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SEIZING A SEAT AT THE TABLE:
PARTICIPATORY POLITICS IN THE FACE OF DISQUALIFICATION

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Introduction

“Governments can change a country. Protest movements simply agitate against those who govern.”¹ This distinction, which Tony Blair deployed as part of his attempt to intervene in the Labour Party’s 2015 leadership elections, may seem remarkably overdrawn. But it gives voice to an intuition that shapes how many people (including some quite friendly to a radically minded politics) talk about protests and social movements, and more generally about unforeseen political events. These are commonly analyzed as expressions of anger, anxiety, and discontent, as demands for recognition and redress, or as symptoms of an antigovernmental orientation—but what is seldom taken seriously is the possibility that those involved in a contestatory politics are manifesting judgments on governmental policies, let alone an aspiration to help run the country.

Commenting on contemporary movements like Occupy, political scientist Ivan Krastev writes that “mass protests are meant to take on (in a nonviolent way) the role that violent insurrections historically have played. [They] testify that the sovereign people exists and is angry” and they serve as a useful “eruption of civic energy.”² Miguel Vatter similarly excises governmental considerations from radical politics when he talks of “separat[ing] the people from the business of government... for the sake of preserving in the people the sovereign indifference to rule.”³ Such perspectives need not deny that protestors do make some claims regarding policy. But they proceed from the assumption that, whatever a movement presents itself as doing, the true stakes of its intervention—what has brought its participants together, what makes it meaningfully oppositional—lie elsewhere. Anywhere, really, but in a popular interest to affect the “business of government.” This view is found in scholars and commentators for whom paying

¹ Tony Blair, “Even If You Hate Me, Please Don’t Take Labour over the Cliff Edge,” *The Guardian*, August 13, 2015.

² Ivan Krastev, “From Politics to Protest,” *Journal of Democracy* 25:4 (October 2014): 16-17.

³ Miguel Vatter, “Pettit and Modern Republican Political Thought,” *Nomos* 46 (2005): 150.

attention to “the strong and slow boring of hard boards”⁴ does not leave enough space to contest what ought to be contested, the idea being that having the former in mind discourages or even co-opts activism;⁵ and it can be found in institutionally-minded commentators and scholars, for whom introducing disruptive elements into the task of governing distracts from its seriousness.

This dissertation addresses the difficulty of appreciating contestatory movements as a form of participation in the business of government. It outlines the distinctive political rationality and the value to democratic life of practices of contestatory participation. These are practices by which people act as if they have a seat at the proverbial table, negotiating the doubts as to their competence and authorization in the course of advocating their views in institutional spaces that present themselves as beyond their involvement.

Practical disqualifications: A story about politics

The political reason to revisit how a contestatory outlook intersects with participation in public affairs is that some people will find that their participatory ambitions on at least some issues are disqualified. While the aspiration that all people be involved in shaping their lives and communities lies at the heart of the democratic project, the appropriateness of this aspiration—or at least the scope of its desirability—is constantly put in question. We often encounter situations

⁴ Max Weber, *Essays in Sociology*, ed. H. H. Gerth and C. Wright Mills (New York: Oxford University Press, 1946): 128.

⁵ Hanna Pitkin and Sarah Shumer, for instance, warn that seeking “immediate changes on specific issues” leads movements to lose sight of the bigger prize; they note that “even the Students for a Democratic Society, which did begin with a larger vision and did value internal democracy, eventually became absorbed in ending the Vietnam War.” In “On Participation,” in *Democracy: A Reader*, ed. Ricardo Blaug and John Schwarzmantel (New York: Columbia University Press): 53. This wariness that the “business of government” may prove deflationary can also be found in Cristina Beltrán’s discussion of the 2006 immigration marches in the United States. For her, the value of these marches lies apart from “protesting an act of government” like the bill under discussion in Congress; focusing on this bill gives up “social transformation” for “liberal inclusion.” In *The Trouble with Unity* (Oxford: Oxford University Press, 2010), 156. Finally, consider Michael Ferguson, who frames policy goals as an overly instrumental approach to protests. “If Occupy stated clear goals, and they were met, there would be no need for further activism. And if its goals were not met, then those intent on a particular outcome could become discouraged.” In *Sharing Democracy* (Oxford: Oxford University Press, 2012), 162.

in which some attempts to influence governmental affairs will strike the public (let alone the socioeconomic elites likely to be governing them) to be out of bounds. Should citizens with no background in urban planning or economics participate in the deliberations of highway engineers or experienced regulators? Should medical patients help design scientific research? Should decisions concerning deficit spending and public sector subsidies be subject to electoral pronouncements? Few nowadays would defend a strictly negative answer to all of these questions as few would altogether reject the idea that everyone should partake in public life in some way. But to many it is likely to seem a step too far for everyone to play the same role as experts, professionals, and experienced policy-makers.

I define *disqualification* as the widely shared sense that certain contributions to public activity lack the attributes requisite to count as acceptable and worthwhile, that something about their speaker (his or her identity, social background, education level, decorum, mode of speech) signals that he or she lacks competence for the task at hand. Conversely, those who possess the requisite attributes are in a position to claim mastery over the corresponding set of issues or decisions, to have a higher stake in decision-making processes and to disregard other people's claims as irrelevant to what they themselves should do and decide.

Two immediate clarifications are in order. First, by disqualification I do not mean disenfranchisement or absolute exclusion. Patterns of disqualification are compatible with democratic arrangements. Second, by disqualification I do not mean domination. The definition above does not equate to a condemnation of the view that some contributions are more worthwhile than others; it only describes the situation that some people face of being seen as unqualified to decide certain issues, whether or not you judge these perceptions to be correct or plausible. Let me explain the importance of each point.

The first clarification is that differentiating between what people are equipped to do is compatible with an inclusive outlook. One can hold that everyone's voice should be heard but that there are different ways that people can contribute to the overall system of democratic governance. Consider a television show that aired in France on October 10, 2003.⁶ It featured as its guest Jean-François Copé, then the head of the country's main center-right party (Union pour un Mouvement Populaire). As part of the show, Copé was to have a conversation with a citizen, Isabelle Maurer, whom the show had brought in from the deindustrialized town of Mulhouse. The segment went viral. In it, a visibly emotional and angry Maurer decries the economic injustices and denounces the "scandal" of being asked to "survive... with the little that you dare give us," all while interrupting and lambasting Copé and apologizing for what she describes as her "lack of dignity" and inability to "stay calm."

Copé and the show's anchor—the prominent journalist David Pujadas—react to Maurer in two noteworthy ways. On the one hand, Copé expresses sympathy for Maurer's anger, but in doing so reduces her intervention to the fact that she is angry: "What [she] told us is the cry of absolute anger, and that is why I did not react because I understood that this was not why we were dialoguing. So I understood the message. This message, I hear it, like all political officials, throughout France in the same manner." This reflects politicians' broad habit of responding to strikes, protests, or electoral sanctions by noting how valid the anger is; this move shows recognition for citizens' discontent, but it can also strip their action of programmatic content, treating it as the symptom of an undifferentiated anguish that those who govern should endeavor to fix. For instance, a seminal anthology on populism suggests that populist movements "can be read as a *fever warning* which signals that problems are not being dealt with effectively, or point to the

⁶ This was the October 10, 2003 episode of France 2's political show "Des Paroles et Des Actes." The specific segment I discuss here can be found at <<https://www.youtube.com/watch?v=F2eVXmrRi6M>> (accessed April 30, 2016). All translations mine.

malfunctioning of the linkages between citizens and governing elites.”⁷ On the other hand, Pujadas’s approach is to press Maurer to offer her “testimony.” He marvels at the “raw speech” that “bubbles up” from her. As I understand it, he is urging her to confront Copé with facts from the ground, with realities that officials like Copé are disconnected from but to which they may develop solutions if citizens testify to them. Here I was reminded of Frederick Douglass’s charge that white abolitionists, while eager to have him work alongside them, thought it would be best if he kept his interventions to what his white audiences would find plausible to hear him speak about. “‘Give us the facts,’ [they] said, ‘we will take care of the philosophy.’”⁸

Copé and Pujadas, while somewhat sympathetic, were ignoring the aspects of Maurer’s speech that were neither a symptom of undifferentiated anxiety nor an “authentic” testimony of what it is like to be in her social class (a symptom/testimony others in her class could have offered interchangeably), but instead the articulation of a set of politicized views on the economy. Besides speaking against low unemployment benefits and a raised retirement age, Maurer faulted the demonization of the welfare state promoted by Copé’s center-right, and more broadly by the continental consensus in favor of austerity. “Always talking about the unemployed and about people who receive welfare benefits [*RSA*]*—*you must stop because this system is paid for. Those who are employed pay for the unemployed, we do pay for child benefits. I’ve been on the other side of this. I paid, I gave, and proudly. But today... I am not proud because you impose requirements on me [*to receive unemployment benefits*] and I cannot help my children.” If I am highlighting this solidaristic vision of mutual assistance and a robust safety net, it is absolutely

⁷ Yves Mény and Yves Surel, “The Constitutive Ambiguity of Populism,” *Democracies and the Populist Challenge*, ed. Yves Mény and Yves Surel (New York, Palgrave: 2002), 15. For more on this perspective, see Paul Taggart, “Populism and the Pathology of Representative Politics,” in *Democracies and the Populist Challenge*, 62-80 and Christa Deiwijs, “Populism,” *Living Reviews in Democracy* (2009): 1-9.

⁸ Frederick Douglass, *My Bondage and My Freedom* (New York: The Modern Library, 2003), 216; the emphasis is in the text.

not to hold it up as the repressed truth of what the downtrodden believe. I find interesting instead insofar as it this reflects Maurer's politicized judgment of what should be done and how society should be organized. Hers is a left-leaning judgment that others who share her anguish or economic circumstances would simply not profess (let alone "cry out" or let "bubble up") "in the same manner." (Interestingly, Maurer later joined a left-leaning citizens' party, the Nouvelle Donne, and ran for office in 2014.⁹) Copé and Pujadas were specifically disregarding the programmatic vision that Maurer was advocating. I would suggest that such disregard does not necessarily speak to cynicism or deafness; it speaks to their expectation of what sort of intervention could possibly be valuable and worthwhile coming from someone in Maurer's position, which is to say their expectations of what she was qualified for.

In this dissertation, I will use the term *contribute* to designate the modality of participation I just described: When I talk of disqualified actors working to contribute to an activity, I mean that they are sharing their programmatic beliefs and directive judgments about what should be done and what decisions should be made, which is to say that they are endeavoring to conduct the same sort of work as those who are already deemed qualified to contribute to this activity.

This gets me to my second clarification: My aim is to emphasize rather than dismiss the difficulty of answering the dilemmas that arise in political life regarding the division of political labor. It is often far from obvious whether a given pattern of disqualification is a valuable exercise of expertise or a mark of domination. The old problem of representation (are representatives usurping the people's role, or do they fulfill a function necessary in democratic governance?) is a perpetual thorn in democratic life; regulators, bureaucrats, planners, or judges have replaced the representatives of yesteryear, whom Rousseau distrusted and Madison defended. This is why I

⁹ Maurer headed the Nouvelle Donne's list in the "Grand Est" region of France during the 2014 European elections; her list received 2.44 percent of the vote.

use the ambivalent expression “claim to mastery.” *Mastery* can denote either a negative or a positive valuation, and *claim* adds a subjective dimension open to rejection or affirmation. I thus aim to highlight that the rightness or wrongness of a given societal perception of who should be doing what is something that calls for judgment.

This means that this dissertation has no pretention to adjudicate these dilemmas, whether by determining which issues are properly technical or by defending specific spaces as needing democratization. On the contrary, a core intuition I will defend is that we as political theorists should resist the quest for *a priori* criteria by which to settle questions regarding the proper division of labor and proper ascertainment of capacities. Instead, we should take seriously disqualified actors who challenge the pervasive sense that their speech is out of bounds. We should do so not because their challenges will always be right—in fact, many may strike us as deeply unconvincing—but because these actors, who often act amidst doubts of their own about their own adequacy, are doing what political theory ultimately cannot: putting claims to mastery (their rightness, their plausibility, their defensibility) to a public and practical test.

Theoretical disqualifications: A story about democratic theory

The core question I explore in this dissertation is as follows: How can people act on their aspiration to contribute to government when their claims are disqualified by institutions and governing elites? This is an urgent question to tackle within political theory because, as I shall argue, the paradigms with which contemporary thinkers approach cases of contestation tend to reproduce at a theoretical level the disqualifying patterns found in political life. I see two major reasons for this: the framework of mutuality, and a turn to ontology. This section addresses the first.

Contemporary democratic theory lacks a conceptual vocabulary with which to appreciate the contributory work that some contestatory movements undertake. The available theoretical

frames misrecognize what some sociopolitical movements are doing because they interpret claims voiced by disqualified actors as at most agitating for a right to participate, rather than as already working to shape the content of governmental decisions.

Indeed, theorists attentive to how people act in the face of their disqualification trace two broad paths of democratic contestation. People can *seek redress* by protesting their inability to direct government: they can address demands for recognition or litigate for an improved status, the idea being that once they are successful they will have achieved the standing to contribute their views. Or else they can act in an empowered manner even before they obtain redress by *acting at a distance* from spaces in which they experience domination, whether by turning their back on governmental aims or by constructing spaces of self-governance.¹⁰ While I do not question the strategic value of either path, the problem is that the table of possibilities they jointly put in place is overly restrictive because they both share the premise that, when people's claims are ignored or not taken seriously, it is futile for them to persist in adding contributions to governmental processes. The decisive theoretical question in such situations is taken to be: How shall these people act, *given that* they are prevented from contributing to their government? Thus, while there are many recognizable paths for contestation, acting upon one's participatory aspirations is not seen to be one of them. The time for participation follows the time of contesting the silencing or exclusion of one's claims—and that's if actors do not choose to bypass governmen-

¹⁰ Theorists who privilege a quest for redress include Charles Taylor in "The Dynamics of Democratic Exclusion," *Journal of Democracy* 9.4 (1998), 143-156 and Philip Pettit in "Republican Freedom and Contestatory Democracy," *Democracy's Value*, ed. Ian Shapiro and Casiano Hacker-Cordsn (Cambridge: Cambridge University Press, 1999). This approach privileges litigating whether one is heard to contributing something one wants heard. (I discuss the quest for redress.) For theorists who encourage action at a distance, see Wendy Brown, *States of Injury* (Princeton: Princeton University Press, 1995), Alain Badiou, *Metapolitics* (London: Verso, 2005) and Filippo Del Lucchese and Jason Smith, "'We Need a Popular Discipline: Contemporary Politics and the Crisis of the Negative,' interview of Alain Badiou," *Critical Inquiry* 34 (2008): 647-651. The idea is that arguing with those positioned to ignore you betrays an attachment to "worshipping the state," as Richard Mohr puts it his critique of ACT UP, in *Gay Ideas: Outing and Other Controversies* (Boston: Beacon Press, 1992), 53. (I discuss acting at a distance in the first chapter, and return to ACT UP in the fourth.)

tal sites altogether. What is thereby ruled out is the logic of mobilizing to intervene in the very activities for which one is deemed incompetent.

Some of the thinkers I discuss in this dissertation may respond that they would be happy to grant that some contestatory movements are motivated by contributory desires. But my view is not that they necessarily intend to deny this possibility. Rather, it is that they lack the concepts and language to account for its value and its political rationality. My first chapter will propose an explanation for this predicament by demonstrating that the political imaginary of contemporary democratic theory is structured by what I call the framework of mutuality. This is the idea that contributory practices are valuable and viable only insofar as one is integrated in relations of mutuality with one's fellow citizens and/or with institutional actors, and that people should privilege other modes of action—democratic or otherwise—insofar as they find themselves ignored or derided. (As we shall see, for most theorists mutuality must be in place prior to political action, but for some it is only in practice that actors enact the mutuality that sustains their action; either way, participatory politics occurs apart from contexts in which mastery is being claimed.) Two theoretical projects thereby work side-by-side within democratic theory: first that of identifying what form relations of mutuality should take and how they can be strengthened for a contributory democracy to flourish, and second that of identifying noncontributory practices that litigate mutuality's absence. What is still not considered is the possible value of persisting to engage, argue with, and respond to those elites or institutions that do not hold one in mutual regard.

This dissertation unsettles the expectation that authoritative claims to mastery effectively put the rulers and institutions that make them beyond the reach of participatory aspirations. I show that the framework of mutuality does not exhaust the range of thinkable and viable democratic practices, and that there is a rationality to people working to intervene in governmental life

even in situations where they do not expect those they address to take their views seriously. For those whose claims and capacities are deemed improper, can democracy still be about contributions to policy-making processes, about institutional participation, about argumentation with decision-makers and responsiveness to rulers? How can one add contributions to governmental processes while also testing the claims to mastery that pervade them? Why would one persist in accompanying and intervening in governmental life, not just insofar as one is acknowledged as competent, but also insofar as one runs against one's disqualification?

Part of the subtext of this dissertation is to complicate the old divide between reform and revolution as pathways to change (between an inside track and an outside track), a divide which somewhat overlaps with the fault line between institutions and noninstitutional action. In its starkest form (which we will encounter in my fourth chapter in the context of disputes within ACT UP activism), this divide supposes a basic incompatibility between having radical aims and engaging existing institutional spaces. This dissertation fleshes out why these may go hand-in-hand, why it may be transformative and radically democratizing to engage what goes on in institutions and governmental processes, even those in need of overhaul. Here I build on Patchen Markell's argument that even activities of rule that preserve "regularity and continuity" can be practices of freedom, and that "a kind of novelty... can also be present in moments that... follow existing patterns, or continue observable regularities."¹¹ To put this somewhat unglamorously, what does it take for political action to be contestatory and egalitarian even when pointing (among other things) toward objects like legislative and policy processes?

Yet I believe that existing attempts to blur the divide between institutions and noninstitutional action neglect the central problem I emphasize, which is the pervasiveness of patterns of

¹¹ Patchen Markell, "The Rule of the People: Arendt, Arche, and Democracy," *American Political Science Review* 100:1 (2006): 7-8.

disqualification. Indeed, this problem cuts across the argument that extrainstitutional voices have a role to play in ruling and that being situated within institutions is not antithetical to transformative action; this is because people in noninstitutional roles may possess the requisite attributes for their voices to count as authoritative, and people located within institutions may not. Hence the distinctiveness of my project stems from my focus on what becomes of practices of democratic rule in the face of resilient disqualification. I contend in my first chapter, for instance, that while Markell overcomes the view of rule as necessarily rigid and closed, his expansive vision demands situations where people jointly step onto a shared space, with citizens responding to leaders willing to have their deeds taken up by others. This may not rule out forms of responsiveness that would feed into still-depoliticized spaces and by which people would take up the deeds of leaders still attached to their sovereignty, but that is not where the focus lies. By contrast, I am asking why and how you would persist in intervening in institutional work and in activities of rule even when you run into actors who believe that the task at hand is not a matter of democratic debate—let alone one to debate with you—and that they can justifiably withdraw from interacting with you as equal partners.

One implication is that the efficiency of practices of contestatory participation is not just that some of the people whom you address may end up recognizing you, thus enabling your views to be heard after all. The intuition underlying my project is that there is a logic to presenting yourself as litigating a disagreement even with people who are disengaged and do not even acknowledge being argued with. I draw out two primary aspects of this logic. First, pursuing uninvited interventions into the business of government is an occasion to challenge the prevailing division of labor by experimenting with the adequacy of alternative ones. Second, publicly persisting to engage those who disqualify you can involve a bid to make the propriety and viability

of your contributions an object of conflict for a wider community. It matters how the visibility of nonmutual interactions is perceived by and explained to others, and whether that affects what behavior appears plausible and defensible to the public. Nonmutual interactions may be partly geared to persuading a third party, distinct from the party one is ostensibly addressing.

Ontological disqualifications: A story about critical theory

If there is to be a rationality to adding contributions to governmental spaces even in the face of one's disqualification, we need to consider two major obstacles: the problem of competence, and the problem of uptake. It would indeed seem that robust relations of mutuality need to be instantiated (a) for people to be *competent* to engage in democratic action, and (b) for their practices to be *taken up* by others. If this is right, then facing disqualification would render the disqualified both *incapacitated* and *voiceless*.

It is easy to see why the second point might be correct. Indeed, if democracy is to involve playing some role in the communities you are part of, then it would seem that you cannot play that role unless these communities' other members tolerate you, respect your rights, and acknowledge you as a partner, so that whatever your abilities you cannot be part of an activity that involves interacting with others when those others are unwilling to interact with you.

What of the first point, that disqualification affects not just whether one is in a position to make use of one's competences, but also what competences one has in the first place? A long philosophical tradition has built on Rousseau and Hegel's view that being recognized as a worthy partner is necessary to human self-flourishing. Axel Honneth, who calls this "the communicative enabling of self-realization," writes that "the experience of being loved constitutes a necessary precondition for participation in the public life of a community."¹² Part of what he means is that

¹² Axel Honneth, *The Struggle for Recognition*, trans. Joel Anderson, (Cambridge: MIT Press, 1995), 172.

whether one develops the capacities to participate is tied to how one interacts with others. “Individuals must know that they are recognized for their particular abilities and traits in order to be capable of self-realization.”¹³ By contrast, in contexts of misrecognition or domination, one’s aptitudes atrophy or fail to emerge. This incapacitation may be due to not having the opportunity to practice and enrich one’s aptitudes,¹⁴ or it may be due to the fact that the negative feelings such relationships produce function as a psychological or motivational wound.¹⁵ Simon Charlesworth, writing on British education, argues that “what looks like a natural absence of capacity in fact emerges from a taught inability and the damage that comes from being made to be intimidated by the expressive medium itself, such that they remain throughout life... alienated from a range of perceptual and expressive tools that enable one access to the possibility of founding worthwhile relations.”¹⁶ His argument is striking: By specifically thwarting one’s ability to interact with others, the experience of stigmatization deprives people of the competence they would need to ever reciprocate in the future.

These observations speak to a larger dilemma that has plagued critically-inclined philosophers: The more one unearths forms of domination and power, the more difficult it becomes to show how people who are dominated or oppressed can make demands and modify their circumstances absent the providential leadership of an enlightened vanguard or an extraordinary law-

¹³ Ibid. 178.

¹⁴ See Iris Marion Young’s definition of oppression as a set of “processes which prevent some people from learning and using satisfying and expansive skills in socially recognized settings.” “All oppressed people suffer some inhibition of their ability to develop and exercise their capacities and express their needs, thoughts and feelings.” In *Justice and the Politics of Difference* (Princeton: Princeton University Press, 2011), 38-40.

¹⁵ For Honneth, “the possibility of a positive relation-to-self emerges only with the experience of recognition.” Honneth, *The Struggle for Recognition*, 174. On this point, see Lois McNay, *The Misguided Search for the Political* (Cambridge: Polity, 2014), 46. McNay notes that Honneth rebuts the “miserabilist” implications of this view by providing an account of the “untrammelled mutuality underpinning social relations;” she calls this a “primal mutuality” that explains why action is still possible in contexts of misrecognition. (62). I discuss this sidestepping of the absence of mutuality by diagnosing inevitable networks of reciprocity in Chapter 5.

¹⁶ Simon J. Charlesworth, *A Phenomenology of Working-Class Experience* (Cambridge: Cambridge University Press, 2000), 283. (I owe my attention to Charlesworth to McNay, *The Misguided Search for the Political*, 63.)

giver. This dilemma is difficult to resolve if one is wary of natural law and essentialist philosophies that determine the source of human agency and identify moral imperatives human agents face. How can one ensure that the dominated retain a capacity for emancipatory practices without attributing it to them as an essential feature of their humanity? Some theoretical schools, especially those bearing a Hegelian or Marxian influence, solved this by diagnosing the existence of contradictions at the scale of social systems. This is the idea that a social system, by the very logic of its operation, can never fully extinguish avenues of upheaval; something about it necessarily preserves or produces a capacity to overcome it. This approach came to face the same relative discredit as other philosophical strategies that seek to guide action by determining with certainty how the world is. Yet a number of contemporary thinkers have devised new approaches to employing it in the hope that, by blunting its depoliticizing or teleological implications, they may continue using it to bridge their commitments to social critique and political struggle.

Two books, published in 1986, heralded a paradigm shift in critical theory. Both shed the language of necessity that had characterized strands of that tradition, and both criticized the impulse of subordinating politics to the realization or reappropriation of what is still unfulfilled. Ernesto Laclau and Chantal Mouffe's *Socialism and Hegemonic Strategy* took Karl Marx's heritage in a radically democratic direction by rejecting any faith in a class that is fated to usher in social change; Seyla Benhabib's *Critique, Norm and Utopia* unfolded as even broader assault on critical theory's reliance on theorizing sociohistorical change as the resolution of a system's inevitable contradictions. According to Benhabib, when critical theory gets stuck in an "explanatory-diagnostic" mode, it is prone to forget the "anticipatory-utopian" mode and to envisage the future as the present's inevitable fulfillment. She argued that conceptualizing emancipation must retain the possibility of a "radical and qualitative break with some aspects of the present," and

that it must be more attentive than it has been to “the moral and political struggle of fighting actors.”¹⁷ The latter point, also central to Laclau and Mouffe’s perspective, is one I especially take to heart. It is a major and distinctive contribution that *Socialism and Hegemonic Strategy* and *Critique, Norm and Utopia* make to critical theory and to analyses of contestation.

In this dissertation, I will seek to do justice to this contribution and to retain some of its language. Yet I shall also demonstrate that these thinkers ultimately remain within the paradigm they had set out to question. They end up diagnosing the availability of contradictions of their own, albeit of a weaker kind.¹⁸ I would suggest that this return to identifying contradictions stems from an anxiety as to what would happen to the political practices these theorists prize absent a guarantee of their possibility. Perhaps worried by the implications of their own critique of theoretical certainty, which can inspire what John McDowell calls in a different context “a sort of vertigo induced by the thought”¹⁹ that actors may be standing on their own and wrestling with uncertainty as to what practices are viable, the authors I consider take on rather than shake off the basic premise that philosophy should establish the presence of the background conditions that always already enable emancipatory action to get off the ground.

¹⁷ Seyla Benhabib, *Critique, Norm and Utopia* (New York: Columbia University Press, 1986), 41, 142, 331.

¹⁸ One way of capturing the point that contradictions can have varying degrees of intensity is Stephen White’s distinction between “strong” and “weak” ontologies in *Sustaining Affirmation* (Princeton: Princeton University Press, 2000). Using White’s language, I would say that Laclau, Mouffe and Benhabib depart from strong ontologies. That said, I do not see their frameworks as quite fitting White’s “weak” ontologies (systems that fold unto themselves and undermine their own certainty); put otherwise, they avoid strong ontologies through different strategies than the ones White highlights. (1) Laclau and Mouffe make contradiction *undecidable*: They guarantee an unaccounted feature of reality, but make its content contingent on political articulation. (2) Benhabib (and Foucault) makes contradiction *intersubjective*: She situates a discordance in background conditions we presuppose in acting. (3) Both frameworks reject the view that it is sufficient to expose ontological truths to compel recognition; they consider how politics exploits these ontological truths and struggles on their behalf. It is important for me to take these strategies seriously so that I can study the move of establishing the ontological availability of contradictions in its most compelling form. This will enable me to show that the problem really lies with the move itself rather than with the ways in which it has been done, and that contradictions should once and for all shed their ontological shell. Yet I also argue that there is something productive about the idiom of contradiction when we only think of it as a polemical and rhetorical device.

¹⁹ John McDowell, “Non-Cognitivism and Rule-Following,” *Mind, Value, and Reality* (Cambridge: Harvard University Press, 1998), 207.

Indeed, I will specifically show that these two frameworks devise ontological solutions to the two problems I have described in this section. Radical democratic theory (represented in my third chapter by Mouffe) is concerned with resolving the problem of competence; the intersubjective turn (represented in my fifth chapter by Benhabib and also by Michel Foucault) with resolving the problem of uptake. The former diagnoses heterogeneous contradictions; something about the world is necessarily heterogeneous to any ordering or accounting of it, so any claim to possess exhaustive mastery is inevitably belied by a feature of that which mastery is claimed over. The latter diagnoses performative contradictions; political authority necessarily depends on inciting the free agency and equal capacity of others, though one may be guilty of disavowing the presuppositions of one's own practices. Hence, taken together, these frameworks settle at an ontological level the twin predicaments of competence and uptake. Their overarching strategy is a promise that phenomena like domination can conceal but never eliminate *popular capacities* on the one hand, and *threads of reciprocity* on the other. They guarantee that (a) there is always already some politically relevant capacity people are wrongly denied, and that (b) those who deny this capacity are in fact always already tacitly authorizing its performance.

Does this two-pronged move not solve the problem I identified? What better way to disturb disqualifying expectations and avoid reproducing them at a theoretical level than to simply reverse them? What better way to challenge incapacitation and voicelessness than to show them to be ontologically impossible? But I argue against this perspective. I demonstrate that these ontological frameworks only obscure the possibility—let alone the importance—of practices of contestatory participation; they further disparage the logic of putting disqualifying expectations to a public test in the course of contributing to the very activities perceived to be out of one's bounds.

Casting disqualification as always already wrong and always already self-undermining—settling these problems theoretically, in advance of people acting—sidesteps the problem at hand, namely how people act in situations where they face widespread perplexity about their aptitudes and about the upshot of even exercising them. Put otherwise, these ontological guarantees do little to address the concrete predicament that disqualified actors confront: How to navigate in practice the uncertainty over the competence and the uptake of one’s contributions?

My contention is that, instead of prejudging whether or not people are incapacitated and voiceless theoretically, we need to be more attentive to how particular movements negotiate these dilemmas in the course of their struggle. Here I build on Linda Zerilli’s arguments that a “sense of correctness is generated... by the very practice of making political judgments and claims,” and therefore that “politics is about making claims and judgments—and having the courage to do so—in the absence of the objective criteria or rules that could provide certain knowledge.”²⁰ Specifically, I extend this framework to ask what we gain from applying it to stubbornly disqualifying situations and nonmutual relationships.²¹ I pursue the idea that the existence of repressed capacities and the existence of disavowed threads of reciprocity—i.e. the existence of the two things which radical democracy and the intersubjective turn look to guarantee—are in need of political experimentation and persuasion, rather than of theoretical protection.

If these ontologies’ basic problem is that they lack traction on the problems they are ostensibly addressing, that problem is compounded by the fact that the thinkers I consider are only able to guarantee contradictions by ignoring how those invested in the prevailing order would

²⁰ Linda Zerilli, “Value Pluralism and the Problem of Judgment,” *Political Theory* 40:1 (2012): 14 and *Feminism and The Abyss of Freedom* (Chicago: The University of Chicago Press, 2005), 179.

²¹ My first chapter makes the case that Zerilli’s framework of anticipatory action fleshes out this idea of acting in the absence of guarantees, but what remains unaddressed is the specific value of continuing to engage and direct contributions towards those who remain within the perspective of mastery and withdraw from the common world we anticipated creating with them.

justify disqualifying others. Some thinkers entirely overlook that what is at issue is not the mere fact of disqualification but its rationalization; others overdetermine the scope of certain concepts in a manner that cannot be settled analytically. Either way, these ontologies disregard the political judgments sustaining a given division of political labor. They therefore miss that there also is political work being undertaken when actors challenge the common sense that their claims are out of bounds by enacting an alternative set of meanings, judgments, and analogies.

There is a related reason why these ontological paradigms produce new disqualifying patterns: They have no room for actors who seize other capacities and intervene in other activities than the ones whose competence and uptake philosophy has identified. Indeed, once we grant that political practice needs a guarantee, philosophy becomes responsible for determining its space and form by identifying a necessary feature of “our” form of life capable of always serving as a resource. This diagnosis slips into an expectation that we will prioritize the concealed possibility always already offered to us. Once philosophy gets assigned the task of uncovering the “deep necessities” of “our societies,” politics becomes the task of reenacting these necessities. Instead, I will consider, not only how disqualified actors navigate the practical uncertainty as to what they can do and what they are authorized to do, but also how they augment prevailing expectations beyond what political theorists can guarantee on ontological grounds.

As if we can

The frames through which we apprehend sociopolitical movements tend to dress down some of these movements’ contributory aspirations. Moreover, the ontological solutions to the doubts people face about what their practices are good for dispense theorists from paying close attention to how people investigate the expectations that they are unqualified and to the concrete struggles that ensue over who should be doing what. This dissertation aims to learn from political

practice. It examines how people navigate the dilemmas they encounter as to the conditions of their participation in the course of acting in the manner whose viability is in doubt.

This is why each of my dissertation's three reconstructive chapters revisits an instance of contestatory activism whose stakes I believe have been misconstrued. In my second chapter, I study American suffragists' postbellum constitutional claims to explain why I am focusing on interlocutory situations that have a nonmutual quality. In my fourth chapter, I study AIDS treatment activists' technical recommendations on scientific research to show how certain ways of adding contributions shift expectations of what it means to be competent for a task. In my sixth chapter, I turn to Frederick Douglass, not just as an abolitionist who had to confront the predicament that his audience was not taking up his claims as he would want them to, but also as an author and lecturer who was uncommonly explicit about the obstacles to his claim-making and to the analogical strategies that could remedy it. (As such, I reconstruct Douglass's approach to the problem of uptake mostly through a close readings of his texts, a different methodology than the work I conduct on suffragists and AIDS activists.)

In each of these chapters, I also turn to Jacques Rancière to draw out of his work critical but misunderstood resources with which I shed new light on these three instances of contestatory politics. I shall defend an unorthodox reading of Rancière as a theorist who blurs familiar fault-lines between participation and contestation, reform and revolution, institutional work and disruptive action. And I shall build on these resources, extending them further than he does to build my own paradigm of practices of contestatory participation into governmental affairs.

One of this dissertation's subplots is therefore that it aims to transform received readings of Rancière. While Rancière has come to play a growing role in the contemporary Anglo-Saxon academe, I believe that scholars have been too quick to read into him the recent decades' various

dominant paradigms for conceptualizing radical politics. As a result, much of what is distinctive and politically productive about his thought has been obscured. Based on this, there are two major reasons why Rancière would seem like an unlikely thinker to accompany my project.

First, he is read as more concerned with interrupting governmental processes than intervening in them.²² He is seen to “reject constituted politics”²³ and to privilege “momentary outbursts,”²⁴ spontaneous ruptures, and ephemeral insurrections that “overwhel[m] human reason, speech and comprehension.”²⁵ This speaks to an expectation that, since he associates politics with the oppositional outlook of marginalized subjects who face disqualifying assumptions regarding who should “discuss common affairs,”²⁶ he must be wary of also associating it with practices of participation in government, and he must be offering some variation on the two contestatory paths I mentioned earlier: seeking redress, or acting at a distance. Some cast him as a theorist of recognition who highlights the confrontational militancy with which excluded groups fight for recognition of their equality; others describe him as championing acting in concert in a manner unconcerned with institutional spaces.²⁷ But I see Rancière as scrambling such expectations. He puts the spotlight on people who offer substantive contributions to the processes that should

²² For James Ingram, Rancière’s democracy resides in the “contestation and destabilization” political moments promote. James Ingram, “*Hatred of Democracy*, by Jacques Rancière,” *Constellations* 17:1 (2010): 177.

²³ Miguel Vatter, “The Quarrel Between Populism and Republicanism: Machiavelli and the Antinomies of Plebeian Politics,” *Contemporary Political Theory* 11:3 (2012): 245.

²⁴ Slavoj Žižek, *The Ticklish Subject* (London: Verso, 2000), 232

²⁵ Jane Bennett, “In Parliament with Things,” in *Radical Democracy*, ed. Lars Tønder and Lasse Thomassen (Manchester University Press, 2005), 138-140. See also Michael Dillon, “(De)void of Politics?,” *Theory and Event*. 6.4 (2003); McNay, *The Misguided Search for the Political*, 164; Peter Hallward, “Staging Equality: Rancière’s Theatocracy and the Limits of Anarchic Equality,” in *Jacques Rancière: History, Politics, Aesthetics*, ed. Gabriel Rockhill and Philip Watts (Durham: Duke University Press Books, 2009).

²⁶ Jacques Rancière, *Moments Politiques* (Paris: La Fabrique, 2009), 106.

²⁷ Scholars who read Rancière as privileging the quest for inclusion include Jean-Philippe Deranty, “Jacques Rancière’s Contribution to the Ethics of Recognition,” *Political Theory* 31 (2003): 136-156 and Bennett, “In Parliament with Things.” Scholars who read Rancière as privileging a politics unconcerned with institutional spaces include Jackie Clarke, “Rancière, Politics and the Social Question,” in *Rancière Now*, ed. Oliver Davis (Cambridge: Polity Press, 2013) and Todd May, “Rancière and Anarchism,” in *Jacques Rancière and the Contemporary Scene*, ed. Jean-Philippe Deranty and Alison Ross (London: Continuum, 2012), 117-127.

in all logic have alienated them. The political actors whom he highlights are the “common people who would have had enough to worry about staying alive, earning a living and reproducing life, [but who] let themselves be exalted by words like ‘liberty’ or ‘equality’ and, as a result, want to have their say in affairs of state that are not their responsibility.”²⁸ Not only that, but they enact this desire without delay, even though doing so would seem unwarranted and inefficient.

Second, Rancière is read as offering ontological certainties of his own to support his conceptualization of an egalitarian politics. In fact, scholars impute to him the two ontological frameworks I described in my previous section. He is cast as an advocate of the spontaneous disruptions produced by inevitable miscounts; and as a champion of the timeless equality that pervades all human interactions. I show, however, that both interpretations neglect the polemical character he attributes to diagnoses of contradictions. I read him as replacing the ontological understanding of contradiction with the idea that it is up to people to act *as if* a contradiction is given. I thus recover his insight that whether the prevailing distribution of functions is wrong is not a question that can be addressed through philosophical musing but a question open to what he calls practices of verification. What happens when we act *as if* the police is wrong?

In short, this dissertation examines political strategies employed by abolitionists, suffragists, and AIDS activists while revisiting texts and speeches by Douglass and Rancière. I reconstruct the value and logic of persisting to enact contributory aspirations even in nonmutual circumstances by examining how people act in the face of perceived limits on their political participation.

I show that there is a two-pronged efficiency to actors seizing a seat at governmental tables for which they lack the established qualifications. First, I theorize democracy as a *seizure of*

²⁸ Jacques Rancière, *Politics of Literature*, trans. Julie Rose. (Cambridge: Polity Press, 2011), 66.

competence: People act as if they possess the competence for an activity that is denied to them by imitating part of what qualifies others for it, as if the element they imitate is sufficient by itself and as if it is distributed evenly. Second, I theorize democracy as a *seizure of standing*: Subjects act as if those who disqualify them are in fact tacitly presupposing their equal competence, and therefore as if it is the latter who shoulder the responsibility for disrupting the social fabric. Thus emerges what I call a politics of the “as if:” By understanding the distinct rationality of people acting *as if* they can, I will expand our sense of what contestatory practices are available to disqualified actors, and I will resist settling dilemmas regarding the division of political labor, appreciating instead how people subject these lines to contentious investigations.

Chapter outline

This dissertation builds a new paradigm with which to appreciate the participatory work undertaken by some contestatory movements. I explain how sociopolitical movements may challenge disqualifying expectations in the course of adding contributions to the business of government, and how activists may navigate and reframe the authoritative doubts about their contributions’ competence and uptake. My argument unfolds over three sections, each of which is comprised of two chapters—one critical, the other reconstructive.

The first section asks what are the conditions of participatory democracy. Chapter 1 argues that contemporary democratic theory assumes that acting in a contributory manner is only viable and worthwhile insofar as one is embedded in relations of mutuality with cooperative interlocutors and responsive institutions. Where such relations exist, democracy describes the affirmative role people play in the networks they are part of; where they are lacking, it is studied as a form of disruptive or redressive action. I consider in detail Philip Pettit and thinkers influenced by Hannah Arendt because, while they ultimately remain within the constraints of the framework

of mutuality, they also provide useful resources with which to identify the conceptual work that needs to be done to remedy this framework's deficiencies. Chapter 2 argues that democratic interaction can have a nonmutual quality. It analyzes the New Departure, a strategy by which American suffragists claimed in the 1870s that the U.S. Constitution already enfranchised them, through the lens of Rancière's theory of reading and writing. I argue that the New Departure unfolded as a confrontation between activists who treated the text's meaning as a matter of loud public debate and opponents who treated it as a matter on which to bring interactions to a close. I show that this dynamic, which can also reorient theories of constitutional interpretation, marks a first step toward exiting the framework of mutuality.

The second and third sections confront the two specific challenges to analyzing scenes of asymmetrical and nonmutual engagement as characteristic of, rather than failures of, participatory politics. The first is the problem of competence, which I discuss in Chapters 3 and 4: How should political theory approach people's capacities for engaging in governmental tasks? The second is the problem of uptake, which I discuss in Chapters 5 and 6: How should political theory approach the seeming futility of modes of interlocution toward those who do not recognize one's speech? Against theorists who settle these two problems once and for all at an ontological level, I theorize participation in governmental affairs as an experimental and polemical practice.

The second section asks how people respond to doubts about their competence to contribute to governmental processes. Chapter 3 critiques radical democratic theory's quest to guarantee neglected political capacities to disqualified people. Through a detailed reading of Mouffe's work, I show that using ontology to evacuate dilemmas regarding who can do what where poses two problems. It obscures the predicament of a sense of crisis about the availability of an alternative set of social arrangements; and it leads to privileging an exclusively negative

and antagonistic politics in situations in which popular capacities are nevertheless being repressed. Chapter 4 demonstrates that people can transform what signals competence for a task while engaging in it without delay. I draw from Rancière's work the insight that practices of partial imitation may entail not an absorption into prevailing norms but instead a way to test the dominant criteria of expertise. And I show that AIDS treatments activists, in endeavoring to do science and to engage bureaucrats and medical researchers, were working on behalf of more egalitarian judgments of what indicates proficiency for public affairs.

The third section asks how people respond to doubts about the uptake of their contributions, when their claims are not taken seriously by those who already enjoy standing. Chapter 5 diagnoses a recent approach to solving this problem by revealing surprising common ground between Foucault and Benhabib. For both, people always already relate to one another through implicit ties of egalitarian reciprocity, so that one is always already tacitly authorizing—if not inviting—challenges to one's oppressive practices. This diagnosis of a performative contradiction inherent to domination allows both thinkers to dissolve some of the anxieties regarding disqualified actors' uptake. But I critique their solution for overdetermining what people's actions commit them to and for minimizing the practical difficulty of struggling for the legibility of one's claims. Chapter 6 argues that one approach to navigating a lack of standing is persuading others that you are already authorized by virtue of what you are already asked to do. I argue that we must be mindful of the polemical quality of this accusation, which rests on augmenting the prevailing specifications of equality through analogical reasoning. I reconstruct the rhetorical work underlying this strategy by revisiting Douglass's speeches and writings. I show that he constructed a conceptual landscape within which slaveholding practices were discordant and presented himself as addressing slaveholders on that basis; the idea was to galvanize apathetic Americans

and shift the responsibility for disruption from abolitionists unto slaveholders.

These six chapters all explore participatory strategies available to disqualified actors—those whose interventions tend to get interpreted as “simple agitation,” as “cries of absolute anger,” or as narrations of facts on the ground. I build a historical and conceptual framework to recognize a neglected form of activism, one by which people engage unresponsive institutions and elites on the substance of what the latter are doing, all while polemically experimenting with the competence and authorization of their own contributions to governmental affairs.

Part I

Democracy and Mutuality

Chapter 1

Mutuality's Allure: The Madness of Participatory Action in the Face of Disqualification

Then Polemarchus said: Socrates, it looks as though you and Glaucon are hurrying to leave us and return to Athens. ... You are going to have to choose between staying here peacefully or fighting us if you try to get away. How about a third choice in which we persuade you that you ought to let us go?

But could you persuade us if we don't listen?

Obviously not, said Glaucon.

Then you might as well know right now that we won't listen.

—Plato, *The Republic* (327b)

[Don Quixote] instructs Sancho to have [his letter to Dulcinea] copied out at the first village... Sancho, though, raises an objection: How can the letter be authenticated for Dulcinea's use? Don Quixote then reassures him through a series of irrefutable arguments: first, Dulcinea does not know Don Quixote's signature; secondly, Dulcinea does not know how to read; thirdly, Dulcinea does not know who Don Quixote is... Don Quixote hangs his fate, the fate of his madness, on a letter that will not be read, on a letter addressed to an addressee who does not even know herself to be its addressee. ... Through this absolutely failed act, Don Quixote carries out his duty, which is to be mad, to the end. ...

Althusser's enterprise is marked throughout by the dread... not to address letters without addressee; not to be Don Quixote, the fine soul who fights against windmills, not to be alone, not to be the voice of one crying out in the wilderness, an activity by which one loses one's head, literally as well as figuratively.

—Jacques Rancière, *The Flesh of Words* (136-137)

There is an air of futility in arguing with people who do not listen, a whiff of madness in persisting to address people who ignore us or refuse to take us seriously. That much is intuitively valid in this chapter's epigraphs, both in Polemarchus's quip and in Sancho and Althusser's fear. Yet this dissertation's core argument is that acting on this madness is a valuable democratic practice. That is how people who are disqualified from certain activities, including governmental ones, nonetheless pursue their contributory aspirations.

Contemporary democratic thought has recoiled from this prospect. In this first chapter, I argue that this is because it has made mutuality the linchpin on which the intelligibility of democracy hinges. More specifically, I show that contemporary democratic theory has been constrained by the premise that the instantiation of relations of mutuality is a necessary condition for participatory politics, and that this has unduly impoverished the range of practices seen to be available to people who face their disqualification from governmental tasks.

I use mutuality as an umbrella concept for all the terms democratic theorists employ to describe a situation in which each party treats the others as legitimate participants of the democratic game. Such terms—reciprocity, symmetry, respect—are often complemented by related concepts that describe what it is that parties are mutually granting each other: recognition, toleration, responsiveness, acknowledgment. My point is not that these terms are interchangeable. I take seriously the substantive differences between them and the debates between thinkers who favor one or the other. Yet my first contention is that these debates—is it sufficient for actors to tolerate one another, or do norms of mutuality need to be more robust? should citizens recognize each other only as legal persons, or also as culturally embodied beings?—play out as extended arguments as to what form mutuality must take, and what spaces it must exist in, for a situation or a polity to count as democratic. What they leave largely unquestioned is what I call the frame-

work of mutuality. In its blunter form, it goes as follows: If relations of mutuality are present, democracy is viable; if they are absent, it is not. (This framework concerns how one can interact with state institutions, but it is also applied to non-state spaces; many point to civil society and informal associations as the substratum that harbors and sustains relations of mutuality.)

Some corners of democratic theory do put marginalized actors' practices of resistance or protest at the core of their reflections on what democracy entails. I am thinking of the radical democratic thought of Sheldon Wolin or Ernesto Laclau, the republican tradition of distrust that Philip Pettit or Miguel Vatter draw on, and the world-building practices advocated by thinkers inspired by Hannah Arendt. For these theorists, situations where relations of mutuality fail—where those powerful enough to do so claim mastery and withdraw from interaction—are too pervasive, even in liberal-democratic regimes, to grant that they foreclose democratic action. But these thinkers of democratic contestation, I argue, work within a variation of the framework of mutuality. While they avoid the view that democratic action *tout court* is unviable in the absence of relations of mutuality, they replace it with the idea that relations of mutuality condition specifically participatory practices. What I mean is the following. Direct contestation of disqualifying elites or unresponsive institutions is only ever conceptualized as a form of *negative* democratic action; here I use “negative” to describe the idea that practices of direct contestation should concentrate on litigating and repairing the absence of mutuality (or, if such repair is deemed impossible, on disrupting the system responsible for this absence) to the exclusion of contributing a politicized judgment of what should be done in the process or institution in question. To the extent that these thinkers want to allow more *affirmative* practices on the part of disqualified actors, they focus on the interactions between people who have come together and are acting with one another; they treat a political movement's internal dynamics as a surrogate island of mutuality.

What therefore structures much of contemporary thinking about democracy is the fundamental idea that a contributory democracy (democracy understood as programmatic and directive activities of rule¹) is viable only insofar as people are integrated in relations of mutuality. Where such relations exist, democracy can describe a role people play in the formal, nonformal and counterformal processes and institutions they are part of; where such relations are lacking, democracy only makes sense (if even that) in the form of recriminative, redressive or disruptive action. What is not considered is whether adding contributions to the spaces and processes that marginalize one's voice may itself be a way of contesting one's disqualification and, further, what value there may be to acting in a participatory and programmatic manner even insofar as one is addressing those elites or institutions that do not hold one in mutual regard.

Throughout this dissertation, I question the framework of mutuality by exploring instances of contestation that defy it and by pursuing conceptual innovations that push past it. My more modest aim in the present chapter is two-fold. First, I document how the framework of mutuality structures approaches to democracy, and how even thinkers attentive to the fragility of mutuality operate within its constraints. Second, I suggest that this framework leaves us with glaring blind spots because it neglects and occludes the democratic rationality of some of the practices and strategies that people can (and do) deploy on those occasions and in those spaces where they experience themselves to be disqualified.

I. Variations on the tune of mutuality

A defining fault line in recent democratic theory opposes scholars who associate democracy with the liberal state's institutional structure to scholars who argue for a more expansive,

¹ Here I use "rule," not in the usual sense of hierarchical relationships of control, but in the sense of collective acts that respond to and care for worldly events. See Patchen Markell, "The Rule of the People: Arendt, Arche, and Democracy," *American Political Science Review* 100:1 (2006): 1-14. I return to this point later.

and less state-focused, understanding of democracy. Frederic Schaffer and Lisa Wedeen, for instance, share a similar frustration with minimalist democrats' focus on institutions and with their further reduction of institutional democracy to elections. Against Joseph Schumpeter and Adam Przeworski's suggestion that democracy starts and ends with elections, Schaffer and Wedeen defend the democratic character of noninstitutional and nonelectoral practices by arguing that minimalists overlook the everyday relations by which people treat each other as political partners. In her study of Yemen, Wedeen argues that *qat chews* (informal gatherings) are democratic because they are "an instantiation of an Arendtian politics of collective action" in which "norms of 'egalitarian reciprocity' find expression in each agent's ability to speak and be heard."² Similarly, in his work on Senegal, Schaffer contends that "*demokaraasi*" does not evoke the same standards to Wolofones as "*démocratie*" does to French-speakers; the latter is identified with notions of procedural fairness associated with elections, while "*demokaraasi*" is identified with "an ideal of mutuality," defined as solidarity, shared responsibility and distributive equality.³ Minimalism on the one hand, everyday norms of mutuality on the other. The contrast seems clear.

Yet minimalists also characterize democracy in terms of mutuality. For them, an electoral regime's viability depends on factions accepting that other participants in the struggle for power may rule, both in advance of an election and in its aftermath. Dahl describes this as the "tolerance and mutual security" required for a regime to be polyarchic, i.e. to approximate a democracy.⁴ While this pales next to the degree of commitment Schaffer and Wedeen are interested in, Przeworski finds it nothing short of "miraculous."⁵ For minimalists, "why do [losers] comply

² Lisa Wedeen, "Concepts and Commitments in the Study of Democracy," in *Problems and Methods in the Study of Politics*, in Ian Shapiro, et al. (Cambridge: Cambridge University Press, 2004), 295 and 298.

³ Frederic Schaffer, *Democracy in Translation* (Ithaca: Cornell University Press, 2000), 65-66.

⁴ Robert Dahl, *Polyarchy*, New Haven: Yale University Press, 1971), 37.

⁵ Adam Przeworski, "Minimalist Conception of Democracy: A Defense," in *Democracy's Value*, ed. Ian Shapiro and Casiano Hacker-Cordsn (Cambridge: Cambridge University Press, 1999).

with their loss?”⁶ is a genuine puzzle, one that calls for further explication as to the conditions that enable such a high threshold to emerge. Dahl’s *Polyarchy*, for instance, is a detailed overview of the conditions—he lists moderate inequality, decentralized economy, low subculture pluralism—capable of decreasing the costs of “mutual security.”⁷

Moreover, a closer examination of Wedeen and Schaffer’s arguments reveals that, while their critiques of the minimalist neglect of extrainstitutional reciprocity seemed similar, they actually rely on distinct understandings of where to find such ties. Schaffer grounds them on norms he attributes to entire cultural formations; he understands mutuality as a set of values deeply ingrained in people’s lives. By contrast, Wedeen does not identify things that all *qat chew* participants share to explain their commitments. Rather, she focuses on reciprocity as a practice they perform, and on how in acting they enable each other “to speak and be heard.”⁸

This brief overview is not meant to downplay the gulf between minimalists and their critics, nor to dramatize the one between norm-oriented and practice-oriented theories of democracy. Instead I mean to draw out a fundamental premise that cuts across, and structures, some of the most familiar debates in contemporary democratic thought. This premise is that democracy is viable when and where relations of mutuality exist through which people acknowledge each other as political partners. The corollary is that a lack of mutuality is indicative of a situation being inhospitable to democracy.

Many strands of democratic theory echo the aforementioned references to the “mutual security required for a system of public contestation” or to the “norms of egalitarian reciprocity”

⁶ Adam Przeworski, et al. *Democracy and Development* (Cambridge: Cambridge University Press, 2000).18.

⁷ For similar endeavors, see Seymour Martin Lipset, “Some Social Requisites of Democracy: Economic Development and Political Legitimacy,” *American Political Science Review*, 53:1 (1959): 69-105 and Carl Boix, *Democracy and Redistribution* (New York: Cambridge University Press), 2003.

⁸ Wedeen, “Concepts and commitments in the study of democracy” and Lisa Wedeen, *Peripheral Visions* (Chicago: University of Chicago Press, 2008).

that underlie a healthy democracy. Charles Tilly, for instance, defines democracy as a regime where the “political relations between the state and its citizens feature broad, equal, protected and mutually binding consultation,” and concludes that “de-democratization occurs chiefly as a consequence of withdrawal by privileged, powerful political actors from whatever mutually binding consultation exists.”⁹ Similarly, for Michael Ferguson interacting “requires establishing... some form of rapport, some kind of acknowledgment between interlocutors,” and so she asserts that “collective agency falters when our interlocutors disengage, do not respond, fail to hear us, or simply do not take us seriously,” when one’s interlocutors try to “brin[g a conversation] to an end,” democratic “interaction is impossible.”¹⁰ For these authors, mutuality functions as a litmus test. A situation or relation is either marked by the sort of mutuality one associates with democracy, or it is not one that lends itself to democratic action.¹¹ Mutuality is the thing whose presence enables democracy—and the thing whose absence disallows it.

Even theories of protests and resistance draw on this dichotomy to separate the (mutual) circumstances that make it viable for contestatory actors to deploy democratic strategies and the (nonmutual) circumstances of elite withdrawal or hostility that leave only nondemocratic paths. The idea is that democratic modes of contestation only make sense when institutions are receptive to input, when channels of complaints grant grievances a hearing, or when the public is open to hearing new voices. This premise underlies studies of social movements. In an essay on the

⁹ Charles Tilly, *Democracy* (Cambridge: Cambridge University Press, 2007), 12-14 and 195.

¹⁰ Michael Ferguson, *Sharing Democracy* (Oxford: Oxford University Press, 2012), 133-135.

¹¹ This binary’s most caricatured version can be found in Robert Putnam’s celebration of “networks of social solidarity” within which collective action is enabled by “norms of reciprocity.” His argument is that Northern Italians are always “eager” to come together in “choral societies and soccer teams” and help each other’s in times of need. But in Southern Italy, which lacks such norms of reciprocity, “nearly everyone feels powerless, exploited and unhappy.” The theoretical argument underlying this dystopian vision is that either norms of reciprocity and mutual trust have been deeply entrenched *for centuries*, or democracy will not take hold and people will withdraw from political engagement altogether. Robert Putnam, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton: Princeton University Press, 1993), 115, 125, 181.

“concrete opportunities available to social movements,” Hanspeter Kriesi and Ruud Koopmans contrast closed institutional systems (France, Germany) to comparatively open ones (Switzerland). They write that a “moderate action repertoire” (“political festivals, petition, and direct-democratic mobilization”) is “only worthwhile if the authorities can be expected to take such a polite appeal seriously” and therefore that such forms of mobilization are not suited to a “situation of exclusion” like France.¹² Since French activists do not encounter such reciprocity, it is “not surprising” that they privilege radical means, which is why “heavy forms of violence are much more frequent in France than in other countries.”¹³ Put otherwise, the closure of channels of complaint leads contestation to take revolutionary or violent paths. These may be *democratizing*, but that does not make them part of the *democratic* arsenal.

This distinction between contexts in which oppositional movements can play by democratic rules and those where they cannot is not just confined to scholars who define democracy institutionally. Take James Tully’s characterization of struggles of recognition in terms of what he calls “games of reciprocal disclosure and acknowledgment:”

When a group puts forward a demand for recognition they seek to disclose the misrecognition or non-recognition in the existing rule of mutual recognition of themselves and others... The implicated others, whose reciprocal identities are called into question, acknowledge this illocutionary action by responding and entering into agonistic negotiations... The game of reciprocal disclosure and acknowledgment is a way of dispelling resentment, generated by perceived misrecognition or non-recognition, which would otherwise be discharged in more violent and anti-democratic forms of protest.¹⁴

¹² Many thinkers share this view that democratic contestation is possible only if the state is open to the voices of the ruled. See John Maynor, *Republicanism in the Modern World* (Cambridge: Polity, 2003), 154, 166. See also Otto Kirchheimer’s distinction between a classical opposition and an opposition of principle. The former “presupposes both the possibility and the preparedness to form an alternative government willing and able to grant its presumptive successor in the opposition the same privileges it enjoyed itself.” Past absences of this “preparedness” explains why “strata of the people which had little chance to make their voices heard through other channels turned toward groups that promised remedial action by supplanting the political system as a whole.” In “The Waning of Opposition in Parliamentary Regimes,” *Social Research* 24:2 (1957): 134-135.

¹³ Ruud Koopmans and Hanspeter Kriesi, “Institutional Structures and Prevailing Strategies,” in *New Social Movements in Western Europe: A Comparative Analysis*, by Hanspeter Kriesi, Ruud Koopmans, Jan Willem Duyvendak, and Marco G. Giungni, (Minneapolis: University of Minnesota Press, 1995), 43-44, 48-49.

¹⁴ James Tully, “Struggles over Recognition and Distribution,” *Constellations* 7:4 (2000): 479.

If those being addressed fail to enter some reciprocal interaction, these struggles take “violent and anti-democratic forms.” As Tully writes elsewhere, the “battle by arms” can give way to a democratic conflict “only as long as the participants continue to listen to each other.”¹⁵ When channels are clogged, institutions unresponsive, elites dismissive—when, to quote Stanley Cavell, “there is a cry of justice that expresses a sense of not having lost out in an unequal yet fair struggle, but of having from the start been left out”¹⁶—this dries out the conditions that make democratic modes of protest and opposition viable forms of contestatory action.

Here an objection may be that some contemporary theorists have already loosened the grip that the concept of mutuality exercises on our conceptual imaginary. Does Chantal Mouffe not critique an attachment to conversational norms of interaction in order to valorize conflict, for instance, and does Cillian McBride not target the concept of reciprocity? Yet these are interventions against a particular manner of conceptualizing mutuality, conducted on behalf of an alternative conceptualization. For instance, McBride argues that the ideal of reciprocity blinds us to situations where the regard being granted is not sincere (he has in mind consultations that are “strategies designed to buy off dissent rather than genuine efforts to secure fair outcomes”); he critiques reciprocity on behalf of stronger standards of mutuality, better suited to judging whether it is appropriate to enter conversation or whether one should “walk away” and “withdraw from dialogue.” Similarly, the clashes Mouffe valorizes are democratic only if people “trea[t] those who defend [standpoints they disagree with] as legitimate opponents.” Far from dispensing with the idea that mutual acknowledgment conditions democracy, her appreciation for conflict leads her to write that “the creation of a vibrant agonistic public sphere of contestation where different

¹⁵ James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995), 138.

¹⁶ Stanley Cavell, *Conditions Handsome and Unhandsome: The Constitution of Emersonian Perfectionism* (Chicago: The University of Chicago Press, 1990), xxxviii.

hegemonic political projects can be confronted” is the “*sine qua non* for an effective exercise of democracy.”¹⁷ (This clarifies that the premise I am diagnosing is not that mutuality is the *telos* of democratic action; that is the view Mouffe criticizes in deliberative democrats. Instead, the premise is that mutuality is a background condition that needs to be in place for the modes of action that a given theorist calls democratic to seem efficient and meaningful rather than futile.)

This is a common pattern. In taking a closer look at positions that appear to push back on the view that democracy is conditioned by the presence of mutuality, we will often discover that they are in fact furthering an alternative definition of mutuality. Many of democratic theory’s major debates are fought within the framework of mutuality. They concern the form and depth that mutuality must take if it is to enable the specific type of action or situation that a given thinker intends to valorize (elections, deliberation, protests, judgment). This is democratic theory’s fractal character: Not only can many of its familiar divides be reframed in those terms, but when you dig into a position, you discover that it is itself the site of new divides as to what sort of mutuality conditions democracy’s instantiation.

Mutuality’s fractal debates

Consider first the debates on how institutional and noninstitutional actors should relate. For Tilly, as I mentioned, “a regime is democratic to the degree that political relations between the state and its citizens feature broad, equal, protected and mutually binding consultation.”¹⁸ But what does this requirement entail? Schumpeter lays out a minimal answer: Democracy is a method by which individuals who belong to the “social stratum... that takes politics as a matter of course” subject the outcome of their leadership competition to the people’s vote; in exchange for

¹⁷ See Chantal Mouffe, *The Democratic Paradox* (London and New York: Verso, 2000), 101-102 and Chantal Mouffe, *On the Political* (Abingdon and New York.: Routledge, 2005), 3.

¹⁸ Tilly, *Democracy*, 12-14.

the power to decide who will lead them, the masses accept this leadership.¹⁹ The import of even such a bare-bones relation should not be denied given the historical preponderance of systems in which it is lacking. But many argue that democracy demands more robust relations between ruler and ruled. One path to establishing this is to reject a strict separation like Schumpeter's and argue that these positions must be exchangeable, that all must get to occupy governing positions in turn, in "reciprocal equality."²⁰ Another is to emphasize other things than the choice of leadership as the thing citizens address to those in power and to which the latter must be responsive.

If so, what should be the thing to which institutions must be responsive for the democratic game to go on? Is what matters responsiveness to the *interests* of the governed, or responsiveness to the *popular input* of citizens who must be able to "experience a translation of their demands into state behavior?"²¹ Even the idea that there should be active interplay means various things to various authors: that state officials must consult communities that must engage in response (Rebecca Abers calls this "a dual process of commitment-building"²²), that individual grievances must be heard and protests taken seriously, that flows of information must ensure that local forms of governance and centralized nodes learn from one another,²³ that communicative

¹⁹ Joseph Schumpeter, *Capitalism, Socialism and Democracy* (New York: Harper Perennial, 1942) 269, 283-5.

²⁰ Aristotle, *Politics*, trans. C.D.C. Reeve. (Indianapolis: Hackett Publishing Company, 1998), 1261a. For Aristotle, it is just if "those who are equal take turns... [and] rule and are ruled in turn" (1261b). Charles Taylor echoes this: "To rule and be ruled in turn means that at least some of the time the governors can be 'us,' and not always 'them,'" in "Cross-Purposes: The Liberal-Communitarian Debate," in *Liberalism and the Moral Life*, ed. Nancy Rosenblum (Cambridge: Harvard University Press, 1989), 179.

²¹ Tilly, *Democracy*, 13. This divide can be traced to ambiguities in Rousseau's conception of the general will. While he typically contends that participation is indispensable to its manifestation, he at times allows that it may be identified without direct action. Compare pages 12 and 115 of *'The Social Contract' and Other Later Political Writings*, ed. Victor Gourevitch (Cambridge: Cambridge University Press, 1997).

²² "The success of participatory institutions depends on a dual process of commitment-building. Unless both state actors... and ordinary people are motivated to support, take part in, and respect [empowered participatory governance] experiments, those policies are unlikely to become either empowered or participatory." Rebecca Neaera Abers, "Reflections on What Makes Empowered Participatory Governance Happen," in *Deepening Democracy*, ed. Archon Fung and Erik Olin Wright (London: Verso, 2003), 201.

²³ Reciprocal flows are central to the pragmatist democracy of Archon Fung, *Empowered Participation: Reinventing Urban Democracy* (Princeton: Princeton University Press, 2006), Charles Sabel and Jonathan Zeitlin,

channels must enable discussions in civil society to influence “porous” institutional fora.²⁴

The common thread is that democracy requires mutual regard or responsiveness between citizens and institutional actors—however one defines such ties. “Only if such an interplay were to materialize,” writes Habermas, “could citizenship mean more today than the aggregation of prepolitical individual interests and the passive enjoyment of rights bestowed by a paternalistic authority.”²⁵ In other words, without this interplay democracy gives way to its conceptual opposites. This is easy to see in minimalists, who engage in binary classifications of regimes—democracy or nondemocracy—based on whether a country’s elites recognize the people’s authority to settle disputes for power.²⁶ But it is also true of those who advocate a more substantive understanding of responsiveness.²⁷ Importantly, such binaries do not need to be all-or-nothing: Few would say that democratic action is hindered *everywhere* as soon as one encounters a lack of mutuality in a given interactive or institutional context. But this is because mutual relations may still be in existence *elsewhere*. For instance, one may experience democracy in solidaristic civil associations or still-responsive local institutions even when state institutions are oppressive.

Second, consider how the pursuit of mutuality’s proper contours structures another constellation of debates, this one regarding how people must relate and engage one another to form a type of community able to sustain and practice democracy. Charles Taylor captures this problem when he writes that “democratic states need something like a common identity” because,

“Experimentalist Governance,” *The Oxford Handbook of Governance*, ed. David Levi-Faur (Oxford: Oxford Handbooks, 2012), Charles Ansell, *Pragmatist Democracy* (Oxford: Oxford University Press, 2011). Ansell calls this dynamic “recursiveness”, which he defines as a “reciprocal information-flowing” (6 and 104-8).

²⁴ For Jürgen Habermas, “Deliberations in decision-making bodies must remain porous to the influx of issues, value orientations, contributions, and programs originating from a political public sphere unsubverted by power,” *Between Facts and Norms*, trans. William Rehg (Cambridge: MIT Press, 1996), 506.

²⁵ *Ibid.* 506. Habermas is here talking about the last sort of responsiveness I listed.

²⁶ See Przeworski et al., *Democracy and Development*.

²⁷ See the way in which Iris Marion Young defines *democracy* and *domination* as dichotomous sets of institutional conditions in *Justice and the Politics of Difference* (Princeton: Princeton University Press, 2011).

To some extent, the members must know one another, listen to one another, and understand one another. If they are not mutually acquainted, or if they cannot really understand one another, how can they truly engage in joint deliberation? ... [We] want an assurance that we shall continue to be able to listen to one another in the future. This demands a certain reciprocal commitment. In practice, a nation can only ensure the stability of its legitimacy if its members are strongly committed to one another by means of a common allegiance to the political community... only if these citizens feel a strong bond of identification with their political community, and hence with their fellow citizens.²⁸

Here Taylor is suggesting that democracy is conditioned on the presence of horizontal bonds of reciprocal commitment between the citizens who are to be its actors. As Young puts it, “recognition is primarily a starting-point for political interaction and contest, rather than its end.”²⁹ These passages evidently further the framework of mutuality I have identified, while raising further questions as to how such horizontal bonds should be concretized.

Efforts to ascertain how heterogeneous groups can constitute a coherent *demos* have produced various models of democratic attachment. On one side are those for whom sufficient ties of mutuality are only possible if people have something substantive in common, whether that be a national identity, a shared language or culture, a shared conception of the public good, or a set of problems that they strive to solve jointly insofar as they all experience them.³⁰ On the other side are the liberal proceduralists, deliberative democrats, and civic republicans for whom substantive unity is impossible in modernity. Bonds of reciprocity must be found elsewhere. Their solution is to make the object of shared attachment formal or procedural: People’s attachment to one another may be mediated by their attachment to an institutional system, a constitution, a po-

²⁸ Charles Taylor, “The Dynamics of Democratic Exclusion,” *Journal of Democracy* 9:4 (1998): 142-145.

²⁹ Iris Marion Young, *Inclusion and Democracy* Oxford: (Oxford University Press, 2000), 61.

³⁰ On the idea that sustaining democracy requires national bonds, see David Miller, *On Nationalism* (Oxford: Oxford University Press, 1995) and Pierre Manent, *Democracy Without Nations: The Fate of Self-Government in Europe* (Wilmington: Intercollegiate Studies Institute, 2007). On the idea that sustaining democracy requires cultural norms of reciprocity, see Putnam’s work on Northern Italy (discussed above). On the idea that bonds of mutuality emerge from the recognition of common problems, see Robert Gooding-Williams’s critique of Eddie S. Glaude in “Politics, Racial Solidarity, Exodus!,” *Journal of Speculative Philosophy*, 18: 2 (2004): 123-126 and Joshua Cohen and Chuck Sabel’s admission that what conditions their “deliberative-polyarchic” model is an “assum[ption] that citizens, despite conflicts of interests and political outlook, agree very broadly on priorities and goals, but cannot translate this preliminary agreement into solutions.” Joshua Cohen and Charles Sabel, “Directly-Deliberative Polyarchy,” *European Law Journal* 3:4 (December 1997): 326.

litical culture, the status of citizenship. Thus Habermas’s “constitutional patriotism” revolves around the idea that, by committing to their constitution, people effectively commit to each other and constitute “an abstract, legally mediated solidarity between strangers.”³¹ Jan-Werner Müller makes this connection explicit when he writes that what a constitutional patriot is committing to is not the constitution “in all its concrete, historical specificity... Rather it is [to] the very idea of citizens mutually justifying political rule to each other.”³²

Some thinkers want to go further and do away with the mediation of consensual objects.³³ But the quest to identify what form of mutuality best suits democracy remains, only now mutuality is instantiated not through a common object people share but through their attachments and attitudes toward each other.³⁴ This position occasions variations of its own. For some, all that is needed—because this is already plenty—is for parties to tolerate each other in the minimal sense of not interfering with each other and granting opponents the opportunity to access power peacefully.³⁵ Others insist that democracy requires more direct relations. It resides in the encounters by

³¹ Jürgen Habermas argues that “nationalism can be replaced by what one might call constitutional patriotism” because the latter only institutes a “shared political culture.” A shared political culture enables “subjects [to] reciprocally recognize each other in their role of addressees of laws and therewith grant one another a status on the basis of which they can claim rights and bring them to bear against one another.” In “The European Nation State,” *Ratio Juris* 9:2 (1996): 132-133 and *Between Facts and Norm*, 123. This account is strikingly similar to Mouffe’s agonism, despite Mouffe’s criticisms of Habermas. Indeed for Mouffe the mechanism that enables conflicts to be litigated democratically is “shared adhesion to the ethico-political principles of liberal democracy,” because people can then fight about these principles’ meaning; the adversary is “someone with whom one agrees about the principles underpinning the organization of society.” Mouffe, *The Democratic Paradox*, 102 and Chantal Mouffe “Democracy—Radical and Plural,” *Center for the Study of Democracy* 9:1 (2001): 12.

³² Jan-Werner Müller, “A General Theory of Constitutional Patriotism,” *International Journal of Constitutional Law*, Vol. 6, Issue 1 (January 2008): 82. For Müller, people are motivated “to maintain the constitutional regime” because it “is supposed to embody the ideal of mutual justification” (79). See also Craig Calhoun’s “Imagining Solidarity,” *Public Culture* 14:1 (2002): 147.

³³ Patchen Markell, “Making Affect Safe for Democracy? On ‘Constitutional Patriotism,’” *Political Theory* 28:1 (2000): 55.

³⁴ For instance, Ferguson’s *Sharing Democracy* is an effective critique of the view that democracy is only possible when its participants have something (objects, concerns, values, problems) in common. But she does this in the service of displacing the expectation of mutuality unto different grounds. (See my chapter’s last section.)

³⁵ For Norberto Bobbio, the democratic state is “founded on a non-aggression pact.” “Democracy and the International System,” in *Cosmopolitan Democracy*, ed. Daniele Archibugi and David Held (Cambridge: Polity, 1995), 33. Deciding on rulers in such situations take the form of majoritarian elections or consociational coali-

which people interact with, struggle against, or address one another—and to get off the ground such encounters need thicker norms of reciprocity than mere tolerance. Participatory democrats think about what bonds enable large groups to make collective decisions;³⁶ thinkers invested in valorizing conflict outline an “ethic of partisanship” capable of reconciling adversarial outlooks with “mutual understanding and a degree of political reciprocity;”³⁷ authors who prize an “ideal of mutual justification” argue that people must ensure that decisions are mutually acceptable to all by providing reasons for them, which “presupposes that participants must recognize one another’s entitlement to moral respect and reciprocity in some sense.”³⁸ And so on.³⁹

This account may be schematic, but it illustrates that much of democratic theory works off of the premise that living in a democracy or practicing democracy, however this is understood, is only possible in those institutions, associations and relationships where mutuality is present. “Democrats can exist without procedural democracy,” Wedeen insists.⁴⁰ But it would seem that they cannot exist outside of relations of mutual acknowledgment and reciprocity.

tions—a distinction often described in terms of the distinct norms of mutual regard at play in each. Compare Kirchheimer on the “game of alternation” in “The Waning of Opposition in Parliamentary Regimes,” 135-140 and Arend Lijphart on regimes of consociational accommodation in “The Netherlands: The Rules of the Game” in *Consociational Democracy: Political Accommodation in Segmented Societies*, ed. Kenneth McRae (McClelland and Stewart, 1974), 139.

³⁶ For Benjamin Barber, “democratic political judgment can be exercised only by citizens interacting with one another in the context of mutual deliberation and decision-making on the way to willing common actions.” Benjamin Barber, *A Passion for Democracy* (Princeton: Princeton University Press, 2000) 25.

³⁷ Nancy Rosenblum. *On the Side of Angels* (Princeton: Princeton University Press, 2008), 141.

³⁸ Müller, “A General Theory of Constitutional Patriotism,” 79 and Seyla Benhabib, “Toward a Deliberative Model of Democratic Legitimacy,” in *Democracy and Difference*, ed. Seyla Benhabib (Princeton: Princeton University Press, 1996), 79.

³⁹ We could pursue these bifurcations further. Consider how deliberative democracy’s ideal of mutual justification gets spun in various ways. (1) Does it entail reflecting on what would be reasonable to hypothetical others, or does it entail engaging in actual conversations? Contra some strands of John Rawls, thinkers who draw on Habermas are more likely to take the latter position. Benhabib talks of “the reciprocal moral recognition of one another’s claims to be participants in the moral-political dialogue” (Benhabib, “Toward a Deliberative Model,” 79). (2) That position occasions further divides: Young argues that “identifying moral respect with a reversibility and symmetry of perspectives” (as she claims Benhabib does) risks concealing the irreducible differences between people’s positions, so that reciprocity must be “asymmetrical.” Iris Marion Young, “Asymmetrical Reciprocity: On Moral Respect, Wonder, and Enlarged Thought,” *Constellations* 3:3 (1997): 340-341.

⁴⁰ Wedeen, *Peripheral Visions*, 146.

II. Conditioning democracy

The extent to which democratic theory conditions the viability of democracy on the presence of relations of mutuality is a problem for political thinking. This problem stems from the pervasiveness of situations where some actors—institutional or otherwise—claim mastery and withdraw from relations of mutuality. This most obviously affects individuals and groups in situations of outright exclusion and marginalization. (Take women’s disenfranchisement in the United States until 1920, the topic of my second chapter.) But situations where mutuality is absent or insufficient are also endemic to the normal functioning of democratic regimes. Here my point is not that all regimes are grounded on some fundamental exclusion, as poststructuralists argue. Rather, I see two concrete ways in which this absence manifests itself.

First, different people are perceived as more or less qualified for certain activities by virtue of their background, education level, identity, or affect. This is most evident in the role played by experts in modern governmental structures. Importantly, a differentiated distribution of roles is a situation of disqualification even if one deems it justified. Put otherwise, even if one believes that people who lack specialized credentials should not be involved in designing monetary policy or environmental regulations, the simple point remains that these people will then be in a situation where their interventions on these issues are not taken seriously, leaving us with the question of what form their protests may take. My fourth chapter turns to an example of this type of absence of mutuality in AIDS treatment activism, a movement that challenged common-sense perceptions that medical decisions are best handled by medical professionals.

Furthermore, it does not take much for the same institutions and relations that instantiate relations of mutuality to breach them. Responsive bureaucrats can grow aloof to popular input when new groups organize and voice novel demands; hierarchical patterns can persist or emerge

even within grassroots spaces and movements;⁴¹ the habit of forming coalition governments can slip into a system of “government by party cartel,” where the “voter largely abdicates the role [of participating] in the arbitration of conflicting leadership claims.”⁴² Events I discuss in my sixth chapter revolve around this type of absent mutuality: French voters rejected a European Treaty in a 2005 referendum, but within a few years the government used a parliamentary route to ratify another treaty (the Treaty of Lisbon) that contained many of the former’s provisions. Similarly, in August 2015 the Greek prime minister agreed to a deal with other European leaders that mirrored a plan that his country’s electorate had just rejected in a referendum. The banner held by one protestor read, “We voted for no, you’re bringing yes. You’re pretending that you didn’t listen.”⁴³ However one judges the necessity of the French and Greek governments’ decisions, it is clear that in both instances some citizens felt that their votes had been ignored.

Democratic theory does not adequately address the fragility of relations of mutuality and the resulting importance of reflecting on what paths are available when these relations recede. To be sure, many of the thinkers discussed in the prior section acknowledge this fragility; some even place it at the core of their endeavors. As such, my concern is not that they operate on too ideal a level and only consider those hypothetical situations where the conditions of democracy have already been fulfilled.⁴⁴ Rather, my concern is that in making the institutional mechanisms,

⁴¹ See Jane Mansbridge on town-halls in *Beyond Adversarial Democracy* (Chicago: University of Chicago Press, 1983).

⁴² Kirchheimer, “The Waning of Opposition in Parliamentary Regimes,” 139 and 144. He adds that this causes “insensitivity of government formation toward popular currents.” Lijphart too is attentive to this ambivalence — coalition or cartel? — when he notes that consociational regimes use “depoliticization” and “proportionality” as “conscious and deliberate” strategies “to make politics dull and to keep popular interest at low ebb.” This is an apt description of European Union governance today.

⁴³ This was printed in English on a banner held by a protestor outside the Greek Parliament in July 2015, as shown in a photograph the Associated Press’s Derek Gatapoulos shared on Twitter. Derek Gatapoulos, July 10, 2015 <<https://twitter.com/dgatopoulos/status/619567449600606208/photo/1>>. Retrieved online July 10, 2015.

⁴⁴ For such critiques of ideal theory, see Raymond Geuss, *Philosophy and Real Politics* (Princeton: Princeton University Press, 2008) and Charles Mills, “Ideal Theory as Ideology,” *Hypatia* 20:3 (2005): 165-184.

norms and capacities that instantiate mutuality into prerequisites for democratic action, they foreclose crucial political possibilities when those elements are absent.

The question of what can be done insofar as people are disqualified is not outright ignored, but it is only addressed within the constraints of the framework of mutuality. This takes three forms: (1) an expectation that conditions that are not amenable to democratic action will occasion nondemocratic practices, some of which may have democratizing effects and lay the grounds for subsequent democratic practices; (2) a confidence that even in such circumstances there will be spaces, institutions, or relationships where mutuality still resides and where democracy will therefore already be possible; (3) a theoretical search for new institutions and norms whose design and implementation will entrench mutuality and enable democracy.

The first expectation clarifies that the framework of mutuality does not leave one defeated in nonmutual contexts as much as it eliminates the viability of specifically democratic practices. Tully, or Kriesi and Koopmans's aforementioned points that circumstances of closure can be met with "violent and anti-democratic forms of protest" speak to the broader view that exiting from nonreciprocal situations may require violent practices on the part of marginalized actors.⁴⁵ Hence many studies of democratization track the "revolutionary threats" if not outright revolutions that institute democratic regimes.⁴⁶ Within the tradition of political thought, this has occasioned the paradox—manifested most emblematically in Rousseau's turn to the lawgiver⁴⁷—that the entry into democracy cannot itself be democratic. Take Benhabib's response when faced with

⁴⁵ See Frantz Fanon on the use of violence in the colonial situation, which he characterizes as stripped of even sparks of a Hegelian reciprocal recognition in *The Wretched of the Earth* (New York: Grove Press, 2005).

⁴⁶ Daron Acemoğlu and James A. Robinson, *Economic Origins of Dictatorship and Democracy* (Cambridge: Cambridge University Press, 2006). Barrington Moore inverts expectations by arguing that the "revolutionary origins of capitalist democracy" were the "massive violence exercised by the upper classes against the lower" Barrington Moore, *The Social Origins of Dictatorship and Democracy* (Boston: Beacon Press, 1996), 29.

⁴⁷ Rousseau, *The Social Contract*. For a critique of all the theoretical hand wringing over this paradox, see Bonnie Honig, *Emergency Politics* (Princeton: Princeton University Press, 2011), Chapter 1.

the dilemma of how democratic discourses could ever begin where their conditions of possibility are not in place: “I am still enough of a Hegelian to maintain... that such reciprocal recognition of one another’s rights to moral personality is a result of a world-historical process that involves struggle, battle, and resistance, as well as defeat, carried out by social classes, genders, groups and nations.”⁴⁸ One need not subscribe to the full Hegelian picture that a series of struggles for recognition will result in universal reciprocity (in Hegel’s view, in the establishment of the democratic state whose citizens recognize each other) to employ this passage’s strategy of gesturing toward a set of predemocratic practices and struggles, different in kind from the ones that the instantiation of relations of mutuality enables, that are *democratizing* in the sense of bringing about such relations and thereafter making democracy possible. Such practices may fall short of what a particular theorist will want to label “democratic,” but he or she may nevertheless grant their importance as a “prelude”—to use Taylor’s chronological term⁴⁹—to democratic endeavors.

The second form corresponds to the aforementioned idea that a lack of mutuality in one space need not mean that it is absent from all others. There may be opportunities to act democratically where one is already met with respect and recognition. As Hanna Pitkin and Sara Shumer put it, “People find ways of being citizens even when they are excluded from the formal institutions of power.”⁵⁰ Nicholas Southwood fleshes out this idea, writing that if “institutions are corrupt and the law cannot catch up with public consciousness,” then “under these circumstances, the deliberative democratic public sphere... can offer to the demos what [the] institutional order cannot, namely alternative and legitimate avenues of self expression and empowerment.”⁵¹ This

⁴⁸ Benhabib, “Toward a Deliberative Model,” 79.

⁴⁹ Taylor, “The Dynamics of Democratic Exclusion.”

⁵⁰ Hanna Fenichel Pitkin and Sara M. Shumer, “On Participation,” in *Democracy: A Reader*, ed. Ricardo Blaug and John Schwarzmantel (New York: Columbia University Press, 2001), 49

⁵¹ Nicholas Southwood, “Beyond Pettit’s Neo-Roman Republicanism: Toward The Deliberative Republic,” *Critical Review of International Social and Political Philosophy* 5:1 (2002): 38.

is sometimes accompanied by the claim that democracy is an *indirect* mechanism of democratization. The idea is that people's actions in contexts where they *do* experience mutuality will have an indirect, long-haul impact on oppressive institutions because they eventually contribute ("as silently as gravity," says Pettit) to spreading certain norms to still-closed contexts.⁵²

The third project logically follows the premise that mutuality conditions democracy: If democratic action has ascertainable conditions, then identifying what these conditions are and prescribing how they should be implemented is an obvious role for political theory. Hence debates as to what form relations of mutuality ought to take spark competing proposals on how to instantiate them. These can be *institutional* proposals, or they can be proposals for an *ethos*, i.e. an affect or attitude people are urged to adopt.⁵³ Thinkers turn to a prescriptive voice, laying out what their theoretical edifice necessitates, often without offering a mechanism to translate their constructs into practice if elite good-will is not forthcoming.⁵⁴

I do not mean to criticize any one of these projects. I do not doubt that implementing in-

⁵² This idea that there is a "value of starting small" (Abers, "Reflections on What Makes Empowered Participatory Governance Happen," 207) is common among democratic theorists who develop a view of ever-widening circles of democracy based on exercises of trust- and commitment-building. Thus Laborde argues that "attitudes of mutual civic recognition are fostered ... through the actual sharing of genuinely public spaces." Cécile Laborde, *Critical Republicanism: The Hijab Controversy and Political Philosophy* (Oxford: Oxford University Press, 2008), 11. Similarly, Dahl argues that a polyarchy is more stable if a small homogeneous group gets a chance to first develop tolerance and mutual security amongst itself (Dahl, *Polyarchy*, 37).

A related argument is that democratic action in already-open spaces trickles to closed spaces and blossoms into deeper commitments between a widening range of actors. This account can be found in Habermas and Pettit's models of democratization, in which mutual interactions in civil society or the public sphere generate norms of public discourse that may eventually transform the state's institutional conditions. For Pettit, the experience of such interactions will "impose a slow, long-haul direction on government—and often, as is the case, on a deeply resistant, even resentful administration." Philip Pettit, *On the People's Terms* (Cambridge: Cambridge University Press, 2012), 271. See also Jürgen Habermas, *The Structural Transformation of the Public Sphere*, trans. Thomas Burger (Cambridge: MIT Press, 1991).

⁵³ Most thinkers would agree that the instantiation of mutuality needs both institutions and norms, but some thematize the former's dependence on the latter. See civic republicans such as Cécile Laborde or John Maynor, or Habermas's explanation that "the legally constituted status of citizen depends on the *supportive spirit* of a consonant background," in *Between Facts and Norms*, 499.

⁵⁴ Irena Rosenthal makes a similar point in the context of critiquing Danielle Allen, whose "focus is so much on restoring a responsive dialogue between majorities and minorities that she does not explain which strategies disempowered citizens could turn to when majorities remain unresponsive." In "Aggression and Play in the Face of Adversity: A Psychoanalytic Reading of Democratic Resilience," *Political Theory* 44:3 (2016): 339.

stitutional proposals and cultivating norms that instantiate relations of mutuality would be a boon to democratic life and facilitate popular involvement. Moreover, I am not denouncing the use of any strategy of protest, whether to argue that there is no value to “smarting small” or to argue that marginalized people should not engage in the sort of nondemocratic strategies mentioned above. I am not even questioning the empirical observations of scholars such as Kirchheimer, Koopmans, or Kriesi that the marginalized are more likely to choose strategies of violent resistance and radical upheaval and to experience such paths as rewarding and empowering. Instead, I am suggesting that taken as a whole these projects figure democracy as the alternative to disqualification—democracy is what follows the nondemocratic or lawgiving resolution of disqualification, or else it is what happens on its side—rather than a resource to directly combat it. In what follows, I hope to expand our sense of what else can—and sometimes does—occur in disqualifying situations of institutional or elite closure.

Specifically, I want to overcome the disempowering implications of using the framework of mutuality and its binary options to evaluate what can and should be done by groups whose views are not taken seriously. Take Koopmans and Kriesi’s statement that, “As a result of the general closure of the strong and exclusive French state, very moderate forms like petitions are not likely to bring any results, and are, therefore, rarely used (barely 1 percent).”⁵⁵ In my view, we should not be so cavalier about instances of protest and contestation in which activists employ democratic strategies to confront or address those responsible for their disqualification. And yet we lack the conceptual resources to assess what is at stake in these atypical cases—this “barely 1 percent.” The framework of mutuality blinds us to the prospect that movements acting in nonmutual circumstances may have a distinctive democratic rationality because it leads us to

⁵⁵ Koopmans and Kriesi, “Institutional Structures and Prevailing Strategies,” 49.

prejudge their efforts as illogical and unviable—if not misguided and counter-productive.

Indeed, the framework of mutuality's grip on our conceptual imaginary explains the ease with which we categorize action in terms of an opposition between radical and accomodating (or reformist) practices. For Jodi Dean, anti-war protesters who invoked the language of democracy during protests against the Iraq War were only reinforcing President George W. Bush's "position of mastery." They should have been "eschew[ing] the legitimizing shelter of the term democracy" and abandoned mediation and argumentation.⁵⁶ Dean's argument is merely a stronger version of the view I have tracked that acting democratically toward unresponsive institutions—in her language, toward those in positions of mastery—is at best a waste of time, at worst a co-optative trap that legitimizes the status-quo. In fact, most of the instances of contestation I discuss in this dissertation were cases where the activists' choice to pursue what Koopmans and Kriesi call a "moderate action repertoire" was denounced as a renunciation of transformative aims on the grounds that practices of responsiveness, argumentation, or claim-making were inappropriate within the nonreciprocal contexts these activists were intervening in.

