

Back to the Rough Ground:
Towards a Conservative Theory of Democracy

by

Jared Giesbrecht
J.D., Queen's University, 2008
B.A., University of Lethbridge, 2004

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Supervisory Committee

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Abstract

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This work seeks to recover the critical spirit of conservatism and re-emphasize its goal of stability and resilience in society. I will argue that we should strive to view ourselves as deeply dependent and persistently vulnerable beings rather than free, equal, and rational individuals. An understanding of ourselves as embodied and interconnected patternings-in-the-world – *res ecologia* – will allow us to better recognize a diffuse violence at work in the modern world. I consider the nature of causation and suggest that the internal stability of *res ecologia*, when disrupted, should be a primary concern when considering the nature of violence and domination. I then invite us to understand the violence and domination arising in modern liberal societies – protocolic modulations – as abstract standardization that ensures efficient synchronization between individuated or atomized actors. Further, I suggest that the rapid modulations of this kind of protocolic domination disrupt the structural causation within and between *res ecologia*. In chapter five, I begin to show how this kind of violence and domination is manifest in and through the tradition of liberalism by tracing out a shared, underlying dualistic logic that simultaneously individuates and totalizes. In chapter six, I turn to the role of reason in creating freedom and legitimizing violence. Reason is seen to be contributing to both freedom and domination depending upon whether or not it creates resilience within society that resists standardizations. In chapter seven, I argue that the only way to effectively counter the excessive violence within the dualistic logic of liberalism is to cultivate an ethic of mutual support and restraint that invests society with stability and resilience. Finally, I conclude by contending that a resilient society requires intermediate structures and civil enterprises to instill tradition and reciprocal responsibilities in interdependent familial, socio-economic, and religious life.

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I. INTRODUCTION

“We have got on to slippery ice where there is no friction and so in a certain sense the conditions are ideal, but also, just because of that, we are unable to walk. We want to walk: so we need friction. Back to the rough ground!”
– Ludwig Wittgenstein, *Philosophical Investigations*, 46e

A. The Problem of Liberalism

The problem of liberalism begins with the fact that our world is speeding up. In stating this, I mean to say something that is as sweeping as it sounds. Everything in our modern world is accelerating. Although acceleration is taking place in all manner of relations, it can be most easily understood in technological and social terms: the speeding up of processes of, for example, computation, communication, transportation, resource extraction, manufacturing, consumption, as well as increasing rates of change in attitudes and values, familial relations, religious practices, sexual practices, vocations, social obligations, and mores. And, importantly, these changes have facilitated the push to ensure legal, economic, and political interactions are taking place with ever-increasing rapidity. The kind of acceleration I refer to, therefore, is a distinct feature of modern industrial society; it takes place through a causal interplay between technological, natural, and social changes as well as certain shifts in normative philosophy.¹ This causal interplay of acceleration is a relatively recent development in world history, but it has become a globally pervasive phenomenon. Nothing in our world today remains untouched by this acceleration.

Everything in our world is speeding up. But why do I understand this as a concern? Why is it motivating me to re-evaluate our tradition of liberal democratic theory and its particular approach to justice in law and politics? Simply put, acceleration is a central concern to me because the speeding-up of everything in the world around us, and indeed, our very selves, is not

¹ Causation between behaviour and thought goes two ways, but this dynamic will not be investigated here. The focus is upon how normative reasoning alters behaviour.

simply pervasive – it is transformative. The forward-thrust of acceleration has very real material, social, and spiritual consequences. It means not simply a quantitative speeding-up, but a qualitative change that takes place within the relations that make up our lives and the world. So, it is not simply *more* movement. It is *different* movement. Changes in our temporal structures transform, for example, our culture, economy, and relations with the natural world. Because our being is historical, changes in the networked patternings of our lives means fundamental, qualitative changes in who and what we are. In other words, these transformations have significant normative implications that deserve our attention.

There are some theorists who problematize acceleration simply because they understand liberal democracy as requiring sufficient time for representation, deliberation, etc. They feel that acceleration, if intense enough, will hinder or even dismantle liberal democratic models of political decision-making.² Although these folks are tuned in to an interesting problem regarding acceleration, this is not my concern. I do not seek to protect our liberal democratic model of governance from the pressures of acceleration. Instead, I endeavour to problematize liberal democracy itself and to demonstrate how acceleration, and the dramatic transformations that accompany it, are fueled by its underlying philosophy. Indeed, my goal is to show how liberalism itself is fueling this acceleration and then suggest some reasons why we should seek to re-discover a normative philosophy that developed in opposition to the liberal tradition.