For instance, in an interview conducted in February 2007, Alain Badiou claimed that the left's mobilization during the French referendum of 2005 had been inconsequential,⁵⁷ which he took as confirmation of his view that it is "inactive" to engage the state. Yet at the time of this assertion, *non* voters had not lost the battle. Only in June 2007 did European leaders meet to launch the process of a new treaty; only in late 2007 was the Treaty of Lisbon drafted, and made to include many of the reforms of the defunct Constitution; and only in 2008 did the government ratify it by bypassing a referendum. Badiou was right to warn that governmental actors did not care for the results of their own consultation and that they were not taking the outcome seriously;

⁵⁶ Jodi Dean's *Democracy and Other Neoliberal Fantasies* (Durham: Duke University Press, 2009), 84.

⁵⁷ Filippo Del Lucchese and Jason Smith, "'We Need a Popular Discipline: Contemporary Politics and the Crisis of the Negative,'" interview of Alain Badiou, *Critical Inquiry* 34 (2008): 645-659.

there were many signs of this by the time of his interview. But in concluding that the situation was thereby lost to democracy, he was prejudging the irrationality of interventions that were not different in kind from the one that had led to the referendum's surprise outcome in the first place, and he was urging people to not mobilize around an issue whose fate was still in flux. Dean and Badiou are examples of thinkers who condemn people who pursue democratic strategies in non-mutual contexts; such thinkers lend theoretical support—in the name of radicalism—to those invested in excluding these people from democratic life in the first place.

Of course, wishing for there to be democratic possibilities in disqualifying contexts does not make it so; and showing that democratic theory takes for granted that certain situations are “senseless” does not guarantee that we will discover them to be meaningful upon closer examination. It is this dissertation's burden to articulate why they are meaningful and to justify my intuition that the current contours of democratic theory are neglecting what is at stake in some instances of activism. Hence the initial iteration of the problem I confront in this dissertation is: What does democracy involve insofar as one experiences oneself as disqualified? In other words, what democratic practices are available insofar as people directly confront patterns of elite withdrawal and institutional closure, rather than insofar as they withdraw into spaces within which they are already embedded in relations of mutuality?

III. Movements and counterinstitutions: Confrontation or participation?

This section turns to approaches to democracy that have tackled this question and that have considered what sort of democratic action is viable in disqualifying circumstances. In a recent essay, Irena Rosenthal writes that, “While democratic life needs majoritarian responsiveness, it also crucially requires disempowered citizens who are resilient enough to perpetuate their

struggles in unresponsive environments.”⁵⁸ She is here suggesting that democratic life involves action in contexts that lack its apparent conditions. While the prior sections argued that this view has been largely overlooked, I now want to consider a range of thinkers who pursue its implication. Indeed, Pettit and Vatter’s republicanism, Wolin’s radical democracy, and the practices of freedom proposed by thinkers drawn to Arendt’s performative model of action all seek to expand democracy to encompass direct struggles against circumstances of endemic domination or systemic marginalization. They all pursue the insight that democracy cannot just be what follows the overcoming of patterns of disqualification. One has too impoverished a conception of democracy if one expects democracy to wait until predemocratic struggles have secured its conditions of possibility or until enlightened elites have implemented the theorist’s prescriptions.

Yet my argument is that these authors, instead of shaking off the framework of mutuality as we may expect them to, turn out to give it a more refined guise. They concretize the above insight at the cost of putting forward an overly stringent distinction between forms of *negative* and *affirmative* democracy. Room is made for the former to be viable in nonmutual circumstances, but at the cost of leaving the latter conditioned on mutuality’s performative instantiation.

Consider Rosenthal. In urging theorists to be more attentive to the “empowering possibilities of withdrawing from mainstream discursive fora,” she writes that, “when dialogical forms do not open up adequate space for challenging current hegemonic forms, it might be more productive for minorities to retreat from those dialogues and to look for alternative strategies such as strikes, road blockages, and the occupation of public space, or for that matter, to create new arenas for dialogical exchange.”⁵⁹ This passage makes two crucial moves: (1) It avoids labeling direct confrontation with disqualifying parties a form of nondemocratic action, and (2) it suggests

⁵⁸ Rosenthal, “Aggression and Play in the Face of Adversity,” 343.

⁵⁹ *Ibid.* 6.

that democratic action might involve “creat[ing] *new*” arenas in which to act dialogically. (The latter move’s implication is that, to engage in dialogical exchange, disqualified actors may not need to find *preexisting* arenas of mutuality because they may perform them instead in their practice.) But this passage also draws a line between these two forms of action. It divides the “new arenas” of dialogical exchange from the strategies of direct confrontation, which are no longer a retreat from democracy but are still a “retreat from dialogue.” People pursue the former in spaces and fora erected at a distance from actors who are stubbornly unresponsive.

In what follows, I explain that the overarching picture we get from this one sentence in Rosenthal’s essay—the two strategies of protest it outlines, *and* the divide it inscribes between them based once again on mutuality’s presence—is characteristic of the overarching account of democracy that we obtain from thinkers who valorize protests and social movements as central of democratic life. As such, I separately consider thinkers who pursue each of the two moves I drew out of Rosenthal. I characterize the first move, found for instance in Pettit’s work, as democratic theory’s *contestatory turn*; and I characterize the second move, put forth by thinkers inspired by Arendt’s work, as democratic theory’s *anticipatory turn*.

On the one hand, I will draw out the distinctive problem each approach alerts us to—(1) how can democracy directly challenge stubborn patterns of disqualification, (2) how can people act in concert with one another if mutuality has not yet been established?—and the valuable resources each provides to answering these. On the other hand, I argue that each approach neglects the other’s question. As the result, the framework of mutuality is still present in their work, albeit in a more nuanced form. Those for whom democracy is a direct confrontation with disqualifying structures make such contestation too negative a practice; and those who prize affirmative action condition it on the successful performance of mutuality. As such, the contestatory turn and antic-

ipatory turn are the two possible poles of conceptualizing protests and movements from within the framework of mutuality. It is true that they no longer deploy mutuality as a criterion with which to categorize situations as either propitious or unpropitious for democracy *as such*. But mutuality now functions as a criterion with which to separate situations that call for nondialogical, noncontributory democratic action and situations where democracy can take a contributory, dialogical form. What will emerge is the idea that it only makes sense to engage in participatory work toward interlocutors who are responding in kind.

The contestatory turn

Philip Pettit calls on democratic theory to take a “contestatory turn.”⁶⁰ Concerned that recent understandings of democracy have downplayed oppositional practices, he places them at the core of his own framework to argue that “democratic life has to have an agonistic—better perhaps, an antagonistic—character,” which is to say that it requires people to practice “eternal vigilance” toward instances of domination.⁶¹ Let me unpack why this turn represents a new stage in this chapter’s exploration of what becomes of democracy in the face of disqualification.

Pettit defines domination as a situation that “sidelines or undermines that relationship of mutual control” which enables an “individual, reasoned power of choice.”⁶² Domination replaces “mutual control” with an “asymmetrical” relationship where a dominating party enjoys the capacity to arbitrarily interfere in the other’s choices, while a dominated party “h[as] to live at the mercy of another, h[as] to live in a manner that leaves you vulnerable to some ill that the other is in a position arbitrarily to impose.”⁶³ This represents a breach of mutuality. Domination “lead[s] others not to take seriously the words uttered by anyone in a position of subordination and de-

⁶⁰ Philip Pettit, “Republican Freedom and Contestatory Democratization,” in *Democracy’s Value*, 185.

⁶¹ Pettit, *On The People’s Terms*, 5 and 226.

⁶² Philip Pettit, “A Republican Law of Peoples,” *European Journal of Political Theory*, 9:1 (2010): 76.

⁶³ Philip Pettit, *Republicanism* (Oxford: Oxford University Press, 1997), 5.

pendency,” and it “deprives a person of the ability to command attention and respect” because others “will have no reason to take the dominated person really seriously; they will have no reason to grant that person a real voice or give him a genuine hearing.”⁶⁴ Dominating agents are able to impose choices that do not track the interests of the dominated and to ignore their input.

So “how are people to be empowered in relation to democratic majorities and democratic elites?”⁶⁵ Pettit’s main solution is the institutionalization of mechanisms of mutual control. He prescribes mechanisms of “reciprocal power” and constitutional protection to ensure that “the people enjoy full and equal contestatory standing.” These are “measures... whereby anyone who has doubts about being treated as equals can contest government decisions and have a reasonable level of confidence that discriminatory decisions will be reversed.”⁶⁶ For instance, the state should “open up channels of consultation and appeal between the public and the legislature,” facilitate the “availability of forums in which challengers can expect an impartial assessment,” “re-spon[d] appropriately to the contestations raised against it.”⁶⁷ These are valuable prescriptions with which I take no issue; of course officials should be responsive to the protests raised against them. But Pettit often takes the *additional* step of making such mechanisms a “precondition”⁶⁸ of democratic contestation. “If there is to be any hope of the people having editorial, contestatory power, in particular a power of contestation by argument rather than by brute force or defiance,” then we need a system where “people are genuinely willing to live on equal terms with all others,” and where “plaintiffs [have] the opportunity to launch appeals.” Absent “republican civil

⁶⁴ Philip Pettit, “The Domination Complaint,” *Nomos* 46 (2005): 102, Philip Pettit, “Keeping Republican Freedom Simple: On a Difference with Quentin Skinner,” *Political Theory* 30:3 (2002): 351.

⁶⁵ Philip Pettit, “Deliberative Democracy, the Discursive Dilemma and Republican Theory,” in *Debating Deliberative Democracy*, ed. James Fishkin and Peter Laslett (New York: Wiley-Blackwell, 2003), 152.

⁶⁶ Pettit, *Republicanism*, 67, and Philip Pettit, “Minority Claims Under Two Conceptions of Democracy,” in *Political Theory and the Rights of Indigenous People*, ed. Duncan Ivison et al. (Cambridge: Cambridge University Press, 2000), 210.

⁶⁷ Pettit, *On The People’s Terms*, 215-216 and *Republicanism*, 200.

⁶⁸ See Pettit’s “Democracy, National and International,” *The Monist* 89:2 (2006): 309 and *Republicanism*, 187.

norms” that “nearly every relevant party conforms to” and institutions that guarantee people “a proper hearing,” “there is very little hope of achieving the ideal envisaged here.” In such moments, Pettit’s view can be encapsulated as such: The ability to contest rests on having already secured the recognition of one’s right to redress; therefore, while democracy organizes electoral power “collectively,” it is sufficient to organize contestatory power “noncollectively.”⁶⁹

It would seem that we are back where we started: Democratic contestation has been defined in a way that has no bearing on situations of domination and it is therefore not a resource for groups experiencing domination. Yet alongside his focus on institutionalizing mutual control, Pettit also pursues the insight that we cannot confine contestation to just those situations where a group has already secured the ability to receive a fair hearing and obtain redress. In *Republicanism*, he asks readers to “suppose that there is some type of offense against people’s freedom as non-domination which is not generally recognized as an offence. Suppose, for example, that while some form of government activity does not track the interests or ideas of a particular group in the society, this is not established as a fact within the culture.” In such a situation, noncollective remedies cannot function, and Pettit talks of the need to organize collectively against state nonresponsiveness; movements “command an audibility which individual citizens cannot hope to match.”⁷⁰ Elsewhere, he cites Bonnie Honig to contend that popular control rests on the people’s “refractory and turbulent zeal,” exemplified in “the activity of the radical social movements that offer an account of common concerns, articulate a suite of popular demands, and challenge government for its failures to recognize or reflect those demands in its policies.”⁷¹ When the channels of mutual control are compromised, contestatory power takes a collective form after all, one

⁶⁹ Pettit, “Democracy, National and International,” 308, *On the People’s Terms* 216, *Republicanism* 280, and Philip Pettit, “Democracy, Electoral and Contestatory,” *Nomos* 42 (2000): 140.

⁷⁰ Pettit, *Republicanism*, 247 and 193.

⁷¹ Pettit, *On the People’s Terms*, 226.

that looks like Pettit's vision of individualized contestation, transposed to this new level.

Of interest in such passages is the idea that a range of mechanisms, from individual legal appeals to collective action, are all part and parcel of the people's contestatory role. In listing ways in which "opinion is activated against government," Pettit runs through "people writing letters to newspapers, switching to the other side at election time, taking to demonstrations on the streets, resorting to civil disobedience, or even practicing open resistance."⁷² These all testify to "the possibility [that] popular, successful resistance is on the cards;" they are all components of a "system ... [that] enables people to enjoy a directive influence that is based on the resistive character of the society, not on the good will of government."⁷³

Pettit thus places the people's "oppositional"⁷⁴ role at the heart of democratic life. The sovereignty of the people, he writes, lies "not in electoral authorization but in the right of resistance."⁷⁵ And this "oppositional" role is not reserved for only those circumstances where people have secured "equal contestatory standing," which is to say those circumstances where domination has effectively been resolved as a system-wide prospect.

This reframes domination from the thing that prevents democratic action to the situation that occasions it. A central tenet of Pettit's thought is that, however much it is guarded against, domination will not be excised from political life. Risks like "the tyranny of the majority and the tyranny of what we might call the tyranny of the democratic elite: those in the corridors of power"⁷⁶ are common even in republican states; Nadia Urbinati calls this "chronic elitism."⁷⁷ The problem of domination is endemic enough that confronting it is part of democracy's ordinary

⁷² Pettit, "Democracy, National and International," 310.

⁷³ Pettit, *On the People's Terms*, 174.

⁷⁴ Pettit, "Republican Freedom and Contestatory Democratization," 183.

⁷⁵ Pettit, *Republicanism*, 202.

⁷⁶ Philip Pettit, "Depoliticizing Democracy," *Ratio Juris*, 17:1 (March 2004): 61.

⁷⁷ Nadia Urbinati, "Republicanism: Democratic or Popular?" *The Good Society* 20:2 (2012): 157.

mission: Democracy must be rethought as a resource by which to resist domination.

As such, a central question that drives Pettit is: What does it mean to act democratically in light of the likely recurrence of patterns of domination (“asymmetrical” relationships), some of which may overwhelm the safeguards of mutual control? This formulation guards against the temptation to draw a clean line between things one should be doing when that problem is present and things one should be doing when it has been resolved. The “disposition of people to rise up in the face of government abuse”⁷⁸ is not democracy’s revolutionary set-up nor an *extrademocratic* safety valve; it is how people should act or prepare themselves to act whether or not their institutional interlocutors are responsive. “The important thing is that [the constituting people] remain present after the state has formed and are always ready to rise up and challenge government, should it not please them: in Lockean terms, should it not keep to the terms of the trust that people must be assumed to have contractually endorsed.”⁷⁹ The “constituent” power to challenge the terms that hold a community together is as important to the arsenal of tricks that democratic citizens must be ready to deploy as the “constituted” power to appeal to already established terms of mutual control. This need not mean that different strategies won’t be more useful at different times, but it undermines the commonly-drawn divide in how we think about contestation in settings where people acknowledge each other and settings where they do not.

Pettit blurs this divide most explicitly when he prescribes that people in each type of setting act *as if* they are in the other. First, even when one has good reasons to expect public officials to be responsive, it is valuable to act *as if* one expects no such thing; “republican vigilance

⁷⁸ Ibid. 173.

⁷⁹ Philip Pettit, “On the People’s Terms: A Reply to Five Critiques,” *Critical Review of International Social and Political Philosophy* 18:6 (2015): 694. This echoes Tilly’s defense of a contentious definition of democracy: “A kind of distrust” is “a necessary condition of democracy.... It implies the threat that if they do not perform in accordance with citizens’ collective will, citizens will withdraw compliance.” Tilly, *Democracy*, 94.

involves going through the motions of personal distrust.”⁸⁰ It is by maintaining a resistive outlook that one makes democracy a practice that struggles against domination rather than a practice that follows domination’s dissolution. Second, even when one faces dominating agents, it is valuable to act *as if* these agents are in fact responsive. Pettit writes in *On the People’s Terms* that, “However illegitimate it may be, the regime is still capable of being made legitimate by being treated as if it were legitimate: that is, by being opposed only within the system. Without being legitimate, the system may in that sense be legitimizable.” He adds, “The legitimizable state will be capable of being made legitimate—fit to be opposed only within the system—by being treated as if it were legitimate—that is, by being opposed only within the system.”⁸¹ This is a central intuition that my dissertation will unpack: A key to understanding how opposition to domination may take a democratic form lies in figuring out the logic of acting *as if*.

To be sure, Pettit does not think through what it would entail for people who suffer from system-wide domination to remedy their situation democratically. He does not dig into what it would look like to act “as if.” Does this neglect, unquestionably a big limitation of his work, erase the value of the insight I have tried to draw from it that democracy is a resource with which to resist domination? I believe that it does not, and this for two reasons.

For one, some of what is at issue here is Pettit’s definition of domination. He has faced justified criticism for focusing on domination as an interpersonal and intentional dynamic, and for neglecting forms of impersonal, systemic, or unconscious power.⁸² One effect of this neglect is that he mainly worries about chronic manifestations of domination as wayward cases that be

⁸⁰ Pettit, *Republicanism*, 281.

⁸¹ Pettit, *On the People’s Terms*, 139-140. Pettit makes a similar argument in an essay on how the international order should treat illegitimate states, “Legitimacy in International Institutions,” in *The Philosophy of International Law*, ed. Samantha Besson and John Tasioulas (New York: Oxford University Press, 2010), 154-155. He comments on this language briefly in Pettit, “On the People’s Terms: A Reply to Five Critiques,” 691-692.

⁸² See Sharon Krause, “Beyond Non-Domination: Agency, Inequality and the Meaning of Freedom,” *Philosophy and Social Criticism* 39:2 (2013): 187-208.

addressed in isolation from one another rather than as cases reflective of broader structures of inequity. He is aware, of course, that groups can be dominated collectively on the basis of attributes like race or gender. But his narrow view of what counts as domination leads him to define away many of the ways in which a group's views and voices get disqualified. This allows him to feel confident that, as long as a state is by-and-large republican and affords every person basic liberties, then valid domination complaints will resonate within the prevailing societal norms.

What I am suggesting here is that, as long as Pettit defines domination in personal and intentional terms, then contemporary situations in which people are dominated to the extent of being deprived of societal standing are going to seem unlikely to him. And this may be why he does not perceive the incongruity of combining his bid to make democracy a resource with which to contest domination with arguments that suggest that system-wide domination must have already been resolved for democratic contestation to take off. In short, I would argue that his neglect for democratic contestation in unfavorable circumstances is due more to such circumstances not being of grave concern to him, than to his ruling out that prospect conceptually based on a commitment to the idea that the absence of mutuality deflates democracy.⁸³

Furthermore, others schools of thought have given this same insight a more complete form by concentrating on how democracy enables people to contest patterns of system-wide illegitimacy or domination. Take the radical democratic approach associated with a post-Marxist such as Ernesto Laclau, for whom democracy is a counterhegemonic practice. Or take Miguel Vatter, who works within the republican tradition to criticize Pettit for neglecting direct manifes-

⁸³ Take a recent essay in which Pettit responds to Vatter's criticism (see below) that his strand of republicanism does not make room for radical action. He replies that, "I am open to making room for proposals of this Arendtian kind. But where Arendt thinks of the constituting people as asserting themselves collectively, I believe that a much more effective mode of assertion may come about via contestatory public-interest groups and public agencies" (Pettit, "On the People's Terms: A Reply to Five Critiques," 695). This strikes me as a disagreement that revolves, not on different definitions of democracy, but on the different levels of plausibility each attributes to the scenario of citizens being dominated in a way that public agencies cannot even recognize.

tations of constituent power.⁸⁴ For Vatter, combatting domination entails defying the terms, laws, institutions that organize the state’s constitution, including those by which citizens may seem to already mutually control each other; he writes that “the people must stop functioning merely as a passive legal subject, as a foundation of the legal power of the state, and become the active political subject of a resistance to the state.”⁸⁵ He attributes the latter perspective to Machiavelli and Arendt, whose strands of republicanism he explicitly contrasts to Pettit’s.⁸⁶ But while there certainly are major differences between Pettit and Vatter (or Laclau)—Pettit prizes the state as a partial ally in the people’s struggle against domination, Vatter warns against institutions’ stultifying force, which threatens to diffuse contestatory energies—these only go so far. After all, Pettit also draws on Machiavelli to highlight “the willingness of the plebeian poor to rise up against even the suspicion of an abuse or usurpation of power by the nobles,” and Vatter also advocates for institutional remedies that will “safeguard public freedom” by “inscrib[ing] a resistance to domination into the state apparatus.”⁸⁷

For the purposes of my present argument, the fault lines between Pettit and radical democrats, institutional protections and counter-hegemonic protests, individual appeals and movement demands, constituent power and constituted power blur into each other. Remains the overarching idea that people have to stay constantly mobilized to challenge domination—even when it seems that there is no need to—and that we should therefore think of democracy not as domination’s conceptual opposite (what is made possible by its absence) but rather as domination’s foil.

⁸⁴ See Miguel Vatter, “Pettit and Modern Republican Political Thought,” *Nomos* 46 (2005): 120 and Miguel Vatter, “Political Ontology, Constituent Power, and Representation,” *Critical Review of International Social and Political Philosophy* 18:6 (2015): 683-5.

⁸⁵ Vatter, “Pettit and Modern Republican Political Thought,” 139.

⁸⁶ *Ibid.* 131.

⁸⁷ Pettit, *On the People’s Terms*, 174, Miguel Vatter, *Between Form and Event: Machiavelli’s Theory of Political Freedom* (New York: Fordham University Press, 2014), 104, and Vatter, “Pettit and Modern Republican Political Thought,” 140.

But this comes at a considerable cost. Thinkers who conceptualize democracy as a resource with which to resist patterns of domination have done so by stripping it down to everything but its oppositional component. In other words, they allow that democratic action may be contentious (in the sense of describing how people act insofar as they challenge inegalitarian and exclusionary situations from which mutuality is absent) by making contestation a strictly *negative* form of action.

What I mean when I talk of a *negative* conception of democracy is the idea that democracy has to do with litigating or disputing breaches in relations of mutuality to the exclusion of aspiring to shape the content of the decisions or institutions that one is contesting. For Pettit, Vatter, and radical democratic thinkers, democratic contestation is about seeking redress, retribution or disruption; it is what ensures that “attempts to push [a] person around will be met with resistance, or should they succeed, the perpetrators will be subject to a sort of redress that is designed to vindicate the standing of the victim.”⁸⁸ Any other motivation raises the suspicion that the actors’ outlook is not appropriately contentious, or that they are seeking redress or retribution for wrong—anti-democratic—reasons (like wanting to dominate others in turn).

It is of course hardly controversial to state that Pettit is not keen on participatory democracy. He explicitly contrasts his republicanism to that of thinkers like Rousseau or Arendt whose “rather romantic picture of the tirelessly engaged public figure” ends up “downplay[ing] private life in favour of public engagement.”⁸⁹ Yet he does not simply invert that picture to downplay public engagement in favor of private life; that is not what I mean when I say that he associates democratic contestation with a strictly negative outlook. Rather, to the extent that he does prize

⁸⁸ Pettit, “Legitimacy in International Institutions,” 142.

⁸⁹ Pettit, *On the People’s Terms*, 18. See Charles Larmore, “A Critique of Philip Pettit’s Republicanism,” *Noûs*, 11 (2001): 229-243 for an analysis of Pettit as a thinker of negative freedom understood more straightforwardly as a freedom that privileges the private realm.

public engagement, it is an engagement stripped of programmatic value.

There are two related reasons for this. First, Pettit finds value in contestation insofar as it eliminates, blocks, or reverses decisions or policies. Hence in conceptualizing the contrast between electoral democracy and contestatory democracy, he associates the latter with a “negative scrutinize-and-disallow dimension” (rather than a “positive search-and-identify dimension”). Contestation involves “rigorously scrutinizing and eliminating those candidate policies and those modes of policy implementation that do not advance common, recognizable interests.”⁹⁰ It is “oppositional” *as opposed to* being “creative, lawmaking.”⁹¹

Second, Pettit constrains even the grounds for disallowing a policy: Contestatory practices litigate procedural violations, not substantive disagreements. They force recalcitrant officials to act in a manner consistent with republican norms. “What the people controls for is conformity to the public values of democratic exchange... not for the detailed direction of policy.”⁹² Even where people are motivated by a programmatic vision or a desire to direct policy (and Pettit does not believe this to be likely in the first place⁹³), we can just abstract from that aspect of their action when we assess their grievances. In a moment of active contestation, what matters is not the things that the people involved say they want done, only the opportunity that this moment represents to assess whether the state is doing is satisfying nondominating procedures.

As such, in making democracy about resistance, Pettit is able to value collective social movements, but he cannot do so insofar as they are mobilized around a particular political pro-

⁹⁰ Pettit, “Democracy, Electoral and Contestatory,” 115-116.

⁹¹ Pettit, “Republican Freedom and Contestatory Democratization,” 183.

⁹² Pettit, “Legitimacy in International Institutions,” 150.

⁹³ In *On The People's Terms*, Pettit disputes the idea that “the people exercise popular control insofar as they intentionally use their influence,” and he therefore does not view it as important that participants in “watchdog groups and social movements” “endorse the purpose that they want government to fulfill” (243). In the book’s last part, he argues that it makes sense to talk of people direct government in a non-intentional way, so that “popular influence will generate the public interest... via a mechanism that operates behind their backs” (250).

gram, only insofar as they pressure government to stick within general constraints within which any policy choice may as well be made by rolling dice.⁹⁴ Vatter furthers a similar view when he describes politics as the “practice of no-rule or of not being governed.” His claim is that while political thought has focused on struggles over who should rule, the “primary social conflict” is the one “between those who want to rule and those who want no-rule.”⁹⁵

“No-rule” captures both aspects of the negativity I just traced in Pettit. First, it means that contestation is oriented only toward blocking, not furthering alternatives. This is why Vatter attributes a “negative power” to what he calls “counterinstitutions” (“the power to veto,” the “public accusation”),⁹⁶ an expression that mirrors Pierre Rosanvallon’s “counter-democracy.” For Rosanvallon, a democratic regime should institutionalize distrust through what he says are “negative” mechanisms of oversight, prevention, and judgment. These mechanisms characterize “a democracy of rejection,” as opposed to a “democracy of proposition.”⁹⁷ (Interestingly, Rosanvallon and Vatter point to the same device as embodying this power of rejection: Rome’s tribunes of the plebs.⁹⁸)

⁹⁴ For Pettit, “it is no problem for republican theory that in any area of policy brute chance ultimately determines what exact policy or decision the government selects under the terms imposed on it by the people.” *On the People’s Terms*, 179).

⁹⁵ Vatter, *Between Form and Event*, 13 and “Pettit and Modern Republican Political Thought,” 135.

⁹⁶ Miguel Vatter, “The Quarrel Between Populism and Republicanism: Machiavelli and the Antinomies of Plebeian Politics,” *Contemporary Political Theory* 11:3 (2012): 256 and “Pettit and Modern Republican Political Thought,” 139.

⁹⁷ Pierre Rosanvallon, *Counter-Democracy*, trans. Arthur Goldhammer (Cambridge: Cambridge University Press, 2008), 15. That distinction is a common frame for assessing protests and oppositional movements, especially among scholars of populism. Deiwiks defines “populism as anti-phenomenon,” and Taggart talks of “the negative drive of populism,” by which he means that “the driving force behind it is... at root, a rejection of something.” Christa Deiwiks, “Populism,” *Living Reviews in Democracy* 1 (2009): 3 and Paul Taggart, “Populism and the Pathology of Representative Politics,” in *Democracies and the Populist Challenge*, ed. Yves Meny and Yves Surel (New York, Palgrave: 2002): 72.

⁹⁸ For Vatter, tribunes embodied “the pure negativity of the constitution;” he cites K. von Fritz’s view that they are “an excess of negative powers the likes of which can hardly be found in any other state in history” (Vatter, *Between Form and Event*, 104 and “Pettit and Modern Republican Political Thought,” 140). John McCormick has a strikingly different account of tribunes. He argues that they were “not merely contestatory officials” who imposed “negative constraints” on elites. They also “wielded authority to initiate legislation” and helped “the plebeians participate in rule.” McCormick aims to show Machiavelli conceptualizes “elite accountability” as

Second, “no-rule” means that contestation must disregard the substance of what government does. Vatter is interested specifically in how “the people *as bearers of the desire for non-domination*” “question the legitimacy of ruling as such.”⁹⁹ While Pettit at least remained ambivalent on whether he is saying that contentious actors are unmotivated by political programs or only that their programmatic motivations do not matter to their actions’ contestatory core, Vatter firmly opts for the former option. He calls for the “separation of the people from the business of government, from the constituted power of the state, for the sake of preserving in the people the sovereign indifference to rule that allows it to contest government from an independent standpoint [and] to interrupt its functioning.”¹⁰⁰ Acting to suspend domination is incompatible with seeking a say in the business of government. The latter drive is corrupting; it will prevent the people from “maintain[ing] itself as that part which does not participate in rule.”¹⁰¹ What I find most concerning here is that Vatter’s demand that people be indifferent to the business of government is not even based on the hope of ending the state form and administrative functions. He envisions “institutions of political contestation, or counterinstitutions” that would allow the people “to voice the demands of no-rule” and “counteract the administration of rule from within the state itself.”¹⁰² The implication is that the people should renounce contributing to the business of

more than a “negative function.” John McCormick, *Machiavellian Democracy* (Cambridge: Cambridge University Press, 2011), 107, 150. See also Mary Dietz’s objection that Vatter neglects Machiavelli’s “frequent association of liberty with free and inclusive ‘government’ (governo largo).” Mary Dietz, “Review of *Between Form and Event* by Miguel E. Vatter,” *Political Theory* 31:5 (2003): 744.

Note that Vatter’s draws on Machiavelli’s line, “Besides giving popular administration its part in ruling, [the tribunes] were constituted as a guard of Roman freedom.” He comments: “Here political freedom is clearly distinguished from the activity of administering the rule of the state.” Yet he is disregarding the first clause: “besides giving popular administration its part in ruling.” He does grant that this describes the tribunate’s role “from the perspective of the state” and not “from the perspective of the people.” But this antithesis between the “administration of rule” and “the perspective of the people” is what he is supposed to be demonstrating, rather than what he should be using as a premise. (In “Pettit and Modern Republican Political Thought,” 140.)

⁹⁹ Vatter, “Pettit and Modern Republican Political Thought,” 119 and 139

¹⁰⁰ *Ibid.* 151.

¹⁰¹ Vatter, “The Quarrel Between Populism and Republicanism,” 259.

¹⁰² Vatter, “Pettit and Modern Republican Political Thought,” 121 and 139.

government *even when they accept that this business will continue to exist.*

The idea that oppositional practices are at bottom about contesting the fact of rule¹⁰³ is a core tenet for those radical democratic thinkers who believe that institutional work and activities of rule are inherently stultifying. To be sufficiently antagonistic, democracy must thereby oppose these activities on behalf of no-rule, rather than on behalf of an alternative conception of what should be done. Miguel Abensour defines democracy as a “disorder that is not destined to be another order,” while for Sheldon Wolin “fugitive democracy” consists of “transgressive acts” that cannot survive the moment of “institutionalization of politics.”¹⁰⁴ These thinkers think what is democratic about fighting domination, or what makes such a fight democratic, but they allow no bridge between that fight and contributing to governmental processes.

Going forward, the challenge is this: Can we avoid reducing democracy to a strictly contestatory power that by definition excludes popular interest in the business of government while making room for the idea that such an interest will involve people in contesting patterns of disqualification? This is a tricky question: When critics of the authors discussed in this section argue that we need more participation, they do so by jettisoning the stakes of resistive contestation.

Take Nadia Urbinati, who judiciously demonstrates that Rosanvallon and Pettit’s “unpolitical democracy” shrinks the space of judgment and reduces citizenship to negative control. But to challenge their view of democracy, she envisions what could be done within already democratized spaces by actors who have agreed to “keep the processes of judgment and will formation

¹⁰³ As I discussed in my dissertation’s introduction, this is also a common trope in how protests are assessed. Here again the literature on populism provides telling illustrations. Paul Taggart argues that the “sense of frustration against being ruled” is the driving motivation of populism, and Cas Mudde describes those attracted to populism as people who “want the politicians to come up with these policies without bothering them, i.e. without much participation from them.” Taggart, “Populism and the Pathology of Representative Politics,” 73 and Cas Mudde, “The Populist Zeitgeist,” *Government and Opposition* 39:4 (2004): 558.

¹⁰⁴ Miguel Abensour, *Democracy Against the State: Marx and the Machiavellian Moment* (Polity, 2010) 101 and Sheldon Wolin, “Fugitive Democracy,” in *Democracy and Difference*, 31, 38-39

open to scrutiny and revision and the political arena open to competing visions.”¹⁰⁵ Similarly, Donatella della Porta takes issue with Rosanvallon’s *Counter-Democracy* on the basis that social movements’ “participation in democracy is... not limited to ‘countering’ the decisions made from above but also involves the promotion of public policies, the construction of new political institutions.” This is an important point Rosanvallon does neglect. But della Porta justifies this possibility by pointing to the “practice of continuous interaction between institutions and social movements, where social movements organizations not only are considered as negotiators for some interests (or identities) but also actively take part in various forums... in the complex mechanisms of public governance.”¹⁰⁶ Social movements can embody more than a democracy of rejection, but only to the extent that they encounter cooperative institutions.

Urbinati and della Porta are right that Pettit and Rosanvallon’s work is excessively negative, but they sidestep the problem these authors were probing: How to persist in the face of uncooperative interlocutors? They lose the insight that, if elites are prone to withdrawing from relations of mutuality, then the need to act in the face of domination should be dragged at the core of democratic life. In fact, Urbinati and della Porta’s criticism ends up vindicating—or at least it leaves unquestioned—Pettit and Rosanvallon’s point that, when elites disqualify and mutuality breaks down, there is no other possibility than to engage in negative (strictly oppositional) actions that exclude contributory drives.

So what avenue is there for democratic action to challenge disqualification without taking a negative form? Is there a way that people act democratically insofar as they are not already met

¹⁰⁵ Nadia Urbinati, “Unpolitical Democracy,” *Political Theory* 38:1 (2010): 84-85. John Maynor’s *Republicanism in the Modern World* runs on similar lines: He criticizes Pettit for downplaying participation, but insofar as his solution is to say that a democratic system will “need to involve open and inclusive forums,” we did not progress on the question of how democracy can be about participation if it is to be relevant to those situations in which such open and inclusive forums are lacking.

¹⁰⁶ Donatella della Porta, “Democracy and Distrust: A Discussion of *Counter-Democracy: Politics in an Age of Distrust*,” in *Perspectives on Politics* 8:3 (2010): 892.

by relations of mutuality *other* than disruptive and strictly oppositional transgressions? Worried that “the consequence of all this negativity is to refuse political freedom any affirmative moment of praxis,” Mary Dietz asks in an essay on Vatter, “What about citizenship as the simultaneity of ruling and being ruled, for instance, or Arendtian ‘no-rule’ as the positive plurality of action in concert?”¹⁰⁷ Dietz’s first alternative to Vatter’s negativity (the “simultaneity of ruling and being ruled”) maps the positive/negative distinction unto the distinction between mutual situations and nonmutual situations, much like the thinkers I have just considered. But what about the second path that she alludes to? What about “no-rule” in its Arendtian—“positive”—guise?

The anticipatory turn: Practicing mutuality

Pitkin and Shumer exhort us to not “postpone the practice of participatory democracy until” conditions of social and economic equality “are achieved.” But how are people to practice it when its apparent conditions of possibility are absent? Even the “contestatory turn,” while it extended democracy into infelicitous situations, accepted that participatory democracy is “postponed” until the quest for redress is resolved, until social movements’ appeal for more egalitarian, inclusive, symmetrical conditions has come through. What would it take for actors to not postpone participatory democracy, and for theorists to not reduce social movements’ democratic element to their restorative or disruptive character?

In discussing the immigration protests that occurred in the United States in 2006, Cristina Beltrán contends that “the marches represented far more than a prelude to citizenship.” They were noteworthy as acts that practiced participatory democracy now and already, as “present-day acts of freedom.” Importantly, Beltrán does not justify the viability of these “present-day acts of freedom” by pointing to already established spaces of freedom; she rejects the idea that immi-

¹⁰⁷ Dietz, “Review of *Between Form and Event*,” 746.

grants' mobilization can be explained based on preexisting bonds of community that they fell back on after experiencing marginalization from a broader public. Instead, she documents how participants in these marches "constructed communities and solidarities within the public realm" and "created relational spaces of freedom and common appearance where none existed previously."¹⁰⁸ Beltrán traces this possibility to Arendt's performative view of politics. Indeed, a core tenet of Arendt's work is that in acting people "create the public space between themselves where freedom could appear."¹⁰⁹ Albrecht Wellmer comments that Arendt highlights the "performative act" of "people who begin to act in concert and thereby transform their common world and create a space for public freedom."¹¹⁰ This is what Linda Zerilli calls the "creative" and "inaugural" character of practices of freedom: People "create, through speech and action, a subjective in-between."¹¹¹

This approach is productive for our current purposes because it conceptualizes how democracy may begin in the absence of its apparent preconditions, including mutuality. When Arendt writes that power "[rests] on reciprocity and mutuality," she means something very different than the outlook I delineated so far because she defines power as what comes "into being when and where people... get together and bind themselves through promises, covenants, and mutual pledges;" power is what "springs up between men when they act together and vanishes the moment they disperse."¹¹² Such passages cast mutuality as a relationship that action initiates and sustains, rather than as a relationship that predates action. Mutuality is now the name of what occurs when people engage each other in the course of political action; it is what "comes into being

¹⁰⁸ Cristina Beltrán, *The Trouble with Unity* (Oxford: Oxford University Press, 2010), 153, 17 and 132.

¹⁰⁹ Hannah Arendt, *Between Past and Future* (London: Penguin, 2006), 3-4.

¹¹⁰ Albrecht Wellmer, "Hannah Arendt on Revolution," *Revue Internationale de Philosophie* 53:208 (June 1999): 210 and 219.

¹¹¹ Linda Zerilli, *Feminism and The Abyss of Freedom* (Chicago: The University of Chicago Press, 2005), 94.

¹¹² Hannah Arendt, *On Revolution* (London: Penguin, 1990), 181 and *The Human Condition* (Chicago: The University of Chicago Press, 1958), 200.

whenever men are together in the manner of speech and action.”¹¹³ Many scholars have built on Arendt’s insights to rethink the nature of democratic attachments. Amy Allen, for instance, employs this framework to talk about collective action without essentializing the commonality that brings people together; she argues that “the solidarity ties that bind members of social movements together and thus make collective resistance possible” are “the result of concerted action, rather as a pre-given, fixed, and hence repressive identity.”¹¹⁴ Michael Ferguson similarly contends that “by interacting, you and I create a ‘we,’” and that it is this politically performed “we” that constitutes “democratic interagency, which is the dialogic agency that emerges in the interactions between persons engaged in making claims about how we should imagine our shared world, wherever these interactions should occur.”¹¹⁵ For these thinkers, mutuality no longer functions as democracy’s conceptual—let alone temporal—prior. It is something that people inaugurate and practice in the course of acting democratically.¹¹⁶

Why, then, am I calling this an *anticipatory* turn rather than a *performative* one? If mutu-

¹¹³ Arendt, *The Human Condition*, 199.

¹¹⁴ Amy Allen, “Solidarity after Identity Politics: Hannah Arendt and the Power of Feminist Theory,” *Philosophy and Social Criticism* 25:1 (1999): 106. On this point, see also Michael Warner’s point that “homosexuals can exist in isolation; but gay people or queers exist by virtue of the world they elaborate together,” in *Publics and Counterpublics* (New York: Zone Books, 2002), 57-58, and Gooding-Williams’s argument that it is “politics in action” that may “forge race-conscious African American solidarities.” Gooding-Williams, “Politics, Racial Solidarity, Exodus!,” 125. In *On the Shadow of Du Bois* (Cambridge: Harvard University Press, 2009), Gooding-Williams finds such a performative politics in Frederick Douglass. “The plantation politics that Douglass and his co-conspirators practice is the politics of a few (of six individuals) who pledge themselves to one another” in an enterprise of equals driven by a shared and discursively expressed concern to free the world of “tyrants and oppressors;” Gooding-Williams cites Douglass’s description of his relationship with his friends in *My Bondage and My Freedom*: “We never undertook to do anything, of any importance, which was likely to affect each other, without mutual consultation.” (185 and 187-188).

¹¹⁵ Ferguson, *Sharing Democracy*, 123 and 11.

¹¹⁶ Hence Zerilli defines “reciprocity” as the construction of associations through “entrustment and acknowledgment, the making and keeping of promises.” Zerilli, *Feminism and The Abyss of Freedom*, 118-119. Others also emphasize the production of mutuality. Honig discusses “free action by equals who act in concert, bound together by mutual promises and reciprocity for the sake of bringing something new into being;” Myers valorizes “the kind of exchange among plural individuals that would allow for the mutual recognition of... a third term that both links and separates.” Bonnie Honig, *Political Theory and the Displacement of Politics* (Ithaca: Cornell University Press, 1993), 101 and Ella Myers, *Worldly Ethics: Democratic Politics and Care for the World* (Durham: Duke University Press, 2013), 126.

ality is to be performed, then democratic action becomes something of a one-sided gamble. To construct mutuality with others involves initiating reciprocal bonds, addressing others with no clear sense of whether they will listen and care to respond. In that sense, *practicing* mutuality first entails *presupposing* mutuality: We start by acting *as if* mutuality is already a fair description of the world around us when we have yet to experience the type of acknowledgment we are positing, in hope that our performance may help make it so. This is what Zerilli calls the “fundamentally anticipatory structure” of political claims.”¹¹⁷ Ferguson similarly characterizes political action in terms of “solicitations to a public, inviting them to imagine the world as we do.”¹¹⁸ To act in concert with others—to build a world together with others—involves beginning to act in a context of uncertainty as to whether they will join you in creating this common world. (Note that, in working out the implications of such a framework, Ella Myers points to Rancière as developing a similar perspective. It is true that, in *Disagreement*, Rancière talks of actors who “create a stage” by acting “*as though* such a stage existed, as though there were a common world of argument.”¹¹⁹ But I read Rancière’s *as if* differently, as my second chapter explains.)

This broadens our sense of how people can act in the face of circumstances from which mutuality is absent: They do not need to take democracy elsewhere or to confine themselves to negative practices. Instead, they can engage in an “affirmative praxis” even when and where they are not so recognized. For instance, Zerilli shows that Monique Wittig’s *guérillères* engaged in practices that are “not reducible to negative freedom” because, while their freedom certainly “consists in the desire not to be dominated” (this is the desire Vatter so emphasized), it is also a desire “for a space in which one can move in word and deed among equals.” She characterizes the latter as “the nonrecriminative desire,” as opposed to the “logic of reparation,” and adds that

¹¹⁷ Zerilli, *Feminism and The Abyss of Freedom*, 179.

¹¹⁸ Ferguson, *Sharing Democracy*, 127 and 141.

¹¹⁹ Rancière, *Disagreement*, 52. Myers mentions this passage in *Worldly Ethics*, 95.

“although *some* women at any given point in time may not have it, not all women are *always* without it.”¹²⁰ The takeaway is that people need not wait before acting on their “nonrecriminative desire.” It’s not that they retreat into safer spaces where they already enjoy some standing, but that their actions create a world that welcomes this desire where such a world did not yet exist. As Wedeen writes in the context of discussing Yemeni *qat chews*, participants who gather together “build an agonistically inclined political world in which disagreements are entertained in common,” opening up spaces that “facilitate a kind of political participation.”¹²¹

Here I wish to emphasize that making mutuality a performative enactment need not mean withdrawing from institutional work or from state engagement. Despite a reading of Arendt as emphasizing spontaneity and fugitivity, an important aspect of her argument in *The Human Condition* is action’s bid for stability and permanence. Zerilli demonstrates that a practice-oriented understanding of politics values the durability of mutual engagement and the world it creates; she argues that “world-building” entails “the creation, and continual reinvention, of institutions that sustain a worldly in-between, a space that both relates and separates those individuals gathered together in it.”¹²² When Zerilli uses the expression “freedom as no-rule” to describe a “nonrecriminative desire,” she therefore means something different than Vatter who, as I have shown, reads Arendt’s language of “no-rule” as designating a strictly negative “desire not to be dominated.”¹²³ For the sake of keeping the distinction between these frameworks clear, in this chapter I would like to reserve the phrase “no-rule” to the contestatory turn’s negative view of action, and to allow that the term “rule” fits Arendt’s practices of freedom. In a 2005 essay, Markell grants

¹²⁰ Zerilli, *Feminism and The Abyss of Freedom*, 81 and 102.

¹²¹ Wedeen, 119-120. On the idea of producing a common world within which we interact politically, see Ferguson, *Sharing Democracy*, 58-59 and Myers, *Worldly Ethics*, 124.

¹²² Zerilli, *Feminism and the Abyss of Freedom*, 125.

¹²³ Both Vatter and Zerilli draw this expression from Arendt’s evocation of a “form of political organization in which the citizens lived together under conditions of no-rule, without a division between rulers and ruled.” Arendt, *On Revolution*, 30. Zerilli talks of “freedom as no-rule” in *Feminism and The Abyss of Freedom*, 21.

that Arendt's spaces of freedom are spaces of "no-rule" in the word "rule"'s "ordinary sense of a power to command over others," but he suggests that this ordinary sense obscures the interdependence of those who "set something in motion" and those who help them complete their course of action. Markell proposes to redefine rule as a nonsovereign activity consisting in encounters between inaugural acts and acts that "sustain, intensify and democratize the beginnings with which we are already confronted."¹²⁴

In following this terminology, I am interested less in adjudicating what exactly falls under the label "rule" than in being clear about the differences between the contestatory and anticipatory turns, and in highlighting that a politics of world-building inspired by Arendt can involve producing spaces where institutional actors and activists encounter one another. This means both that institutional actors can be among those who enter a world of joint action,¹²⁵ and that activists can "inaugurate new forms of 'politically significant relationships'" even insofar as they engage in a "regular, institutional politics," as Paul Apostolidis has put it.¹²⁶ Even the work conducted in and toward organizations, institutions, and bureaucracies can occasion transformative practices of care, public exchange, and world-building of the sort Arendt prizes.¹²⁷

Going forward, I shall retain these resources to think about how to begin an "affirmative

¹²⁴ Markell, "The Rule of the People," 4 and 12. Wellmer also argues that Arendt is interested in the "institutionalization of freedom." He contends that Arendt's focus on the council system should be read as a "metaphor for a network of autonomous or partially autonomous institutions, organizations and associations, in each of which something takes place like the self-government of free and equal participants." Wellmer adds that the *modern constitutio libertatis* "is not least a highly intricate problem of inventing and 'constructing' a system of institutions, which would balance elements of direct democracy with the necessities of central government, of efficient administration and of unitary legal system." Wellmer, "Hannah Arendt on Revolution," 219 and 221.

¹²⁵ Here I have in mind Honig presenting U.S. Assistant Secretary of Labor Louis Post's legal maneuvers during the red scare as an example of political resistance, in *Emergency Politics*, Chapter 3.

¹²⁶ Paul Apostolidis, "Feminist Theory, Immigrant Workers' Stories, and Counterhegemony in the United States Today," in *Signs* 33:3 (2008): 546.

¹²⁷ This argument resonates with the importance Zerilli attributes to processes by which things perceived as antipolitical (in the sense that they fail to occasion democratic responses and public action in concert) are seen in a new guise: In other words, we should not consider that certain spaces or objects are improper for politics. On this point, see also Bonnie Honig, "Public Things," in *Political Research Quarterly* 68:3 (2015): 623-636.

praxis” where one is not already supported by felicitous circumstances. Yet here I also part ways with this Arendtian perspective. It has drawn welcome attention to the “affirmative praxis” that occurs within those spaces and relationships produced by actors who step into a mutually performed world, and make themselves vulnerable to encountering others. But it has not expanded what can be done when and where one’s practices run against people who stubbornly cling to the perspective of mastery. Consider Ella Myers’s statement that “it is through our ‘speaking with one another about it’ that the world can appear as something common” because “it is on a ‘meeting ground’ of citizens that the world can emerge, however briefly, as something in common, in the specific sense of lying between people.”¹²⁸ Practices of freedom unfold within the meeting ground they themselves brought about, but where one’s invitation is not reciprocated and no meeting ground materializes, the ensuing situation of continued depoliticization is not conducive to action in the way Arendt conceptualizes it.

Wellmer describes “the constitution of a space of public freedom” as a “contingent performative act by those *who decide to act together* as free and equal citizens, and in whose light this space of political necessarily appears limited and local, as ‘fenced in;’”¹²⁹ people who act in concert have “fenced themselves in” from those who do not join them. Wellmer’s striking image is echoed most explicitly by those thinkers who highlight action’s performative dimension but not its anticipatory one, for they are left with the implausible view that a common world emerges between people who come together synchronically. Jeffrey Isaac values the “voluntary association and concerted action” by which people “establish boundaries that keep out the impersonality and routine characteristic of mass society [and] insulate the oases of civic engagement from the

¹²⁸ Myers, *Worldly Ethics*, 124.

¹²⁹ Wellmer, “Arendt on Revolution,” 210.

desert of mass politics.”¹³⁰ While Isaac insists that such associations are “open to all who wish to participate,” he has confined democracy to what occurs within these “islands of civic engagement and solidarity.”¹³¹ (This mirrors social movement scholars who focus on “participatory decision-making” as something that movements practice within themselves. When Francesca Polletta writes that some movements “see themselves as islands of democracy in a sea of political conformity,” and when Della Porta talks of a movement’s “internal democracy,” they are focusing on movements as counter-publics whose “internal practices” of debate and deliberation are “governed by norms of openness and mutual respect.”¹³²)

Does the anticipatory dimension of action, which Isaac is not attuned to, impact this account? After all, this dimension’s promise was that one can act as if still-absent bonds are present. Yet the picture that emerges from the authors I have discussed is that an anticipatory practice is suspended on its ability to bring about mutuality’s instantiation. Ferguson, who writes that “the point of protesting... is to act anyhow in the hopes that one may have some effect,” goes on to explain that the presupposition one gambled on is “confirmed intersubjectively when I observe others acting as if” it is true; “the validity of my use of the word ‘table’ [is] a function of other language users... accepting my use of the word in this way and responding as if they have understood it.”¹³³ The “validity” of acting “as if” stems from my success at constructing a new inter-

¹³⁰ Isaac is drawing this from Arendt’s *On Revolution* (279): “If we equate these spaces of freedom... with the political realm itself, we shall be inclined to think of them as islands in a sea or oases in a desert.”

¹³¹ Jeffrey Isaac, “Oases in the Desert: Hannah Arendt on Democratic Politics,” *American Political Science Review* 88:1 (March 1994): 158-9. Isaac draws a parallel between Arendt’s “islands” and Ivan Jirous’s “parallel polis,” where “the voice of the ruling power is heard only as an insignificant echo” and where people have “little aspiration directly to influence public policy” (quoted on 163). Isaac’s language also evokes Myers’s argument that “care for the world... is enacted in and through democratic counter-institutions,” which she defines as “an organization located outside the state’s institutional matrix that serves as a venue for the experience of discussion, decision making, and action among citizens.” Myers, *Worldly Ethics*, 150 and 193.

¹³² Francesca Polletta, *Freedom is an Endless Meeting: Democracy in American Social Movements* (University of Chicago Press, 2002), 7-9, and Donatella della Porta, “Deliberation in Movement: Why and How to Study Deliberative Democracy and Social Movements,” in *Acta Politica* 40 (2005): 338-347.

¹³³ Ferguson, *Sharing Democracy*, 55, 141, 149. This furthers Zerilli’s view that, “If such a claim can only be

subjective reality; it hinges on others picking-up what I have started and bringing about a community committed to practicing this reality.¹³⁴ Where others refuse to confirm my performance, the bond we presupposed with them deflates. “Collective agency falters... when our interlocutors disengage, do not respond, fail to hear us, or simply do not take us seriously,” so that “my half of the conversation would appear senseless on its own.” Only those willing to “interac[t] with others in such a way as to continue rather than shut down or foreclose the interaction” play a role on the democratic stage we are performing.¹³⁵ Hence the anticipatory turn frees political actors from depending on a *prior* acknowledgment, but they are now *look forward* to their own authorization, absent which they flail. If others ignore or rebuff the risk I took in presupposing a common world between us, then continuing to act in on this presupposition tips over from being a gamble to being madness. It is “senseless” action, as Ferguson wrote.

Practices of freedom are viable within the world produced by their presuppositions’ fulfillment and participatory politics retains an inward-looking quality. It is exercised in those “mutual contexts,”¹³⁶ as Myers calls them, that emerge between those who initiate new relationships and those willing to take up and respond to their solicitation.

Cavell, who also attributes an anticipatory guise to politics, which he draws from Wittgenstein, similarly argues that speaking politically is “to speak for the others with whom you consent to association,” but that if others reject your claim to community you “ha[ve] learned that there is no us (yet, maybe never) to say anything about.”¹³⁷ As Andrew Norris comments on

anticipatory, then it is always in need of agreement and consent.” *Feminism and The Abyss of Freedom*, 173.

¹³⁴ This is how I understand Honig’s use of the language of “as if” in *Emergency Politics*. See Judith Butler’s *Gender Trouble* (New York: Routledge, 1990) and *Bodies that Matter* (New York: Routledge, 1993) for more on performativity as the (re)production of discursive reality.

¹³⁵ Ferguson, *Sharing Democracy*, 157.

¹³⁶ Myers, *Worldly Ethics*, 95.

¹³⁷ Stanley Cavell, *Claim of Reason* (Oxford: Oxford University Press, 1979), 27 and 20.

this point, “If you reject my claim... I am evidently wrong.”¹³⁸ (As a preview, this is the central view I work to uproot starting in my Chapter 2: When others reject my claim to community, their stance is no proof I am wrong; it does not reveal the fact of the matter to be that the world I posited between us is absent. Rather, that absence is one of the sides to a conflict that I can persist in litigating over whether there in fact is such a world.)

Relatedly, if democracy rests on others fleshing out what we begin, it also rests on others opening opportunities for us to engage them on worldly affairs. Markell describes depoliticization as “the erosion of the contexts in which events call for responses.”¹³⁹ Part of what he has in mind are situations where leaders become entangled in illusions of sovereignty and perceive rulership as a matter of issuing commands rather than soliciting responses. My concern is that, while his enlarged understanding of rule expands democratic politics to encompass engagement with events that occur within institutional and bureaucratic life, this remains contingent on leaders stepping into the realm of human affairs, willing to have their deeds or speech taken up.¹⁴⁰

Democracy, thus understood, is still not a reaction to encountering claims to mastery or stubborn

¹³⁸ Andrew Norris, “Introduction: Stanley Cavell and the Claim to Community” in *The Claim to Community: Essays on Stanley Cavell and Political Philosophy*, ed. Andrew Norris (Stanford: Stanford University Press, 2006), 14.

¹³⁹ Markell, “The Rule of the People,” 2.

¹⁴⁰ I have the same concern about other efforts to bridge radical movements and institutions. In rebutting calls to “desert” state institutions, Mouffe writes that practices like parliamentary struggles can “profound[ly] transform[m] those institutions.” But her examples only account for such engagement in contexts where movements encounter a cooperative state. For instance, “democratic advances made in recent years” in South America were “made possible by the state’s collaboration with a variety of social movements” and “thanks to the synergy that was established between the government and a series of social movements (among them some *piquet-ero* groups that accepted [President] Kirchner’s offer to collaborate with them).” Chantal Mouffe, *Agonistics* (New York: Verso, 2013), 76. Or take Archon Fung’s review of della Porta’s *Can Democracy Be Saved?* He asks whether the social movements she studies will “muster the capacity for a transformation of not just their internal governance, but for a wider transformation of public institution.” He points to her discussion of “deliberative experiments’ inside public institutions, endorsed by government,” which he takes as a sign that “under some conditions, governments have the desire and wherewithal to implement [participatory] institutions.” In “*Can Democracy be saved? Participation, Deliberation, and Social Movements*” *Contemporary Sociology* 44:1 (2015): 51. Unless there is such cooperation, only a movement’s internal dynamics (rather than its aspiration for institutional participation) is paid attention to as its participatory aspect.

dismissals of the contingency of rule; it does not tell us what value responsiveness may have in contexts in which events are widely perceived to not call for responses.

What is missing is the confrontational dimension, the idea that a democratic movement can direct itself toward litigating its claims even toward actors who are remaining indifferent or hostile.¹⁴¹ While the anticipatory turn makes room for affirmative practices in the face of disqualification, it neglects the possibility that these practices may have value even when people encounter opponents who systematically rebuff them.

We are still operating within the conceptual framework according to which a contributory democracy is unviable when and where relations of mutuality are not being instantiated; such a democracy is still delayed when and where the anticipation of mutuality goes unfulfilled. Arendt writes that “power... will disappear when, for whatever reason, [men] disperse and desert one another,”¹⁴² and while I do not deny the prospect of such an erosion—a common world needs participants to sustain it—I question whether the existence of a common world between parties hinges on one party’s desire to withdraw from it, on one party’s refusal to “gather together [with others] and act in concert,” especially since if the political predicament we must address is an elite propensity to disengage. What of situations where some actors persist in addressing those who desert them? Is there value to continuing to posit that we share a world with those who

¹⁴¹ *Apostolidis* critiques Wendy Brown along similar lines: “When Brown does discuss political practices conducive to freedom in more detail, she focuses on the modes of political engagement among activists rather than on their encounters with institutional power per se.... Thus she stresses the need to learn ‘how to have public conversations with each other, arguing from a vision about the common,’ and enjoying the ‘pleasures’ of doing so.” For *Apostolidis*, Brown misses how “activists develop their common sense about how to shape their political world for themselves not only through deliberative and agonistic conversations with one another but also through direct, antagonistic confrontations with institutionalized authority.” He adds that with these engagements activists “gain a sense on a visceral level of both the weight of oppression and the capabilities of an oppositional movement.” (*Apostolidis*, “Feminist Theory, Immigrant Workers’ Stories, and Counterhegemony,” 550-552.) In this dissertation, I am interested not just in how such confrontations build activist strength (how activists shape a world “for themselves”), but also in what are the specific ways that they may help movements pursue the work of shaping, directing, contributing to the very institutional sites they are opposing.

¹⁴² Arendt, *On Revolution*, 175.

stubbornly deny its existence, reject argumentation and interlocution, avoid stepping into a realm of political exchange? Is there a democratic logic to movements that work to interact with those who keep shutting interactions down?

One of my central intuitions is that we can address these questions by revisiting the idea of acting “as if,” an idiom that we have encountered in both of the past two sections. In its anticipatory guise, acting “as if” entails risking action even when it is uncertain whether others will join in practicing the world in a new way and bringing about novel political realities. But I am interested in situations where what is needed is *persistence* on top of *anticipation*. The question that motivates me is how people proceed, not just in the face of uncertainty as to whether their speech and deeds will be taken seriously by their addressees, but also in the face of the continued experience of disqualification. This is the kind of situation I believe Rancière has in mind when he urges political actors to “create a stage” by acting “*as though* such a stage existed, as though there were a common world of argument.” He is interested in the political stakes of those situations where (powerful) others are refusing to respond to this solicitation and rejecting a common world. What then? What becomes of the desire to respond to governmental events—what becomes of contributory aspirations—when a perception predominates that government is beyond engagement, when rulers hold on to the idea that their actions do not call for public responses? This dissertation will suggest that the language of acting “as if” is useful to thinking about precisely this question: How and why can one still act democratically in nonmutual contexts when it looks fairly clear that those whom one is addressing will keep withdrawing from democratic interactions and keep not taking one’s voice seriously?

Participatory contestation

How has democratic theory addressed the question of whether citizens can act democrati-

cally in disqualifying contexts? In exploring this question, I showed that two avenues along which such action has been conceptualized (the contestatory turn and the anticipatory turn) are themselves structured by a distinction between what is viable in mutual or nonmutual situations. They avoid discriminating between situations based on whether they are propitious for democracy, but a new separation is drawn between what democratic actors do insofar as they are interacting with each other, and what they do insofar as they directly confront those who continue to disengage and to not acknowledge them as political partners.

Most thinkers I have discussed emphasize one or the other aspect as that which democratic contestation is about. But they share the premise that it only makes sense to engage in a contributory politics toward interlocutors willing to act cooperatively, and that as a result people should adopt modes of action other than working to intervene in spaces and processes from which they are systematically disqualified. Even when it is granted that the same activists may be engaging in both confrontational practices and more recognizably participatory ones, these are mapped onto different conceptual spaces and encounters.

Yet the reason I detailed these two approaches is that each provides a powerful insight into the overarching problem that interests me; namely, how people work to contribute to governmental processes from which they are disqualified. The contestatory turn articulates how confronting disqualifying institutions and elites can be a democratic practice: It puts forth the idea that democracy involves persistent resistance to such institutions and elites. (But it also reduces democracy to a negative practice, which I have defined as a redressive, disruptive, or recriminative practice.) The anticipatory turn articulates how people exercise democratic action of a specifically participatory kind even in the absence of preexisting relations of mutuality: It puts forth the idea that actors begin a contributory or programmatic practice through positing and presup-

posing features, including mutuality, that may lack a worldly reality. (But it also downplays the importance of persistence when it reserves the viability of such practices to those spaces where they do obtain an eventual validation.)

The challenge going forward is whether these two insights are compatible. How can one retain a meaningfully confrontational stance if one is already looking to contribute one's views to what one is still meant to be resisting? Why presuppose worldly features if not to anticipate their intersubjective fulfillment? These questions are key to appreciating the radically transformative potential of disqualified actors persisting in their participatory aspirations.

Conclusion

The “dread... not to address letters without addressee,” with which I began this chapter, looms large in contemporary political thought. As I have shown, much of democratic theory accepts the premise that intervening in processes of rule is conditioned by the instantiation of relations of mutuality, and therefore that a participatory politics is deemed to be an unviable form of action toward unresponsive institutions or disqualifying elites. I have also argued that mutuality's allure is dangerous. When confronted with activists who work to shape closed governmental processes, democratic theory either has little to say since their efforts seem too inefficient and futile to be significant, or it regards them as excessively accommodating.

A critical sensibility toward institutions' or powerful actors' propensity to claim mastery and to withdraw from relations of mutuality is a welcome attitude. But it becomes disempowering when it leads theorists to rule out all but the most generous elites and the most open institutions (those most likely to seek out and hear citizens) as interlocutors for democratic practices of direct address and militant argumentation. It impoverishes the range of thinkable strategies when it is accompanied by the view that, by withdrawing from relations of mutuality, these institutions

and elites have succeeded at putting themselves beyond the reach of participatory interventions.

The perceived madness of a participatory politics in the face of disqualification perversely vindicates powerful agents' claim that certain processes or spaces are lost to popular engagement. It makes for too quick a jump from documenting the *political* practices by which these powerful actors treat others as unqualified to drawing the *theoretical* conclusion that the latter have effectively been barred from directing the content of their government, so that they better exert themselves in other ways until the situation changes. More broadly, I worry that theorists' ambition to determine the conditions for participatory action, and to point to a different set of practices insofar as those conditions are lacking or insofar as their performance is not met by others' assent, is equivalent in its effects to justifying claims to mastery. When a theorist finds that the conditions to contribute to government are unmet, he or she effectively ratifies disqualifying expectations and prospectively closes the door to practices by which people may be contesting whether their claims are out of bounds and their aspirations unviable.

My working hypothesis is that, as long as some citizens retain a desire to maintain involvement in unwelcoming governmental processes, we should be wary of granting that popular engagement in processes of rule is inoperative—even in the frequent situations in which comparatively powerful, educated or enlightened actors are deemed entitled to control them. This is why the most complete iteration of this dissertation's guiding problem is: What persistent participatory strategies are available to people who encounter resilient patterns of disqualification?

Against the manifold connections established between experiencing mutuality and practicing democratic rule (in the face, for instance, of Taylor's contention that “popular government” requires a preexisting “reciprocal commitment” and “mutual trust”), can we identify the logic and value of practices of contestatory participation? Answering this requires deepening our un-

derstanding of both participation and contestation, and examining how these may be intertwined with one another. I wish to complement radical democrats' attention to protests and resistance with an appreciation for the persistence of governmental aspirations; and to complement institutionally-minded theorists' attention to governance with more awareness of people acting from disqualified positions. To develop this new framework, I first sketch a general case for why nonmutual situations are characteristic of democratic politics; this is the aim of Chapter 2.

Chapter 2

A Matter of Debate, or Just a Misunderstanding? Woman's Suffrage, Constitutional Struggles, and the Ambivalence of Writing

I insist if government officials may thus manipulate the pronouns to tax, fine,
imprison and hang women, women may take the same liberty with
them to secure to themselves their right to a voice in the government.
—Susan B. Anthony

Texts and traditions are facts to study, not convictions to demonstrate about.
—Antonin Scalia

In the wake of the Civil War, women's suffrage activists hoped that the U.S. Congress would meet their demand for enfranchisement. But not only did the Fourteenth Amendment leave that out, but it introduced an explicit mention of sex into the Constitution for the first time by referring to the rights of "male citizens." When efforts to change the amendment's language failed in 1866,¹ some suffragists publicly opposed its ratification.² Tensions mounted further in February 1869 when Congress adopted a version of the Fifteenth Amendment—" [t]he right of citizens of the United States to vote shall not be denied or abridged... on account of race, color, or previous condition of servitude"—that failed to integrate other possible attributes,³ including sex. Disagreements within the American Equal Rights Association about the strategy to adopt vis-à-vis this amendment led the organization to split; those like Stanton and Susan B. Anthony who opposed ratification because the amendment fell short of universal enfranchisement formed the National Woman Suffrage Association (NWSA).

Yet the NWSA-side of the divide soon pivoted to a claim quite different from the one they had made heretofore: that the new Reconstruction Amendments had in fact enfranchised women. As Stanton declared, "We have reasoned for twenty-five years, and now we propose to take our rights under the Constitution as it is."⁴ Known as the New Departure, this movement was launched at the National Woman Suffrage Association's first convention in October 1869. "I

¹ Elizabeth Cady Stanton, et al, "Petition for Universal Suffrage" (1866). The Elizabeth Cady Stanton and Susan B. Anthony Papers Project. <http://ecssba.rutgers.edu/docs/petuniv.html> (accessed May 2, 2015). Signatories include members from both sides of suffragists' subsequent AWSA/NWSA split.

² See Ellen DuBois, *Feminism and Suffrage: The Emergence of an Independent Women's Movement in America: 1848-1869* (Ithaca and London: Cornell University Press, 1978), 53-78. To contest the passage of this amendment, Elizabeth Cady Stanton announced her candidacy for a congressional seat in New York, a move that she framed as a "rebuke to the dominant party for its retrogressive legislation in so amending the National Constitution as to make invidious distinctions on the ground of sex." Elizabeth Cady Stanton, Susan B. Anthony, and Matilda J. Gage, eds., *History of Woman Suffrage, Vol. 2* (Rochester.: Susan B. Anthony, 1881), 181. I hereafter refer to the *History of Woman Suffrage* as HWS.

³ Earlier versions included bans on restricting the right to vote on account of nativity or education; this would have banned literacy tests. See David Logan, in "Judicial Federalism in the Court of History," in *A Nation of States: Federalism at the Bar of the Supreme Court*, ed. Kermit Hall (London: Routledge, 2000), 222-224.

⁴ HWS vol. 2, 496.

believe that the Constitution of the United States gives me every right and privilege to which every other citizen is entitled,” suffragist Virginia Minor stated; her husband Francis Minor proposed to “no longer assume merely the attitude of petitioners.”⁵ Over the following years, the NWSA struggled on behalf of this claim. The New Departure inspired dozens to attempt to cast ballots, and it provoked high-profile episodes of direct action, public oratory, legislative disputes, and judicial battles, including Susan B. Anthony’s trial on charges of election fraud and a Supreme Court ruling against suffragists’ constitutional claims.⁶

Jacques Rancière is keenly interested in this dynamic by which sociopolitical movements frame their claims as fulfilling existing rights declarations. In fact, he often mentions another episode pertaining to women’s suffrage: Olympe de Gouges’s argument in 1791 France that the denial of her “right to vote” contradicted the Declaration of the Rights of Man.⁷ In this article, I propose a new approach to Rancière’s thought on reading and writing, and through it I compli-

⁵ Ibid. 408-410. On Virginia Minor and Francis Minor’s peculiar marriage, see LeeAnn Whites, “The Tale of Two Minors: Women’s Rights on the Border,” in *Women in Missouri History*, ed. by LeeAnn Whites et al. (Columbia: University of Missouri Press, 2004), 101-118.

⁶ Strangely, Justice Antonin Scalia frequently used the suffrage movement as exemplifying an orderly past, when activists purportedly knew it was inappropriate to seize unto existing constitutional language to demand new rights: “Seventy-five years ago, we believed firmly enough in a rock-solid, unchanging Constitution that we felt it necessary to adopt the Nineteenth Amendment to give women the vote. The battle was not fought in the courts.” Antonin Scalia, *A Matter of Interpretation* (Princeton: Princeton University Press, 1998), 47. He made this point in many speeches. “A Theory of Constitutional Interpretation” (1996) retrieved 25 April, 2015 from <http://web.archive.org/web/20030418153846/http://www.courtvtv.com/archive/legaldocs/rights/scalia.html> and “Speech at the Woodrow Wilson International Center for Scholars” (2005), retrieved 25 April, 2015 from www.cjif.org/htdocs/freedomline/current/guest_commentary/scalia-constitutional-speech.htm.

To be sure, Scalia’s aim in invoking this example is less a historical demonstration than a putting into relief of what he sees as the Constitution’s present politicization. His construction of a past in which authentic constitutional meaning was respected accompanies his denunciation of a contemporary disregard for it. But his neglect for the New Departure introduces a glaring flaw in his argument and in his nostalgia for a time in which aspirational groups did not turn to the Constitution to make rights-claims. (For a set of rich essays on the long history of constitutional aspirations in the American context, see *The Journal of American History*’s December 1997 special issue (Volume 74:3), especially Morton Keller’s “Powers and Rights,” 675-694.) Amusingly, around the time of one of Scalia’s aforementioned speeches erasing the New Departure, his colleague Justice Sandra Day O’Connor published a brief history of the suffrage movement that discusses the New Departure at some length. “The History of the Woman’s Suffrage Movement,” *Vanderbilt Law Review* 49 (1996): 657-675.

⁷ Jacques Rancière, *Dissensus*, trans. Steven Corcoran (New York: Continuum, 2010), 68-69. He also talks about de Gouges in *The Hatred of Democracy*, trans. Steven Corcoran (London: Verso, 2006), 60-61.

cate theoretical expectations of what disputes over texts signal. First, what is the relationship between the content of aspirational claims and the texts they appeal to, especially when these texts' received meaning does not support their claims? How did the New Departure's "innovative readings of the Constitution"⁸ relate to the underlying document? Second, what is the logic of the argumentative scene that is produced when marginalized activists draw on a text in a way their addressees dismiss or find misguided? What was the democratic upshot of suffragists defending interpretations that actors with interpretive standing were dismissing as "follies?"⁹

One theoretical approach to such questions is to argue that the meaning of rights declarations is irreducibly plural and contestable. The idea is that something about political language or acts of writing ruins attempts to achieve semantic closure and foregrounds these documents as "empty vessels"¹⁰ and as "the site of intense public battles"¹¹ on which democratic citizens stage irresolvable debates between competing interpretations. Rancière is often read as furthering this approach due to how his concept of "literarity" has been understood. As Rancière defines it, literarity is the bare fact that written texts give rise to unforeseen uses by unexpected readers because of their wide circulation and nontransparent language. Some readers interpret literarity to be Rancière's guarantee that meaning is disputable and that innovative readings are worthy of respect.

But I argue that Rancière offers a more ambivalent account of what follows from literarity. His crucial insight is that written texts' susceptibility to being used in unforeseen ways undergirds the case both for and against democracy because public agitation over a text's meaning oc-

⁸ Norma Basch, "Reconstructing Female Citizenship: *Minor v. Happersett*," in *The Constitution, Law and American Life*, ed. Donald G. Nieman (Athens: The University of Athens Press, 1992), 60.

⁹ *Ibid.* 54.

¹⁰ Costas Douzinas, *The End of Human Rights* (Oxford and Portland: Hart Publishing, 2000), 95.

¹¹ Seyla Benhabib, *Another Cosmopolitanism* (Oxford: Oxford University Press, 2006), 59.

casions two contrasting evaluations. Such agitation can be perceived as evidence that a text's language is indeterminate, eschews closure, and invites debate; but it can also be perceived as a symptom of democracy's duplicity, as evidence that the circuits of continuous discussion should be distrusted and that interpretation should be restricted to those with the requisite mastery. These are two takes, operating on the same level, as to what manifestations of literarity signify, two practical orientations toward texts' disorderly circulation.

This complicates what a politics of texts looks like. What gets fought over is not just a text's meaning. It is also whether this meaning is a matter for democratic interaction—for public claim-making by all those who avail themselves of the text's circulation—or whether such interaction betrays a misunderstanding of how the text should be used. At stake is which of these evaluations will prove more attractive to those who witness manifestations of literarity. When a movement puts forth new readings, will its interventions be perceived as something to take seriously, or as markers of hermeneutic incompetence and confusion? Using a text democratically, then, involves more than advocating for innovative interpretations. It also involves struggling to make moments of textual deviation appear as a proper way to use the text against opponents for whom such moments' disorderly quality signals that the text needs more expert handling. One implication is that, when those who subject a text's meaning to democratic interaction run into opponents who claim hermeneutic mastery over it and withdraw from such interactions, these encounters are not a delay or failure of democracy. By treating texts as a platform for democratic debate even in such asymmetrical and nonmutual situations, activists work to drag others into responding in kind. I illustrate this argument by showing that the New Departure did not just entail a conflict between rival readings of the Constitution. It also unfolded as a nonmutual and asymmetrical struggle over whether the task of interpretation lends itself to democratic advocacy

and egalitarian contention, between suffragists who subjected constitutional meaning to loud public debate and opponents who treated it as a matter on which to bring interactions to a close.

Written words' democratic potency

Rancière targets the influential suspicion, which he attributes to Karl Marx and Hannah Arendt, that the “rights of Man” are a “deceptive trick” because the formal equalities they declare conceal the material realities of rightlessness. Rancière counters that rights inscriptions are not “merely an abstract ideal.”¹² They serve as “reference texts”¹³ that marginalized people invoke to mobilize around subversive claims.

To make this case, Rancière does not draw on the view that rights inscriptions have a universal meaning or form that exclusionary practices necessarily violate. “Ultimately, words are still words,” he has quipped.¹⁴ If rights declarations are to ground challenges to exclusion, it must be insofar as they provide political actors no more than words. How can that be?

Rancière uses the term “literarity” to describe the “disordering”¹⁵ implications of our entanglement in written texts. While his best-known work (*Disagreement*) only contains a passing reference to this concept,¹⁶ many of his books focus on literarity as a condition that enables the

¹² Rancière, *Dissensus*, 67-68. Examples of the view Rancière is critiquing are Karl Marx, “On the Jewish Question,” in *Karl Marx: Selected Writings*, ed. David McLellan (Oxford: Oxford University Press, 1977), 39-62 and Nicos Poulantzas, *State, Power, Socialism* (London: Verso, 1980), 76-92.

¹³ Jacques Rancière, *The Names of History*, trans. Hassan Melehy (Minneapolis, University of Minnesota Press, 1994) 93.

¹⁴ Jacques Rancière, “Aesthetics against Incarnation: An Interview by Anne Marie Oliver,” *Critical Inquiry* 35 (2008): 176.

¹⁵ Jacques Rancière, *The Flesh of Words*, trans. Charlotte Mandell (Stanford: Stanford University Press, 2004), 103.

¹⁶ Jacques Rancière, *Disagreement* (Minneapolis: University of Minnesota Press, 1998), 37. Books in which he focuses on “literarity” are the aforementioned *The Flesh of Words*, *Politics of Literature*, *The Names of History*, as well as *Mute Speech*, trans. James Swenson (New York: Columbia University Press, 2011).

Note that the English-language editions of *Disagreement* and *The Names of History* translate “*littérarité*” to “literariness,” while in the other books it is translated to “literarity.” Since Rancière employs the same word, I will systematically translate the French “*littérarité*” with “literarity,” even when this modifies the published translation. In *The Lessons of Rancière* (Oxford: Oxford University Press, 2013), Samuel Chambers argues

egalitarian politics he prizes. “Democracy is the regime of writing,” he argues.¹⁷

Part of what Rancière is alluding to is the familiar view that language is an arbitrary system of signs that bear no intrinsic relationship to the things they name. It is because “no primeval legislator put words in harmony with things”¹⁸ that disputes frequently arise over what to call a given thing—is this ruler a king or a tyrant? are Uber drivers contractors or employees?—or over what thing a given word refers to. This “excess of words in relation to things” allows words to be employed in ways that “do not resemble any reality” and in contexts with which they are not typically associated. This gives people “power to put words into circulation that exceed the function of rigid designation.”¹⁹ Hence Rancière’s first point is that language enables us to play with words to propose new meanings and construct alternative accounts.

But Rancière also draws from Plato’s denunciation of writing in the *Phaedrus* to intimate that writing compounds this nakedness of words. A spoken utterance is transmitted only to those interlocutors I address, and I can at least clarify a spoken utterance if confusion arises. But these two controls evaporate with writing, an “orphan utterance” that “circulat[es] outside any determined relationship of address” for two reasons.²⁰ First, writing is “talkative.” It may reach other people than those for whom it was intended because texts are durable, sharable, reproducible documents that may “se[t] off anywhere at all, without knowing to whom [they] should and should not speak;” they are “freely available to anyone who feels like grabbing hold of them,” including “readers with no title [*sans qualités*].” Second, writing is “silent.” No longer subject to its author’s immediate authority, a text stands on its own, “incapable... of answer[ing] those who

that Rancière only coined the term “*littérarité*” in the late 1990s, so after publishing *Names of History* (1992) and *Disagreement* (1995); but this is a matter of the word being translated differently in English.

¹⁷ Rancière, *Mute Speech*, 95. For a similar formulation, see Rancière, *The Flesh of Words* (103-104).

¹⁸ Rancière, *The Names of History*, 35.

¹⁹ Davide Panagia and Jacques Rancière, “Dissenting Words: A Conversation with Jacques Rancière,” *Diacritics* 30:2 (2000), 115, and Rancière, *The Names of History*, 21.

²⁰ Rancière, *Politics of Literature*, 12 and Rancière, *The Flesh of Words*, 103.

question it.”²¹ How it is received cannot be supervised. “The materiality of the book is opposed to the position of the master; the book is in your hands, and nobody is there to tell you how you have to understand words.”²²

Hence written texts have a double democratic potency: They are “available for any use *and* for any speaker.”²³ Writings may provide anyone some concrete material with which to concern themselves with poetic or political affairs, *and* readers can appropriate this material with no regard nor awareness for its received meanings.

This double availability is what Rancière calls literarity. While he attributes to it a “trans-historical”²⁴ status, he also argues that it takes on a heightened importance in modernity. Only then—only with the transition from the representative regime of art and the *belles-lettres* to the aesthetic regime of art and literature—can we speak of art’s “complicity” with the condition of literarity.²⁵ In the representative regime, a poetic text had to conform to rules of propriety that defined what was worthwhile to represent to what audiences and in what genres; poeiticity stemmed from the use of these rules to reach intended addressees. The aesthetic regime abandons the quest for “poetic proportion;”²⁶ it is indifferent to the grandeur of what is represented and to the proper fit between content, addressee, and mode of address. (Rancière pinpoints novelists’ focus of style as a shift that helped bring about a “dissolution of all hierarchies.”²⁷) For literary works produced in this regime, the disorderly quality of words is not a mere byproduct but an

²¹ Rancière, *The Flesh of Words*, 102-103, *Politics of Literature*, 13, *Mute Speech*, 173, as well as Jacques Rancière, *The Politics of Aesthetics*, trans. Gabriel Rockhill (London: Continuum, 2004), 14.

²² Rancière, “Aesthetics against Incarnation,” 173.

²³ Rancière, *Mute Speech*, 87. He also emphasizes this double availability in “The Politics of Literature.” Texts are things that “anybody can retrieve and use *in his or her own way*” (in *Dissensus*, 158, emphasis added).

²⁴ Rancière, *La Méthode de l'égalité*, 104 (my translation).

²⁵ Rancière, *Politics of Literature*, 21. Rancière’s most elaborate historicized account of literarity can be found in the first five chapters of *Mute Speech*; the book’s sixth chapter returns to a transhistorical argument.

²⁶ Rancière, *Politics of Literature*, 39. See also *The Politics of Aesthetics*, 23 for an explanation of this shift.

²⁷ Rancière, *Politics of Literature*, 10.

organizing principle; Rancière calls this a “literary democracy.”²⁸

The 1789 Declaration of the Rights of Man exemplifies the deviations that literary enables. Rancière evokes actors “caught in the web of a war of writing in which the new Declaration of the Rights of Man... came to mobilize anew,”²⁹ and he often cites Olympe de Gouges, the French revolutionary whose 1791 Declaration of the Rights of Woman reproduced the original declaration’s structure while changing pronouns and extending demands.³⁰ Decades later, the American women’s rights movement similarly reworked texts written in other contexts. Take the Seneca Falls Convention, whose 1848 Declaration of Sentiments emulated the Declaration of Independence, or take an 1873 speech in which Susan B. Anthony quotes Benjamin Franklin before adding, “Suppose I read it within the feminine gender.”³¹ In Rancière’s terms, these actors articulated new claims by “hijacking the words, phrases and figures of founding texts.”³²

In describing texts’ availability for such “hijackings,” the concept of literarity explains why rights declarations are conducive to an emancipatory politics without ascribing a universal meaning to them. Rancière’s proposal is that political action may take the form of a “revolution of paperwork” because reference texts are “available to anybody for any kind of reading, transformation, reappropriation.”³³ They make available for appropriation and resignification unmoored words and phrases. Even a “juridical inscription that should set things in order” is “susceptible to being deviated.”³⁴

²⁸ Ibid. 11.

²⁹ See Rancière, “Who is the Subject of the Rights of Man,” 71.

³⁰ Olympe de Gouges, “The Declaration of the Rights of Woman,” in *The French Revolution and Human Rights*, ed. Lynn Hunt (Boston/New York: Bedford/St. Martin’s, 1996), 124-129. For instance, she changes Article VI’s attribution of a right to participation to “all citizens” by adding “all female and male citizens.”

³¹ *HWS*, vol. 2, 637 and 645.

³² Rancière, *Politics of Literature*, 20.

³³ Rancière, “Aesthetics against Incarnation,” 174.

³⁴ Rancière, *The Names of History*, 20 and “Against an Ebbing Tide: An Interview with Jacques Rancière,” in *Reading Rancière: Critical Dissensus*, ed. Paul Bowman and Richard Stamp (London: Continuum, 2011), 243.

The ambivalence of writing

But here is the twist: this demonstration that texts are “susceptible to being deviated” would not be disavowed by Plato or by Rancière’s other foils. From the demonstration that words lend themselves to proliferating understandings, it is tempting to deduce that meaning is contingent, that debate between competing alternatives is worthwhile, and that any claim to have mastered interpretation is fraudulent. But I shall argue that, for Rancière, literacy is a weapon in both the democratic anti-democratic arsenals: Its manifestations can shore up the perception that texts support contingent or innovative uses and they can corrode authority, but they can also shore up the perception that texts are only read properly if readers conform to hierarchical expectations and possesses the requisite mastery.

Scholars often neglect that Rancière portrays literacy as a condition whose political implications are ambivalent. Oliver Davis encapsulates a widespread reading of Rancière when he writes that his “theory of literacy is distinctly optimistic,” that it affirms writing’s “disruptive, liberatory potential.”³⁵ According to this reading, diagnosing literacy settles a number of facts about texts and the world, facts conducive to a democratic politics. For one, it shows us that texts lack true, stable meanings. For Davis and Allison Ross, the power to innovate and play with words shows that meaning is “malleable,” “contingent, metastable, temporary,” a “constitutively disputatious provisionality,” and thus that “no individual’s, school’s, movement’s or community’s view of it can ever be definitive or sovereign.”³⁶ Second, it shows us that there is equality in literary competence. By demonstrating the inexhaustibility of unforeseen readings, Rancière is said to resolve that a “heretical reading... is an act of intelligence,” that “the literary animal” is

³⁵ Oliver Davis, *Jacques Rancière* (Cambridge: Polity Press, 2010), 114.

³⁶ Alison Ross, “Expressivity, Literarity, Mute Speech,” in *Jacques Rancière: Key Concepts*, ed. Jean-Philippe Deranty (Oxon: Routledge, 2014), 138 and Oliver Davis, “The Politics of Art: Aesthetic Contingency and the Aesthetic Affect,” in *Rancière Now*, ed. Oliver Davis (Cambridge: Polity Press, 2013), 160.

“not the animalistic crowd of Plato’s *Republic*, the ‘great animal’ open to manipulation by rhetoricians and sophists,” but one worthy of discursive recognition.³⁷ Third, literacy is said to reveal the contestability of the underlying order of things. Ross presents literacy as “proof of the contingent nature of any” distribution of the sensible, evidence that “the distribution or positioning of things in social space is always provisional.”³⁸ Overall, literacy is seen to ruin efforts to ascertain meaning and order the world; we already know that “the very excess of words—literarity—always disrupts” discourses like “Plato’s logic of the proper,”³⁹ and that “any attempt to link meaning and expression in some necessary way is doomed.”⁴⁰

This reading aligns Rancière with thinkers such as Claude Lefort and Chantal Mouffe, for whom something about political discourse—especially the lofty language of rights declarations—unravels attempts to anchor authority and certainty. For such thinkers, rights declarations, by virtue of being “paradigmatically open text[s]” whose meaning is “always contested”⁴¹, inaugurate a democratic politics in the form of vibrant “indeterminate” debates⁴². This perspective affirms not only that declarations will occasion deviations, but also that these deviations speak to an intrinsic undecidability and contestability. It “is clear... that no one can pretend to possess the ‘correct’ interpretation” because “there will always be competing interpretations of the demo-

³⁷ Renaud Pasquier, “Politiques de la lecture,” *Labyrinthe* 17:1 (2004): 38 and Mark Robson, “‘A Literary Animal:’ Rancière, Derrida and the Literature of Democracy,” *Parallax* 15:3 (2009): 92.

³⁸ Alison Ross, “Equality in the Romantic Art Form: The Hegelian Background to Jacques Rancière’s ‘Aesthetic Revolution,’” in *Jacques Rancière and the Contemporary Scene*, ed. Jean-Philippe Deranty and Alison Ross (London and New York: Continuum, 2012), 95 and Alison Ross, “Expressivity, Literarity, Mute speech,” 136. One implication is that the aesthetic regime’s newly egalitarian principles make art coincide with how the world really is. “Aesthetic art is an education in contingency; an education, rather than brainwashing, for the order of domination is, in reality, contingent.” Davis, “The Politics of Art,” 163.

³⁹ Chambers, *The Lessons of Rancière*, 116.

⁴⁰ Jean-Phillipe Deranty, “Regime of the Arts,” in *Jacques Rancière: Key Concepts*, ed. Jean-Philippe Deranty (Oxon and New York: Routledge, 2014), 128.

⁴¹ Douzinas, *The End of Human Rights*, 95.

⁴² Claude Lefort, *Essais sur la politique* (Paris: Editions du Seuil), 59. This account evokes Benhabib’s view that rights commitments are subject to “democratic iterations” by which “rights are appropriated by new political actors... [who] open up new worlds and create new meaning.” Benhabib, *Another Cosmopolitanism*, 159.

cratic principles of equality and liberty,”⁴³ because “evidence is always elusive” and no ruling can “extinguish doubt,”⁴⁴ and because every “interpretation of norms” entails an act of resignification in which “meaning is enhanced and transformed.”⁴⁵ The implication, as Bonnie Honig notes, is that “acts of writing” are “always incomplete, forever calling out for augmentation and amendment,”⁴⁶ or, as others contend, that they “authoriz[e]” their reappropriations⁴⁷ and that “their formulation contains the demand for their reformulation.”⁴⁸

I contend that Rancière abstains from affirming that such optimistic conclusions logically follow from the condition of literarity. Literarity’s lesson is no more conclusively the view that readers are equal or that a final meaning is unattainable than it is the view that the myriad readings being offered are mere noises concealing the text’s decipherable meaning. As such, the view that manifestations of literarity necessarily “disrupt” or “doom” discourses of order errs in treating these manifestations as the end of the story rather than as its beginning.

To claim that the pursuit of “an ideal core of meaning” necessarily “overlook[s] the inherent ‘literarity’ of all linguistic utterances”⁴⁹ or that an “untimely and ungrammatical excess of words challenged sovereignty just by existing”⁵⁰ neglects the reverse operation by which discourses of order justify what is proper *on the basis* of diagnosing an excess of words. It overlooks Rancière’s attentiveness to the ways in which his intellectual adversaries flip the script and enlist manifestations of literarity as supporting their own cause. Indeed, when Rancière observes

⁴³ Chantal Mouffe, *The Return of the Political* (London: Verso, 1993) 66 and 130.

⁴⁴ Lefort, *Essais sur la politique*, 59.

⁴⁵ Benhabib, *Another Cosmopolitanism*, 48.

⁴⁶ Bonnie Honig, *Political Theory and the Displacement of Politics* (Ithaca: Cornell University Press, 1993), 115.

⁴⁷ Douzinas, *The End of Human Rights*, 95.

⁴⁸ Claude Lefort, *The Political Forms of Modern Society: Bureaucracy, Democracy, Totalitarianism*, ed. John B. Thompson (Cambridge: MIT Press, 1986), 258.

⁴⁹ Jeremy Lane, “Rancière’s Anti-Platonism: Equality, the ‘Orphan Letter’ and the Problematic of the Social Sciences,” in *Rancière Now*, 41.

⁵⁰ Elizabeth Wingrove, “Sovereign Address,” *Political Theory* 40:2 (2012): 139.

that the “polemic against democracy... has it that those empty words are circulating, and anybody can appropriate them to frame political subjects,”⁵¹ he is characterizing the antidemocratic argument as consisting of nothing but the bare definition of literarity. He is pointing out that the polemic *against* democracy thrives on the same diagnosis as the polemic in its favor.

His constant choice to introduce the concept of literarity by channeling Plato’s critical voice⁵² is the first sign that he does not take the mere existence of an excess of words to settle what can be done with words, and by whom. If Plato rejects literarity’s democratic implications, that is not because he forgets his own argument that writing introduces disorder into rigid hierarchies but because that argument feeds into his drive to order things. Socrates warns in *The Republic* that, “Knowing nothing in truth about which of these convictions and desires is noble, or base, or good, or evil, or just, or unjust, [the unwise man] applies all these names following the great animal’s opinions.”⁵³ That people apply names indiscriminately does not indicate that their meaning is contingent, only that their availability blinds the many to their true meaning; and when the querulous sailors of Plato’s metaphorical ship use words out of place, it betrays their ignorance of what these words are in truth designating and affirms the need to protect essential truths from those who chatter.

The fact that we are “caught in the circuit of literarity that undoes the relationship between the order of words and the order of bodies”⁵⁴ may be irrevocable, but it is not something a defense of the order of things has to ignore or deny. This fact can be the starting point of its case, something it cites in support of its distrust of democracy as a regime that foments deception, ob-

⁵¹ Rancière, “Aesthetics against Incarnation,” 174.

⁵² See Rancière, *Mute Speech*, 92-96, *The Flesh of Words*, 3-5, 103-105, *Dissensus*, 157, “Dissenting Words,” 115, “Aesthetics against Incarnation,” 174, *The Politics of Aesthetics*, 13-15, 53, and “The Method of Equality;” 278. Plato plays a more marginal role in *The Names of History*. But here again Rancière defines literarity by paraphrasing authors who denounce it, especially Hobbes (see 20-22).

⁵³ Plato, *The Republic*, trans. Allan Bloom (New York: Basic Books, 1991), 493b.

⁵⁴ Rancière, *Disagreement*, 37, translation modified.

scures truth, and empowers people who do not understand how to read. And when Plato has Socrates attribute humanity's turn to writing to a god's gift in the *Phaedrus*, he installs words' nakedness as an irrevocable aspect of our condition. If he still criticizes democracy, it is not that he overlooks this nakedness, but that he makes sense of how there could be order *in light* of it.

Manifestations of literacy may be used to bolster the antidemocratic case in two ways. First, the chatter of people deemed unqualified to analyze texts is susceptible to being interpreted as attesting to their incompetence, as further evidence that texts should not be in their hand. Such acts are perceived to confirm words' vulnerability to being "poorly used" and "torn... from their context" "by people who should not handle them," and who in handling them merely reveal their ignorance of how to do so.⁵⁵ This is a method to "reduce the talkative reign of interpretation to insignificance."⁵⁶ Rancière tracks how, in the nineteenth century, the "faceless multitude of readers of book" (2011a, 172) was seen as an excitable mass of Emma Bovarys, people so stimulated by texts as to become "over-eager" [*acharnés*], "disturbed," "ailing," "hysterical."⁵⁷ From this perspective, demonstrating the availability of words doubles as a warning that they will "betray" us. And defining democracy as "the regime in which the law is given by [such] wanderings" marks it as the "reign of duplicity" and ignorance, not of contingency and intelligence.⁵⁸

Second, some treat the chatter of these reading masses as *adding* to the compendium of words that expert interpreters have at their disposal to "rescue" or "redeem"⁵⁹ meaning. Rancière highlights the "literary procedures by which a discourse... gives itself the status of a science" in

⁵⁵ Rancière, *The Names of History*, 21.

⁵⁶ Rancière, *Politics of Literature*, 26.

⁵⁷ Ibid. 19-20 and 68 (translation modified), *Politics of Literature*, 67-68, *The Flesh of Words*, 105. *Chronicles of Consensual Times* (London and New York: Continuum, 2010), 12-15 links this nineteenth-century critique of over-stimulation to contemporary anxieties about advertising and its omnipresent images and slogans.

⁵⁸ Rancière, *The Names of History*, 54, *Mute Speech*, 95-96, and *Politics of Literature*, 152.

⁵⁹ Rancière, *The Names of History*, 64-65 and *Politics of Literature*, 164.

order to bring back “the truth through the window.”⁶⁰ Now, it should be possible to identify various redemptive approaches. Take Leo Strauss’s anti-historicist claim that philosophical disagreements do not prove there is an “anarchy of systems” but “confron[t] us...with the philosophical question as to which... is true.”⁶¹ But Rancière remains focused on one specific historicist method of extracting meaning from the excess of words: symptomal reading. For decades, he has engaged in an implicit reassessment of (or atonement for) his participation in *Reading Capital*, a collective study guided by Louis Althusser’s claim to have discovered a “new practice of reading” that “reveals beneath the innocence of speech and hearing” the “inaudible and illegible notation” of a nonmanifest discourse.⁶² While Rancière has only recently called symptomal reading the general approach of all those who seek a scientific status for writing,⁶³ he has consistently cast his foils—e.g., the critics of his early research on proletarian literary practices, Balzac, Flaubert, Michelet, Deleuze—as practitioners of symptomal reading. In his telling, they share the conviction that, since “words always hide something profound below the surface,” one should “disqualify the verbiage of every proffered message in favor of the mute eloquence of one that is not heard.”⁶⁴ His point is not that they necessarily dismiss or disavow linguistic entanglements, but that they treat even disorderly and egalitarian uses of language as a felicitous layer from which one can excavate words’ nonmanifest discourse.

While Rancière attributes a transhistorical sweep to this “hermeneutic of social truth,”⁶⁵ he also contends that nineteenth-century novelists and historians—the very writers whose indif-

⁶⁰ Rancière, *The Names of History*, 8 (emphasis mine) and *Politics of Literature*, 149.

⁶¹ Leo Strauss, *What Is Political Philosophy* (Chicago: University of Chicago Press, 1988), 64.

⁶² Louis Althusser and Etienne Balibar, *Reading Capital*, trans. Ben Brewster (London: New Left Books, 1970), 15-18.

⁶³ Symptomal language figures in the essays published in *Politics of Literature*, but not in the earlier *Mute Speech* and *The Names of History*. In *The Flesh of Words*, it is confined to the one essay devoted to Althusser.

⁶⁴ Rancière and Panagia, “Dissenting Words,” 114 and Jacques Rancière, *Proletarian Nights*, trans. John Drury (London and New York: Verso, 2012), 11 (translation modified).

⁶⁵ Rancière and Panagia, “Dissenting Words,” 114 and Rancière, *Mute Speech*, 143

ference toward rules of hierarchy and propriety facilitated “literary democracy”—made literature and history “a kind of symptomatology of society.”⁶⁶ While literature dismantled the rules of artistic propriety, its new egalitarian indifference also served to wrestle meaning away from people who chatter to “give it back to mute things.”⁶⁷ They figured the world around them as a text, an “immense fabric of signs that bear, *as written*, the history of a time, a civilization or a society,”⁶⁸ and they thereby applied techniques of symptomal reading to all worldly objects. Indeed, if anything, however insignificant, carries poetic power, then all “mute things” may be “symptoms” of a truth the “words of literature . . . display and decipher;”⁶⁹ Annales School historians, for instance, privileged the testimonies of “the silent witness.”⁷⁰ Objects have a meaning of which texts can be the expression.

Actual texts and utterances are themselves part of this fabric of mute things that reflect the historical truth of the reality that produced them. If “any stone can . . . be language”⁷¹ in that it can be a symptom of the truth that orders it, it is also the case that any language can be stone. Written utterances can be treated vertically as symptoms of a determining background rather than horizontally as products of transmissions and deviations.⁷² If “language speaks above all by manifesting its own provenance,” then interpretation must track “the way words contain a world”

⁶⁶ Rancière *The Politics of Aesthetics*, 29.

⁶⁷ Rancière, “From Politics to Aesthetics,” 17. Hence Rancière warns that Flaubert’s free style “is at once an implementation of the democracy of the written word and its refutation,” in *The Politics of Aesthetics*, 49. One essay that gives weight to novelists’ attempts by to neutralize literarity (rather than cast these attempts as always undone) is Hector Kollias, “Taking Sides: Jacques Rancière and Agonistic Literature,” *Paragraph* 30:2 (2007): 82-97. The parallel implications of literarity’s ambivalence for politics are neglected, perhaps because it is hard to know what to do with something that vindicates the case neither for nor against democracy.

⁶⁸ Rancière, *Politics of Literature*, 15, emphasis added.

⁶⁹ Rancière, *Dissensus*, 160.

⁷⁰ Rancière, *The Names of History*, 54-57. For these historians, “truth . . . is better read when no one is trying to speak, where no one is trying to deceive,” so they sought to “mak[e] the poor speak by keeping them silent.”

⁷¹ Rancière, *Mute Speech*, 60.

⁷² A related way to dissipate polysemy is to place an utterance in several contexts to show that the different meanings stem from a word reflecting different determining vertical relationships. See John Fiske, “Television: Polysemy and Popularity,” *Critical Studies in Mass Communication* 3:4 (1986): 391-408.

by “travel[ing] under the visible stage” and taking words as signs of the material base, historical reality, or affective state in which they are produced.⁷³ Reading properly then entails possessing the proper hermeneutic expertise to conduct this conversion. For Rancière, Freud’s “deciphering of the rhetoric of the dream” through a “play of opposites” is a paradigmatic example of how analysts get empowered to “rescue” “literary truth” from “nihilistic” dispersion.⁷⁴ Another is Michelet, whose history of France “enthusiastically evokes the written testimonies of local orators,” but only to “tel[l] us what is speaking through the written works of the village orators.”⁷⁵ Meaning is contained in “what makes them speak,” in the configuration of factors that historians are equipped to uncover as the explanatory background of texts’ possibility and intelligibility.⁷⁶ Even the seemingly new is by definition the expression of conditions that produced it. “There is no possible heresy.”⁷⁷ It is only a matter of discovering its roots; perhaps it exemplifies a misrecognition brought about by one’s social class, or an emotional backlash against changing times. In fact, it would be anachronistic to say that a particular utterance is saying anything but that which its context could have allowed.⁷⁸

Hence the muteness of things cuts both ways. While it underlies their democratic promise, it is also what makes them susceptible to deciphering. It is a reason to conclude that “there is nothing that the poet is obliged to say in a determinate manner” and endorse the freedom to play with words, but it is also a reason to conclude that “the poet cannot express something other than what he expresses” since all he can do is to read the “meaning indelibly inscribed in things.”⁷⁹

⁷³ Rancière, *Mute Speech*, 64, 66 and 69, and ““From Politics to Aesthetics?” 18.

⁷⁴ Rancière, *Politics of Literature*, 164-166.

⁷⁵ *Ibid.* 20-21.

⁷⁶ Rancière, *The Names of History*, 45-46 and *The Flesh of Words*, 73.

⁷⁷ Rancière, *The Names of History*, 57 and 69.

⁷⁸ See Jacques Rancière, “Le Concept d’anachronisme et la vérité de l’historien,” *L’Inactuel* 6 (1996), 53-68.

⁷⁹ Rancière, *Mute Speech*, 74 and *The Names of History*, 57. See also: “The mute letters offered to the greediness of plebeian children were taken away from them by another kind of muteness,” in *Dissensus*, 160.

To illustrate these two takes on muteness, consider two strands of reader-response theory, an approach to texts that focuses on their effect on readers. This approach would seem consonant with a democratic politics; Antonin Scalia has derided it for leading to the view that “every reading would be as valid as every other reading.”⁸⁰ That is the sense one gets in Wolfgang Iser’s work. For Iser, a reader, faced with a text’s “vital richness of potential,” must “reduce the poly-semantic possibilities to a single interpretation” by making nondetermined decisions that fill in the gaps. Hence texts are sources of inexhaustible meanings. Crucially, this inexhaustibility is not a product of communicative failure but of texts prefiguring the contingency of their reception: They contain an “implied reader” (a “network of response-inviting structures, which impel the reader to grasp the text” in a manner not “given by the text itself”) that “anticipat[es] the presence of a recipient without necessarily defining him.” Iser is thus demonstrating that a text authorizes the plural interpretations it triggers.⁸¹ But Stanley Fish develops a different vision of reader-response theory, one that he associates not with a text’s “implied reader” but with what calls an “informed reader.” For Fish, the best meaning is the one that would be produced by a *hypothetical* reader competent in relevant conventions and equipped to perform instructions. This shifts the interpreter’s task from valuing the inexhaustibility of meanings to attaining the informed reader’s perspective, which involves “discount[ing] what is idiosyncratic in [one’s] own response.”⁸² This second strand of reader-response theory grants that actual readers may read a text in various ways, but it privileges readers competent enough to follow signposts, *and* it empowers them to triage what is and is not relevant in the readings put forth by others.

⁸⁰ Antonin Scalia, “Review of Steven D. Smith’s *Law’s Quandary*,” *Catholic University Law Review* 55:3 (2006): 689.

⁸¹ Wolfgang Iser, *The Implied Reader: Patterns of Communication in Prose Fiction from Bunyan to Beckett* (Baltimore: The John Hopkins University Press, 1974), 55, 58-59, 65 and *The Act of Reading: A Theory of Aesthetic Response* (Baltimore: The John Hopkins University Press, 1978), 18, 34 and 50.

⁸² Stanley Fish, *Is There a Text in This Class?* (Boston: Harvard University Press, 1980), 67

In short, the view that our entanglement in circulating texts supports a democratic and egalitarian organization is just one of the conclusions that may be drawn from it. The other is the inverse, namely that this unshakable entanglement is precisely the reason one should fight democracy since it compounds distrust toward suspiciously enthusiastic readers and gives “interpreters of symptoms”⁸³ an ever-proliferating archive to uncode. Rancière himself provides no definitive theoretical argument that would support the first conclusion over the second. In fact, by carefully staging literarity as a premise he shares with philosophers of order and by structuring his essays to illustrate how each side provides an incomplete picture of the evaluations literarity lends itself to,⁸⁴ he constantly dramatizes this ambivalence.

Rancière has in recent years described his body of work as theorizing “disagreement [*mésentente*] and misunderstanding [*malentendu*] as different ways of dealing with the excess of words.”⁸⁵ He lays out this distinction in *Disagreement: Saying that something is a “mere misunderstanding”* is a “language medicine” that “deplores the way people fail to understand each other properly because of the ambiguity of the words exchanged.”⁸⁶ In a later essay, Rancière evokes the “world of familiar experience in which misunderstanding is perceived as a matter of erroneous interpretation that can easily be traced back to some ambivalence in the signs to be interpreted. ‘It’s just a misunderstanding,’ as they say.”⁸⁷ Disagreement evokes another experience, the “democratic experience” of “a being who speaks,... a being capable of embracing a

⁸³ Rancière, *Mute Speech*, 74.

⁸⁴ The strategy Rancière adopts is to first tease out one perspective as if it was self-evident, and then to complicate matters. He either tells a happy story of emancipation before unexpectedly introducing the “duplicity of muteness”—“we cannot end matters so easily”—or else he channels the Platonic polemic before giving it a “positive turn.” Rancière, *Dissensus*, 157 and 163, and “Aesthetics against Incarnation,” 174.

⁸⁵ Rancière, *La Méthode de l'égalité*, 116.

⁸⁶ Rancière, *Disagreement*, x-xi.

⁸⁷ Rancière, *Politics of Literature*, 31. This essay is entitled “Literary Misunderstanding.”

distance between words and things *which is not deception, nor trickery, but humanity.*”⁸⁸ Disagreement and misunderstanding are two plausible ways of making sense of manifestations of literary, a “twofold manner of re-configuring sensory data” in its wake.⁸⁹ Both configurations acknowledge moments of unauthorized reading or discordant word use, but they have different perceptions of what that distance or disorder signals: humanity or trickery?

To be sure, Rancière combines his diagnosis of an excess of words with an evident commitment to an egalitarian politics. But this does not mean that he is offering the former as proof capable of justifying the latter. This is a political *parti pris*, not the unfolding of literarity’s necessary consequences. By intimating that it is a matter of judgment, he leaves texts “suspended... between two possible fates,” subject to an “interminable tossing” between the “twofold politics” that the excess of words induces.⁹⁰ One side embraces the political plane as the terrain on which people develop their readings and confront them to one another. This is the politics of “sonorous” actors working to make their “appropriation ‘outside the truth’” count for something.⁹¹ The other side denounces that terrain as deceptive, and affirms an underlying meaning to texts that is discoverable if one is equipped with the proper techniques with which to excavate it out of the confusion their circulation provokes. This is the politics of “homonym hunters,” who set out to remedy “the lack of an exact index of signs and their meanings” causing this commotion.⁹² “The noisy stage of the orators is opposed by the journey through the subterranean passages that hold its hidden truth.”⁹³ What follows the fact of literarity is this bifurcation between two evaluations of what should be done with the availability of words.

⁸⁸ Jacques Rancière, *On the Shores of Politics*, trans. Liz Heron (London: Verso, 2006), 51, emphasis added.

⁸⁹ Rancière, *Dissensus*, 163.

⁹⁰ Rancière, *The Flesh of Words*, 110-111 and *Dissensus*, 163.

⁹¹ Rancière, *The Names of History*, 30 and 56.

⁹² Rancière, *The Names of History*, 3 and *Politics of Literature*, 31.

⁹³ Rancière, *Politics of Literature*, 30.

Conflictual encounters

What politics follows from drawing out these different ways of accounting for texts' susceptibility to unforeseen uses? Literarity's ambivalent implications highlight the stakes of confrontations between those who treat the activity of reading as an occasion for democratic interactions and those for whom such interactions misunderstand what reading entails.

Rancière defines a "war of writings" as a "war between two equally eloquent kinds of muteness," "two visions of writing."⁹⁴ The "politics of literature turns out to be the conflict of two politics of the 'mute letter,'" a "battlefield" that "constantly shuttles back and forth between the democracy of the mute-loquacious letter and the innumerable figures of hyper-writing."⁹⁵ The "democratic *mise en scène*" through which texts are reappropriated is pitted against "a different politics" that "return[s] to its vanity the great racket made by the orators of the people... in order to decipher the testimonies that society itself offers us to read."⁹⁶ I propose that we understand such formulations as extending Rancière's point that "the combat between the 'rich' and the 'poor' is one over the very possibility of splitting these words into two."⁹⁷ I would say that a politics of texts concerns *the very possibility of splitting a text in two*. Does a deviation from the determinate world a text is often assumed to express betray "just a misunderstanding" or does it "open up worlds of disagreement and dissension?"⁹⁸ Does the availability of words to "unqualified readers" result in manifestations of humanity or deception? Is it misusing a text's phrases to draw on them as "instruments of a discourse of persuasion or seduction?"⁹⁹ These are matters that get fought over in the course of concrete struggles.

⁹⁴ Rancière, *Mute Speech*, 100 and 109. I modified the translation of "guerre des écritures."

⁹⁵ Rancière, *Dissensus*, 160 and *Mute Speech*, 109.

⁹⁶ Rancière, *Politics of Literature*, 20.

⁹⁷ Rancière, "Ten Theses on Politics," in *Dissensus*, 35.

⁹⁸ Rancière, *Disagreement*, 60.

⁹⁹ Rancière, *Mute Speech*, 55.

At stake is which manner of evaluating manifestations of literarity will prove more compelling to one's publics. When a democratic movement proposes innovative readings, will its interventions be perceived by its audience as worth hearing and discussing, or as markers of duplicity? When interpretations proliferate—especially when some are put forth by actors whose standing is questioned—will we be inspired to think of this proliferation as the plane on which to debate the text's meaning and locate our own reading, or will it prove more attractive to lament the ignorance this proliferation manifests and pursue closure? Battling over these questions affects not just what a text is taken to mean, but also which way of responding to its excesses will appear to do it more justice.

This perspective expands our sense of what using a text democratically involves. On the one hand, the theoretical diagnosis that the meaning of texts is irreducibly plural is consonant with defining democracy as public conflicts between competing interpretations. A democratic politics then looks like a “theatre of contestation” whose “history... remains open;”¹⁰⁰ it entails debates between those who take this openness seriously and seek to make decisions “within the framework of a debate on the interpretations of these principles.”¹⁰¹ This paradigm recognizes that people who put forth innovative readings may run into dismissive actors who claim hermeneutic mastery and withdraw from public exchanges. But this paradigm also runs the risk of treating such dismissals and withdrawals, when authoritative, as the closure of democratic interaction. It leaves democracy at a loss when aspirational activists' prospective interlocutors see no obligation to treat the text to which activists are appealing as a “theatre of contestation.”

By contrast, by appreciating literarity's ambivalence, we can rethink democracy as rele-

¹⁰⁰ Lefort, *The Political Forms of Modern Society*, 258; see Ayten Gündoğdu, “A Revolution in Rights: Reflections on the Democratic Invention of the Rights of Man,” *Law, Culture and the Humanities* 10:3 (2014): 367-379.

¹⁰¹ Mouffe, *The Return of the Political*, 130.

vant to precisely such asymmetrical (in the sense that the parties to a conflict are doing different things) and nonreciprocal (in the sense that one of these parties denies the propriety of the other's interventions) situations. It highlights that by subjecting a text to democratic advocacy even when one confronts opponents for whom it demands expert handling, one is working to get others to see its meaning as a matter of public and egalitarian contention.

In *Disagreement*, Rancière describes political interlocution as a kind of ““abnormal” communication situatio[n].” It is here that he most clearly departs from the framework of mutuality. He states that “the *demonstration* proper to politics is always both argument and opening up the world where argument can be received and have an impact.”¹⁰² This formulation would appear to echo the anticipatory paradigm, described in my first chapter as the idea that, when we act, we perform the communal world we posit in the sense that others may or may not respond in kind and create an inter-world. But this is not quite Rancière's perspective.

When Rancière talks of subjects “opening up” a common world, what he has in mind is subjects who act as if others recognize them even though “such recognition *does not occur*.” The trick is to “includ[e] in the argument situation he who rejects its existence.”¹⁰³ In a counter-intuitive passage, he writes that a political interlocution is a relation where “one of the partners of the interlocution refuses to recognize one of its features (its place, its object, its subjects),” while the other “behave[s] *as though*... there were a common world of argument—which is eminently reasonable *and* eminently unreasonable... since such a world does not exist.”¹⁰⁴ He is emphasizing the common world's polemical quality even when his language suggests that this world has come to exist. Note the verb tenses he employs when he writes that, “The platform of disagreement being thereby established, it is possible to argue *as though* this discussion between

¹⁰² Rancière, *Disagreement*, 56.

¹⁰³ Ibid. 52 and 54.

¹⁰⁴ Ibid. 52 and 56.

partners, which is challenged by the other party, has really taken place.”¹⁰⁵ The idea is to persistently act as though those who remain disengaged have in fact interacted with us. There is an efficiency to positing an inter-world even with those who keep ignoring us, and this logic is not just that they may still end up agreeing to step onto this joint stage. I find these pages from *Disagreement* especially notable because they represent a clear evolution from Rancière’s first essays and lectures on democratic theory in the late 1980s. By the mid-1990s, he had moved to arguing, contra earlier statements, that democratic interaction and interlocution have a nonmutual logic.¹⁰⁶

This expands democratic theory’s horizons. Running into claims of mastery and disengaged interlocutors need not represent a failure or closure of democratic interaction. Instead, these may be treated as a party to such interaction. I have not yet detailed the benefits of such nonmutual engagement (I do so in my fourth and sixth chapters). This chapter’s more modest aim is to justify my approach of treating nonmutual engagement as a distinct form of activism. I believe that the value of doing so becomes apparent when we juxtapose Rancière’s views on interlocution with his theorization of writing, for this juxtaposition paints a politics of texts in a new light: By persisting to treat texts as a platform for democratic contestation, and by acting as though public agitation is a legitimate way to read in the face of opponents who act as though it is not, one enacts the case for democracy against those enacting the case against it.

¹⁰⁵ Ibid. 54.

¹⁰⁶ I have in mind the lectures and essays published in *On the Shores of Politics*. These are Rancière’s first interventions in something like disciplinary political theory, and they channel the framework of mutuality. For instance: “The only kind of dialogue compatible with democracy is one where the parties hear one another but do not agree with one another,” and “a common language and a comprehension by each side of the other’s reasoning are prerequisites for the wrong’s being made manifest and being debated” (*On the Shores of Politics*, 102-103.) I believe that the reason he linked democracy and mutuality at this time is that he was still attached to an ontological framework that guaranteed that consensual orders would necessarily be undone by “the shock of the real” (ibid. 28-29). My third chapter argues that such an ontological premise feeds the framework of mutuality, and my fourth chapter demonstrates that Rancière no longer believed this premise by *Disagreement*. In my view, his shift away from ontology spurred him to also consider interlocution’s nonmutual quality. As to why he held these more traditional positions on ontology and mutuality in the late 1980s, my hypothesis is that his venture in new theoretical directions made him initially more reliant on the views of French thinkers with whom he was in conversation and who were, like him, endeavoring to think about the political.

Consider Rancière's description of his own early work on proletarians caught in "the conflict between two ways of speaking"—the speech proper to the "popular lived experience . . . of which they are supposedly an expression" and the speech they "experiment with when they encounter words, phrases and stories that come from elsewhere." He presents them as testing literature's democratic potency against contemporaries who believed them unfit for literary practices. Since Rancière himself is drawing on texts from elsewhere, this doubles as his own verification of democratic potency and intervention in literarity's battlefield. He frames proletarians' "encounter with the words of others" as enacting the hypothesis that such encounters occasion intelligent and worthwhile experimentation; in so doing, he "challenges" historians' alternative symptomatic frame in which proletarian speech and writings only "provide evidence for some kind of lived experience . . . hidden beneath the public life of the workers' movement."¹⁰⁷ Rancière has stated that, "Understanding an author, for me, means being able to do something with what he says, to appropriate it for myself and to reinvent it."¹⁰⁸ If one succeeds at using a text in a way that comes across as comprehensible, even illuminating, then one's public verification of intelligibility may drag others into responding as though its words are "instruments of a discourse of persuasion and seduction."¹⁰⁹ As such, one can act as though texts "open up worlds of disagreement," not because it is theoretically certain that they authorize one's deviations or that one is even competent to interpret them, but because one is struggling to have such egalitarian judgments make sense to those witnessing them.

The New Departure

I have argued that a politics of texts entails a conflict over what reading and interpretation

¹⁰⁷ Rancière, *Politics of Literature*, 181-182.

¹⁰⁸ Jacques Rancière, "A Politics of Aesthetic Indetermination: An Interview with Frank Ruda & Jan Voekler," in *Everything is in Everything*, ed. Jason Smith and Annette Weisser (Art Center Graduate Press, 2012): 31.

¹⁰⁹ Rancière, *Mute Speech*, 55.

involve. When different understandings of a text arise, part of what ensues is a struggle to shape how that plurality is perceived on the part of actors who, in enacting asymmetrical takes on reading and interpretation, work to draw others into acting in kind. Is it a matter over which to exchange and debate, or a misunderstanding to expertly dissipate? This argument reframes the New Departure as one such conflict over how to deal with disputes over rights inscriptions.

From 1869 onward, New Departure activists deployed a dexterous mix of constitutional claims. They employed a number of registers—pointing to precedents, historical practices, changing mores, and authorial intent—and they claimed that a myriad constitutional clauses ensured their right to vote.¹¹⁰ Anthony, for instance, argued that denying women the right to vote conflicted with the Fifteenth Amendment’s ban on abridging the franchise on account of a “previous condition of servitude” because “the entire womanhood of the nation is in a ‘condition of servitude.’”¹¹¹ But the movement was mainly characterized by its appeal to the Fourteenth Amendment’s Privileges or Immunities Clause, which reads as follows: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.” Suffragists deployed a two-step reading of this clause: (1) Since “all persons born or naturalized in the United States” are “citizens,” women are citizens; and (2) the franchise is one of the “privileges or immunities of citizens,” so women have the right to

¹¹⁰ The Supreme Court brief that the Minors filed in 1874 argued that denying women the franchise conflicted with eight distinct constitutional clauses. John M. Krum, John B. Henderson, Francis Minor, “Statement, Brief and Petition in the Case of Virginia L. Minor, et al., vs. Reese Happersett” (St. Louis: Industrial Age Printing Company, 1873), 21-22. The breadth of argumentation is far greater in a speech Anthony repeatedly delivered in the spring of 1873 (HWS, vol. 2, 630-647), which I discuss later.

¹¹¹ HWS, vol. 2, 644. The New Departure also appealed to constitutional provisions that anteceded the Civil War, which speaks to its abolitionist roots: Many political abolitionists had argued that the *antebellum* Constitution made slavery illegal and even guaranteed black suffrage. In a 1873 speech, Anthony explicitly reads Senator Charles Sumner’s claim that the “*original* powers of the United States Constitution guaranteed to [the freedmen] equal rights—the right to vote and to be voted for.” She then adds that Sumner had told her in a letter that he believed the same to be true about women’s rights. In HWS, vol. 2, 633-634.

vote. Anthony summarized this argument succinctly as “the broad interpretation of the Constitution ‘that all persons are citizens, and all citizens voters.’”¹¹²

Importantly, here the main controversy was not over the question of membership (“all persons are citizens, ...”) but over the question of the privileges associated with membership (“... and all citizens voters”): What was denied was not that women are citizens but that voting is coextensive with citizenship.¹¹³ The *Rochester Union and Advertiser* editorialized in 1872 that “citizenship no more carries the right to vote than it carries the power to fly to the moon.”¹¹⁴ Congress and courts similarly affirmed that the franchise did not belong to the “privileges or immunities of citizens,” the Supreme Court doing so in a 1874 decision (*Minor v. Happersett*)¹¹⁵ that upheld a Missouri election clerk’s refusal to register Virginia Minor.

One attractive picture of these events is that suffragists were responding to the text’s open-ended language, and that the New Departure is an exemplar of democratic action insofar as it opened and contributed to worlds of contentious exchange in public fora like newspapers or Congress.¹¹⁶ Another attractive picture is that, by making evidentiary claims themselves, suffragists were holding courts to the adjudicatory promise that characterizes democratic rule of law.¹¹⁷ Both accounts would cast the New Departure’s democratic upshot in terms of the symmetrical and mutual encounters it occasioned; either would support the contention that the movement made “anti-suffrage positions... increasingly vulnerable to the logic of democracy:”¹¹⁸ by “forc-

¹¹² Ibid. 521.

¹¹³ This example runs counter to the narrative that expanding rights is mostly a matter of widening inclusion. Lynn Hunt, *Inventing Human Rights* (New York: W. W. Norton, 2007), 149-150.

¹¹⁴ Quoted in Neil Hamilton, *American Social Leaders and Activists* (New York: Facts on File, 2002), 22.

¹¹⁵ *Minor v. Happersett*, 88 U.S. 162 (1874).

¹¹⁶ Ellen DuBois, “Outgrowing the Compact of the Fathers: Equal Rights, Woman Suffrage and the United States Constitution, 1820-1878,” *The Journal of American History* 74:3 (1987): 836-862.

¹¹⁷ Adam Winkler, “A Revolution Too Soon: Women Suffragists and the ‘Living Constitution,’” *New York University Law Review* 76 (2001): 1456-1526

¹¹⁸ Cindy Koenig Richards, “Susan B. Anthony, ‘Is it a Crime for a U.S. Citizen to vote?’” *Voices of Democ-*

ing authorities... to articulate their premises” explicitly,¹¹⁹ suffragists got them to step into a democratic playing field where one must take one’s opponents seriously and respond to them in kind by offering counter-evidence or counter-arguments.

Yet I emphasize an additional playing field: The New Departure also unfolded as a confrontation between two approaches to dealing with a proliferation of interpretations. Suffragists worked to cast the constitutional relationship between suffrage and citizenship as a matter that democratic exchange and egalitarian contention could reasonably litigate, and they did so against opponents who were working to cast this relationship as a matter about which there was no such debate to be had, or at least about which debate should be brought to a rapid and conclusive resolution. At stake was whether the Constitution, specifically the Privileges or Immunities Clause, would be perceived as a proper platform on which to debate the question of augmenting the meaning of citizenship in the first place.

On one side were suffragists who used existing documents as part of their strategy to build political will for enfranchisement. As historian Ellen DuBois documents, they treated rights claims “as the object of political struggle as much as of judicial resolution.”¹²⁰ At times, suffragists explicitly presented themselves as “manipulating” texts—Anthony claimed a “liberty” for women to “manipulate the pronouns” in order “to secure to themselves their right to a voice in the government”¹²¹—and they pointed to the fact that different interpretations were circulating as evidence that meaning evades final ascertainment and that debate is thereby proper. Stanton as-

racy 2 (2007): 202.

¹¹⁹ Angela Ray, “The Rhetorical Ritual of Citizenship: Women’s Voting as Public Performance, 1868-1875,” *Quarterly Journal of Speech* 93:1 (2007): 2. See also Angela Ray and Cindy Koenig Richards, “Inventing Citizens, Imagining Gender Justice,” *Quarterly Journal of Speech* 93:4 (2007) 375-402.

¹²⁰ Ellen DuBois, “Taking the Law into Our Own Hands: Bradwell, Minor, and Suffrage Militance in the 1870s,” in *One Woman, One Vote: Rediscovering the Woman Suffrage Movement*, ed. Marjorie Spruill Wheeler (Troutdale: New Sage Press, 1995), 83.

¹²¹ *HWS*, vol. 2, 637.

served that the Constitution “can be expounded in favor of many directly opposite principles,” and that it should not be rescued from this polysemy since it was drafted as a “series of compromises.”¹²² Victoria Woodhull commented that “it can be seen that equally able men differ upon a simple point of Constitutional Law.”¹²³ (Such statements mirror what some scholars describe as political abolitionists’ approach to the Constitution as a “malleable document.”¹²⁴)

That said, my point is not that suffragists were invested in portraying meaning as intrinsically undecidable. They typically did advance their interpretation as the correct one, deploying legal precedents and evidentiary language like framers’ intent and changing social mores. Yet this is consistent with DuBois’s characterization that they treated meaning as the “object of polit-

¹²² Elizabeth Cady Stanton, Susan B. Anthony, and Matilda J. Gage, eds., *History of Woman Suffrage*, vol. 3 (Rochester: Susan B. Anthony: 1886), 88.

¹²³ Quoted in DuBois, “Taking the Law into Our Own Hands,” 90.

¹²⁴ For Donald Nieman, “black leaders understood that the general language of the Constitution made it a malleable document whose meaning was subject to redefinition through political and legal processes, that the polity was... an ongoing constitutional convention.” Donald Nieman, *Promises to Keep: African-Americans and the Constitutional Order, 1776 to the Present* (Oxford: Oxford University Press, 1991), viii. This point is made about Douglass specifically. For Nieman, Douglass believed that “the Constitution, because it was written in general language, was an open-ended document” (34). See Peter Dorsey, who describes Douglass’s strategy as a “self-conscious manipulation of textual materials,” in “Becoming the Other: The Mimesis of Metaphor in Douglass’s *My Bondage and My Freedom*,” *Publications of the Modern Language Association of America* 111:3 (1996): 447. See Robert Gooding-Williams, who attributes to Douglass “the proposition that texts, written and spoken, lend themselves to conflicting interpretations,” *In the Shadow of Du Bois*, (Cambridge: Harvard University Press, 2009), 198. See also Nicholas Bromell, “A ‘Voice from the Enslaved’” *American Literary History*, 23:4 (2011): 711, and Wayne Moore, *Constitutional Rights and the Powers of the People* (Princeton: Princeton University Press, 1996), 64.

I would make the same point that I make below about suffragists: From the perspective of this chapter, what matters is not whether abolitionists believed constitutional meaning to be “open-ended” and “malleable,” but whether they subjected their interpretation to democratic interaction. The latter is consistent with the possibility that they viewed their reading as the correct one—and Douglass does present himself as persuaded on evidentiary grounds. Two texts that push against the above readings that Douglass viewed the text as “malleable” and affirm instead that “he is not playing a part” are Charles Mills, “Whose Fourth of July? Frederick Douglass and ‘Original Intent,’” in *Frederick Douglass: A Critical Reader*, ed. Bill Lawson and Frank M. Kirkland (Malden: Blackwell Publishers, 1999), 115-116 and David E. Schrader, “Natural Law in the Constitutional Thought of Frederick Douglass,” in *Frederick Douglass: A Critical Reader*, 85-99.

As such, most important in Douglass’s constitutional activism is the view that meaning is a matter for public judgment. “I scout the idea that the question of the constitutionality, or unconstitutionality of slavery, is not a question for the people,” he said in an 1852 speech, adding that “it is not presumption in a private citizen to form an opinion of that instrument.” Frederick Douglass, *Selected Speeches and Writings*, ed. Philip Foner (Chicago: Lawrence Hills Books, 1999), 204. This view can be held in conjunction with the belief that one has formed an opinion about the true constitutional meaning and that one is defending it as such.

ical struggle.” One can be convinced of one’s interpretation while opening constitutional meaning to democratic contestation, whether by drawing others into exchanges to persuade them, entering partisan conflicts, or engaging in justificatory reason-giving. As Linda Zerilli argues, one can advance “comprehensive truth claims” in a manner conducive to building a common world of action rather than to producing “deafening silence.”¹²⁵ Furthermore, given their marginalized status and the radical quality of their readings—Adam Winkler refers to their legal claims as a “revolution too soon”¹²⁶—suffragists had to complement their movement’s juridical efforts with political strategies that more established litigants may not have needed. That they adopted this approach speaks to the movement’s abolitionist roots. Frederick Douglass declared in 1852 that, “I hold that every American has a right to form an opinion on the Constitution, and to propagate that opinion, and to use all honorable means to make his opinions the prevailing one.”¹²⁷ My point is that, much like Douglass had advocated, suffragists were striving to make their interpretation the prevailing one by instigating loud public contention.

They organized a multi-front battle to address not just courts, but also legislators, reading publics, and juries. In 1869 and 1870, Victoria Woodhull and Stanton laid out the New Departure’s interpretive case in congressional testimonies urging Congress to protect suffrage as an existing constitutional right.¹²⁸ Such legislative appeals blurred the distinction between the interpretive claim that women are enfranchised and the political claim that they should be; the former stood on its own, but also provided an idiom with which to defend the latter. Moreover, suffragists pursued opportunities to directly confront prospective interlocutors and generate controver-

¹²⁵ Linda Zerilli, “Value Pluralism and the Problem of Judgment: Farewell to Public Reason,” *Political Theory* 40:1 (2012): 20.

¹²⁶ Winkler, “A Revolution Too Soon,” 1456.

¹²⁷ Douglass, *Selected Speeches and Writings*, 204. See Moore, *Constitutional Rights and the Powers of the People*, 55-64 for more on how Douglass worked to drag constitutional meaning into the electoral arena.

¹²⁸ On the politics of Woodhull’s congressional testimony, see Jason Jones, “Breathing Life into a Public Woman: Victoria Woodhull’s Defense of Woman Suffrage,” *Rhetoric Review* 28:4 (2009): 352-369

sy. Besides giving public lectures and writing newspaper editorials, suffragists also headed to polling venues on election days to try to vote. They used these carefully staged actions,¹²⁹ to interpellate opponents. They prized the spectacle of laying out their constitutional arguments to hostile election clerks and onlookers and demanding responses. Isabella Beecher Hooker wrote in 1872 that, “This action not only serves the purpose of agitation of the whole question of suffrage, but it puts upon men, our brothers, the onus of refusing the votes of their fellow citizens, and compels them to show just cause for such proceeding.”¹³⁰ When clerks let them register and cast a ballot—Anthony herself voted in 1872—suffragists drew attention to this success. “Women voted, and went home, and the world jogged on as before,” a pro-suffrage paper wrote in 1873.¹³¹

On the other side were opponents of suffrage who, rather than step into these debates on the meaning of citizenship, took it as their task to dissolve them. I identify four separate strategies through which they pointed to public tumult as a reason to disqualify suffragists’ interventions, and through which they treated interpretive disputes as best resolved off the public stage; as I shall show, suffragists in turn treated these strategies as occasions for further interaction.

First, the suffrage issue was dragged onto the legal terrain even when suffragists hoped it would play out in the press and the realm of public opinion. Soon after voting, Anthony was arrested for election fraud. “The courts did not wait for me to appeal to them—they appealed to me,” she noted.¹³² Indeed, her arrest was not preordained. Others who voted with her were not charged, and DuBois documents that Republican leaders turned against suffragists only after the 1872 election, during which some suffragists including Anthony supported the Republican,

¹²⁹ Ray, “The Rhetorical Ritual of Citizenship,” 6-13.

¹³⁰ *HWS*, vol. 2, 496.

¹³¹ *The Country Post*, June 27, 1873, quoted in *HWS*, vol. 2, 944.

¹³² *HWS*, vol. 2, 635.

Ulysses Grant.¹³³

Anthony's response was to use her upcoming trial to frame the underlying constitutional dispute as a matter for popular judgment. She launched a speaking tour to lay out in detail why in voting she had "simply exercised my citizen's right;"¹³⁴ Cindy Koenig Richards shows how she cast her "audience as citizens with the capacity to make the law consistent with public value."¹³⁵ Anthony may have hoped to reach prospective jurors, who could have used nullification powers if she convinced them that New York's voting laws were unconstitutional.¹³⁶ But her efforts were stymied by Ward Hunt, a Supreme Court Justice assigned to preside over her trial. He ruled her "incompetent" to testify on her own behalf and directed a guilty verdict without allowing the jury to deliberate. He told a related trial's attorney that he did not think that "there [was] anything upon which you can legitimately address the jury."¹³⁷

Second, in dismissing Anthony's competence, Hunt echoed the accusation that suffragists lacked the capabilities for participating in public life. Importantly, it's not just that they were denounced for making claims on the grounds that they were women, but that the very fact that they were making claims was cited as a symptom of their unfitness. Hence the historical pathologization of activists who defended women's rights; a lengthy 1904 study of psychology, for instance, diagnosed de Gouges as mentally ill, suffering from "revolutionary hysteria" and "paranoia reformatoria."¹³⁸

¹³³ DuBois, "Taking the Law into Our Own Hands," 93-94.

¹³⁴ *HWS*, vol. 2, 630.

¹³⁵ Richards, "Susan B. Anthony," 195.

¹³⁶ Winkler, "A Revolution Too Soon," 1507. Winkler specifically notes that Anthony would have been familiar with the abolitionist strategy of urging juries to use nullification powers in cases involving fugitive slaves.

¹³⁷ *HWS*, vol. 2, 653 and 695.

¹³⁸ Alfred Guillois, *Etude médico-psychologique sur Olympe de Gouges* (Lyon: A. Rey, 1904). The booklet's last chapter extends its diagnosis of de Gouges to most women who were politically active during the Revolution. Joan Wallach Scott discusses de Gouges and Guillois in "French Feminists and the Rights of 'Man: Olympe de Gouge's Declarations," *History Workshop* 28 (Autumn 1989): 17.

Third, opponents of suffrage worked to close off the entire interpretive exercise that consists in periodically reassessing or reascertaining what rights a generally worded clause like the Privileges or Immunities Clause covers. When the congressional committee that heard Woodhull's testimony held that the "privileges or immunities of citizens" did not include suffrage, the specific reason it gave was that this clause referred only to rights enumerated elsewhere in the Constitution.¹³⁹ Rather than demonstrate why Woodhull's reading of the clause's pregnant language should not be upheld, it concluded that this language was not pregnant at all: If it only covers already specified rights, it can never be reinterpreted as protecting any hitherto unprotected rights. There is nothing here to make claims about. The Supreme Court affirmed this view in a series of mid-1870s rulings that "gutted the Privileges or Immunities Clause."¹⁴⁰

Proponents of the reading that this clause only covers already enumerated rights explicitly justified it based on its ability to forestall aspirational uses. The Ohio Supreme Court, ruling in 1871 that the clause "includes only such privileges or immunities as are derived from, or recognized by, the Constitution of the United States," warned that "a broader interpretation opens into a field of conjecture limitless as the range of speculative theories."¹⁴¹ Decades later, Justice Felix Frankfurter echoed that sentiment in a 1947 decision, writing that, "I put to one side the Privileges or Immunities Clause" because of "the mischievous uses to which that clause would lend itself if its scope were not confined to" the one courts gave it in the 1870s.¹⁴² These rulings recognize

¹³⁹ Kurt Lash, *The Fourteenth Amendment and the Privileges and Immunities of American Citizenship* (Cambridge: Cambridge University Press, 2014), 237-242.

¹⁴⁰ Laurence Tribe, "Taking Text and Structure Seriously," *Harvard Law Review* 108:6 (1995): 1298.

¹⁴¹ Quoted in Lash, *The Fourteenth Amendment*, 232.

¹⁴² *Adamson v. California*, 332 U.S. 46 (1947). In 1989, Judge J. Harvie Wilkinson III defended Frankfurter's interpretation of the Privileges or Immunities Clause on the grounds that "[a] dormant volcano may not be very exciting, but once it erupts the excitement may prove a bit much. Its course of eruption would be both difficult to predict and to contain... As a result, there is much to be said for continuing the present predictability of the 'privileges or immunities' jurisprudence, and not engaging in a disruptive roll of the dice." J. Harvie Wilkinson III, "The Fourteenth Amendment Privileges or Immunities Clause," *Harvard Journal of Law and Pub-*

polysemy, but they do so in order to *justify* dismissing unforeseen readings. If one views it as implausible that the Constitution would be open-ended, then the fact that one of the possible interpretations preemptively declares deviations illegitimate is reason enough to adopt it. Take *The New York World's* 1873 lament that “there is no limit to the follies which have clutched at that Amendment for support;”¹⁴³ this invokes the abundance of interpretations as something that discredits each individual interpretation as a “folly.” Such statements did not stop suffragists from advocating alternative views. But they set the ensuing battle as one over whether the very fact of proposing an innovative reading of the Privileges or Immunities Clause marks one as an unserious reader.

Fourth, the Supreme Court’s rulings aspired to solve the interpretive question. This sense of finality is echoed by scholars such as Linda Kerber,¹⁴⁴ who writes that *Minor vs. Happersett* “meant that woman suffrage could not emerge from reinterpretation of the Constitution.” But this presumes that suffragists treated legal rulings as the definitive finding on constitutional meaning, rather as one take on that question. In 1857, abolitionists like Douglass had mobilized against the Supreme Court’s *Dred Scott* ruling. Wayne Moore explains that they distinguished “accepting *Dred Scott* as final for purposes of resolving the lawsuit” from accepting it as a “rule of action” that non-judicial actors had to follow going forward.¹⁴⁵ They persisted in defending the interpretations the Court had rejected and promised not to let the Supreme Court’s “voice” bring agitation to a “still,” as Douglass put it in a speech that used the Supreme Court’s attempt to put the

lic Policy 12:1 (1989): 46. In other words, one ought to subscribe to the reading according to which there is nothing here to make new claims about because of the “disruptive” “course” (one might say the “random circulation,” following Rancière, *The Politics of Aesthetics*, 51) that this reading keeps at bay.

¹⁴³ Quoted in Basch, “Reconstructing Female Citizenship:” 54.

¹⁴⁴ Linda Kerber, “‘Ourselves and our Daughters Forever:’ Women and the Constitution, 1787-1876,” in *One Woman, One Vote*, 34.

¹⁴⁵ Moore, *Constitutional Rights and the Powers of the People*, 52. Moore argues that, “governmental decisions such as *Dred Scott* appear to have provoked and crystallized political opposition, much of which later became channeled through official actions and larger-scale changes in the law of the Constitution.” (41)

polity at “peace” as an occasion to instead “intensify” said agitation.¹⁴⁶

Some suffrage proponents similarly treated hostile court rulings as political competitors to their own readings, rather than as interpretations that trumped or disproved their own. A pro-suffrage newspaper commented on Anthony’s guilty verdict that “the decision of the judge... only shows that one judge on the bench differs *in opinion* from other equally well qualified judges *off the bench*.”¹⁴⁷ Even after the Supreme Court’s 1874 anti-suffrage ruling, suffragists could still draw on the Fourteenth Amendment as a familiar shared language with which to keep arguing for enfranchisement. When Stanton testified in Congress on behalf of a Sixteenth Amendment in 1878, her case for this *new* language incorporated the argument that “we believe that our constitution, fairly interpreted, *already* secures to the humblest individual all the rights, privileges and immunities of American citizens.”¹⁴⁸ Persuading Congress and public opinion that the court’s *interpretation* was wrong could feed demands for *amending* the Constitution.

In short, each side struggled against the other’s take on how to respond to interpretive plurality. Some opponents treated suffragists as politically incompetent, the interpretive task as closed, and existing inscriptions as irrelevant to augmenting rights. But as Anthony’s response to her arrest, Hooker’s call to publicly argue with hostile clerks, and Stanton’s 1878 remarks highlight, these disqualifying encounters did not mark democratic activism’s outer limit. By persisting to address disengaged interlocutors, suffragists worked to drag a wider audience into using

¹⁴⁶ See Douglass, *Selected Speeches and Writings*, 344-358 for his speech following Dred Scott. He rebuffs the view that “the day is lost” because “the highest authority has spoken.” He faults the court for trying to close discourse: “The voice of the Supreme Court has gone out over the troubled waves of the National Conscience, saying peace, be still.” He declares, “I have no fear that the National Conscience will be put to sleep,” adding, “The whole history of the anti-slavery movement is studded with proof that all measures devised and executed with a view to ally and diminish the anti-slavery agitation, have only served to increase, intensify and embolden the agitation.” (347-8). See also Todd F. McDorman, “Challenging Constitutional Authority: African American Responses to *Scott v. Sanford*,” *Quarterly Journal of Speech* 83:2 (1997): 202-204.

¹⁴⁷ Quoted in *HWS*, vol. 2, 944.

¹⁴⁸ *HWS*, vol. 3, 80. Some activists pursued the strategy of attempting to vote long after 1874. See DuBois, “Taking the Law into Our Own Hands,” 97.

constitutional phrases as though they were “instruments of a discourse of persuasion.”

“The last resort of the desperate”

By the time of Stanton’s 1878 testimony, the suffrage movement had largely turned away from the Fourteenth Amendment. As DuBois shows, its strategy “was no longer tied to an overall democratic interpretation of the Constitution.”¹⁴⁹ But this was not a necessary consequence of legal losses. Rather, it reflected a shift in political aims. While those who claimed suffrage as a right of citizenship still drew on existing inscriptions, many suffragists were no longer demanding that all citizens vote. An 1869 version of the Sixteenth Amendment stated that “the right of suffrage in the United States shall be based on citizenship” and that “all citizens... shall enjoy this right equally.”¹⁵⁰ But the 1878 version, which the NWSA rallied around and which was adopted as the Nineteenth Amendment in 1920, only extended the franchise based on sex. This dissociation of suffrage and citizenship had major consequences; it facilitated the racial rhetoric suffragists took to using, and it removed a check on the next ninety years of voting restrictions.

But in withdrawing from claiming the franchise as a right of citizenship, suffragists also retreated from the struggle over whether aspirational appeals to the Privileges or Immunities Clause are worthy of debate and serious response. In this section, I will lay out my argument that this retreat contributed to enshrining the clause’s status as “the last resort of the desperate,” as Judge J. Harvie Wilkinson III has described the jurisprudential role the clause has played in the late nineteenth- and twentieth-century.¹⁵¹ (Wilkinson’s point is that the very fact of having to appeal to this Clause has marked petitioners as desperate, discrediting their claims.)

The usual approaches to U.S. constitutional theory mirror the two halves of Rancière’s

¹⁴⁹ DuBois, “Taking the Law into Our Own Hands,” 97.

¹⁵⁰ Ibid. 83.

¹⁵¹ Wilkinson, “The Fourteenth Amendment,” 46. Another evocative descriptor is the “Ghost Clause.” Henry P. Weihofen, “The Ghost Clause Walks Again,” 14 *Rocky Mountain Law Review* 77 (1941).

war of writings. Indeed, the politics of constitutional interpretation is usually situated in one of two planes: either in masterfully dissipating the muddle around the Constitution's meaning, or in enacting its essential contestability. What this neglects is the stakes and the impact of the concrete confrontations between these two ways of dealing with interpretive plurality. Constitutional politics involves struggles over which of these two orientations will have tangible effects and come to control what specific constitutional phrases are seen to be for.

For many thinkers, the U.S. Constitution's vague and polysemic language—Hendrik Hartog talks of its “infinite plasticity”¹⁵²—makes the American polity an “ongoing constitutional convention.”¹⁵³ This vision of an Essentially Contested Constitution¹⁵⁴ is shared by those constitutional scholars for whom it is the “descriptive” fact of the matter that in constitutional disputes “neither side can claim exclusive legitimacy” because “these are unresolved and, most likely, irresolvable political positions over which people will continue to argue.”¹⁵⁵ It is also shared by political theorists such as Terence Ball and J. G. A. Pocock, for whom the Constitution “cannot be made incontestable [and] there may be legitimate debate between alternative readings of the text.”¹⁵⁶ This casts the Constitution as a mediating grammar that enables vigorous disputes about

¹⁵² Hendrik Hartog, “The Constitution of Aspiration, and ‘The Rights that Belong to Us All,’” *The Journal of American History* 74:3 (1987): 1026.

¹⁵³ Nieman, *Promises to Keep*, viii.

¹⁵⁴ I am paraphrasing W. B. Gallie's agenda-setting claim that certain terms are “essentially contested concepts,” i.e. concepts that “inevitably involv[e] endless disputes about their proper uses on the part of their users,” in “Essentially Contested Concepts,” *Proceedings of the Aristotelian Society*, 56 (1955-1956): 169.

¹⁵⁵ Dennis Goldford, *The American Constitution and the Debate over Originalism* (Cambridge: Cambridge University Press, 2005), 19, 288, and 295. Note the work Goldford's “most likely” is doing in obscuring the judgment call behind the slide from “unresolved” to “irresolvable.” This gets to Barry Clarke's distinction between “essentially contested” and “essentially contestable,” in “Eccentrically Contested Concepts,” *British Journal of Political Science*, 9:1 (1979): 122–126. Others who share this view of constitutional interpretation include Sanford Levinson, who resolves to “accept the Nietzschean interpreter into the house of constitutional analysts,” in “Law As Literature,” *Texas Law Review* 60:3 (1982): 373-403, and Wayne Moore, *Constitutional Rights and the Powers of the People*, 11-12.

¹⁵⁶ Terence Ball and J.G. A. Pocock, eds., *Conceptual Change and the Constitution* (University of Kansas Press, 1988), 8. Pocock has laid out elsewhere why “the languages of politics” is “plural, flexible and non-final.” His reasons resemble Rancière's literarity. First, an utterance is available in many contexts; its author

the meaning of the principles that constitute the people's collective identity; it is "a site of struggle among competing political arguments about the basic principles of our social compact."¹⁵⁷

This analysis is particularly relevant to the Fourteenth Amendment. In an influential book, John Hart Ely identifies "open-textured" provisions for which the attempt to identify a meaning "seems untrue to the open-ended quality of the language" and to the fact that the "text doesn't give us a clue as to" their content. He includes the Eighth Amendment's ban on "cruel and unusual punishments," the Ninth Amendment's promise of "retained rights," and the Privileges or Immunities Clause. For Ely, these provisions "invite" interpreters "to *freelance* to a degree."¹⁵⁸

Many jurists, by contrast, hold the "belief that there is something 'in' the Constitution that can be extracted."¹⁵⁹ What I want to show here, in line with what I called literarity's ambivalence, is that this belief need not entail blindness to the fact of interpretive plurality: It can entail *neutralizing that fact by digging under it*. For Scalia, constitutional language "could mean a lot of things in the abstract," but "of course it doesn't mean those things" since "words, like other conventional symbols, do convey... an objective meaning."¹⁶⁰ It is unsurprising that he grants the

"cannot prevent his readers from interpreting [it] in any or all contexts in which their minds can place it," so it "will have a multiple history, proceeding on as many levels as those on which it is taken to have meaning." Second, it does not just reproduce the linguistic "paradigm" that constrains its production and makes it comprehensible; its flexibility will enable innovative uses. But Pocock goes a step further than Rancière: He argues that in performing such utterances we "commit ourselves to what others may make of our words, our intentions" and we "give [them] power over us." J.G.A. Pocock, *Politics, Language and Time* (Chicago: University of Chicago Press, 1989), 24-29 and *Political Thought and History: Essays on Theory and Method* (Cambridge: Cambridge University Press, 2009), 25-26, 40, 74-76, and 102.

¹⁵⁷ Goldford, *The American Constitution*, 287. See also Mark Tushnet, *Taking the Constitution Away from the Courts* (Princeton: Princeton University Press, 2009), 191.

¹⁵⁸ John Hart Ely, *Democracy and Distrust: A Theory of Judicial Review* (Cambridge: Harvard University Press, 1990), 13-14 and 28-31 (emphasis added). Others who single out the Fourteenth Amendment's plasticity include Goldford, *The American Constitution*, 287, and Tushnet, who points to the Reconstruction Amendments as provisions whose "vague" language institutionalized the competition between "specific programs consistent with the competing definitions of equality. Mark Tushnet, "The Politics of Equality in Constitutional Law," *The Journal of American History* 74:3 (1987): 885, 902-903.

¹⁵⁹ Levinson, "Law as Literature," 381. See also Daniel Farber and Suzanna Sherry, *Desperately Seeking Certainty: The Misguided Quest for Constitutional Foundations* (Chicago: University of Chicago Press, 2002).

¹⁶⁰ Scalia, "Review of Steven D. Smith," 692 and "Speech at the Woodrow Wilson International Center."

former point in the course of making the latter.¹⁶¹ James Madison discussed “the inadequateness” of language as a “vehicle” for ideas at some length (“no language is so copious as to supply words and phrases for every complex idea, or so correct as not to include many equivocally denoting different ideas”) in a Federalist essay aimed at *rebutting* the anti-Federalist view that the proposed Constitution would license different accounts of people’s rights instead of clearly establishing one. “When the Almighty himself condescends to address mankind in their own language, his meaning, *luminous as it must be*, is rendered dim and doubtful by the cloudy medium through which it is communicated.”¹⁶² The Constitution’s meaning might not be as “luminous” as the Bible’s, but it exists nonetheless, underneath the words that inadequately express it.

Madison’s belief in a decipherable meaning—if one knows how to dig—is common to both originalism and to a nonoriginalist Living Constitution jurisprudence. In fact, the intensity of the conflict between these two methods has obscured their commonality. Scalia has called it the “Great Divide” of constitutional law,¹⁶³ but what unites these doctrines is the view that the Constitution’s meaning can be read off of the social background it is taken to express. Both subscribe to a symptomal method, much like the one Rancière diagnoses in other fields.

Take Scalia’s jurisprudence. For him, we should not confuse “whether words convey a concept from one intelligent mind to another (communication) with... whether words produce a concept in the person who reads or hears them (meaning).”¹⁶⁴ This point may seem to empower

¹⁶¹ For instance, in a short essay Raoul Berger asserts both that “some words in the Constitution are susceptible of an enormous range of meaning” and that “the founders used words to forge... chains.” Raoul Berger, “Originalist Theories of Constitutional Interpretation,” *Cornell Law Review* 73:2 (1987): 351-353.

¹⁶² Alexander Hamilton, James Madison, and John Jay, *The Federalist: With Letters of Brutus* (Cambridge: Cambridge University Press, 2003), 172, emphasis mine. For more on the dispute between Federalists and anti-Federalists, see Philip A. Hamburger, “The Constitution’s Accommodation of Social Change,” *Michigan Law Review* 88:2 (1989): 304-313, and Ball and Pocock, *Conceptual Change and the Constitution*, 2-3.

¹⁶³ Scalia, *A Matter of Interpretation*, 38.

¹⁶⁴ Scalia, “Review of Steven D. Smith,” 691. This speaks to the fact that Scalia’s originalism rejects original intent in favor of the text’s original understanding by the wider society in which it was promulgated.

the reader. But it allows him to cast words as “symbols” that convey “an objective meaning, regardless of what their author ‘intends’ them to mean.” If the Constitution is unredeemable as a transparent communicative utterance, if it is to be a “rock,” as Scalia says, then it can be made to speak as rock; “we know when and where the words were promulgated, and thus we can ordinarily tell without the slightest difficulty what they meant to those who read or heard them.”¹⁶⁵

While Scalia does not go as far as Rancière’s homonym hunters who say that “a good historical dictionary would suffice to restore these words to their exact meaning”—for Scalia, one must consider an “enormous mass of material” and “immers[e] oneself in the... atmosphere of the time”¹⁶⁶—his Constitution is indeed like Rancière’s “fossils or striations in rock [that] bear their written history.”¹⁶⁷ Yet nonoriginalists also call the Constitution as a rock. The authors of one essay call on interpreters to “take into account the complete sedimentary development of each clause,” including decisions that follow its adoption, for these “have all turned to rock beneath us” and invite the interpreter to “mine... below the surface to identify” this sedimented texture.¹⁶⁸ Jurists are geologists probing the communal fabric to reach what the Supreme Court once called the “bedrock” that is “that whole community sense of ‘decency and fairness.’”¹⁶⁹

What differs between Scalia and Living Constitution jurists is not *whether* to mine—only (1) *how far back* (against the background of which historical moment should a word be read: that of its adoption, or the present?) and (2) *how deeply* to do so (which background is relevant to meaning, linguistic conventions or constitutive values?).¹⁷⁰ The Living Constitution approach

¹⁶⁵ Scalia, “A Theory of Constitutional Interpretation” and Scalia, “Review of Steven D. Smith,” 692.

¹⁶⁶ Scalia, “Originalism: The Lesser Evil.”

¹⁶⁷ Rancière, *Politics of Literature*, 14 and Rancière, *The Names of History*, 33.

¹⁶⁸ Barry Friedman and Scott B. Smith, “The Sedimentary Constitution,” *University of Pennsylvania Law Review* 147 (1998): 6-7.

¹⁶⁹ *Breithaupt vs. Abram*, 352 U.S. 432 (1957).

¹⁷⁰ This suggests that jurisprudential approaches can be classified in at least four broad categories: original conventions (Scalia), original constitutive values, present conventions, and present constitutive values. Exam-

only differs from Scalia in holding that the relevant background is the present, *and* that the relevant depth is not linguistic conventions but moral consensus. Its quest to decipher “*this* generation’s deepest, most enduring commitments”¹⁷¹ only heightens the fact that constitutional words are general and vague to better justify that “*each generation rewrites the Constitution.*”¹⁷² This last quote captures why its reading method mirrors originalism: It holds that interpreters should approach the Constitution as if the context of its original writing were the present one.

The obvious objection to such methods is that the moments they mine are not homogeneous.¹⁷³ (1) How could there be one way in which a community understood a word given disagreements within it? For instance, given the suffragist claim that citizenship entails suffrage, would an originalist analysis of the society that adopted the Fourteenth Amendment not grant that some in that society understood the amendment to grant the franchise? Yet Scalia is interested not in how actual people understood the text, but in “*the meaning that a reasonable person would gather from the text.*” To the extent he draws on what real people said, it is the “writings of *intelligent* and *informed* people of the time,”¹⁷⁴ those who approximate a reasonable reader. (2) How can we speak of a consensus around a community’s deep commitments when aspirational claims testify to the alternative commitments of some? Here too the level of inquiry gets shifted, from values people are publicly professing to values around which a consensus would appear *if people’s unreasonable biases were discounted*. For Harry Wellington, courts can identify “conventional morality” if they “screen out... bias, passion, and prejudice.”¹⁷⁵ To say that the fact of

ples of the third and fourth track are, respectively, Thomas Merrill’s “Bork versus Burke,” *Harvard Journal of Law and Public Policy* 19:2 (1995-1996): 509-523 and Robert A. Sedler, “The Legitimacy Debate in Constitutional Adjudication: An Assessment and a Different Perspective,” *Ohio State Law Journal* 44 (1983).

¹⁷¹ Friedman and Smith, “The Sedimentary Constitution,” 6.

¹⁷² Arthur Slwyn Miller, *The Modern Corporate State* (Westport: Greenwood Press, 1976), 5-6.

¹⁷³ See Levinson, “Law as Literature,” 399-401.

¹⁷⁴ Scalia, *A Matter of Interpretation*, 17 and 38.

¹⁷⁵ Harry H. Wellington, “Common Law Rules and Constitutional Double Standards” *Yale Law Journal* 83

disagreement indicates a lack of moral consensus confuses morality and democracy. “Judges are not paid to defer to what some people imagine to be more democratic or politically tenable actors, but to identify deeper commitments.”¹⁷⁶ If anything, when activists dissent *against* a dominant interpretation, that can count as evidence for the existence of a consensus *in its favor*.¹⁷⁷

All in all, this leaves us with a new Great Divide, which opposes two ways of doing things with the plurality of constitutional interpretations: practices of “freelancing” and practices of mining. The former treats constitutional phrases as resources in democratic conversations. The latter treats such declamations as a misunderstanding of what the text is for; as Scalia wrote, “texts and traditions are facts to study, not convictions to demonstrate about.”¹⁷⁸

Each side sees the other as negating the interpretive task. Those invested in redeeming meaning fault others for misusing it as a “mere springboard” for their political agendas, as Scalia charges.¹⁷⁹ Those invested in constitutional interpretation as an endeavor that involves political claim-making also do not have much to say about encounters with those who dismiss such uses as misguided, other than maximize their impact as altogether “destroying” politics.¹⁸⁰ But my

(1973), 251. Bruce Ackerman makes the same point that even the Living Constitution method can be hostile to public agitation. He criticizes jurists who purport to track the “drift of popular sentiment and take the countless small steps needed to keep the tradition responsive to the present’s half-articulate sense of its special needs.” He writes that these jurists “recoil from the scene of mobilization in disgust” and only see “excited, but ignorant, masses” in the “public dialogue accompanying such ongoing adaptation.” Bruce Ackerman, *We The People, Volume 1: Foundations* (Cambridge: Harvard University Press, 1991), 18.

¹⁷⁶ Friedman and Smith, “The Sedimentary Constitution,” 87.

¹⁷⁷ For Friedman and Smith, *Brown vs. Board of Education* affirmed a normative consensus in favor of racial integration: The tenor of the resistance against it “only reinforced the fact that the decision found support in the deeper views of society at large.” Friedman and Smith, “The Sedimentary Constitution,” 69, 87-88. I take this to be the implication of Adam Winkler’s article on the New Departure, which argues that suffragists used a Living Constitution strategy to cite social change as evidence that meaning had evolved. Winkler, notes that their claim’s defeat was a “sign that [it] was still too radical for its time” (theirs was “a Revolution Too Soon”) and that it did not reflect their generation’s standards of fairness. Their *political* defeat can be pointed to as retrospectively demonstrating their *legal* incorrectness (Winkler, “A Revolution Too Soon,” 1465).

¹⁷⁸ Quoted in Bruce Allen Murphy, *Scalia: A Court of One* (New York: Simon and Schuster, 2014), 213.

¹⁷⁹ Scalia, *A Matter of Interpretation*, 25. I suspect that many scholars would embrace the word “springboard.”

¹⁸⁰ Goldford’s point that “we have to be committed” to antifoundationalism and to the multiplicity of “legitimate standpoints” for political argumentation to be possible leads him to say that originalism “destroys” poli-

earlier argument regarding the asymmetrical and nonmutual quality of a politics of texts alerts us to the stakes of these encounters. Scalia's aforementioned assertion does not by itself mark the violent disappearance of the conditions for democratic responses. Rather, it is one of the possible judgments within the battle to control whether specific parts of the Constitution will be perceived to be "facts to study" or "convictions to demonstrate about."

Here my argument has a point of contact with that of scholars—Bruce Ackerman, Keith Whittington, Tushnet—who are alert to the historical and jurisprudential role of two distinct constitutional orientations. In particular, Whittington juxtaposes constitutional *interpretation*, which involves "discovering" meaning, and constitutional *construction*, which involves "elaborating constitutional meaning in the political realm."¹⁸¹ Yet they draw overly clear conceptual distinctions between the circumstances that call for each orientation. Ackerman differentiates them *temporally* (history cycles between rare moments of "constitutional politics" and long periods of "normal politics," which "preserve the achievements" of the former¹⁸²); Whittington and Tushnet differentiate them synchronically, proposing that *different parts of the Constitution ascertainably call for different approaches* (construction is reserved for those "instances when the text cannot be fairly said to have a discoverable meaning," instances when the process of interpretation

tics. Goldford, *The American Constitution and the Debate over Originalism*, 291-297. Note a recent essay's use of the word "fundamentalist" to describe Scalia: Tom Levinson, "Confrontation, Fidelity, Transformation: The Fundamentalist Judicial Persona of Justice Antonin Scalia," *Pace Law Review* 26:2 (2005): 472-474.

¹⁸¹ Keith Whittington, *Constitutional Interpretation: Textual Meaning, Original Intent, and Judicial Review*, 5 (Lawrence: University Press of Kansas, 1999) and *Constitutional Construction: Divided Powers and Constitutional Meaning* (Cambridge: Harvard University Press, 1999), 2

¹⁸² Ackerman, *Foundations*, 31-32. Based on this separation, Ackerman casts the entire period between 1868 and the New Deal as a "moment of normalization." The New Departure is excised out, as are all efforts by activists to usher in "constitutional politics" against those working to preserve "normal politics." Ackerman even writes that Grant's "election [in 1868] would allow normal politics to proceed without further agonized debate over the premises of the new regime inaugurated by the three Republican amendments." (134) The synchronicity and conflictuality of these two types of politics has fallen out, replaced with an inevitable cycle in which periods of "agonized debate" and routine adjudication follow one another seamlessly.

There is a curious parallel between Ackerman's evasion of the New Departure in that sentence and Scalia's flawed insistence that suffragists never turned to courts (see footnote above). Perhaps the certainty of when and whence constitutional politics will arise leads them to neglect instances that do not fit conceptual expectations.

“highlights the existence of gaps in the discoverable meaning”¹⁸³). These scholars overlook the impact of practical conflicts over which approach a particular moment or a particular clause demands because they take that issue for granted.

Harvie Wilkinson has stated, in the context of discussing the Privileges or Immunities Clause no less, that “force of precedent and sheer happenstance have made some constitutional provisions prominent and left others in a relatively quiescent and obscure state.”¹⁸⁴ Simply put, my argument has been that there is a politics to these happenstance distinctions and legal settlements. The sedimented aftermath of a conflict like the New Departure affects how the line gets drawn between clauses that call for construction and clauses that call for interpretation; it also affects whether the members of a given historical moment believe that meaning ought to be dragged into the political arena. In *Democracy and Distrust*, Ely recounts that, in legal circles, “a surefire way to get you a laugh” is to invoke the Ninth Amendment’s promise that the people retain unenumerated rights. What makes this invocation laughable is that the language is so broad that “read for what it says the Ninth Amendment seems open-textured enough to support almost anything one might wish to argue.” Ely notes that “the joke is somewhat elusive” since other clauses are just as broad and yet “generally accepted.”¹⁸⁵ But this joke, much like the similar fact that the Privileges or Immunities Clause is now perceived as the “last resort of the desperate,” is hardly mysterious in light of my chapter’s attention to the stakes of asymmetrical and nonmutual struggles to control whether a particular clause will be seen as something that is best kept at a distance from political debate, or as something that is fair game for political claim-

¹⁸³ Whittington, *Constitutional Interpretation*, 13 and 221. Another instance of a neat distinction between parts of the Constitution is in Tushnet. He distinguishes its uninspiring parts and parts that belong to a “thin Constitution,” namely the “fundamental guarantees of equality, freedom of expression, and liberty” embedded in the Declaration of Independence, the Bill of Rights, and the Reconstruction Amendments. The latter are “open” to “principled political discussions.” Tushnet, *Taking the Constitution Away from the Courts*, 11 and 185.

¹⁸⁴ Wilkinson, “The Fourteenth Amendment Privileges or Immunities Clause,” 51.

¹⁸⁵ Ely, *Democracy and Distrust*, 34.

making. This is a struggle that suffragists retreated from in the late 1870s.

I am suggesting that reconstructing conflicts over how to deal with interpretive plurality can shed light on what has made a given text or phrase wax and wane from the repertoire of legal and political disputes. The New Departure thus provide a possible starting-point to consider why the constitutional language of “privileges or immunities of citizens” “quickly fade[d] from our collective memory”¹⁸⁶ and from the repertoire of American political discourse.¹⁸⁷

Conclusion

I first argued that egalitarian and inegalitarian outlooks both invoke acts of textual deviation as supporting their own perspective. This ambivalence showed that manifestations of literacy are not self-sufficient, and that we need to pay attention to the dissensual perceptions these manifestations provoke. When appealing to an existing text to make claims, activists are thus also struggling for the propriety of subjecting its meaning to democratic advocacy. Second, I used this framework to expand what democratic politics entails. I emphasized, not the common world that those who commit to arguing for their views and to hearing one another open between each other, but rather situations where readers persist in addressing their interpretations to prospective interlocutors who withdraw from this interaction.

This marks a first step toward overcoming the framework that relations of mutuality condition the viability of a participatory democracy. Public claim-making, such as suffragists’ contributions to processes of constitutional interpretation, need not just bring together those who

¹⁸⁶ Lash, *The Fourteenth Amendment*, 231. He discusses the minimal role the Clause has played on 230-276.

¹⁸⁷ John Denvir recently attempted to reignite a conversation around the “privileges of citizens,” including voting, in *Democracy's Constitution: Claiming the Privileges of American Citizenship* (University of Illinois Press, 2001). In a 1989 lecture, Sanford Levinson considers whether the Privileges or Immunities Clause will “continue to have little meaning” or whether it can “serve as a springboard for additional constitutional protections of individuals.” Sanford Levinson, “Some Reflections on the Rehabilitation of the Privileges and Immunities Clause of the Fourteenth Amendment,” *Harvard Journal of Law and Public Policy*, 12:1 (1989): 75.

have renounced claims to mastery; such interventions can also be pursued in the course of conflicts over their own adequacy. When people face disqualification from an activity, they can treat that disqualification as nothing more than a possible judgment as to how this activity should be approached, a judgment they investigate by acting as if it instead calls for democratic interactions.

The remainder of my dissertation tackles two specific difficulties of theorizing the value of nonmutual interactions. The first difficulty (Chapters 3 and 4) is the question of capacities: How to act in the face of doubts about one's competence? Consider how Justice Hunt dismissed Anthony's bid to address the jury on the ground that she was incompetent. It is now thankfully uncontroversial to state that Anthony's sex did not affect her aptitude to testify. But how should we approach the question of who can do what in disputes that are more resonant today, like uncredentialed citizens trying to intervene in scientific research. The second difficulty (Chapters 5 and 6) is the question of uptake: How to act insofar as one's efforts to participate are not taken seriously by those on the inside? Take how difficult it proved for Anthony to get the Seneca Fall Convention to adopt a resolution demanding the right to vote in 1848. "Those who took part in the debate feared a demand for the right to vote would defeat others they deemed more rational, and make the whole movement ridiculous."¹⁸⁸ Convention attendees' objection was not that women lack the capacity for public life, but that this capacity would elicit derision. In short, my overarching aim in what follows is to show how working to contribute to processes from which one is disqualified offers occasions to transform (a) what counts as *competence* to partake in public affairs and (b) what counts as an *authorization* to do so.

¹⁸⁸ Elizabeth Cady Stanton, Susan B. Anthony, Matilda J. Gage, *History of Woman's Suffrage: Vol. 1* (Rochester: Susan B. Anthony, 1881), 73.

Part II

A Question of Capacity

Chapter 3

The Specter of Populism: Radical Democratic Theory's Disqualifying Quest to Guarantee Political Agency

Have we in fact reached the end of history? Are there, in other words, any fundamental 'contradictions' in human life that cannot be resolved in the context of modern liberalism?

—Francis Fukuyama

Other worlds are always possible... There are always alternatives that have been excluded by the dominant hegemony and that can be actualized.

—Chantal Mouffe

Much of twentieth-century political thought has voiced anxieties about popular capacities. While the Platonic suspicion toward ordinary citizens has given way to more egalitarian paradigms, new dividing lines have been enacted. Joseph Schumpeter, for instance, separates those people who are capable of formulating thought-out policies from “the mass of people [that] never develops definite opinions on its own initiative” because “[a]ll it can do is to follow or refuse to follow such group leadership as may offer itself.”¹ Yet compounds this long-standing theoretical suspicions toward political capacities is that critical philosophers’ attempts to theorize the twin problems of depoliticization and domination have fostered new doubts regarding most people’s ability to act competently in the present.

First, diagnoses of domination challenge the *viability* of people exercising political agency. Thinkers who explore domination’s dehumanizing effects—what Frederick Douglass calls the “degradation, mental and physical” that is “ground into the very bones of a people by ages of unremitting bondage”²—contend that oppressive conditions impair people’s organizational, psychological and motivational aptitudes, damage their self-worth, or produce internalized beliefs of inferiority. (I alluded to this in my first chapter by pointing to the tradition for which the experience of recognition is a condition for self-flourishing, so that misrecognition causes human capacities to atrophy or fail to develop. Another tradition, exemplified by Louis Althusser and Michel Foucault, reaches a similar conclusion through the inverse premise that domination has to do, not with a lack of recognition, but with the way in which one is recognized.³) Domination

¹ Joseph Schumpeter, *Capitalism, Socialism and Democracy* (New York: Harper Perennial, 1942), 145.

² Frederick Douglass, “West India Emancipation” in *Selected Speeches and Writings*, ed. Philip Foner (Chicago: Lawrence Hills Books, 1999), 363.

³ The idea is that people’s subjectivities are constituted and therefore constrained by the discursive or material conditions that they in turn reproduce. For Foucault, government “categorizes the individual, marks him by his own individuality, attaches him to his own identity, imposes a law of truth on him which he must recognize and which others have to recognize in him.” In “The Subject and Power,” *Critical Inquiry*, 8.4 (1982): 780. See also Louis Althusser, “Ideology and Ideological State Apparatuses,” in *On The Reproduction Of Capital-*

then comes to look like a phenomenon that strips its victims of the capacities they would need to contest it. How can a people challenge the way things are if degradation “will not depart from that people in the course even of many generations,”⁴ or if a “total system” is programing lives in “ever more pervasive”⁵ ways?

Second, visions of a depoliticized society—whether offered as critique of how the world already is or as a call for what it should become—challenge the *propriety* of this exercise by suggesting that people’s agency may be too political for the modern world. Some people advocate for institutional arrangements that shield government “from popular inference or the vagaries of political judgments.”⁶ Others bemoan the reduction of public life to administration; they contend that depoliticization masks power relations and shrinks occasions for creativity.⁷ Both sides share a concern that the activities most people can or even want to engage in are discordant with modes of governance that accommodate administrative complexity and technical expertise. There is a sense of misfit between popular rule and the escalating demands of knowledge and specialization that follow the onset of Weber’s “polar night of icy darkness.”⁸

ism: Ideology And Ideological State Apparatuses, trans. and ed. G.M. Goshgarian (London: Verso, 2014).

⁴ Douglass, “West India Emancipation,” 363.

⁵ Frederic Jameson, *The Political Unconscious* (Ithaca: Cornell University Press, 1980), 90.

⁶ Alasdair Roberts, *The Logic of Discipline* (Oxford: Oxford University Press, 2010), 13. For recent defenses of depoliticization, see Alan Blinder, “Is Government Too Political?,” *Foreign Affairs* 76:6 (1997), Philip Pettit, “Depoliticizing Democracy,” *Ratio Juris* 17:1 (2004): 52-65, Peter Orzag, “Too Much of a Good Thing: Why We Need Less Democracy,” *The New Republic* (October 6, 2011), 11-12.

⁷ For analyses of depoliticization as an already advanced phenomenon, see Carl Schmitt, *The Concept of the Political*, trans. George Schwab (Chicago: University of Chicago Press, 1996), Martin Heidegger, “The Question Concerning Technology,” in *Basic Writings*, ed. David Farrell Krell (San Francisco: HarperCollins Publishers, 1977), 307-382, Hannah Arendt, “Freedom and Politics,” in *Between Past and Future* (London: Penguin, 1996), Jürgen Habermas, *Toward a Rational Society*, trans. Jeremy Shapiro (Beacon Press, 1971), Leo Strauss, “What is Political Philosophy?” (Chicago: University of Chicago Press, 1988), Wendy Brown, *Regulating Aversion* (Princeton: Princeton University Press, 2006), Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 2011), Chapter 3, Matthew Flinders and Jim Buller, “Depoliticisation: Principles, Tactics and Tools,” *British Politics* 1:3 (2006): 298-306, Ran Hirschl, “The New Constitutionalism and the Judicialization of Pure Politics Worldwide,” *Fordham Law Review* 75 (2006): 721-754.

⁸ Max Weber, *Essays in Sociology*, ed. H. H. Gerth and C. Wright Mills (Oxford: Oxford University Press, 1946): 128.

These two diagnoses risk foregrounding certain people's incapacitation at a theoretical level by prejudging that popular competences are lacking, at least until after marginalized groups are emancipated or until the masses are better educated into established criteria of expertise. In this chapter and in the next, I consider how to best challenge inegalitarian paradigms when even the tools of critique risk prejudging people's incapacitation. Can we take seriously the power hierarchies and epistemic inequality that are producing misgivings about popular capacities, but do so in a way that does not conceptually overdetermine these capacities' absence?

This chapter critically engages one solution to this problem of incapacitation: radical democratic theory's turn to ontology. Radical democratic thinkers resolve anxieties about domination and depoliticization's effects on political agency with a theoretical guarantee that political agency is inextinguishable and always already exercisable. This is indeed a step out of the impasse I just described. But I argue that its promise is undone by the fact that it accepts that it really is theory's business to determine what people are capable of, and merely flips the diagnosis of incapacitation into one of capacity (specifically, the capacity for radical change).

This ontological trump card poses two problems. First, it does little to address the concrete predicament it is meant to remedy. Casting disqualifications and exclusions as always obviously wrong—settling the question theoretically, in advance of people acting—simply sidesteps the problem at hand, namely how people can act when their aptitudes look to be in doubt, when they need to navigate questions (which they might share) regarding their capacity. Radical democratic theory has little to say on this. Second, it attributes a measure of political agency to all at the cost of reducing political possibilities for those people who seek to challenge persistent conditions of domination or depoliticization to populist confrontations. (I use the term populism not in the sense of popular sovereignty and mass participation, but in Chantal Mouffe and Ernes-

to Laclau's sense of a practice that is strictly antagonistic to the prevailing institutional order.) This second problem's implication is that radical democrats' ontology of heterogeneity, as I shall call it, entrenches the framework of mutuality. I mean that the guarantee that all marginalized persons retain a neglected political agency ends up entrenching the separation I tracked in my first chapter between a negative praxis, possible where reciprocity is absent, and an affirmative praxis, possible where reciprocity is instantiated. Radical democracy retains the expectation that insofar as we face patterns of domination or depoliticization, we are effectively deprived of the ability to contribute to the institutions by which we are governed.

I explain the effects of radical democratic theory's ontological turn through a detailed reading of Chantal Mouffe's work. One reason for this is that Mouffe can be mapped unto both sides of a debate internal to radical democratic theory between those who call for a constant struggle against all instituted order and those open to institutional life. By reconstructing the internal logic of her thought, I can thereby demonstrate that agonism and antagonism—as threads internal to Mouffe's thought and to radical democratic theory—are two sides of the same coin. The divide's existence is a direct consequence of radical democratic theory's starting assumption that any social order represses something about the world that it cannot account for. Indeed, if a given society is always already threatened by a constitutive wrong, the decisive question becomes whether it will recognize its own incompleteness and open itself to the unexpected. If it does, political practice can take a participatory, pluralistic or institutional form; but if it cannot or does not, excluded parties are once again confined to playing the role of a haunting specter.

Another reason for concentrating on Mouffe is that at times she does display a commendable reluctance toward offering certainties as to how situations of domination and depoliticization will be undone, and whether they even should. That she does not follow through on this re-

luctance speaks to the draw of radical democratic theory's convenient move to secure a radical political agency for all, and it casts that move's deficiencies in sharp relief. I mean two things by this. First, Mouffe is alert to the practical predicament of a world in which popular capacities are everywhere doubted and in which we face deep perplexity as to what our actions would even be good for. This makes it all the more glaring that, instead of questioning the premise that theory should ascertain who is capable of what type of action, she takes it upon herself to simply reverse the answer given by those who decree the impossibility or undesirability of political agency. As a result, she gives up leverage to reflect on how people challenge the perceptions that keep them sidelined when they lack certainty that these assumptions are wrong. Second, even insofar as Mouffe takes on the mantle of adjudicating who is capable of doing what, she does so cautiously. To rebut the claim that history has ended and answer in the affirmative Francis Fukuyama's question—"are there... any fundamental 'contradictions' in human life that cannot be resolved in the context of modern liberalism?"⁹—she does not resort to the old dialectical trick of enlisting philosophy in the task of determining what these contradictions are. She aspires to guarantee *that* a crisis is always already available as a starting-point for contestation while thoroughly politicizing the question of *what* that crisis is. Yet, even this weaker guarantee pushes the marginalized to privilege the already available points of rupture and to thereby withdraw from the activities and spaces from which they are disqualified.

I. From one crisis to another

Theses about the end of ideology and the obsolescence of utopia were ubiquitous in the 1950s, and they found a distant echo in Fukuyama's end-of-Cold-War claim that "we have trou-

⁹ Francis Fukuyama, "The End of History?" *The National Interest* (Summer 1989).

ble imagining... a future that is not essentially democratic and capitalist.”¹⁰ Critics of liberalism have long assailed Western modernity for bringing about a world in which politics is out of place. The lament that public life has been reduced to administration, instrumental rationality, and bureaucratic considerations has been a powerful leitmotiv in twentieth-century philosophy. Many contemporaneous thinkers would recognize themselves in the mission Mouffe sets herself in the first page of *On the Political*: “I want to challenge this post-political vision.”¹¹

What is somewhat distinctive about Mouffe’s version of this project is that she embeds her concerns about the relevance of politics in a crisis Marxist thinkers experienced in the late-19th century. The first chapter of *Hegemony and Socialist Strategy*, which she published with Laclau in 1985, focuses on a moment when the apparent failure of the classical Marxist paradigm forced Marxist thinkers to move beyond the comfort of trusting historical necessity. These “post-crisis” thinkers—Rosa Luxemburg, Eduard Bernstein, George Sorel, Lenin—had to work with a “new awareness of the opacity of the social, of the complexities of an increasingly organized capitalism.” Faced with an unexpectedly persistent capitalist system and with the “experience of fragmentation and the indeterminacy of the articulations between different struggles and subject positions”—faced, in short, with the dawning realization that the revolution may not come, at least not in the form that it was expected to take—they had to revise their own certainties regarding how capitalism would be toppled, and by whom. The crisis in Marxism, in Mouffe and Laclau’s retelling, was first and foremost a crisis over thinkable and realizable alternatives.