Before discussing liberalism and examining its theoretical foundations, however, we might question a little further why acceleration is a problem worthy of our consideration. I will

² For example, William Scheuerman argues that traditional institutions of liberal democracy (e.g. a separation of power) are grounded in temporal assumptions and, more importantly, “[t]he legitimacy of liberal democratic rule is predicated on the necessity of wide-ranging but time-consuming deliberation and debate.” William Scheuerman, *Liberal Democracy and the Social Acceleration of Time* (Baltimore: The Johns Hopkins University Press, 2004) at 3, 4. Specifically, he suggests that the legislative branch was to be slow, deliberate and future oriented, the executive was to be generally more expeditious and present oriented, and the judiciary was to be retrospective. However, the current speed of the social and economic world tends to undermine the importance of the legislative body’s work and put greater emphasis upon the executive. And, increasingly, courts are beginning to take on forward-looking tasks more akin to traditional legislatures. See *ibid* at xvi.

be arguing that acceleration should be a central concern when theorizing regarding justice in law and politics because our world is not only speeding up, but this acceleration in our rates of change is causing significant structural violence. We are now moving so fast forward that we are losing our connectivity to our past and this disconnection hinders our ability to live in keeping with the patternings of our nature and our communal traditions. So, acceleration is a problem because rapid change fragments and dislocates; it does violence to the material, social, and spiritual network patternings that make up our world and us. That is, transformative change violates the relations of our lives and creates a kind of structural violence through processes of destabilization, disruption, and displacement. This kind of disconnection produces a radical disorientation and disintegrates society. And, I will suggest in what follows that, although indigenous peoples and traditional communities are perhaps feeling this disintegration of society most acutely, no one remains unharmed by the isolation and disorientation that has become rampant in the modern world. The patternings of the world possess a kind of inherent stability within their structures and the transformations of acceleration violate this stability. There is a natural or, in other words, a relatively persistent ordering that makes up the world. Although these patternings are ever-changing and subject to reconfigurations through history, they nevertheless possess stability and resilience in the face of change. So, there is always change and flux in network patternings, but dramatic change is violence; it is violating the integrity of networks as patternings of relations existing and persisting through time.

In order to understand acceleration and the nature of change in the modern world as well as its significance for legal and political philosophy, we must give some thought to its underlying cause – standardization through the advancement of protocol. By “standardization” and “protocol” I refer to a homogenization of the structures and processes taking place in the development of patternings. This is a homogenization or universalization that takes place

through a process of abstraction away from the diverse temporal experiences of various locales. Protocol, if it is to be effective in governing through coordinating action, will homogenize through standardization. For, in order for protocol to transcend the variations and deep diversity within the patternings of the world, it must universalize. It must develop a kind of homogeneity or standardization in order to open up connectivity and ensure effective co-ordination. In this manner, standardization through the advancement of protocol collapses space and time through universal co-ordinations and symmetrical synchronizations that are only possible in abstractions away from the differences and diversity of real-world patternings. Protocol governs relations in and through modulations that perpetually re-make network patternings. Therefore, we might think of standardization as being represented or manifest in the synchronized violations of the modulations of protocol which continually disrupt the internal pattern-developing or pattern-re-enforcing changes of network patternings. As such, they should be understood as a kind of structural violence active in the modern world.

A couple questions still remain: How might this general discussion of standardization, patternings, and protocol relate to legal and political philosophy? And, more specifically, in what ways will I suggest that this concern regarding the acceleration that is caused by standardization will lead us toward a conservative approach to democracy? Not only is acceleration being facilitated and caused by standardizations that are abstractions away from the deep differences of the world, but there is another level of causation underlying acceleration. The standardizations are fueled by the logic at work in the core normative commitments of liberalism. When standardization takes place, the local and particular in patterned relations must be transcended through a process of abstraction. For, it is only in the abstract that the broad coordination and symmetrical synchronization of standardization can take place. This process of abstraction involves a de-personalization, de-territorialization, and atomization as it moves away from the

life-worlds of persons to minimize the specificity and maximize universality. I will be arguing that liberalism, although it is a diverse and multifaceted tradition, contains within its most fundamental orientation, a dualistic logic of abstraction that manifests itself in the homogenizing impulse of protocolic standardization that fuels acceleration.