Mouffe herself is a post-crisis thinker. She is committed to socioeconomic and political transformations, but she worries that her own moment is one in which such radical aspirations

¹⁰ Francis Fukuyama, *The End of History* (New York: Free Press, 1992), 46. See also Daniel Bell, *The End of Ideology* (Cambridge: Harvard University Press, 1960), Judith N. Shklar, *After Utopia: The Decline of Political Faith* (Princeton: Princeton University Press, 1957), Seymour Martin Lipset, *Political Man* (New York: Doubleday & Company, 1960).

¹¹ Chantal Mouffe, *On the Political* (New York: Routledge, 2005), 1.

are running against “the no alternative dogma.”¹² In 1981, four years before *Hegemony and Socialist Strategy*, she published a short essay with Laclau (“Socialist Strategy: Where Next?”), the first paragraph of which describes the context of their intervention as one in which “the old certainties, the famous ‘guarantees of history’ are strongly questioned and the political uncertainty is accompanied by a growing theoretical perplexity.”¹³ This is in part an allusion to the Left’s loss of confidence in the working-class as an agent of historical change. This loss created a crisis similar to the one Marxists faced in the 19th century—and Mouffe and Laclau were hardly the first to diagnose this predicament. C. Wright Mills had already warned in 1960 that “the seeming collapse of our historical agencies of change ought to be taken as a problem, an issue, a trouble.”¹⁴ What was so theoretically perplexing, dizzying even, was how this crisis undercut the guarantee of dialectical progress. Without that familiar guarantee, how could advocates of radical change counter liberalism’s renewed confidence that it represented the end of history?

By the time Mouffe and Laclau wrote the preface to *Hegemony and Socialist Strategy*’s second edition, in 2001, this problem had grown more urgent still. In this text, they worry that with the end of the Cold War “it is the very idea of socialism that became discredited.” The “triumph of neo-liberalism, whose hegemony has been so pervasive,” has plunged the left “in an even deeper crisis today” and center-left politicians have deepened this crisis by embracing a “third way” vision that accepts prevailing values and principles “as a fate to which we all have to submit,” and by equating governance with the implementation of “realistic possibilities,” as if it is only a matter of technical expertise.¹⁵ This idea that the decline of the Marxist imaginary has

¹² Chantal Mouffe, “The Radical Centre: A Politics Without Adversary,” *Soundings* 9 (Summer 1998): 18.

¹³ Ernesto Laclau and Chantal Mouffe, “Socialist Strategy: Where Next?,” trans. Mike Mullan, in *Marxism Today* 25:1 (1981): 17.

¹⁴ C. Wright Mills, “Letter to the New Left,” *New Left Review* 5 (September-October 1960), 22.

¹⁵ Ernesto Laclau and Chantal Mouffe, *Hegemony and Socialist Strategy* (New York: Verso, 2001), xv-xvi. This is reminiscent of Fukuyama: “In our grandparents’ time, many reasonable people could foresee a radiant

depoliticized Western democracies runs through the entirety of Mouffe's corpus, injecting it with a sense of urgency. Concerned that contemporary liberal-democratic regimes are chasing after "a form of consensual governance transcending the political," Mouffe continually regrets that mainstream parties are "advocating very similar policies" and morphing into a "radical centre" that "deprives democratic citizens of an agonistic debate where they can make their voices heard and choose between real alternatives."¹⁶ (While Mouffe applies her analysis to various trans-Atlantic contexts, her argument's earlier instantiations are specifically informed by Bill Clinton and Tony Blair's Third Way politics.¹⁷) Mouffe also analyzes depoliticization as a theoretical feature in liberal thought; she suspects that John Rawls and Jürgen Habermas are looking for "a society from which politics has been eliminated" and in which conflicts are "susceptible to a rational solution" that "would preclude the possibility of contestation."¹⁸

Mouffe thus understands depoliticization as a situation in which vast swaths of the status quo look to be beyond political disagreement based on a combination of institutional transformation and ideological closure. Debate and conflict are seen to be out of place on a range of issues, and even on matters where politics is granted a role many positions are rejected less for being undesired or undesirable than for being unreasonable. Importantly, depoliticization does not

socialist future in which private property and capitalism had been abolished... Today, by contrast, we have trouble imagining a world that is radically better than our own, or a future that is not essentially democratic and capitalist," in "The End of History?"

¹⁶ Mouffe, *Agonistics*, 119 and *On the Political*, 69 and 106.

¹⁷ The New Labour has occasioned a vast literature on depoliticization as governmental strategy. See Matthew Watson and Colin Hay, "The Discourse of Globalisation and the Logic of No Alternative," *Policy and Politics* 30:4 (2004): 289-305, Peter Burnham, "New Labour and the Politics of Depoliticisation," *The British Journal of Politics & International Relations* 3:2 (2001): 127-149, Norman Fairclough, "Dialogue in the Public Sphere," in *Discourse and Social Life*, ed. Srikant Sarangi and Malcolm Coulthard (Harlow: Longman, 2000). Mouffe has criticized the European Union along similar lines. "All attempts to challenge the prevalent neo-liberal rules are constantly presented as expressions of anti-European attacks against the very existence of the Union" (Mouffe, *Agonistics*, 58). For works on the EU as a system of "apolitical governance," see Simon Hix, "The Study of the EU II," *Journal of European Public Policy* 5:1 (1998): 38-65 and Matthew Flinders, "Distributed public governance in the European Union," *Journal of European Public Policy* 11:3 (2004): 537-539.

¹⁸ Mouffe, *The Democratic Paradox*, 29 and 92.

just threaten the prospect of revolution or radical transformation. Invocations of realism and claims that the left/right spectrum is obsolete also undermine the possibility of more ordinary forms of political interventions, from the ability to demand that one's government enact different economic policies to the expectation that elections will have consequences.

This crisis over alternatives doubles as a crisis over qualifications. If the order of things has a certain necessity to it, those with better insight into that necessity are better capable of governing it.¹⁹ The view that certain spaces and issues are better left free of politics goes hand-in-hand with a view that political aptitudes and democratic agency are distributed unequally. It entails disqualifying certain programmatic claims because their speaker lacks the proper insight into the necessity of things. Her education may be inadequate, or she may not have the legitimacy to talk about public matters that elected office confers. Her claims will be dismissed as “‘anti-democratic,’ ‘retrograde,’ and as remnants of a thoroughly discredited ‘old left’ project.”²⁰ Take British Prime Minister David Cameron, who justified austerity measures in 2010 by declaring that, “This is the sober reality I must set out for the country today... We are not doing this because want to, driven by theory or ideology. We are doing this because we have to.”²¹ This is a claim as to why a policy decision simply cannot be otherwise. But it is also a claim to superior insight into what the national situation demands and what the economic laws that must guide its management dictate than that possessed by those who protest the Cameron's decisions. Thus the

¹⁹ This argument plays a crucial role in Plato's *Republic*, in which ruling entails knowing the unchanging laws that determine justice. Only those equipped with the philosophical nature to see “that which provides light for everything”—and Socrates is clear that “such natures are few and born only rarely among human beings” (490b)—can “use it as a pattern for ordering city” (540a). Similarly in *The Statesman* Plato writes that “it is the men who possess the art of ruling and these only whom we are to regard as rulers;” those who possess a “scientific understanding of the art of government” ought to enjoy free reign, just as we do not question the prescriptions given by a doctor (293a-293d). That said, *The Statesman's* argument soon follows a different route as Plato casts severe doubts as to the existence of men with such enlightened knowledge since following the end of the age of Kronos rulers and ruled are too alike “in nature” (275c). Plato, *The Republic*, trans. Allan Bloom (Basic Books, 1991) and Plato, *The Statesman*, trans. J. B. Skemp (Indianapolis: Hackett, 1992).

²⁰ Mouffe, *The Democratic Paradox*, 7.

²¹ Quoted in Eliane Glaser, “Bring Back Ideology,” *The Guardian*, March 21, 2014.

second facet of depoliticization is that, when decision-making draws on scientific or technical grounds rather than on value judgments and partisan programs, certain positions obtain an epistemic privilege. Mouffe's concern over epistemic privilege also explains her and Laclau's critique of the Marxist dogma that the working-class is the privileged subject of struggle.²²

But this raises a difficulty. Tracing skepticism toward politics to an antidemocratic aspiration does not by itself tell us whether that aspiration is misguided. After all, the sense that alternatives have dissipated is hard to shake off, and certain matters seem so complex that we may not be comfortable denying in all instances that some actors possess a special insight that better prepares them for governing. Moreover, warning against politicization has been a refrain more familiar on the American left than the American right in the face of George W. Bush's presidency and of global inaction on climate change, and the age of Donald Trump has heightened some commentators' concerns regarding the propriety of subjecting governance to popular processes.²³ This is why politics faces a genuine crisis. How can we justify that public life should be open to popular aspirations and debates in the face of the ubiquitous worry, experienced even by committed democrats, that such aspirations and debates are unreasonable or unrealistic?

Mouffe's focus on depoliticization confront these thorny questions. The stakes she sets herself are to show that the lack of revolution and capitalism's resilient adaptability do not mean that the end of history is upon us. Hence the importance for her framework of ascertaining how

²² For Mouffe and Laclau, "the roots of authoritarian politics lie in this interweaving of science and politics" since the Party's "epistemological privilege" is founded on the scientific monopoly enjoyed by a given class perspective" (*Hegemony and Socialist Strategy*, 58-59). Linda Zerilli discusses the importance of not letting "the particularity of any one group" "predetermine" stand in as the political signifier in "This Universalism Which Is Not One," *Diacritics* 28:2 (1998): 15. The criticism Mouffe and Laclau have received for this vindicates their point that privileging certain positions leads to disqualify other struggles *a priori*. Dana Cloud's incredulity at their idea that "any struggle against subordination, *whether or not it is perceived to be subordination to capitalism*, is a legitimate struggle" (emphasis in the text) exemplifies the type of argument Mouffe and Laclau usefully disturb. Dana Cloud, "'Socialism of the Mind': The New Age of Post-Marxism," in *After Postmodernism: Reconstructing Ideology Critique*, ed. Herbert Simons and Michael Billig (London: SAGE Publications Ltd: 1994): 229. See also Norman Geras, "Post-Marxism?" *New Left Review* 163 (1967): 40-82.

²³ James Traub, "It's Time for the Elites to Rise up against the Ignorant Masses," *Foreign Policy*, June 26, 2016.

Marxist thinkers dealt with a similar dilemma in the 19th century. Faced with the apparent failure of the dialectic, a failure that threatened to leave them with no challenge to capitalism, Luxemburg, Sorel or Bernstein did not replace one depoliticizing logic of necessity with another. Instead, they sought to restore the importance of categories pertaining to contingent variation, categories like spontaneity, the will, the initiative or the ethical decision that classical Marxism had relegated to the merely superstructural. Similarly, Mouffe acutely senses that what is at issue is not merely the resilience of one particular social form but rather the idea as such that things are as they should be—or at least the idea that things are the only way they *can* be for the moment, which the dialectic takes up when it transforms the present into a necessary stage of progress.²⁴ Acting politically entails confronting the logic of necessity that is at work in Marxist and liberal thought, and to do so in the name of a logic of contingency that may restore a sense that another world is possible and worth struggling for—if, that is, we are able to make it stick as an analysis of a given social field or historical moment.

Mouffe and Laclau write in *Hegemony and Socialist Strategy* that “everything depends on how we conceive this organization which we are able to give ourselves and which gives the elements a new form of unity: either that organization is contingent...; or else, both the fragments and the organization are necessary moments of a totality that transcends them.”²⁵ What they mean by the latter clause is something like what I described as a logic of necessity. This logic presents society as a unity in which the different elements that make up our world are organized according to some essential feature that these elements possess or that the whole possesses. The

²⁴ Jacques Rancière criticizes Karl Marx’s portrayal of setbacks to revolutionary organizing as “the ironic but incontestable confirmation of materialist theses.” Rancière cites a letter from Marx: “If I were to only listen to my personal inclination, I would like this superficial calm to last a few more years. In any case, it is a very good period to conduct scientific investigations.” Jacques Rancière, *Le Philosophe et ses pauvres*, my translation (Paris: Flammarion, 2010), 163-164.

²⁵ Laclau and Mouffe, *Hegemony and Socialist Strategy*, 96.

idea is that “the ensemble of the social can be absorbed in the intelligible and ordered framework of a society,” a “differential absorption of demands” that transforms these demands “into objective differences within the system.”²⁶ (The welfare state, for instance, justifies itself as having incorporated the previously marginalized into the social body.²⁷) Such an essentialist or positivist conception of society is unbothered by a lack of alternatives. From its perspective, why should there be an alternative to objective (historical, scientific, technical) necessity?

That is why, for Mouffe and Laclau, “everything depends” on the ability to conceive of the “organization which we are able to give ourselves” as contingent and to thereby propose that things could be different. To contest the status quo, one must take on the apparent normalcy and obviousness of values and expectations that structure our lives. What could be different, what may not be as right or unshakable as it seems? Confronting these questions involves a practice of articulation. This means “disarticulat[ing] the existing order” to “establis[h] between various positions a contingent, undetermined relation.”²⁸ The idea is to imagine alternatives whose mere emergence may challenge the perception that the status quo is immovable. For instance, proposing new articulations between elements whose current configuration seems to be beyond contestation can transform “relations of subordination” (hierarchies one just accepts as beyond question) into “forms of oppression” (hierarchies one is resolved to combat).²⁹

Mouffe and Laclau present their solution as nothing less than a Copernican Revolution. By “breaking decisively with the essentialist metaphysic of the ‘guarantees of history,’” they believe that they have invested contestation with the new task of developing a “political project”

²⁶ Ibid. 130.

²⁷ On the welfare state as depoliticization, see Young, *Justice and the Politics of Difference*, Chap. 3, Nikolas Rose and Peter Miller “Political Power Beyond the State,” *The British Journal of Sociology* 42:2 (1992): 191-201, and Nancy Fraser, *Unruly Practices* (Minneapolis: University Of Minnesota Press, 1989), Chaps. 7 and 8.

²⁸ Laclau and Mouffe, *Hegemony and Socialist Strategy*, xvi and 18; Mouffe, *The Return of the Political*, 78.

²⁹ The practice of articulation involves “the equivalential displacement of the egalitarian imaginary to ever more extensive social relations.” Laclau and Mouffe, *Hegemony and Socialist Strategy*, 154 and 188.

and getting it “recognized by the other democratic subjects as fundamental for the realization of their demands.”³⁰ Faced with the “theoretical perplexity” of a world whose overcoming is no longer certain, they think that they have responded by embracing that uncertainty.

This emphasis on articulation and imagination has spread since Mouffe and Laclau spoke of them in the mid-1980s.³¹ This is with good reason. With these concepts, we can avoid prejudging that this or that social dynamic is fixed or unchallengeable, whether by virtue of an essential quality it is supposed to possess or by virtue of the alleged efficiency of its repressive character. The framework I just reconstructed would thus seem to provide the seeds of a vocabulary with which to explore how people may act in the face of doubts about whether society can be transformed and about whether they themselves enjoy the aptitudes to bring about change.

And yet, something happens along the way. While Mouffe and other radical democratic theorists mean to argue for contingent variation and uncertain struggles, guarantees are soon reintroduced, the crisis of alternatives that threatened to discredit the left is quickly dismissed as illusory, and contingency is entrenched as an essential and haunting feature of the social world.

If the first pages of *Hegemony and Socialist Strategy* signaled a profound anxiety over the lack of alternatives, the first pages of Mouffe’s *The Return of the Political* (1993) acknowledge no such fears. It’s not that Mouffe has ceased to be interested in depoliticization—she writes that “it is indeed the political which is at stake here, and the possibility of its elimination”—but that her writing is confident that this possibility cannot come to pass. She tells us in the very first paragraph that, while “not long ago we were being told... that liberal democracy has won and that history has ended,” liberals have since been “taken by surprise” by the “convincing refutation of their optimis-

³⁰ Laclau and Mouffe, “Where Next?,” 22.

³¹ See Aletta Norval, *Aversive Democracy* (Cambridge: Cambridge University Press, 2008) and Linda Zerilli, *Feminism and the Abyss of Freedom* (Chicago: The University of Chicago Press, 2005).

tic forecasts.” She goes on to diagnose the “irreducible character” of the political and the “impossibility” of a world without it.³² Similarly, in *On the Political* she reassures her reader that “the shallowness of the post-political approach had already been revealed” and that it is “an illusion to believe in the advent of a society from which antagonism would have been eradicated.”³³ Gone is the apparent apprehension that the viability of alternative social organizations has been foreclosed. “Everything” may have depended on which of two logics shapes our conception of society, but it appears that this was not much of a choice. Mouffe and Laclau grant that “a fully successful system of differences... would not make possible any articulation,” but rather than letting this point stand as a testament to what necessity does to politics, they constantly evacuate the prospect of such a full success. As Mouffe asserts in *Agonistics*, “other worlds are always possible... There are always alternatives that have been excluded by the dominant hegemony and that can be actualized.”³⁴ These are comforting thoughts when we thought we were facing the prospect of a world in which politics has grown obsolete.

Mouffe goes one step further. She does not just claim that alternative modes of social organization will be viable if people decide to advocate for them, or that seemingly necessary features of the world could be transformed. She also claims that such political contestations are inevitable. “It is not enough to eliminate the political in its dimension of antagonism and exclusion from one’s theory to make it vanish from the real world. It does come back, and with a vengeance.”³⁵ (This slide from possibility to inevitability, for which Carl Schmitt has been vigorously criticized by Jacques Derrida,³⁶ is hardly innocuous. But I want to be clear that my critique tracks the conse-

³² Mouffe, *The Return of the Political*, 1 and 4.

³³ Mouffe, *On the Political*, 64 and 16.

³⁴ Mouffe, *Agonistics*, 143.

³⁵ Mouffe, *The Democratic Paradox*, 31.

³⁶ Jacques Derrida, *Politics of Friendship*, trans. George Collins (London: Verso, 1997), especially 112-138.

quences of both strands. As I show in this chapter's second half, efforts to secure a place for politics are flawed even when it takes the weaker form of guaranteeing a mere possibility, even when Mouffe foregrounds a condition for political action but means it to be insufficient by itself.)

At first glance it had seemed like it was those challenging the prevailing order who were in crisis, faced with the discrediting of alternatives. But now Mouffe is saying that it is the prevailing order itself that is in crisis in that it faces the "convincing refutation" of its logic of necessity. Here Mouffe embraces the idea of "organic crisis," which is the moment "one becomes acutely aware of the dislocation in the structure," the "experience which makes visible the ultimate contingency of all forms of identification."³⁷ A slide has occurred from Bernstein and Sorel's "awareness of the *opacity* of the social" to this new awareness of the *contingency* of the social.

There is, of course, a long social theoretic tradition that foregrounds the prospect of historical transformation on the crises that social formations are bound to undergo due to the unsustainability of their own material or discursive organization; Hegel, Marx, or Habermas have different versions of this idea, as do thinkers inspired by them.³⁸ Yet my chapter's early pages presented Mouffe and Laclau as loud critics of resting sociopolitical change on the necessity of crises; this was their Copernican Revolution, their turn to the political. But it now appears that their criticism was sustained by a new diagnosis of societal crisis. Our values, Mouffe confidently asserts, are "forever... open to challenge."³⁹

Mouffe couches this diagnosis in explicitly ontological terms. She writes that the political "must be conceived as a dimension that is inherent to every human society and that determines

³⁷ Anna Marie Smith, *Laclau and Mouffe: The Radical Democratic Imaginary* (Oxon: Routledge, 1998), 167 and Aletta Norval, *Deconstructing Apartheid Discourse* (London: Verso, 1993), 13.

³⁸ Nancy Fraser is a recent example of a thinker who develops a crisis critique. See her "Behind Marx's Hidden Abode," *New Left Review* 83 (March/April 2014): 55-72.

³⁹ "Our values, our institutions and way of life constitute one form of political order among a plurality of possible ones, and the consensus they command cannot exist without an 'outside' that will forever leave our liberal democratic values and our conception of justice open to challenge." Mouffe, *The Return of the Political*, 32.

our very ontological condition.”⁴⁰ Conversely, this “ontological condition” determines that advocates of a post-political vision are bound to be in the wrong. Mouffe’s rebuttal to Rawls and Habermas is that “obstacles to rationalist devices like the original condition or the ideal discourse are ontological.”⁴¹ Thus she does not present her opposition to depoliticization as a political claim of which they must be persuaded. Instead, the relevance of the political is something that demands to be “acknowledge[d]” and “accept[ed].”⁴² Mouffe says she is merely providing “an adequate understanding of the nature of the political” in order for us to “grasp the nature of the political” and “never forge[t] it.”⁴³ By contrast, she declares the positivist perspective that claims to have incorporated every social element into a totality to be an “illusion;” the post-political approach is not dangerous so much as “blind” and “shortsighted.”

This ontological turn is particularly glaring because of the virulence with which Mouffe takes her post-political opponents to task for using a similar strategy. For instance, she criticizes Rawls for designing a society regulated by a strong (overlapping) public consensus around liberal procedures, adherence to which is not meant to be a matter of personal initiative, political judgment or contingent choice but a matter of rationality. She asks, “What is this, if not an indirect form of asserting that reasonable persons are those who accept the fundamentals of liberalism?” What is this, if not a “partisan gesture” masquerading as a “moral exigency?”⁴⁴ Her point is that an alternative social organization is always possible and that the decision to value one over another cannot be settled rationally; presenting one’s decision as rational is to disingenuously give one’s preferences the veneer of necessity. But that is exactly what Mouffe herself is do-

⁴⁰ Ibid. 3. She writes elsewhere that, “The political belongs to our ontological condition” (*On the Political*, 16).

⁴¹ Mouffe, *The Democratic Paradox*, 98.

⁴² Mouffe, *The Return of the Political*, 3 and 13.

⁴³ Mouffe, *On the Political* 34 and 109 and Mouffe, *The Democratic Paradox*, 99.

⁴⁴ Mouffe, *The Democratic Paradox*, 15, *The Return of the Political*, 24-25, and *Agonistics*, 55.

ing. While she faults advocates of depoliticization for giving “an appearance of scientificity and incontestability to the post-political vision, portraying all those who disagree with them as the prisoners of an old-fashioned framework,” her own ontological turn gives an appearance of incontestability to her agonistic vision. It makes those who dispute the propriety of radical contestation the prisoners of an illusion belied by “our very ontological condition.” What is this, if not a way of asserting that “reasonable” persons are those who accept the ontological fact that the social order is “forever” open to radical transformation?⁴⁵

One way to capture this problem is that, while Mouffe acknowledges that the value system one subscribes to is contestable, she sees no contestability in how one should approach one’s value system. She writes, for instance, that “a line should... be drawn between those who reject [a set of ethico-political] values outright and those who, while accepting them, fight for conflicting interpretations.”⁴⁶ What is missing in that sentence is a possible third party: those who, while accepting a society’s organizing principles, insist that their own perspective is beyond dispute. She is not denying that such people will exist, of course; much of her work is a polemic against thinkers and politicians who do exactly that. But she is promising that they would simply be wrong. Those who claim final insights in the necessity of things are being unreasonable. Mouffe criticizes Rawls, Habermas or Anthony Giddens for presenting partisans and ideologues as “fundamentalist[s] opposing the process of reflexive modernization,”⁴⁷ but these authors function as

⁴⁵ Martin Beckstein is a rare interpreter to capture this point when he faults Mouffe for using a depoliticizing strategy to defend the political. “She takes the quest of framing one’s partisan stance in a neutral language to its hilt,” he writes in “The Dissociative and Polemical Political: Chantal Mouffe and the Intellectual Heritage of Carl Schmitt,” *Journal of Political Ideologies* 16:1 (2011): 46-47. Yet Beckstein makes this point in the course of arguing that Mouffe has overdetermined the content of politics (I return to this accusation below). By contrast, this chapter’s aim is to consider why Mouffe frames the post-political outlook in this way given her commendable wariness of overdetermining the content of politics. Maintaining this balance is important to consider if concepts like imagination and articulation can be disentangled from ontological guarantees.

⁴⁶ Mouffe, *On the Political*, 121.

⁴⁷ *Ibid.* 55.

fundamentalist⁴⁸ figures in her own thought for refusing to accept the human condition.

This turn to ontology is common among radical democratic thinkers, even those (like her) who warn against it. In his review of Mouffe's *The Return of the Political*, William Connolly endorses her argument that every social unity is unstable, marked by "the fugitive experience of excess or fundamental difference," but he cautions that this thesis is merely an "article of faith" that "remains, like its competitors, a highly contestable rendering of the fundamentals of being," one that "we defend in competition with other fundamental perspectives (Christianity, rationalism, secular contractualism...)." "To insist otherwise," he warns, "is to offer an essentialist critique of 'essentialism'." Yet this caution is not followed by an explanation of how it changes the resulting politics. Connolly seems to think that, once he has granted that his view is just one perspective, he can rest his normative prescriptions on the gamble that it does reflect how the world really is. He writes that social movements and pluralization are possible "*given* the protean character of life" and as a result of the "existing energies" that are always already circulating. And his call for "acknowledg[ing]" abundance connotes a need to grant an ontological fact, rather than to imagine and persuade of a contestable thesis. Similarly, while Mouffe warns that "the search for 'guarantees' can lead to the very destruction of pluralist democracy,"⁴⁹ this antiessentialist point is undercut by her systematic diagnosis that social reality is "*essentially* unstable."⁵⁰ She may criticize the search for "a viewpoint standing above politics whence to formulate arguments... from which one could infer an obligation to pursue democratic politics," but she affirms

⁴⁸ Laclau and Mouffe go so far in denying their theses' contestability that they label those who "deny the radically open character of the social" as totalitarians (*Hegemony and Socialist Strategy*, 187). They cite Claude Lefort, who had defined totalitarianism as a "condensation... between the sphere of power, the sphere of law, and the sphere of knowledge," which is to say a situation in which "knowledge of the ultimate goals of society and of the norms which regulate social practices become the property of power." Claude Lefort, *Democracy and Political Theory*, trans. David Macey (Cambridge and Oxford: Polity Press, 1988), 11-13.

⁴⁹ William Connolly, "Twilight of the Idols," *Philosophy and Social Criticism* 21:3 (1995): 130-134.

⁵⁰ Mouffe, *The Return of the Political*, 78, emphases added.

exactly such an obligation, asserting for instance that her approach “*provides a guarantee* that the dynamics of the democratic process will be kept alive.”⁵¹

As such, Mouffe displays an aspiration to indeterminacy and contingency, but she is pulled back to offer ontological certainties that our social representations are always fundamentally indeterminate and contingent. This same dynamic exists in many radical democratic theorists. They valorize political judgment, highlight contingent practices associated with articulation or imagination, and trust people with shaping the meaning of their actions as part of their activism, but they also ground all of these innovations in a vitalist ontology that guarantees that political agency is always exercisable by all. For Badiou, for instance, an “ontology of the multiple” ensures that “there is no possible structural description of the cessation of politics.”⁵²

What explains this remarkable back-and-forth, this return to diagnosing guarantees that anchor political action? Relatedly, what are we to make of radical democratic theorists’ general obliviousness as to the tension between the two strands that they are employing? (For instance, in an essay that explores the radical democratic argument that every social representation leaves out a “heterogeneous” element, an essay published in a volume he co-edited to track radical democrats’ ontological frameworks, Lasse Thomassen concludes without batting an eye lid that this “is perhaps what radical democracy is about: politics without ultimate guarantees.”⁵³)

Obscuring the problem

It may seem that faulting Mouffe for guaranteeing that there are no guarantees is too clever by half. If anything, does this not make the lack of guarantees as to how one should act

⁵¹ Chantal Mouffe, “Decision Deliberation and Democratic Ethos,” *Philosophy Today* 41:1 (Spring 1997): 28.

⁵² Alain Badiou, “The Lessons of Jacques Rancière: Knowledge and Power after the Storm,” trans. Tzuchien Tho, in *Jacques Rancière: History, Politics, Aesthetics*, ed. Gabriel Rockhill and Philip Watts (Durham: Duke University Press, 2009), 46.

⁵³ Lasse Thomassen, “In/exclusions,” in *Radical Democracy: Politics Between Abundance and Lack*, ed. Lars Tønder and Lasse Thomassen (Manchester: Manchester University Press, 2005): 116.

more dizzying? Does it not confirm that radical democratic theorists value “a willingness to act in highly ambiguous circumstances,” as Connolly calls for?⁵⁴ This is what Oliver Marchart gets to when he writes that radical democrats’ ontology does not function as a “traditional *ontology*, in which the role of being was to provide us with a stable ground” but as “*hauntology*, where being is always out-of-joint, never fully present.”⁵⁵ But this is misleading. This “hauntology” provides a perfectly firm ground for the thing which radical democratic theorists are most concerned with protecting, namely the viability of political practice and democratic agency.

The diagnosis of a constitutive social indeterminacy has grown so familiar that its political function has been obscured. The reason I started this chapter by tracking Mouffe’s anxiety about depoliticization is that it makes this function more explicit in her work than in other theorists’. What this diagnosis renders ineliminable is the very thing that we are concretely experiencing as being in crisis: politics, specifically political action on behalf of alternatives.

The experience of uncertainty that we started with involved a concrete practical problem: Is the prevailing social organization changeable, and by whom? This is a crisis for those who hope to transform the social organization but are no longer driven by the certainty that history will move toward the alternative they are struggling for; it is a crisis for those who hope to challenge prevailing relations but occupy a place seen to lack the aptitudes necessary to mount such a challenge. The pervasive sense that things may be right, or at least too congealed to change is a powerful obstacle political action must struggle against. But once you lose sight of who concretely is experiencing uncertainty and under what conditions, once you thereby talk of indeterminacy in the abstract terms of a general absence of foundations, these categories take a different

⁵⁴ William Connolly, *The Augustinian Imperative: A Reflection on the Politics of Morality* (Oxford: Rowman & Littlefield Publishers, 2002), 158

⁵⁵ Oliver Marchart, “The Absence at the Heart of Presence,” in *Radical Democracy*, 18. The image of “haunting” evokes a threat that is simultaneously still-absent and already-felt. As such, it splits the difference between guaranteeing that political manifestations are always *possible* and that they are *inevitable* (see below).

form. What comes to appear indeterminate is no longer the propriety or viability of contesting the prevailing order; it is all of social reality. And if social reality is necessarily unstable, then the possibility of contesting its organization or representation (what was at issue to start with) comes to look guaranteed—an outright inversion of our starting point.

While a quest for guarantees is questionable enough for theorists who pride themselves on reveling in uncertainty, what is especially problematic about Mouffe's confident assertions is that they obscure the political problem she was alerting us to. By turning to ontology to resolve doubts about the viability and propriety of political interventions, she sidelines the decisive question that her own analyses had initially appeared so attuned to: How can one act when one is facing perplexity and doubts—from both oneself and others—as to what one's acts are even good for? Confronting depoliticization should mean responding to the concern that history may have ended, but Mouffe starts from the premise that history is “forever” open. She takes as always already settled the question of whether a given social organization can be contested (it always can), whether it is in some way oppressive (it always is), or whether its norms or principles enjoy a transcendental grounding (they never do). Precisely what was most interesting about her attunement to political perplexity has been thrust aside by the comforting thought that attempts to eliminate the political are always already certain to run against the way world is and be undone. Philosophy has rushed in to dispel the concern over the viability of alternatives.

The preface to the 2001 edition of *Hegemony and Socialist Strategy* contains a particularly explicit moment in which Mouffe and Laclau turn to ontology to foreclose political doubts. As I explained above, this preface is concerned with the sense of a lack of alternatives. Yet the authors suddenly ask, “How—to repeat our transcendental question—does a relation between entities have to be, for a hegemonic relation to become possible?” Their answer is striking. “If a rela-

tion of hegemonic representation is to be possible, its ontological status has to be defined.” It is to reach such a definition that they then turn (in this text, but also more generally in all of their writings) to post-structuralism, deconstructionism and psychoanalysis, movements from which they draw arguments such as “undecidables permeate the field which had previously been seen as governed by structural determination.”⁵⁶ But these pages betray an obvious problem. It is one thing to use a transcendental argument to identify the conditions of possibility of something whose existence one can take as given, as Kant did in his first *Critique*; it is quite another to take a practice whose possibility is experienced as uncertain and then claim that its conditions of possibility are given for no other reason than that we want the practice they condition to exist.

Mouffe and Laclau had used the same flawed strategy in the original text of *Hegemony and Socialist Strategy*. Despite their historical attention to the 19th-century Marxist crisis, the book’s theoretical chapters bear no trace of the idea that the political is needed because it is uncertain whether the existing order can be overcome. This has been replaced by the idea that the political is possible because the existing order *is* certain to be unstable. “If contingency and articulation are possible, this is *because* no discursive formation is a sutured totality and the transformation of the elements into moments is never complete.” Rather than a practice that works to unsuture the discursive formation, or to present it as unsutured, politics becomes a mere “witness of the impossibility of a final suture.”⁵⁷ By ensuring that all representations and institutions are in the throes of an organic crisis, Mouffe and Laclau have shed their concern over the first crisis, the one over the viability of alternatives and the propriety of contestation. Their talk of “our on-

⁵⁶ Laclau and Mouffe, *Hegemony and Socialist Strategy*, x-xi.

⁵⁷ They similarly write that the possibility of articulation “*proceeds from* the openness of the social, *a result, in its turn*, of the constant overflowing of every discourse by the infinite of the field of discursivity.” (Laclau and Mouffe, *Hegemony and Socialist Strategy*, 106-107, 113, and 125, emphasis added.) Laclau’s solo writings contain the same language: “Freedom exists *because* society does not achieve constitution as a structural objective order,” in *New Reflections on the Revolution of our Time* (London: Verso, 1990), 44, emphasis added.

tological condition” is meant to reassure us—and them—that the conditions of possibility of radical agency are already fulfilled.

To be sure, there is a commendable impulse underlying this quest to secure the agency of marginalized agents. When Lois McNay faults Mouffe for privileging the “fundamental contingency of social existence” to establish with certainty that the dominated will resist, her disdain for the “weightless” expediency of Mouffe’s strategy may seem to echo my present concerns. But McNay takes issue with Mouffe’s ontological certainties in the name of Pierre Bourdieu’s inverse “ontology of complicity,” according to which power shapes “embodied experience” so as to “prevent” the “powerless... from acting in their own interests” and exercising agency. What she finds lacking in Mouffe is a “negative sociological scrutiny” with which to track cases where the “social conditions necessary to realize effectively agonistic agency” are missing.⁵⁸ In other words, she faults Mouffe for not using social analysis to identify the weighty situations in which the dominated are constrained to act in a manner that reproduces the order that shapes them. Sociology may not say that things are as they *should* be, but it can determine that they are the only way they *can* be as far as dominated subjects can help it. This is another aspect of the broader perspective Mouffe rightly objects to, another way of prejudging the limits of agency before any practice is enacted. While Mouffe’s usual adversaries disqualify people’s agency in the name of a depoliticized adjudication of what is proper for them to do, this “ontology of complicity” produces an expectation that members of oppressed groups are too poor, too ignorant, too dominated to effectively resist or protest. And the disqualifying certainties that accompany diagnoses of domination are just as worth questioning as those that accompany depoliticized outlooks.

⁵⁸ McNay cites Bourdieu and Lois Wacquant’s point that, “The analysis of the doxic acceptance of the world, due to the immediate agreement of objective structure and cognitive structures, is the true foundation of a realistic theory of domination and politics. Of all the forms of ‘hidden persuasion,’ the most implacable is the one exerted, quite simply, by the *order of things*.” Quoted in Lois McNay, *The Misguided Search for the Political* (Cambridge: Polity, 2014), 36. For the other cited passages, see pages 69 and 96-97.

The problem is that Mouffe questions such perspectives by adopting the same theoretical program as them. She, like them, involves philosophy in the business of determining whether marginalized subjects have the capacity to exercise the democratic tasks they are disqualified from. The conclusion she draws is admittedly the polar opposite of theirs since, faced with the claim that the conditions for political agency are lacking for some individuals in some circumstances, her solution is to guarantee that these conditions are always in place. But she retains the idea that philosophy can and should (1) determine the conditions that must be fulfilled for political agency to be exercisable, and (2) adjudicate whether these conditions are in fact fulfilled.

Mouffe writes as though alternatives really would be foreclosed and marginalized groups really would be powerless to challenge their exclusion unless philosophy could guarantee that such scenarios cannot come to pass. She may think she is true to Connolly's call for a "willingness to act" in "ambiguous circumstances," but she does not consider what such willingness looks like when what is experienced as ambiguous is *whether* there can be any radical transformation or political struggle at all, rather than what identity people should construct or what they should demand *when* they act politically. Could political practices really not proceed absent a prior certainty that it is worth working for a new world and that the people who are doing so are capable of designing it and advocating for it?

In fact, the concrete predicament generated by depoliticization would only grow more dire if Mouffe were right that the exercise of political agency needs to reflect such certainty since, by her own account, our world is marked by doubts about popular capacities and by an "awareness of opacity." What makes these doubts so important to scrutinize is that they are not obviously wrong. Mouffe leans on her ontological trump card to sidestep the question of how denials of agency can be challenged not just on (the theorist's) paper but also in (political) prac-

tice. But given how compelling such denials often seem (compelling enough, according to Mouffe herself, to spark a crisis in the left and spread the sense that neoliberalism is the only game in town), how useful can that trump card really be?

As I suggested above, Mouffe does gesture toward some promising tools with which to think about how radical agency may arise. Taken on its own, her statement that “every hegemonic order can be challenged by counter-hegemonic practices, which attempt to disarticulate the existing order so as to establish another form of hegemony”⁵⁹ provides a path to think about how one may respond to the sense that opportunities for political contestation and contingent variation have narrowed or disappeared. Indeed, by itself it is consistent with the idea that articulatory practices are needed precisely because the logic of necessity often strikes us as being right; by itself it suggests that articulatory practices are responsible for generating a sense that alternative social representations are viable so as to challenge the view that none is. Hence the Marxist figures she praises devised concepts with which to portray the social order as susceptible to political change because they had to defeat the logic of necessity they were confronting, and not because it was clear that that logic was baseless. But Mouffe goes on to foreground the structural necessity of the alternative hegemony counter-hegemonic practices construct. This affects the project she sets herself. When she writes that imagination and articulation are useful practices *because* the prevailing order is open to being challenged or transformed, she does not consider that they may first be needed to persuade oneself and others of this prospect and to construct a sense in which the social order is open to a viable challenge, let alone a challenge from subjects who appear too dominated or epistemically deficient to mount a credible one.

Had Mouffe taken the risk of not deploying a comforting ontology—had she allowed that

⁵⁹ Mouffe, *Agonistics*, 143.

the matter of who enjoys what agency may call for political demonstrations or experimental responses, rather than accepting that it can and should be theoretically adjudicated—she would have had to explore how people act when their aptitude to do so is disputed and uncertain. She would have had to think about how they present the reasonableness of their practices and projects. She would have had to consider that their disqualification’s wrongness is something people have to imagine, make sense of, and argue for as part of their political work.

I have heretofore explained the first problem with Mouffe’s guarantee that political agency is ineliminable: It distracts from the actual problem faced by people who are disqualified. A second, related problem is that she misdiagnoses the position of the people doing the disqualifying. She makes them hold a more ridiculous position than they need to be—namely, that there are no exclusions—in order to portray them as naive denialists of the human condition.

Mouffe’s ontology rebuts those who deny the existence of any exclusions and who insist that something about the status quo is beyond political disturbance. But those are quite obviously not the stakes. To hold an antipolitical position, one does not have to deny that one is disqualifying others’ voices, nor the possibility of disturbances. For one, disqualifying others is something that one often rationalizes; and as I explained in my dissertation’s introduction, a disqualifying outlook can even take the guise of a respectful attitude. Moreover, the occurrence of disturbances can get rationalized as further evidence of the need to protect the order; this is the point that I made in my second chapter regarding manifestations of literarity. The belief that a reality *should* not be contested is perfectly consistent with the view that some people—unreasonable, ignorant, ideological people—will not accept this, stuck as they are in the Platonic cave.

Mouffe criticizes proponents of antipolitics for imagining a society from which “exclusions, so to speak, disappear.” But her own language consistently attests that this position just

cannot be her foil. Whenever she examines particular contexts or thinkers she herself must grant that what is actually at stake is that they “*justify* those exclusions.”⁶⁰ She says that those who negate the political are daily “bewilder[ed] in the face of its manifestations,” but she herself immediately grants that technocrats who dislike popular outbursts have no problem dressing them down as “a new upsurge of the archaic.” The rise of populist parties may have “confounded liberal theorists and commentators alike,” but they are easily accounted for as “some kind of moral disease,” which in turn strengthens mainstream parties’ identity as “good democrats.” And while terrorism may “shatte[r] the illusions of the universalist humanitarians,” it is just as likely to confirm their sense of fighting a righteous crusade.⁶¹

What is at issue in situations of domination or depoliticization is not the simple fact of disqualification but its rationalization. To view a society as “fully sutured” may indeed entail a set of repressions, but what makes that view credible is that these repressions may appear justified. You have biased the argument in favor of the inevitability of eruptions as soon as you define the social order as *that thing* which owes its coherence to the exclusion or neglect of alternatives. It is more relevant to the (hard) problem at hand to take the object of inquiry to be the set of expectations that make exclusions and disqualifications look appropriate. In other words, a society is best characterized by the rationalizations it owns up to than the exclusions it does not account for. I develop this point at greater length in my next chapter. For now, what matters is that the question that we should confront is not *whether some positions are disqualified*, but *whether the rationalization of a given disqualification is appropriate*. On this the political’s vengeful outbursts tell us little. They testify to the existence of an exclusion, not to its propriety.

⁶⁰ Lynn Worsham and Gary A. Olson, interview with Chantal Mouffe, “Rethinking political community,” *JAC* 19:2 (1999): 170 and *The Return of the Political*, 142.

⁶¹ Mouffe, *The Return of the Political*, 76, 140, 142, and *On the Political*, 64, 76 and 83.

To the extent that Mouffe does take on exclusions in their justified appearance, she faults antipolitical thinkers like Rawls for not acknowledging that justifications will always be contestable. But that argument is circular. Promising that one can contest the propriety of one's exclusion requires dismissing *a priori* the possibility that this exclusion is appropriate. This gets us back to the first problem I outlined. It resolves the problem at hand—that, in any given moment, marginalized subjects face doubts as to whether they retain agency and capabilities—by simply dissolving it. Again, we are left with no sense of what one can do when the answers as to one's capabilities are not quite as certain as Mouffe makes them out to be.

II. Radical difference, radical reciprocity: An impoverished range of political practices

I have for now remained vague on the ontology Mouffe deploys because I did not want to make my argument so specific to her terms as to lose sight of her commonality with other radical democrats. Indeed, different thinkers articulate their own ontologies in distinct if not incompatible ways. But at bottom these share the same basic form. A recent anthology identified as “common to radical democratic thought as a whole” the basic claim “that there is always some difference escaping subsumption to identity or to any simple dichotomy between identity and difference.”⁶² Put in a way that captures the different versions the paradigm of radical difference takes, the basic idea is that there is always something in the world that is not accounted for by social representations, discourses and classifications. There is always a “remainder” that is heterogeneous to them—that “haunts” them, to use a ubiquitous term in the radical democratic literature⁶³—

⁶² Lars Tønder and Lasse Thomassen, “Rethinking Radical Democracy Between Abundance and Lack,” in *Radical Democracy*, 1.

⁶³ I already mentioned that Oliver Marchart characterizes radical democratic ontology as a “hauntology.” This metaphor is omnipresent in the radical democratic literature. For instance, Alain Badiou recently asked “Why does the spectre of May 68 still haunt French discourse?” to rebuff what he saw as President Nicolas Sarkozy’s “refus[al] to be haunted by anything at all.” Bonnie Honig talks of the “undone oughts that haunt political life,” while Ramond Coles talks of “haunting” “background depths.” Alain Badiou, “The Communist Hypothesis,” *New Left Review* 49 (2008), Gary Browning, “An Interview with Bonnie Honig,” *Contemporary Political The-*

and that is thereby available as a starting-point to make something new visible and to unsettle the prevailing order. This is why there can be no “cessation of politics” for Badiou, this is why “other worlds are always possible” for Mouffe, this is why “I am condemned to be free” for Laclau.⁶⁴

Commentators have parsed out radical democratic theorists into different strands, and there is much to gain in studying variations between Mouffe, Connolly, Badiou, Tully, Laclau, or Honig.⁶⁵ But what is then missed is how thoroughly the starting assumption these thinkers share—the framework of heterogeneity—structures their subsequent disagreements.

In particular, a contrast is commonly drawn within radical democratic theory between those who call for a constant struggle on behalf of the always already excluded remainder, and those for whom pluralist institutions may provide a lasting antidote against unjust exclusions. The implication is that the latter have endorsed “the possibility of constructing social structures that are not inevitably unjust.”⁶⁶ Mouffe is associated with both sides of this divide in light of the apparent change her thought undergoes from her earlier post-Marxism to her later agonism. But as I will now show the contrast between these threads is not reflective of different understandings of the political, nor is it a sign that some radical democratic theories have abandoned ontology. Rather, these are the two exclusive and complementary paths that a belief in the necessity of a heterogeneous element permits. A problem with ontologizing contingency, then, is that it leaves no exit from the framework of mutuality: It subordinates the prospect of pluralistic or in-

ory 7:4 (2008): 436, Romand Coles, “The Wild Patience of Radical Democracy,” in *Radical Democracy*, 77.

⁶⁴ Badiou, “The Lesson of Jacques Rancière,” 46; Mouffe, *Agonistics*, 143; and Laclau, *New Reflections*, 46.

⁶⁵ See Edward C. Wingenbach, *Institutional Agonistic Democracy* (London: Routledge, 2013), Chapter 3, Andrew Schaap, “Introduction” to *Law and Agonistic Politics*, ed. Andrew Schaap (London: Routledge, 2009); Mark Wenman, “Agonistic Pluralism and Three Archetypal Forms of Politics,” *Contemporary Political Theory* 2 (2003): 165-186; Tønder and Thomassen, “Rethinking Radical Democracy,” 1-13. On the specific differences between Mouffe and Laclau, see Mark Wenman, “Laclau or Mouffe? Splitting the difference,” *Philosophy and Social Criticism* 29:5 (2003): 581-606.

⁶⁶ That is how Edward Wingenbach characterizes “pluralist agonism,” which he opposes to the “agonism of resistance.” Wingenbach, *Institutional Agonistic Democracy*, 42.

stitutionally-minded practices to the social system acknowledging the wrong it is bound to always already be committing, and it otherwise only allows negative (populist) forms of action.

Ontological truisms

To reject “every type of fixity, through an affirmation of the incomplete, open and politically negotiable character of every identity” does not mean that there can be no identities, value systems or group belongings. It only means that such social forms inevitably involve exclusions. (This is what Seyla Benhabib calls, somewhat critically, the “ontological truism” that every “system of membership” rests on a logic of exclusion.⁶⁷) Specifically, there are two sets of reasons that lead Mouffe to conclude that “there is always something that has been excluded.”⁶⁸

The first reason has to do with contingency. For Mouffe, reality does not contain essential features that determine how we should perceive it; making sense of the world involves fitting its disparate elements into concepts and objects in a thoroughly contingent manner. She and Laclau illustrate this point by pointing to earthquakes, noting that it “depends upon the structuring of a discursive field” whether they are perceived to be natural phenomena or expressions of God’s wrath. Discourses shapes how we “constitut[e earthquakes] as objects,” how we provide them with the meaning we collectively ascribe to them, and how we relate earthquakes to other elements (e.g. other geological phenomena) that make them intelligible as part of a larger order of things.⁶⁹ Mouffe and Laclau deduce from this analysis the further point that all social categories have a “discursive exterior.”⁷⁰ This means two things, both of which are captured by Mouffe’s assertion that “every consensus appears as a stabilization of something essentially unstable and

⁶⁷ Seyla Benhabib, *Another Cosmopolitanism*, ed. Robert Post (Oxford: Oxford University Press, 2006), 162.

⁶⁸ Nico Carpentier and Bart Cammaerts, “Hegemony, Democracy, Agonism and Journalism: an Interview with Chantal Mouffe,” *Journalism Studies* 7.6 (2006): 967.

⁶⁹ Mouffe and Laclau, *Hegemony and Socialist Strategy*, 108.

⁷⁰ *Ibid.* 111.

chaotic.”⁷¹ For one, no consensus can exhaust the possible meanings of the worldly elements it combines; if a truth comes from imposing an arbitrary form on chaos, then it could always be otherwise.⁷² Moreover, no consensus can account for all of the elements it is meant to organize. Anne Marie Smith explains that, “Theoretical models never correspond perfectly to the concrete world; there will always be some element of materiality that exceeds our theoretical grasp, for the real ultimately cannot be reduced to the concrete.”⁷³ Hence the pretention to authoritatively describe the world is bound to run into the ontological fact that “contingency always threatens to interrupt even the most institutionalized social order.”⁷⁴

The second reason has to do with antagonism. “There is always something that has been excluded,” not just because a discursive formation is bound to foreclose alternatives or forget elements (contingency), but also because it derives unity by defining itself *against* something. Like other thinkers within the continental tradition, Mouffe calls this something—this Other, this “they”—a “constitutive outside.”⁷⁵ The idea is that “we” owe our coherence to our *equivalent* relationship to an object that “we” all consider to be *different* than ourselves. Yet this exclusion can never be justified since it is what makes possible the very existence of terms and criteria by which “we” are in a position to justify something. Hence the pretention to authoritatively describe the world is bound to run into this second ontological fact that the seed of antagonism is

⁷¹ Mouffe, *The Democratic Paradox*, 136.

⁷² In the language of *Hegemony and Socialist Strategy*, “The transition from elements to moments can never be complete” (113). The implication is that a social objectivity owes its hegemonic character to excluding alternative ways of making sense of the world. It always “constitutes its own forms of rationality and intelligibility... by expelling outside itself any surplus of meaning subverting it.” Ibid. 137.

⁷³ Smith, *Laclau and Mouffe*, 60.

⁷⁴ Ibid. 61.

⁷⁵ Mouffe is here drawing from Hegelian language (she writes that, “The perception of something ‘Other’... is a precondition for the existence of any identity,” in “Decision Deliberation and Democratic Ethos,” 26) and from Carl Schmitt’s account of enmity. She writes that, “To construct a ‘we’ it must be distinguished from the ‘them,’ and that means establishing a frontier, defining an ‘enemy,’” in *The Return of the Political*, 69. Note that Laclau is keen on the idea of antagonistic in his solo writings as well; he writes for instance that, “Social coherence will only be achieved at the cost of repressing something that negates it” (*New Reflections*, 172).

ineradicable in the construction and maintenance of any social order.

(Other theorists who argue that society necessarily neglects something that is heterogeneous to itself—Badiou, Young, Connolly, or Judith Butler—also draw on each of these two strands. They propose arguments to the effect that no unity can be constituted out of multiplicity, and they emphasize the antagonistic dimension of a “constitutive outside.”⁷⁶)

This chapter’s first half unearthed Mouffe’s guarantee that every order is “forever... open to challenge.” I have now grasped the grounds for this guarantee, so I can examine what sort of eternal challenge it is meant to enable. What politics follows from the fact that “there is always something that has been excluded?” What would happen if answers *were* that clear?

The specter of populism: Politicized points of rupture and the negation of order

There is an easy way to critique Mouffe and other radical democratic theorists who deploy this ontology of heterogeneity. It goes something like this: If they are so certain that something is improperly excluded, then they must go on to conclude that there are specific groups or entities that are repressed in a given situation. They are thereby still guilty of specifying privileged positions and denying a role for contingent judgment. If this were indeed Mouffe’s point, it would considerably ease my own argument that guaranteeing constitutive heterogeneity impoverishes the range of thinkable political practices. Indeed, the social struggle that would follow

⁷⁶ Iris Marion Young, for instance, argues that identity is achieved “at the expense of an expelled, unaccounted... Because the totalizing movement always leaves a remainder, the project of reducing particulars to a unity must fail” (in *Justice and the Politics of Difference*, 99). For Badiou, any multiplicity’s “count as one” is incoherent. Indeed, “situations are nothing more, in their being, than pure indifferent multiplicities,” so a situation’s “counting as one” entails an operation not contained in the situation. Badiou writes that, “a fundamental datum of ontology is that the state of the situation always exceeds the situation itself,” which guarantees the existence of a “dysfunction” or “void” that the event “reveals.” See Alain Badiou, *Metapolitics*, trans. Jason Barker (London: Verso, 2005), 119 and 144, and *Being and Event*, trans. Olivier Feltham (New York: Continuum, 2005), xii. For Connolly, there is an “excess of life over identity” because “the superabundance of life will always exceed our attempts to subdue its vast difference and variety in the form of stable and enduring identities.” William Connolly, “Beyond Good and Evil,” *Political Theory*, 21:3 (1993): 371. See also Judith Butler, *Bodies that Matter* (New York: Routledge, 1993), 188.

from such an account would be the familiar narrative that whatever element is oppressed in a given context will mature to the point of triggering a ruptural or eventual social transformation.⁷⁷

Yet the fact that Mouffe's (and Laclau's) promise to suspend certainty works side by side with a guarantee that every social order is undone by remainders does not mean that we can simply ignore this promise and focus only on this guarantee. Many interpreters avoid the interpretive task of balancing these two threads by reading Mouffe as though she was only pursuing the latter. They neglect her drive to politicize and read her to be saying that every society has a constitutive outside whose content is specifiable prepolitically, e.g. that the identity of the wronged group is not a contingent matter in need of articulation.⁷⁸ The problem is that leaving it at this ignores most of what I have explained is original in her thought, namely her attempt to grapple with the failure of the dialectic by turning from the comfort of ascertainable contradictions to political articulation. We cannot simply cast aside Mouffe's critique of social necessity.⁷⁹

⁷⁷ Diane Davis gets to this narrative in her comments on Mouffe when she talks of the "continual conflict" by which "hegemonies (temporary consensus blocs) rise up, get challenged by the voices they exclude, and give way to future hegemonies, which will constitute different exclusions/excretions." Diane D. Davis, "Agonizing [With] Chantal Mouffe," *JAC* 19:3 (1999): 469.

⁷⁸ For Arash Abizadeh, Mouffe's "enemy is supposed to consist in an empirically specifiable group(s) of actually existing concrete individuals." Matthias Fritsch shares this reading; he is concerned that "the precedence of the other as already concretely existing allows the self to emerge in a passive exposure to a given other," rather than in a moment of political decision as Mouffe had promised. Arash Abizadeh, "Does Collective Identity Presuppose an Other?" *American Political Science Review* 99:1 (2005): 55, and Matthias Fritsch, "Antagonism and Democratic Citizenship," *Research in Phenomenology* 38:2 (2008): 187.

A related accusation is that Mouffe is guilty of anthropomorphism, that she believes that those figured as the constitutive outside are necessarily "concrete human beings." Abizadeh and Beckstein contend, allegedly *contra* her, that it is possible for the "excluded to be non-human," for instance by being conceived "imaginatively and temporally" (Abizadeh, "Does Collective Identity Presuppose an Other?," 58; see also Beckstein, "The Dissociative and Polemical Political, 42-44). But I simply do not see why Mouffe would not to deny this. All that the remainder provides Mouffe is a structurally antagonistic position. People must still give meaning to it through articulatory practices. It makes no difference to Mouffe's aims if a given society has articulated itself in opposition to a nonhuman category, to a time period or, as Honig puts it, "to those parts of all person that are ill fitted to dominant norms and forms of subjectivity" (Browning, "An Interview with Bonnie Honig," 46). These can all function as a ground for human subjects to occupy.

⁷⁹ It is true that Abizadeh or Beckstein are not reading Mouffe to be saying that the negated subjectivity is *theoretically* specifiable, but only "*empirically* specifiable" (which is to say that it could be established through concrete sociological scrutiny of a given situation). Yet Mouffe explicitly rejects either possibility of ascertaining the identity of the heterogeneous element. She and Laclau differentiate antagonism not just from "logical

(It is all the more surprising that some ignore this side of the equation given the criticism Mouffe has received for throwing politics into “relativistic doom” by uprooting crises from criteria with which to diagnoses them.⁸⁰) The challenge is to consider how she means to fit together the two halves of her framework. For instance, how does she understand her assertion that “there is always something that needs to be oppressed” to work alongside her view only practices of articulation and imagination can transform “relations of subordination” into “forms of oppression?”

This is an important question to consider because we need to isolate the problems that accompany the old theoretical ambition of *specifying the content of political action* from the problems that accompany Mouffe’s watered-down ambition of *foregrounding political agency*. In fact, faulting Mouffe for doing the former instead of identifying the issues of doing just the latter risks encouraging the idea that theoretical guarantees would be useful if only inalienably capable actors were trusted with the task of shaping the direction of their own action.

Thus in what follows I explain (1) how Mouffe’s ontology ensures *that* a crisis is always already available as a starting-point for action without addressing the question of *what* that crisis is, and (2) why even that partially-politicized ontology constrains democratic possibilities.

A central claim for Laclau and Mouffe is that a radical difference is nothing but an entity’s lack. Their argument is that an entity constitutes its unity in opposition to an outside, but that outside could not fulfill such a constitutive role if its exclusion could be accounted for within the

contradiction” but also from “real opposition” (Laclau and Mouffe, *Hegemony and Socialist Strategy*, 123-124). Here I agree with Allen Hunter that “in effect they collapse the practical into the ontological, rejecting the possibility that conditions ever exist under which privileged subjects in the ‘practical sense’ may emerge.” Allen Hunter, “Post-Marxism and the New Social Movements,” *Theory and Society* 17:6 (1988): 889.

⁸⁰ In reviewing *Hegemony and Socialist Strategy*, Geras talks of “bottomless, relativist gloom,” Dallmayr of a “flavor of voluntarism,” and Osborne of “radicalism without limits.” What these critics are uncomfortable with specifically is the “indeterminacy of direction.” Geras, “Post-Marxism?” 67, Fred Dallmayr, “Hegemony and Democracy,” *Philosophy and Social Criticism* 13:3 (1987): 27, Peter Osborne, “Radicalism Without Limits?,” in *Socialism and the Limits of Liberalism*, ed. Peter Osborne (London and New York: Verso, 1991): 201-225. In light of these critiques, it is fascinating to see that Laclau and Mouffe are prone to similar anxieties, and that they end up grounding their groundless politics on the social world’s “essential” contingency.

terms of what it is excluded from; if it could, it would just be another differential moment, another part of the prevailing order. So if what is beyond “cannot consist in something positive—in a new difference—then the only possibility is that it will consist in something negative,” i.e. the system “constructs what is beyond the limits as that which it is not.”⁸¹ In other words, the excluded element is emptied of all positive specification. It is only what negates the order. This is why no particular identity or demand is inherently wronged, just as there is nothing “absolutely radical and irrecoverable by the dominant order.”⁸² Hence the reading of Mouffe according to which the content of the heterogeneous element can be specified prior to politics falls short.⁸³ Mouffe argues that all particulars are recuperable. Therefore, the only thing that can never be absorbed is the structural position of a beyond; *Hegemony and Socialist Strategy* calls this a society’s “point of rupture,” that which signifies what society is not.⁸⁴ Put otherwise, the thing whose exclusion enables a social formation’s construction is nothing but its contingency and antagonism, and the “repress[ed] consciousness”⁸⁵ thereof.

This view ensures the availability of a heterogeneous element while denying the possibility of identifying what that element is. It retains the *prepolitical* determination that social struc-

⁸¹ Laclau and Mouffe, *Hegemony and Socialist Strategy*, 143.

⁸² Mouffe and Laclau are not denying that the constitutive outside must be a particular, but that the “ontological function” that this particular object assumes “far exceeds its ontic content” (Laclau, “The Future of Radical Democracy,” in *Radical Democracy*, 258).

⁸³ What are we to make, then, of the passages Abizadeh and Fritsch point to in arguing that, for Mouffe, a society’s constitutive outside is empirically specifiable? The first problem with their interpretation is that they accuse her of overspecifying the other because they read her to be saying that that political occurs only *after* society has drawn frontiers. But Mouffe is clear that the drawing of frontiers is not a prelude to the political; it itself is an undecidable political operation. Mouffe criticizes Schmitt for making the friend/enemy distinction merely “a recognition of already-existing borders” (*The Return of the Political*, 69). Does this at least mean that the constitutive outside can be identified after the frontiers have been drawn? Even that is not so clear. A vulnerable system constitutes itself in explicit opposition to what negates it, but it otherwise presents itself as totality with no remainders (this is the “logic of difference”). While this is an illusion since even such a system “bears the traces of the acts of exclusion which govern its constitution,” those “traces” only provide a structural position from which a new subjectivity must still be articulated. (This draws on Anne Marie Smith’s fruitful distinction between a *structural* position and a *subject* position in Smith, *Laclau and Mouffe*, 57-58).

⁸⁴ *Ibid.* 55 and 87.

⁸⁵ Laclau and Mouffe, *Hegemony and Socialist Strategy*, 125.

tures are bound to be in crisis while thoroughly *politicizing* what that crisis and where it is located. That is the best philosophy can do; the rest is up to political practice.

But I believe that this is already too much for philosophy to have done. This view does represent a major twist on thinkers who diagnose constitutive contradictions without even politicizing their *content*—a point to which I have just tried to do justice—but it still overdetermines the *type* of practice that political actors should privilege. Indeed, if political agency is conditioned on the social order’s ineradicable lack—if “what allows the forms of resistance to assume the character of collective struggles is the existence of an external discourse which impedes the stabilization of subordination as difference”—then politics acquires a specific task: to give meaning to that heterogeneity, to make sense of it in some way.⁸⁶ As such, even we read Mouffe and Laclau as giving the ontology of heterogeneity a commendably politicized form (even if we read them to be insisting that it is up to people to invest and shape the point of rupture whose availability they have guaranteed), securing even just this formal condition for agency leads to an unadvised narrowing of the range of desirable practices disqualified subjects can and should enact. It forces challenges to one’s disqualification to take a negative form.

What I mean by “negative” encompasses but also expands the point made by other critics of radical democracy, which is that thinkers who assert that every attempt to order the world is undone by a heterogeneous remainder are likely to collapse political contestation into disruption.⁸⁷ On the one hand, it is justified to expect such a collapse from Mouffe. If every social structure is contradicted by a thing it cannot account for, it seems logical to conclude that this remainder represents first and foremost a threat to order itself. This is the perspective espoused

⁸⁶ Ibid. 159. Tønder and Thomassen describe this as the “continuous reoccupation of the lack” in “Rethinking Radical Democracy Between Abundance and Lack,” 5.

⁸⁷ See for instance Norval, *Aversive Democracy*, 12.

by philosophers who hinge their politics on a dichotomous pair of concepts such as life versus institution, energy versus structure, the new versus the normalized, matter versus form, the real versus the symbolic. The idea is that the second concept in each pair (say, *form*) attempts to systematize the world by eliminating from it the first concept (say, *matter*), but that the fact of contingency and/or antagonism⁸⁸ make this elimination impossible. Institutions, structures, forms always faces the explosive return of life, energies, matter.

The paradigmatic example of this view may be Schmitt's assertion that "in the exception the power of real life breaks through the crust of a mechanism that has become torpid by repetition."⁸⁹ There is an echo of Schmitt in Connolly's point that "'life,' and other terms of its type, functions as an indispensable, nonfixable marker, challenging every attempt to treat a concept, settlement, or principle as complete, without surplus or resistance."⁹⁰ (Connolly draws this from Nietzsche, as does Honig.⁹¹) There is a similar echo in Foucault's distinction between the "principles of their regularity" that a discourse imposes on things and "everything that could possibly

⁸⁸ I wrote "and/or" to rebut the view that thinkers who emphasize antagonism are more prone to disruption than those who emphasize contingency. In their introduction to the anthology *Radical Democracy*, Tønder and Thomassen differentiate an ontology of *lack* from an ontology of *abundance*, and they argue that the latter is more conducive to pluralization. But I think this contrast is too stark. To talk of abundance—as Connolly does when he emphasizes the "excess of life over identity" and the "superabundance of life"—also paves the way for a politics in which multiplicity continually disrupts social entities: Connolly's view that "energies and forces exceeding the social construction of subjects and things circulate through 'gaps' in these institutionalizations" leads him to assert that "surprising events of multiple sorts periodically burst forth [and] a fundamental diversity of beings keeps blooming and surging forth on its own." Connolly, "Beyond Good and Evil," 371 and 377; Morton Schoolman and David Campbell, "An Interview with William Connolly," in *The New Pluralism*, ed. Campbell and Schoolman (Durham: Duke University Press Books, 2008), 315.

⁸⁹ Carl Schmitt, *Political Theology*, trans. George Schwab (Chicago: University of Chicago Press, 2006), 15. See Andreas Kalyvas, "Carl Schmitt and the Three Moments of Democracy," *Cardozo Law Review*, 21:5-6 (1999) for the use of this idea within democratic theory.

⁹⁰ Connolly, "Beyond Good and Evil," 371.

⁹¹ Honig draws on Nietzsche in elaborating her distinction between virtue and virtù in *Political Theory and the Displacement of Politics* (Ithaca: Cornell University Press, 1993). She also attributes a diagnosis of remainders to Nietzsche in Browning, "An Interview with Bonnie Honig," 434. This raises the question of whether it is accurate to read Nietzsche as affirming the inexhaustibility of multiplicity and the impossibility of closure; Robert Gooding-Williams has suggested in conversation that Nietzsche's later works may be a sign it is not.

be violent, discontinuous, querulous, disordered even and perilous in it;”⁹² this distinction explains the widespread reading of Foucaultian resistance as an “eruptiv[e]” practice.⁹³ All in all, my point is that an ontology of heterogeneity leads its adopters to (1) guarantee that political agency cannot be eliminated, *and* (2) that political agency is necessarily opposed to institutions and rule, so that it consists in a practice of unsettling disturbance. For instance, Sheldon Wolin’s view that democracy is “devitalized by form” leads him (1) to affirm “the political potentialities of ordinary citizens”, and therefore (2) to conceptualize democracy as a series of “transgressive acts” that cannot survive the moment of “institutionalization of politics.”⁹⁴

At times, Mouffe does use “the political” as synonymous with disruption, defining it as what upsets the illusory sense that a social order has firm foundations. She warns that social structures that negate the remainders they generate are “condemn[ed]... to perpetual irrelevance” as “the political becomes [their] underthought and repressed side;” people will “vent their anger against such a post-political situation.”⁹⁵ One of her books is entitled *The Return of the Political*—an expression whose connotation of pathological disruption is hard to ignore.⁹⁶

But Mouffe is typically careful to distinguish what she means by radical democratic action from disruption. In *Agonistics*, she criticizes fellow radical democratic theorists because

⁹² Michel Foucault, “The Discourse on Language,” in *Critical Theory since 1965*, ed. Hazard Adams and Leroy Searle (The University of Florida Press, 1986), 158. Leslie Paul Thiele works out the importance of Foucault’s binary between systematization and creativity, and shows that it constitutes Foucaultian politics as one of “joyful, polymorphous, unhierarchical, creative, and self-constituting engagement,” in “The Agony of Politics: The Nietzschean Roots of Foucault’s Thought,” *American Political Science Review* 84:3 (1990): 920.

⁹³ Edward Said, “Michel Foucault, 1926-1984,” in *After Foucault*, ed. Jonathan Arc (New Brunswick and London: Rutgers University Press, 1988), 4.

⁹⁴ Sheldon Wolin, “Fugitive Democracy,” in *Democracy and Difference*, ed. Seyla Benhabib (Princeton: Princeton University Press, 1996), 31, 38-39.

⁹⁵ Mouffe, *The Democratic Paradox*, 31, “Democracy, Power, and the ‘Political,’” in *Democracy and Difference* and Mouffe, *Agonistics*, 120. Alan Keenan faults her for neglecting the need for closure in *Democracy in Question* (Stanford: Stanford University Press, 2003).

⁹⁶ It is ironic that, in a book with that title, she blames liberalism for “relegat[ing]” political movements “to the pathological or [deeming them] to be the expression of irrational forces” (*The Return of the Political*, 3).

“their celebration of a politics of disturbance ignores the other side of such struggle,” namely “the necessity not only of challenging what exists but also of constructing new articulations and new institutions,” “an alternative hegemony.”⁹⁷ Similarly, *Hegemony and Socialist Strategy* had argued that a hegemonic project must “consist of a set of proposals for the positive organization for the social:” “If the demands of a subordinated group are presented purely as negative demands subversive of a certain order, without being linked to any viable project for the reconstruction of specific areas of society, their capacity to act hegemonically will be excluded from the outset.”⁹⁸ In this passage, Mouffe and Laclau indict an understanding of politics as negative in the specific sense of unruly and resistive to closure as such.

Therefore, the limitation I point to when I say that Mouffe’s ontology leads her to only allow a politics of negative contestation is not that she is limiting herself to disruption. Rather, it is that, even when she allows that contestatory movements are to articulate a “positive” project in the sense of a project that constructs an alternative, she retains the idea that such movements must stake a strictly antagonistic relationship toward the order they are contesting. They must endeavor for the negation of prevailing social structures and existing (state) institutions. (In what follows, I follow Mouffe and Laclau’s lead in describing these movements as “populist.”⁹⁹)

⁹⁷ Mouffe, *Agonistics*, 11 and 14.

⁹⁸ Mouffe and Laclau add that, “Every hegemonic position is based, therefore, on an unstable equilibrium: construction starts from negativity, but is only consolidated to the extent that it succeeds in constituting the positivity of the social.” *Hegemony and Socialist Strategy*, 189.

⁹⁹ Laclau uses the word more systematically. See Ernesto Laclau, *On Populist Reason* (London: Verso, 2007). But Mouffe also talks of the “populist rhetoric” of “anti-Establishment forces” and of the “eruption of populist passions” that the post-political approach is bound to generate. Chantal Mouffe, “Politics and Passions: The Stakes of Democracy,” *Ethical Perspectives* 7:2-3 (2000) and *On the Political*, 64. Note that, in *Hegemony and Socialist Strategy*, Mouffe and Laclau use the term “popular” more narrowly than they later use “populism.” They distinguish between a “popular subject position,” “constituted on the basis of dividing the political space into two antagonistic camps,” and a “democratic subject position,” which emerges when “the proliferation of points of antagonism permits the multiplication of democratic struggles.” What is important for my purposes is that both the “popular” and “democratic” positions occupy a *negative* position toward what they struggle against. While the latter “lessen[s] the charge of negativity,” all that means is that, rather than collapse all struggles unto a single confrontation opposing “the people” to its enemies, a given situation’s political field

While Mouffe's ontology trusts people with deciding the content, meaning and direction of their struggle, it also conditions the exercise of such agency on the enabling presence of ineradicable remainders. As a result, articulatory practices must involve constructing identities and demands that are equivalent to that position which the social order casts out as beyond itself. Put otherwise, they are tasked with displacing the prevailing order's elements onto an already given (albeit empty) discursive exterior and therefore with launching challenges solely from the structural position of an incommensurable "point of rupture." Political action cannot just consist in elaborating a program or imagining an alternative; it must also identify that program with the negation of the order it is meant to be an alternative to.

Laclau is said to be more committed than Mouffe to portraying politics as a practice that works for the prevailing social order's overthrow.¹⁰⁰ Indeed, he calls for "a chain of equivalences to that which the system demonizes in order to signify itself," and he associates political practices with "the signifier of pure threat, of pure negativity," as "bearers of anti-system meaning."¹⁰¹ But such statements mirror Mouffe's own perspective. She only allows negative practices in situations where exclusion, disqualification or depoliticization remain paramount. She writes, for instance that, "The lack of political channels for challenging the hegemony of the neoliberal model of globalization fosters discourse and practices of *radical negation of the established order*."¹⁰² (That formulation is borrowed from *Hegemony and Socialist Strategy*'s definition of "an-

remains fractured so that different struggles (each "the locus of a clearly delimited antagonism") are fought simultaneously without being seen as overlapping one another. (Laclau and Mouffe, *Hegemony and Socialist Strategy* 131-133.) Popular and democratic subject positions are both in the throes of "populist passions."

¹⁰⁰ Wenman, "Laclau or Mouffe?"

¹⁰¹ Laclau, *Emancipations*, 39, and Ernesto Laclau, "Constructing Universality," in Slavoj Žižek, Ernesto Laclau, and Judith Butler, *Contingency, Hegemony, Universality* (London: Verso, 2011), 302.

¹⁰² Chantal Mouffe, "Schmitt's Vision of a Multipolar World Order," *The South Atlantic Quarterly* 104:2 (2005): 251.

tagonism as the negation of a given order.”¹⁰³) If “the two poles of an antagonism” are “essentially heterogeneous,”¹⁰⁴ there is no room for mediation.

In short, while guaranteeing that those who face the disqualification of their demands retain a vitalist capacity for political agency, Mouffe constrains that agency to take a negative form in the specific sense that people must maintain a frontal and negating opposition to the terms, agents and sites that decide their disqualification. Conversely, other possible avenues of contestation, such as institutional engagement or argumentative claim-making, come to look like instances of cooptation. They would transform a struggle into an “internal location within that system—that is, another difference” the system can account for.¹⁰⁵ For instance, when some of the reformist currents of the 19th-century labor movement advocate changing “relations *in* production,” “the relations of subordination between workers and capitalists are... to a certain extent absorbed as legitimate differential positions in a unified discursive space.”¹⁰⁶ This suggestion that it is enough for an excluded movement to adopt a reformist stance for its claims to be incorporated or legitimated may seem strange; if only that were an adequate description of the dynamics of social struggles! But it is also an unsurprising claim to find in *Hegemony and Socialist Strategy*. As long as a position heterogeneous to the social order is guaranteed, anything other than a practice that invests and occupies it—anything but a practice oriented toward the prevailing structures’ negation—represents a betrayal and entrenches the status-quo.¹⁰⁷

Mouffe and Laclau do a lot to distance political theory from the Marxist baggage of his-

¹⁰³ Laclau and Mouffe, *Hegemony and Socialist Strategy*, 126

¹⁰⁴ Mouffe, *Agonistics*, 78-79.

¹⁰⁵ Laclau and Mouffe, *Hegemony and Socialist Strategy*, 139.

¹⁰⁶ *Ibid.* 157.

¹⁰⁷ This familiar antireformist idea that the legitimation of sociopolitical demands deprives the struggle on their behalf of its transformative potential, and thus the idea that integration should be viewed suspiciously as an attempt to protect the status-quo, explains the skepticism that *Hegemony and Socialist Strategy* displays toward the welfare state, among other things. See Steven Klein, “‘Fit to Enter the World’,” *American Political Science Review* 108:4 (2014): 856-869 for a broader critique of radical critics of the welfare state.

torical teleology and from the epistemic privilege that accompanies determinable contradictions. But their thought is still one in which a specter is haunting Europe. If it's no longer specifically that of communism,¹⁰⁸ it's only because they have replaced it with the specter of populism.

Agonistic generosity

What are we to make, then, of Mouffe's later call for pluralist engagement? What are we to make of her arguments for pacifying antagonism and institutionalizing democracy? This section explains that these arguments are no break from the view I have here outlined that contestation is a strictly negative practice. That Mouffe ends up talking of populism pejoratively—or, more exactly, that she comes to view populism as a symptom of a democracy's illness rather than as a sign of its health—does not mean that she has broken with the pervasive belief that it is the only thinkable response to patterns of exclusion and disqualification.

When Mouffe defines “politics” as “the attempt to domesticate the political, to keep at bay the forces of destruction and to establish order,”¹⁰⁹ it is clear that something has changed since the texts she wrote with Laclau. This definition is on its face consistent with Laclau's and her earlier warnings that regimes will protect themselves by coopting and legitimating radical political demands into the institutionalized order of politics. But Mouffe has reversed her earlier evaluation. That liberal democratic institutions “can shape the element of hostility in a way that defuses its potential” has now become a reason to prize them rather than condemn them.¹¹⁰ Instead of siding with the forces that seek to construct a counter-hegemonic order, she is now examining how the hegemonic order she is committed to—liberal democracy—can be strengthened

¹⁰⁸ Badiou doesn't even bother with such a semantic change. He makes communism the name of the politicized movements that fill the undecidable void.

¹⁰⁹ Mouffe, *The Return of the Political*, 141.

¹¹⁰ *Ibid.* 5.

against attempts to unsettle or negate it.¹¹¹ How can Mouffe aim for such stability given her claim that any order has inevitable remainders? She now believes that a social entity is capable of meaningfully opening itself to its constitutive outside, not in the sense of absorbing it as a new difference but in the sense of really hearing it as something heterogeneous.

Can there be another type of relationship between an object and what contradicts it (what is constitutively different from it) than a relationship of antagonism and disavowal? For Laclau (or Badiou) the answer is an emphatic no. “If two different groups have taken two different decisions, the relationship between them will be one of antagonism and power, since no ultimate rational grounds exist for their opting either way.”¹¹² As Andrew Norris puts it, “a non-antagonistic relationship with one’s constitutive outside” is not possible.¹¹³ But Mouffe rebuts the idea that some parties are so wounded—that exclusion is so constitutive, some claims are so foreign—that they are necessarily beyond recognition.¹¹⁴ She writes that, “It is possible to visualize a form of democracy that does not deny radical negativity.”¹¹⁵ Mouffe calls this “form of democracy” ago-

¹¹¹ In interviews she gives in the 1990s and 2000s, Mouffe is open about her growing comfort with liberalism. Perhaps her strongest statement is her call for the redefinition of the left “within the confines of a liberal democratic regime” and for “the acceptance of the liberal democratic regime and the rejection of any strategy of revolution or complete change.” Chantal Mouffe, “On the Itineraries of Democracy: An Interview with Chantal Mouffe,” *Studies in Political Economy* 49 (Spring 1996): 142.

¹¹² Laclau, *New Reflections*, 31.

¹¹³ Andrew Norris, “Ernesto Laclau and the Logic of the ‘Political,’” *Philosophy and Social Criticism* 32:1 (2006): 117. See also Norval, *Aversive Democracy*, 82. This is reminiscent of Lyotard’s *The Differend*. For Lyotard, I suffer a damage when my injury can be expressed as such within the injuring regime of discourse, but I suffer a wrong when I lack the capacity to litigate it because it is not thinkable or expressible as an injury within the prevailing rules of communication and criteria of public judgment. Wronged subjects are those whose wounds are not hearable by the order that victimizes them. Jean-Francois Lyotard, *Le Différend* (Paris: Les Editions de Minuit, 1984). In “Agonizing [With] Chantal Mouffe,” Davis argues that Mouffe has forgotten Lyotard’s lesson that some voices will be wronged; I argue below that she has not forgotten it as much as theorized the possibility that a voice be heard *as* wronged, and not just as damaged.

¹¹⁴ I am not suggesting that Mouffe’s (or Connolly’s) argument is something Laclau (or Badiou) has not thought about. Whether a regime acknowledges its point of rupture is a matter of substantial disagreement. Mouffe’s position has its critics, who argue that it deprives remainders of what makes them a source of vitality. See Shinko’s “Agonistic Peace.” A more nuanced criticism they face is that they have remained too vague about what this ethos of radical openness consists in. Keenan asks, “What strategy might one use, for instance, to be more alert to exists outside the more hegemonic discourses?” (Keenan, *Democracy in Question*, 132).

¹¹⁵ Mouffe, *Agonistics*, xii.

nism. It is in this context that we encountered Mouffe in Chapter 1: As a representative of democratic theory's propensity to condition democratic action on the presence of relations of mutuality. For Mouffe, conflict can only take an agonistic form (rather than an antagonistic one) if parties are reciprocally acknowledging each other's legitimacy to defend their views,¹¹⁶ and contesting the state from the inside is worthwhile when the state is "collaborating."¹¹⁷

Mouffe's trust in reciprocal interactions has been denounced as a renunciation of her ontological priors, for neglecting the systematic exclusions that accompany any social order and for downplaying the importance of thinking about how "those standing outside the boundaries of accepted democratic interaction"¹¹⁸ can participate in political life.

But I dispute this reading: Mouffe's ontology is the very thing that leads her to hinge the dichotomy between antagonism and agonism on the presence of reciprocity. Indeed, the political's unavoidable manifestations do not suddenly recede into the background in essays where she conceptualizes agonism. On the contrary, the space she opens within radical democratic thought for a practice that is not aiming to negate the prevailing order directly follows her certainty that continued disqualification—a lack of reciprocity—will be met by a populist reaction.

This certainty functions as a practical warning. "No amount of dialogue or moral preaching will ever convince the ruling class to give up its power," she writes. She notes later that,

¹¹⁶ Others who connect agonism to reciprocal relations include James Tully, *Strange Multiplicity* (Cambridge: Cambridge University Press, 1995), Simona Goi, "Agonism, Deliberation, and the Politics of Abortion," *Polity* 37.1 (2005), and Connolly, who defines "agonistic respect" as the "respectful strife between parties who reciprocally acknowledge the contestable character of the faiths that orient them and give them definition in relation to one another," in William Connolly, *Identity\Difference* (Minneapolis: University of Minnesota, 1991), 211.

¹¹⁷ Mouffe, *Agonistics*, 76. (See my Chapter 1.)

¹¹⁸ Keith Breen, "Agonism, Antagonism and the Necessity of Care," in *Law and Agonistic Politics*, 141. One reason for this criticism is her demand that claims conform to liberal-democratic principles and the limits that imposes on discourse. See Andrew Schaap, "Political Theory and the Agony of Politics," *Political Studies Review* 5:1 (2007): 68, Diane Davis, "Agonizing [With] Chantal Mouffe," and Robert Tally, "The Agony of the Political," *Postmodern Culture* 17.2 (2007), and Wenman, "Laclau or Mouffe?," 600. Connolly is criticized along similar lines by Antonio Vazquez-Arroyo, "Agonized Liberalism," *Radical Philosophy* 127 (2004): 10 and Rosemary E. Shinko, "Agonistic Peace," *Millennium* 36:3 (2008): 483-485.

“There is no point in trying to convince them that my agonistic approach is informed by the ‘true’ understanding of ‘the political.’ I will follow a different route. What I will do is bring to the fore the consequences for democratic politics of the denial of ‘the political’ as I define it.”¹¹⁹ What are these “consequences?” The answer to that question is supplied by her ontological framework: Nonadversarial societies face the necessarily negative return of what they exclude. Hence “when democratic confrontation disappears, the political in its antagonistic dimension manifests itself through other channels,” “dissent tends to take violent forms,” and “passions tend to find other outlets around particularistic demands or nonnegotiable moral issues in diverse fundamentalist movements.”¹²⁰ The motivating force behind agonistic pluralism—the motivation that can realistically be expected to lead elites to adopt its ethos—is this threat that its disavowal will lead to violence, this blackmail that they should either adopt her model or face the wrath of populist movements far more uncompromising and destabilizing.

The threat that dismissals of political contestation will lead to violence—this blackmail that elites should either adopt her model or face the wrath of uncompromising populist movements—is the motivating force behind agonistic pluralism. It is the motivation that may tempt elites into adopt an agonistic ethos and open themselves to those they may otherwise disqualify.

Hence Mouffe’s faith in mutual relations is no renunciation of the ontology of heterogeneity. The trick is that she has made acknowledging others *equivalent* to acknowledging the fact that all social systems engender remainders. “The relation between social agents becomes more democratic only... insofar as they recognize their mutual relations as one from which power is

¹¹⁹ Mouffe, *The Democratic Paradox* 15 and *On the Political*, 4.

¹²⁰ Mouffe, *The Democratic Paradox*, 114, *On the Political*, 21, and “For an Agonistic Public Sphere,” in *Radical Democracy*, 124. She pushes this to its Godwin’s Law extreme by attributing the Holocaust and “the increase in terrorist attacks” to the convergence of mainstream parties; but she typically limits herself to pointing to the rise of Europe’s anti-establishment far-right. (Mouffe, *On the Political*, 23, 71, 81.) She often traces a strong association; for instance, that the rise of the far-right “would not have been possible had more real political choices been available within the traditional democratic spectrum” (Mouffe, “The Radical Centre,” 15).

ineradicable.”¹²¹ Democracy requires reciprocity—only now of a radical kind. Agonism requires more than a respectful attitude toward established groups; it also requires being alert to unthinkable injuries, “constantly wonder[ing] if those demands which have been excluded at a given moment should now be included.”¹²² How can we anticipate still-unarticulated wrongs? By reflecting on “our very ontological condition.” We can combine institutional closure with radical democracy’s openness when “we give up the dream of mastery,” “acknowledge the contingent character of the hegemonic politico-economic articulations,” and value our society’s “non-achievement, incompleteness and openness.”¹²³ Mouffe’s ontological premises thus expand the test of democratic viability, from whether we pay attention to others to whether we open ourselves and seek out what always already “haunts” us.

This establishes a direct connection between Mouffe’s ontology of heterogeneity and her abiding by the framework of mutuality. The former has dictated that only if radical reciprocity is instantiated can contestatory politics take pluralistic or institutional forms; if it is not, then politics is still confined to an “negation of the given order.” Societies thus face a simple dichotomy: Either they abide by (radical) reciprocity, or they face the specter of populism.

Armed with the certainty that one of the other outcome will come to pass, Mouffe does not need to reflect on why and how agonistic practices may still be worthwhile in depoliticized and oppressive conditions. In “Where Next?,” she had complained about thinkers for whom “the precise strategic forms of the transition to socialism can be neglected since Marxist science pro-

¹²¹ Mouffe, *The Democratic Paradox*, 21.

¹²² Mouffe, “Rethinking political community,” 186. This echoes Connolly’s dual call for “agonistic respect,” which we owe to already-recognized groups, and “critical responsiveness,” which “entails careful listening and presumptive generosity to constituencies struggling to move from an obscure or degraded subsistence below the field of recognition.” William Connolly, *The Ethos of Pluralization* (Minneapolis: University of Minnesota Press, 1995), 186, and William Connolly, *Pluralism* (Durham: Duke University Press, 2005), 126.

¹²³ Mouffe, *The Democratic Paradox*, 77, *The Return of the Political*, 110, “Rethinking political community,” 186, and *On the Political*, 35. Nathan Widder fleshes out the idea of constructing identities that embrace “excessive, chaotic, ungrounded difference,” in “What’s Lacking in the Lack,” *Angelaki* 5:3 (2000): 117.

vides us with the guarantee of this transition.”¹²⁴ But her work is in a similar situation: The precise strategic forms of the transition to agonism can be neglected, since the radical democratic “hauntology” provides us with the guarantee that closed regimes will be unstable.

Two sides to one coin

So what are the consequence of guaranteeing that the political is ineliminable? It’s not that politics will always take a negative form, but that it will take a negative form as long as a society has not thoroughly and radically democratized itself, as long as a pervasive sense subsists that some voices are too unreasonable, too unqualified, too partisan. Thus radical democracy as a practice of periodic interruption and radical democracy as a practice of pluralist engagement are hardly in tension with one another. They are the two sides of the same coin of heterogeneity. Not only are these the only two strategies that a belief in the necessity of a heterogeneous element permits, but there isn’t even a question as to which people should pursue. If every system leaves out positions heterogeneous to it, the sole question becomes whether it will recognize that it is improperly excluding some elements and open itself to them. This involves both the theoretical matter of whether such a radical form of acknowledgment is even possible, and the practical matter of whether it is actually extended. Those thinkers (the earlier Mouffe, Laclau, Badiou, among others) who believe that it is impossible for a system to ever recognize its constitutive lack only allow a relation of negative disruption between political actors and that which they contest; others (the later Mouffe, Connolly, Butler, Young, among others) say that such a recognition is theoretically possible, but they still allow for nothing but ruptural practices in those situations where that recognition is absent. Anything else—including institutional engagement on the part of the still-disqualified—is condemned to failure, first because its enabling conditions are lacking, se-

¹²⁴ Laclau and Mouffe, “Socialist Strategy: Where Next?” 18.

cond because it is unnecessary since negating forces are certain, and third because it entails turning one's back on the traces of repression.

Hence the promise of heterogeneity mires radical democratic theory in the framework of mutuality I diagnosed in my first chapter. Its vitalist guarantees grants a specifically affirmative agency only to those subjects who find themselves acknowledged by those centers they contradict. These guarantees have dispensed them from theorizing nonnegative modes of popular action for those situations in which people face disqualification. The implication is that, to conceptualize an affirmative form of democracy even where relations of mutuality are lacking, we need another approach to the question of agency and popular capacities than radical democratic theory's ontology of heterogeneous remainders.

Conclusion

The first part of this chapter faulted radical democratic theory for obscuring the concrete problem posed by domination and depoliticization. In discrediting as obviously wrong the disqualifying expectations that result from these twin conditions, Mouffe sidesteps the issue of how people may confront the question of what they are capable of in practice. Attributing an ontological grounding to political agency is inadequate to the predicament this move is meant to remedy, namely the uncertainty of whether people are capable of transforming the prevailing order.

The second part of this chapter showed that the manner in which radical democrats concretize the endeavor to guarantee political agency aggravates the problem. The framework they elaborate ensures that a capacity for political action is ineliminable, but it does so at the cost of limiting this capacity to that of negating the established order. The only practice allowed in a situation of depoliticization or domination is to stake a strictly confrontational position; acting within the world one needs to contest necessarily affirms its closure. One can work for a radical

overhaul from a position heterogeneous to it, or one can hope for an democratization so thorough that Mouffe can give no historical example of it, but as long as one enters the system in which one is subordinated (the world of “relations *in* production,” for instance), one is incapable of meaningful political agency. This makes sense within the terms of radical difference (if a heterogeneous position is always available, why bother examining what can be done from positions *in* the prevailing order?). But it confronts actors who aspire to contest situations of depoliticization or domination with a simple choice: They can be cogs, or they can be “anti-system” trouble. An important implication is that radical democratic theory treats the fact that people are labeled as unqualified for a given task as evidence they should not engage in it. The sole alternative to the social role one is perceived to occupy is to work from a “position of rupture.” Put otherwise, the ontology of heterogeneity not only obscures the disqualifying expectations it was meant to combat, but in fact actively reproduces them.

Mouffe would protest that her ontology cannot be guilty of reproducing disqualifying expectations since she has guaranteed that bewildering events will expose liberalism’s unsettling remainders and reveal surprising capacities. But we should be wary of overdetermining events’ astonishing quality. Doing so obscures the difficulty of confronting the practical uncertainty as to whether something novel has even occurred, and whether people have manifested a form of equality they were denied.¹²⁵ Mouffe is confident that contestatory events will prove surprising because her guarantee that any order is bound to have an unaccounted remainder has made irrelevant the mechanisms by which such events are rationalized away. She has ensured that there will always be some way in which the ruling class believes that exclusions have disappeared

¹²⁵ For more on this point, see Daniel Nichanian, “A Politics of Surprises: Review of *The Lessons of Jacques Rancière*, by Samuel Chambers,” *Syndicate Theology*, forthcoming (2016), in particular the second part, where I question Chambers’s reliance on the trope that events will be surprising. I ask, “Can political events ever be breathtaking enough to ‘take the world by surprise’—to compel onlookers to view them as surprising—and how can politics be sustained when what strikes some as shocking is just not experienced by others as such?”

more than they have; there is always some position—however empty—from which the system can be astonishingly attacked for what it cannot even be trying to rationalize.

But exclusion need not be “haunting” to be interrogated; disqualification need not be unthinkable to be questioned. When one’s capacities are denied, the danger is not just that this denial will be covered up by a sense that there are no exclusions, but that one’s exclusion will be seen as justified. Take a 1961 sociology study, which rebutted the view that proponents of segregation lived the “discrepancy as a significant source of discomfort;” the study found that “a segregated system provides its own set of counter-norms, a rationale that justifies the system while it helps the actor in the system to compartmentalize or re-interpret the American Creed.”¹²⁶ Frederick Douglass had long already raised this point, writing in *My Bondage and My Freedom* that, “Perhaps the greatest hindrance to the adoption of abolition principles by the people of the United States, was ... that because of his assumed natural inferiority, people reconciled themselves to his enslavement and oppression, as things inevitable, if not desired.”¹²⁷ His predicament was not that his exclusion was invisible or beyond the normative constraints of antebellum America, but that it was perceived to fit these constraints. Populism (as Laclau and Mouffe define it) can be valuable for many reasons, from mobilizing activists to drawing publicity, but it does little to blur the expectations by which exclusion gets justified and interpreted as desirable. How can people confront persistent doubts regarding their capacities and challenge the sense that they are unqualified? The next chapter tackles this question by examining Jacques Rancière, an unlikely source in that he is typically read as part of the radical democratic framework discussed in this chapter, and the AIDS treatment activism movement.

¹²⁶ Ernest Q. Campbell, “Moral Discomfort and Racial Segregation,” *Social Forces* 39:3 (1961): 229 and 233.

¹²⁷ Frederick Douglass, *My Bondage and My Freedom* (New York: The Modern Library, 2003), 234. I return to discussing Douglass in my sixth chapter; I primarily do so in the context of discussing how he negotiated the problem of uptake, rather than the problem of capacities which is my focus in the present paragraph.

Chapter 4

Seizing Competence: AIDS Treatment Activism and Disputes over Popular Capacities

It is necessary for a man who is sick, whether rich or poor, to go to
the doors of doctors, and every man who needs to be ruled to the
doors of the man who is able to rule.
—Plato

Henceforth AIDS activists would demand a seat at any table where AIDS research
was under discussion; increasingly, we would succeed in seizing such places. Not
only did we want full participation, we wanted to change the research agenda.
—Mark Harrington

By 1987, six years after the first AIDS diagnoses, tens of thousands of people had died but the epidemic was getting woefully inadequate attention. An emboldened right-wing was calling for tattooing or quarantining people with AIDS, researchers were underfunded, and the one treatment drug that had been approved (AZT) was the most expensive drug in history up to that point.¹ Soon after its creation in March of that year, the organization ACT UP began spectacular actions to dramatize just how urgent these problems were, just how many lives were being lost. Activists called for more research funding and speedier clinical trials. But these goals were insufficient for some activists, who aimed to also participate in decisions regarding said research and shape the design of said trials. They grew determined, as ACT UP member Mark Harrington put it in an autobiographical essay, to “demand a seat at any table where AIDS research was under discussion.”² They were looking to “do science” themselves.³

We often encounter situations like the one of these uncredentialed activists, where some people’s attempts to contribute to certain activities—to shape them by sharing programmatic beliefs about what should be done—appears to be out of bounds based their status, training, or background. In the face of the recurring anxiety that some people’s inclusion would threaten good governance, how should theorists address the question of popular capacities for governing?

Recent debates have sought theoretical solutions to dilemmas over popular capacities, whether it be to ascertain if epistemic considerations argue for or against democratic institutions, to define what role experts should play in a democracy, or to adjudicate whether or not domina-

¹ William F. Buckley Jr., “Crucial Steps in Combating the AIDS Epidemic; Identify All the Carriers,” *New York Times*, March 18, 1986, John Balzar, “The Times Poll: Tough New Government Action on AIDS Backed,” *Los Angeles Times*, December 19, 1985, and Dennis Patterson, “Activists Occupy Pharmaceutical Office to Protest AZT Price,” *New York Times*, April 25, 1989.

² Mark Harrington, “AIDS Activists and People with AIDS: A Movement to Revolutionize Research and for Universal Access to Treatment,” in *Tactical Biopolitics: Art, Activism, and Technoscience*, ed. Beatriz da Costa and Kavita Philip (Cambridge: MIT Press, 2008), 339.

³ Debbie Indyk and David A. Rier, “Grassroots AIDS Knowledge: Implications for the Boundaries of Science and Collective Action,” *Science Communication* 15:1 (1993): 22.

tion extinguishes the aptitudes of the dominated.⁴ But these quests risk overlooking the practices by which people put the propriety of their own contributions to a public and contentious test, and the concrete political struggles that ensue over who is capable of doing what. This is true even of scholars who ostensibly insist that people's political literacy is a matter of empirical measurement. They treat competence as a theoretically definable or settled attribute, and then merely probe the degree to which the average person possesses that property.⁵ I argue instead that political theory should pay attention to these practices and struggles, not because they are means by which to identify who is competent, but because they are occasions to interrogate what competence even consists in. At stake in such disputes is not just who meets preestablished standards of competence, but also what qualifying standards one must display to be considered competent.

As such, this chapter asks how sociopolitical movements negotiate doubts regarding popular capacities in practice. To do so, I examine AIDS treatment activism through the lens of an unorthodox interpretation of Jacques Rancière. In my reading, Rancière associates radical con-

⁴ On the first debate, see Joseph Schumpeter, *Capitalism, Socialism and Democracy* (New York: Harper Perennial, 2008), Elizabeth Anderson, "The Epistemology of Democracy," *Episteme* 3.1 (2006): 8-22, David Estlund, *Democratic Authority: A Philosophical Framework* (Princeton: Princeton University Press, 2008), Hélène Landemore, *Democratic Reason: Politics, Collective Intelligence, and the Rule of the Many* (New Haven: Yale University Press, 2012). On the second, see Harry M. Collins and Robert Evans, "The Third Wave of Science Studies: Studies of Expertise and Experience," *Social Studies of Science* 2008 32:2 (2002), 235-296, Philip Pettit, "Depoliticizing Democracy," *Ratio Juris*, 17:1 (2004): 52-65, Robert Crease and Evan Selinger, eds., *The Philosophy of Expertise* (New York: Columbia University Press, 2006), Philip Kitcher, *Science in a Democratic Society* (Amherst: Prometheus Books, 2011), Josiah Ober, "Democracy's Wisdom: An Aristotelian Middle Way for Collective Judgment," *American Political Science Review* 107 (2013): 104-122. On the third debate (discussed in my third chapter), see James Scott, *Seeing like a State* (New Haven: Yale University Press, 1999), Ernesto Laclau and Chantal Mouffe, *Hegemony and Socialist Strategy* (London: Verso, 2001), Axel Honneth, *Disrespect: The Normative Foundations of Critical Theory* (Cambridge: Polity, 2007), Lois McNay, *The Misguided Search for the Political* (Cambridge: Polity, 2014), Sharon Krause, *Freedom Beyond Sovereignty* (Chicago: The University of Chicago Press, 2015), 98-132.

⁵ Jason Brennan, for instance, responds to the Condorcet theorem by calling for experiments to see "if citizens' mean competence is [more or] less than 0.5." In "How Smart is Democracy?" *Critical Review*, 26:1-2 (2014): 36. See also Sara Binzer Hobolt, who asks whether voters engage in "competent voting on EU referendums" (she turns to this question because of the French and Dutch rejection of the Constitutional Treaty in 2005, and one wonders if there would be such an anxiety to test had the outcome been different), and then proceeds by "setting out explicit theoretical propositions" and measuring whether Norwegians met these criteria during a 1994 referendum. In "Taking Cues on Europe?," *European Journal of Public Research* 46 (2007), 151-182.

testation, not with extraordinary moments of disruption or rupture, but with a more participatory form of politics in which people act upon the proposition that anyone can contribute to an activity seen to require specialized qualifications. By examining how emulative practices may transform the meaning of competence, I explain that working to contribute to a process may entail not an absorption into its norms but a way to test its criteria of expertise. I thus reconstruct an overlooked strand of political activism, one by which people whose capacities are denied challenge expectations of what signals competence for an activity *while* engaging in it.

AIDS treatment activism provides one compelling illustration of movements that seize competence because it confronted a domain (medicine⁶) with prohibitive differences of qualification. The idea that people who lack the credentials painstakingly accumulated by researchers should have a say in the production and implementation of medical knowledge can seem so obviously whimsical that Plato used the doctor-patient relationship as a go-to analogy for the proper hierarchy between the ruler and the ruled.⁷ AIDS treatment activists attracted predictable skepticism from officials and scientists. Even ACT UP members doubted their own capacity to speak on the substance of medical research. Harrington recalls a fellow activist objecting that, “Those things should be decided by scientists. We’re not scientists.”⁸ The claim to possess the competences to seat at this table, of all tables, just seemed like a bridge too far.

To some it also seemed like the wrong bridge to take. Why sit at the same table as people who Larry Kramer had described as “inhumane... monsters?”⁹ People with AIDS had long been

⁶ Recent contributions to the debate on democratizing science that approach it with a political theoretic orientation include Mark Brown, *Science in Democracy: Expertise, Institutions and Representation* (Cambridge: MIT Press, 2009), Michel Callon, Pierre Lascoumes, and Yannick Barthe, *Acting in an Uncertain World: An Essay on Technical Democracy* (Cambridge: MIT Press, 2009), and Kitcher, *Science in a Democratic Society*.

⁷ Plato, *The Republic*, trans. Allan Bloom (New York: Basic Books, 1991), 498b.

⁸ Harrington, “AIDS Activists and People with AIDS,” 339.

⁹ Quoted in Paula Treichler, “How to Have Theory in an Epidemic,” in *Technoculture*, ed. Constance Penley and Andrew Ross (Minneapolis: University of Minnesota, 1991), 74.

shunning the label of passive patients, but had largely hit a brick wall. So what could they gain from addressing still more arguments to people who saw them as unqualified? Why not privilege disruptive actions that would get them noticed and perhaps even heard on their own turf?

Yet by 1993 the movement had met remarkable success. Activists who in 1987 did not know basic medical terms now sat on committees that oversaw funding priorities and research protocols; they had obtained an acceleration of the drug approval process, changes to the mechanisms for testing new drugs, and more inclusive access to still-experimental drugs; and they had laid out highly technical guidelines regarding what treatments to test, and with what markers of success, with an eye to what research questions. In the words of Steven Epstein, they had become “genuine participants in the construction of scientific knowledge,” and they had achieved this not by hiring medical professionals to represent them, but by teaching themselves—“late at night, after completing work”¹⁰—the language of medical science to gain “credibility as people who might legitimately speak [to] the design, conduct and interpretation of clinical trials.”¹¹

But this strategy opened AIDS treatment activists to a different type of criticism than the one they faced in 1987. The sense that they lacked the qualifications for medicine was replaced by a sense that they may have been *too* successful in showcasing these qualifications, that they had been coopted by the system they had set out to transform and had entrenched the expectation that mastery of a specialized knowledge is a condition for entry. By 1996, Foucaultian scholar Nikolas Rose was drawing on AIDS activism to illustrate the way new governmental technologies “instrumentalize” communities and “affiliat[e] them to expertise” in the service of regulato-

¹⁰ Harrington, “AIDS Activists and People with AIDS,” 328.

¹¹ Steven Epstein, “The Construction of Lay Expertise,” *Science, Technology, & Human Values*, 20:4 (1995): 409 and Steven Epstein, *Impure Science: AIDS, Activism, and the Politics of Knowledge* (Berkeley and Los Angeles, University of California Press: 1996), 9.

ry projects.¹² These concerns were compounded by the fact that these activists were disproportionately white, male, and college-educated.¹³ As an activist critical of the movement told Epstein in 1993, “It’s interesting how similar they are to the people that they are fighting. Who is raised in this culture to believe that they could be scientists? Smart white men. And who are the treatment activists? Smart white men.”¹⁴

Looking at AIDS treatment activism solely from the standpoint of either end, its political import may seem limited. In 1987, it looked like the activists lacked the competence to follow through on their ambitions and the recognition to make their efforts worthwhile. There is nothing to do here, move along:¹⁵ For better or worse, science is the province of scientists, activist energies are better spent elsewhere. In 1993, it looked like most activists’ preexisting status as “smart white men” had made it so predictable that they would succeed as to make the intervening events further illustrations of social destiny, further proof that successful participation in the medical research apparatus was premised on the possession of certain attributes. There is nothing to see here, move along: Science was just done by those who were expected to do it all along. But how are we to understand what happened *between* these two moments? How did a group of activists go from facing incredulity to being viewed as part of the establishment, and what, if anything, was emancipatory about their transformation? There are three underlying problems at play here.

First, what does AIDS treatment activism tell us about how people act when there is no clear assurance that their disqualification is wrong? It is often far from evident whether a specific

¹² Nikolas Rose, “The Death of the Social?” *Economy and Society* 25:3 (August 1996): 334-336.

¹³ Raymond Smith and Patricia Siplon, *Drugs into Bodies: Global AIDS Treatment Activism* (Westport: Praeger: 2006), 27-28. Earlier groups were also disproportionately white; see Dennis Altman, *AIDS in the Mind of America* (Garden City: Anchor, 1986), 100.

¹⁴ Epstein, *Impure Science*, 293.

¹⁵ I am here paraphrasing the motto of Rancière’s “police” in “Ten Theses on Politics.” Jacques Rancière, *Dissensus*, trans. Steven Corcoran (New York: Continuum, 2010), 37.

claim to mastery is a legitimate exercise of expertise or a mark of domination.¹⁶ Thus I treat their movement as an occasion to examine what is potentially fruitful about exercising an activity absent a clear guarantee—just some hope, and much doubt—that one has the capacity to do so.

Second, what does AIDS treatment activism tell us about why people engage in activities that are sociologically-speaking the province of elite actors? It is tempting to view this as a conformist choice, but the fact that the same activists who worked to acquire medical knowledge were also organizing confrontational protests and break-ins provides a reason to at least interrogate that presumption. Thus I ask what is empowering about laying a claim to the same capacities on which some claim mastery, rather than affirming capacities that one more obviously enjoys or that are less identified with elite distinction.

Third, what does AIDS treatment activism tell us about how disqualified people pursue participatory aspirations? These activists did not just enact scientific competences in alternative spaces of their own creation; they also used them to intervene in processes biased toward ignoring their voice. Their movement is an occasion to ask how challenges to disqualification—and not just what *follows* them—are already undertaking contributory work.¹⁷

Rancière helps address these questions because he is attentive to those actors who pursue activities for which they lack the established qualifications, and which we may have expected them to either reject as elitist or to steer away from out of a sense of alienation or out of a lack of instruction or preparation. Yet, despite the conventional reading that he privileges disruptive ir-

¹⁶ Demonstrating that knowledge is socially constructed says nothing by itself on whether a claim to expertise is unwarranted or undesirable. Yaron Ezrahi's *The Descent of Icarus* (Cambridge: Harvard University Press, 1990) is a socially constructivist argument that warns against eroding the line between experts and nonexperts.

¹⁷ Part of this third question evidently pertains to what I have called the problem of uptake, which I address in Chapters 5 and 6. But it does also pertain to the problem of competence. As I argue in this chapter, acting in a contributory manner toward activities and spaces from which one is disqualified (rather than at a distance from them) provides an occasion to interrogate what counts as competence for the task at hand—and not just an occasion to interrogate why others are disengaging from one's contributions, regardless of one's competence.

ruptions over constructive interventions,¹⁸ for Rancière there can be something radically transformative about disqualified subjects who take to acting as consummate insiders. As he wrote provocatively in 1978, “The worker who, without having learned to spell, tried his hand at making verses to the taste of the day was perhaps more dangerous for the existing ideological order than the one who sung revolutionary songs.”¹⁹ Or take a 1986 essay in which he contrasts two French protest movements that featured university students:

In our day, we did not read the text of proposed legislation on the universities... We had nothing to say to the politicians who proposed them, except that capitalism spoke out of their mouths... For their part they expected no other reaction from us and accordingly had no problems besides that of maintaining order. This time, though, something took place which created total disarray in the ranks of the government and the majority: the students evaluated the law and pronounced it a bad law. They addressed the politicians as if they were people who could, after all, just as easily make good laws as bad ones. Politicians expecting the usual refrain, 'Capitalism speaks out of your mouths', suddenly found themselves being taken seriously as legislators.²⁰

These passages evoke the same problems as treatment activism. First, is it not misguided to engage in complex activities that seem better suited for experts? Second, is it not naïve to pursue conciliatory strategies like evaluating legislative language? Third, is it not futile to confront those who deny your credibility by intervening in their conversations?

To address such questions, I expand recent efforts to challenge what Jason Frank has dubbed the “evental” reading of Rancière as a theorist of ruptures.²¹ I specifically consider what

¹⁸ I discuss the widespread reading of Rancière as an antigovernmental disruptive thinker in my introduction.

¹⁹ Jacques Rancière, *Staging the People: The Proletarian and His Double* (London: Verso, 2011), 181.

²⁰ Jacques Rancière, “The Uses of Democracy,” in *On the Shores of Politics* (London: Verso, 2006), 57.

²¹ Jason Frank, “Logical Revolts: Jacques Rancière and Political Subjectivization,” *Political Theory* (2015). See also Aletta Norval, “‘Writing a Name in the Sky:’ Rancière, Cavell, and the Possibility of Egalitarian Inscription,” *American Political Science Review* 106:4 (2012): 810-826. I share Frank and Norval’s sense that the picture of Rancière as a theorist of rupture is belied by his earlier, historical and archival works. But they both suggest that these works are in some tension with his later, better-known theoretical texts (e.g. *Disagreement*), whereas I argue that these later texts’ conceptual apparatus lay out an alternative to a ruptural politics. Furthermore, this chapter supports Samuel Chambers’s case that Rancière’s politics is never “pure” and that Rancière outlines a form of radical politics that is not sealed from other spheres of human activities. Samuel Chambers, *The Lessons of Rancière* (Oxford: Oxford University Press, 2013), 38-64. But Chambers’s attachment to an “evental” reading of Rancière (see below) leads him to abstain from arguing that even what occurs in institutions or bureaucracies can be political. That is the step that I take in this chapter. Chambers shows that Rancière does not demonize institutions, but he still invites us to consider the stuff that happens in them “under

new conceptual doors he opens for appreciating why and how people contribute to institutional and bureaucratic activities that seem to evidently be beyond their purview; after all, radical democratic thinkers are more prone to denouncing the complexities of modern governance for impeding democratic energies than to asking what it means to be competent for such spaces.

I argue that the specific reason Rancière's politics is viewed as primarily disruptive and ruptural is that he is read as asserting that any social order is always already incomplete and that it necessarily wrongs those it disqualifies as incompetent. Yet I demonstrate that he distances himself from that views, and that he looks instead to conceptualize challenges to disqualification without guaranteeing that people retain a set of vitalist capacities. This has major consequences for contestation. If there is no guarantee that a partition of the sensible—his term for our collective common sense of who is capable of doing what where—miscounts what people can do, then it takes political work to persuade both oneself and others of just that: It involves enacting an elite activity for which one lacks the requisite qualifications and publicly experimenting with one's ensuing efficacy.

By examining Rancière's focus on people who do what is expected of others and AIDS activists' efforts to investigate perceptions of what scientific competence entails, I outline a strategy for responding to disqualification in which people *contest* the common sense that certain tasks (including governmental ones) are beyond their competence by *participating* in them without delay. They seize a capacity associated with the task of governing, acting as if that capacity is equally distributed *and* as if it is by itself a sufficient marker of competence, and they work on its basis to intervene in public affairs. By turning a social expectation of incompetence into an

a nonpolitical heading;" politics is the "insurrectionary moment" that disrupts them (8, 41). He asks, "What would it mean for the word politics to point not toward legislative decisions and judicial decrees, but to moments of irruption like those in Egypt?" (8) As I noted in my introduction, I ask what it would take for politics to be contestatory and egalitarian while pointing (in part) toward legislative and policy processes.

occasion to conduct contributory work, one works for more egalitarian judgments of what indicates proficiency for public affairs.

A question of capacities: Rancière's refusal of ontology

Rancière often targets philosophers like Plato who believe that social life should be structured hierarchically and that variations in people's capacities are indicative of an innate difference. But his most provocative polemics blame thinkers like Marx, Althusser or Bourdieu for reproducing inegalitarian presuppositions in their very efforts to denounce inequality.²² His charge is that, by defining domination and attendant notions as the deprivation of organizational, epistemic, psychological, or social capabilities, they portray the oppressed as too poor, too ignorant, too overworked to challenge their condition, or at least to do so without the guidance of an intellectual or vanguard party. For Rancière, these different views all have an ontological tenor because they treat social and material conditions as always already determining who can do what where; they analyze people's competences as reflecting an underlying inequality. Hence Rancière's explicit repudiation of ontology is rightfully interpreted as a critique of thinkers who engage in *a priori* diagnoses of differentiated capacities. But what has been largely neglected is that this repudiation also applies to the paradigm commonly invoked to counter theoretical diagnoses of incapacitation, namely radical democratic theory's ontological demonstration that a disruptive political agency is always exercisable by all.

My prior chapter explained that a central claim of radical democratic thought is that social representations and classifications always already ignore or repress something in the world. There is an unaccounted "remainder" that is heterogeneous to them and that is available as a

²² In my third chapter, I differentiated two ways in which domination is theorized as depriving people of agency: a lack of recognition makes one's capacities atrophy or fail to develop, or inversely it is the mechanisms through which one is recognized that constrain one's agency. Given his polemic against Althusser, it is unsurprising that Rancière tends to target the latter approach.

starting-point to make something new visible. We find in some studies of knowledge production a similar idea that, in simplifying reality, science leave out a set of variables, enabling those on the ground to resist based on the availability of a neglected local knowledge.²³ While this paradigm may seem to heighten the social world's indeterminacy, it provides a firm ground for the thing radical democratic theorists are most concerned with protecting, namely marginalized subjects' capacity to exercise agency on behalf of suppressed political alternatives.

Rancière is often read as deploying such an ontology. Many interpreters share Michael Dillon's view that Rancière proposes an "ontology of structural difference" in which a "remainder is always already operative;"²⁴ they highlight his determination to expose a social system's inevitable constitutive outside, what Jane Bennett describes as the "'excessive part' that always haunts the order" and undoes its pretention to exhaustiveness.²⁵ Even readers who emphasize his hostility to ontology are drawn to this reading. Bram Ieven relates Rancière's "disagreement with ontology" to his critique of "reductive" discourses on an order of things, but he concludes from this that Rancière must then be relying on the inverse affirmation of a "quasi-original" heterogeneity and an "essentially open" world.²⁶

Rancière does deploy concepts (the wrong, the miscount) that echo those of ontological-

²³ Scott, *Seeing like a State*, and Friedrich August Hayek, *Individualism and Economic Order* (Chicago: The University of Chicago Press, 1996).

²⁴ Michael Dillon, "(De)void of Politics?," *Theory & Event* 6:4 (2003) para. 4 and Michael Dillon "A Passion for the (Im)possible: Jacques Rancière, Equality, Pedagogy and the Messianic." *European Journal of Political Theory* 4:4 (2005): 429;

²⁵ Jane Bennett, "In Parliament with Things," in *Radical Democracy*, ed. Lars Tønder and Lasse Thomassen (Manchester University Press, 2005), 140 and 144. For similar readings, see Norval, "Writing a Name in the Sky," 824, Chambers, *The Lessons of Rancière* 103, Alain Badiou, *Metapolitics*, trans. Jason Barker (London: Verso, 2005). For Badiou, Rancière "takes up the central idea of my ontology, i.e. that what the State strives to foreclose through its power of counting is the void of the situation, while the event always reveals it" (119).

²⁶ Bram Ieven, "Heteroreductives: Rancière's Disagreement with Ontology," *Parallax* 15:3 (2009): 51 and 59. Similarly, Chambers highlights Rancière's radical critique of ontology in his *Lessons of Rancière*, 18-20, but he then goes on to attribute an ontological argument to Rancière by writing that he "exposes what we might call the constitutive outside of these regimes" and shows that pluralist regimes are "predicated upon certain exclusions, but ones that can never be named – ones that are never visible as exclusions" (103).

ly-inclined radical democrats; this supports the view that he rebuts popular incapacitation by guaranteeing the availability of a suppressed capacity. But here I want to suggest that what has sustained the reading that he challenges one ontological project with another is the very assumption he hopes to question. It would seem that, if one hopes to effectively push back against outlooks that predetermine limits to people's capacities, one must diagnose the impossibility of such limits at the same (ontological) level of analysis, namely by affirming a vitalist and inexhaustible agency. It would follow that, to justify his sense that inequality is wrong, Rancière must identify what about the world makes it so. He must "establish, on the basis of a productive contradiction at the heart of the modern world, the possibility of free, creative action," as Deranty puts it.²⁷ It would then be to fulfill this objective that he uses concepts like "the miscount."

Yet my contention is that Rancière's distinctive contribution is to question the terms of this problem: Rather than try to justify that inegalitarian expectations are wrong, he refuses to involve philosophy in the business of determining whether social orders suppress equal capacities that can foreground action. He asks instead: How (with what political practices and framing devices) do people confront doubts about their competence? The next two sections explain how his corpus—including the aforementioned concepts—tackles this question. I show first that

²⁷ Jean-Philippe Deranty, "Regime of the Arts," in *Jacques Rancière: Key Concepts*, ed. Jean-Philippe Deranty (Oxon and New York: Routledge, 2014), 130. Alain Badiou and Lois McNay similarly assume that, given his opposition to theoretical outlooks that prejudice against popular capacities, Rancière must be looking to identify an outlook that prejudices in their favor by establishing the existence of a "a suppressed... element, a disruptive inconsistency" in all societies, as McNay writes. (See McNay, *The Misguided Search of the Political*, 156-158, and Badiou, *Metapolitics*, 119) The twist is that Badiou and McNay both see that Rancière did not actually go on to flesh out such an account of ontological indeterminacy. Yet, for both the assumption that this ontological route would be the only path available for an egalitarian outlook is so strong that they conclude that he fails on his own terms. They do not consider that he may be up to something different.

Badiou later backs off *Metapolitics's* barely veiled accusation that Rancière had plagiarized his ontology and grants that Rancière was not looking to establish an "ontology of the multiple at all." He writes that, while "in my view there is no cessation of politics... [f]or him, there is a definable structural form for the end of politics." Alain Badiou, "The Lessons of Jacques Rancière: Knowledge and Power after the Storm," trans. Tzuchien Tho, in *Jacques Rancière: History, Politics, Aesthetics*, ed. Gabriel Rockhill and Philip Watts (Durham: Duke University Press Books, 2009), 46.

Rancière targets exclusions insofar as society owns up to them and justifies them, rather than insofar as it fails to do so, and second that this leads him to value people who stage uncertain public disputes over whether the rationalization of their disqualification is appropriate.

Partitioning capacities

Borrowing one of the defining images of Plato's *Statesman*, Rancière contends that the proper qualifications for the task of governing only emerge as a problem once humans depart the time of Kronos, that mythical era in which gods harmoniously ruled men.²⁸ If humans are to be governed by humans, which is to say by beings with whom they bear *similarities*, what *distinguishing* traits can justify why some will occupy positions of leadership?²⁹ His point is that the project of distinguishing people's competences follows the experience of some element of equality between a ruling class and those they rule. "Whenever someone thinks about establishing the theoretical rulers of a city's proportions, it means that democracy has already passed that way."³⁰ Thus Plato outlined an inegalitarian order in *The Republic* because of his dissatisfaction with the historical arrangement that "simply by being born in [Athens]... any old artisan or shopkeeper whatsoever is counted in this party to the city that calls itself the people, as taking part in community affairs."³¹ He thereby introduced distinctions between the worth of co-citizens.

A partition of the sensible is such an account of how various parts of a community partake *differently* in what is *common* to them.³² It may, for instance, disclose that a group of people is speaking the same language, while separating their ostensibly similar linguistic utterances—

²⁸ See Jacques Rancière, *Disagreement*, trans. Julie Rose (Minneapolis: University of Minnesota Press, 1998), 16 and *The Hatred of Democracy*, trans. Steven Corcoran (London: Verso, 2006), 46.

²⁹ For more on the force of this question, see Bernard Manin on Federalists and anti-Federalists, in *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997), Chapters 3 and 4.

³⁰ Rancière, *Disagreement*, 16.

³¹ *Ibid.* 7.

³² A partition of the sensible "simultaneously discloses the existence of something in common and the delimitations that define the respective parts and positions within it." Jacques Rancière, *The Politics of Aesthetic*, trans. Gabriel Rockhill (New York: Continuum, 2006), 12.

was it reasonable discourse, or mere “noise signaling pleasure or pain, consent or revolt?”³³ — based on criteria like the speaker’s tone or social status.

But a partition is more than a classification of our experiences. In affecting how we intuitively interpret them, it renders that classification common-sensical. It is the “system of self-evident facts of sense perceptions” that structures our expectations of who is capable of doing what, what should be done where, and how it should be done.³⁴ However hard it may seem to “be sure that the human animal mouthing a noise in front of you is actually articulating a discourse, rather than merely expressing a state of being,”³⁵ a partition of the sensible renders that distinction obvious, often in a way that makes the prevailing division of labor appear to be an accurate reflection of people’s underlying competences. It is what settles in practice the question that Plato was so anxious to answer in *The Statesman*: What is it about statesmen or doctors that makes statesmanship the business of statesmen, just as “illnesses are the business of doctors?”³⁶

Indeed, a partition is what defines whether different constellations of attributes are a sign of competence or of a lack thereof. It “ties together a location, an occupation, and the aptitude... that is geared toward them,”³⁷ so that the exercise of a particular activity comes across as proficient when accompanied by the proper convergence of qualifying attributes (education level, disposition, language used). One of Rancière’s frequent examples is the idea that working-class people lack the free time to be elsewhere than the workplace, and thus that they have no occasion to develop proficiency in other activities like deliberation or aesthetic contemplation.³⁸

³³ Rancière, *Disagreement*, 23.

³⁴ Rancière, *The Politics of Aesthetics*, 7.

³⁵ Rancière, “Ten Theses on Politics,” in *Dissensus*, 38.

³⁶ Jacques Rancière, *Chronicles of Consensual Times*, translated Steven Corcoran (London and New York: Continuum, 2010), 89-90.

³⁷ Jacques Rancière, “The Aesthetic Dimension,” *Critical Inquiry* 36.1 (2009): 4.

³⁸ See Jacques Rancière’s *The Philosopher and His Poor*, trans. John Drury, et al. (Durham: Duke University Press Books, 2004) and *Proletarian Nights*, trans. John Drury (London and New York: Verso, 2012).

None of this is to deny the materiality of inequality, only to say that its translation into an order that appears to be treating people as they should be—as opposed to an order that rests on “naked violence”³⁹—rests on an “interpretative machine”⁴⁰ that makes sense of certain voices or sights as incompetent because lacking the qualifications of competence. Take the mid-19th century bourgeois for whom it was not enough to crush the 1848 revolution with “leadshot and repression;” they also worked to “cancel” the uprising’s “political significance” by explaining it as the sign of a diseased hedonistic modernity.⁴¹ Here, consider the contrast between this focus on rationalized exclusions and Mouffe’s interest in exclusion as something that embarrasses a social system. Her belief in the inevitability of a remainder leads her to cast those who predict the end of politics as “bewilder[ed] in the face of its manifestations.” She asks, “How could dialogic theorists make sense of this sudden eruption of populist passions?”⁴² Her point is that they cannot, that these eruptions are a “convincing refutation of their optimistic forecasts.” But these eruptions are very easily “made sense of.” They can be classified as just that, as populist passions. Or as retrograde resistance to progress on the part of those who don’t know any better, as understandable anger on the part of citizens who don’t grasp the limits to what can be done. The problem posed by disqualification is not that it will be covered up by the perception that there are no exclusions, but that it will be perceived as common-sensical and justified—along with a whole set of expectations of who can do what where.

This point is neglected by those who take Rancière to be saying that the fact of disqualifi-

³⁹ See Frantz Fanon’s argument that colonialism relies on “naked violence” because it has no care for normalizing itself in *The Wretched of the Earth*, trans. Richard Philcox (New York: Grove Press, 2005), 23.

⁴⁰ Rancière, *Chronicles of Consensual Times*, 11 and 143. Philip Watts eloquently captures this point by coining the formulation “hermeneutic oppression,” in Philip Watts, “Heretical History and the Poetics of Knowledge,” in *Jacques Rancière: Key Concepts*, 107.

⁴¹ It was interpreted as the “insurrection of the infinite free-floating social atoms, eager to enjoy all that was an object of enjoyment.” Jacques Rancière, *Politics of Literature*, trans. Julie Rose (Cambridge: Polity Press, 2011), 52-53. He similarly highlights democracy’s denigration as consumeristic in *The Hatred of Democracy*.

⁴² Chantal Mouffe, *On the Political* (Abingdon and New York.: Routledge, 2005), 64.

cation is indicative of something being wronged. Panagia evokes those who are “excluded from the [reigning] system of distributions” and made “insensible,” while McNay talks of the “distinctions between the ruler and the ruled, the dominant and the dominated, or in Rancière’s terms, those who have a part and those who have no part.”⁴³ But Rancière does not equate “the ruled” with “those who have no part,” and he does not equate inequality with an exclusion from the sensible. On the contrary, his insight is that a partition of the sensible functions, not by leaving without a part those whose utterances it does not count, but by casting them as that part of the community whose defining attributes indicate incompetence. Things really are simple for those compelled by the status quo. “If one is not counted... it’s because one doesn’t have the property of what is counted.”⁴⁴ A partition of the sensible interprets what is not heard as that which should not be heard; it counts those who are ruled as those who lack the signs that qualify one to exercise public tasks. (The next section explains how Rancière’s notion of a miscounted “part that has no part” should be read in light of this present claim.)

This generates a markedly different target for politics than that produced by ontologies of constitutive heterogeneity. For Mouffe, there is always some way in which a system can be said to assume that exclusions have disappeared more than they have, and as a result she puts the spotlight on movements that reveal the existence of “bewildering” exclusions. Similarly, it is because Rancière is seen to be grounding political agency on the ontological guarantee of a contradiction that he is read to be privileging ruptural relations between the disqualified and what they contest—first because other strategies are then unnecessary (we already know that people always retain a neglected vitalist agency and that antagonisms are sure to explode), second because other strategies are then unwelcome (they betray what the system cannot hear). Put otherwise, if

⁴³ McNay, *The Misguided Search for the Political*, 135 and Davide Panagia, “Partage du Sensible: The Distribution of the Sensible,” in *Key Concepts*, 97-99.

⁴⁴ Jacques Rancière, *Moments politiques*, my translation (Paris: La Fabrique, 2009), 103.

he is starting from the premise that a social system fails to account for constitutive exclusions,⁴⁵ then it would follow that contestation for him takes a ruptural form, what Michael Dillon evocatively calls “the insurrection of the remainder.”⁴⁶

But what is at stake for Rancière is not quite the fact of disqualification, nor its mere revelation. Exposing it only sets up the police’s common-sensical comeback, its appeal to the tautological “fact of being nothing because you are nothing.”⁴⁷ It is this comeback that politics must investigate. If it is to challenge disqualification, it must be insofar as it is owned up to, insofar as it can be plausibly interpreted as the byproduct of a differentiated distribution of capacities.

Disruptive events that testify to the existence of an exclusion, rather than to its propriety, do little to offset that comeback. Expecting the disqualified to withdraw into alternative spaces or into nondiscursivity—into things the social order purportedly cannot speak of—means encouraging them to take on prevailing schemas of who can do what where. Recall Rancière’s discussion of the students “in our day” who “did not read the text of proposed legislation” and “had nothing to say to the politicians who proposed” it, while “for their part they expected no other reaction from us and accordingly had no problems besides that of maintaining order.” His point is that, not unlike *Disagreement*’s Scythian slaves,⁴⁸ these students enacted the type of doing and saying associated to the sociological profile of radicalized students. Whatever its other benefits, their intrusion posed no difficulty for the “capacity for symbolization” of “those charged with uttering its significance.”⁴⁹ It did not challenge the perception that politicians were drawing on to justify

⁴⁵ Chambers reads Rancière to be arguing that a society necessarily “is predicated upon certain exclusions, but ones that... are never visible *as* exclusions.” Chambers, *The Lessons of Rancière*, 103.

⁴⁶ Dillon, “(De)void of Politics,” para. 7.

⁴⁷ Rancière, *Moments Politiques*, 102. Rancière uses a similar formulation in *Chronicles of Consensual Times* (13) when he talks of the “pure tautology, namely that the backward are backward.”

⁴⁸ Ayten Gündoğdu, “Disagreeing with Rancière” (presented at the American Political Science Association’s 2014 Conference, unpublished) usefully complicates Rancière’s account of the Scythian revolt.

⁴⁹ Jacques Rancière, “September 11 and Afterwards,” in *Dissensus*, 97-98.

treating it as irrelevant, refusing to dialogue, or resorting to force.

The political task, then, is not to confront the “interpretative machine” with what is always already invisible to it, but to have it count differently what it is already counting so as to shift the common sense perceptions of what something (or someone, or somewhere) is good for. As the next section argues, what follows is that politics is not what provides “proof positive” that “the established division of labor [is] arbitrary,” as Oliver Davis writes.⁵⁰ Rather, it is what opens a disagreement over what competence people’s actions are manifesting.

Borrowing capacities

What Rancière calls the police is a partition of the sensible organized around the perception that everyone is being seen and heard according to the reality of their unequal capacities. It is a “rule governing [the] appearing”⁵¹ of bodies that trusts that there is no “void and [no] supplement” in the prevailing expectations of who can do what where, and that these exhaustively account for people’s (in)competences. By contrast, politics is a partition organized around the perception that something in the world is improperly interpreted by the police. It involves “getting out of the ordinary ways of sensory experience” and presenting the police as unduly disqualifying the “equal capacity of anybody” to “concern themselves with common affairs.”⁵²

It is here that his readers have discerned in his thought an ontological diagnosis that the police order’s pretention for exhaustiveness is always already undone, that it always already wrongs a part that is left unaccounted and that preemptively justifies political interventions. But Rancière has pushed back on this reading throughout the 2000s and 2010s, which is to say ever since he encountered the booming scholarship on *Disagreement* and “Ten Theses of Politics.” He

⁵⁰ Oliver Davis, *Jacques Rancière* (Cambridge: Polity Press, 2010), 50-53.

⁵¹ Rancière, *Disagreement*, 29.

⁵² Rancière, *Moments Politiques*, 181, “From Politics to Aesthetics?” *Paragraph* 28:1 (2005): 14, and *Chronicles of Consensual Times*, 72.

insists that he “does not construct an ontology of structural difference,” that he does not “ontologize a principle of the heterogeneous,” “absolutiz[e] the wrong,” or deploy “ontologies of superpower,” and he has described his refusal to do so as “the specificity of [his] position.” He cautions that from haunting ghosts and “from the time out of joint, no politics come,” and he warns against “ground[ing] political dissensus in an excess of Being which would make any count impossible.” He goes so far as to write, quite strikingly, that “the count of the uncounted doesn’t mean that the parties of the society cannot add up to a total sum, *because they do add up.*”⁵³

If Rancière’s focus is on how we make sense of things—if, as I argued above, what is at issue in instances of disqualification is that practices are being interpreted as dismissible—and if we take seriously his refusal to guarantee that the reigning common sense is missing something, then what can it mean to count the uncounted? To address this, Rancière does deploy concepts, like the miscount, that have an ontological ring, but he politicizes them. He “deontologizes”⁵⁴ the availability of a part miscounted by the prevailing distribution of functions. Whether the police count is wrong is not a question to be settled philosophically but one that calls for public experimentation and dispute. What happens when we act *as if* the police is wrong?

Consider two nearly back-to-back sentences in *Disagreement*: (1) Political philosophy, that police ally, is “linked” to a count that “*perhaps [peut-être]* mask a fundamental miscount.” (2) Politics has to do with “a count... which is *always [toujours]* a false count, a double count, or a miscount.”⁵⁵ It is crucial to take both sentences seriously. Together, they suggest that politics *always* puts into practice a count of the community relatively to which the police is miscounting,

⁵³ Jacques Rancière, “The Use of Distinctions,” in *Dissensus*, 213–215, Jacques Rancière, “Comments and Responses,” *Theory and Event* 6.4 (2003): para. 13 and 21, and Jacques Rancière, “The Thinking of Dissensus,” in *Reading Rancière: Critical Dissensus*, ed. Paul Bowman and Richard Stamp (London: Continuum, 2011), 9–15. See also Jacques Rancière, *La Méthode de l’égalité* (Montrouge: Bayard Editions, 2012), 116, and Jacques Rancière, “A Few Remarks on the Method of Jacques Rancière,” *Parallax* 15:3 (2009): 119.

⁵⁴ He evokes deontologizing in “The Thinking of Dissensus,” 14 and “Comments and Response,” para 14.

⁵⁵ *Ibid.* 6, translation modified and emphasis mine.

and yet it remains the case that the police count is only *perhaps* a miscount. This means that the new egalitarian configuration is no more evidently right than the prevailing inegalitarian one is. The former is itself a mere “interpretation of what [people] do with their mouth.”⁵⁶ This is why Rancière consistently ascribes the same axiomatic status to equality/inequality, and why he argues that repartitioning the sensible involves no “change of level” but a horizontal struggle between competing ways of making sense. It sets up a “clash between two partitions of the sensible” and between “two broad ways of symbolizing the community,” “an opposition between logics that count the parties and parts of the community in different ways.”⁵⁷ Politics is a struggle to implement new expectations of who can do what where. This is best captured by Rancière’s talk of the “exchange of one as if for another as if.”⁵⁸ While on some occasions he allows that politics could be characterized as the “composition” of an “ontological tissue” since it is “a question of constructing a real in opposition to another,” he immediately adds that this should be understood as “a poem” or a “fiction:” It “is always a ‘might be’ or an ‘as if.’”⁵⁹ For instance, politics involves people who “act *as if* intellectual equality were indeed real and effectual.”⁶⁰

We can be more specific still: If people act in the absence of an ontological guarantee that they are right, it is their acts that make the police appear wrong. This removes any possibility that politics neatly break from police categories. It involves resignifying—“doubling”—the police count into a miscount, “rephrasing” and “reshuffling” its partitions to polemically cast them

⁵⁶ Rancière, “A Few Remarks,” 121.

⁵⁷ Rancière, *La Méthode de l'égalité*, 170-172, Rancière, “The Use of Distinctions,” 213, “Ten Theses on Politics,” 35 and 39, and *Moments Politiques*, 117.

⁵⁸ Rancière, “Thinking Between Disciplines,” 4.

⁵⁹ Rancière, “A Few Remarks,” 119. Rancière also talks of an ontology as a poem or a fiction in *La Méthode de l'égalité*, 116 and “Thinking of Dissensus,” 14. The argument that acting “as if” provides a productive path to acting upon a “fiction” is formulated at great length by the early twentieth century Kantian philosopher Hans Vaihinger, in *The Philosophy of As If* (London: Routledge, 1968 [1911]).

⁶⁰ Rancière, *The Philosopher and His Poor*, 219.

as miscounting something, i.e. a part that has no part.⁶¹ Put otherwise, politics redistributes in an egalitarian fashion the categories that the prevailing police logic is distributing unequally.

This entails practices of borrowing. People perform an activity that they are disqualified from by imitating attributes that make other groups appear competent for it. They “appropriate what was until then the discourse [*parole*] of the other, the privilege of the other,” “exercise capacities that they were not supposed to exercise,” and constitute themselves as “beings sharing the same properties as those who deny them these.”⁶² In *The Plebeian Philosopher* and *Proletarian Nights*, for instance, Rancière tracks nineteenth-century workers who engaged in paradigmatically bourgeois activities: philosophizing, verse-writing, leisurely walks. “Breaking the rule Plato imposed to artisans, [they] decided to introduce themselves in what is the territory reserved to others.” He says of Louis-Gabriel Gauny, a joiner, that, “Never had a man of the people claimed with more serene impropriety the pleasures for which it was understood that his kind was not born.”⁶³

Such a politics may seem like a quest for respectability, but two dimensions give it emancipatory force. Rancière is only consistent about the first, which is that the purchase of emulation is not to show that a few more people than originally thought can enact a given capacity, but to stage it as the capacity of “anybody whoever”⁶⁴ so that it no longer serves to differentiate parts of the community. Imitating an elite capacity is democratic when exercised from places or with compartments that the police already deems to be common. Take the plebeians who seceded to “discover themselves” as speaking beings by “executing a series of speech acts that mimic those

⁶¹ See Rancière, “Thinking of Dissensus,” 6-8 and *Moments Politiques*, 182.

⁶² Rancière, *La Méthode de l'égalité*, 51, *Moments Politiques*, 192, and *Disagreement*, 24. Richard Stamp, “Of Slumdogs and Schoolmasters,” *Educational Philosophy and Theory* 45:6 (2012), 647-662 discusses the importance of imitation for Rancière.

⁶³ Jacques Rancière, “Préface,” in Louis-Gabriel Gauny, *Le Philosophe plébéien* (Paris: La Découverte-Maspéro, 1983), 18, my translation.

⁶⁴ Rancière, “Does Democracy Mean Something,” 60.

of the patricians.”⁶⁵ What matters to Rancière is that they seized the patricians’ capacity for argumentative exchanges insofar as they were commoners, with no other title than being whomever. Similarly, the atypical plebeian philosophers featured in Rancière’s early works were not aiming to be bourgeois—they retained an antagonistic posture toward the established order⁶⁶—but to perform bourgeois activities within proletarian schedules. What makes them political figures is their ambivalent status as “proletarians who have fallen on the other side.”⁶⁷

The second dimension is that a politics of borrowing challenges, not *who* is deemed competent for a certain task, but *what* it even means to be competent for it. Rancière obscures this when he characterizes politics as an imitation of the words of others in the course of a dispute over who can speak. That problematically suggests that political action involves emulating the sum total of what already characterizes competence; indeed, if all that was at issue was whether the poor can use the same words as the wealthy, then for politics to involve “steal[ing] the words... of others”⁶⁸ would reduce it to a form of passing. Thus I add the following argument: The activity on which there is a dispute is rarely speaking *per se*. It is whatever activity people are looking to use speech for (e.g. giving an order, writing philosophy, proposing policies), and so using words is just one of the qualifying attributes for the task at hand. For instance, plebeian-philosophers faced the difficulty that proficient philosophizing involved not just using certain terms but also having time to master them. The broader point is that, in borrowing a capacity from others, one is not imitating all the attributes of competence but struggling for the capacity one is imitating to count as a sufficient surrogate of competence.

⁶⁵ Rancière, *Disagreement*, 24.

⁶⁶ For Rancière, they were motivated to work toward a new social order and radically criticize the prevailing one. He highlights how Gauny’s writings portray one’s day in a workshop as “hell without remission: the stolen time, the broken body, the crushed soul: a life in shadders.” In Rancière, *Le Philosophe plébéen*, 6.

⁶⁷ *Ibid.* 8.

⁶⁸ Rancière, *Moments Politiques*, 67.

This is compatible with those passages in which Rancière downplays the centrality of speech and instead deploys the more general argument that a partition of the sensible defines competence as the convergence of a way of speaking, a way of living and a way of doing. Political actors rearrange these received constellations of qualification by contesting that a failure for these elements to converge—an element getting out of sync—indicates incompetence.⁶⁹ They exercise activities assumed to not interest their social class, or they act as if the words they are using still make sense when uttered from places or with affects that are generally taken to discredit them.

This two-pronged repartitioning is not just a mental exercise or a petition for recognition. To act “as if” means that, rather than wait, one verifies an alternative accounting of what people can do. “[W]e don’t know that men are equal. We are saying that they *might* be. This is our opinion, and we are trying, along with those who think as we do, to verify it.”⁷⁰ Hence politics involves an “investigation” into one’s capacities; it entails “forms of experimentation” that “pu[t] to the test one’s capacity to give force to the power of an action.”⁷¹

Such verificatory language may seem to belie my argument that politics fights on behalf of an interpretation of what people can do. But verifying is not about proving that a miscounted part really is there, either because it was there all along or because politics has ascertainably instituted it as a feature of reality, as a performative reading of Rancière suggests.⁷² Instead, I read verificatory practices as having an “invitational” quality, to use a term that psychologist George Kelly associates with the idea of acting “as if:” One inhabits a claim to explore what follows

⁶⁹ This point echoes the educational method Rancière draws from Jacques Jacotot: “learning something and referring everything else to it.” Rancière, *La Méthode de l’égalité*, 154.

⁷⁰ Rancière, *The Ignorant Schoolmaster*, 73.

⁷¹ Rancière, *Moments Politiques*, 10 and 231.

⁷² See Oliver Marchart, “The Second Return of the Political,” in *Reading Rancière*, 143. Marchart is concerned that Rancière’s “egalitarian politics has to presuppose as a premise what it is about to institute or verify;” but the egalitarian premise remains an axiomatic figuration even when it does shift our (common) sense of things.

from presupposing it.⁷³ Verifying equality entails “seeing what can be done under this supposition.”⁷⁴ No matter how consistent a system is built on axiomatic grounds, it does not retrospectively justify the initial axiom. Thus the purchase of a verification is not to adjudicate the polemic over equality but to bring about a “change in the regime of belief.”⁷⁵ For Rancière, “interpretations are themselves real changes, when they transform the forms of visibility a common world may take and, with them, the capacities that ordinary bodies may exercise in that world.”⁷⁶ In investigating what follows from exercising a capacity, people are putting themselves in a position to litigate that something does follow from it against those for whom that capacity is inoperative when dissociated from other qualifications.

Evoking those who fear that emulation will coopt radical energies, Rancière asks in *Proletarian Nights*, “Where did they get the idea that workers cannot simultaneously love bourgeois people and combat them?”⁷⁷ In terms I have used, his point is that proletarians can emulate the bourgeois while also fighting the prevailing distribution of functions. A politics of borrowing is one in which disqualified parties stage imitative interventions while working to shift a wider public’s expectations⁷⁸ and persuade it that their imitative interventions are not out of place. Will an elite activity be perceived as one that only some people can exercise proficiently, or as one that is equally distributed? A politics of borrowing struggles to affect what answer appears self-evident at a given moment. It challenges the prevailing distribution of functions to shape common sense perceptions of who can do what where and what that is even indicative of.

⁷³ George Kelly. “The Language of Hypothesis.” *Journal of Individual Psychology*, 20:2 (1964): 137-152. Kelly traced his elaboration of the idea of acting of “as if” to Hans Vaihinger (see above).

⁷⁴ Rancière, *The Ignorant Schoolmaster*, 46.

⁷⁵ Rancière, “Thinking Between Disciplines,” 4.

⁷⁶ Rancière, *The Politics of Literature*, 30.

⁷⁷ Rancière, *Proletarian Nights*, 21-22.

⁷⁸ This is why Rancière talks of “the third person of public opinion” (*The Hatred of Democracy*, 79).

“The government of the incompetent”⁷⁹

I have proposed this crucial connection: It is because disqualifying expectations are neither obviously wrong nor obviously reflective of incompetence, but rather coherent sensory answers to the question of who is apt to exercise what activities, that it is so valuable for those who lack desired qualifications to nonetheless intervene in the spaces and processes they are deemed unprepared for. Put otherwise, it is easier to accept that certain spaces or processes are irremediably lost to politics when one is certain that a position heterogeneous to them is available for political subjects to occupy. But once we shed such guarantees, politics entails people investigating the common sense that certain places or issues are irrelevant to them and are beyond their capacities. How does this inform whether disqualified actors can act upon their aspiration to specifically concern themselves with the business of government?

Rancière does not put examples of such participatory politics at the forefront of his work. He rarely details the judgments citizens put forth in evaluating particular laws or measures. This has supported insurrectional readings of his thought; it explains why even scholars who highlight his interest in popular government say that he associates activities like voting or legislating with the police.⁸⁰ Yet Rancière’s corpus does make some room for examples of activism by people who verify the “competence of the incompetent” by engaging institutions and working to “have their say in affairs of state that are not their responsibility [*compétence*].”⁸¹ He evokes people who “take on the identity of a deliberative citizen” without having the requisite time for it,⁸² and

⁷⁹ Rancière, *Moments Politiques*, 159.

⁸⁰ For Todd May, Rancière classifies activities like voting as inherently part of the police and he therefore distances politics from all state activities. See Todd May, “Rancière and Anarchism,” in *Jacques Rancière and the Contemporary Scene*, ed. Jean-Philippe Deranty and Alison Ross (London: Continuum, 2012), 127 and “Jacques Rancière and the Ethics of Equality,” *SubStance* 36.2 (2007): 23.

⁸¹ Rancière, *Moments Politiques*, 219, and *Politics of Literature*, 66.

⁸² Rancière, *The Politics of Aesthetics*, 43.

he allows that elections can be political spaces.⁸³ His attention to governmental work is most striking when he praises the “collective action of all those who affirm their capacity to judge the validity of this or that measure concerning jobs and retirement, education, health care” and who intervene in policy debates presented as “purely technical,” like “reforms of social insurance or retirement schemes.”⁸⁴ This explains his aforementioned discussion of the second student protest, when students “circulated” and “evaluated” proposed legislation, and invited themselves in the discussions taking place between politicians who distrusted their policy input. As such, I question the reading that Rancière repudiates participation, organization, institution—even management.⁸⁵ I question even more the reading that his conceptual framework requires him to do so.

Therefore, I will push past Rancière’s comfort zone to argue that one can treat even governmental sites and institutions as occasions for such experimentation. The method of boundary-testing I have drawn out of Rancière and that I have build on invites us to revisit expectations that institutional or governmental practices are lost to democratic engagement. I have outlined a practice through which disqualified actors challenge what signals competence for different societal tasks. They investigate whether a given space or activity is propitious for equal participation by acting as if anyone is capable to participate in it, which is to say as if a constellation of attributes that is common to all is indicative of competence. This politics of borrowing can be used in the course of intervening in processes of rule; people can put the perceived incompetence of their contributions to governmental affairs to such a public test by staging interventions in unwelcom-

⁸³ See in particular Rancière, *The Hatred of Democracy*, 53 and *Chronicles of Consensual Times*, 141-144. In one recent interview, Rancière highlighted Icelanders who mobilized to “change their Constitution themselves.” He adds, “As we used to say, one can say that this is reformist, but the idea that people can write their Constitution themselves is something that seems much more important to me than the grand radical speeches that we can hear in political conferences in our countries.” Rancière, *La Méthode de l’égalité*, 237.

⁸⁴ Rancière, *Moments Politiques*, 174 and Rancière, “Against The Ebbing Tide,” 250.

⁸⁵ Rancière, *Moments Politiques*, 189, 236 and *La Méthode de l’égalité*, 217. There is a durability, even tediousness, to some of the activities that Rancière he valorizes, like the running of proletarians newspapers or Jacotot’s teaching experiments.

ing institutions, on governmental issues and decisions expected to attest to one's ineptness.

Glenn Mackin recently analyzed the welfare rights movement through the lens of my argument for such a politics, as I summarized it in a conference paper.⁸⁶ I shall now turn to AIDS treatment activism to better explicate the connection between contesting one's disqualification and contributing to the institutional spaces that one is disqualified from.⁸⁷

The politics of AIDS treatment activism

ACT UP was created in 1987 as a grassroots organization aimed at fighting the AIDS crisis.⁸⁸ Its Treatment & Data Committee (T&D) was established in 1988 to advocate for more access to available treatments and quicker drug development. AZT was still the only approved drug six years into the epidemic, there were few options available to fight the opportunistic infections from which people were suffering, and AIDS groups bemoaned that new drugs were moving through the trial process at too slow a pace.⁸⁹ While there were some mechanisms in place for distributing experimental drugs to people whose lives were immediately threatened, few benefited. This meant that clinical trials were the only means by which most people had access to any treatments at all. Activists denounced the stringent conditions for inclusion in trials: Women were typically barred from enlisting, participants were mostly white,⁹⁰ and one was excluded if

⁸⁶ Glenn Mackin, *The Politics of Social Welfare in America* (Cambridge: Cambridge University Press, 2013), 201-208

⁸⁷ Karen Zivi, *Making Rights Claims* (Oxford: Oxford University Press, 2011) also stages a meeting between Rancière and a strand of AIDS activism, this time that of seropositive mothers. She does this to study the logic of demanding new rights, whereas I focus on the struggles over competence that such demands may occasion.

⁸⁸ In what follows I focus on ACT UP and on events that occurred after 1987, but this is not to deny the activism that preceded and prepared that group's creation. On the advocacy groups on the scene by that year (e.g. New York's Gay Men's Health Crisis), see Altman, *AIDS in the mind of America*, 83-107, and Larine Sommella, interview of Maxine Wolfe, "This Is About People Dying: The Tactics of Early ACT UP and Lesbian Avengers in New York City," in *Queers in Space: Communities, Public Places, Sites of Resistance*, ed. Gordon Brent Ingram et al. (Seattle: Bay Press, 1997), 407-438.

⁸⁹ See Treichler, "How to Have Theory in an Epidemic," 61 for more on the stages of drug development.

⁹⁰ Sarah Schulman, "Interview with Mark Harrington," *ACT UP Oral History Project* through the New York Lesbian & Gay Experimental Film Festival (2003), accessed online 3 Mar. 2005, 15, and Treichler, "How to

one was also taking a drug for another opportunistic disease than the one being tested for. Activists perceived these rules as virtual death sentences for entire groups of infected people. Moreover, the use of placebos meant that success was defined as the death of a significant number of participants; ACT UP denounced clinical trials as a game of “Russian roulette.”⁹¹

Treatment activists argued that such ethical failures also affected scientific validity—they charged, for instance, that male-only clinical trials would be faulty because of a lack of generalizability⁹²—and they laid out technical proposals of their own. They advocated not just for more research into certain areas, but also for changes to research conventions to get more drugs into (all sorts of) bodies. *The Village Voice* wrote that, “These activists seek nothing less than a revolution” in “the long-standing assumptions about drug development.”⁹³

ACT UP as a whole was a departure from prior AIDS activism. In 1986, Dennis Altman had noted that “most AIDS politicking... has involved the lobbying of federal, state and local governments rather than large street demonstrations,” and that this has “meant dependence upon professional leaders able to talk the language of politicians and bureaucrats.”⁹⁴ ACT UP shifted from professional lobbying to public demonstrations, but that is not all. It also represented a wholesale displacement of two assumptions in Altman’s statement: (1) that argumentative addresses and confrontational demonstration operate according to different logics, and (2) that pur-

Have Theory in an Epidemic.” T&D member Iris Long notes that the exclusion of women was so “ingrown” in the medical culture that researchers only worked on male rats. Sarah Schulman, “Interview with Iris Long,” *ACT UP Oral History Project* through the New York Lesbian & Gay Experimental Film Festival (2003), accessed online 3 Mar. 2005, 27.

⁹¹ ACT UP, “A National AIDS Treatment Research Agenda” (September 1989) 2. Here is how activist Ron Goldberg recalled the argument later on: “Drug trials are healthcare.... This idea of pristine science in this ivory tower where trials are done with placebos, when you know that people on placebos are going to die, that’s just untenable.” Sarah Schulman, “Interview with Ron Goldberg,” *ACT UP Oral History Project* through the New York Lesbian & Gay Experimental Film Festival (2003), accessed online 3 Mar. 2005, 23.

⁹² Epstein, “The Construction of Lay Expertise,” 420. For Epstein, “yoking together methodological (or epistemological) arguments and moral (or political) arguments” was a key credibility tactic for treatment activists.

⁹³ Robert Massa, “ACTING UP at the FDA: What AIDS Activists Want,” *Village Voice*, October 18, 1988, 1.

⁹⁴ Altman, *AIDS in the Mind of America*, 105.

suings the former strategy (seeking to make direct contributions) requires specialized competences. These assumptions are not anodyne, for they structure contemporary democratic theory's conceptual vocabularies; my first chapter made this case by laying out what it called the framework of mutuality. In his book on AIDS activism in Vancouver, for instance, Michael Brown draws on Mouffe's paradigm that non-antagonistic practices are worthwhile only if institutions cooperate with their constitutive outside. As a result, he distinguishes between organizations that played an insider game insofar as they benefited from governmental agencies' good will and organizations that confronted government indifference by staging "disruptive public spectacles" while "rarely engage[ing the state] on its own turf."⁹⁵ Yet AIDS treatment activists belied these expectations. Here were uncredentialed and confrontationally-minded people who lacked training in governmental work and medical issues, and were perceived as such by their prospective interlocutors, but who persisted in engaging the still-uncooperative state "on its own turf" and shaping scientific research. Understanding their intervention requires expanding the constraints of the framework of mutuality.

The politics of borrowing I have argued in this chapter sheds new light on AIDS treatment activism. Through that lens, we can see that the movement illustrates that contestatory action can entail seizing a seat at the governmental table rather than turning one's back on it. It specifically sheds light on how disqualified actors address doubts about their capacities as part of their democratic activism. The rest of this section lays out this argument.

In making technical interventions, treatment activists engaged in a "crash course born out of desperation."⁹⁶ They amassed information about the disease, familiarizing themselves with the

⁹⁵ Michael P. Brown, *Replacing Citizenship: AIDS Activism and Radical Democracy* (New York: The Guilford Press, 1997), 51, 58 and 68.

⁹⁶ George Carter, "My Integrative Strategies for Managing Hepatitis C," *TheBody.com*, 13 August, 2015, accessed online October 15, 2015.

scientific literature, and learned medical language, much like one would a foreign language; Harrington recounts how he “translated” it by preparing and distributing an extensive glossary.⁹⁷ A participant in an activist video performance from 1989 recounts: “Slowly we educated ourselves... We read stacks of tedious protocols and contracts.”⁹⁸ For instance, T&D members were assigned a “buddy” drug on which to prepare a detailed literature review for the larger group,⁹⁹ and they filed Freedom of Information Act requests for Federal Drug Administration (FDA) documents pertaining to AZT to grow familiar with the stages of drug development and to identify changes that would quicken the approval process¹⁰⁰—“unglamorous”¹⁰¹ work indeed.

Treatment activists quickly used the knowledge they were acquiring to make specific claims as to what science should do, and how. They began community research initiatives in which people with AIDS and local physicians ran clinical trials of their own, sometimes in underground spaces.¹⁰² They engaged with the federal bureaucracy and established academics, taking issue with their conventions and protocols, and recommending alternatives. This strategy blossomed at the Fifth International AIDS Conference, in 1989, which T&D activists stormed to present their “National Treatment Agenda.” As Harrington describes it, “We said, look, the federal government doesn’t have a plan, we do, here’s what they should do,” here are “concrete proposals for what they should study, how they should study it.”¹⁰³ The document denounces the unsustainability of Placebo experiments and the prohibitive cost of drugs,¹⁰⁴ it designs a “parallel

⁹⁷ Schulman, “Interview with Mark Harrington,” 13. The comparison between medical language and foreign language is drawn from Epstein, “The Construction of Lay Expertise,” 418.

⁹⁸ The video, “Rockville is Burning”, is a January 1989 performance by an ACT UP affiliate (Wave 3) some T&D members belonged to. Retrieved March 18, 2015. <<https://www.youtube.com/watch?v=oNVI4TrK4g0>>

⁹⁹ Schulman, “Interview with Mark Harrington,” 13.

¹⁰⁰ Treichler, “How to have Theory in an Epidemic,” 65.

¹⁰¹ Schulman, “Interview with Mark Harrington,” 56.

¹⁰² Indyk and Rier, “Grassroots AIDS Knowledge,” 25, Treichler, “How to Have Theory in an Epidemic,” 64.

¹⁰³ Schulman, “Interview with Mark Harrington,” 52.

¹⁰⁴ The document asks, “Can a drug [AZT] which drives many people into poverty be considered safe?” (ACT

track” process to expand access to drugs undergoing clinical trial and ways to oversee that process,¹⁰⁵ it champions specific changes to the sequencing of clinical trials with an eye to fast tracking drug approval,¹⁰⁶ and it raises outstanding research questions on a long list of individual drugs and medical conditions. Angry activists had theatrically stormed a space in which they were uninvited—and they had done so to voice views like “too much research is focused on nucleoside analogues and their reverse-transcriptase (RT) inhibitory activity,” to raise questions like “could Foscarnet be administered orally?,” and to accuse pharmaceutical companies of having “failed to keep up with the published literature on the proper chemical sequence of the CD4 protein receptor.”¹⁰⁷ (The document integrates such technical proposals with demands for broader sociopolitical transformations on issues such as poverty or accessibility. This holistic approach can be found in other documents published by T&D activists.¹⁰⁸)

These interventions ran against the prevailing expectations of who has the requisite qualifications to do science. Harrington describes how those whom activists addressed “shook their heads, told us they were on our side, but we didn’t understand the science.”¹⁰⁹ Even later on, after Anthony Fauci, head of the National Institute of Allergy and Infectious Diseases (NIAID),

UP, “A National AIDS Treatment Research Agenda,” September 1989, 6).

¹⁰⁵ In laying out who would be part of the oversight committee they were proposing, the document makes the strategic choice of first listing federal officials, representatives of pharmaceutical companies, academic and clinical researchers, and only then community representatives and people with AIDS (PAWs) (ibid. 7).

¹⁰⁶ For instance: “It is not necessary to determine high-dose toxicity if a lower dose already found safe is sufficient to test for efficiency” (ibid. 6), i.e. a Phase II trial should begin before a Phase I trial is completed.

¹⁰⁷ Ibid. 11-12, 14.

¹⁰⁸ For instance, a lengthy pamphlet published by treatment activist George Carter in 1992 combines a review of his concerns regarding scientific research with arguments regarding the importance of addressing “social isolation, homophobia, racism, sexism” by proposing a range of policies such as: extending insurance benefits (in part by reforming “eligibility criteria for Medicaid/Medicare”), fighting the priority given to “corporate profits,” improving “the conditions of prisoners with AIDS,” lowering drug prices, adopting needle exchange programs, “expanding the [federal Centers for Disease Control’s] list of infections that qualify as AIDS diagnoses” to remedy the exclusion of many maladies that disproportionately affects women and intravenous drug users. The document also contains a section that ties the fight against AIDS to the need to combat militarism and oppose wars (like the contemporaneous Gulf War) that take up federal spending. See George M. Carter, *ACT UP, the AIDS War & Activism*, Westfield: Open Media Pamphlet Series, 1992.

¹⁰⁹ Schulman, “Interview with Mark Harrington,” 52.

agreed to integrate them into the AIDS Clinical Trials Group (ACTG) committees, researchers warned that this would mean an end to “serious scientific discussion.”¹¹⁰ T&D also faced the challenge of prospective activists’ self-doubt. A recurring theme in ACT UP testimonials is that people needed to overcome the sense, as one activist put it, that those in power “must know what they’re doing,” so “how can I possibly speak up, because who am I?”¹¹¹

Now, Rancière’s emblematic examples of inegalitarian expectations belong to the distant past. As a result it can be hard to follow through on the implications of his view that disqualification is supported by a “system of self-evident facts of sense perception.” Even when we grasp this dynamic on an intellectual level, police statements (e.g. “plebs do not speak”) can seem so blatantly absurd as to distract us from the fact that it is the challenges to such statements that appeared unsupported when they were made. This is what makes AIDS treatment activism an interesting movement to analyze. The proposition that research decisions should be the province of medical professionals is one that makes common sense in our own moment; many would not find it obvious that ordinary citizens are competent to “do science,” nor that they will be if they acquire medical knowledge in a compressed timeframe and in a nonacademic milieu. Hence we are unlikely to skip over treatment activists’ struggle, not just to appear where they were not expected, but also to persuade themselves and others of the propriety of that appearance.

Importantly, an outlook that posits different roles based on people’s differentiated capacities is compatible with an otherwise inclusive attitude. Denying that certain voices are qualified for a certain task can involve differentiating them from other voices without silencing them altogether. It can involve mean speakers insofar as they help identify areas of public discontent for leaders to fix, or insofar as they feed local information and a situated perspective to rulers’ top-

¹¹⁰ Bruce Nussbaum, *Good Intentions: How Big Business And the Medical Establishment Are Corrupting the Fight Against AIDS* (New York: The Atlantic Monthly Press, 1990), 306-307, via Epstein, *Impure Science*, 286.

¹¹¹ Schulman, “Interview with Ron Goldberg,” 14.

down perspective. It is especially tempting to analyze ACT UP—fueled as it was by the desire to survive, by anger, and by concerns about what drugs do to particular bodies—in such terms.

Such analyses would further a common paradigm in the literature on democratizing science: that knowledge-claims by lay citizens are valuable insofar as they reflect a distinct form of life, insofar as they offer a *nonscientific* perspective.¹¹² Michel Callon has criticized this framework on the grounds that it risks ruling out *a priori* the prospect that people other than professional scientists have the competence to produce a knowledge “that warrants the term ‘scientific.’”¹¹³ AIDS treatment activists encountered such reactions—that their interventions had value, but not *as* scientific contributions—from sympathetic interlocutors. Ron Goldberg, for instance, recalls how some scientists praised their involvement in the 1989 conference and responded by proposing to split future conferences into separate sessions devoted to scientific issues and social issues.¹¹⁴

¹¹² We can distinguish between two approaches to rehabilitating the value of local knowledges as distinct from scientific knowledge. The first holds that scientific knowledge fails at its alleged ambition to represent the world as it really is, while forms of practical and lived knowledge better capture complexities that scientists are blind to. (See Scott’s argument on behalf of “metis” in *Seeing Like a State*.) The second proposes a more symmetrical analysis: The Sociology of Scientific Knowledge school (SSK) argues that a mode of knowledge is the product of a form of life, of the norms and rules that constitute the network in which it is produced. See David Bloor, *Knowledge and Social Imagery* (Chicago: The University of Chicago Press, 1976), Barry Barnes, David Barnes, and John Henry, *Scientific Knowledge: A Sociological Analysis* (Chicago: University of Chicago Press, 1996), and Steven Shapin and Simon Schaffer, *Leviathan and the Air-Pump: Hobbes, Boyles and the Experimental Life* (Princeton: Princeton University Press, 2011). This second framework’s upshot is that different communities should acknowledge the conventional character of their own modes of knowledge-production and negotiate between their alternative commitments. See Brian Wynne, “Misunderstood Misunderstanding: Social Identity and Public Uptake of Science,” *Public Understanding of Science* 1:3 (1992) and “Public Uptake of Science: A Case for Institutional Reflexivity,” *Public Understanding of Science* 2:4 (1993). Scott’s asymmetrical analysis leads him to explicitly reject such a model of complementary co-negotiation. He writes in *Seeing like a State*, “There seems to be no door in this epistemic edifice through which metis or practical knowledge could enter on its own terms” (340). Similar debates on how to best represent the relationship between biomedical knowledge and local knowledges also structure medical anthropology; see Byron Good’s overview in *Medicine, Rationality, and Experience* (Cambridge: Cambridge University Press, 1994), 25-64.

¹¹³ Michel Callon, “The Role of Lay People in the Production and Dissemination of Scientific Knowledge,” *Science, Technology & Society* 4:1 (1999): 89. Callon contrasts a model of democratized science that retains a line of demarcation between experts and non-experts along the line of a SSK approach (see above); another in which “lay people” mobilize to participate in the production of the knowledge “which warrants the term ‘scientific’” by “framing” the flow of information and discussion by which this knowledge is produced.

¹¹⁴ Ron Goldberg, “Conference Call: When PWAs first sat at the high table,” in *POZ* (July 1998), retrieved from <http://actupny.org/documents/montreal.html> on 03/15/2015. Even Epstein, whose approach is to show

Yet treatment activists' technical recommendations and their efforts to jump-start grassroots trials problematize such assessments. As Epstein shows, they were looking “to reform science by exerting pressure from the outside but to also *perform science* by locating themselves on the inside.”¹¹⁵ Treatment activists were not just claiming a general right to be heard; they were seizing a capacity to do the same sort of work as credentialed professionals.

Their efforts paid off—and quickly so. Indyk and Reider described in 1993 how grassroots activists were treated as partners with which to “create, collect, spread and apply information about new treatments.”¹¹⁶ Stephen Joseph, who was targeted by ACT UP while serving as New York City's health commissioner, stated in 1990 that, “they've had an enormous effect... We've basically changed the way we make drugs available in the last year.”¹¹⁷ The FDA sped up its process for approving and distributing drugs, even approving one drug (aeosolized pentamidine) in 1989 on the basis of studies conducted by community groups of physicians and nonprofessionals—a breach from the traditional privileging of research conducted in academic centers; the National Institute of Health (NIH) instituted a parallel track program that expanded access to experimental treatments; and nonexpert representatives of affected groups sat on committees that oversaw funding, research priorities, and trial rules.¹¹⁸

Here we encounter a thorny question. Treatment activists framed their interventions by displaying proficiency in the idiom of academic research; they treated the capacity to speak the

how activists staked out “ground on the scientists' own terrain,” briefly frames them as championing a “locatable” knowledge, as having “something to say simply because of where they stand” (*Impure Science*, 13, 337).

¹¹⁵ Epstein, *Impure Science*, 17 (emphasis mine).

¹¹⁶ Indyk and Reier, “Grassroots AIDS Knowledge,” 28

¹¹⁷ Jason DeParle, “Rude, Rash, Effective, Act-Up Shifts AIDS Policy,” *New York Times*, January 3, 1990.

¹¹⁸ See Schulman, “Interview with Mark Harrington,” 53; Epstein, *Impure Science*, 218 and 235-7; Gina Kolata, “F.D.A. Approves the Use of an Experimental Drug for AIDS Patients' Eye Infections,” *New York Times*, March 3, 1989; Victor Zonana, “Community Research Seeks to Speed Work on AIDS Treatments,” *Los Angeles Times*, July 9, 1989; DeParle, “Rude, Rash, Effective, Act-Up Shifts AIDS Policy.”

language of the journal article... [as] a *sine qua non* of their effective participation.”¹¹⁹ In doing so, did they not accept and reproduce the prevailing expectation of what scientific qualifications one must be manifesting in order for one’s speech to be credible?¹²⁰ This is the concern voiced by Keith Topper, for whom the story of AIDS treatment activism is that some people were not being heard because they lacked “familiarity with the language of bioscience,” so they worked to acquire that familiarity, and once they did they gained the status they needed to be heard.¹²¹ The implication is that, whatever benefit may have followed from their inclusion in scientific fora,¹²² they did not challenge what signals competence to speak on credible matters; instead, they further entrenched preexisting judgments of how utterances must be packaged if they are to count as valid contributions. This echoes the claim I mentioned in my introduction that treatment activists benefited from the already-common perception that “white men” are good at science. Seen in this light, the movement’s success is evidence of its complicity, evidence that entry into a specialized field is indissolubly associated with the possession of given markers.¹²³

Yet this narrative rests on the questionable premise that the “capacity to speak the language of the journal article,” and this concomitant “familiarity with the language of bioscience,” was the preeminent marker of scientific credibility in 1987. Topper himself is attentive to the va-

¹¹⁹ Epstein, “The Construction of Lay Expertise,” 417.

¹²⁰ This worry has special weight in the case of AIDS treatment activism given the gay rights movement’s earlier struggle against scientific professionals. Concerns of medicalization spread alongside the epidemic. In 1982, columnist Michael Lynch warned that, “We have peremptorily, almost inexplicably, relinquished the one power we so long fought for...: the power to determine our own identity. And to whom have we relinquished it? The very authority we wrestled it from in a struggle that occupied us for more than a hundred years: the medical profession.” Michael Lynch, “Living with Kaposi’s,” *Body Politic* 88 (1982).

¹²¹ Keith Topper, “Arendt and Bourdieu between Word and Deed,” *Political Theory* 39.3 (June 2011): 368.

¹²² Having drawn on Bourdieu to explain the obstacles activists encountered to being heard as authoritative speakers, Topper turns to Arendt to describe what was gained by scientists’ eventual recognition of activists’ credibility; he points to the “enlarged mentality” and common power that was generated by activists and scientists’ willingness to step into joint deliberative fora. Yet a group deciding that it can talk with another hardly means that it will be seen as capable to do so. Topper sidesteps the puzzle of how activists were able to act on their participatory aspirations even in the face of established actors’ rejection of their qualifications.

¹²³ This is also the implication of Linsey McGoey’s brief remarks on AIDS treatment activism in “Police Reinforcement: The Anti-Politics of Organizational Life,” in *Reading Rancière*, 155.

riety of things on which credibility hinges; he points to Bourdieu's focus on "styles of embodied conduct," on "pronunciation, bodily compartment," "proper dress, speech and behavior."¹²⁴ (On this much Bourdieu and Rancière agree.) This makes it more surprising that Topper then treats the comparative simplicity of what treatment activists seized as a stand-in for the broader capital of the expert class. What about diplomas, the years of training (in medical school and laboratories), the level of intelligence that acceptance in these programs is typically taken to signal, university posts, publications, appropriate decorum, and all the other credentials that inform who is seen to be expert enough to opine on scientific research?¹²⁵ (After all, not even medical professionals were all seen to be equally qualified to produce scientific knowledge; one activist quest was to expand the scope of competent actors beyond academic researchers, to practicing physicians.) In what follows, I keep this broader constellation in mind to argue that the movement's political work resided in activists' efforts to sever the marker of scientific credibility they borrowed—the capacity to use an academic idiom—from markers that usually accompany it, combining it instead with more egalitarian traits.

Epstein cites a treatment activist describing how she walked into meetings with researchers with "earrings in one ear and a Mohawk and my ratty old jacket on." This is not someone trying to pass as a respectable scientist, nor is it someone looking to leave behind the type of "embodied conduct" likely to make her interlocutors think, as she put it, "Oh great, one of these street activists who don't know anything."¹²⁶ The same complexity is apparent in activists' public performance of anger, an affect commonly taken to signal that one lacks the disinterestedness

¹²⁴ Topper, "Arendt and Bourdieu between Word and Deed," 360 and 365.

¹²⁵ While many AIDS treatment activists had a privileged background—for instance most were college graduates (see, *Impure Science*, 230 and Joshua Gamson, "Silence, Death and the Invisible Enemy," *Social Problems* 36:4 [1989]: 362)—and therefore already enjoyed some specialized markers of credibility, consider also that the stigma of homosexuality marked many as undesirable speakers. Altman discusses the problems of self-esteem and social isolation faced by many AIDS activists, in *AIDS in the Mind of America*, 92.

¹²⁶ Epstein, *Impure Science*, 232.

requisite for rational discourse,¹²⁷ even while making research assessments. The polemical strategy of partial imitation can be shown to comprise two distinct moves. (These two moves correspond to the two points I made earlier to explain why Rancière’s politics of borrowing has an emancipatory force.) First, activists isolated a specialized style of speaking from the places and compartments usually associated with it, as if it is by itself a sufficient sign of competence. Second, they exercised it from place and compartments that were the province of anybody, as if it is equally distributed. Let us consider each aspect in turn.

First, treatment activists did not pursue all the credentials expected to accompany competence; they did not imitate researchers in general. Rather, they acted as if the borrowed capacity (“speaking the language of the journal article”) was enough to signal an aptitude to do science. They enacted the hypothesis that familiarity with this language is a sufficient sign of credibility whatever else it is coupled with—diplomas, academic positions, proper dress code be damned. Here one could object that this was less a polemical challenge to the structures of science than an appeal to what already was the scientific ideal; according to this view, activists exposed as fraudulent the resort to biased shorthands for competence and got themselves heard according to a perception of their true competence, unmediated by sociological markers. Yet the aforementioned criticism that the capacity activists emulated was itself not sociologically neutral—that the way they framed knowledge-claims corresponded to privileged groups’ capital—questions this narrative. If there is something politically transformative about their technical interventions, it is to be found in light of this point that they enacted a “style of conduct” of their own. This is why their emulation’s *partial* character matters. It is no foregone conclusion that severing the aca-

¹²⁷ Iris Marion Young discusses the denigration of “emotion, figurative language, or unusual or playful forms of expression” in *Inclusion and Democracy* (Oxford University Press, 2002), 63. See also Jeff Goodwin, James Jasper and Francesca Polletta’s “Why Emotions Matter,” in *Passionate Politics: Emotions and Social Movements*, ed. Jeff Goodwin, et al. (Chicago: University of Chicago Press, 2001), 1-24. They argue that in many movements activists take up this same suspicion and criticize other participants’ excessive display of emotions.

demic idiom from other specialized attributes will still occasion competence; that it does was the political claim that treatment activists fought for.

Consider the point, which I developed in my second chapter, that it is not clear what the manifest capacity to employ certain words is a sign of, especially when displayed by unexpected subjects. What is at stake is not who uses a given language, but who makes sense while employing it, and the latter does not follow from the former. There is nothing about one's ability to talk like a scientist that inherently signals one's ability to do a scientist's work. Is this talk a sign that one has acquired mastery over the underlying concepts or merely a sign that one has learned to parrot scientific discussions?¹²⁸ Asking for diplomas or for a dispassionate affect is one common response to this uncertainty, and it is this response that treatment activists investigated; it is this partition that they worked to displace. For instance, they challenged the sense of the time (and patience) it takes to master an aptitude to do science. This does not mean that they denied the importance of learning (they were committed to educating each other and accumulating knowledge) but that they treated learning as a process that goes hand-in-hand with the work of experimenting with its efficacy. They crafted and advocated technical recommendations in very short order, and education was incorporated into action.¹²⁹

T&D member Jim Eigo once remarked that treatment activists were “displaced intellectuals from other fields,”¹³⁰ and while this statement has been cited to support the suspicion that this movement consisted in elite self-reinforcement, we should not skip over that displacement's

¹²⁸ Here the comparison between medical language and a foreign language becomes a double-edged sword. Say that one learns how to speak a foreign language without being able to spell out the underlying rules one is already following, perhaps as a result of being immersed in a new community. Does that knowledge give one the same type of competence as the one that accompanies knowledge of the underlying rules?

¹²⁹ Maxine Wolfe talks of the distribution of fact sheets before protests. In Jim Hubbard, “Interview with Maxine Wolfe,” ACT UP Oral History Project through the New York Lesbian & Gay Experimental Film Festival (2004), accessed 3 Mar. 2015, 108.

¹³⁰ Cited in Epstein, *Impure Science*, 230.

polemical character. That later observers do so is telling of activists' accomplishment, which lies precisely in this erasure. Put otherwise, making the displacement from one type of intellectual work to another look obvious rather than preposterous was itself a political production. It took work to generate the hypothesis that something follows from the capacity activists were imitating, and to stage a dispute around what they could do with it. Members of the T&D committee brought their analyses of new clinical trials or drugs to the ACT UP floor to discuss with others committees known for aggressive actions (zaps) how to intrude into governmental processes to make these analyses have weight.¹³¹ Their activism entailed public and intrusive demonstrations to frame their talk of "nucleoside analogues" or "CD4 protein receptors" as worthwhile contributions rather than charlatanry.¹³² This blurs the standard account that ACT UP pursued two separate tracks—one insider and "accommodationist", the other outsider and "oppositional"¹³³—because it reveals treatment activists' participatory aspirations to have been inextricably contestatory. In calling on activists to acquire expertise, one *AIDS Treatment News* editor explicitly presented this as a way to *reject* injunctions to "not rock the boat."¹³⁴

Second, not only did treatment activists uncouple their use of the academic idiom from the other usual signs of expertise, they also articulated it with traits already seen to belong to the community-at-large. They acted as if using this idiom was a capacity that "anyone whoever" en-

¹³¹ Ron Goldberg, who was not in T&D, recalls that, "They would come and they would say, "Okay, this is what's going on, and this drug is working, and this is why we have to do this." And then Actions could go – oh, well – how should we do this? Well maybe we should do this, maybe we should do that." Schulman, "Interview with Ron Goldberg," 38. See also Schulman, "Interview with Mark Harrington," 53.

¹³² Goldberg notes that, even as some scientists cheered activists' storming of the 1989 AIDS Conference, "it was only when we refused to leave the auditorium and instead parked ourselves in the VIP section that the crowd realized that our action was more than just a symbolic protest." Goldberg, "Conference Call."

¹³³ See Smith and Siplon, *Drugs into Bodies*, 31 for an opposition between the "rational and cognitive" and "protests, zaps, demonstrations." Deborah Gould's narrative also emphasizes the tensions between proponents of an "oppositional politics" (rocking the boat) and of an "accommodationist politics" (steadying the boat) in Deborah Gould, "Rock the Boat, Don't Rock the Boat, Baby: Ambivalence and the Emergence of Militant AIDS activism," in *Passionate Politics*, 135-157. See also McGoey's critique that in speaking the language of bioscience, activists "discredit[ed] the tactics of an earlier wave of activists" in "Police Reinforcement," 155.

¹³⁴ John S. James, "What's Wrong with AIDS Treatment Research?" *AIDS Treatment News*, 9 May 1986.

joyed. Just like Rancière’s plebeian philosophers who “made themselves other, ... living *like* workers and speaking *like* the bourgeois”¹³⁵ (Rancière 2012b, 9), activists spoke like scientists from the ways of being and doing of nonscientists. They packaged research assessments in angry performances and displays of emotion, debated medical issues during intrusive sits-ins and open meetings, presented experimental findings divorced from the pedigree of academic centers, and invoked the urgent temporality of mortal bodies. ACT UP as a whole was committed to the idea that, “Anybody who goes to an action should be able to speak on whatever,”¹³⁶ and treatment activists tested specifically whether they—*qua* ordinary, uncredentialed citizens—could participate in scientific processes. Instead of pointing to a new set of qualifications that would justify their way of speaking, they presented it as a capacity one could exercise without needing specific qualifications. This was a polemical move in its own right. If it is already not obvious that the capacity to use the academic idiom is a sufficient sign that one knows what one is talking about, that is even less so when one does so in anger, or on the street.