This homogenizing impulse shows itself in many different ways. For example, within mainstream liberal legal and political theory, discussions regarding the nature of justice, albeit unwittingly, consistently problematize difference and specificity. The question motivating each new scholarly work is nearly always the same: how can we manage the tension between freedom and equality to ensure our interaction as individuals and communities produces a more just world? In my search for a conservative approach to democracy below, I take a step back. I question the assumptions underlying this mainstream project and consider the role these assumptions play in preventing us from pluralizing our societies. Specifically, I argue that the problematization of difference stems from the fact that liberal political theory has developed a dominant language of normative theorizing built upon a dualistic logic that simultaneously individuates and universalizes. This logic undermines the localized normative and political relations of communities and therefore prevents pluralism from deepening beyond a relatively superficial interactionalism. So, this logic fuels acceleration by standardizing within the abstractionism of an atomism that simultaneously individuates and totalizes.

Therefore, to summarize, this project represents an attempt to (a) identify an underlying logic at work in the 21st century's accelerating pace, (b) characterize and re-evaluate the normative theory animating this logic, (c) point toward an alternative normative theory and, (d) suggest some of the implications this conservative normative theory might have for legal and political theory. But, why turn to normative philosophy? First, as mentioned, the transformations taking place in and through modern acceleration have important normative implications. Second,

it is my contention that the core normative commitments of liberalism are fueling standardizations that, in turn, fuel acceleration. For example, liberalism is motivated by a normative commitment to ensuring all persons are treated as free, equal, and rational individuals. In contrast, this project represents an attempt to re-discover and re-vitalize political relations built upon conservative principles of peace, order, and good governance. As such, it is motivated by a different understanding of human nature and their being-in-the-world than liberalism; it represents a commitment to fostering the normative orderings needed for stability and resilience in society.

B. The Revival of Conservatism

It should be acknowledged up front that the language I will be using may appear strange and even confusing. Indeed, the story I have just told with its emphasis upon the underlying normative logic behind the liberal tradition is itself quite likely foreign to many readers. There are a number of places where my concerns regarding a diffuse violence and institutions built upon liberal principles stem from a recognition of ordering in the universe (and therefore normativity) that is genuinely transcendent.³ My comfort with talk of transcendent orderings in

³ By “genuinely transcendent” I mean experience of that which comes from beyond ourselves (ontologically and epistemologically). This notion of transcendence in the ordering of the universe has provided the foundation for pre-modern understandings of natural law. That is, it has been understood that natural law requires transcendence to give the ordering of the world its “ought” or its purposiveness. Although this idea of transcendence is very much out of style in today’s world, there is a close cousin to natural law found in the revival of ecological constructivism. For an example of this kind of thought, see Michael M’Gonigle, “Green Legal Theory: A New Approach to the Concept of Environmental Law” (2008) 4 *Ökologisches Wirtschaften* 34-38 and Michael M’Gonigle, “A New Naturalism: Is There a (Radical) ‘Truth’ Beyond the (Postmodern) Abyss?” (2000) 8 *Ecotheology* 8-39 [M’Gonigle, “A New Naturalism”]. M’Gonigle seems to argue that the perpetually unknown complexities of the world function as a kind of transcendence arising out of the immanence of the world as we experience it. Or, in other words, there is a disconnect between the finitude of our understanding and the complexity of the world that ensures an experience of transcendence in our experience of nature. So, we are able to come to an understanding of the natural law in and through our phenomenological experiences of the natural world rather than from rationalist abstractions and projections. However, the question from the natural law theorist is: Why should we believe that our experience of the natural world is not simply an extension of ourselves? Or, indeed: Don’t we need a truly genuine transcendence (i.e. ontologically and epistemologically) to give us the “ought” of natural law? For, if we simply come to know the natural law through our encounter and wrestling with the natural world, there really is nothing that prevents this natural world from simply being our own construction - i.e. the ordering of the world is simply our own projection. If there is no fundamental break between immanence (our experience of ourselves and our world) and