Here again, the claim that the aptitude to do science is equally distributed—that anyone can exercise it—need not deny the importance of learning and acquiring expertise. But it also adds up to more than the Enlightenment idea that everyone has an equal potential to learn and eventually gain the status of someone who knows. As I described, efforts to acquire expertise went hand-in-hand with efforts to exercise it; the claim of an equal capacity to learn science and of an equal capacity to do science bled into each other—at least in the movement’s early years.

I have highlighted two moves in assessing what was transformative about treatment activists’ success in shaping AIDS research. (1) They treated the capacity they were enacting as a qualification sufficient to contribute to governing, as if the capacity to make use of the language

¹³⁵ Jacques Rancière, *La Nuit des prolétaires*, my translation (Paris: Fayard, 2012), 9 (emphasis in text).

¹³⁶ Schulman, “Interview with Ron Goldberg,” 41.

of bioscience signaled a competence to participate in scientific decision-making. (2) They uncoupled the capacity they were enacting from the “ways of being, ways of doing, and ways of saying” with which it was associated (the credentials, diplomas, training, dress code or sense of decorum it demanded), articulating instead with the common trait of belonging to the community-at-large, as if the capacity to make adequate use of the language of bioscience was a capacity common to “anyone whoever.” The political logic of treatment activism lies in the enactment of this doubly polemical proposition: The capacity (1) that is sufficient to qualify one to do science (2) is equally distributed.

Treatment activism’s retreat

By the early 1990s, government agencies and pharmaceutical companies were in dialogue with treatment activists, but this was accompanied by mounting tensions within AIDS organizing. Treatment activists were criticized by fellow ACT UP members on a number of fronts. One charge was that the conversational politics they were enacting was undermining other, more disruptive tactics. As ACT UP member Maxine Wolfe summarized this charge, “They were meeting with the very people who we were fighting against.”¹³⁷ A second was that, having established

¹³⁷ Hubbard, “Interview with Maxine Wolfe,” 95. This charge was accompanied by an accusation that treatment activists were focusing on too narrow a range of issues. As Wolfe put it, “You could not talk about women’s stuff with that group of people without them believing that it was a social issue... instead of a treatment issue” (In Sommella and Wolfe, “This Is About People Dying”). At issue was what exactly AIDS activism should be about. Eileen Hansen wrote in 1991, “Activists have struggled over the last ten years with the question of a specifically focused agenda on treatment issues versus a broadly defined approach to the AIDS agenda that seats HIV in the context of an economic, political, and social system that is oppressive and discriminatory... Do we have the wisdom to bring together those who come to AIDS activism out of the understandable fire of saving their own lives with those who come to AIDS activism out of the vision of saving the life of our society?” Eileen Hansen, “Can the AIDS Movement Work for All of Us?” *The Advocate*, August 13, 1991. Numerous documents produced by T&D activists did adopt such a holistic approach; I earlier described ACT UP’s 1989 “National Treatment Agenda” and a 1992 pamphlet published by George Carter, both of which integrated technical proposals and arguments for broader transformations (on drug affordability, universal insurance, racial discrimination, the housing crisis, corporate profiteering). Yet Hansen article came in a context where the bridge between these different issues was coming undone. On one side, some (non-treatment) activists contended that intervening on treatment issues would lead to an insufficiently transformative politics; on

their own credibility, the first wave of treatment activists had no more patience for new activists looking to verify their capacities' efficacy. "They looked at us differently," one activist interested in getting involved in treatment issues told Epstein. "They were offended by us."¹³⁸

I contend that such concerns stemmed in part from treatment activists' gradual retreat to the assumptions they had undermined when they were still struggling to achieve credibility. It is true that some of those voicing the first charge were drawing on a view that institutional engagement *as such* is hostile to a radical transformative politics, and that one must choose between meeting and fighting because the former leads to accommodation and absorption; they demanded that movement participants suspend aspirations to contribute to governmental processes, at least until redress has been obtained.¹³⁹ This is the strict separation that I have argued

the other, some (treatment) activists characterized issues like racism or underinsurance as a distraction from what should be the immediate aims of AIDS organizing. Examples of the latter position are Robin Hardy, "Die Harder: AIDS activism is abandoning gay men," *Village Voice*, 36:27 (2 July 1991): 33-34, Peter Staley, "Has the Direct-Action Group ACT UP Gone Astray?" *The Advocate*, July 30, 1991: 98, and Steven H. Miller, "Gay White Males: PC's Unseen Target," *Heterodoxy* (November/December 1994). In a fascinating article, Jeffrey Edwards reconstructs "the context" of the early 1990s to explain how "in city after city 'treatment issues' got constructed... as separate and opposed to activism around racism, sexism, and heterosexism." His view is that this relates to the increasing racialization of the discourse surrounding AIDS, and with the rapid rise of conservative gay writers and journalists who spoke the language of the New Right. In Jeffrey Edwards, "AIDS, Race, and the Rise and Decline of a Militant Oppositional Lesbian and Gay Politics in the U.S.," *New Political Science* 22:4 (2000): 486-506, 504.

¹³⁸ Quoted in Epstein, *Impure Science*, 294.

¹³⁹ A focal point in ACT UP's infighting was a proposal for a six-month moratorium on meetings between ACT UP members and officials; this would have effectively barred T&D activists from pursuing their objectives. Some critics of T&D were broadly skeptical of institutional politics in a way that made the very act of sitting at the governmental table in and of itself suspect. For instance, to explain her discomfort with T&D's strategies, Wolfe cites the fact that "they would sit on all these committees." (Hubbard, "Interview with Maxine Wolfe, Oral History Project," 98.) This reform/revolution divide is drawn even more starkly in later commentary on ACT UP. In an often-cited text, Peter Cohen faults ACT UP for its "moderate, narrow agenda" and its "continual willingness to use existing institutions to achieve those goals." Cohen illustrates this by writing that, "while a 'radical' politics might have been focused on 'root' solutions such as the elimination of the FDA or the elimination of the capitalist approach to drug development, ACT UP operated... on the premise that relatively minor tinkering with existing institutions and practices could adequately address the needs of people with HIV." Peter F. Cohen, "'All They Needed': AIDS, Consumption, and the Politics of Class," *Journal of the History of Sexuality*, 8:1 (1997), 93. Cohen is casting any relationship with the FDA short of demanding its elimination (its negation) as a mere tinkering. The very fact of institutional engagement is under suspicion here, replaced by an *a priori* call for contributory aspirations to be excised from contestation.

This covers the concern that activists were co-opted because they were not confrontational enough, because they adopted an insider strategy. A separate concern is that absorption follows from the very act of seeking

Rancière and AIDS treatment activism usefully problematized. Yet prominent T&D activists were themselves returning to this same assumption of a clear distinction between situations propitious for contestation and those propitious for participation. For instance, when asked if treatment activists were privileging insider strategies, Harrington said in 1992 that, “It’s silly to risk arrest and the hassles that are attendant upon it if you can get serious attention and negotiations going with other measures;”¹⁴⁰ similarly, fellow T&D activist Peter Staley said that “we don’t have time for actions, and there’s no great urge.”¹⁴¹

The problem here is not treatment activists’ aspiration to hold a seat at the table; it is the erosion of the idea that contributory work entails an intrusive public struggle to make claims have weight. Instead, some activists felt that, since they were already on the inside, they could focus exclusively on a participatory politics of a more conventional kind and privilege interactions between parties that already acknowledged each other.¹⁴² Yet not all voices, perspectives and issues were being paid equally “serious attention” by “the scientific or political establishment,” as other activists (notably ACT UP’s Women’s Committee) were pointing out.¹⁴³ The return to the expectation that conversation and confrontation are at odds with one another was closing the space for the practices of contestatory participation ACT UP had initially attempted—that

public visibility, even through outsider/radical means. Mary Patten argues in an “ACT UP post-mortem” that “ACT UP’s very success in seizing the public space of spectacle” contributed to “the transformation of every resistant gesture into a consumable object or image,” and the eventual “absorption” of “our political subculture” into “a larger context of the commodification of ‘queerness.’” Mary Patten, “The Thrill is Gone: An ACT UP Post-Mortem (Confessions of a Former AIDS Activist),” in *The Passionate Camera: Photography and Bodies of Desire*, ed. Deborah Bright (London and New York: Routledge, 1998), 385, 401, and 403.

¹⁴⁰ Quoted in *How to Survive a Plague*, directed by David France (New York: IFC Films, 2013).

¹⁴¹ Quoted in Derrick G. Hodge, “Retrenchment from a Queer ideal: Class privilege and the Failure of Identity Politics in AIDS Activism,” *Environment and Planning D: Society and Space* 18:3 (2000), 366.

¹⁴² Ron Goldberg contends that “the guys who got inside” felt that there was no longer “a use for an outside force.” Schulman, “Interview with Goldberg,” 50. Jeffrey Edwards documents this shift in “AIDS, Race, and the Rise and Decline of a Militant Oppositional Lesbian and Gay Politics in the U.S.,” 494-495.

¹⁴³ See Sommella and Wolfe, “This Is About People Dying.”

“combination of research, meetings, and protests” that Carter evoked in his 1992 pamphlet.¹⁴⁴

Moreover, some treatment activists returned to treating science as a stratified activity that cannot be expected to be open to all. What changed was not that activism suddenly came to involve more technical issues, nor that a knowledge gap emerged between different groups of activists; indeed, the movement’s earlier phase was already concerned with technical matters, and it showed that a knowledge gap need not bar the verification of an equal capacity.¹⁴⁵ Rather, what changed was that some treatment activists were impatient with newcomers’ efforts to imitate their own earlier emulative strategies, as though it was sufficient for them to have already put in the work of borrowing expert capacities.¹⁴⁶ Wolfe contends that many activists accepted this distribution. She describes how the initial commitment to teach each other, for instance by distributing fact sheets before actions, was replaced by a sense that most activists could now turn to those who had already established their credentials.¹⁴⁷ In a sense, the first generation retreated from the presupposition of equality that had driven their own seizure of expertise to a new presupposition of inequality, according to which scientific issues are better reserved to those who already have specialized qualifications. The erosion of the initial egalitarian method is clearest in

¹⁴⁴ Carter, *ACT UP, the AIDS War & Activism*, 8.

¹⁴⁵ Recent scholarship, in assuming that treatment activism flailed in the 1990s because the bar of competence was too high, reproduces the expectations treatment activism challenged in the first place. According to Edwards, what changed in the 1990s was that, “Participation in scientific processes at this level would require a degree of expertise on the part of both activists and the public(s) they sought to mobilize that had not been necessary for the earlier campaigns against FDA red tape—a degree of expertise that even most of the best-educated members of ACT UP would never be able to develop.” (Edwards, “AIDS, Race, and the Rise and Decline,” 505.) This narrative belies what I documented about the early movement, namely that activists with no scientific background were concerning themselves with biomedical questions. This highlights what makes treatment activism so radical: It is a reminder of how unlikely a proposition it was—and still is—to say that scientific competence is something ordinary members of the public can exercised, or that it can be acquired in the compressed timeframe and nonacademic milieu in which treatment activists pursued it.

¹⁴⁶ This dynamic speaks to Della Porta’s argument that participants in social movements can construct “solidarity links [that] tend to exclude newcomers.” Donatella della Porta, “Deliberation in Movement: Why and How to Study Deliberative Democracy and Social Movements,” in *Acta Politica* 40 (2005): 337.

¹⁴⁷ Maxine Wolfe recounts that, “Everybody else got into this thing about, if you weren’t on that committee, you had to accept their point of view, because they were the experts.” Hubbard, “Interview with Maxine Wolfe,” 108. See also Theo Smart, “This Side of Despair,” *QW*, 13 September 1992.

some T&D members' departure from ACT UP to form the invitation-only Treatment Action Group (TAG). It is not activists' decision to pursue expert capacities as much as this closure to continued investigation that substituted the "affirmation of the intellectual capacity of anybody" with what Rancière calls the "privatization of intellectual power."¹⁴⁸

This renewed proprietariness does not speak to the logical inevitability of institutional capture. It signals, first, the need to pay attention to what Irena Rosenthal describes as "capacities that help dissenters to persist in their resistance when one's fellow activists do not provide a responsive holding environment." Here she is pointing to the importance of reproducing *within* a movement the "dissident practices" by which the movement as a whole is fighting (or fought) its disqualification from wider spaces.¹⁴⁹ And it signals, second, the value for social movements to "develo[p] a coherent educational strategy that would bring larger number of activists into the arena of knowledge-assessment,"¹⁵⁰ as Epstein puts it, and to thus sustain and expand the egalitarian method of investigating common sense judgments who can do what where.

Conclusion

I argued first that Rancière bridges an appreciation for counter-institutional protests with an appreciation for the persistence of participatory aspirations, and second that this same bridge is found in movements like AIDS treatment activism, in which people test—through actions that are simultaneously intrusive and wonky, contestatory and contributory—whether it is as preposterous as it seems for them to intervene in domains reserved to a credentialed few. This has shed light on a path that some activists looking to direct governmental processes use to challenge the sense that they are too incompetent to do so. If a common response to instances of authoritative

¹⁴⁸ Rancière, *Moments Politiques*, 169.

¹⁴⁹ Irena Rosenthal, "Aggression and Play in the Face of Adversity: A Psychoanalytic Reading of Democratic Resilience," *Political Theory* 44:3 (2016): 357.

¹⁵⁰ Epstein, *Impure Science*, 293.

disqualification is to ask what people can do *given that* they are effectively barred from participating, I have teased out another possibility: that of people who nevertheless concern themselves with the business of government, and in so doing put their disqualification to a contentious and public test. Contentious, because they investigate the polemical proposition that the specific capacity they borrow is both distributed equally and sufficient to signal competence. Public, because they work to shift wider perceptions of who is competent for what task, and what indicates competence. Thus emerges the distinctive logic of movements that work to transform prevailing expectations of popular capacities as part of their effort to seize a seat at governmental tables.

In discussing AIDS activism, I argued that there was an intrusive quality to activists forced the issue of their competence by dramatizing their interventions and staging their seizure as proficient. But how did these activists present themselves as entitled not just to enact a capacity they were denied, but also to expect a response? In other words, how did they deal not just with doubts regarding their capacities, but also with their apparent lack of standing? My next two chapters concern the legibility of argumentative claim-making on the part of people whose qualifications are not established.

Part III

A Question of Uptake

Chapter 5

Threads of Reciprocity: Michel Foucault and Seyla Benhabib's Promise of a Legible Freedom

The paradoxes of the 'right to have right' are ameliorated by those who exercise their democratic-republican participation rights with or without possessing the correct papers.
—Seyla Benhabib

Did he break a rule? Obviously not.
—Michel Foucault

In discussing France's scarf affair, during which a group of teenagers defied public norms (and school rules) by wearing headscarves in public schools, Seyla Benhabib marvels at the "increasing courage, maybe even militancy, of a group of women considered usually to be 'docile subjects.'" ¹ How did these women, seemingly unauthorized to make such demands and unprepared for such political action, suddenly find themselves in the spotlight, not just acting like "public selves" but even triggering introspective conversations nationwide? There would be no political urgency behind this question if remedying oppression was a task for armchair ethicists, and at times Benhabib does speak as a moral philosopher with insight into human rights standards, "enjoining" those who may be oppressing others to adopt better norms. ² But she is typically clear that such calls from above are just not that helpful. It must be "the excluded and downtrodden, the marginalized and the despised" themselves who "mobilize and claim political agency and membership." ³ Yet can these groups' claims be legible as claims if they have not already secured political visibility? If one's "right to have rights" is not yet recognized, how could one's voice be heard, let alone contribute to a conversation about which rights one is entitled to?

Benhabib is confident enough that such action is conceptually and practically intelligible that she talks of people "exercis[ing] their democratic-republican participation rights with or without possessing the correct papers." ⁴ What can that mean? How can those who lack authorizing papers, whether these are understood literally as immigration documents or figuratively as the expertise and diplomas that attest to one's competence, participate in conversations from which they are disqualified? What about Davide Panagia's concern that, "without papers, the *sans papiers* are suspended from the system of mimetic representation," "voiceless" and "incog-

¹ Seyla Benhabib, *The Rights of Others* (Cambridge: Cambridge University Press, 2004), 209.

² Seyla Benhabib, *The Claims of Culture* (Princeton: Princeton University Press, 2002), 14.

³ Benhabib, *The Rights of Others*, 124.

⁴ Seyla Benhabib, *Dignity in Adversity* (Cambridge: Polity Press, 2011), 111.

nizable?”⁵ Or what about Chantal Mouffe’s point, that “without a demos to which they belong, those cosmopolitan citizen pilgrims [lose] the possibility of exercising their democratic rights of lawmaking,” and that they should thus start by securing those rights?⁶

Similarly, in describing a scene in which a defendant remains silent while questioned by a judge, Michel Foucault takes obvious delight in evoking the ensuing confusion. “For heaven’s sake, defend yourself!,” a juror cries out.⁷ How could such incident even prove to be so challenging to the penal process (Foucault talks of “impasses and derailments”⁸)? After all, a courtroom is hardly a space where we would expect those who are empowered to be open or generous toward each other’s claims, so why would this defendant’s silence be legible to others as an act to which attention must be paid rather than as further evidence of his marginality and illegibility?

These two scenes illustrate the problem of the *uptake* of disqualified actors’ contributions to political and governmental processes. My two prior chapters addressed the separate question of what capacities disqualified persons even have to exercise. I argued against the radical democratic move of guaranteeing some repressed political agency; I showed how disqualified subjects test their capacities by engaging in activities they are disqualified from. Yet seizing a capacity is not enough to put oneself in the position of expecting a response. Why would one’s claims be legible as claims to those invested in denying one’s qualifications? Why bother acting in a way that one is reasonably certain will run into indifference or hostility?

In this chapter, I track how Foucault and Benhabib confront this set of questions. Both

⁵ Davide Panagia, *The Poetics of Political Thinking* (Durham: Duke University Press), 121-122.

⁶ Chantal Mouffe, *The Democratic Paradox* (London: Verso, 2000), 42. Mouffe adds that these people “would be left, at best, with their liberal rights of appealing to transnational courts” (ibid.).

⁷ Michel Foucault, “About the Concept of the ‘Dangerous Individual’ in Nineteenth-Century Legal Psychiatry,” in *Power: The Essential Works of Foucault, 1954-1984, Volume 3*, ed. James Faubion, trans. Robert Hurley (New York: The New Press, 2000), 176-177.

⁸ Michel Foucault, *Wrong-Doing, Truth-Telling*, ed. Fabienne Brion and Bernard E. Harcourt, trans. Stephen W. Sawyer (Chicago: The University of Chicago Press, 2014), 211.

care about people's ability to contribute to their government, and while they understand this differently—for Benhabib, it entails shaping and challenging norms and decisions that affect us; for Foucault, it entails acting as an autonomous center within the relations by which others conduct our conduct—they are both faced with the pressure of explaining what makes it possible for dominated or excluded subjects to enact such practices successfully. They could have questioned the burden of providing a definitive explanation, of guaranteeing that such acts are always viable; they could have presented the legibility of unauthorized contributions as a matter of political investigation. Neither ends up doing so. Perhaps influenced by the vociferous charge that they had left no room for freedom to flourish in oppressive conditions—a charge ironically leveled against each by the school of thought represented by the other⁹—they temper their reluctance for involving philosophy in the task of grounding freedom's mutual recognition.

I argue that Benhabib and Foucault respond to this challenge by turning to a promising but ultimately flawed strategy that they themselves had taught us to be wary of. They reconstruct the pragmatic rules of (modern) interactions to identify ineliminable threads of reciprocity in the way people relate to one another. We are already embedded in relations of mutuality that guarantee that others are always tacitly authorizing our challenges, and we can exploit these relations to recognizably intervene in processes and institutions we are disqualified from.

⁹ By the early 1980s, Foucault had faced years of criticism from Habermasians for offering so totalizing an account as to suppress hope for emancipation, and some directly attribute the modifications in the later Foucault's views to his exchanges with Habermas. See James Tully's "To Think and Act Differently: Foucault's Four Reciprocal Objections to Habermas' Theory," in *Foucault Contra Habermas*, ed. Samantha Ashenden and David Owen, (London: SAGE Publications Ltd, 1999), 90. Over the next decade, Benhabib battled the converse accusation, this time voiced by Foucaultians, that the communicative paradigm she was associated with neglected history and power. See in particular her acrimonious exchange in 1990 with Judith Butler, who accused her of making freedom into a presocial attribute of the subject. (Their exchange is published in Seyla Benhabib, Judith Butler, Drucilla Cornell, and Nancy Fraser, *Feminist Contentions*, New York and London: Routledge, 1995.) I believe that such exchanges help account for the change from her 1986 *Critique, Norm, and Utopia* (New York: Columbia University Press, 1986), where she criticizes critical theory in a way that distances her from the drive to explain action, to her 1992 *Situating the Self* (New York: Routledge, 1992), where the pressure to justify the reasonableness of excluded people's claim-making is more apparent.

The first section lays out Foucault and Benhabib's intersubjective ontology, according to which people are always already treating each other as free, even in their attempts to dominate or exclude each other. This is a commitment that one denies at the cost of disavowing what one is already doing, which is to say at the cost of performing a contradiction. I explain that both thinkers deploy this paradigm even though we would expect them to have little patience for it. It is their turn's unexpected character that makes their work an ideal occasion to consider what problem it is meant to resolve. I show that it is to guarantee the uptake and legibility of acts of unauthorized participation that Foucault and Benhabib diagnose ineliminable threads of reciprocity. They counter the worry that a lack of reciprocity dooms some people's contributory aspirations by making it ontologically certain that such aspirations are already being authorized, however implicitly. If "we are always free," as Foucault declared,¹⁰ it is in part because we can always respond to those who govern us on the basis of their existing but often disavowed—commitment to our freedom. The disqualified can make themselves heard or noticed by drawing upon what they are always already being called to do. As such, this paradigm provides a vocabulary to appreciate why one would bother addressing those who seem deaf to one's claims.

Yet in my second section argues that guaranteeing threads of reciprocity constrains democratic possibilities. First, Foucault and Benhabib take on rather than shake off the sense that a lack of reciprocity would leave subjects blocked off from democratic practices; they merely strive to make that lack theoretically impossible. As a result, in grounding their promise of freedom on the claim that subjects always already treat each other as free, they stabilize political action into the fulfillment of those specific competences whose reciprocal recognition their philosophy has guaranteed. Second, their diagnoses of performative contradiction neglect that the ques-

¹⁰ Michel Foucault, "Sex, Power, and the Politics of Identity," in *Ethics: Subjectivity and Truth (Essential Works of Foucault, 1954-1984, Vol. 1)*, ed. Paul Rabinow (New York: The New Press, 1994), 167.

tion of what a given practice implies allow for a range of plausible answers based on how one interprets the purpose of that practice and the commitments that underlie it. This is not a matter that can be settled through logical or conceptual analysis, however convenient it would be to shield it from political judgment and dispute. Both of these limitations suggest that the practical task of struggling for the uptake of one's claims and of testing their legibility is actually hindered by theoretical paradigms designed to dissolve these difficulties.

I. Reciprocity, legibility, and the appeal of the performative contradiction

Foucault and Benhabib both borrow from the playbook of philosophers who avoid analyzing how individuals are in themselves by diagnosing a contradiction within social systems. But they both modify this diagnosis's usual form by moving contradiction to the level of intersubjectivity. To identify a productive tension within social structures, they do not make claims about how the world really is, only about what we necessarily presuppose about each other and about the rules of our interactions.¹¹

The basics of this paradigm are laid out by Jürgen Habermas,¹² along with Karl-Otto Apel. Habermas identifies rules that we unavoidably presuppose when we engage in argumentation. His method is as follows: If one must presuppose a rule in order to argue against its propositional content, then it belongs to the pragmatics of argumentation and can only be denied at the cost of performing a contradiction.¹³ He further contends that the pragmatics of argumentation

¹¹ See Nigel Pleasants's *Wittgenstein and the Idea of a Critical Social Theory* (New York: Routledge, 1999) for a broader critique of social theory's search for implicit rules that we follow in our everyday interactions.

¹² As Martin Jay writes, "for Habermas, contradictions exist less on the level of social ontology, as they did for Hegelian Marxists..., than on that of intersubjective communication." In "The Debate over Performative Contradiction," in *Philosophical Interventions in the Unfinished Project of Enlightenment*, ed. Axel Honneth et al. (Cambridge: MIT Press, 1992), 265.

¹³ Habermas writes that, "We must show that these rules of discourse are not mere *conventions*; rather they are inescapable presuppositions... The presuppositions themselves are identified by convincing a person who contests the hypothetical reconstructions offered that he is caught up in performative contradictions." In "Discourse Ethics," in *Moral Consciousness and Communicative Action*, trans. Christian Lenhardt and Shierry

mirror those of everyday communicative action, so that we implicitly commit to these rules as soon as we engage in ordinary lifeworld interactions.¹⁴ Through this method, Habermas demonstrates in particular that engaging in communicative action “always already presuppose[s]... relationships of reciprocity and mutual recognition” in the specific sense that we presume that our claims can be redeemed and criticized by “all subjects without exception who have the capacity to take part in argumentation.”¹⁵ In other words, when I act to reach an understanding with others (so that they say *yes*), I presuppose that all whom I may communicatively encounter are my moral equals in that they are free to dissent (to say *no*) and to make counterclaims on me. To deny others’ communicative freedom, dismiss dissent, or purport to justify my views while excluding them is wrong not just on external grounds, but also because it involves me in a performative contradiction: I would then be disavowing the implications of what I am always already doing.

This paradigm runs into three momentous objections. Benhabib lays out the first two. Even if it were true that one is bound to treat others as equal and autonomous beings *when* one communicates with them or justifies oneself to them, (1) there is no logical necessity for one to engage in any communicative or justificatory practices at all, and, (2) even when one does engage in such practices, there is no logical necessity that one be using them toward the community of all other humans. These objections challenge the usefulness of the performative contradiction; they suggest that we are not bound to act in such a way as to inevitably presuppose the commu-

Weber Nicholse (Cambridge: MIT Press, 1990), 89. See also Karl-Otto Apel, “The Problem of Philosophical Foundations in Light of a Transcendental Pragmatics of Language,” in *After Philosophy: End or Transformation*, ed. Kenneth Baynes et al. (MIT Press: Cambridge, 1987), 277. For instance, the propositional content of the utterance “I doubt that I exist” contradicts what the act of uttering it presumes. On Habermas and performative contradictions, see Martin Matusik, “Habermas on Communicative Reason and Performative Contradiction,” *New German Critique* 47 (1989): 143-172 and Martin Morris, “On the Logic of the Performative Contradiction: Habermas and the Radical Critique of Reason,” *The Review of Politics* 58:4 (1996): 735-760.

¹⁴ Habermas writes, “The reciprocities undergirding the mutual recognition of competent subjects are already built into action oriented toward reaching an understanding, the action in which argumentation is rooted.” In “Discourse Ethics,” 101. On this point, see Benhabib, *Critique, Norm and Utopia*, 290 and 295.

¹⁵ Habermas, “Discourse Ethics,” 89 and “Moral Consciousness and Communicative Action,” 130.

nicative freedom of all others. Foucault lays out the third challenge: (3) What about power relations, i.e. noncommunicative interactions? Foucault objects to Habermas that everyday practices ought to be analyzed not just as means by which people try to reach an understanding, but also as “means by which [people] try to conduct, to determine the behavior of others.”¹⁶ And if people interact with an eye to governing one another, the egalitarian presuppositions that underlie communicative interactions are not inextricable features of human intersubjectivity after all.

Based on their objections to the Habermasian paradigm, we would expect Foucault and Benhabib to be wary of diagnosing ineliminable threads of reciprocity and systematic performative contradictions. And yet both thinkers end up emulating this diagnosis. As I shall show, they both draw on the idea that patterns of domination and exclusion are undercut by intersubjective necessities. By correcting for the deficiencies each sees in Habermas’s view (Benhabib is attentive to the need to contextualize threads of reciprocity, while Foucault extends them to a non-communicative domain by proposing that it is specifically in governing others that one treats them as free), they both end up making use of the comforting assurance that in attempting to dominate or exclude others one contradicts the fact that one is inevitably treating them as free.

Why do I explore performative contradictions through Foucault and Benhabib, and not through Habermas? The fact that they employ this paradigm despite their pronounced criticisms, and the relative subtlety with which they must therefore do so, help isolate the political anxiety to which performative contradictions are seen to be the answer. I show that that they offer this theoretical move insofar as they face the problem of how a political practice by excluded or dominated subjects can viably get off the ground if their political competency is being denied by others. By diagnosing performative contradictions, they get to guarantee that this denial is self-

¹⁶ Michel Foucault, “The Ethic of Care for the Self as a Practice of Freedom,” *Philosophy and Social Criticism* 12:2-3 (1987): 129.

undermining and unsustainable, instead of exploring what to do absent that guarantee.

(While identifying common ground between Foucaultians and Habermasians is not this chapter's primary aim, it is an unavoidable subtext given the binary that has characterized contemporary debates on subjectivity: either one is engaged in a radical critique of domination that leaves subjectivity in tatters, or one is preserving a nonillusory sense of subjectivity at the cost of reproducing the fallacy of a presocial self.¹⁷ Benhabib and Foucault are often caricatured as representing two opposite sides of this binary, and some even read Foucault as having moved from the former to the latter camp. But as my argument will make clear, neither embraces a naive humanism and neither renounces the constitutive role of relationality. Instead, they both ground freedom on a presuppositional analysis of the way people unavoidably relate to one another.)

1.1 Benhabib's contextualized diagnosis of reciprocity: Exploiting modernity's ironies

Critique, Norm and Utopia faults critical theory for theorizing sociohistorical change as the resolution of a system's inevitable contradictions. She argues that diagnosing systemic crises retains depoliticizing effects even with the move from Hegel's philosophy of the subject to Habermas's intersubjectivity. As a discourse theoretician herself she shares Habermas's reconstruction of the presuppositions of argumentation. For her, as for him, "some minimal norms like reciprocity and symmetry among participants belong among the rules of argumentation;" in particular, one must respect the communicative freedom of those one justifies oneself to, which entails that to argue one must counterfactually assume that the conditions are fulfilled for the hearer to "take a 'yes' or 'no' position," i.e. to assent or dissent.¹⁸ Yet she also critiques his view that lack-

¹⁷ An example of this phenomenon is Benhabib and Butler's vitriolic debate in *Feminist Contentions*. Benhabib accused Butler of eliminating the hope for emancipation and Butler retorted that Benhabib was renouncing social critique – charges that echoed earlier back-and-forths between Foucault and Habermas.

¹⁸ Benhabib, *Situating the Self*, 175 and Benhabib, "The Local, The Contextual and/or Critical," *Constellations* 3:1 (1996): 86. As Benhabib recently put it, "My agent-specific needs can serve as a justification for you only

ing respect for others' communicative freedom and right to dissent entangles one in a performative contradiction.

Benhabib's first objection to that view is that a universal-pragmatic analysis of the presuppositions of communicative action, while useful to reconstruct moral discourse, can tell us nothing about how people always already treat others. It cannot guarantee that people will engage in the type of practices in which they presume the communicative freedom of others.

Habermas was cognizant of this difficulty. He feared that granting that individuals can just withdraw from communicative action when it suits them would make the diagnosis of a performative contradiction irrelevant in the situations in which it is most needed. If individuals only risk involving themselves in a performative contradiction when they "decide" to argue, there is nothing to be said about situations in which they choose not to. (Habermas and Benhabib associate this "decisionist" account with Apel's work.) He thereby set out to demonstrate that the type of practices in which one presupposes rules of reciprocity and symmetry are unavoidable.

His essay "Discourse Ethics" is the centerpiece of this demonstration. There, he imagines a scene in which a skeptic rejects a discourse ethicist's moral principles. But the skeptic is stuck. If he argued against these principles, he would necessarily be presupposing them and thus vindicating their status as "inescapable presuppositions." So what happens if he stays silent, rejecting discourse theoretical principles by refusing to argue? Even this silence would contradict what he is bound to already be doing. Indeed, while it may be possible to stop arguing (though even that is doubtful¹⁹), it is impossible to fully retreat from communicating. Our humanity is tied to processes that require linguistically-mediated cooperation with others. We "do not have the option

if I presuppose that your agent-specific needs can likewise serve as a justification for me. And this means that you and I have recognized each other's right to have rights." Benhabib, *Dignity in Adversity*, 70.

¹⁹ "The end of argumentation... is so intimately interwoven with the intersubjective form of life to which subjects competent in speech and action belong that there is no way we can either posit or bypass it." Ibid. 94-95.

of a long-term absence from contexts of action oriented toward reaching an understanding. That would mean regressing to the monadic isolation of strategic action, or schizophrenia and suicide.”²⁰ Independently of any decision, every individual “stands nevertheless ‘already’ in contexts of communicative action” and “has already naively recognized the validity claims... contained in speech acts.”²¹ This is a picture of double entanglement: Even he who intends to reject all moral principles “cannot drop out of the communicative practice of everyday life, to the presuppositions of which he remains bound.”²² We are inextricably entangled in the “reciprocities undergirding the mutual recognition of competent subjects.”²³ There is always already some sense in which we recognize each other’s communicative competence.

But Benhabib is unconvinced. She contends that Habermas’s point that the ideals of discourse ethics “are *always already* presupposed” is ahistorical and divorced from the experiences of embodied social actors.²⁴ “Between us and Aristotle there is the undeniable hermeneutic horizon of modernity,” which is to say that only with the modern transformations associated with the rationalization of the lifeworld do processes of identity formation and social integration take a reflexive and linguistically mediated form. These principles cannot be justified as the “unequivocal transcendental presuppositions” of all human communication.²⁵

The idea of a progressive rationalization of the lifeworld, of course, is not Benhabib’s; it

²⁰ Ibid. 100. The skeptic “cannot, even indirectly, deny that he moves in a shared sociocultural form of life, that he grew up in a web of communicative action, and that he reproduces his life in that web... As long as he is still alive *at all*, a Robinson Crusoe existence through which the skeptic demonstrates mutely and impressively that he has dropped out of communicative action is inconceivable.”

²¹ Habermas, *Legitimacy Crisis*, 159.

²² Habermas, “Discourse Ethics,” 101.

²³ Ibid.

²⁴ Benhabib, *Critique, Norm, and Utopia*, 290 and 307. The italics are Benhabib’s. In an amusing passage of *Situating the Self* (63-64), she imagines a dialogue between Aristotle and a modern communicative ethicist to show the two cannot be said to share presuppositions as to what constitutes valid argumentation. For Aristotle’s conventional moral point of view, things are justified when they correspond to how things are; he faces no (performative) pressure to justify himself to those who are affected by his norms.

²⁵ Benhabib, *Critique, Norm, and Utopia*, 246-247 and Benhabib, *Situating the Self*, 30.

is Habermas's. His argument of "Discourse Ethics" works alongside a second, evolutionary argument, according to which the principles of communicative ethics only "correspond to the know-how of competent 'moral' agents at the post-conventional stage."²⁶ Yet Benhabib contends that this second thread reproduces the problem of ahistoricity because Habermas naturalizes his development narrative. He divorces rationalization from modernity's "concrete" and "specific" configurations and made it into "the logical and inevitable outcome of a normal sequence of development."²⁷ Her idea is that Habermas reinstated the idea that the ideals of discourse ethics have always been presupposed—if only *in potentia*—in the very move of historicizing his justification of discourse ethics.

Her overarching point, then, is to reject the "naturalist" resolution to the problem of decisionism. It cannot be said that "the ideals of communicative ethic appear as if they were 'always already presupposed.'" Benhabib rejects this view whether the rationale is that these ideals are the "unequivocal transcendental presuppositions which every rational agent, upon deep reflection, must concede to," or that they are the outcome of a progressive acquisition of competencies by "normally developing subjects."²⁸

Benhabib's second objection to the performative contradiction is that, even when one does engage in practices that presuppose the communicative freedom of others, the scope of the other could be limited. Even if reciprocity were unavoidable, its reach need not be universal.

She points out that normative commitments like the principle of reciprocity are merely formal; they have many allowable interpretations. It's all well and good to say that one must adopt norms of reciprocity toward one's interlocutors and toward fellow members of one's

²⁶ Ibid.

²⁷ Benhabib, *Critique, Norm and Utopia*, 320 and 343.

²⁸ Benhabib, *Critique, Norm, and Utopia*, 326 and *Situating the Self*, 30. In *Situating the Self* Benhabib attributes the first type of naturalist argument to Apel rather than to Habermas. This is unlike her earlier *Critique, Norm, and Utopia*, which followed Habermas in reading Apel as a strict decisionist.

community, but who belongs to one's community? Who is one in conversation with? For Habermas, communicative action presupposes the universal interpretation of the principle of reciprocity. His rule 3.1 "defines every agent that is capable of speech and action as a potential participant in discourse."²⁹ But this formulation is itself ambiguous. What counts as speech? Are barbarians speaking or babbling? What about infants whose capacity of speech is underdeveloped? For Benhabib, these questions cannot be settled analytically. "Even if certain symmetry and reciprocity conditions may be implicit in all speech and action, it would not thereby follow that the universalist interpretation of these conditions was also implicit." She goes on to write,

The suggestion that *all* speakers of any natural language are potential participants in discourses precludes *particularistic* interpretations of rule 3.1 as 'those who speak my language and whom I can understand.' The exclusion of such a particularistic interpretation is not a consequence of conceptual analysis alone.³⁰

There is nothing about the concept "reciprocity," nor about the formal principles one must presuppose in engaging in argumentation, that impels one to recognize "all speakers of any natural language" as potential interlocutors of one's discourse. To say that there is falsely naturalizes the specific universalist content that reciprocity obtains in certain circumstances and duplicitously represents one's political/moral commitments as conceptual necessities.

In short, Benhabib has argued that (1) humans are not bound to engage in practices of justification that presuppose each other's freedom, and that, (2) even when they do, the circle of others toward whom they justify themselves need not be universal. With this dual "recognition of the historical and sociological contingency of communicative ethics," she outlines a "self-conscious historical universalism"³¹ that shuts the door on the idea that humans are always already enacting ineliminable threads of universal reciprocity by the very fact of engaging in communicative action, let alone by the very fact of *living*. Consequently, there can be no *logical*

²⁹ Ibid. 305.

³⁰ Ibid. 293 and 306.

³¹ Benhabib, *Situating the Self*, 61. She contrasts this to "the stronger justifications of Habermas and Apel."

demonstration that one performs a contradiction when one excludes others.

And yet, despite her strong critique of critical theory's reliance on diagnosing crises and of Habermas's use of the performative contradiction, Benhabib herself gravitates toward attributing a self-contradictory character to exclusion. Let us turn to *Situating the Self*:

Inegalitarian arguments [e.g. "men and women are 'by nature' different," "the white race is 'by nature' superior to others and hence must be granted 'higher' rights"] usually also require that others 'see' the validity of these principles. Herein lies the paradox of such inegalitarianism: if such inegalitarianism is to be 'rational' it must woo the assent of those who will be treated unequally, but to woo such assent means admitting the 'others' into the conversation. But if these 'others' can see the rationality of the inegalitarian position, they can also dispute its justice. To assent entails just as much the capacity to dissent, to say no.³²

Here Benhabib diagnoses a performative contradiction of her own in structures of exclusions. At least in certain circumstances, one is bound to display a respect that contradicts the oppressive purposes for which it is enacted. Even attempts to deny this will serve as further evidence for it since "one cannot question the texture of our everyday moral commitments in communicative ethics without permanent and continuous embroilment in them on a day-to-day level."³³

What does this argument accomplish, and why is Benhabib tempted by it? Given her warnings about critical theory's diagnostic mode, why does she not discard the performative contradiction altogether? I shall argue that it gives her a way out of understandable anxieties regarding the uptake of democratic claims. For Benhabib, it is crucial that excluded people make claims themselves. "It is only when new groups claim that they belong within the circles of addressees of a right from which they have been excluded in its initial articulation that we come to understand [a rights claim's] context-transcending validity."³⁴ But if a group is not already recognized as "possessing the correct papers," what is the point of its exercising "participation

³² Ibid. 32.

³³ Ibid. 107.

³⁴ Benhabib, *The Rights of Others*, 197. As Means puts it, Benhabib's democratic constitution functions as a "discursive space in which the hitherto suppressed or not yet present voice of *other* people finds its way and expands the terms of meaning giving and hence reason giving" (Means, "The Rights of Others," 406).

rights?” If Benhabib can identify ineliminable threads of universal reciprocity in the way in which we interact with each other, and if she can make that identification withstand the test of her objections to Habermas, she will have found an ontological solution to that quandary. She will have guaranteed that, in actuality, no one’s right to exercise participatory rights is ever being fully denied. She will have explained why the excluded are hearable when they talk back.

Benhabib’s two-pronged deconstruction of Habermas’s argument prevents her from justifying this point logically. So what other resources does she have? Why would men woo the assent of women and whites that of nonwhites, let alone in a manner that invites them to dissent? Benhabib must remedy the two difficulties she diagnosed in Habermas. (a) Can she carry out her determination to contextualize while still making a claim that resonates at an ontological level, that tells us something about what people are bound to be doing? (b) Can she establish that interlocution is bound to have a universal scope binding without deducing this from the formal components of the moral perspective? Her solution to both difficulties is to restrict inegalitarianism’s paradoxical character to the horizon of modernity. Her argument is that the modern form of life (*our* form of life³⁵) is characterized by two contingent transformations, each of which addresses one of her two objections to Habermas. The first is the emergence and constitutionalization of a post-conventional perspective; the second is the fact of global interdependence. It is because of these developments’ historically contingent encounter that we moderns are bound to always already be presupposing the communicative freedom of all others. Let us consider each claim.

³⁵ Benhabib sees no *spatial* connotation to the premodern/modern distinction. While the norms of discourse ethics “only make sense against the background of hermeneutic process of modernity,” this cannot serve to exclude any currently existing cultures because “modernity, although the most significant elements constituting it were assembled in the West, is a world-wide process and phenomenon.” This essay, which rebuts those who view discourse ethics as irrelevant to non-Western countries, is arguing that Bangladeshi women have made the transition to reflexivity, and “have beg[un] to question their social order.” Seyla Benhabib, “Cultural Complexity, Moral Interdependence, and the Global Dialogical Community,” in *Women, Culture and Development*, ed. Martha Nussbaum and Jonathan Glover (Oxford: Oxford University Press, 1995), 239-241, 252.

Justification and global interdependence: The two necessities of the modern form of life

The ideals of discourse ethics may not belong to the irrevocable presuppositions of human interaction, but for Benhabib they do belong to the implicit know-how of a specific historically situated subject: the modern actor. She states that “universal pragmatics reconstructs a system of rules which will be recognized as binding by agents of a certain sort,” namely those who belong to the horizon of modernity. “The principles of universal respect and egalitarian reciprocity are our philosophical clarification of the constituents of the moral point of view from within the normative hermeneutic horizon of modernity.”³⁶ At the same time, she insists that this know-how is the result of “contingent learning processes,” and that hers is not a story of humans appropriating underlying competencies but of an emerging “psychic-moral *Bildung*” that does justice to “the contingent, historical and affective circumstances which makes individuals adopt a universalist-ethical standpoint.”³⁷ How can contingent rules be binding?

Sociological changes have made humans reflexive; we moderns are not just participants but also observers, which means that we can no longer take our norms for granted. Moreover, because of processes like secularization or desacralization, we can only defend our norms by arguing for them with reasons. “The culture of modernity” is one “in which the justification of norms and values and their reflective questioning have become a way of life.”³⁸ We cannot withdraw from acting to convince others of our norms’ validity—that is a necessity of our way of life—so the pragmatics of such action are binding on us. As Amy Allen puts it, these presuppositions “are necessary for us, but only contingently so”—a felicitous phrase that echoes Hanna

³⁶ Benhabib, *Situating the Self*, 30 and Benhabib, *Critique, Norm, and Utopia*, 291.

³⁷ Benhabib, *Situating the Self*, 74 and *Critique, Norm, and Utopia*, 298. On this point, see Maeve Cooke, *Language and Reason* (Cambridge: MIT Press, 1997) 55.

³⁸ *Ibid.* 40.

Pitkin's discussion of the "deep necessities" of a form of life.³⁹ Thomas McCarthy echoes this in writing that, "Given that we must start from where we are, any presuppositions that are practically indispensable for participating in communicative processes to which we have no alternative will figure as preconditions of our communication, whether or not they belong to the conditions of possibility of communication as such."⁴⁰ In short, within modern societies we have no alternative but to justify ourselves through the reflexive norms of postconventional morality. In particular, one of the "practically indispensable" preconditions of our communicative processes is the counterfactual presupposition that others can either agree with our reasons or challenge them. We moderns are always already inviting the dissenting response of (at least some) others.

Benhabib goes further. It's not just that argumentative norms are binding in modernity; it's also that modernity is binding on societies that enter it. Once humans commit to an argumentative method, even attempts to interrogate it rely on its rules; modernity is caught in "a hermeneutical circle which we cannot overcome and escape."⁴¹ The transition *into* post-conventional morality was contingent, but we cannot exit it.⁴² Benhabib puts a more institutional spin on this point in her work on "democratic iterations."⁴³ There, she suggests that democratic regimes constitutionalized communicative action's discursive rules. Attempts to revisit collective decisions go through the same norms and procedures by which these decisions are made in the first place, and these norms and procedures are themselves subject to the process of continual revision they

³⁹ Allen, *The Politics of Ourselves*, 143, and Hanna Pitkin, *Wittgenstein and Justice* (Berkeley and Los Angeles: University of California Press, 1972).

⁴⁰ Thomas McCarthy, "Philosophy and Critical Theory: A Reprise," in *Critical Theory*, by David C. Hoy and Thomas McCarthy (Cambridge and Oxford: Blackwell Publishers, 1995), 47.

⁴¹ Benhabib, *Situating the Self*, 32 and *Critique Norm, Utopia*, 279.

⁴² "For one whose culture has taken the reflexive turn, this context is no longer eliminable... What was once learned for good reasons cannot be unlearned at will" Ibid. 273. See also "Cultural Complexity," 252.

⁴³ Democratic iterations are "processes of public argument, deliberation, and exchange through which universalist rights claims and principles are contested and contextualized, invoked and revoked." Benhabib, *The Rights of Others*, 179.

enable. A democratic people that “considers itself bound by certain guiding norms and principles, engages in iterative acts by reappropriating and reinterpreting these.”⁴⁴ This account accentuates the self-perpetuating character of our embroilment in justificatory processes.

What I have shown so far is that, for Benhabib, modern individuals are bound to engage in justificatory practices that recognize the communicative freedom of all competent speakers. But that says nothing about the definition of competence nor the scope of that recognition. In fact, she writes that the principle of universalizability is *not* “the only allowable interpretation of the formal constituents of the competency of postconventional moral actors.”⁴⁵ The problem is that, if she really allowed that other interpretations are sustainable, her diagnosis of the paradox of inequality would flail for then she could not establish that oppressors unavoidably seek the assent of all, i.e. even those whom they oppress. This explains why, despite granting that “the formal constituents of [modern actors’] competency” do not necessarily demand universalizability on *conceptual* grounds, she nevertheless guarantees that they do on *sociological* ones.

Benhabib makes the Heideggerian point that “we do not choose the webs in whose nets we are initially caught or select those with whom we wish to converse.” Rather, we are “thrown” into “webs of interlocution,” “born into” “networks of dependence” that we cannot shake because they are constitutive of our self.⁴⁶ And she shows that in modernity these unshakable webs of interlocutions are global. Our condition is one of “planetary interdependence.” “Communication and collaboration across cultures have become a reality” and are now “our lot.”

Importantly, the mere fact that one converses with others tells us nothing by itself about the norms that this conversation presupposes. This is a point Benhabib makes in an exchange

⁴⁴ Seyla Benhabib, *Another Cosmopolitanism*, ed. Robert Post (Oxford: Oxford University Press, 2006), 49.

⁴⁵ Benhabib, *Situating the Self*, 30.

⁴⁶ *Ibid.* 344 and Benhabib, *The Claims of Culture*, 15. See also Benhabib, *Situating the Self*, 189.

with Jeremy Waldron in which she faults him for drawing normative conclusions from the necessity of human contact. Since discourse ethics is not the irrevocable presuppositions of all communication across history (see above), there is no conceptual guarantee that humans recognize each other as moral equals even when they do belong to the same community of interlocution.⁴⁷ All that the necessity of contact demonstrates is the scope of the webs that humans are thrown into: It clarifies who are the others whom one is bound to be conversing with and treating as a competent interlocutor. This clarification will only be of moral import when communicative norms happen to be egalitarian and reciprocal. Thus Waldron's mistake is not that he treats webs of interlocution as morally relevant, but that he neglects that they are so only when individuals are bound to a post-conventional perspective.

That the shift to a post-conventional perspective coincided with globalizing forces is a historical contingency. But this contingency has great moral significance. Webs of interlocution expanded at the very moment in which the turn to dialogical procedures transformed them into webs of justification. Benhabib writes that,

A community of interdependence becomes a moral community only if it resolves to settle those issues of common concern to all via dialogical procedures in which we are all participants. This 'all' refers to all of humanity, not because one has to invoke some philosophically essentialist theory of human nature, but because the condition of planetary interdependence has created a situation of worldwide reciprocity, exchange, influence and interaction.⁴⁸

This passage is explicit in tracing to sociological grounds rather than conceptual ones the necessity to justify ourselves to "all of humanity." The same essay criticizes Richard Rorty's view that only the members of my ethnos "share enough of my beliefs such as to enable us to communicate with one another" by asserting that this view "flies in the face of the realities of global inter-

⁴⁷ Waldron argues that "the mundane growth of repeated contact between different humans and different human groups can lay the foundation for the emergence of cosmopolitan norms." Jeremy Waldron, "Cosmopolitan Norms," in Benhabib, *Another Cosmopolitanism*, 94. Benhabib's view is that "just because I must... come into contact with other human beings and cannot flee them forever, this does not imply that upon such contact, I must treat them with the respect and dignity accorded every human being" (*The Rights of Others*, 33).

⁴⁸ Benhabib, "Cultural Complexity, Moral Interdependence," 251.

dependence” and is disproven by the “global realities of immigration, travel, communication.”⁴⁹

This analysis’s implication is that, regardless of whether we chose to, we moderns are always already moving within networks in which we are implicitly treating all humans as our moral equals. “We need no further proof of their shared humanity with us” because we already converse with them and because “our common humanity” “is established every day through our innumerable contacts and conversations.”⁵⁰ Thus our duty toward others stems in part from the imperative to recognize how we already relate to them and what our encounters already presuppose. For instance, by reminding her readers of “the fact... of immigration,” Benhabib frames immigration as something that demands “an acknowledgement” rather than an embrace.⁵¹

It is so important for Benhabib to demonstrate that justificatory practices extend beyond one’s immediate group that in rare moments she makes this point ahistorically. She embeds interdependence not in the contingent transformations of modern globalization but in the structures of human intimacy. In *Situating the Self*, she extends communication to include the bodily gestures with which parents communicate with their infants:

[i]n mothering, nursing, caring and in education we are always counterfactually presupposing the equality and autonomy of the being whose needs we are satisfying... In each case for a successful communication to be established one must counterfactually presuppose the equal claims of the being one is communicating with, one must reciprocate when confronted with these needs, claims and demands.⁵²

There are always others whose claims on me I am already responding to. Similarly, she contends that a *paterfamilias* participates in egalitarian and reciprocal conversations that reach beyond himself by virtue of daily “family brawls” with other household members who “always make claims on one and remind one of the inevitable... limits of one’s own point of view.”⁵³ By this

⁴⁹ Ibid. 244 and 247.

⁵⁰ Ibid. 251-252 and Benhabib, *The Claims of Culture*, 25, *Situating the Self*, 63.

⁵¹ Benhabib, *Another Cosmopolitanism*, 66.

⁵² Benhabib, *Situating the Self*, 59.

⁵³ Seyla Benhabib, “Sexual Difference and Collective Identities.” *Signs*, 24:2 (1999): 349.

logic, even the inhabitants of premodern and conventional societies were presupposing their wives or slaves' "equal claims" by virtue of being involved in "family brawls." Benhabib grants that such brawls often "fail" at being "good conversations." Nevertheless, the implication is that those who rule are unavoidably engaged in activities that presuppose the equality they are invested in denying.

To review, Benhabib's account of modernity has two complementary components. (1) For contingent but binding reasons like the constitutionalization of normative indeterminacy, we moderns have no alternative but to participate in communicative processes that presuppose principles of egalitarian reciprocity; these include the right of others to assent or dissent. But this alone does not determine the scope of those we recognize as competent speakers. (2) Benhabib also specifies that this commitment comes at a time of globalization and mass migration, because of which the conversational webs we are thrown in extend to all of humanity; we are already treating all others as our interlocutors. Thus emerges Benhabib's intersubjective ontology: Within modernity, our practices always already presuppose the communicative freedom of all other humans. We intuitively invite them to intervene in our justificatory processes. Hence modernity is traversed by ineliminable threads of universal reciprocity. In the next section, I shall show that this intersubjective ontology foregrounds the fact that modern oppressive practices section are not just morally wrong; they are also a form of disavowal of what one is already doing.

The performative paradox of democratic exclusion

Benhabib has established that we moderns owe something to others by virtue of the rights that our practices already presuppose them to enjoy. For instance, Benhabib makes the aforementioned claim that parents are already assuming their infant's communicative freedom in the context of asking "how [we can] conceptualize our moral obligations toward those kinds of being

who are either not fully or not at all capable of speech and action.”⁵⁴ Put otherwise, it is on the basis of this set of facts about the practices we are bound to enact, and about the presuppositions that these entail, that we can speak of moral duties.

That does not mean, of course, that we always respect our moral duties. Universal reciprocity may belong to the pragmatics of modern communication games, but relating to others as genuine “moral partners” requires appropriating our implicit know-how and reconciling ourselves to our presuppositions.⁵⁵ What it does mean, however, is that what we do can be held up against the pragmatic presuppositions of our practices. When we exclude others or when we engage in oppressive practices, we involve ourselves in a performative contradiction: It is inconsistent for us moderns to only justify ourselves to one group, or to not take seriously some people’s dissent; the logic of our own claims and decisions entangles us in the webs we try to disavow. As such, denying the rights of others contradicts what that denial must be presupposing, since in a post-conventional and global world the ascription of a marginalized status depends on argumentary and justificatory processes committed to others’ communicative freedom.

This makes sense of the “paradox” described in *Situating the Self*, according to which those committed to inegalitarian norms are bound to try to justify them through procedures that “admit the ‘others’ into the conversation.” The idea is that, in modern contexts, we orient ourselves in the world by intuitively courting the assent of all of humanity; even when we treat others unequally, we are inviting them to “dispute its justice” and committing to their capacity to say no. We thus implicitly concede that treating them in exclusionary ways is wrong. The propositional content of inegalitarian beliefs is unsustainable because it is contradicted by what we must presuppose to put these beliefs into practice. For instance, the specific reason Benhabib

⁵⁴ Benhabib, *Situating the Self*, 59.

⁵⁵ Benhabib, *The Claims of Culture*, 36. Benhabib contrasts “moral partners” and “moral contemporaries.”

gives for regarding the plight of a Bangladeshi woman (Metha Bai) as being “unjust” is that “we recognize her common humanity,” “we can understand her language, her actions, her emotions, her needs, and we can communicate with her.”⁵⁶ Since we are already committed to treating her as a fellow human by virtue of the “innumerable contacts and conversations” we enact daily, what we are already doing provides a standpoint from which to condemn her destitution.

Benhabib diagnoses many such tensions in *Another Cosmopolitanism* and *The Rights of Others*. These books’ overarching thesis is that democratic societies’ “dual commitments to human rights and sovereign self-determination”⁵⁷ induces a series of paradoxes. On the one hand, there is a contradiction between the *is* and the *ought*. That human rights depend on the particular instantiations that a political sovereign gives them suggest that all democratic peoples are falling short of them. But this only captures part of her story: In violating human rights a demos contradicts not just its ideals, but also what is implied by the actual practices it is exercising.

This point is most clear in her remarks on immigration. While she grants that democracy societies need some degree of closure,⁵⁸ nevertheless “defining the identity of the democratic people is an ongoing process of constitutional self-creation.”⁵⁹ Democratic societies are bound to continually renegotiate their boundaries and rules of membership through iterative processes that presuppose all competent speakers’ right to participate. Who are these competent speakers? The reality of immigration guarantees that citizens daily encounter and converse with non-citizen immigrants; the fact of globalization guarantees the same toward non-resident foreigners.

This means that nonresidents’ and noncitizens’ right to take part in deciding on the rules

⁵⁶ Benhabib, “Cultural Complexity, Moral Interdependence and the Global Dialogical Community,” 251.

⁵⁷ Benhabib, *The Rights of Others*. 47.

⁵⁸ “Democratic governance implies drawing boundaries and creating rules of membership.” Ibid. 174.

⁵⁹ Ibid. 177. Angelia Means talks of the increasingly self-conscious iterability of identity,” in Angelia Means, “The Rights of Others,” *European Journal of Political Theory* 6:4 (2007): 411.

of membership belongs to the pragmatic preconditions of these iterative processes.⁶⁰ On the other hand, “those who are excluded will not be among those who decide upon the rules of exclusion and inclusion.”⁶¹ Bonnie Honig reads this as a Rousseauian anxiety that a democratic people can never found itself democratically.⁶² But more is at stake. I would argue that her point is that this tension is inherent to how iterations are continually performed, that iterations entail a performative contradiction: The included justify excluding others through procedures that presuppose the communicative rights of even those they are excluding. Put otherwise, practices of boundary-drawing contradict the norms that they themselves are actualizing. What is the upshot of this discordance between what one seeks to justify and how one does so? It allows Benhabib the moral theoretician to diagnose an injustice. But it also enables her to identify an opening through which those who are excluded can stage viable political interventions.

The voices of others

In criticizing the German Constitutional Court’s decision in a 1990 immigration case for conflating the demos with an ethnos, Benhabib faults the Court’s argument not so much for being morally bankrupt as for being sociologically flawed. She then praises Hamburg’s decision to give noncitizens a right to vote less for coming in line with universal ideals than for its “acknowledgement” that “Germany has in fact become in the last decades a country of immigration.”⁶³ Underlying her point is a call for democratic citizens to acknowledge the conditions of their existence. But why care about contradicting oneself if one am getting something out of it?

One possible response is that the awareness of being involved in such a contradiction is

⁶⁰ Benhabib talks of “the communicative freedom of all person inherent in the understanding of these rights” [of membership]” in *The Rights of Others*, 142.

⁶¹ *Ibid.* 177.

⁶² See Bonnie Honig, *Emergency Politics* (Princeton: Princeton University Press, 2011), Chapter 1.

⁶³ Benhabib, *Another Cosmopolitanism*, 65-66.

an untenable position, that there is pressure for argumentative consistency for the same reason that there is pressure to justify oneself in the first place. It is not “motivationally plausible [or] rationally acceptable” for individuals shaped by the *Bildung* of modern democratic societies to persist in adopting principles whose validity claims have been compromised by the silencing of affected people’s dissent. There is shame in denying the conditions of one’s way of life, and there is respect in appropriating them. But I would argue that Benhabib does not overdraw the idea that a contradictory system will wither on its own, or as soon as it is exposed, and that if the presupposition of freedom serves as a critical resource for her, it is not as an armchair injunction that those who dominate others reconcile themselves to their practices’ noncontingent egalitarian aspect. Instead, this resource outlines a path of contestation.

In a passage I cited at this chapter’s outset, Benhabib stated that, “The paradoxes of the ‘right to have right’ are ameliorated by those who exercise their democratic-republican participation rights with or without possessing the correct papers.” While this formulation is admittedly puzzling, it misses the point to object, as T. Alexander Aleinikoff does, that “to say that any resident migrant has the right to participate in the conversation is to assert as a postulate the very issue that is under discussion in the conversation—the right of membership.”⁶⁴ Benhabib is not asserting a right to participate as though that right were always respected; rather, she is diagnosing a performative contradiction *in its probable denial*, and a path to credibly challenge this.

If all acts of democratic closure rest on the implicit presumption that the excluded can talk back, this profoundly reframes the voice of others. It figures their claims as *always-already authorized* by those whom they address. It may look like they are enacting rights they do not have. But in fact they are already recognized as having these rights—at least in the intuitive,

⁶⁴ T. Alexander Aleinikoff, “Comments on The Rights of Others,” *European Journal of Political Theory*, 6:4 (2007): 427.

pragmatic sense that suffices to justify that claim-making is a viable democratic practice in the face of exclusion. This may not ensure that we moderns always engage in discourse-ethical conversations with each other, but it does guarantee that people contradict themselves when they turn a deaf ear to the voices of others—a tension that the excluded can exploit to confront those who silence them with embarrassing challenges. The latter may not care about being inconsistent, but such indifference is harder to maintain when they are confronted with contestatory acts that dramatize in public the fact that they have been tacitly authorized to speak and that all they are doing is taking seriously the implications of their oppressors’ practices.

For instance, if citizens must presuppose non-citizens’ capacity to challenge their exclusion with reasons of their own, then immigrants can do more than tap into constitutional norms’ unrealized potential. They can also take advantage of what is implied by the rules enacted to exclude them. Take Benhabib’s aforementioned essay about Bangladesh. This essay is no plea for Westerners to respect the rights of transnational others. Her point that webs of interlocution have expanded accounts for what already empowers a Bangladeshi to make legible claims on inhabitants of Europe. Even if “we” dismiss them as belonging to foreign cultures, they are still able to “engage in a moral conversation with us and draw us into their circle of meaning and value.”⁶⁵

The idea that we are always already authorizing the claims that others make on us does the most work in Benhabib’s analyses of the French scarf affair.⁶⁶ What interests her is that the students who triggered the controversy began a national democratic iteration themselves by acting as “public selves.”⁶⁷ Even though they were “subject to systems of coercion that excluded

⁶⁵ Benhabib, “Cultural Complexity, Moral Interdependence,” 241.

⁶⁶ Benhabib, *The Claims of Culture*, 94-100, *Another Cosmopolitanism*, 50-58, *The Rights of Others*, 181-196, *Dignity in Adversity*, 172-175.

⁶⁷ Benhabib does describe one woman (Debza) as “asking” for a democratic iteration (*Another Cosmopolitanism*, 58). But she usually portrays the marginalized as launching iterations themselves. Her jurisgenerative politics is comprised of “cases of legal and political contestation in which the meaning and rights and other fun-

their voices,” they did not petition for its restoration.⁶⁸ Rather, they took their right to have rights for granted and exercised it. The scarf affair thus illustrates how still-marginalized subjects voice claims, rather than have already-included subjects make claims on their behalf. It sheds light on how those who do not “possess the correct papers” “exercise their participation rights.”

So why were these girls were not simply ignored or repressed? Why did their acts have a type of iterative effect we associate with those of “public selves?” In each text in which she analyzes these events, Benhabib addresses this dilemma by diagnosing “ironies” in these situations.

Ironically, they used the freedom given to them by French society and French political traditions, not the least of which is the availability of free and compulsory public education for all children on French soil, to transpose an aspect of their private identity unto the public sphere.

Ironically, it was the very egalitarian norms of the French public educational system that brought these girls out of the patriarchal structures of the homes and into the French public sphere, and gave them the confidence and the ability to resignify the wearing of the scarf.

Ironically, precisely the realities of Western democracies with their more liberal and tolerant visions of women's roles permits these girls and women to be educated in public schools...They are transformed from being 'docile bodies' into 'public selves.'... As women they also become empowered in ways they may not have anticipated. They learn to talk back to the state.⁶⁹

The norms discussed in these passages are not ideals that the French are failing to actualize. The irony emerges from their existing realization. These silenced subjects' claims were heard as such because their political agency was *already* being presupposed by their coinhabitants. Note the third excerpt's passive voice (“they are transformed from being 'docile bodies' into 'public selves’”). It is the manner in which they were already being treated by the state—the same state that was aiming to silence them—that “empowered” them to “talk back” to it.⁷⁰

damental principles are repositied, resignified and reappropriated by new and excluded groups” (70). How that is possible is the puzzle that Benhabib's diagnosis of an ineluctable tension resolves.

⁶⁸ Benhabib, *Dignity in Adversity*, 165. There are three reasons Benhabib casts these students as excluded subjects. First, the scarf affair was “about the status of the so-called ‘others’ within the demos itself” (ibid.). Second, these women were also marginalized vis-à-vis their own group: “Traditional Muslim girls and women are not supposed to appear in the public sphere at all” (*Another Cosmopolitanism*, 67). Third, the issue around which this democratic iteration was structured is not one that the French typically allow to be politicized.

⁶⁹ Benhabib, *Another Cosmopolitanism*, 53, 56 and 67, emphasis mine.

⁷⁰ This analysis is qualified by Benhabib's acknowledgment that “the girls' voices are not heard in this heated debate” (*Another Cosmopolitanism*, 56). There is only so much “public voice” that these initially silenced stu-

These examples show how, when under pressure to justify how those who lack the correct papers can participate and how “docile subjects” can launch democratic mobilizations, Benhabib points to the recognition they already benefit from. Their claims are hearable because we already authorized them; they can participate because we already extend participation rights to them. Her intersubjective ontology is a resource to tap into when she needs to establish not only that the subaltern can speak (competence), but also that the subaltern can be heard (uptake).

I find it plausible that she is not entirely comfortable with how she rests political practice on the diagnosis of a constitutive tension. But even when she refrains from deploying the full framework of globalized webs of justification (she presents France’s “ironies” more subtly than the “paradox of inegalitarianism”), it still functions as the scaffolding that justifies the downtrodden’s practices of claim-making. She critiqued Habermas’s sweeping approach to ontologizing reciprocity into a binding presupposition of social interaction, but relies on that vocabulary to ensure that the marginalized will not be making claims for nothing. She has simply taken care of making that diagnosis apply to no more (and no less) than the political struggles of her present, which covers the struggles she is invested in. Her work thus speaks to the pull of two assumptions: (1) the existence of a wrong must be demonstrable extrapolitically for political contestation to get off the ground, and (2) relations of mutuality must be present for contributory practices to be viable. The same assumptions shaped the evolution of Foucault’s thought.

1.2 Foucault and the presupposition of freedom

From the mid-1970s to the 1980s, Foucault went from talking about power/knowledge to talking about government.⁷¹ As he defined it, government covers “the whole range of... strate-

dents manage to attain. However, this aspect of Benhabib’s narrative does not negate the question of how they were seen to have acted as public selves, to have launched an iterative process and politicized the matter.

⁷¹ Michel Foucault, *Du gouvernement des vivants: Cours au Collège de France. 1979-1980* (Paris: Seuil-

gies that individuals *in their freedom* can use in dealing with each other.”⁷² It is an exercise of power through which one conducts another’s conduct. With this shift, Foucault famously turned to preoccupations that seemed incompatible with views he had come to be associated with. Terms like freedom, ethics, thought and autonomy came to populate his lectures and interviews—and it was clear that he did not mean those to be illusions concealing the depth of our subjection. Here was France’s foremost anti-humanist thinker, widely read to have reduced individuals to “standardized products” “mechanically punched out” by disciplinary regimes,⁷³ talking of subjects constituting themselves through “voluntary and intentional” practices and through “more autonomous... practices of liberation.”⁷⁴ What could this all amount to?

Appreciating the change in Foucault’s thought has often come at the cost of caricaturing his earlier work as one of fully constituted subjects, and caricaturing his late work as one of fully constituting ones. The most widespread interpretation has been that Foucault made up for having sacrificed subjectivity on the altar of power by attributing to subjects a creative capacity to constitute themselves apart from power, or at least freed from its effects.⁷⁵ Many who read the later

Gallimard, 2012), January 9 lesson. In this period, Foucault came to talk of people doing things to each other: “certain persons exercise power over others.” “The Subject and Power,” *Critical Inquiry* 8.4 (1982): 786. This language may surprise readers accustomed to his earlier analyses of “strategy without a strategist.”

⁷² Foucault, “The Ethic of Care for the Self as a Practice of Freedom,” in *Ethics*, 300, my emphasis. This is the only time that I draw from this text’s translation in *Ethics*, rather than in *Philosophy and Social Criticism*.

⁷³ Jürgen Habermas, *The Philosophical Discourse of Modernity*, trans. Frederick G. Lawrence (Cambridge: MIT Press, 1990), 293. Nancy Harstock similarly argues that Foucault depicts “a world in which active subjects become obliterated, or rather, re-created as passive objects,” in “Foucault on Power: A Theory for Women?,” in *Feminism/Postmodernism*, ed. Linda J. Nicholson (New York and London: Routledge, 1990), 163.

⁷⁴ Michel Foucault, *History of Sexuality, Vol. 2: The Use of Pleasure* trans. Robert Hurley (New York: Vintage Books, 1990), 10, and “An Aesthetics of Existence,” trans. Alan Sheridan, in *Politics, Philosophy, Culture, Interviews and Other Writings*, ed. Lawrence D. Kritzman (New York: Routledge, 1988): 50.

⁷⁵ Some drive this reading to its logical conclusion, characterizing Foucault’s late writings as embracing the “prediscursive subject” he had once violently rejected. See Eric Paras’s *Foucault 2.0* (New York: Other Press, 2006), Peter Dews, “The Return of the Subject in Late Foucault,” *Radical Philosophy* 51 (Spring 1989): 37-40, and Richard Wolin, “Foucault the Neohumanist?” *The Chronicle of Higher Education*, September 1, 2006. Yet most who share this reading avoid the improbable description of Foucault as a humanist; they argue instead that he threw himself into the arms of a depoliticized aesthetics. To many who make his call for an “aesthetic of existence” the key to his late writings, Foucault becomes a champion of the individual capacity for creative

Foucault in this light have grave concerns about this transformation. Some charge that he confined ethical subjects to a sphere of “reflexive intimacy;”⁷⁶ others worry that he betrayed his earlier insights on the unshakable effects that power relations and techniques of government have on the formation of our subjectivity.⁷⁷ Yet both sides of this interpretative coin—the totalizing Foucault, the individualistic Foucault—miss the mark. He did not obliterate subjectivity in the mid-1970s, and he did not call for spontaneous reinventions in the 1980s.

As I shall now argue, in the 1980s Foucault developed two related insights on freedom. The first is that governing others involves more than getting them to actively manifest their subjectivity (as he had already theorized in the 1970s): It also involve treating them as capable of realizing an open range of possibilities. The second is that freedom is an intersubjective capacity. It describes how I am treated by others insofar as they govern me.

“There cannot be relations of power unless the subjects are free,” Foucault said in 1984.⁷⁸ What does he mean by freedom? Part of the answer is that this is a view that he had long held, namely that power needs subjects whose practices manifest their subjectivity. That this subjectivity is itself reflective of the power relations subjects are embedded in does not negate the point that subjects are the conduits of their own subjectivation. Indeed, a central claim in the two *magna opera* Foucault published in 1976—*Discipline and Punish* and *History of Sexuality: An*

self-authoring. See Stephen White, “Foucault’s Challenge to Critical Theory” *American Political Science Review*, 80:2 (1986), Alexander Nehamas, *The Art of Living* (Berkeley and Los Angeles: University of California Press, 2000), and Ella Myers, *Worldly Ethics* (Durham: Duke University Press, 2013). A critique of this reading is Jeffrey Nealon, *Foucault Beyond Foucault* (Stanford: Stanford University Press, 2008).

⁷⁶ Myers, *Worldly Ethics*, 14.

⁷⁷ Jean Grimshaw argues that the later Foucault ignored social forces and the structurally differentiated positions that make self-fashioning pernicious. She even states that it is hard to detect in Foucault’s late work how he might still believe that “the self [is] social. Jean Grimshaw, “Practices of Freedom,” in *Up Against Foucault*, ed. Caroline Ramazanoglu (New York: Routledge, 1993), 67. And Thomas McCarthy wonders, with some evident glee at the chance of turning the tables on Habermas’s rival, whether in “correct[ing] the holistic bias we found in his work in the 1970s” Foucault “hasn’t gone too far in the opposite direction and replaced it with an individualistic bias.” Thomas McCarthy, *Ideals and Illusions* (Cambridge: MIT Press, 1995), 70.

⁷⁸ Foucault, “The Ethic of Care for the Self as a Practice of Freedom,” 123.

Introduction—is that techniques of power constitute a type of subjects whose actions further reproduce the system that shapes them; in particular Foucault tracks the practices of veridiction by which subjects are to declare and fix the truth of their selves.

Foucault's shift to the framework of government retains this first dimension of freedom. Governing others entails dealing with them insofar as they can be said to conduct themselves. Foucault defines government as an "encounter between the technologies of domination of others and those of the self," and while the former "determine the conduct of individuals," the latter "permit individuals to effect by their own means, or with the help of others, a certain number of operations on their own bodies and souls, thoughts, conduct, and way of being."⁷⁹ Hence governing others involves getting them to manifest, produce, modify their selves. It works through their "affirmation of [their] subjective existence through action," to borrow Sharon Krause's definition of agency. To the extent that my acts "manifest *someone else's* subjective existence" rather than my own (think of Aristotle's account of slaves as instruments perfectly responsive to their master), I am not part to a relation of government.⁸⁰

(One immediate implication is that Foucault's interest in practices of the self in no way means that he is talking about a freedom *from* power. In fact, there can be no practices of the self—hence no freedom—unless subjects are imbricated in relations of government. This is first-ly because one can only manifest one's subjectivity within power relations. Foucault always discusses practices of the self in terms of one's relation with others: spiritual directors, sexual partners, servants, co-citizens, doctors, patients, friends. Even ethics describes a way in which we conduct ourselves amidst others' attempts to conduct that conduct. It has to do with our orientation toward those who govern us and those we govern. Second, practices of the self are socially

⁷⁹ Foucault, "Technologies of the Self," in *Ethics*, 225. See also "Sexuality and Solitude," in *Ethics*, 177.

⁸⁰ Sharon Krause, "Beyond Non-Domination," *Philosophy and Social Criticism* 39:2 (2013): 196 and 200.

prescribed. They are “not something that the individual invents by himself. They are patterns that he finds in his culture and which are proposed, suggested and imposed on him by his culture, his society and social group.”⁸¹ One manifests one’s subjectivity within the “games of truth” one is invited to play; these are the “truth obligations,” present in the “self technology” of “every culture,” by which one affirms the truth of one’s self.⁸²)

Yet the later Foucault believed that his analytic of government captured another dimension of freedom, one he had earlier neglected. He often regretted that, “When I was studying asylums, prisons and so on, I perhaps insisted too much on the techniques of domination.”⁸³ As such, when he mentioned “free subjects” in 1984, he cannot just have meant subjects who manifest their self and partake in their own subjection. And this is clear from that same interview’s further specification of the type of freedom that Foucault now believes is presupposed by power:

[P]ower can only be exercised over another to the extent that the latter still has the possibility of committing suicide, of jumping out of the window or of killing the other.⁸⁴

Freedom now supposes a capacity to act otherwise. Foucault had already laid out the importance of this capacity a few years earlier in his seminal essay “The Subject and Power:”

A relationship of violence acts upon a body or upon things; it forces, it bends..., it destroys, or it closes the door on all possibilities... [A]nd if it comes up against any resistance, it has no other option but to try to minimize it. On the other hand, a power relationship can only be articulated on the basis of two elements which are indispensable if it is really to be a power relationship: that ‘the other’ (the one over whom power is exercised) be thoroughly recognized and maintained to the very end as a person who acts; and that, faced with a relationship of power, a whole field of responses, reactions, results and possible inventions may open up. Power is exercised only over free subjects, and only insofar as they are free. By this we mean individual or collective subjects who are faced with a field of possibilities in which several ways of behaving, several reactions and diverse comportments, may be realized. Where the determining factors saturate the whole, there is no relationship of power.⁸⁵

⁸¹ Foucault, “The Ethic of Care for the Self,” 122. Elsewhere, he talks of procedures “suggested or prescribed to individuals.” (Foucault, “Subjectivity and Truth,” in *Ethics*, 87.)

⁸² Foucault, “Sexuality and Solitude,” in *Ethics*, 177. For more on the vocabulary of the “game” in Foucault, see James Tully, “The Agonic Freedom of Citizens,” *Economy and Society* 28:2 (1999): 161-182.

⁸³ Foucault, “Sexuality and Solitude,” 177.

⁸⁴ Foucault, “The Ethic of Care for the Self,” 123.

⁸⁵ Foucault, “The Subject and Power,” 789-790.

Foucault is arguing that government needs subjects who act freely not just in the sense that their acts manifest their subjective existence, but also in the sense that they can act in several ways.

Foucault is assuming first that, as soon as a relation of physical determination ceases, one can act in several ways. A nonviolent situation (a situation in which my conduct is not determined through violence or force) is necessarily an open field of possibilities. This is most clear in Foucault's Rousseauian⁸⁶ illustration of what it means for "determining factors [to not] saturate the whole." He writes that, "Slavery is not a power relationship when man is in chains... but when he can move and possibly escape."⁸⁷ Here he is contrasting the violence of being in chains with the openness that follows from one's liberation from them. There is no middle-ground, no Aristotelian slave who is noncoerced yet perfectly responsive. Either a relation is violent, or it involves a range of possible responses. Either you are obstructing me or physically coercing me, or it must be that I can decide to act otherwise. Absolute other-determination is incoherent.

Foucault is assuming, second, that several actions I may take would all manifest my subjectivity; I can realize myself in more than one way. If I am a person who conducts myself, rather than a person who is merely "acted upon," then I am necessarily also a person who can conduct myself differently and tie myself to another truth. Foucault is explicit about this when he defines

⁸⁶ Here is how Rousseau describes the prospect of servitude in the state of nature: "He will have to make up his mind not to let me out of his sight for a single moment and to keep me very carefully tied up while he sleeps, for fear that I might escape or kill him." Jean-Jacques Rousseau, *The Discourses and Other Early Political Writings*, ed. Victor Gourevitch (Cambridge: Cambridge University Press, 1997), 258.

⁸⁷ "The Subject and Power" was first published in English in Hubert Dreyfus and Paul Rabinow, *Michel Foucault: Beyond Structuralism and Hermeneutics* (Chicago: University of Chicago Press, 1983), 208-228. But the latter part of this sentence ("mais justement lorsqu'il peut se déplacer et à la limite s'échapper") is missing from that text. It can be found in the later French versions published in Dreyfus and Rabinow's *Michel Foucault: Un parcours philosophique* and in *Dits et écrits*, Vol. IV, #306. While Dreyfus and Rabinow do specify that the section of "The Subject of Power" from which this sentence is extracted was originally written in French, neither of the French publications specify whether they have published Foucault's original manuscript or a translation of the English translation. That said, Foucault wrote the original manuscript for Dreyfus and Rabinow, who were thus likely to have had access to it when putting together their book's French version.

conducting oneself as “behaving within a more or less open field of possibilities.”⁸⁸ It is incoherent to say that one is conducting oneself absent a capacity to realize different selves; such a situation would indicate that one’s own subjective existence but is forced by another. As such, one can be said to act freely in the sense of manifesting one’s self if and only if one acts freely in the sense of a capacity to act otherwise than one does.

These two assumptions are distinct to Foucault’s late thought. In the mid-1970s he did not conflate a subject’s self-constitution with his or her freedom to realize a range of possibilities, however attractive a reading that would make.⁸⁹ He did not associate control over one’s act (in acting I manifest myself) with that act’s openness (I can act otherwise). Indeed, subjects of power/knowledge use on themselves, and thereby reproduce, the discourses and categories by which they are constituted. While this does not mean that a given regime ever succeeds at fully determining the subjectivities thus produced, it does aim to approximate such determination. A practice is useful to power/knowledge when it function like a “straightjacket,”⁹⁰ stabilizing subjects into constituting themselves as its targets. The panopticon’s function is to get subjects to act as though constantly under watch. But other-determined self-determination is incoherent for the later Foucault. Contrast Foucault’s account of the panopticon with his later point that the slave may escape once a direct physical determination is lifted. Governing others does not aim to approximate a situation in which they are chained. It does not shape them into docile bodies. Rather, it directs them insofar as they are subjects with the capacity to act otherwise.

⁸⁸ Foucault, “The Subject and Power,” 789.

⁸⁹ Some scholars counter the charge that Foucault reduced subjects to passivity by rightly pointing out that he always believed that power needs subjects to “play an active role in the maintenance and reproduction of power relations.” But they deduce too hastily from this that he already conceptualized autonomous practices in the mid-1970s. See Allen, *The Politics of Ourselves*, 37-55 and Kevin Jon Heller, “Power, Subjectification and Resistance in Foucault,” *SubStance* 25:1 (1996): 78-110. There is a difference between power’s need to involve subjects and government’s need for agents to act in an open world.

⁹⁰ Frédéric Gros, “Situation de cours,” in Foucault, *L’Herméneutique du sujet* (Paris: Gallimard, 2001), 492.

As such, government involves confronting others to an open field of possibilities. Take the following actions: “I want him to come with me, so I tie him and drag him along” and “I beat him until he obeys.” These are relations of violence because I act to ensure that a specific outcome comes to pass; I do not allow alternatives to occur. Now, take the following prescriptions: “Follow me, or I will punish you” and “You will take care of household duties.” Here I invite you to determine your conduct amid options I structure. Even when you do follow me, you could have acted otherwise; you were free to realize either possibility. The consequence of your decision to not follow me may be extremely costly, but it will not bring about the result I favored⁹¹ unless I revert to a strategy of violence and beat you *so that* you follow me. Thus I successfully govern you when your behavior conforms to what you would have done had I simply coerced you even though I did not, even though you could have acted otherwise.

We might say that Foucault always believed in a capacity to act differently. But subjects of power/knowledge act differently insofar as they are shaped by countervailing regimes and forces (for instance by local knowledges). By contrast, governed subjects’ capacity to act differently is a presupposition of the very technology of government that is conducting them.

This presupposition functions on two separable dimensions. The first, which is where interpreters who have paid attention to it have located it, is that Foucault is speaking of a capacity we actually enjoy. Relations of government are operative when one’s conduct is not fully constrained; it follows that governed subjects can act in an underdetermined manner. Hence freedom describes our ineradicable agency as governed subjects. We can always “act differently.”⁹²

⁹¹ One may understandably object that this is not an option at all, that it cannot be said that I have “allowed” you to not follow me if I plan on punishing you. Foucault would say that this objection is born of a juridical model of power. An act’s (il)legality does not determine whether the field of possibilities is open. (On this point, see Saint Paul’s argument in Romans 3:20 that the Law constitutes and even incites sin.)

⁹² This reading is advanced most powerfully by Tully, “To Think and to Act Differently,” especially 133-137, by Mark Bevir, “Foucault and Critique: Deploying Agency against Autonomy,” *Political Theory* 27:1 (1999),

Yet this first dimension, while convincing,⁹³ does not exhaust power and freedom's interplay, and it does not capture the distinctiveness of Foucault's late thought, which goes beyond asserting the ineradicability of resistance. The emphasis it places on Foucault diagnosing a capacity subjects possess neglects an essential, intersubjective dimension of his talk on freedom. To say that "there cannot be relations of power unless the subjects are free" is not just a claim about how persons must *be* when they govern each other. It is also a claim about how they must *be treating* each other to govern each other: They must be treating each other *as* free.

To be clear: This does not mean that people explicitly or deliberately recognize those they govern as free agents. (In fact, we shall soon see that it is likely that they will *not* think through the implications of how they relate to others.) Rather, this is an account of the pragmatic presuppositions of what one is necessarily doing in governing another. The point is that procedures of government—their rationality, their logic—work by assuming the freedom of governed subjects, and that those who exercise such procedures deploy that assumption. My action on you—what I am doing in governing you—implies that you can respond in several ways.

Governing others entails demanding that they take up certain techniques of the self. It "invites" and "incites" them to act on themselves; it "provokes" them to play games of truth. And since it cannot be said that one conducts oneself absent an open field of possibilities, what we are doing when we govern others is inciting them to partake in games and techniques that are constitutively open to alternative subjectifications. We implicate ourselves in the underdetermination of their response. In fact, in "structur[ing] the possible field of action of others," govern-

65-84, and by Neve Gordon, "Foucault's Subject: An Ontological Reading," *Polity* 31.3 (1999): 395-414.

⁹³ I would only emphasize that, since what it means to "act differently" for Foucault is relative to the aims of power, we should talk of individuals *responding* differently. This idea of responding differently is best captured by Foucault's assertion that he "believe[s] in the freedom of people" because, "to the same situation, people react in different ways." Rux Martin, "Truth, Power, Self: An Interview with Michel Foucault," in *Technologies of the Self*, ed. Luther H. Martin et al. (Amherst: The University of Massachusetts, 1988), 14.

ment is itself what brings into play the idea that subjects will realize one of several acts. One governs others by enacting the presupposition (the “recognition,” as Foucault writes in “The Subject and Power”) that they may respond by committing a proverbial suicide, and by implicitly promising that they can tie themselves to different subjectivities by virtue of their enlistment in the procedures they are prescribed. This openness is a constitutive rule of the games through which subjects are governed, in that it is a rule whose suspension would make a game unintelligible as an exercise of power, robbing it of what makes it an efficient way of acting on others.

This last point has an important implication: Government is not the poor man’s violence. It is not what one resorts to when one does not have the resources to physically coerce another to do one’s bidding. Foucault’s suggestion that people are governed insofar as they are free cannot simply mean that one recognizes the prospect of their indocility only to guard against it the best of one’s abilities. One governs another not by closing her world but by thriving in its openness. The former tactic may keep others in line, but it deprives one’s control of the efficiency of a governmental relation. Foucault specifies that, without freedom, power “would disappear and would need to find itself a substitute in the pure and simple coercion of violence.”⁹⁴ This sentence highlights that presupposing the freedom of others adds something to my control over them; it makes it more economic and productive. That people may be said to “voluntarily and intentionally” subject themselves to the desired order of truth is what makes it sensible (even alluring) to govern them. “The more that people are free in respect to each other, the greater the temptation on both sides to determine the conduct of others. The more open the game, the more attractive and fascinating it is.”⁹⁵ It is meaningful to conduct the conduct of others insofar as—*not in spite* of the fact that—their conduct is underdetermined.

⁹⁴ Foucault, “The Subject and Power,” translation modified. The English version (“power would be equivalent to a physical determination”) loses the suggestion that something is lost with the resort to violence.

⁹⁵ Foucault, “The Ethic of Care for the Self,” 131

In short, the freedom of others is not a mere impediment that one must take into account to conduct them. It is what makes power *work*. This addresses an objection to the distinction between violence and power, namely that when the game is repeated, it becomes hard to distinguish the punishment I am inflicted for my refusal from a violent act used to coerce me into responding in a specific way the next time around. “Follow me or I will beat you” blurs into “I will beat you until you follow me.” But once we see that replacing the former logic with the latter does *not* make for a more economic relationship, it becomes clear that freedom is a *counterfactual* presupposition of governmental relations. With that formulation, I mean that it is productive to presuppose that those whom one directs are free, even when other conditions would suggest that they are not. To govern each other, we *counterfactually* treat each other as free.

In his inaugural Louvain lecture, Foucault recounts a scene in which a certain Dr. Leuret repeatedly asks a patient whether he is mad and throws him under a cold shower until the patient says that he is. On the one hand, this patient was physically constrained to avow. He was not free since Leuret did not allow him to bring about another truth than the one he desired. Yet Leuret was presupposing that the patient could do so. Foucault asks of this scene, “Why must an avowal, even when it is obtained through force, be considered free in order to take on its... effects?”⁹⁶ This puzzle could be rephrased as follows: Why does Leuret ask a question at all? The answer is that the economy of this relationship is sustained by the assumption that the patient is manifesting his own subjectivity; that he is avowing freely. This supposition cannot be dismissed as merely a convenient ruse. Whether or not the freedom that government presumes is true, the necessity of its consideration ensures that you are free in my eyes (or rather, in my practices)—and as we shall see this can be quite inconvenient to the stability of my power.

⁹⁶ Foucault, *Wrong-Doing, Truth-Telling*, 16.

Here Foucault clearly parts ways with Habermas. For Foucault, treating others as free is not a mark that one has exited the domain of strategic relations. On the contrary, it is a means necessary to governing others. Foucault is extending to relations of government the Habermasian argument that communicative action counterfactually presupposes the freedom of others.⁹⁷

In short, when we govern others, we act on them with practices that presuppose that they are free agents, that they can orient themselves through these practices in a manner that cannot be exhaustively determined. Minimizing this intersubjective dimension risks blinding us to a crucial aspect of Foucault's argument. He is speaking not just of what governed subjects are free to do, but also of what they are already recognized as free to do by those who govern them.

This neglect also risks limiting our understanding of resistance. If we only pay attention to people's freedom, and not to the existing recognition of that freedom, then the provocation of acting otherwise can only look like "insubordination," "escape," "dire confrontation," or "revolt."⁹⁸ But this provocation looks different if procedures of government are necessarily treating subjects as free. If one's unexpected response conforms to the constitutive rules of the game that one is prescribed, then acting otherwise may embarrass these procedures from the inside.

The coming sections will show that Foucault's Louvain lectures are an extended reflection on this point. For now, suffice it to say that the practices of freedom he evokes there are all captured by the types of resistance associated with his work. We need to pay attention to his intersubjective diagnosis of freedom to appreciate the alternative politics he is foregrounding.

⁹⁷ This is a striking feat. For Habermasians, the distinction between communicative and strategic action is precisely that individuals only presuppose each other's freedom in the former. "In contrast to communicative action ... strategically acting agents are not dependent on the co-operation of others." Maeve Cooke, "Pragmatics in Habermas' Critical Social Theory," in *Foundations of Pragmatics*, ed. Wolfram Bublitz and Neal R. Norrick (Berlin and Boston: Walter de Gruyter GmbH & Co, 2011), 298.

⁹⁸ Tully, "To Think and Act Differently," 135. Tully writes, "Accompanying the agonistic free play in any game of power, by which the rules of the game are continuously modified, is always the possibility of insubordination, of challenging the relation of power itself by escape or confrontation." James Tully, *Public Philosophy in a New Key, Vol. 1* (Cambridge: Cambridge University Press, 2009), 125.

“I don’t know anything about anthropology”

Is any of this an account of how subjects *necessarily* relate to each other? They may treat each other as free insofar as they govern each other, but are relations of government inevitable? Benhabib wrestled with this by walking the tight-rope of binding contingencies. Foucault is less cautious about historicity. He presents governmentality’s emergence as an early modern phenomenon.⁹⁹ But when he talks of government as practice of conducting another’s conduct, the historicization fades. He uncovers such relations in every period he studies, and he makes statements about their presence in “all societies whatever they are.”¹⁰⁰ Procedures “suggested or prescribed to individuals” for “relations of self-mastery or self-knowledge” “no doubt exist in every civilization,” and “to live in society is to live in such a way that action upon others is possible—and in fact ongoing.”¹⁰¹ It simply seems to be the case that humans exercise power on each other in this basic governmental form. This may explain his strikingly transhistorical histories¹⁰² and the ease with which he transitions from detailed archival work on ancient and medieval ethical practices (in books and lectures) to commenting on ethics in contemporary contexts like the gay scene (mostly in interviews). No doubt aware that such sweeping statements may cause frictions in his project, Foucault tried to have it both ways in a remarkable 1984 interview:

I don’t know anything about anthropology, but we can imagine that there are societies in which the way one determines the behavior of others is so well determined in advance, that there is nothing left to do. On the other hand, in a society like ours... the games can be extremely numerous.¹⁰³

While the clause “in a society like ours” is vague, what speaks volumes is the attempt to sideline situations in which relations of government are foreclosed to the realm of marginal societies to

⁹⁹ See the February 1, 1978 lecture in *Security, Territory, Population*, ed. Michel Senellart, trans. Graham Burchell (London: Palgrave-MacMillan, 2007), 126-145. This is known as the “Governmentality” lecture.

¹⁰⁰ Foucault, *The Politics of Truth*, ed. Sylvère Lotringer et al. (New York: Semiotext(e), 1997), 181.

¹⁰¹ Foucault, “Subjectivity and Truth,” in *Ethics*, 87, and “The Subject and Power,” 791. This mirrors Habermas’s claim that we cannot disengage from communicative action and the presuppositions therein (see above).

¹⁰² The six Louvain lectures move from Greece (#1-2) to Rome (#3) to the early Middle Ages (#4-5) to the late Middle-Ages and the twentieth-century (#6).

¹⁰³ Foucault, “The Ethic of Care for the Self,” 131.

be approached through anthropological study. He has ensured that humans relate to each other through relations of government in every society he is concerned with – starting with “ours,” presumably Western modernity. Like Benhabib, he thereby guarantees that any situation he is interested in critiquing and potentially overcoming will be a situation of freedom, understood as a situation in which individuals (counterfactually) deal with each other “in their freedom.”

Putting these pieces together yields a picture of double inextricability: Foucault reveals our freedom to be an indispensable presupposition of the practices with which we unavoidably relate to each other. Humans (at least all those in societies he claims to know about) are entangled in relations in which they recognize the other to be acting as a free agent. This is his intersubjective ontology: A condition of mutual recognition is always being realized.

Foucault’s ethical divide

Governing others involves enlisting them in games that presuppose their capacity to act otherwise. This explains why Foucault would say that “liberty is the ontological condition of ethics.” But the next sentence adds a wrinkle: “But ethics is the thought-through form [*la forme réfléchie*] assumed by liberty.”¹⁰⁴ What does it mean for freedom to take a thought-through form? This section argues that the language of thinking through functions as Foucault’s version of Stanley Cavell’s distinction between knowledge and acknowledgment. While all technologies of government presuppose their subjects’ freedom, only some think through what they tacitly presuppose. Those that do not can be said to be disavowing the implications of their practices.

Foucault defines thought as “freedom in relation to what one does, the motion by which

¹⁰⁴ Some English-language edition of this text translate “*la forme réfléchie*” as the “deliberate form” and “the reflexive form.” One prominent translation goes as follows: “Ethics is the considered form that freedom takes when it is informed by reflection” (in *Ethics*, 284). I thank Tuomo Tiisala for his suggestion of translating the term “*réfléchie*” by “thought-through.” While the usual translations (“deliberate,” “intentional”) are less cumbersome, I have tweaked them to emphasize the relationship between ethics and thought.

one detaches oneself from it, establishes it as an object, and reflects on it as a problem.”¹⁰⁵ One’s conduct is thought if it is problematized, if one’s freedom becomes an object of reflection. (I mean reflection literally as a set of social and philosophical musings regarding the courses of action available to one.) *The Use of Pleasure* provides Foucault’s clearest contrast between subjects whose freedom is thought through in this sense, and subjects whose freedom is not thought through. There, Foucault compares the Greek rules and prescriptions that touched the lives of male teenagers with those that touched the lives of women (or rather, wives).

On the one hand, a teenager’s response to an older man’s sexual advances was configured as an “open game (with preferences, choices, freedom of movement, uncertain outcomes).”¹⁰⁶ Foucault explains that a concern had arisen that the same teenagers who were prized as objects of penetrative pleasure would grow up to be citizens. As a result, precepts were developed as to how teenagers should respond to sexual advances. What is important here is that pederastic relations were not repressed. Rather, teenagers were asked to navigate the invitations that they let themselves be penetrated in such a way as to constitute themselves as their own masters. Put otherwise, their conduct was problematized as a test of their character.

By contrast, no “deliberate art of self-conduct” was elaborated around a wife’s conduct, even though her behavior was deemed crucial to the household order. Foucault notes clearly that, while “the boy... constituted an independent center vis-à-vis the lover,” the wife was present in the Greeks’ ethical reflections “only as a complementary element of the man.”¹⁰⁷ This does not mean that Greek wives were not asked to conduct themselves, and in so doing to manifest themselves as the agents of their own subjection. What it means is that their conduct was not thought

¹⁰⁵ Michel Foucault, “Polemics, Politics and Problemizations,” in *Ethics*, 117. This is an interview from 1984.

¹⁰⁶ Foucault, *The Use of Pleasure*, 202.

¹⁰⁷ *The Use of Pleasure*, 202-203. The first part of this quote, which is so consequential, is missing from the English translation. It appears in the original French: “elle n’était là qu’à titre d’élément complémentaire de l’homme.” Michel Foucault, *L’Usage des plaisirs* (Paris: Gallimard, 1994), 223.

as an open game. In discussing later Hellenistic cultures in the third volume of *History of Sexuality*, for instance, Foucault explains that marriage evolved into a relation of reciprocal fidelity, but that while the husband's sexually exclusive attitude belonged to the period's "deliberative art of self-conduct," the reciprocal expectation that the wife be monogamous did not. Plutarch's text simply "assumes, without even having to recall the fact, that the wife owes her husband fidelity."¹⁰⁸ That line encapsulates the condition of being governed in a manner that does not think through one's freedom. It was assumed that the wife's conduct would be coextensive of her husband's. Her duty was not problematized as the desirable option of an uncertain practice, but it was also not simply maintained through violence since forcefully enforcing conformity would have meant exiting the economy of a governmental relation.

This example gets to a crucial distinction. A technology of government that thinks through its own implications is fueled by a reflection on the field of possibilities that its subjects may realize and on the relative uncertainty of how they will respond. By contrast, a technology of government that does not think through its own implications is fueled by the expectation that insofar as they conduct themselves subjects will produce a specific truth; it calls on subjects to act on themselves with the expectation that there is only one course of action that they may determine to realize—an expectation that, as I explained above, Foucault deems fantastical.

The latter type of relationship may seem improbable. Even when I expect another to do something, do I not know that he or she may act otherwise, if for no other reason than that I must have witnessed disobeying slaves or wives who act improperly? That much is true. But I may take such acts to be determined by someone else than themselves. Foucault's work is full of situations that call into question Jane Bennett's point that "when humans exercise the power to

¹⁰⁸ Foucault, *The Care of the Self*, 174.

thwart, it is typically viewed as an active decision and not an instance of passive, automatic functioning.”¹⁰⁹ Foucault suggests instead that it is often the case that desired acts are perceived to be active decisions while untowardly ones are perceived to be instances of passive functioning. When a Greek wife behaved improperly, it was seen as sign as a sign of her husband’s bad influence rather than of her own determination. “When sheep fare badly, we usually fault the shepherd.”¹¹⁰ Similarly, I will discuss a Homeric chariot race whose organizers explain away results that do not conform with their expectations by attributing them to a divine intervention. Finally, take the monastic hermeneutic of the self, where monks were called to constantly verbalize all of their thoughts, the idea being that a thought one is reluctant to avow is sent by the devil.¹¹¹ Leaving a thought unsaid was not seen as the manifestation of an alternative subjectivity but as a sign that one had been taken over by an external presence.

Contrast these cases with Foucault’s discussion of medieval torture. In his account, this procedure functioned by asking an open question: “If I subject you to the test of torture..., will you win or lose, will you give in or, to the contrary, will you be able to resist by saying nothing?” If one did not avow during a prescribed time, one was considered to have tied oneself to the truth of one’s innocence and the prosecutor “was forced to abandon his procedure.”¹¹² In this truth game, not only are suspects confronted with an open field of possibilities, but both possible outcomes are thought to be a manifestation of their truth. Similarly, a Greek teenager’s response to a man’s attempt to seduce him spoke to the character of his relation to himself.

With these distinctions, Foucault came to diagnose performative contradictions of his

¹⁰⁹ Jane Bennett, “In Parliament with Things,” in *Radical Democracy*, ed. Lars Tønder and Lasse Thomassen, (Manchester: Manchester University Press, 2005), 147.

¹¹⁰ Ibid. 155.

¹¹¹ Foucault discusses this example in the fifth lecture in *Wrong-Doing, Truth-Telling*.

¹¹² Ibid. 204-205.

own. On the one hand, he established that enticing others to manifest their subjectivity presupposes their capacity to respond otherwise. On the other hand, he identified regimes of government that do not problematize their subjects' freedom; they expect that insofar as subjects conduct themselves they will realize a preordained truth. This shows that some relations of power are wobbled by a discordance between the nonproblematized injunction that persons manifest a specific truth and the open practices by which they are asked to do so. When I govern you without thinking through your freedom, my actions toward you run afoul their own implications. By viewing your untowardly acts as instances of passive or other-determined functioning, I disavow the presuppositions of the practices which I am orienting myself in the world.

Whatever we call it, it is crucial to see that the contradiction Foucault diagnoses does not just stem from an ideal's insufficient actualization (as, for instance, when we indict the tension between a regime's oppressive practices and the egalitarian ideals it professes). It also stems from an insufficient acknowledgment of what is already actualized. Foucault's systems of government are not pregnant with unrealized thoughts but with unthought realizations. To deny that others may act otherwise is at odds with what one is *already doing* in governing them.

This reading counters the ubiquitous charge that Foucault has no "normative criteria for distinguishing acceptable from unacceptable forms of power."¹¹³ Instead, I have argued that a key differentiating standard in his late work is whether a regime of power thinks through the

¹¹³ Nancy Fraser, *Unruly Practices*, Minneapolis: University of Minnesota Press, 1989, 33. A common response has been to point to late interviews in which he differentiates power from domination. But too much is made of these statements. The most famous is his claim in "The Ethic of Care for the Self" that relations of domination are "firmly set or congealed," "impassive and invariable," whereas power relations are fluid and reversible (114). Yet this distinction is similar to the one in "The Subject and Power" between power and force/violence. Foucault is emphasizing that an exercise of power deals with others in their freedom. He is not contending, as Amy Allen argues in *The Power of Feminist Theory* (Boulder: Westview Press, 2000, p.44), that this makes a relation of power "easily mutable." In fact, if his only distinction were this contrast between domination and power, his notion of government would still be the night in which all cows are black. Instead, the contrast I am pointing to here gives him a distinction *within* techniques of government.

freedom that it already invites subjects to exercise. This reading also counters a second, related charge: that in talking about ethics the late Foucault forgot about power and neglected that many individuals occupy positions from which they cannot care for themselves. Jean Grimshaw writes that, “His conception of a class of free beings who make works of art of their own lives is ‘always already’ premised on a distinction between those who do and those who do not have such freedoms,” a point she intends as a damning criticism since she believes Foucault missed this.¹¹⁴ But this distinction is all over his final books, lectures and interviews. Foucault pays close attention to the question of whose conduct is an object of reflection because he believes that only those whose conduct is thought-through as free can engage in an ethic of the self.

Indeed, Foucault’s ontological declaration that “we are always free” does not mean that we are always free to act ethically. In discussing the emergence of the Greek injunction that individuals care for themselves, Foucault notes that this prescription was aimed only to “those with a certain cultural, economic, and social capability,” and thus not to “the *hoi polloi* who are, precisely, the people absorbed in everyday life.” An “ethical divide” separated those “competent” to act ethically—those who were “able to practice themselves, able to carry out this practice of the self”—and those with no such capacity.¹¹⁵ This “ethical divide” echoes his suggestion that Greek wives lacked the opportunity to fashion themselves as ethical subjects.

As Foucault defines it, “ethics” covers those practices of the self prescribed to people whose conduct is problematized: A self-technology is conducive to an ethical orientation only if it is supported by a social reflection on how people should act. The reason for this is captured by Krause’s distinction between “the affirmation of one’s subjective existence in one’s concrete ac-

¹¹⁴ Grimshaw, “Practices of Freedom,” 69.

¹¹⁵ Michel Foucault, *The Hermeneutics of the Subject: Lectures at the Collège de France 1981-1982*, trans. Graham Burchell (New York: Palgrave Macmillan, 2005), 74 and 118. Even when the injunction is generalized, the divide between “those who are capable [of the self]” and “those who are not” is only displaced (119).

tion” and “the fact that [one] can recognize [oneself] in [one’s] actions, can see [one’s] hands behind the deeds.”¹¹⁶ This capacity to recognize oneself as the author of one’s conduct conditions Foucault’s ethics. Individuals must be “*incited to apply techniques to themselves that enable them to recognize themselves as ethical subjects.*”¹¹⁷ If I am to cultivate myself ethically, I must have available to me a set of games that think through my freedom. This is what enables me to care for my conduct, to take my self as an object to cultivate. This is why, in *History of Sexuality*’s second and third volumes, Foucault explores ancient ethics through the study of prescriptive philosophical texts. These “served as functional devices that would enable individuals to question their own conduct, to watch over and give shape to it, and to shape themselves as ethical subjects.”¹¹⁸ As spaces of reflection, they are a necessary condition for ethics.

To review, when Foucault declares that “freedom is the ontological condition of ethics [but] ethics is the thought-through form assumed by liberty,” he is arguing that we are always treated as free insofar as society is traversed by relations of government, but this freedom must have been thought through, problematized, acknowledged for us to act ethically. Greek teenagers were able to give their freedom a form informed by reflection insofar as they were invited to partake in games configured as a test of *whether* they would subject themselves. By contrast, those on the wrong side of the ethical divide (the *hoi polloi*, Greek wives) were incapable of ethics because the techniques prescribed to them did not problematize their capacity to act otherwise, though these subjects are still governed subjects dealt with in their freedom.

The embarrassing responses of the governed

What form does resistance take for those on the wrong side of Foucault’s ethical divide?

¹¹⁶ Krause, “Beyond Non-Domination,” 196.

¹¹⁷ James W. Bernauer and Michael Mahon, “The Ethics of Michel Foucault,” in *The Cambridge Companion to Foucault*, ed. Gary Gutting (Cambridge: Cambridge University Press, 1994), 144.

¹¹⁸ Foucault, *The Use of Pleasure*, 13.

What can subjects like the *hoi polloi* or Greek wives do when they are “incited to apply techniques to themselves that” do *not* “enable them to recognize themselves as ethical subjects?”

These subjects, at least those in “our societies,” have a critical resource at their disposal.

They can take advantage of the performative contradiction enacted by those who seek to control them. They can act unexpectedly even while they respect the rules of the games they are prescribed. And if they show that their untowardly conduct in fact meets the invitation that they were extended, it may prove embarrassing to those looking to conduct their conduct. The latter cannot then just dismiss these responses without in so doing renouncing their aspiration to govern. That Doctor Leuret does just that—that he simply resets the game—has a lot to do with the fact that this confrontation takes place in private and with no witnesses. As we shall now see, Foucault discusses similar cases in which a subject’s response to a nonproblematized invitation has destabilizing consequences since a regime of power cannot just sweep under the rug a defiant act whose propriety is constitutive of its operational logic. It is in the Louvain lectures in particular that Foucault exposes the tricky situation of technologies of government that do not think through individuals’ freedom. He suggests that what gets them in trouble is that they have incited individuals to act in games whose outcomes may destabilize the ends of that incitation.

The Louvain lectures’ overarching narrative is that power’s need for avowal became a stumbling block—an “embarrassment”—for the modern judicial system. By relying on avowal, the judicial system introduced a party who was both “indispensable” and “somehow in excess,” “constantly solicited to say what was asked for him, yet always saying less than what was expected, always saying something other than what would allow the machine to function properly.”¹¹⁹ This lecture suggests that forms of veridiction of the self evolved through a gradual disa-

¹¹⁹ Foucault, *Wrong-Doing, Truth-Telling*, 200.

vowal of the tacit presupposition that an avowing subject could respond in several ways. Freedom became unthought, and this made government vulnerable.

Medieval torture had problematized the possibility that a demand for avowal could be met by a refusal or by silence, just like the games by which Greek men tried to seduce male teenagers. Yet demands for avowal gradually transitioned from an open game to an expectation so strong that a failure to match it proved embarrassing to the those who demanded it. The prescription that individuals avow no longer thought through its own implications. Thus “impasses and derailments are produced when this need for avowal is not satisfied or when something escapes within this very procedure—when, to the question we pose to the one who has committed his crime, he cannot respond or gives *a different response than the one we expect*.”¹²⁰ The possibility of a subject acting otherwise than he expected is internally consistent and yet embarrassing.

In a 1978 lecture, Foucault had evoked an incident in which a courtroom is strangely bewildered by a defendant’s stillness:

Question from the presiding judge: ‘Have you tried to reflect on your case?’

Silence.

‘Why, at twenty-two years of age, do such violent urges overtake you? You must make an effort to analyze yourself. You are the one who has the keys to your own actions. Explain yourself.’

Silence. ...

Then a juror took over and cried out, ‘For heaven’s sake, defend yourself!’ ...

We have facts that have been established, an individual who admits to them – one who, consequently, accepts the punishment he will receive. All should be for the best in the best of all possible judicial worlds... And yet it happens that the machinery jams, the gears seize up.¹²¹

How can this silence prove so unsettling? In this 1978 lecture, Foucault claims that by remaining silent the defendant “does not play the game.” But when he describes the same incident in Louvain in 1981, he dispenses with this suggestion that the defendant exited the prescribed game.

Now that Foucault is attentive to power’s need for a relatively open world, silence has come to

¹²⁰ Ibid. 211.

¹²¹ Foucault, “About the Concept of the ‘Dangerous Individual,’” 176-177.

look like one of the outcomes truth games allow. It is a possibility “inside the procedure.” Put otherwise, his new insights on how government necessarily presumes a freedom to act otherwise has reframed the defendant’s silence from a mere obstacle to the penal system to a response internal to its prescriptions. The penal system is in a jam because its injunctions were presupposing the defendant’s freedom—a perspective Foucault only arrived at in the early 1980s.

Foucault makes this tension come to a head in the last Louvain lecture. He cites defense attorney Robert Badinter’s courtroom speech during Patrick Henry’s famous murder trial:¹²² “He did not say anything. He did not want to say anything. He could not say anything... Can you condemn to death someone who you do not know?”¹²³ Here Badinter dramatizes Henry’s silence. This is an essential move. As I explained, a game that does not think freedom through has room for recalcitrant acts; it just takes them as a sign that in acting one is not manifesting one’s own subjectivity. Foucault highlights Badinter’s effort to ensure this silence is not read as an incidental failure or as the mark of an inability to conduct oneself but as a direct and deliberate response (“he did not want to say anything”). For him, Henry’s silence destabilizes because of this demonstration that he takes the system’s rules seriously in the very act of provoking it.¹²⁴

Foucault’s revised analysis of what a defendant’s silence entails would perhaps be too minor for us to notice if he had not pulled a strikingly similar twist in the first Louvain lecture. There, he returned to another of his old stories—*The Iliad*’s description in Book 23 of a chariot

¹²² Henry’s trial is remembered as a dress rehearsal for the death penalty’s abolition in 1981. Badinter became Minister of Justice a month after Foucault delivered this lecture and pushed the reform through.

¹²³ Foucault, *Wrong-Doing, Truth-Telling*, 228-229.

¹²⁴ James Scott gestures toward a similar argument in *Domination and the Arts of Resistance* (New Haven: Yale University Press, 1992). In arguing that the “public transcripts” of elites depend on demonstrations of willing adherence (he calls this a “show of discursive affirmation from below”), Scott suggests that this makes them internally vulnerable. “If the courts are filled with truculent and defiant criminals, if slaves stubbornly refuse to humble themselves..., their behavior amounts to a sign that domination is nothing more than tyranny” (58). Scott and Foucault both present courtrooms as a felicitous stage on which to call power’s bluff.

race that ends in an unexpected upset—to modify his numerous earlier analyses.¹²⁵

Here is *The Iliad* story, briefly recounted: After the death of his beloved Patrocles, Achilles organizes funeral games, which include a chariot race. Six warriors volunteer, among them Menelaus and Antilochus. In Foucault's telling, Menelaus's superiority to Antilochus is so manifest that the race is meant to merely dramatize an already obvious hierarchy. Yet Antilochus beats him. A livid Menelaus challenges him to take an oath attesting he has not cheated. Antilochus shies away and admits his rival's superiority.

In recounting this story in a 1974 lecture, Foucault had attributed the race's unexpected outcome to a "foul" committed by Antilochus.¹²⁶ But he dismisses that view in 1981. "Did he break a rule? Obviously not."¹²⁷ In the earlier iterations in which he worked on this story, Foucault had focused exclusively on its last part: the oath challenge. He seemed to have little interest in the race itself, and his characterization of Antilochus's actions as a "foul"¹²⁸ mattered little to his analysis of the oath. But that changes in Louvain. He suddenly displays a keen interest in the race's function and unfolding, which fits his newfound sensitivity to the games through which power invites to act on themselves as free agents, and it is because of this interest that Antilochus's act no longer looks like an uninteresting foul. Let me explain.

Foucault presents the chariot race as a game by which warriors were invited to manifest the truth about themselves and about their place in their world. He calls this an alethurgy, "a ritu-

¹²⁵ Foucault had recounted this story on multiple occasions before Louvain. See his January 27, 1970 lecture at the College de France in *Lectures on the Will to Know: Lectures at the Collège de France, 1970-1971* (New York: Palgrave Macmillan, 2013), the lectures he delivered in Brazil in 1974 ("Truth and Juridical Form," in *Power*), and, more succinctly, his January 16th 1980 College de France lecture in *On The Government of the Living: Lectures at the Collège de France, 1979-1980* (New York: Palgrave Macmillan, 2014).

¹²⁶ Foucault, "Truth and Juridical Form."

¹²⁷ Foucault, *Wrong-Doing, Truth-Telling*, 40.

¹²⁸ In this, he may have been following conventional scholarship on this scene, which accepts Menelaus's claim that Antilochus committed a foul. See Michael Gararin, "Antilochus's Strategy: The Chariot Race in Iliad 23," *Classical Philology*, 78:1 (January 1983): 35. For another interesting reading of this scene, see Sylvie Perceau, *La parole vive* (Louvain-Paris-Dudley: Bibliothèque d'Etudes Classiques 2002): 252-259.

al procedure for bringing forth... that which is true,” specifically what is true about the warriors. “The race must unfold in such a way that the truth – that is, the true relation and differences in strength – manifests itself.”¹²⁹ It aims to establish a relational field of subjects. By racing the warriors will tie themselves to their place within the Greek *kosmos*.¹³⁰

And yet, the peculiarity of this race is that Achilles does not organize the race to discover what this truth is, but for the warriors to manifest what Achilles already knows to be true:

For us, a fair race is a race where everyone's chances are equal from the beginning, so that the winner is as unpredictable as possible... [T]he race, such as it is organized by Achilles, as it unfolds in this Homeric text, is precisely the opposite... [The heroes] are not at all considered equal from the beginning... The presentation of the heroes thus indicates their truth strength... That is to say, there is no reason to hold the race. We already know everything... The order is already predetermined, so what is the function of the race, exactly? The function of the race is nothing more than to develop... and dramatize an order of truth that is given from the beginning ... the liturgical unfolding of a truth already known.¹³¹

If the race is organized to manifest an already-known truth, why is it not redundant?¹³² For one, something is gained when subjects fix themselves to their place in the world through their own actions. But by now Foucault had gone further. The race is not redundant because the hierarchy it reveals can be attributed to subjects manifesting the truth of themselves only insofar as it takes place in a game that could have gone otherwise. In a sense, the race’s alethurgical function rests on the unsuspendable rule that “to the question we pose” a warrior may “give a different response than the one we expect.” This is why, when Antilochus’s victory produces another truth than the one already known, Achilles does not and cannot just overlook it or order a redo.

Antilochus ties himself to an alternative truth by *twice* dramatizing the fact that the game he was asked to play to manifest his place depends on his free conduct. He does this first with his

¹²⁹ Foucault, *Wrong-Doing, Truth-Telling*, 39 and 41.

¹³⁰ This relates to Foucault’s argument elsewhere that, for the Greeks, relating to oneself entailed turning toward the world to know one’s place within the order of things. Foucault, *The Hermeneutics of the Subject*, 235.

¹³¹ Foucault, *Wrong-Doing, Truth-Telling*, 38-39.

¹³² It is important that Foucault chose to describe the chariot race, which was actually held, and not the spear-throwing contest described later in Book XXIII, which Achilles organizes but which never takes place because he awards the prize to Agamemnon (on account of his superior strength) before a single spear is thrown!

actions *during* the race. Foucault details the decisive moment: When Antilochus and Menelaus approach the spot at which the path narrowed, they face a decision (should they slow down or remain steady?) and it is the consequence of Antilochus's deliberate decision to "simply refus[e] to yield to Menelaus"¹³³ that determined the result. Second, Antilochus reiterates his freedom *after* the race in order to fight off Achilles' attempt to circumvent the results by attributing them to a divine intervention—the idea being that the results bear no relationship to the truth of the warriors' strength because their veridiction was marred by something on which they had no control—rather than to Antilochus's agency. But Antilochus intervenes once more, this time to dispute the notion that divine intervention dilutes human agency: He points out that being the target of a god's anger suggests that one has been insufficiently pious.

The scandal of Antilochus's upset, as Foucault tells the story in Louvain, stems from his demonstration that the chariot race presupposed a capacity that it was also invested in denying him. He revealed that the race's alethurgical function is contradicted by what inviting warriors to race implies. Hence this story is indicative not just of the intersubjective resource governed subjects have at their disposal—the thread of reciprocity already available to them—but also of the mode of resistance it triggers.

Indeed, I have shown that in Louvain Foucault similarly revised his past take on two stories. He framed the defendant's silence and Antilochus's racing, two acts he had characterized as breaches in or withdrawals from the prescribed game, as conforming to that game's rules. These revisions trace the effects of Foucault's ontology: Those whose freedom is not problematized can engage in defiant acts whose propriety is tacitly recognized. They can take seriously the rules of the game they are incited to play to demonstrate that they are already treated as free agents with-

¹³³ Foucault, *Wrong-Doing, Truth-Telling*, 40.

in it, and to obtain that the way in which they are already being treated be thought through.

This new outlook on the race also changed Foucault's perspective on Menelaus's challenge to Antilochus: swear that you didn't cheat. In earlier lectures, Foucault had described this challenge as the first appearance "of something resembling judicial avowal." But by paying attention to what preceded it and thus to why it might have emerged at this particular moment, he reorients the story into that of the transition from one type of game to another. He notes in Louvain that Menelaus "wants the truth of his victory to be recognized without violence and in truth."¹³⁴ This is as we would expect. Government is more efficient to conduct others than naked violence. But it also demands that others subject themselves in freedom, and while the initial game did not think through this condition, Antilochus made that unsustainable. How, then, could Menelaus still establish the truth of his superiority without having recourse to violence?

Foucault defined problematization in 1984 as "this development of a given into a question, this transformation of a group of obstacles [*embarras*] and difficulties into problems to which the diverse solutions will attempt to produce a response."¹³⁵ Menelaus exemplifies this transformation since he devises a game that, unlike the race, thinks through the possibility of an unwanted outcome. As Foucault summarizes it, the oath implies "two possible outcomes," and if "Antilochus takes the oath, ... Menelaus is forced to concede."¹³⁶ Put otherwise, Menelaus made explicit what Achilles's initial demand had not problematized, namely that what is demanded is a free act. While Antilochus's failure to meet Menelaus's challenge reestablishes the initial order of truth, the initial configuration of government is not restored. Antilochus's capacity to be the "independent center" of his own conduct has become thought. The new technique of the self that

¹³⁴ Foucault, *Wrong-Doing, Truth-Telling*, 34.

¹³⁵ Foucault, "Polemics, Politics and Problematizations," 118.

¹³⁶ Foucault, *Wrong-Doing, Truth-Telling*, 41.

Antilochus is prescribed is one that tests *whether* he will subject himself.

Strangely enough, chariot racing makes another appearance in Foucault's corpus. In *The Use of Pleasure*, he presents chariot racing as a metaphor for Greek teenagers' response to older men's sexual pursuits. He cites Demosthenes's *Eroticos*, in which a teenager named Epicrates wins a race against men favored to beat him:

A brief narration that appears in the middle of the speech acquires a symbolic value. It is a commonplace account of a chariot race, but a direct relation is established between the little sports drama that is reported and the public test that the young man undergoes in his behavior with his suitors. We see Epicrates driving his team...; he is on the verge of defeat, his chariot is about to be smashed to piece by an opposing team; the crowd, despite the taste it ordinarily has for accidents, cheers for the hero, while he, "stronger than the vigor of his team, manages to win the victory over the most favored of his rivals."¹³⁷

Here we have two chariot races won by younger underdogs, but these upsets are met by dramatically different reactions. While Epicrates's victory earns him praise, Antilochus's provokes confusion. The former brilliantly passes the test his race represented, while the latter unsettles expectations. What explains this contrast? The two chariot races are mobilized by different governmental configurations. While Antilochus and Epicrates are both invited to partake in a game that ties the truth of their place to a contingent response, only for Epicrates is this dependence thought through. Antilochus's race stands in for those techniques of the self through which subjects were expected to freely manifest a preordained order. By contrast, Epicrates's chariot race is a stand-in for the ethical techniques Greek teenagers were prescribed as a public test of their character. His reflexivity is acknowledged, and the possibility that he play these (erotic and athletic) games without subjecting himself to older men is prefigured as a sign of self-mastery.

So is the reason Antilochus's act and Menelaus's challenge are so important to Foucault that they provide a symbolic tipping point of the problematization of Greek teenagers' actions? Viewed thus, Antilochus's act not only got him to be prescribed a new sort of game—one that

¹³⁷ Foucault, *The Use of Pleasure*, 212.

afforded him a novel opportunity to watch over his own conduct and author his subjectivity—but it also ushered in a durable transformation that paved the way for Epicrates’s erotic ethics.

II. The perils of the performative contradiction

If *sans-papiers* are already presupposed to have participation rights, if the *hoi polloi*’s freedom to constitute alternative subjectivities is already presumed, then the anxiety regarding how their practices and claims can be taken up by those who ignore them is alleviated. Such persons may take advantage of the way in which they are already being treated and expose or exploit their participatory aspirations’ preexisting authorization. This troubles the tendency to regard disqualified subjects as lost to contributory work; it provides an account of how they may nonetheless make use of the intuitive recognition that they are already being extended.

Yet I shall now argue that this strategy of expanding political horizons by diagnosing ineliminable threads of reciprocity runs into two problems. First, it reproduces constraining assumptions about what constitutes a viable act of contestation. Second, it is hampered by an analytical confusion that calls into question its ontological validity.

2.1. A reiterative politics

This dissertation has critiqued the widespread assumption that we can only intervene in our government when mutual ties exist between us and those who govern us. Foucault and Benhabib sidestep the anxieties that this assumption creates by ontologizing these ties. But they only need to do so because they subscribe to this assumption in the first place; they see their diagnosis as an indispensable condition for such interventions. When Benhabib appropriates Jessica Benjamin’s point that “owning the other within diminishes the threat of the other without,” it becomes apparent that her guarantee of universal reciprocity is needed as a protection against the collapse of democratic horizons a lack of mutuality would create. She does add that where “a

strong sense of respect for the autonomy of the other and for his or her equal right to retain such difference” is “not available,” “recognition can indeed break down altogether and result in violence and civil war, armed conflict or silent confrontation.”¹³⁸ We return to the expectation that nonreciprocal conditions will be confronted by nondemocratic action. Similarly, in the rare instances in which Foucault imagines a society structured as a “state of domination,” a society so congealed and repressive as to have no room for governmental relations that “deal [with subjects] in their freedom,” he has no language to use other than the one his conceptualization of power was meant to overcome: A colonized people is “oppressed” through mechanisms of “repression” against which it can engage in “a practice of liberation in the strict sense,” and until this struggle is successful “practices of freedom do not exist.”¹³⁹ We return to the expectation that, in the quasi-unthinkable situations in which the power exercised on me does not presuppose my freedom to act otherwise, what is left is an old-fashioned struggle for liberation.

The first problem this poses is that, while Foucault and Benhabib took it upon themselves to make a full absence of reciprocity theoretically impossible, stacking the deck by ontologizing it, relations from which intersubjective recognition is suspended are still conceivable. In these cases, the only recourse remains escape or violent confrontation. Democratic horizons remain impoverished in those spaces where reciprocity’s presence has not been guaranteed.

The second problem is more complex. If the viability of democratic practices still depend on their being recognized, then all competences but those Foucault and Benhabib have discovered to be ontologically certain to be recognized fall through from their political repertoire. Put otherwise, they anchor freedom on the guarantee of a critical resource at the cost of stabilizing politics into the reiterative fulfillment of that resource, the reiterative fulfillment of the capacity

¹³⁸ Benhabib, “Sexual Difference and Collective Identities,” 354.

¹³⁹ Foucault, “The Ethic of Care for the Self,” in *Ethics*, 282.

people must always already be assuming each other to enjoy. Demands involving competences that one is not always already invited to exercise thus remain foreclosed.

By moving contradiction to the level of intersubjectivity, Foucault and Benhabib open a space for contestation at the cost of stabilizing it into the uncovering of the fact of some specific feature's intersubjective recognition. For both, that feature is autonomy, defined as one's capacity to be the subject of one's actions or norms. (For Benhabib, this is the ability to provide reasons for oneself in communicating with others; for Foucault, the ability to recognize one's conduct as an affirmation of one's subjectivity.) The affirmation of autonomy is the political project made possible by their respective ontologies.

In the case of Benhabib, I have tracked the connection between her ontological demonstration that we are “always counterfactually presupposing the equality and autonomy” of all sorts of people (from the infant “whose needs we are satisfying” to the immigrant whose membership we are deciding) and her political contention that the “practical intent [of critical theory] is the commitment to render humans the autonomous subjects of their actions.”¹⁴⁰ As a result, I worry that she rests iterations on an unfortunate logic of reconciliation. I do not mean that she needs a people to approximate independently determined ideals.¹⁴¹ I mean that, if she is tracking universal principles insofar as their meaning is already presupposed, then she needs citizens to appropriate intuitive rules they are already performing. Democratic iterations always concern the scope and modalities of the community of justification at-hand because these are the things modern practices must presume to be universal, reciprocal and symmetrical. Put otherwise, Benhabib freezes the object of politics as the cultivation of one's autonomy for reasons that are neither po-

¹⁴⁰ Benhabib, *Situating the Self*, 59 and Benhabib, *Critique, Norm, and Utopia*, 253.

¹⁴¹ As such, I disagree with Lasse Thomassen's critique that Benhabib makes the iterated principles into “depoliticized universals” whose full meaning people merely try to approximate. Lasse Thomassen, “The Politics of Iterability: Benhabib, the Hijab, and Democratic Iterations,” *Polity* 43:1 (2011): 128-149.

litical nor moral. They have to do with her assumption that theory needs to provide an intersubjective guarantee for politics, and with the contingent fact that autonomy happens to be the demand for which her pragmatic analysis of modernity has met that challenge.

Similarly, Foucault guarantees one specific presupposition of freedom, the openness of relations of government. This explains why his practices of freedom have a privileged form, namely his famous call for “a permanent creation of ourselves in our autonomy.”¹⁴² The concern I have with this call is not that he collapses action into self-creation, but that the reason he does so is that our capacity to be the center of our conduct is the capacity whose recognition he is able to root ontologically. Understood in this light, his ethics of the self and the acts of unexpected-yet-authorized subjectification I have described are two sides of this same affirmation. If the ineliminable presupposition that we freely conduct ourselves is obscured, we exploit its intuitive form by tying ourselves to an unexpected truth and obtaining the problematization of our conduct; if this presupposition is thought through, we act upon its acknowledged form by drawing on the ethical techniques that are prescribed to us.

As such, my worry is that Foucault’s dependence on ontologizing his promise of freedom forces him to overspecify the aim of working with others to be the continual making-deliberate of government’s demand for a free self-constitution. Politics is what problematizes freedom, and what transforms an ontologized given into a question, on a loop. In analyzing the pedagogical relationship, Foucault said that, “I don’t see where evil is in the practice of someone who, in a given game of truth, knowing more than another, tells him what he must do, teaches him, transmits knowledge to him, communicates skills to him. The problem is rather to know how you are

¹⁴² Michel Foucault, “What is Enlightenment?” in *Ethics*, 314.

to avoid in these practices... the effects of domination.”¹⁴³ My point in citing this passage is not that Foucault should have condemned pedagogical relationships once and for all or that he should have blessed people’s faculty to learn without a teacher. But I worry that his promise of freedom comes at the expense of not trusting subjects to experiment with demands other than the ones whose viability he demonstrates is always presupposed by those who govern one. Why should autonomous self-constitution be the privileged end of working with others, other than because it is that practice for which philosophy has managed to offer a guarantee?

Thus, my first concern is that, while this framework enables political agency, it constrains our sense of the spaces and capacities relevant to it. It cements the expectation that depoliticized violence is the sole path when mutuality does break down; and it unduly prioritizes competences we always already presuppose in each other, molding political action on their reiteration.

2.2 Involvement and openness: Dimensions of freedom

This chapter has distinguished two dimensions of freedom. The first is *the openness of the field of possibilities*: I have engaged in a course of action freely if and only if I could have acted otherwise.¹⁴⁴ The second is *self-manifestation*: I have engaged in a course of action freely if and only if it reflected my subjectivity. (For the purposes of this argument, I define self-manifestation as an action one controls *and* is involved in.¹⁴⁵) Such a typology immediately begs the question of whether these dimensions analytically implicate another. If I recognize that you

¹⁴³ Foucault, “The Ethic of Care for the Self,” 129.

¹⁴⁴ See Roy Bhaskar, for whom “it is analytic to the concept of action that the agent could have acted otherwise.” *The Possibility of Naturalism* (Oxon and New York: Routledge, 1998), 114.

¹⁴⁵ Patchen Markell distinguishes between control (“what matters is that this course of action be responsive to your interest, not determined by another’s whim”) and involvement (“whatever is happening, and however it’s being controlled, to what extent is it happening *through you*, through your activity?”) in “The Insufficiency of Non-Domination”, *Political Theory*, 36:1 (2008): 12. I endorse the point that these dimensions cannot be assumed to implicate one another. Distinguishing them raises a question similar to the one I asked about openness and self-manifestation, only here about control/involvement: If I recognize that the other can act (be involved in what happens to her), does it follow that I am also recognizing that she can control her own deed?

are conducting yourself and that your deeds manifest your subjectivity, does it logically follow that I am also recognizing that you could manifest your subjectivity in another way than you do?

The stakes of this question should be evident by now. To diagnose performative contradictions Foucault and Benhabib must run these two dimensions of freedom together. If they did not affirm that freedom as self-manifestation necessarily implicates freedom as openness, they would not be able to contend that oppressors disavow their own presuppositions when they invite others to act on their own while only allowing this to take one form. Hence they would not be able to identify a tension in patterns of exclusion or domination. This is why Benhabib asserts that justifying oneself to others involves the presupposition that the conditions are fulfilled for them to not just assent but to “take a ‘yes’ or ‘no’ position.”¹⁴⁶ And this is why Foucault holds that demanding that others reveal their truth necessarily involves the presupposition that their conduct may “realize a range of possibilities.” For both, a self-determining agent is necessarily an agent whose acts are open, and it is thus senseless to treat others as only capable of acting freely in one specific way.

Yet Foucault and Benhabib are too quick to elide an analytically plausible distinction. What one is presupposing when inviting others to manifest their subjectivities or to act on their own reasons is subject to interpretive disagreement. Specifically, logic cannot settle whether to treat others as free one must presume their capacity to act in different ways. Whether denying others’ freedom to deviate from a course of action one prescribes to them is contradictory depends on how that prescription and its function are interpreted, and that is a disputable matter.

The practical predicament the marginalized face is not the mere fact that their freedom to act otherwise is denied, but rather the (intuitive) conceptual frames within which their oppres-

¹⁴⁶ Benhabib, “The Local, The Contextual and/or Critical,” 86.

sors' interpretations of their own prescriptions do appear coherent.¹⁴⁷ Foucault and Benhabib accept that the legibility of political freedom requires philosophy to preemptively determine these interpretations to be incoherent. But the result is that we still have no theorization of how the marginalized can practically challenge these interpretations and struggle against these conceptual frames. I shall now explain what is credible about the claim that inciting others' freedom does not commit one to their freedom to act otherwise, and therefore why there is little to gain by deploying the performative contradiction as an ontological device.

There are two ways to introduce daylight between these dimensions of freedom. Plausible arguments can be made that (1) I may not be in control of my own deed even when I do choose it among several options, and that (2) I have determined my own act even if I could only have realized the one possibility I realized. Let me explain each of these in turn.

First, one may resist calling an act an instance of agency even when it does involve a choice. This is the more obvious of the two points, if for no other reason than the existence of a voluminous literature devoted to refuting Hobbes's arguments that the robber's "your purse or your life" preserves one's freedom or that there is "no reason for a slave to complain on the ground that he lacks liberty."¹⁴⁸ Foucault draws on slavery to contend a slave could escape as long as he is not physically chained. But this forgets that a fugitive slave "has nowhere to turn within lawful society," as Richard Friedman showed in his work on Roman law.¹⁴⁹

Second, one could argue that people own their acts even if they cannot act otherwise than

¹⁴⁷ This argument relates to Robert Gooding-Williams's critique of Georgia Warnke's "reliance on the criterion of coherence" for "disregard[ing] credible disagreement as to the proper contexts for interpreting social practices," in "Review of *After Identity*, by Georgia Warnke," *Constellations* 17:4 (2010): 589-594. I return to the political stakes of such credible disagreements in my next chapter.

¹⁴⁸ Thomas Hobbes, *On the Citizen* (Cambridge: Cambridge University Press, 1998), 111. For a review of that literature, see Philip Pettit, *A Theory of Freedom* (Oxford: Oxford University Press, 2011), 46-47.

¹⁴⁹ Richard Friedman, "Liberty Conceived as the Opposite of Slavery," in *The Reluctant Liberalism of Richard Flathman*, ed. Bonnie Honig and David Mapel (Minneapolis: The University of Minnesota Press, 2002), 177.

they do. This is the view of compatibilist theorists like Harry Frankfurt who theorize free will as dissociated from a capacity to act otherwise. Frankfurt gives the following example. Black wants Jones to perform an action and can resort to measures of “irresistible compulsion” (like hypnosis) to ensure that he does. But as it happens Black does not have to “show his hand” because Jones ends up performing this action “for his own reasons.” Black has structured the field in a way that allows for no alternatives to occur. Jones could not have acted otherwise than he does; he could not have jumped out of Foucault’s proverbial window. Hence Foucault cannot view this as a situation of government in which one is dealt with in one’s freedom. By contrast, Frankfurt contends that since it is not “as a result of Black’s intervention” that Jones acted the only way he could have, we can hold Jones morally accountable for his act¹⁵⁰ Pettit has made a similar point in *A Theory of Freedom*.¹⁵¹ For Frankfurt and Pettit, then, freedom entails that my acts reflect my will, but for such freedom it is not necessary that I be able to act otherwise. This is the position Foucault himself held in the mid-1970s.

The point of evoking these alternative positions is not to prove, contra Foucault and Benhabib, that the possibility of acting otherwise is unnecessary for an act to count as a free manifestation of one’s self. Rather, my point is to question the force and validity of theoretical interventions that diagnose performative contradictions. The hope of securing the legibility of disqualified voices neglects that those who disqualify these voices may scoff at the accusation that they are performing a contradiction, and they may do so not because they disavow that they are treat-

¹⁵⁰ Harry Frankfurt, “Alternate Possibilities and Moral Responsibility,” *Journal of Philosophy*, 66:23 (1969): 833-835. See John Martin Fisher’s distinction between “regulative control” (I control my acts if I have “access to alternative possibilities”) and “guidance control” (I control my acts if they are “regularly *receptive* to reasons... and at least weakly *reactive* to reason”). John Martin Fischer, “Compatibilism,” in *Four Views on Free Will*, ed. John Martin Fisher et al. (Malden: Blackwell Publishing, 2007), 44-84 and John Martin Fischer and Mark Ravizza, *Responsibility and Control* (Cambridge: Cambridge University Press, 1998), 82.

¹⁵¹ For Pettit, an agent like Jones “as free” even though he “could not have done otherwise.” We can treat him “as fit to be held responsible, not for doing A rather than non-A, but doing A of their own volition rather than being manipulated into doing it.” Pettit, *A Theory of Freedom*, 22. (I return to this point in the next chapter.)

ing others as free, but because they interpret differently what treating others as free implies.

It is tempting to assume that enlisting subjects to play an active role is equivalent to enlisting them to act among a range of possibilities. But once we appreciate that there are arguments with which one could justify inviting others to conduct themselves while disqualifying their capacity to act otherwise, it becomes harder to view the slide from self-manifestation to openness to be “the consequence of conceptual analysis alone,” to paraphrase Benhabib’s critique of Habermas. The claim that intersubjective relations depend on participants’ capacity to act differently precludes plausible interpretations of the rule that participants are treating each other as free, for instance that what they are presuming in each other is a capacity to will one’s essential truth or a capacity to involve oneself in what is bound to happen. That preclusion is too uncertain for theory to definitely settle the controversy over what people are doing and over the rules to which their actions conform. Put otherwise, Foucault and Benhabib’s framework is insufficient to prevent practical disputes over what exactly it is that one is presupposing in governing others or in justifying oneself to them.

For instance, Foucault evokes Achilles calling on warriors to tie themselves to the truth of their position and a judge calling on a defendant to tie himself to the truth of his known guilt through his own avowal. Did the defendant breach the rules of this game by refusing to avow? Did Antilochus cheat by beating Menelaus? “Obviously not,” says Foucault in Louvain. But consider how Achilles and the judge may defend themselves from the accusation that they are contradicting themselves. If the judge has proof of the defendant’s guilt, he may mean his demand for avowal as an opportunity for the defendant to manifest his own truth by his own means, for his own reasons. The defendant’s silence then looks like a failure to involve himself in his fate, a failure to be free. Similarly, when the chariot race is interpreted as a way to involve warriors in

the manifestation of a preexisting hierarchy, then Antilochus's win over Menelaus looks like a failure to make the cosmic order happen through him. It speaks to his inability to give the *nomos* the imprimatur of his own volition, which is to say his failure to be free. Foucault rules out as incoherent an interpretation of the judge and Achilles's invitations that makes sense of them as treating the defendant or Antilochus as free by the mere fact of demanding a conduct from him, but this overlooks the uncertainty over the meaning and the purpose of their prescriptions and over the proper frame in which to place their demands.

Or take Benhabib's claim that, because (modern) inegalitarianism must "woo the assent of those who will be treated unequally," it must also admit that the other can dispute its justice since "to assent entails just as much the capacity to dissent, to say no." This slide—calling for someone's assent means calling for her assent *or* dissent—does more work than she acknowledges because it carries the burden of dispelling the alternative positions mentioned above. Similar conflation is ubiquitous in the passages I have been discussing. Take her statement that the plight of a Bangladeshi woman "is unjust" "because we recognize her common humanity with us" through the fact that "we can communicate with her and see the world... as she sees it." But why would recognizing her as an interlocutor or even presupposing her communicative freedom involve recognizing a commonality in the specific sense that would provide a standpoint from which to declare her condition unjust? Moreover, why should my recognition of another's communicatory competence entail my recognition of her specific competence to participate in normative judgments? For instance, men could posit a distinction between women's competence to participate in "daily brawls" about child-rearing strategies and their competence to engage matters of educational policy. With this distinction, men would claim that they *do* in fact "need further proof of [women's] shared humanity" than the mere "common humanity" that is "estab-

lished every day through [their] innumerable contacts and conversations.” Perhaps Benhabib would answer that the ties of reciprocity enacted in everyday conversations are meaningless if dissociated from material capabilities whose propriety is therefore also presupposed, but she must explain what are the capabilities that condition the exercise of a right to have right. The number of nonconceptual questions to which philosophy must offer a definitive answer expands precipitously when we try to immunize analyses from political dispute.

All these cases feature a dispute between the plausible accusation that it is meaningless to extend an invitation while insisting on only one possible response and so the oppressors are contradicting their own commitments, and on the other hand the plausible rebuttal, articulated for instance by Pettit, that it may make sense to invite others to bring about a course of action through their own volition even if that action is preordained.

Foucault and Benhabib intend to shield their diagnosis of a performative contradiction from such uncertainty: uncertainty as to whether different dimensions of freedom really are equivalent to one another and thus whether a contradiction exists. To do so, they neglect that certain actors may reject others’ capacity to act otherwise not because they are oblivious to the implications of their own deeds, but because they hold an alternative interpretation of the purpose of their actions. If we want to upset interpretations of freedom that are conducive to oppression—if we want to question attempts to partition between different dimensions of freedom, if we want to refute people who claim that nothing about what they are doing implies that they are already treating others as free to speak or to challenge them—we can’t just affirm their logical incoherence, as Foucault and Benhabib do by overspecifying the semantic meaning of concepts like freedom. In doing so, they stretch that diagnosis’s plausibility, and they depoliticize the essentially-political question of whether different types of capacities follow from one another. In-

stead, political actors must work to make these positions unsustainable to hold and to defend. They must work to discredit the conceptual frames that make them appear plausible.

Conclusion

How can subjects participate in practices from which their disqualification would seem to exclude them? Benhabib and Foucault deployed intersubjective ontologies according to which (modern) practices always already presuppose the freedom of others. Therefore we can act on the basis of the threads of reciprocity we are already embedded in, and those we are responding to will disavow the propriety of our responses at the risk of performing a costly contradiction.

This framework's appeal is that apparent patterns of domination or exclusion need not foreclose the viability of exercising participation rights because we can draw upon the tacit recognition of our competences on the part of those who are invested in denying our capacities. But this framework runs into two problems. First, it reproduces constraints on the proper spaces and modes of democratic action. Second, it foregrounds its analytical elisions as conceptually obvious in order to protect its diagnoses of contradictions from being contested by those who stand to benefit if they can scoff at the accusation that they are contradicting themselves.

I do not intend this second problem as a nail in this framework's coffin but as something which, if modified, can improve the first as well: I believe that if we remedy the analytical confusion by transposing, as I do in the next chapter, the accusation of performative contradiction from the ontological register at which it operates here to the register of political and analogical rhetoric, its benefits for conceptualizing practices of unauthorized participation become *more* formidable. Indeed, the decisive question is not whether theory can guarantee that people are always already treated in a more egalitarian manner than the idiom of domination and exclusion would suggest. Rather, the question is what happens when people act *as if* they are.

Chapter 6

Seizing Authorization: Frederick Douglass and the Politics of Claiming Oneself Already Authorized

‘Do you contradict me, you rascal?’ is the final silencer of counter statements
from the lips of a slave.
—Frederick Douglass

My resistance was entirely unexpected, and Covey was taken all aback by it, for
he trembled in every limb. ‘Are you going to resist, you scoundrel?’ said he.
To which I returned a polite ‘yes sir.’
—Frederick Douglass

“Slavery is one of those monsters of darkness to whom the light of truth is death. Expose slavery, and it dies.”¹ These words, spoken by Frederick Douglass in an 1846 speech, signaled his Garrisonian conviction that moral suasion would obtain slavery’s abolition. The idea behind moral suasion was that appealing to slaveholders’ reason or moral sentiments² would convince them of slaves’ humanity and of slavery’s immorality. As Douglass stated in 1841, slaveholders “don’t dread the political movement; it is the *moral* movement, the appeal to men’s sense of right, which makes them and all our opponents tremble.”³ But his faith in moral suasion soon waned. “It is not light that is needed, but fire,” he asserted in what is arguably his most famous speech, his Fourth of July address, delivered on July 5, 1852. Part of the change was a growing attunement to the fact that, whatever the truth of his claims and his capacity to articulate them, many of the people he had to convince were not paying attention to what he had to say, whether because his words did not reach them or because they tuned him out, much like one would tune out a capricious child’s cries. “No colored man with any nervous sensibility,” he told a predominantly white New York audience in 1853, “can stand before an American audience without an intense and painful sense of the immense disadvantage under which he labors.”⁴

With such statements, Douglass came to publicly wrestle with what I have called the problem of uptake. This problem, whose reverberations in Habermas, Benhabib and Foucault I

¹ Douglass included this speech in the appendix to his 1855 autobiography, *My Bondage and My Freedom* (New York: The Modern Library, 2003). This passage is on page 254. I hereafter cite this volume as *Bondage*.

² Frank Kirkland differentiates appeals to sentiments and appeals to reason as two distinct threads of moral suasion. He argues that Garrisonians believed that moral suasion “can awaken through rhetoric moral sensibility and, as a consequence, motivate us to do what is good;” Kirkland contrasts that view with the belief that moral suasion can “produce, through discursive deliberation, rationally binding moral convictions concerning the wrongness of slavery.” Frank Kirkland, “Enslavement, Moral Suasion and Struggles for Recognition: Frederick Douglass’s Answer to the Question ‘What is Enlightenment?,’” in *Frederick Douglass: A Critical Reader*, ed. Bill Lawson and Frank M. Kirkland (Malden: Blackwell Publishers, 1999), 244 and 292. See also Leonard Harris, “Honor and Insurrection,” in *Frederick Douglass: A Critical Reader*, 228.

³ In David Chesebrough, *Frederick Douglass: Oratory from Slavery* (Westport: Greenwood Press, 1998), 18.

⁴ Frederick Douglass, May 2, 1853 speech, in *The Annual Report of the American and Foreign Anti-Slavery Society* (New York: The A. & F. Anti-Slavery Society, 1853), 183.

examined in my prior chapter, finds an apex in the context of American slavery. Paul Gilroy writes that there is “no reciprocity on the plantation outside of the possibilities of rebellion and suicide, flight and silent mourning, and there is certainly no grammatical unity of speech to mediate communicative reason.”⁵ (To make matter worse, I showed while discussing Foucault that even acts of rebellion face this issue of whether those in a position of power will apprehend them as acts of political contestation rather than passive acting-out.) In light of this lack of reciprocity, which Douglass also experienced outside of plantations, why persist in addressing speeches and giving reasons to white Americans, let alone to slaveholders, rather than view such addresses as “pointless, out-of-place, and probably nonsensical and delusive?”⁶ Hence in this chapter I examine how Douglass negotiated the reception of his claims given that he had strong reasons to believe that many of the people whom he was addressing did not see him as qualified to make claims on them in the first place.

I focus on Douglass’s habit of embedding in some of the very utterances whose uptake he was concerned for the accusation that slaveholders already treated slaves in egalitarian ways, and that slavery was thereby in the throes of what we today might call a performative contradiction. In exploring the stakes of this accusation, I demonstrate the political and rhetorical work involved in staging oneself as already authorized.

This accusation would seem to vindicate philosophers for whom structures of oppression necessarily authorize challenges to themselves because they cannot evade relying on tacit egalitarian presuppositions. As we shall see, some scholars analyze Douglass’s claims and American slavery more generally through this lens. Nicholas Bromell, for whom relations between slaves and slaveholders were “predicated implicitly in word and glance and touch on their recognition

⁵ Paul Gilroy, *The Black Atlantic* (London and New York: Verso, 1993), 57.

⁶ Bernard Boxill, “Two Traditions in African American Political Philosophy,” *The Philosophical Forum* Volume 24:1-3 (1992-93): 126.

of their slaves' humanity," even concludes that "[i]t is there—in these moments of eye contact and or its refusal—that democracy either lives or dies."⁷ From this perspective, the question to ask is how Douglass exposed or exploited slavery's existing vulnerabilities. I argue, however, that this paradigm overlooks conceptually perceivable partitions between dimensions of equality and personhood that Douglass was running together, and that neglecting these partitions obscures both the predicament Douglass found himself in—how could he persuade others that these partitions are untenable?—and the work he undertook to confront it.

Pointing out the difficulties involved in diagnosing performative contradictions at a theoretical level does not diminish the political role that such accusations can play. It only calls for more attention to the analogical reasoning that wielding such accusations involves. To explain this, I briefly return to Jacques Rancière's thought. Against the common reading that he champions a timeless equality that pervades all human relationships, I offer a new interpretation of his notion of an "equality of intelligence;" I show that politics for him involves augmenting the meaning of the terms by which one is already counted to polemically represent the police as contradicting the equality it already discloses. Then I highlight the analogies Douglass constructed between different dimensions of personhood or equality; these enabled him to act as if from the fact that slaves were already called upon to do one task it followed that they were recognized as capable of doing another. I suggest that he used these analogies to galvanize apathetic Americans (those for whom slavery's ills, however regrettable, did not warrant disrupting the social peace) into taking his exhortations to heart; the idea was to persuade this community that slaveholding practices were fundamentally discordant and to thereby shift the responsibility for disrupting the social fabric from abolitionists unto slaveholders. In short, I argue that Douglass navigated his

⁷ Nick Bromell, "Democratic Indignation: Black American Thought and the Politics of Dignity," *Political Theory* 41:2 (2013): 298.

fears about the uptake of his speeches and texts by framing these as responding to his audience's tacit invitations, but that this entailed enacting polemical propositions as to what exactly these invitations signified and who exactly this audience was.

Speeches and dialogues: From *The Columbian Orator* to *The Heroic Slave*

In his autobiographies, Douglass points to his young self's discovery of *The Columbian Orator*, a late eighteenth-century manual of rhetoric, as the moment he realized "the power of truth over the conscience of even a slaveholder."⁸ This manual contains a short dialogue between a master and a recaptured slave. As Douglass recounts the dialogue, "The slave was made to say some very smart as well as impressive things in reply to his master—things which had the desired though unexpected effect; for the conversation resulted in the voluntary emancipation of the slave on the part of the master."⁹ This scene captures some abolitionists' faith that moral suasion and direct address would trigger conversions¹⁰—a faith that, as I mentioned, Douglass shared in the 1840s. William Garrison claimed that he experienced an "extraordinary" moral awakening of his own upon first hearing Douglass. "I think I never hated slavery so intensely as at that moment," he writes in his Preface to the *Narrative*. "[C]ertainly my perception of the enormous outrage which is inflicted by it... was rendered far more clear than ever."¹¹ Garrison was of course already a fervent abolitionist at that time, but the trope he alludes to here—that of

⁸ Frederick Douglass, *Narrative of the Life of Frederick Douglass, An American Slave* (London: Penguin Books, 1982), 84. (I hereafter cite this book as *Narrative*.) Douglass's second autobiography, *Bondage*, contains no clear-cut statement that the lesson to be drawn from *The Columbian Orator* is the power of moral suasion. There, his narration of encountering *The Columbian Orator* ends on the more personal note that it made him hope that he himself would one day avail himself of the anti-slavery points made in the text: "I could not help feeling that the day might come, when the well-directed answers made by the slave to the master, in this instance, would find their counterpart in myself" (Douglass, *Bondage*, 54).

⁹ Douglass, *Narrative*, 83. A decade later, in *Bondage* (p.82), Douglass adds more agency to the slaveholder's conversion: "The master was vanquished at every turn in the argument; and *seeing himself to be thus vanquished*, he generously and meekly emancipates the slave" (emphasis added).

¹⁰ See John Blessingame, "Introduction," in *The Frederick Douglass Papers*, ed. John Blessingame (New Haven: Yale University Press, 1979), xxv-xxvii.

¹¹ William Garrison, "Preface," in Douglass, *Narrative*, 34.

listeners being compelled to grant slavery's ills almost in spite of themselves¹²—echoes *The Columbian Orator* in how it stages moral suasion's virtues.

Yet Douglass's confidence in the emancipatory impact of humans addressing one another (Margaret Kohn calls this his "Kantian moment"¹³) waned as he grew disillusioned with Garrison and gradually endorsed the use of collective action, institutional channels, and even violent resistance. This transition culminated with his renunciation of Garrison's hostility toward political abolitionism in an 1851 *North Star* editorial.¹⁴ This was in part a shift in strategy; he had come to doubt the efficiency of appealing to slaveholders' moral faculties.¹⁵ He even allowed that some people may be altogether lost to conversion. For instance, he writes in his 1855 autobiography *My Bondage and My Freedom* that "[t]o talk to [slave merchants] about justice and mercy would have been as absurd as to reason with bears and tigers. Lead and steel are the only arguments that they understand."¹⁶

In public addresses, Douglass came to highlight the difficulty he faced in getting slaves' plight seriously considered. He said in Rochester in 1850 that, "The multitude can assemble... they can pour out their grievances, and proclaim their wants without molestation... They pass resolutions, send forth addresses, and enjoy the right to petition. But how is it with the American slave?" And he went further in casting this as a problem faced by all black speakers vis-à-vis

¹² On October 4, 1855, *The Watertown New York Reformer* reported on reactions to a Douglass speech as follows: "One of our most eminent professional men remarked the next day that 'he was never so humiliated in his life, to be told such palpable truths, by a negro, in so sarcastic a manner; yet *there was no way of escaping the truth and force of the illustration.*'" Quoted in Blessingame, "Introduction," xxxiv; emphasis added).

¹³ Margaret Kohn, "Frederick Douglass's Master-Slave Dialectic," *The Journal of Politics* 67:2 (2005): 498.

¹⁴ Frederick Douglass, "Change of Opinion Announced," in Frederick Douglass, *Selected Speeches and Writings*, ed. Philip S. Foner (Chicago: Lawrence Hills Books, 1999), 173-174

¹⁵ Leslie Goldstein and Bernard Boxill convincingly demonstrate that Douglass's evolution was not a philosophical break—he was already not steadfast in his opposition to political strategies and violent methods in the 1840s—but a tactical one. Leslie Friedman Goldstein, "Violence as an Instrument for Social Change: The Views of Frederick Douglass (1817-1895)," *The Journal of Negro History* 61:1 (1976): 61-72, Bernard Boxill, "The Fight with Covey," in *Existence in Black: An Anthropology of Black Existential Philosophy*, ed. Lewis Gordon (New York and London: Routledge, 1997): 273-290 and Boxill, "Two Traditions," 119-135.

¹⁶ Douglass, *Bondage*, 175. These sentences are absent from the *Narrative* (see page 129).

whites (rather than only slaves vis-à-vis slaveholders). He began an 1853 speech by noting the “anomalous, unequal and extraordinary position” he himself was in at that very moment:

Sir, I am a colored man, and this is a white audience. No colored man, with any nervous sensibility, can stand before an American audience without an intense and painful sense of the immense disadvantage under which he labors. ... [W]ere I a white man, speaking before and for white men, I should in this country have smooth sea and a fair wind. ... The Hungarian, the Italian, the Irishman, the Jew and the Gentile, all find in this land a home, and when any of them or all of them desire to speak, they find willing ears, warm hearts, and open mercy... But for my poor people—enslaved, blasted and ruined—it would appear that America has neither justice, mercy nor religion. She has no scales in which to weigh our wrongs—she has no standard by which to measure our rights. Just here lies the difficulty of my cause.¹⁷

Douglass is voicing two concerns in this passage. The first is that black speakers lacked standing. Their claims could not register as addresses to which a response was owed since “fitness for entry into the realm of the political was explicitly racially normed,” as Charles Mills has shown.¹⁸ Some scholars frame this problem in terms of invisibility. For Lewis Gordon, “forced into the realm of property, even linguistic appeals—cries for recognition—are muffled, unheard; waving hands, gestures for acknowledgment are invisible... there has been a carefully crafted discipline of unseeing.”¹⁹ But this language should be complemented with attention to how black speakers were specifically not heard *as making moral or political judgments*. As John Rawls puts it, “slaves are human beings who are not counted as sources of claims;”²⁰ or as Stephen Marshall writes, a slave “was not simply invisible but unintelligible.” Marshall explains that, “in the absence of this kind of imaginative reciprocity, a moral agent might perceive the pain of the other and perhaps feel disturbed or burdened at the sight of it. Even so, this agent may not apprehend the moral significance of this pain”²¹—nor, I would add, its discursive quality.²²

¹⁷ Douglass, in *The Annual Report of the American and Foreign Anti-Slavery Society*, 183.

¹⁸ Charles Mills, “Whose Fourth of July? Frederick Douglass and ‘Original Intent,’” in *Frederick Douglass: A Critical Reader*, 125.

¹⁹ Lewis R. Gordon, “Douglass as an Existentialist,” in *Frederick Douglass: A Critical Reader*, 223.

²⁰ John Rawls, *Political Liberalism* (New York: Columbia University Press, 2011), 33.

²¹ Stephen Marshall, *The City on the Hill from Below: The Crisis of Prophetic Black Politics* (Philadelphia: Temple University Press, 2011), 63-64.

This is useful to understanding Douglass's own predicament. He was evidently not in a situation of invisibility vis-à-vis the people who had come to listen to him. But the risk of unintelligibility remained. In *Bondage*, he famously faults Garrisonians for asking him to only “*narrate* wrongs” instead of “*denouncing* them” as well. ““Give us the facts,’ [they] said, ‘we will take care of the philosophy.’”²³ Douglass was confined, not quite to silence, but to *phôné*.

Douglass's second concern is contained in his assertion that America “has no standard by which to measure our rights.” The idea is that, irrespective of black speakers' standing, claims against slavery cannot gain assent because even the criteria by which grievances are judged are racially normed. There can be no redress from within the principles American society espouses. The standards that one's prospective judges would bring to bear on one's claims are no remedy; they are the problem. (This suggests that we should tamper the prevalent idea²⁴ that Douglass believed that the practice of slavery contradicted the ideals white Americans already believed in.²⁵) Miguel Vatter makes a similar point about slavery; against Pettit's faith that “the status of being dominated in the one who complains about domination will necessarily be condemned as being wrong by others who listen to the complaint,” he objects that “to engage in ‘rational discourse’ with others is already to stand in agreement with them over the essentials. [But] between

²² This distinction echoes Rancière's between utterances apprehended as speech “capable of enunciating what is just” (*logos*) and utterances apprehended as “noise signaling pleasure or pain, consent or revolt” (*phôné*). Jacques Rancière, *Disagreement*, trans. Julie Rose (Minneapolis: University of Minnesota Press, 1998), 23.

²³ Douglass, *Bondage*, 216; the emphasis is in the text. See also Nolan Bennett, “To Narrate and Denounce: Frederick Douglass and the Politics of Personal Narrative,” *Political Theory* 44:2 (2016): 240-264.

²⁴ See James Colaiaco, *Frederick Douglass and the Fourth of July* (New York: Palgrave Macmillan, 2007). His central point is that Douglass exposed “the contradiction of a nation tolerating slavery while professing the moral principles of the Declaration of Independence” (8). This is the type of argument Jason Franks has in mind when he contends that Douglass's Fourth of July address has been treated as “a paradigmatic instance of immanent critique in the dissenting traditions of American political thought.” In *Constituent Moments*, 218.

²⁵ Here I follow Robert Gooding-Williams's demonstration that, while Douglass argued that the Founders professed egalitarian ideals in the Declaration of Independence and the Constitution, he also thought that “prevailing ideals [in his own time] were pro-slavery,” and he was thus not simply aiming to “bring group practices into conformity with... prevailing group ideals.” Robert Gooding-Williams, *In the Shadow of Du Bois* (Cambridge: Harvard University Press, 2009), 196, 204.

a master and a slave no such commonality, no such agreement, can be presupposed if the slave is to emancipate herself.”²⁶ If domination is a situation where legitimate grievances get rebuffed, moral suasion and appeals to reason are only viable when there is nothing to use them for.²⁷

If those one needs to persuade doubt one’s humanity and intellectual capabilities, they cannot be expected to think through one’s claims on them. And if the criteria with which they would even assess these claims are the very things that one is contesting, then they cannot be expected to perceive their rightness. In light of these “dilemmas of authorization,” as Jason Frank calls them,²⁸ the prospect of persuading slavery’s proponents to change their beliefs (let alone a scene like *The Columbian Orator*’s dialogue) seems to be sheer fancy.

Yet in 1852, when Douglass was asked to contribute to a collection of abolitionist writings by the Rochester Ladies’ Anti Slavery Society, he wrote *The Heroic Slave*, a short story that bears resemblances—at least at first glance—to the scenes of conversion in *The Columbian Orator* and in Garrison’s Preface. It recounts the adventures of Madison Washington, a slave who had led a successful mutiny aboard a ship in 1841. It begins with a white voyager (Mr. Listwell) who comes across the soliloquy of a slave (Washington), who is unaware that he is being overheard. Washington’s “scathing denunciations of the cruelty and injustice of slavery” and “heart-touching narrations of his own personal suffering” have a powerful effect on his listener:

The speech of Madison runs through the chambers of his soul, and vibrated through his entire frame... *From this hour, I am an abolitionist.* I have seen enough and heard enough, and I shall go to my home in Ohio resolved to atone for my past indifference to this ill-starred race, by making such exertions as I shall be able to do, for the speedy emancipation of every slave in the land.²⁹

In the story’s last section, the focus shifts from Mr. Listwell to a sailor who was aboard the ship

²⁶ Miguel Vatter, “Pettit and Modern Republican Political Thought,” *Nomos* 46 (2005): 141-142.

²⁷ Vatter writes that, “If one is already in a position to complain about domination [through rational discourse], then there is nothing to complain about” (Ibid. 142).

²⁸ Jason Frank, *Constituent Moments: Enacting the People in Postrevolutionary America* (Durham: Duke University Press, 2009), 212.

²⁹ Douglass, *Selected Speeches and Writings*,” 223. This whole initial scene comprises pages 220-223.

on which Washington and other slaves rebelled. The sailor recounts the way Washington spoke to him after prevailing in the battle, and he describes that, “by heaven, [this impudent speech] disarmed me. The fellow loomed up before me. I forgot his blackness in the dignity of his manner, and the eloquence of his speech.”³⁰

These two conversion scenes are striking in light of Douglass’s concerns about suasive and communicative exchanges. Nevertheless, they are hardly surprising. After all, while he contributed to strengthening black publics, for instance through his founding of *The North Star* in 1848, he also remained in constant contact with white abolitionists and audiences. The 1850 and 1853 speeches mentioned above were by his own account addressed to mixed if not predominantly white publics; this is true of many of his speeches, including his 1852 Fourth of July address. Moreover, the importance of interracial interlocution comes through in a brief exchange Douglass embeds in his recounting of his physical fight with Edward Covey:

When [Covey] saw Hughes bending over with pain, his courage quailed. He asked me if I meant to persist in my resistance. I told him I did, come what might; that he had used me like a brute for six months, and that I was determined to be used so no longer. [*Narrative*, 113]

My resistance was entirely unexpected, and Covey was taken all aback by it, for he trembled in every limb. ‘Are you going to resist, you scoundrel?’ said he. To which I returned a polite ‘yes sir.’ [*Bondage*, 138]

This scene is similar to the ship mutiny depicted in *The Heroic Slave* to the extent that it too blends together physical resistance and interlocution; I shall return to it at length later.

A pressing question, then, is how Douglass understood the political efficiency of addresses from slaves or black abolitionists to white Americans. Why expect such addresses to get off the ground and have value to the abolitionist cause—enough value to make them, to dramatize the fact that one has made them in the past and is making them presently, and to narrate others as making them? What does this tell us about how the problem of uptake could be negotiated in

³⁰ Ibid. 245. The sailor is recounting this to explain to other sailors why he has come to oppose slavery.

practice? Complicating these issues' theoretical treatment is that Douglass is acting as an activist: There may be rhetorical aims at play, not just in what he tells audiences whose receptivity he is unsure of, but also in how he frames his relationship to these audiences and the predicament he faces toward them. Why does he explicitly thematize the problem of uptake in the very speeches and interlocutory moments whose uptake he is concerned for?

Two paths: Struggles for recognition and performative contradictions

In turning to Douglass, political theorists have identified two paths through which modes of contestation that prize some degree of interaction and interlocution could get off the ground in antebellum America. The first is physical fighting as something that set up the conditions for slaves' grievances to be heard; Nolan Bennett calls this the model of "self-authorization."³¹ (This mirrors my argument in Chapter 1 that one way democratic theorists conceptualize what can be done absent mutuality is a violent struggle that paves the way for democracy.) The second proposes that slaveholders already presupposed slaves' equal capacities, giving the latter an opening to exploit; I call this the model of tacit authorization. (This mirrors my demonstration in Chapter 5 that Benhabib and Foucault sought to identify ineliminable threads of reciprocity.)

Physical resistance and the fight with Covey

Douglass's fight with Covey, whose farm he had been sent to for a year so Covey would "break"³² him, plays a crucial role in Douglass's autobiographies. He recounts how, after suffering a series of particularly brutal beatings, he resolved to resist the next time Covey would attempt to hit him; the ensuing fight resulted in Covey renouncing to punish Douglass, both at that moment and in the future. Douglass describes these events as a "resurrection from the dark and

³¹ Bennett, "To Narrate and Denounce," 242.

³² Douglass, *Bondage*, 123.

pestiferous tomb of slavery, to the heaven of comparative freedom.”³³

This resurrection can be understood in terms of Douglass’s relationship *to himself*. He writes that fighting Covey dispelled the degradation that slavery and Covey’s brutality had caused and restored his “self-respect and [his] self-confidence.” “I was *nothing* before. I WAS A MAN NOW.”³⁴ Viewed through this lens, calling an act of violence “self-authorizing” means that it is an assertion of agency by people who lack agency, and who transform their sense of self into that of people able to affirm their “independence” from others.³⁵

(That Douglass was able to resist in the midst of a situation of extreme dehumanization makes his fight with Covey a propitious story for thinkers who believe that humans always retain an inalienable agency. For Herbert Marcuse, Douglass’s decision to “one day hi[t] back” enlivens the “abstract philosophical concept of a freedom which can never be taken away;”³⁶ for Sharon Krause, Douglass’s “physical resistance” is as “extraordinary” exemplar of the “vitality of [people’s] agency even under hostile conditions.”³⁷ I discussed the potential pitfalls of resolving the question of capacity ontologically in my third chapter. I do not wish to return to these here, only to note the susceptibility of Douglass’s narratives to such a conceptualization and to flag my

³³ Ibid. 140.

³⁴ Ibid. The emphasis is in the text.

³⁵ Scholars who read the fight with Covey this way include Kirkland, who talks of “violent resistance for the sake of restoring self-respect” (“Enslavement, Moral Suasion, and Struggles for Recognition,” 285), Gooding-Williams, for whom Douglass’s “physically expressed aversion to domination... was a precondition for the revival of his mentally expressed aversion” (*In the Shadow of Du Bois*, 183), and Neil Roberts, *Freedom as Marronage* (Chicago, University of Chicago Press, 2015), 75. Even the importance of being recognized by others can be cast in terms of the effects this has on “self-consciousness.” Kohn analyzes the fight with Covey as enabling Douglass to have “his internal conception of himself [as equal] validated externally,” in “Frederick Douglass’s Master-Slave Dialectic,” 504. Like Kohn, Cynthia Willett turns to Hegel to show that “Douglass emerges from the struggle as a fully embodied will,” in “The Master-Slave Dialectic: Hegel vs. Douglass,” in *Subjugation and Bondage*, ed. Tommy Lott (Oxford: Rowman & Littlefield Publishers, 1998), 166.

³⁶ Herbert Marcuse, “Dear Angela,” *Ramparts* 9 (1971): 22. Marcuse traces this concept to “Sartre’s notion of a freedom which is truly inalienable and can be practiced even in prison, even in a concentration camp—namely, the freedom to refuse submission.” He attributes this reading to Angela Davis. Lewis Gordon also finds existentialist resonances in Douglass’s story; see his, “Douglass as an Existentialist.”

³⁷ Sharon Krause, *Liberalism with Honor* (Cambridge: Harvard University Press, 2002), 168 and *Freedom Beyond Sovereignty* (Chicago: University of Chicago Press, 2015), 17.

intuition that the framework I developed in my fourth chapter provides resources to shed a different light on Douglass's approach to the question of capacity.³⁸)

But this resurrection can also be understood in terms of Douglass's intersubjective relationship with Covey. The idea would be that it compelled Covey to recognize Douglass in a way that he would not have absent this battle, thereafter repairing some of the stark inequality between them and bringing about a situation in which other forms of action are possible. This view is defended by Gilroy, among others. After noting that there is "no reciprocity on the plantation... [and] certainly no grammatical unity of speech to mediate communicative reason," Gilroy evokes the "mutual respect born in [Douglass and Covey's] tussle."³⁹ For Gilroy, who is a rare scholar to highlight this moment, this newfound respect explains why Douglass narrates himself as having exchanged words with Covey during their fight: "The Hegelian struggle ensued, but

³⁸ Douglass's relevance to my treatment of the question of capacity in Chapters 3/4 is most clear in Sharon Krause's view that he exemplifies the "rare individuals" who "may make themselves forceful political agents or display great acts of honor without much in the way of equipment" (*Liberalism without Honor*, 130). My fourth chapter argued by contrast that disqualified actors can negotiate (self-)doubts about their capacity by publicly experimenting and struggling over the relation between their equipment (the set of capacities they are enacting) and activities they are performing. I illustrated this argument by discussing AIDS activism, but I suspect that Frederick Douglass's activism would be interesting to study through this lens as well.

Douglass faced accusations of inauthenticity because of the juxtaposition of his status as a fugitive slave and his "manner of speech;" even Garrisonians told him that these did not fit (see *Bondage*, 216). The implication is that Douglass's listeners, instead of interpreting his speech as a sign slaves had capacities for "philosophy" (*ibid.*), were interpreting it as a sign Douglass had not been a slave. I argued in my fourth chapter that this situation points to the stakes of a practice through which one struggles to drag others into perceiving the juxtaposition of elements one is enacting as indicative of competence instead of charlatanism.

Moreover, Douglass also goes beyond the marker of race in *Bondage* to point to the ill fit between his intellectual aspirations and his Northern professional life. He notes that his own friends were "astonish[ed]" when he proposed creating his own newspaper: "A 'wood-sawyer' offering himself to the public as an editor!" (This an allusion to the day jobs that Douglass held in New Branford after his escape; see Frederick Douglass, *The Life and Times of Frederick Douglass* [Mincola: Dover Publications 2003], 148.) This sentence is reminiscent of the situation of the plebeian philosophers of Rancière's *Proletarian Nights*. Here again, part of the stakes in Douglass's activism is to make sense of the specific constellation of attributes he publicly presents himself as embodying—his training in menial tasks, and his interest in intellectual work—as indicative of competence.

³⁹ For a similar point see Bernard Boxill, "Douglass against the Emigrationists" in *Frederick Douglass: A Critical Reader*, 43, see Lewis Gordon, who evokes how "the physical struggle dragged Covey into a moment of equilibrium" (in "Douglass as an Existentialist"), and see Miguel Vatter, "Pettit and Modern Republican Political Thought," 141, for whom "violent or nonviolent rebellion appears to be necessary in wresting the recognition of oneself as free from someone who did not want to give 'as of right' such a recognition."

this time *Douglass discovered an ideal speech situation* at the very moment in which he held his tormentor by the throat: “I held him so firmly by the throat that his blood flowed through my nails... ‘Are you going to resist you scoundrel’ said he. To which, I returned a polite ‘Yes Sir.’”⁴⁰ Viewed through this lens, calling an act of violence “self-authorizing” means that it compels others to authorize one’s subsequent claims. Douglass’s decision to fight created reciprocity where there was none and made communication viable. Some conclude from this that Douglass endorsed physical resistance because it could lead white Americans to “acknowledge the moral standing of those whose rights they would violate,”⁴¹ just as it had led Covey to acknowledge his. This, according to Kirkland, is Douglass’s “division of labor:” Violence resolves the problem of uptake by giving moral suasion and communicative exchanges a chance to register.⁴²

Douglass’s writings⁴³ and the transformation he attributes to his fight with Covey leave no doubt that he thought physical resistance important. But what is unsatisfactory in these analyses is the starkness of the “division of labor” they posit. For Vatter or Kirkland, noninterlocutory struggles are conceptually and chronologically prior to the interlocutions whose viability they set up. Either a situation allows for reciprocal dialogues arbitered by shared criteria, or it requires the force of Douglass’s fight with Covey. (Vatter, for instance, cites this fight as an exemplar of the type of acts that “appea[r] to be necessary”⁴⁴ in contexts where domination complaints are

⁴⁰ Gilroy, *The Black Atlantic*, 62.

⁴¹ Boxill, “Douglass against the Emigrationists” 43. Kirkland and Boxill propose a variety of reasons why physical resistance would do this. Boxill, who focuses on the idea that fighting produces fear, suggests that it can “forc[e] slaveholders to pay attention to the slaves’ dignity that they might otherwise have ignored” or that it can “give them enough trouble to induce them to pause and reflect on their behavior.” Ibid. Kirkland writes that “involvement in such struggles serves... to gain for enslaved Africans from others an attention to and regard for their morally obligating traits,” in “Enslavement, Moral Suasion and Struggles for Recognition,” 288.

⁴² Ibid. 249.

⁴³ See in particular Frederick Douglass, “Is it Right and Wise to Kill a Kidnapper”, in *Frederick Douglass’ Paper*, June 2 1854. The essay is published in *Selected Speeches and Writings*, 277-281.

⁴⁴ Vatter, “Pettit and Modern Republican Political Thought,” 141. This point is also captured by Nicholas Bromell’s statement that, in “his condition of unfreedom, the slave would have understood at a glance that per-

unintelligible.) But much in Douglass's writings and speeches escapes this binary.

For Douglass, practices of address and claim-making have a role to play in struggling for their own uptake. This is not to purify politics of physical resistance nor to privilege linguistic appeals, but to note that Douglass inextricably combines the two in how he envisions black actors maneuvering for standing. This is clear in his efforts to speak and write to audiences whose receptivity he doubted, his choice to embed a communicative interaction during (rather than after) his fight with Covey, and in *The Heroic Slave*'s two conversions, both triggered by moments of speech. To consider what this role may be, we must suspend the supposition that interlocution only makes sense after the problem of uptake has been resolved. If we say that Douglass's "Yes sir" matters because it attests that Douglass had already won Covey's respect, we lose the opportunity to consider the political work that the assertion itself is doing. We occlude the potential parallel between how Douglass stages his fight with Covey in his autobiographies and how he stages his speeches to white audiences. The question remains of how he is in each instance negotiating the problem of uptake.

Implicit authorization and slavery's disavowals

Douglass stated in his Fourth of July address that he would not "undertake to prove that the slave is a man." Doing so is unnecessary, he said, because "that point is conceded already" by "slaveholders themselves." Here Douglass meant, not that slaveholders harbored unrealized *ideals* that committed them to this humanity, but that the *practices* and *rules* through which they actualized their power implicitly presupposed slaves' humanity:

[Slaveholders] acknowledge it when they punish disobedience on the part of the slave. ...
What is this but the acknowledgment that the slave is a moral, intellectual, and responsible

suaing the master has never been an option... His or her only choice was to resist through force or to submit," in "A 'Voice from the Enslaved:' The Origins of Frederick Douglass's Political Philosophy of Democracy," *American Literary History*, 23:4 (2011): 713.

being? The manhood of the slave is conceded. It is admitted in the fact that Southern statute books are covered with enactments forbidding, under severe fine and penalties, the teaching of the slave to read or to write. When you can point to any such laws in reference to the beasts of the field, then I may consent to argue the manhood of the slave. ... For the present, it is enough to affirm the equal manhood of the Negro race. It is astonishing that, while we are ploughing, planting, and reaping, using all kinds of mechanical tools, erecting houses, constructing bridges, building ships, working in metals or brass, iron, copper, silver and gold; that while we are reading, writing and ciphering, acting as clerks, merchants and secretaries, having among us lawyers, doctors, ministers, poets, authors, editors, orators and teachers; that, while we are engaged in all manner of enterprises common to other men, digging gold in California, capturing the whale in the Pacific, feeding sheep and cattle on the hill-side, living, moving, acting, thinking, planning, living in families as husbands, wives and children, and, above all, confessing and worshipping the Christian's God, and looking hopefully for life and immortality beyond the grave, we are called upon to prove that we are men!⁴⁵

Douglass makes two points in this passage. He presents *what black people already do* as evidence for their humanity. But he also presents *what slaveholders call on slaves to do* as evidence that even they already recognize slaves' humanity in how they interact with them. (Or do they recognize slaves' "equal" humanity, or else their "moral, intellectual" status? I underlined the clauses that state what slaveholders already know; I later return to these subtle differences.)

Douglass's accusation picked up on rhetoric other abolitionists had been using.⁴⁶ The idea was to fight slavery through claims about what its proponents already know to be the case, as reflected not just in their beliefs but through their actual practices. Douglass is accusing the sys-

⁴⁵ Douglass, *Selected Speeches and Writings*, 196, emphasis added. There is an echo of the Fourth of July's lengthy list in a passage of *Bondage*, in which Douglass lists activities that Mrs. Auld (his master's sister-in-law) witnessed him performing. The implication, here too, is that what she knew that he could do contradicted the dehumanizing demands of her status: "It was no easy matter to induce her to think and to feel that the curly-headed boy... sustained to her only the relation of a chattel. I was *more* than that, and she felt me to be more than that. I could talk and sing; I could laugh and weep; I could reason and remember; I could love and hate. I was human, and she, dear lady, knew and felt me to be so. How could she, then, treat me as a brute, without a mighty struggle with all the noble power of her soul" (*Bondage*, 79).

⁴⁶ Garrison stated in a Fourth of July Oration of his own that he would not "argue the question, as one of doubtful disputation, on an occasion like this, whether our slaves are entitled to the rights and privileges of freemen." Indeed, "[t]hat question is settled irrevocably. There is no man to be found, unless he has a brow of brass and a heart of stone, who will dare to contest it on a day like this." William Lloyd Garrison, *Selections from the Writings and Speeches of William Lloyd Garrison* (Boston: R. F. Wallcut, 1852), 189.

Another example is a speaker at the 1856 Ohio Negro Convention: "That we are men, we will not insult your intelligence by attempting to prove... Statute and ordinances are not necessary for the regulation and control of animals, but men, reasoning men, who can understand and obey, or plot to overthrow." Quoted in Celeste Michelle Condit and John Louis Lucaites, *Crafting Equality: America's Anglo-African World* (Chicago: University of Chicago Press, 1993), 82.

tem of slavery of disavowing facts whose truth it is on some level already relying on.

Scholars have highlighted this aspect of Douglass's case against slavery. Patchen Markell has argued that Douglass is exposing the fact that the "misrecognition involved in enslavement" is "a contradiction within the actual, a disavowal on the part of slaveholders of part of the meaning of their own practices;"⁴⁷ and George Shulman has shown that, for Douglass, white supremacy must be confronted as "a refusal of acknowledgment."⁴⁸ In what follows, I will explore in detail the stakes of Douglass's accusation. My overarching aim is to question many thinkers' endeavor to theoretically justify the disavowal Douglass is pointing to, but rather than conclude that Douglass's claim is flawed, I want to suggest that its effectiveness lies elsewhere.

I see three paths through which Douglass's claim that slavery disavows its truths has been justified by scholars of slavery. The first is a diagnosis that slaveholders and slaves routinely engaged in interactions in which the former treated slaves as human, in "brazen contravention of the doctrine of black subhumanity."⁴⁹ For Bromell, it would have been "evil enough" if slaveholders "consistently treated" slaves as "living tools," but "even worse was that they tried to form and benefit from relationships with their slaves—relationships predicated implicitly in word and glance and touch on their recognition of their slaves' humanity—while at the same time formally denying their slaves' personhood."⁵⁰ The idea is that these interactions were in ten-

⁴⁷ Patchen Markell, "The Potential and the Actual: Mead, Honneth, and the 'I,'" in *Recognition and Power*, ed. Bert van den Brink and David Owen (Cambridge: Cambridge University Press, 2007), 132. I owe to this essay my own attention to the relevance of Douglass's address to the issue of how political theory should approach diagnoses of contradictions, and specifically to the distinction between violating ideals and violating practices.

⁴⁸ George Shulman, "Acknowledgment and Disavowal as an Idiom for Theorizing Politics." *Theory and Event* 14:1 (2011).

⁴⁹ Marshall, *The City on the Hill from Below*, 85.

⁵⁰ Bromell, "Democratic Indignation," 298. As examples of relationships predicated on humanity, Marshall points to "the fact that masters sexually exploited slaves, sought intimate nonsexual companionship from them, and elicited pleasure from the theatrical and musical amusements of slaves." These reveal "that masters recognized the 'human' over the 'animal' as the salient dimension of the slave category" (Marshall, *The City on the Hill from Below*, 69 and 85). See also Sidney Wilfred Mintz, *The Birth of African-American Culture* (Boston: Beacon Press, 1976), 28-33, which discusses how various contacts between slaves and "the free group" were

sion with slavery's extremely dehumanizing dynamics, so that slaveholders had to constantly *look away* from them to justify slavery, to others but also to themselves.

The second and third diagnoses make a stronger claim: Slaveholders were in the throes of a *performative contradiction*. What this adds is that even the oppressive practices that enact, enforce and justify slavery (rather than the parallel interactions that took place on the side as a result of slaves and slaveholders living in close quarters) rest on a tacit egalitarianism. This view should be a familiar one because of my prior chapter; in fact, both Benhabib's and Foucault's strands get deployed to analyze slavery.

One way of foregrounding slavery's performative contradiction is to say that justifying slavery—an endeavor slaveholders evidently pursued—is necessarily self-contradictory because the justificatory task's pragmatic presuppositions involve an implicit recognition of slaves as beings to which some reciprocal recognition is owed, if not as beings with a right to challenge one's justifications. (This view mirrors Benhabib's, though only somewhat.⁵¹) Kirkland, for instance, notes that, "If defenders of inequality and slavery were to stake rational claims about racial inequality and slavery, they would have to acquire the *uncoerced* assent of non-whites who were to be enslaved or treated unequally. But this would mean conceding the rationality of non-whites to assent or dissent freely."⁵² (Joshua Cohen hints at a similar argument.⁵³)

Another way of foregrounding slavery's performative contradiction is to say that it takes

"marked by at least some recognition of interdependence" (33).

⁵¹ Benhabib confines her intersubjective ontology to what she calls "modern" societies (as I explained in Chapter 5), and it is highly plausible that she would be uncomfortable saying that antebellum America had entered modernity in the sense of committing to a postconventional morality. As such, it may be fairer to say that this strand of argument mirrors Habermas's less historically cautious diagnosis of performative contradictions.

⁵² Kirkland, "Enslavement, Moral Suasion and Struggles for Recognition," 273.

⁵³ Cohen similarly contends that an "expansion of the moral community and the associated passage from internal to external criticism is arguably anticipated when the internal norms are presented to slaves as considerations they should recognize as bindings, and by appeals to reciprocity in justifications of slavery." Joshua Cohen, "The Arc of the Moral Universe," *Subjugation and Bondage: Critical Essays on Slavery and Social Philosophy*, ed. Tommy L. Lott (Oxford: Rowman & Littlefield Publishers, 1998), 297. See also 313-314.

humanity for slaves to act *qua slaves*, a humanity slaveholders are otherwise invested in denying them. Mintz, who calls this the “core contradiction of New World Slavery,” succinctly encapsulates the point when he writes that, while “the often unquestioning acceptance by the masters of their right to treat the slaves as if they were not human rationalized the system of control, “[i]n practice... it is abundantly clear that the masters did recognize that they were dealing with fellow humans.” Indeed, despite “the conception of slaves as mindless automatons,” slaves were “called upon continuously to respond in human ways.”⁵⁴

Scholars give three reasons for this. First, only humans can carry out the tasks that slaveholders require of slaves. Slaveholders may say that they believe slaves to not be human, but the acts that they order slaves to perform—“plough, plant, and reap,” to cite part of Douglass’s list—suggest otherwise as such acts would not be expected of domesticated animals.⁵⁵ Second, insofar as slaveholders aim for slaves to obey even when not directly forced to, they must be presupposing that slaves may act otherwise. For Mintz, “although power originated at the top of the system, it could not be applied without taking into account the nature of *response*” and that response “was modified... by various modes of active and passive resistance.”⁵⁶ Third, slaveholders must be presupposing slaves’ ability to comprehend them when they give an order; their utterances’ perlocutionary force contradicts the inegalitarian doctrines that support slavery. As Frank writes, “the implicit equality of making the command to comprehending subjects undermines the com-

⁵⁴ Mintz, *The Birth of African-American Culture*, 25-26. I thank Gooding-Williams for drawing my attention to Mintz’s text, which has been particularly helpful for pinpointing the wider resonance of Douglass’s claims.

⁵⁵ See Marshall, *The City on the Hill from Below*, 69 and Mintz, *The Birth of African-American Culture*, 26.

⁵⁶ Mintz, *The Birth of African-American Culture*, 27. The relationship between slavery’s performative contradiction and Foucault’s paradigm becomes evident when Mintz ends his list of activities that slaves can evidently do with the clause: “or commit suicide to escape their agonies.” My prior chapter explains that Foucault justifies the view that we retain the capacity to act otherwise by noting that, worst comes to worst, the governed party “still has the possibility of committing suicide, of jumping out of the window.”

mand's self-evident legitimacy."⁵⁷ In short, issuing an order to a slave commits a slaveholder to their humanity, their free agency, and their intelligence—all in a way that corrodes slavery.

How would the problem of uptake be impacted if proponents of slavery were disavowing their practices' implications or performing a contradiction? It would reorient the problem of contestation from needing to get through to people who have no internal reason to pay attention to one's claims, to needing them to reconcile themselves with presuppositions that they cannot help but already be enacting. The task would become, in Shulman's words, "to *make salient* what [people] already know" by obtaining that they "acknowledge—count as real—what they know" instead of keeping it "split off from thought and action."⁵⁸

The optimistic answer as to how this could be done would be that exposing slavery's contradictions is enough for slaveholders to reconcile themselves with what they already do. On this view, the Fourth of July speech identifies its own "discursive cogency"⁵⁹ when it diagnoses a performative contradiction; at the very least, it deprives slaveholders of their own cogency.⁶⁰ But in this speech, Douglass is distancing himself from the idea that discursive cogency is sufficient. "Convincing argument" must be replaced with "fiery stream of biting ridicule, blasting reproach, withering sarcasm and stern rebuke."⁶¹ (It is notable that he is here only listing modes of interlocution.) Shulman reads this passage as saying that disavowal can only be confronted through collective action. For Shulman, disavowal is sustained by considerations of maintaining power; the

⁵⁷ Frank, *Constituent Moments*, 230.

⁵⁸ Shulman, "Acknowledgment and Disavowal," and George Shulman, "Thinking Authority Democratically: Prophetic Practices, White Supremacy, and Democratic Politics," *Political Theory* 36:5 (2008): 724.

⁵⁹ This is Kirkland's suggestion in "Enslavement, Moral Suasion and Struggles for Recognition," 264.

⁶⁰ I take this to be the point of those scholars who suggest that slavery's contradictory character cause its justifications to be unsustainable. For Marshall, "if masters repudiated the central justification for slavery by their own behavior... then the principled case for slavery would wither from within," a point that Frank echoes when he writes that "everyday acts of acknowledgment... may implicitly corrode [slavery's] discursive justifications." Marshall, *The City on the Hill from Below*, 85 and Frank, *Constituent Moments*, 229.

⁶¹ Douglass, "Selected Speeches and Writings," 196.

“investment in not-knowing” must be challenged “on grounds of expedience not ethics” through confrontations that provide whites self-interested reasons to fully align their practices with what they know.⁶² Boxill spells out the connection between disavowal and active resistance by proposing that fear, by “redirec[ting] our attention to” what “we contrive not to see,” may “make the slaveholders pay attention to the evidence they already had of the slaves’ right to liberty.”⁶³

These perspectives have a common thread. If slaveholders are disavowing implicit threads of reciprocity, then there are elements internal to the system of slavery—elements to which to which slaveholders’ attention can be “redirected”—that put slaves in a position to expect that they are already authorized, if only implicitly, by the system they are targeting. This does not solve their predicament, but it displaces it to the matter of identifying what oratory and resistive strategies will make it untenable for white Americans to deny this worldly reality. Bromell is perhaps most explicit about this when he proposes that “an enslaved person’s political resistance” can take the form of “insisting that the relationship” by which a master implicitly recognizes his or her humanity “be acknowledged or honored.”⁶⁴

The interlocutory exchange that Douglass embeds in his fight with Covey appears conducive to such an analysis. In fact, it bears an obvious parallel to Foucault and Benhabib’s stories of dissenting actors who partake in games they are invited to play in unforeseen yet valid way. Seen through this lens, Covey’s query (“Are you planning to resist?”) is an example of what Foucault’s alleturgies of truth or of what Benhabib calls the “admi[ssion]... into the conversation” of the others’ “capacity to “take a ‘yes’ or ‘no’ position.”⁶⁵ And Douglass’s answer (“Yes sir”) is meaningful because, while it is unexpected, its adequacy is already presupposed by the

⁶² Shulman, “Acknowledgment and Disavowal.”

⁶³ Bernard Boxill, “Fear and Shame as Forms of Moral Suasion in the Thought of Frederick Douglass,” *Transactions of the Charles S. Peirce Society* 31:4 (1995): 732 and “Douglass against the Emigrationists,” 42.

⁶⁴ Bromell, “Democratic Indignation,” 298.

⁶⁵ Seyla Benhabib, *Situating the Self* (New York: Routledge, 1992), 41.

fact that Covey asked a yes/no question. The effectiveness of his audacious reply would derive from the fact that Covey drew him into a tacitly open game.

My fifth chapter laid out some concerns with theoretical frameworks that ground the possibility of political action on diagnosing performative contradictions. I did so in the context of discussing Foucault and Benhabib's ontologies, which were admittedly geared to identifying such a contradiction across situations of oppression rather than in one specific historical context. In what follows I contend that these analyses of Douglass's speech suffer from a similar problem of conceptual overdetermination. They treat as the preconditions of his speech the very things that this speech is striving to make sense of. As a result, they overlook its political work.

“Partitioning personhood”

I earlier called attention to the back-and-forth as to what exactly is “the point” that slaveholders have “already conceded.” Douglass's assertion that he will not bother demonstrating “the manhood of the slave” is juxtaposed with mentions of the “*equal* manhood of the Negro race,” and, more specifically, with mentions of slaves' “moral, intellectual” equality. The distinctive importance of these two formulations is evident in an 1854 speech, “The Claims of the Negro Ethnologically Considered.” In it, he first focuses on rebutting “the temptation... to read the Negro out of the human family,” but he then turns to arguing that “the African is... *equally* a man with the Anglo-Saxon.” While discussing whether humanity has a single origin, he says the following: “Let it be once granted that the human race are of multitudinous origin, naturally different in their moral, physical and intellectual capacities, and at once you make plausible a demand for classes, grades and conditions... and a chance is left for slavery.”⁶⁶ This emphasis on the threat posed by classifications and gradations *within* “the human family” echoes *Bondage's*

⁶⁶ Douglass, *Selected Speeches and Writings*, 286-7.

warning that “perhaps the greatest hindrance to the adoption of abolition principles by the people of the United States, was the low estimate... placed upon the negro, *as a man*.”⁶⁷ These passages present Douglass as confronting, not just those who questioned his humanity *writ large*, but also those who “question my equal humanity,” specifically his equal humanity as it manifested itself “morally” and “intellectually.”⁶⁸ So why are there such hints in Douglass’s speeches that “humanity” may not by itself be a category that will counter slavery’s justifications?

Many scholars have argued that slavery was built not on the rejection of slaves’ humanity but on a conceptualization of humanity as a category that justifies the enslavement of some of those to whom it applies. For Saidiya Hartman, “the constitution of the slave as person was not at odds with the structural demands of the system,” and “the figuration of the humane in slave law was totally consonant with the domination of the enslaved.”⁶⁹ The implication here is not that the concept of humanity lacked salience, but that its very articulation served slavery’s inegalitarian structures. Charles Mills makes this point forcefully when he criticizes the slide from demonstrating an “*external* inconsistency between [slavery’s] principles and the reality of black personhood” to demonstrating an “*internal* inconsistency” between slavery and the existing recognition of black personhood. Mills notes that, for this slide to work, “there is supposed to be no conceptual room for the idea that if all men are equal, nonetheless some men are more equal than others.” He objects that the history of European thought conclusively shows the existence of a “conceptual space... for entities who are humanoid but not fully human,” and that “once one

⁶⁷ Douglass, *Bondage*, 234. These moments in which Douglass emphasizes the gradations that are drawn within the “human family” are in some tension with moments in which he focuses on slavery’s goal of “reduc[ing] man to a mere machine,” as he said in an 1850 lecture. “The first work of slavery is to mar and deface those characteristics of its victims which distinguish *men* from *things*, and *persons* from *property*.” Douglass, “Selected Speeches and Writings,” 167.

⁶⁸ Douglass, *Bondage*, 222.

⁶⁹ Saidiya Hartman, *Scenes of Subjection: Terror, Slavery and Self-Making in Nineteenth Century America* (Oxford: Oxford University Press, 1997), 93-94.

recognizes” the existence of this space, “then, the whole notion of a ‘contradiction’ ... becomes much fuzzier and more problematic.” This space shows that humanity is not a thing whose conceptual logic guarantees that it will get apprehended as connoting equality and freedom or experienced as homogeneous; rather, it is a category with “elaborate internal conceptual mechanisms” that “partitio[n] personhood” into racialized classes.⁷⁰

The best-known elaboration of such a conceptual space may be Aristotle’s claim in his *Politics* that some people are natural slaves “despite being human:”

Those people who are as different from others as body is from soul or beast from human, and people whose task, that is to say, the best thing to come from them, is to use their bodies are in this condition—those people are natural slaves. For he who can belong to someone else (and that is why he actually does belong to someone else) ... *and he who shares in reason to the extent of understanding it, but does not have it himself* (for the other animals obey not reason but feelings), is a natural slave.⁷¹

Aristotle designates an attribute that qualifies certain beings as human (“shar[ing] in reason”) in the course of introducing a distinction between those who “share in reason” in the sense of “having it” and those who “share in reason” in the mere sense of “understanding it.” Importantly, the common transpires through its division; commonality and gradation are co-constitutive. Historian David Brion Davis, in describing slavery’s legitimating discourses (including Aristotle’s), highlights the importance of such lines between what humans *share in* and what *differentiates* them from one another. He argues that what is at issue in the “animalization of slaves” is not that “masters literally saw slaves as ‘only animals,’” but rather that slaves were portrayed as “human animals” by “focusing on and exaggerating the so-called animal *traits that all humans share* and *fear, while denying the redeeming rational and spiritual qualities* that give humans a sense of

⁷⁰ Mills, “Whose Fourth of July?” 121-123. For discussions of philosophical paradigms that racialized the human, see Charles Mills, *The Racial Contract* (Ithaca: Cornell University Press, 1999) and Thomas McCarthy, *Race, Empire, and the Idea of Human Development* (Cambridge: Cambridge University Press, 2009). See also Hartman’s work in *Scenes of Subjection* on the “construction” of “black humanity in accordance with minimal standards of existence,” which “enhanced” the “constraints of channel status” instead of “lessening” them (93).

⁷¹ Aristotle, *Politics*, trans. C.D.C. Reeve (Indianapolis: Hackett Publishing Company, 1998), 1254a-b.

pride.”⁷² Hence, for Davis, the main discourse was not that slaves lacked human traits, but that they lacked those traits relevant to their freedom.

Such distinctions add layers to what it would mean for slaveholders to already be treating slaves as human. They complicate analyses that present the treatment of slaves as evidence that slaveholders were disavowing the implications of their practices. They suggest that this treatment may not have been a secret that ate away slaveholders *from within*, that slaves’ humanity may have been something that appeared—in partitioned form—in slaveholders’ self-understanding.⁷³

For a *denial* of humanity or equality to be a *disavowal* of humanity or equality, two things must be identical to one another: the thing being denied, and the thing already presupposed/known. But many of the aforementioned analyses present these things as identical by underspecifying terms such as “humanity” or “equality.” For Marshall, slaveholders rejected “any recognition of the humanity of blacks” and yet their practices recognized the “humanity of slaves;” for Mintz, slaveholders “treat[ed] the slaves as if they were not human,” and yet there also was an “implicit recognition by the masters of the humanity of the slaves;” for Bromell, slaveholders engaged in relationships “predicated... on their recognition of their slaves’ humanity,” and yet they were “formally denying their slaves’ personhood;” for Boxill, they had evidence for slaves’ equal rights, and yet they were “blind... to equality,” full stop.⁷⁴ Such under-

⁷² David Brion Davis, *Inhuman Bondage: The Rise and Fall of Slavery in the New World* (Oxford: Oxford University Press, 2006), 32, emphasis added.

⁷³ This gets to my objection to Bromell’s point that, “We cannot refuse to recognize except insofar as we have first felt, however subtly and fleetingly, an impulse to recognize” (“Democratic Indignation,” 300-301). First, this relies on a visibility/invisibility binary that evades the matter of how something is seen, as belonging to which conceptual categories. Second, this leads to the implausible conclusion that the very fact of rejecting a claim means that I am implicitly granting its rightness. That I refuse to recognize the personhood of fetuses when faced with demands that their constitutional rights be protected (a demand voiced for instance by Mike Huckabee in a 2015 presidential debate) does not prove that I repress what I have felt to be true. Something being rejected does not by itself demonstrate a disavowal.

⁷⁴ Marshall, *The City on the Hill from Below*, 61 and 85, Bromell, “Democratic Indignation,” 298, Mintz, *The Birth of African-American Culture*, 25, and Boxill, “Two Traditions,” 129.

specification pays insufficient attention to the link between what is denied and what is known. What did slaveholders claim they treated slaves as equal in, and was that identical to what abolitionists claimed slaves were equal in? What attributes were slaves recognized as human for? Such questions are at issue when it comes to elucidating whether slaveholders' domination was specifically a form of disavowal. And they are especially important if, as I just discussed, certain dimensions of equality and humanity were conceptualized as compatible with slavery.

These distinctions also complicate diagnoses of disavowal that are more specific as to where the contradiction lies. Consider the idea that, in presupposing slaves' capacity to obey, slaveholders relied on slaves' intelligence in a way that contradicted their inegalitarian beliefs; this was Frank's point that "the implicit equality of making the command to comprehending subjects undermines the command's self-evident legitimacy." Yet these are the very things Aristotle presents as compatible in his *Politics*; by parsing apart the intelligence to "comprehend" reason and the intelligence to "make" rational commands, he proposed that an equality in the former could be accompanied by an inequality in the latter. Douglass was sensitive to this. Take the following medley of remarks: (a) "Slaveholders ever underrate the intelligence with which they have to grapple... [They] never encourage that kind of communication, with the slaves, by which they might learn to measure the depths of his knowledge;" (b) "the masters imagine that the poor slaves are so ignorant that they don't know the meaning of the language they are using; for the slaves always pretend to be very stupid... and act like baboons and wild beasts in [the] presence of their masters (c) "a slave should know nothing but to obey his master" (this is what Hugh Auld says upon learning that his wife had taught Douglass how to read).⁷⁵ Together, these passages signal a conceptually coherent landscape, with slaveholders deeming slaves to have the

⁷⁵ The first quote is in Douglass, *Bondage*, 34; the third is in Douglass, *Selected Speeches and Writings*, 168; the second is cited in Peter Dorsey, "Becoming the Other: The Mimesis of Metaphor in Douglass's *My Bondage and My Freedom*," *Publications of the Modern Language Association of America* 111:3 (1996): 439

intelligence requisite to know how to obey, but not the intelligence to make rational use of language (for instance to engage in reciprocal conversation). Of course, my point is not that this landscape's conceptual coherence says anything about its reality; only that the specific reason it is wrong may not be that slaveholders tacitly recognized that "the intelligence with which they [had] to grapple" was incompatible with slavery.

Or consider the point that it is inconsistent to incite others to act by themselves without allowing them the freedom to act otherwise. In criticizing Foucault and Benhabib for this position, my previous chapter argued that a conceptual analysis of the implications of inviting others to manifest their subjectivity cannot guarantee that, in doing so, one also invites them to act in an open field. I pointed to various conceptual mechanisms by which philosophers have parsed apart freedom as self-manifestation and freedom as an open field of possibilities. (Recall Harry Frankfurt's example in which Jones can be said to own an act he performed "for his own reasons" even though he could not have acted differently since Black stood ready to intervene.) Such partitioning mechanisms circulated in the context of U.S. slavery. Hartman, who focuses on the sexual exploitation of black women, explains how slaveholders reconciled "the agency of the dominated" with "perfect submission." She explains that "master-slave relations were predicated upon the inability of the enslaved to exercise her will in any ways other than serving the master."⁷⁶ First, the *discourse of criminality* enabled defiant acts to be interpreted as breaking the system's rules rather than as challenging them from the inside. Second, the *discourse of seduction* figured female slaves as active participants in their submission. Slaveholders claimed that their sexual desires were triggered by slaves' manipulative guiles, so "the sexual exploitation of the enslaved female... served as evidence of her collusion with the master class and as evidence of her power

⁷⁶ Hartman, *Scenes of Subjection*, 82 and 99.

to be the mistress of her own subjection.” By representing their own desire as the product of slaves’ agency, slaveholders developed a “‘no means yes’ philosophy” that made sense of even the rejection of their sexual advances as the expression of an underlying willingness.⁷⁷

This point, that acting on one’s volition can be conceptually disentangled from an ability to act in several ways, sheds new light on the interlocutory exchange in Covey and Douglass’s fight. It raises the possibility that it may not have been *internally* inconsistent for Covey to ask a question while only allowing one answer.

Bondage, as I shall now show, thematizes this point in some depth. Indeed, the use of the question form by slaveholders is a recurring topic in that book. Before recounting his fight with Covey, Douglass repeatedly examines why slaveholders ask questions. In doing so, he spells out the dissociation between interrogating someone and drawing them into an open game. This repetition is a notable literary choice because these passages are effectively setting up the later scene involving Covey. In fact, just pages before that scene, Douglass recounts how he traveled to ask his master Thomas Auld for protection from Covey. Yet Auld rebuffed him, after which,

I had very little heart to reply. I must not affirm my innocence... The guilt of a slave is always, and everywhere, presumed... The word of the slave, against this presumption, is generally treated as impudence, worthy of punishment. ‘Do you contradict me, you rascal?’ is the final silencer of counter statements from the lips of a slave.⁷⁸

Here Douglass is making a simple but important point: a question can be a *rhetorical question*. Put otherwise, its pragmatic function can be, not to invite the other into an open-ended exchange, but to serve as a “final silencer,” a way to emphasize a point you deem obvious without inviting the other to dissent or propose an alternative. A defiant response would then be punished not because the slave has embarrassingly pierced the master’s need to presuppose the slave’s freedom to answer, but because it is interpreted as a sign that the slave does not know the normative or-

⁷⁷ Ibid. 87-88.

⁷⁸ Douglass, *Bondage*, 130.

der. A slave who does not acquiesce is figured as betraying the racial hierarchies that slaveholders collectively experience as true. (Or, as Hartman's work of seduction suggests, a lack of acquiescence is reinterpreted as the symptom of a deeper willingness.) As Douglass explains, "Does [a slave] speak loudly when spoken to by his master? Then he is getting high-minded, and should be taken down a button-hole lower."⁷⁹

These general reflections become a concrete reality a few pages later, when Covey asks Douglass a nearly identical question to the one Douglass just discussed in the abstract. ("Do you contradict me, you rascal?" becomes Covey's "Are you going to resist, you scoundrel?") Thus by the time Douglass gets to Covey's query, he has explained why Covey would have been asking him a rhetorical question rather than tacitly acknowledging his right to dissent.⁸⁰

So why would a slaveholder's "final silencer" be an interrogative rather than an imperative? Per my earlier distinction between self-manifestation and openness, there is an efficiency to getting others to involve themselves in their own subjection, and this is conceptually consistent with holding that they lack the freedom to act otherwise. As Pettit remarks, one can suppose an agent to be free even though he "could not have done otherwise" if one treats him "as fit to be held responsible, not for doing A rather than non-A, but doing A of their own volition rather than being manipulated into doing it."⁸¹ From slaveholders' perspective, inciting slaves to speak could

⁷⁹ Ibid. 118.

⁸⁰ Note that there is no such parallel between a general discussion of rhetorical questions and Covey's query in Douglass's earlier *Narrative*. In fact, I would suggest that in that text Douglass uses the fight's interlocutory exchange as a didactic moment rather than as an opportunity to add texture to the unfolding of his relationship with Covey. (The *Narrative*, page 112 reads: "He asked me if I meant to persist in my resistance. I told him I did, come what might; that he had used me like a brute for six months, and that I was determined to be used so no longer.") Other readers of Douglass have paid close attention to the ways in which the fight's "mise-en-scène [in *Bondage*" is richer" than in *Narrative*, and that in his later autobiography Douglass "calls attention to the theatrical quality of the episode." John Sekora, "Mr. Editor, If You Please: Frederick Douglass, *My Bondage and my Freedom*, and the End of the Abolitionist Imprint," *Callaloo* 17.2 (1994): 624.

⁸¹ Philip Pettit, *A Theory of Freedom* (Oxford: Oxford University Press, 2011), 22. As I argued in Chapter 5, there is a rationality to Achilles asking warriors to manifest the truth of a preexisting hierarchy and then interpreting the unforeseen result as evidence that gods intervened.

mean involving them in what slaveholders believed to be their the certain truth of their inequality, or else testing whether they understood this truth. A slaveholder may have asked a question to probe a slave's literacy in slavery's normative language.

This, too, is a point that Douglass has made in *Bondage* by the time the reader reaches the fight with Covey. In yet another passage that discusses the functions of the question form in slave society, Douglass recounts the story of a slave who encountered a man on a road, unaware that this man was his master:

“Well, boy, who do you belong to?” “To Col. Loyd,” replied the slave. “Well, does the colonel treat you well?” “No, sir,” was the ready reply. ... The colonel, after ascertaining where the slave belonged, rode on; the slave also went on about his business... until two or three weeks afterwards. The poor man was then informed by his overseer, that, for having found fault with his master, he was now to be sold to a Georgia trader... *This* is the penalty of telling the simple truth, in answer to a series of plain questions. It is partly in consequence of such facts, that slaves, when inquired of as to their condition and the character of their masters, almost invariably say they are contended, and that their masters are kind.⁸²

I read this passage as Douglass suggesting that there is a ritual to question-and-answer exchanges. While a slave has the capacity to answer otherwise than the ritual demands, such resistance may entail breaking the system's implicit rules rather than embarrassing it from the inside. While my next section argues that there is more to the story—that *Bondage* further complicates the role of the question form—for now it suffices to say that the relationships and practices that would seem to testify to the presence within slavery of relations of tacit reciprocity can instead be interpreted as cohering with the system's oppressive functioning.

In fact, Hartman's discourse of seduction is a direct twist on the theoretical diagnosis of ineliminable threads of tacit reciprocity between the dominated and oppressors. Recall Benhabib's point that even a *paterfamilias* will find himself in “family brawls” with other members of his household, brawls that “always make claims on one and remind one of the inevitable...

⁸² Douglass, *Bondage*, 56. He also recounts this story in the *Narrative* (62-63), using almost identical language.

limits of one's own point of view."⁸³ Yet Hartman documents that slaveholders presented their recognition of slaves' humanity—including the sexual violence Marshall describes as implicitly contradicting slavery's dehumanization—as attesting to slavery's morality. They “invok[ed] the centrality of affections in regulating the asymmetries of power in the master-slave relation,” pointed to “feelings” they had for their slaves as “regulating” their own behavior, and claimed that the “reciprocal benevolence” that the discourse of seduction purportedly demonstrated showed slaves' submission to be voluntary. For Hartman, “the insinuation that the dominated were mutually invested in their subjugation recast violence in the ambiguous guise of affection.”⁸⁴ Reciprocity, in the way it was figured, was part of how domination was framed, rather than its “primal”⁸⁵ corrosive core.

Now, while diagnosing the discourses by which black personhood was reconciled with absolute submission, Hartman also denounces these discourses as a “cynical” and “calculated misreading or misrecognition of the state of domination,” which is to say as an internal discrepancy rather than an external injustice.⁸⁶ I understand her doubts about the sincerity of slaveholders' beliefs in these discourses to stem from it seeming like a stretch that slaveholders could really have subscribed to such a conceptual landscape given the horrible implications of its restricted understanding of agency. This gets me back to the point I made earlier in this dissertation, namely that when we consider injustices from the distant past, it is hard to understand what made them stick because the norms by which they were justified strike us not just as wrong but also as preposterous. Here I follow Mills, who warns that the “supposed absurdity of the notion that any Enlightenment figure could ever have regarded blacks as less than human” should not lead us to

⁸³ Seyla Benhabib, “Sexual Difference and Collective Identities,” *Signs* 24:2 (1999): 349.

⁸⁴ Hartman, *Scenes of Subjection*, 90-91.

⁸⁵ This is how Lois McNay, in the context of discussing Honneth's work, talks of the mutuality underlying social relations in *The Misguided Search of the Political* (Cambridge: Polity, 2014), 46.

⁸⁶ Hartman, *Scenes of Subjection*, 111-112.

“conclud[e], against the evidence, that the Framers” were “conceptually discommoded.” Mills invites us to take seriously the possibility that “in their own eyes, these Framers would *not* have been doing something wrong in codifying black subordination.”⁸⁷ Yet I would also suggest (contra Mills⁸⁸) that we put aside the issue of slaveholders’ private belief. The issue that I have been dealing with is these discourses’ political plausibility. It is the availability in public life of conceptual frames through which oppressive practices appear to cohere with their own presuppositions, including those that have an egalitarian or reciprocal tenor.

Throughout this section, I have suggested that Douglass himself was cognizant of this predicament. I have pointed to moments where he concerned himself with whether white Americans granted his “equal humanity” and treated him as an equal in a sense specifically relevant to his freedom, and to moments where he concerned himself with the mechanisms that made such specific concessions important (for instance the distinctions between types of intelligence and knowledge, or the peculiar function of rhetorical questions). In fact, Douglass was not unlike Mills in that he too warned that injustice will not compel all at the moment it is denounced. He began his Fourth of July speech by pointing out that people misremember the American Revolution when they think that it was perceived as an obviously just cause: “To say now that America was right and England wrong is exceedingly easy... [B]ut there was a time when to pronounce against England and in favor of the cause of the colonies tried men’s souls.”⁸⁹ As such, his rhetoric was partly geared toward confronting some of the conceptual frames that raised questions as to whether the “point” for which he was struggling (that slaves are entitled to the natural freedom

⁸⁷ Mills, “Whose Fourth of July?” 122.

⁸⁸ Ibid.

⁸⁹ Douglass, *Selected Speeches and Writings*, 190. James Jasinski’s essay “Rearticulating History of Epideictic Discourse: Frederick Douglass’s ‘The Meaning of the Fourth of July to the Negro’” shows how Douglass endeavored “denaturaliz[e] the revolution by removing its aura of inevitability, thereby restoring moments of choice and contingency.” In *Rhetoric and Political Culture in Nineteenth-Century America*, ed. Thomas Benson (East Lansing: Michigan State University Press, 1997): 72.

of all persons) was indeed “already conceded by slaveholders,” even tacitly.

Political accusations

The complicating factor, of course, is that Douglass did accuse his oppressors of contradicting their own presuppositions. There certainly is good reason that scholars draw on Douglass to conceptualize the disavowals or performative contradictions of the system of slavery. The pressing question, then, is what we should make of his accusations in light of the warnings in my previous section. Does my point that Douglass himself hinted at the coherence of seemingly inconsistent practices change our understanding of what he was up to in the Fourth of July speech and in *Bondage*? Or should we still conclude that he was misguided in presenting slavery as mined by tacit threads of reciprocity and that this particular strategy was a toothless approach to navigating the problem of uptake?

Mills firmly takes the second path. For one, he does not draw out the threads I teased out with which Douglass differentiates between different figurations of humanity and equality; I believe that these threads relativize Mills’s point that Douglass “failed to fully recognize... how deeply race and racial self-interest had entered into the creation of the policy and its citizens’ identities.”⁹⁰ More importantly, Mills takes Douglass’s Fourth of July speech as one might approach the work of an armchair philosopher divorced from practical concerns. His method is this: Douglass makes the argument that his equal humanity is already conceded by slaveholders; the soundness of this argument must be evaluated based on whether it is analytically correct; since a “conceptual space” exists that is able to frame the system of slavery as internally coherent, Douglass was “wrong” (not “factually right”) when he pointed to slavery’s contradiction.⁹¹

My concern with this approach is that, much like scholars who diagnose disavowals and

⁹⁰ Mills, “Whose Fourth of July?” 127 and 131.

⁹¹ Ibid. 119-121.

contradictions, Mills is overdetermining the meaning and (in)compatibility of the relevant concepts. The idea remains that Douglass's accusation has value if it can be shown to be conceptually conclusive; only then could it provide an opening for his claim-making to take off. My earlier objection to thinkers for whom Douglass's accusation was correct was that they do not allow that the conceptual landscape within which slaveholders operated may have been internally consistent; my mirror objection to Mills is that he does not allow that the conceptual landscape within which Douglass located slaveholders is a possible alternative interpretation of what their practices implied. Both sides conceal what Gooding-Williams has called, in another context, the "credible disagreement as to the proper contexts for interpreting social practices."⁹² In what follows, I defend another approach to Douglass's accusation. I see him as opening and litigating precisely such a disagreement as to the proper contexts for interpreting slaveholding practices.

The Douglass depicted by Gooding-Williams in *In the Shadow of Du Bois*, more so than Mills's Douglass, is an activist who aims to "reform [the American] polity by reimagining and reconstituting its constitutive norms," rather than to merely appeal to its preexisting norms, and who works for a "a radical transformation of the fabric of political habits."⁹³ I wish to add to Gooding-Williams's depiction a reconstruction of one specific approach Douglass used to obtain such a transformation: He treated this reimagined fabric as equivalent to the fabric that white Americans were already operating within.

To develop a vocabulary by which to gain clarity on how Douglass did so, I will first turn to Rancière's notion of the equality of intelligence, which I read differently than it usually is, namely as an endorsement of the importance of analogical reasoning. I will then return to Douglass to ascertain more specifically how he staged himself as already authorized.

⁹² Robert Gooding-Williams, "Review of *After Identity*, by Georgia Warnke," *Constellations* 17:4 (2010).

⁹³ Gooding-Williams, *In the Shadow of Du Bois*, 204 and Robert Gooding-Williams, "Politics, Racial Solidarity, *Exodus!*" *Journal of Speculative Philosophy*, 18:2 (2004): 127.

Jacques Rancière and analogical reasoning

My fourth chapter explained that Rancière provides resources to appreciate how political actors may seize a competence they are denied by adding contributions to spaces and tasks that are perceived to demand specialized qualifications, as if they are competent. We then encountered the problem that seizing competence is not enough to put oneself in the position of expecting a response. Rancière approaches this problem by theorizing a second step to acting “as if.” He talks of “the power that one gives oneself by supposing that the other hears you,” “as though the other can always understand [one’s] arguments,” and he evokes political subjects who “posi[t] community by presupposing... an obligation to hear.”⁹⁴ So what does this entail? How can you act as if the other hears you, as if the other is obligated to hear you?

It may appear that Rancière’s answer mirrors that of the thinkers who diagnose disavowals within structures of oppression. This apparent parallel stems from one of his better-known arguments, namely that an unequal relationship between people presupposes some equality between its parties. In *Disagreement*, he writes that equality is “necessary to the very functioning of the inegalitarian machine,”⁹⁵ a point he couches in terms of what it takes to issue a command:

There is order in society because some people command and others obey, but in order to obey an order at least two things are required: you must understand the order and you must understand that you must obey it. And to do that, you must already be the equal of the person who is ordering you. It is this equality that gnaws away at any natural order... Inequality is only possible through equality.⁹⁶

He uses similar language elsewhere, for instance, writing that there is “no force that is imposed

⁹⁴ Jacques Rancière, *La Méthode de l'égalité* (Bayard Editions, 2012), 130, my translation, and Jacques Rancière, *On the Shores of Politics*, trans. Liz Heron (London: Verso, 2006), 50 and 86.

⁹⁵ Rancière, *Disagreement*, 34.

⁹⁶ *Ibid.* 17. Strangely, though this passage and its last sentence (“l'inégalité n'est... possible que par l'égalité”) appear in what is arguably his most famous book, Rancière seems taken aback when an interviewer asked him what he means by a similar sentence: “The formulation ‘inequality is only possible on the basis of equality’ [*l'inégalité n'est possible que sur la base de l'égalité*] is certainly ambiguous. I may have said this, it’s very possible. In fact, inequality can only function through equality, but that does not mean that equality founds inequality in general. Inequality can very well authorize itself.” Rancière, *La Méthode de l'égalité*, 198.

without having to justify itself, and hence without having to recognize the irreducibility of equality needed for inequality to function.”⁹⁷

Many readers of Rancière interpret these passages as his guarantee that the police disavows its presuppositions. This is because they assume that “equality” is something an inegalitarian system must be invested in denying; it would follow that saying that “inequality is only possible through equality” is by itself indicative of a discordance. Thus Ella Myers states that, for Rancière, “all acts of communication—even the master’s issuing of commands to a slave—are actually premised on equality” (this much I agree with), and based on this she characterizes Rancière’s point to be that equality operates as a “disavowed” and “hidden secret.”⁹⁸ Similarly, for Lois McNay, “although equality of understanding forms the necessary foundation of any structured order, this can never be fully acknowledged;”⁹⁹ for Jean-Philippe Deranty, Rancière establishes that “the social hierarchical order” must “be called wrong” because of its entanglement in “ontological equality;”¹⁰⁰ and for Todd May, while the “equality of all speaking beings” is a presupposition that is unavoidably held by “elites,” this unavoidable presupposition is “usually veiled.”¹⁰¹ According to this reading, the point of Rancière’s politics would be to “brin[g...] out into the open”¹⁰² the secret equality that is always already enacted; politics uncovers the ontological condition that structures all human relationships.¹⁰³

⁹⁷ Jacques Rancière, *The Hatred of Democracy*, trans. Steven Corcoran (London: Verso, 2006), 48.

⁹⁸ Ella Myers, “Presupposing Equality: The Trouble with Rancière’s Axiomatic Approach,” *Philosophy and Social Criticism*, 42:1 (2016): 45-46.

⁹⁹ McNay, *The Misguided Search of the Political*, 136.

¹⁰⁰ Jean-Philippe Deranty, “Jacques Rancière’s Contribution to the Ethics of Recognition,” *Political Theory*, 31.1 (February 2003), 143-144. Deranty’s aim is to show that Rancière has a politics of recognition by which people get “included in a communicative context” that they were already a tacit part of (Ibid. 146).

¹⁰¹ Todd May, “Jacques Rancière and the Ethics of Equality,” *SubStance* 36.2 (2007): 24 and 27.

¹⁰² Ibid. 27. For McNay, the secret equality that always “haunts an established order” is what manifests itself in “instances of political conflict” (*The Misguided Search for the Political*, 136).

¹⁰³ Marchart, who reads Rancière this way as well, thereby worries that Rancière has “transform[ed] a fighting word... into a transcendental, ahistorical condition.” Olivier Marchart, “The Second Return of the Political:

These readings err in treating “equality” and “inequality” as mutually exclusive terms, and they do this because they underspecify what people are held to be equal and unequal in. By running all dimensions of equality into one another, they effectively read Rancière to be claiming that all human practices indiscriminately presuppose all such dimensions at once. This is clear for instance when Deranty writes that masters “assume that [slaves] understand, and therefore [masters] implicitly recognize that the understanding of orders hides the possibility of a communicative reciprocal understanding.”¹⁰⁴ Deranty ignores the possible incongruity between the two sides of this equation; this enables him to seamlessly slide from the capacity to understand an order to that of understanding reciprocal communication.

Yet in the third chapter of *Disagreement*, Rancière directly criticizes Habermas’s view that withdrawing from “conditions of validity that come from mutual understanding” will lead a speaker to fall into a performative contradiction. To rebut Habermas, Rancière points to the utterance “Do you understand?”, which he explains “is a false interrogative” because its “positive content” is something akin to “it’s not up to you to understand; all you have to do is obey.”

‘Do you understand?’ is a performative that makes fun of the ‘performative contradiction’ because its own performance, its manner of making itself understood, is to draw the line between two senses of the same word and two categories of speaking being. This performative gives those it address to understand that there are people who understood problems and people who have only to understand the orders such people give them.¹⁰⁵

There is no necessary inconsistency in addressing others without presupposing their ability to reciprocate. On the contrary, we risk misrecognizing some utterances’ possible pragmatic function if we ignore how their presuppositions preemptively deflect the claim that they perform a contradiction. And just like Mills, Rancière turns to Aristotle’s *Politics* as the best illustration of

Democracy and the Syllogism of Equality,” in *Reading Rancière*, ed. Paul Bowman and Richard Stamp (London: Continuum, 2011), 135-136.

¹⁰⁴ Deranty, “Jacques Rancière’s Contribution to the Ethics of Recognition,” 143.

¹⁰⁵ Rancière, *Disagreement*, 45.

how equality in one domain and inequality in another can be perceived to be consistent.¹⁰⁶

The catch is that, despite this warning, Rancière cautions against throwing the baby out with the bath water; he seeks to retain the efficiency of an accusation of disavowal. It has proven tricky to do justice to both sides of his maneuver. While most of his interpreters rely on the passages I cited earlier to read him as saying that equality is a “hidden secret,” one recent essay has offered an excellent reconstruction of his critique of Habermas; yet in that essay it is the other passages (those that lead Rancière to be read as Habermas) that recede, and we still get no clarity as to why he finds it so important to insist on inequality’s dependence on equality.¹⁰⁷

My approach to squaring this circle is that Rancière displaces the performative contradiction from the ontological register on which it operates for other thinkers unto a political register. By political register, I don’t just mean that a contradiction lacks ethical repercussions on its own and that its existence must be dramatized through struggle. I mean that the pragmatics of communication are a critical resource even where the theorist’s analytical level cannot guarantee a discordance: The efficiency of accusing others of performing a contradiction—and in so doing of staging ourselves as already authorized—stems from a bid to analogically resignify the terms by which these others already count us as equal.

Let us return to the third chapter of *Disagreement*. After working out distinctions between types of understanding, which throws a wrench in Deranty’s seamless slide from “understanding an order” to “communicative reciprocal understanding,” Rancière adds that he is not saying that this distinction is correct, only that presenting one as following the other poses a

¹⁰⁶ Ibid. Rancière frequently returns to discussing how Aristotle figures the “human animal” as divided between those who understand and those who possess language. See “A Few Remarks on the Method of Jacques Rancière,” *Parallax* 15:3 (2009), “The Thinking of Dissensus,” in *Reading Rancière*, 2.

¹⁰⁷ Matheson Russell and Andrew Montin, “The Rationality of Political Disagreement: Rancière’s Critique of Habermas,” in *Constellations* 22:4 (December 2015): 543-554. Russell and Montin’s position mirrors Mills: the demonstration that there is conceptual space to deny the accusation of a contradiction leads them to overlook that the accusation’s conceptual frame may nonetheless look more politically plausible than its denial’s.

challenge. “Clearly all interlocution supposes comprehension of some kind of content of the illocution. The *contentious issue* is whether this understanding presupposes a telos of mutual understanding.”¹⁰⁸ This is the “basic quarrel as to what understanding language implies:”

We can deduce either something or nothing from such an understanding. From the fact that a command is understood by an inferior we can simply deduce that such a command was indeed give... and that as a result the person receiving the order will indeed carry out their work, ... in keeping with the division between simple *aisthesis* and the fullness of *hexis*. Another completely contrary deduction can also be made: the inferior has understood the superior’s order because the order takes place in the same community of speaking beings and so is, in this sense, their equal.¹⁰⁹

Giving an order assumes that the other can understand it. Does it thereby assume something more? This is where the political problem lies. “For more to happen, equality has to take on the form of a wrong [about] what saying, understanding and carrying out commands are.”¹¹⁰ In other words, “to say that there is a common speech situation *because* an inferior understands... a superior... means that a disagreement... must be set up between two camps: those who think there is an understanding within understanding, that is, all that all speaking beings are equal *as speaking beings*, and those who do not think so.”¹¹¹ Political action involves constructing the hypothesis that, from one meaning of understanding (a capacity to comprehend orders), another (a capacity to respond or conversate) follows. And it involves enacting this hypothesis against those for whom the first meaning stands on its own.

The broader idea is that it is an issue of eminent political importance whether the capacity to do one thing entails a capacity to do another. This point has been neglected. Rancière’s notion of the *equality of intelligence* has been read to mainly mean that everyone is as capable of engaging in a given task as anyone else; in fact, this reading has encouraged the drawing of new lines in the sand as to what activities fall inside and outside the purview of Rancière’s notion of equal-

¹⁰⁸ Rancière, *Disagreement*, 48.

¹⁰⁹ *Ibid.* 49.

¹¹⁰ Jacques Rancière, “Comments and Response,” *Theory and Event* 6.4 (2003), paragraph 14.

¹¹¹ Rancière, *Disagreement*, 49, emphasis added.

ity.¹¹² But for Rancière the equality of intelligence “does not signify the equal value of all manifestation of intelligence, but the self-equality of intelligence in all its manifestations;”¹¹³ it means “that the same intelligence makes poetic fictions, political inventions or historical explanations, that the same intelligence makes and understands sentences in general.”¹¹⁴ Put otherwise, the equality of intelligence is the assumption of a relationship between different occasions to manifest one’s own intelligence. And when he writes that equality is a presupposition to test through political action, he is suggesting that politics involves investigating the hypothesis that the thing everyone knows I can do signals that I can do something else.

This clarifies why the phrase “inequality is only possible through equality” provides an opening for politics even if it does not prejudge the presence of a discordance. Rancière defines a distribution of the sensible as what “simultaneously discloses the existence of something in common and the delimitations that define the respective parts and positions within it.”¹¹⁵ At stake is not just how particular *delimitations* justify certain hierarchies (that was my fourth chapter’s focus) but also how the *something in common* is figured. On the one hand, this element of equality is not something a police order conceals; its disclosure is part of how the given is configured. (For instance, Plato does not deny that being born in Athens indicates some equality; he specifies this equality in such a way that it “can be posited as having no bearing on something like politics.”¹¹⁶) But on the other hand, this disclosure introduces the possibility for political actors to reinterpret the terms by which the police counts the common. “From the moment that the world

¹¹² Todd May writes that the equality of intelligence does not mean “of course, a belief that everyone can... conceive advanced theoretical physics” (May, “Jacques Rancière and the Ethics of Equality,” 27).

¹¹³ Jacques Rancière, *The Emancipated Spectator*, trans. Gregory Elliott (London: Verso, 2009), 10. For instance, Jacques Jacotot’s method of teaching a foreign language, which Rancière discusses at length in *The Ignorant Schoolmaster*, is built on the presupposition that “the human animal learns everything in the same way as it initially learnt the mother tongue.” (Ibid.)

¹¹⁴ Rancière, “The Thinking of Dissensus,” 14.

¹¹⁵ Jacques Rancière, *The Politics of Aesthetic*, trans. Gabriel Rockhill (New York: Continuum, 2006), 12.

¹¹⁶ Rancière, *Disagreement*, 17.

equality is inscribed in the text of laws and on the pediments of buildings... there is an effectiveness to politics.”¹¹⁷ The way in which the police order figures its constricted recognition of equality is something disqualified actors can intervene on. They can act as if this figuration of equality commits the police to another figuration, which is equivalent to it. Put otherwise, the equality that is already disclosed and the equality that disqualified actors claim is already disclosed may correspond to two different figurations; it takes political work to draw an equivalence between them, as if from one dimension the other follows inexorably.

In my fourth chapter, I explored a first dimension to the idea of acting “as if,” what I called a seizure of capacity. This seizure meant enacting the following polemical presupposition:

If *they* can do X, then it follows that *we all* can do X.

For instance: If *experts* can do science, then it follows that *we all* can do science. I am now exploring a second dimension, which I am calling a seizure of authorization. This seizure means enacting the following polemical presupposition:

If we are authorized to do Y, then it follows that we are authorized to do X.

For instance: If we can understand orders, then it follows that we can understand the problems that motivate these orders—and those who incite our capacity to do the former while denying our capacity to do the latter are contradicting themselves. This second dimension transpires in a passage of Olympe de Gouges’s Declaration that Rancière cites (though not in this context): “Woman has the right to mount the scaffold, she should equally have the right to mount the rostrum.”¹¹⁸

¹¹⁷ Jacques Rancière, *Dissensus*, trans. Steven Corcoran (New York: Continuum, 2010), 207. “Inscriptions” are not just literal writings. As he writes elsewhere, “[T]he possibilities for a political intervention reframing a situation have to be taken from a given setting of the political, understood in that way. This is why... I emphasized the part played by all the inscriptions of the democratic process in the texts of the constitutions, the apparatuses of public opinion, the mainstream forms of enunciation.” Rancière, “The Thinking of Dissensus,” 5.

¹¹⁸ Olympe De Gouges, “The Declaration of the Rights of Woman,” in *The French Revolution and Human Rights: A Brief Documentary History*, ed. Lynn Hunt (Boston/New York: Bedford/St. Martin's, 1996), 125, translation modified. There is dry humor in de Gouges labeling a woman’s potential subjection to the guillo-

There is a theatrical if not absurdist quality to de Gouges's claim, and to her use of the verb "mount" [*monter*] to describe these two activities that she claims are equivalent.

Most political actors do not spell out their analogical work as transparently as de Gouges. Nevertheless, her claim dramatizes the point that staging oneself as already authorized entails a polemical operation. It entails constructing a sense in which the police disavows its own presuppositions by analogizing a capacity one is denied and a capacity one is already recognized as sharing in.

Such analogical reasoning is a matter, not of proving oneself in a way that a logical analysis can vindicate, but of obtaining that the equivalences one draws make common sense to others. In an essay on the political role of analogical arguments (arguments that "exten[d] what is accepted to what is new and unfamiliar") Hilliard Aronovitch argues that these are "never uniquely and definitely valid as against alternatives but rather more or less persuasive as compared to them, though perhaps very compellingly so." Note that his paradigmatic formulation of an analogical claim is quite relevant to my focus on accusations of disavowal: "Don't you see, this is really like that which you already accept and do not want to go back upon."¹¹⁹ The success of a public accusation that one's opponents have fallen into a contradiction hinges in part on whether one can make this equivalence come across as self-evident.

Recent scholarship has cautioned against attributing an analogical form to political claim-making. Davide Panagia faults analogies' subsumptive function for privileging a consensual model of politics. He worries that that, "through use and circulation..." an analogy will "lose its

tine a "right." Her claim took a tragic turn when her own execution was justified in part as a sanction for her audacity in claiming rights. Faulting de Gouges for her "harangues in the galleries, at the bar of the senate," Paris Commune member Pierre-Gaspard Chaumette stated that "this forgetfulness of the virtues of her sex led her to the scaffold." Quoted in Joan Wallach Scott, "French Feminists and the Rights of 'Man': Olympe de Gouges's Declarations," *History Workshop* 28 (1989), 3 and 17.

¹¹⁹ Hilliard Aronovitch, "The Political Importance of Analogical Argument," *Political Studies* 45:1 (1997), 86 and 88.

force of originality and acquires the status of a common meaning,” which “produces a loss of memory” and makes the metaphor “the site of a constant forgetting.” Turning to Deleuze, he encourages analogies that “retai[n] difference” and “confrontation,” and do justice to the “improper use of terms, [their] deviant relationship.”¹²⁰ Yet I would argue for the value of the prospect that a juxtaposition’s initial sense of incongruity may be forgotten and that what appears strange may grow into a “common meaning.” Aronovitch, whose view is close to the position Panagia criticizes,¹²¹ gets to this when he turns to Aristotle’s theory of slavery to argue that “what was essentially lacking was not some general concept of humans (which [Aristotle] did possess) or special deduction from it, but rather an array of particulars and of appropriate analogies.”¹²² It matters a great deal that Aristotle’s distinctions offend us today, that it is untenable to deflect accusations of disavowal based on them, and that the analogy between the types of understanding he distinguishes compels us more than their partition. Contemporary society may still be structured by mechanisms through which types of intelligence are teased apart, but this does not make its partitions identical to Aristotle’s, lest we ignore people’s lived experience and the accomplishments of political struggles.

One possible objection to reading the framework I have developed so far into Rancière could be his discussion of the Roman plebs’s secession in 494 BC. In *Disagreement*, he recounts that the consul Menenius Agrippa visited the seceding plebeians to explain why it was essential that they return to their proper place in the city. These pages have been read as evidence of Rancière’s belief that inegalitarian discourses fall into performative contradictions.¹²³ He indeed

¹²⁰ Davide Panagia, *The Poetics of Political Thinking* (Durham: Duke University Press, 2006), 58-59 and 69.

¹²¹ Aletta Norval discusses Panagia and Aronovitch as two opposite poles in *Aversive Democracy* (Cambridge: Cambridge University Press, 2008), 89-101. But I do read Aronovitch as being attentive to the political efforts it takes to constructing equivalences and to give them weight.

¹²² Aronovitch, “The Political Importance of Analogical Argument,” 90.

¹²³ See Marchart, “The Second Return of the Political,” 135 and Myers, “Presupposing Equality,” 60.

explains that, to teach the plebs that “they are only the stupid members of a city whose soul is the patricians,” Agrippa “must assume they understand what he is saying” and “must presume the equality of speaking beings, which contradicts the police distribution of bodies who are put in their place and assigned their role.”¹²⁴ Yet this scene is more complex than a binary confrontation between the plebeians and Agrippa because Agrippa is not operating within the distribution of the sensible that patricians are enacting and plebeians are challenging.

If Rancière writes so assuredly that Agrippa’s speech “contradicts” the prevailing order, it is because he had earlier showed Agrippa to be an “atypical” patrician. Agrippa was seduced by the interlocutory situation that plebeians polemically staged, allowing himself to be drawn into it and conceding the quarrel between patricians and plebeians. But other patricians, namely Appius Claudius and his fellow “intransigent patricians,” have not. To them, Agrippa is the “victim of sensory illusion” if he imagines that there is a “common stage where plebeians and patricians could debate anything.” Worst, he is a “class traitor” who “made a fatal mistake in imagining that words were issuing from the mouths of the plebs when logically the only thing that could issue forth was noise.”¹²⁵ The content of Agrippa’s speech may be justifying the order that Claudius perceives, but he has defected from patrician ranks. He has taken on the plebs’s repartitioning of the sensible, acting as if it is right, whereas Claudius is acting as if the prevailing distribution is right. As such, the dissensus plebeians are litigating does not oppose them to Agrippa, but to Claudius. It is against the latter’s inegalitarian frame that the plebs enacts a politics of the “as if.” At issue is whether intransigent patricians are contradicting the conditions of their own practices in believing that the plebs is not owed an explanation of the sort Agrippa provides. Agrippa’s defection is undoubtedly important, but only in that it makes it easier for plebeians to make

¹²⁴ Rancière, *Disagreement*, 33.

¹²⁵ *Ibid.* 23-25.

their repartitioning of patricians' commitments seem more self-evident.

A more straightforward illustration of Rancière's perspective is France's 2005 referendum on the *Treaty* establishing a *Constitution* for *Europe* (TCE), which I evoked in my first chapter to emphasize that popular capacities get disqualified even within democratic institutions. The referendum was called by President Jacques Chirac, who expected the TCE to be easily adopted. But the campaign grew heated. Part of the opposition was driven by the far-right, but the *non* was carried to an unexpected extent by left-wing voters and politicians who pronounced themselves favorable to the European project but demanded "another Europe."¹²⁶ They argued that the TCE would further entrench what they denounced as neo-liberal governance.¹²⁷ On May 29, 2005, 55 percent of voters rejected the TCE. Most leaders of France's governmental parties were united in the TCE's defense, and opposition was largely disqualified as unreasonable and politically illiterate, both during the campaign and in its aftermath. A *non* vote was cast as an out-of-place tantrum against President Chirac, a sign of misinformation (a former Prime Minister described it as the "agitation of the illiterate"), or a symptom of irrational "populism."¹²⁸ After the TCE's defeat, advocates for European integration, operating under the presumption that the result would have been different had voters been more knowledgeable, focused on the need for

¹²⁶ See Henry Milner, "'Yes to the Europe I Want; No to This One.' Some Reflections on France's Rejection of the EU Constitution," *Political Science & Politics* 39:2 (2006): 257-260 and Sylvain Brouard and Vincent Tiberj, "The French Referendum: The Not so Simple Act of Saying Nay," *Political Science & Politics* 39:2 (2006): 268. For more on the idea that left-wing social movements are working to articulate the vision of "another Europe," see Donatella della Porta's work on what she calls "critical Europeanists," for instance in "Social Movements and the European Union: Eurosceptics or Critical Europeanists?" Notre Europe Policy Paper, 22 July, 2006. Web. <www.institutdelors.eu/media/Policypaper22-en.pdf>

¹²⁷ Article 177 proved controversial, for instance. It specified that, "The activities of the Member States and the Union shall include:... the adoption of an economic policy...conducted in accordance with the principle of an open market economy with free competition." European Union, "Treaty Establishing a Constitution for Europe."

¹²⁸ François Hollande, then the Socialist Party's head, called the prospect of a *non* victory "the crisis, the irrational." The *non* "is populism, which once led Italy to what we know," agreed fellow Socialist Martine Aubry. Remarks cited in this paragraph can be found at: Jean-Baptiste de Montvalon, "Un Grand témoin dans la campagne," *Le Monde*, May 6, 2005, Serge Maury, "Michel Rocard en propagandiste du non," *Marianne*, February 19, 2005, Jean Valbay, "Mauroy, Lang et Aubry accablent les dissidents PS," *Le Figaro*. April 1, 2005, and Nicolas Barotte, "Pour Hollande, 'tout commence aujourd'hui,'" *Le Figaro*, 21 March 2005.

pedagogical campaigns that would familiarize citizens with the European Union (EU). And politicians by-and-large ignored the vote's results, as the Treaty of Lisbon that carried substantial similarities to the TCE was ratified through a parliamentary-only route less than three years later.

Of interest in the present chapter is the stakes of inviting the electorate to weigh in if one does not respect their competence to do so and if one sees no issue overruling the popular verdict afterward.¹²⁹ It would seem that calling a referendum implies a commitment to either answer's validity, in which case the disqualifying discourses that accompanied the *non*'s win were a disavowal by political elites of the implications of the very mechanism they were employing to imbue European integration with more popular legitimacy than it was perceived to have. But consider a quip by Valéry Giscard d'Estaing, the former French President who presided the convention that drafted the TCE. He stated during the campaign that, "It is a good idea to have chosen a referendum, as long as the answer is yes."¹³⁰ While I certainly allow that Giscard meant this as a *bon mot*, it nevertheless provides an instructive window into the referendum's logic.

Rancière has discussed this referendum as exemplifying the contentiousness of what equality the police is already disclosing. As he presents the dilemma, "if an electoral body is asked the question of whether it is for or against a measure proposed by its government, then one must of course have included in the proposition the possibility of a negative response," but "even as it gave us the choice of voting yes or no, we were expected to say yes, or else avow ourselves as worshippers of nothingness."¹³¹ Rancière explains this simultaneity with a point that will seem counter-intuitive to those inclined to a radically democratic attitude: that, for some of the partici-

¹²⁹ The Treaty of Lisbon was ratified under President Nicolas Sarkozy, which is to say not under the same person who called the referendum in the first place. But the 2008 parliamentary ratification process proved largely uncontroversial among former TCE advocates; nearly two-thirds of members of Parliament voted to ratify it.

¹³⁰ De Montvalon, "Un Grand témoin dans la campagne."

¹³¹ Jacques Rancière, *Chronicles of Consensual Times*, trans. Steven Corcoran (London and New York: Continuum, 2010), ix, 141 (translation modified). Lest Rancière's formulation seem hyperbolic, one politician did call the *non* the "choice of nothingness" in 2005 (Maury, "Michel Rocard en propagandiste du non").

pants in this situation, the inclusion of a negative response cohered with the expectation that only an affirmative one was viable. “The electoral process increasingly resembles the exercises of school maieutics, in which the schoolmaster who knows the right response pretends not to know it and to be leaving it to the initiative of the students to find it out.” Viewed thus, “the free choice accorded to popular suffrage actually turns out to be a test of its ability to discern the correct response and of the state of health which enables it to do so or prevents it from doing so.”¹³² Calling a referendum need not have committed the questioner to the validity of both answers because the process was framed around the preemptively inegalitarian outlook that some people’s economic destitution or cultural marginalization bars them from rational decision-making, so that a negative vote is a symptom of the anxieties that blind some voters to the underlying reality of which they had the occasion to become the active subjects.¹³³ An unexpected response is prospectively framed as marking one unfit to govern oneself.

But Rancière argues that, as the campaign began, many voters “inversely judged that the question was a real question, [a matter]... for the sovereignty of the people, and so a matter to which the people could respond no as well as yes.”¹³⁴ This is a striking point because it describes the very position that Habermas, Foucault and Benhabib defend ontologically (that to a question one can answer no as well as yes, or even with silence) as an uncertain political judgment that must be struggled for in cases where the issue arises of what exactly an invitation to respond implies. The referendum was political in Rancière’s sense because citizens acted *as if* its organization was an open-ended invitation to debate, *as if* the set of issues whose resolution is open to popular judgment included European integration. And while the mobilization did wane after the

¹³² Rancière, *Chronicles of Consensual Times*, 141-142.

¹³³ Rancière suggests that this speaks to a broader habit of “interpretat[ing] every vote that does not conform to the official expectations as an expression of a pathological state,” in *Chronicles of Consensual Times*, 141.

¹³⁴ Rancière, *The Hatred of Democracy*, 79, translation modified.

referendum ended, Rancière continued to insist that it had been different than most electoral processes in that it had been an “open consultation.”¹³⁵ Given the tenor of his earlier essays, it is safe to say that Rancière did not mean by “open consultation” that politicians understood the implications of soliciting popular suffrage differently in this case than they usually did; he meant that the citizens who engaged in the campaign refigured this solicitation as an encouragement to debate multiple viable answers. The referendum illustrates Rancière’s interest in actors who not only make claims on those who ignore their voice, but who also stage their address as taking seriously what they are already called to do by augmenting what that call signifies.

Douglass’s elisions

Rancière’s paradigm, as I have interpreted it, helps clarify why Douglass attributes egalitarian presuppositions to slaveholders. Mills is right that, at such moments, Douglass elides distinctions between different dimensions of humanity and equality; Mills is also right that these distinctions are an obstacle to accusing slaveholders of committing disavowals or internal contradictions. But this does not mean that Douglass’s elisions were wrong; this was not an error on his part. The purchase of his elision lies elsewhere: not in revealing a disavowal, but in publicly collapsing the distinctions that made it tenable for slaveholders to partition personhood as they did, and in producing a collective judgment that these dimensions really are indistinguishable, that slaveholders therefore really are committing a wrong on their own terms.

In *Crafting Equality*, Celeste Condit and John Lucaites trace how the “public specification of equality as a public value” evolved in U.S. history; they attribute these changes to “extensive work” by “oppositional leaders” to “justify any alteration” of this specification.¹³⁶ What specifically comes through in Douglass’s Fourth of July address is that such work can involve resig-

¹³⁵ Rancière, *Moments Politiques*, 213.

¹³⁶ Condit and Lucaites, *Crafting Equality*, 3 and 78.

nifying equality to make sense of the presence of a contradiction, not just “between [America’s] creed and practice,”¹³⁷ but also within slavery’s very practices. When Douglass matter-of-factly states that, in ordering slaves to perform an activity like “ploughing fields,” slaveholders were conceding the point that slaves have the “moral, and intellectual” capabilities relevant to their “equal humanity,” and hence to their freedom, he is enacting an analogy between different ways of specifying equality, one that antebellum Americans acknowledged as common and one that they did not. Against slaveholders who were acting as if these specifications of equality could reasonably be separated, he acted as if there was a clear connection between them. This highlights that, even as it seeks a forgetting, analogical reasoning need not be about minimizing dissonance and conflict for the sake of a consensual approach. It may be employed instead to introduce a discordance within the perspective of those who deny one’s standing and voice, and in so doing to stage oneself as already authorized—if only tacitly—to address them.

Mills does briefly consider the possibility that Douglass’s accusation should not be evaluated through the lens of its analytical correctness. His reason for concluding that it should be is that Douglass was not “playing a part,” that he did not “consciously decid[e] to adopt” a “sophisticated naivety” that would enable him to “refus[e] to see any exclusionary racial subtext.”¹³⁸ But this focus on sincerity and private belief obscures the alternative I am proposing. My point in highlighting the work undertaken by Douglass’s rhetoric is not that he was engaging in cynical play-acting.¹³⁹ My emphasis is on Douglass testing the public plausibility of a conceptual frame

¹³⁷ Garrison, *Selections*, 53.

¹³⁸ Mills, “Whose Fourth of July?” 115-116.

¹³⁹ Some scholars do use the idiom of acting *as if* to designate the idea of a deliberately cynical or a delusional practice. Richard Sennett uses it to describe people whose “enactment of fantasy” deluded them into falsehoods and makes them “los[e] touch with the world.” Richard Sennett, “Afterword,” in *Forest Hills Diary*, by Mario Cuomo (New York: Random House, 1974), 159 and 176. In very different contexts, Lisa Wedeen and Milton Friedman also use the idiom to designate the idea of acting as if was true even though it is obviously absurd or avowedly false. Lisa Wedeen, *Ambiguities of Domination* (Chicago: University of Chicago Press,

within which slaveholders appear to be wrong on their own terms, irrespective of whether he himself “believed” this. The politics of his address, as I understand it, is a bid to get the frame he enacts to compel others as the correct one for interpreting slaveholders’ commitments.

The difficulty we face today to notice the mechanisms slaveholders had available to them with which to laugh off accusations of disavowal shows what Douglass stood to gain from acting as though he was not noticing those mechanisms either. What was a provocative proposition to nineteenth-century listeners strikes us as self-evident; abolitionism is an instance in which political struggles augmented the understanding of equality in a way that eclipsed their own polemical quality. This is politically fortunate. But the active quality of Douglass’s accusation is missed when we transpose it to a theoretical level—whether to reproduce it or to disprove it, as Mills does—without paying attention to the work it took to construct this reconfiguration and to have it make sense to others as the correct account of slaveholding practices’ inexorable implications. The problem of misrecognizing Douglass’s predicament is that we also overlook what it takes for still-emerging sociopolitical movements to navigate the problem of uptake.

This also informs the political stakes Douglass infuses to his brief exchange with Covey in *Bondage*. I have pointed to many passages, all of which precede this confrontation, in which Douglass explains that questions can function as a “final silencer.” But *Bondage* also lays out the prospect that when a question is asked an open-ended response is not only possible but actually solicited. Indeed, *Bondage* significantly expands the *Narrative*’s summary of the *Columbian Orator*’s dialogue; it highlights at every step that this fictional slave’s responses were the result of direct questioning. The slave is “called upon to reply,” after which “the master insists upon his

1999) and Milton Friedman, “The Methodology of Positive Economics,” in *The Philosophy of Economics: An Anthology, Third Edition*, ed. Daniel M. Hausman (Cambridge: Cambridge University Press, 2008 [1953]).

further speaking,” and later still the slave is “invited to the debate.”¹⁴⁰ Douglass was not endorsing the *Columbian Orator* as a realistic portrayal of how such a dialogue would go. But this insistence is a fascinating choice given *Bondage*’s portrayal of the question form as a ritual that manifests social adherence; it is also fascinating in light of the fact that this back-and-forth is setting up Douglass’s defiant answer to Covey’s question, a moment whose dramatic quality *Bondage* isolates and draws out in a way the *Narrative* did not. So why has Douglass made the fight into the culminating point of a recurring thematization of the question form’s function?

By the time the readers of *Bondage* reach the fight with Covey, they have been presented different figurations of what asking questions implies. Absent this presentation, Douglass’s “Yes, sir” would only be a representation of his courage and vitalist self-assertion, much like his decision to fight Covey in the first place.¹⁴¹ But in its wider context, this scene puts on the table a disagreement as to what the act of asking questions actually concedes, and as to whether a question can ever just be a rhetorical question. Against Covey, who acted as if asking a question ought to put a slave in his place, Douglass responded as if it goes without saying that his own capacity to resist—to fight, to talk back—was something that Covey’s acts already conceded. This concession would matter because it would complicate Covey’s public justification for punishing him,¹⁴² and because it would show defenders of slavery to be hypocritical when they argued, as they did,¹⁴³ that slaves lacked the ability or the disposition to resist and fight.

¹⁴⁰ Douglass, *Bondage*, 82.

¹⁴¹ Neil Roberts casts Douglass’s “Yes sir” as compounding the fight’s demonstration that “resistance entails self-consciously choosing to counter any forces acting negatively against one” (*Freedom as Marronage*, 75).

¹⁴² Of course, slaveholders did not need to publicly justify punishing a slave. But Covey, as he is represented in *Bondage*, does. *Bondage* holds him up to a wider public as exemplifying slavery’s arbitrariness—and the need for justification is also valid as something internal to the scene *Bondage* depicts because, as scholars have noted, the fight’s mise-en-scène in *Bondage* is more “communal” than in the *Narrative*, with others witnessing and actively participating in its unfolding. Sekora, “Mr. Editor, If You Please,” 624. See also Bennett, “To Narrate and Denounce,” 15-16 and Gooding-Williams, *In the Shadow of Du Bois*, 166 and 189.

¹⁴³ See Cohen, “The Arc of the Moral Universe,” 310 and 314.

As such, part of the reason this exchange is politically charged is that it doubles as the production of a practical uncertainty that forces the readers of *Bondage* to wrestle with the meaning of slavery's mechanisms and the slave's role within them in a way they might not have otherwise. And elements in the rest of the story—that Douglass is able to back up his defiance, that Covey eventually gives up imposing any punishment on Douglass, as though the fight and question really was a test of his equality, and that Covey calls upon other slaves to help him subdue Douglass, which they also refuse to do—conspire to persuade the reader that Douglass's figuration of slavery's presuppositions are more plausible than his opponent's.

Negotiating the problem of uptake

How did Douglass's dramatization of the accusation of disavowal help him navigate the problem of uptake? One answer would be that constructing this charge provided him with a rationale for bothering to address defenders of slavery; if he could make it compelling *to them* that they already treated him as equal, it could give him an opening to press his case. But my account so far (for instance, I paid attention to the meaning of "Yes, sir" for *his readers* rather than for Covey) points to another answer: Such accusations were part of a complex strategy of getting the relatively sympathetic but apathetic audiences he was addressing to treat his words with urgency. Douglass purported to address a third party—one actually invested in slavery's defense—whose alleged contradictions his audience would want to distance itself from, especially as Douglass was running his actual audience together with this third party.

This returns us to a point I made at this chapter's outset: Understanding how Douglass approaches the problem of uptake involves paying attention to how he frames the interlocutory situation of the speeches and texts whose uptake he is concerned for. Take his Fourth of July speech. Frank writes that it "marked a clear break from traditional Fourth of July oratory," that

Douglass employed “unexpectedly discordant” rhetoric that would have seemed “to his audience no doubt unexpected and shocking.”¹⁴⁴ It is true that, in this speech, Douglass draws a stark line between himself and a second person “you” and faults his audience for betraying the commitments of the American polity. But this was in line with a lengthy tradition of radical Fourth of July oratory among early nineteenth-century labor and anti-slavery activists.¹⁴⁵ Garrison himself delivered numerous fiery speeches on Fourths of July, declaring in an 1829 address that slavery “should make this a day of fasting and pray, not of boisterous merriment and idle pageantry—a day of great lamentation, not of congratulatory joy.”¹⁴⁶ Moreover, Douglass, who was after all a very prominent figure in abolitionist circles by 1852, gave his Fourth of July speech at the invitation of an anti-slavery organization, and he did so in the same hall (the Corinthian Hall) in which he had recently delivered eight anti-slavery lectures in the winter of 1850-1851. (In fact, he begins by saying he has spoken in the hall before and by saluting the “familiar faces.”¹⁴⁷)

My point is that there are reasons to think that Douglass’s speech tracked what his audience expected to hear more closely than what Douglass’s self-presentation suggests. This matters because it suggests that we should not take the binary division that Douglass designates as the context of his address at face-value. It forces us to pay attention to the way in which Douglass stages his predicament and his relationship to the audience as a crucial part of the work he is doing rather than as the given parameters within which he must work.

An instructive parallel to how Douglass stages his Fourth of July speech is his letter to

¹⁴⁴ Frank, *Constituent Moments*, 214-215.

¹⁴⁵ Jasinski shows that abolitionists used Fourth of July oratory starting in the early 1820s, in “Rearticulating History of Epideictic Discourse,” 71-89.

¹⁴⁶ Garrison, *Selections*, 49. See 44-61 and 188-200 for Garrison’s Fourth of July speeches. William Watkins’s letter to the *Genius of Universal Emancipation* on July 4th, 1831 also contains language that Douglass echoes two decades later. See Jacqueline Bacon, “‘Do You Understand Your Own Language?’ Revolutionary Topoi in the Rhetoric of African-American Abolitionists,” *Rhetoric Society Quarterly* 28:2 (1998): 59.

¹⁴⁷ Douglass, *Selected Speeches and Writings*, 188-189.

Thomas Auld in September 1848. “I have never forgotten you, but have invariably made you the topic of conversation,” he writes. But the letter is itself designed to make Auld, and by extension the relationship between Douglass and this “you,” into a topic of conversation for a wider community. That Douglass published this letter in *The Liberator*¹⁴⁸ speaks to his fondness for using the second person in texts and speeches that will mainly (if not only) be read by people other than their ostensible addressee. While my first chapter began by mentioning the “dread... not to address letters without addressee,” here Douglass addresses a letter that is unlikely to meaningfully reach its designated addressee as something for others (whoever reads *The Liberator*) to witness and comment on.

This is not to say that Douglass faced a smooth dynamic with those people who came to hear him (as evidenced by Garrisonian condescension) or who picked up *The Liberator* and his autobiographies. But his predicament toward these people was different from the one he would have faced vis-à-vis slaveholders and slavery’s active defenders. One distinct problem he had to confront was apathy toward the plight of the slaves on the part of white Americans for whom slavery, however regrettable, was unworthy of the disruption emancipation would cause to the social fabric. In a 1850 lecture (one of those delivered in Rochester’s Corinthian Hall), Douglass evokes meeting white Americans who “speak of the enslavement of their fellow-men with an indifference and coldness which might be looked for only in men hardened by the most atrocious and villainous crimes.”¹⁴⁹ The pivotal role to be played by Americans who do not yet feel strongly about slavery is clear in *The Heroic Slave*, the short story featuring a man who converts to abolitionism upon hearing a slave’s soliloquy. Douglass chose to make the converted a North-

¹⁴⁸ The letter, originally published in *The Liberator* on September 22, 1848, can be found in Douglass, *Selected Speeches and Writings*, 111-117.

¹⁴⁹ Ibid. 164. Marshall remarks that Douglass thematized “most white Americans” “imperviousness” and “tacit acceptance” of slavery. Marshall, *The City on the Hill from Below*, 64 and 89.

erner with preexisting sympathies (“he had long desired to sound the mysterious depths of the thoughts and feelings of a slave”); Mr. Listwell was not converted from a pro-slavery attitude but from “my past indifference to this ill-starred race.”¹⁵⁰

As such, on some occasions Douglass staged his relationship with his addressees in a manner that collapsed a tripartite division (black speakers, white Americans invested in protecting slavery, white Americans who do not find slavery objectionable in the way necessary to spur them to political action) into a binary between black speakers and an undifferentiated second person. Besides constructing discordances within the system of slavery, Douglass is thereby attributing to his audiences and readers, who may disdain his speech for different reasons than slaveholders would, the same type of hypocrisy as the latter.

I see three upshots to this maneuver. First, it forces his readers and listeners to reckon with their own relationship to slavery and to black speakers in light of the more extreme relationship being staged in front of them. Implicating a wider public into this accusation produces an incentive for them to not only agree but to also rally behind his call to prioritize abolition.

Second, it is a bid to change a wider community’s sense of how to interpret signs of black humanity and slaveholders’ treatment of them. I argued earlier that the political stakes of accusing slaveholders is to persuade others that the conceptual frame supporting that accusation is the correct one for interpreting their practices. We can now see that the people Douglass is looking to persuade are not exactly the people whom he is accusing, even though he runs them together. So part of his endeavor is to turn public opinion against the mechanisms and discourses by which slaveholders specifically partition personhood.¹⁵¹ In this context, staging himself as addressing

¹⁵⁰ Douglass, *Selected Speeches and Writings*, 222-223.

¹⁵¹ Douglass emphasizes public opinion’s importance in *Bondage*: “Public opinion seldom differs very widely from public practice. To be a restraint upon cruelty and vice, public opinion must emanate from a humane and virtuous community. To no such humane and virtuous community is Col. Lloyd’s plantation exposed” (22).

all white Americans is a way to frame the fact that some of them will hear him out (however imperfectly) as evidence for his claim that tacit interlocutory paths already exist and that the system of slavery already concedes slaves' "moral and intellectual capabilities." In a sense, he stages his interlocutory situation in a way that casts his audience in a role similar to the one Agrippa occupied between plebeians and Claudius: In Rancière's story, Agrippa speaking to the plebs painted Claudius's intransigence in a more implausible light, which affected the struggle over the conceptual coordinates of what patricians can credibly deny doing.

Third, it is an effort to shift the responsibility for disrupting the social fabric from abolitionists to the dismissive reactions they encountered from slaveholders. By accusing slaveholders of disavowing their own presuppositions, Douglass frames his own claims as conforming to the rules of the prevailing games, and slaveholders' probable refusal to hear him as a breach. This is important if part of abolitionists' obstacle was the perception by non-slaveholders that changes they demanded were too radical. Rancière also evokes this idea of turning the table on those who who "dare accuse us of revolt" when he talks of "includ[ing he who rejects the argumentative situation] a second time in the demonstration of the fact that he is trying to escape from the situation."¹⁵² Rancière, who sometimes takes it upon himself to rearrange stories to *minimize* the extent to which a political event disrupted the social order,¹⁵³ is clearest about this in "The Cause of the Other," an essay on the brutal repression of Algerians who were protesting in Paris on Octo-

¹⁵² Rancière, *Disagreement*, 53-55.

¹⁵³ He does this in discussing the plebs's retreat to the Aventine Hill, a story originally told by Livy. While Rancière asserts that Livy misses the story's importance, he does not explicitly challenge Livy's details and he attributes to Livy the location of the plebs's retreat (Rancière, *Disagreement*, 29). But Livy wrote the plebs seceded to the Sacred Mount, adding "This is a more generally accepted tradition than the one adopted by Piso that the secession was made to the Aventine." Livy, *The History of Rome, Vol. 1*, trans. Canon Roberts (London: J.M. Dent & Sons, 1905), Book 2.32. Stakes are high: While the Aventine is one of Rome's seven hills, the Sacred Mount is miles away from the city. For Livy, the plebs literally withdrew from the city, putting Rome in grave danger. "How long... would the multitude who had seceded remain quiet? What would happen if a foreign war broke out in the meantime?" (Ibid.) But by changing Livy's story, Rancière portrays the plebs as dividing the city from the inside, making it harder to portray them as endangering Rome's survival. If anything, it is Appius Claudius's intransigence that threatens the community's maintenance.

ber 17, 1961. He suggests that, on that day, the collective sense of who is authorized to appear as a political subject was challenged in such a way that many who had not concerned themselves with the war saw the usual line “between some ‘French people’ and others” in a new light; in resorting to violence to preserve this line, “the State made... possible” a broader movement of French citizens.¹⁵⁴ Rancière is not so naïve as to portray this as a victory for the massacred protesters; he is only talking of the effects it had on others. Similarly, Douglass may have hoped that, if slaveholders’ conceptual landscape were to no longer look obvious, then slaveholders who continued to act on its behalf would be perceived by others to lack grounding for their acts, which may galvanize more white Americans into joining the abolitionist movement.

Conclusion

An absence of reciprocity is an obstacle for radical political actors who prize some degree of democratic interaction, interlocutory address, and argumentative claim-making. So how did Douglass navigate the lack of authorization he was encountering? I emphasized his strategy of presenting himself as already authorized—not just by the American creed, but even by the actual practices enacted by slaveholders. I argued that the value of this presentation should not be located in the exposure of oppression’s secret egalitarian foundations or in the making salient of disavowed truths. Rather, he endeavored to construct analogies between different ways of specifying equality and humanity, as if from the capacity to do one task it follows that one is capable to do another. And he endeavored to make others perceive that analogy as common-sensical by confronting apathetic Americans with this accusation, as if they were part of the same undifferentiated group as slavery’s active defenders. He preemptively set up his ability to embarrass or get through to audiences as evidence that his accusation was right, and that white Americans were

¹⁵⁴ Jacques Rancière, “The Cause of the Other,” trans. David Macey, *parallax* 4:2 (1998): 29.

breaching the social fabric and the rules of the prevailing social games.

What this chapter has drawn out is the possibility that political actors stage themselves as conforming to prevailing expectations even when seizing competence for an activity that was not expected to be within their orbit. They do so by staging a dissensus around the question: Does anything follow from the equality that is already acknowledged? For instance, if community residents can choose between two plans that have been laid out by experts, would it not follow that they can formulate such plans in the first place? Take Schumpeter's view that people have a capacity to "follow or refuse to follow such group leadership as may offer itself" but lack a capacity "to form definitive opinions on [their] own initiative."¹⁵⁵ A sociopolitical movement can try to make that parsing look implausible; in fact, that was part of the stake of the French referendum. AIDS treatment activists used a similar strategy. Mark Harrington describes telling a 1992 research conference that "people with AIDS were giving their bodies for clinical science, but they also needed to be contributing to basic science."¹⁵⁶ He is here drawing a link between two ways of contributing to science in order to point to what AIDS patients were already called upon to contribute (their body) as lending credence to their aspirations to also contribute thoughts on the research.¹⁵⁷ To highlight such claims is not to offer a guarantee that any specific partition of per-

¹⁵⁵ Joseph Schumpeter, *Capitalism, Socialism and Democracy* (New York: Harper Perennial, 1942), 145.

¹⁵⁶ Sarah Schulman, "Interview with Mark Harrington," *ACT UP Oral History Project* through the New York Lesbian & Gay Experimental Film Festival (2003), accessed online 3 Mar. 2005, 58.

¹⁵⁷ I would suggest that Michel Callon's work on actor-network theory (ANT) effectively operates as a theoretical justification of Harrington's argument. Callon, much like Bruno Latour, argues that the world we inhabit is a "sociotechnical agencement," so that conducting scientific research entails activating and mobilizing entire networks of interested "actants." What this means concretely is that scientists depend on the enrolment of humans and nonhumans into their network, a connection they cannot withdraw from; in fact, the way these actants are configured in relationship to one another constructs the world in which we inhabit. As an example, Callon discusses the HIV virus, whose circulation links together a network of agents: "The virus circulates in different forms in the patients' veins, in the researchers' tubes and trials, in scientific publications, and in the dossiers assembled by pharmaceutical laboratories to get authorization for drug trials. This same circulating virus links those actors and imposes a common destiny on them beyond their oppositions and differences." AIDS patients can exploit the fact that they are involved in the research collective *qua* people with a viral identity to also claim a stake in other modes of relating to the virus. See Michel Callon et al, *Acting in an Uncer-*

sonhood (Mills) or intelligence (Rancière) is inherently untenable or will be experienced as such; it is only to draw attention to practices by which activists work to make it so.

The present chapter and my second and fourth chapters have built a vocabulary to describe how some people act in the face of their disqualification. I showed first that adding contributions to a process for which one is perceived to lack requisite qualifications involves enacting the presupposition that anyone can do so (seizure of competence)—and I have now showed that it can also involve presenting one’s contributions as taking seriously what one is already called to do (seizure of authorization). The first dimension entails imitating some of what makes others competent for a task; we all can all do X since they can do X. The second dimension entails drawing an equivalence between this task and another for which we are perceived to be equal; we are already authorized to do X since we are already authorized to do Y. When combined, the logic of this practice is that we can act *as if* the specialized activity whose competence we have polemically seized is equivalent to an activity for which we are already deemed competent.

This politics of the “as if” outlines a path to intervene democratically in specialized spaces and institutions, including governmental ones. People ought to take claims to mastery (the pervasive sense that they cannot and should not participate) as weighty but uncertain judgments, ones they can dispute by enacting reverse presuppositions. What this entails is staging one’s interventions as competent and already authorized; *and* persisting to litigate the subsequent conflicts over how wider publics will make sense of what is occurring. Which competing representation of who is competent for what and who is authorized for what will seem to make common sense? These questions are part of what is at stake in practices of contestatory participation, those practices by which people struggle against their disqualification in the course of contributing to

tain World: An Essay on Technical Democracy (Cambridge: MIT Press, 2009), 184.

the activities from which they are disqualified.

Over the past six chapters, I explored how people confront their disqualification, especially when the claims they make are heard as something else than as attempts to contribute to public life or governmental affairs. I argued that two changes need to be made to the dominant paradigms of political theory if we are to appreciate how such actors work to seize a seat at the tables at which decisions concerning them are made. First, we must interrogate the assumption that it is only viable to act upon one's participatory aspirations insofar as one is embedded in relations of mutuality. Second, we must refrain from the temptation to resolve at an ontological level the twin predicaments of competence and uptake; doing so blinds theorists to the ways in which disqualified actors navigate the practical uncertainty they face as to what they can do and why they would even bother doing it toward people who deny their proficiency.

By contrast, I have pointed to the distinctive value of New Departure suffragists, AIDS treatment activists, and political abolitionists' persistent engagement toward those who (at best) ignored them. They worked to shift perceptions of what it means to be competent for a task, and they worked to turn a wider community against the disqualifying dismissals that their own interventions were encountering. What has emerged is a neglected strand of activism, one by which people put their contributions' viability and propriety to a public and contentious test, and investigate what follows when they act as if they can participate in the business of government.

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