the universe leads me into ways of doing political and legal theory that are at odds with the dominant liberal tradition. The Anglo-American tradition of legal and political philosophy (in the last few centuries) has been dominated by debates among liberal constructivists and liberal positivists who share a fundamental skepticism of any appeal to transcendent norms manifest in and through tradition. Reformist liberalism has so fundamentally shaped the last few centuries of western philosophy that reverence for tradition and a concern for stability in systems of legal, economic, and political relations appears somewhat ridiculous to the modern reader. To be sure, talk of tradition is often accepted, but only if it is stripped of its authority and relativized within a larger project of constructing a new, forward-looking political and economic project – i.e. it is no longer the carrier of transcendent authority. There is a radical divide, therefore, between the progressive idealism that inspires a spirit of irreverence within liberalism and the devotion to the past that inspires a spirit of lamenting within conservatism. For quite some time we have been captured by an iconoclastic methodology of throwing off what has become seen as the shackles of tradition. An approach to theorizing regarding legal and political norms that seeks genuine devotion to tradition and submission to its expression of transcendent authority is shocking and dramatically out-of-step with contemporary debates within legal and political theory. So, because my arguments represent an attempt to revive in some small way a counter-tradition to the dominant liberal paradigm of modern thought, we should expect some degree of strangeness or awkwardness in the discussion that follows.

Although I am appealing to more traditional conceptions of authority and normativity, I am motivated by a relatively new problem (what I will call the modulations of protocolic control)

transcendence (something truly outside and beyond ourselves), there cannot be genuine transcendence. In other words, post-modern approaches to transcendence through ecological constructivism reveal a striving to overcome ourselves coupled with the belief that we are never able to do so. This refusal to believe in that which is beyond us as something that comes to us from beyond and transforms us disallows what I would call a genuine engagement with transcendent authority.

as well as a sense that modern liberal thought not only lacks the means of addressing this problem but actually exacerbates the problem. The modulations of protocolic control have arisen as a result of both liberalism's idealistic disdain for the authority of tradition as well as our corresponding drive to control our future through technique and technological advancements. This forsaking of the past involves an attempt to minimize risk by means of simultaneously isolating actors and re-uniting them under universalizing procedural mechanisms of governance. But this transformation of patterns of interaction threatens humanity and our dependence upon our natural environment in a relatively new way. This new interactionism at work within the world destabilizes and delocalizes in order to facilitate globalization and our domination over the natural world. Ironically, our attempts to minimize the risks posed by the darkness, the wilderness, and the stranger have given rise to extremely risky ways of life that are increasingly fragile and unable to withstand the diffuse violence of a globalized world. Within this radical instability and insecurity, the decaying of the modern nation state provides us with a tangible focal point for beginning to re-consider what it means to live lives characterized by just relations and democratic patterns of governance.⁴ What does it mean to cultivate security and resilience in

⁴ Numerous books have been published on the end of the nation state. For example, see Martin van Creveld, *The Rise and Decline of the State* (Cambridge: Cambridge University Press, 1999), Jean-Marie Guéhenno, *The End of the Nation-State*, trans. by Victoria Elliott (Minneapolis: University of Minnesota Press, 1995), and Kenichi Ohmae, *The End of the Nation-State: The Rise of Regional Economies* (New York: Free Press, 1995). Most relevant, though, is Philip Bobbitt's work showing how the state is changing in the 21st century. As Bobbitt explains, "[w]e are at a moment when our understanding of the very purposes of the State is undergoing historic change." Philip Bobbitt, *The Shield of Achilles: War, Peace, and the Course of History* (New York: Knopf, 2002) at 7. The nation state is being disintegrated in a rapidly changing globalized world and the battle over what the new model of the state – a struggle over what kind of governance is legitimate – has begun in earnest. In light of the travails of last century, the new state structure – the market state – is based upon the new promise of maximizing the opportunities of its peoples. See *ibid* at xxvi and 232. The radical instabilities of the late 20th century could not be managed and controlled by the nation state so its fundamental constitution had to change. And, in light of its inability to control the volatility, the new constitution of the state actually incorporates this indeterminacy into the heart of its story of legitimacy through the provision of opportunity. The legitimacy of the state is no longer rooted in norms that give rise to organizational patterns that might insulate or stabilize through steady, direct control. Instead, because control over the instabilities of the modern world increasingly appears to be an unrealistic project, governance in the market state is shifting to a kind of second-order control. Forsaking direct orderings of social and material life, the market state therefore increasingly governs through modulations in protocol-shifts in the way patterns of interactions develop. Also and of course, the state itself is also very much altered and shaped through protocolic modulations

legal and political institutional arrangements when we live in a liberalized, globalized world?

What kinds of violence are acceptable in a world beset by threats of disruption and displacement on every side?

Modern industrial society and its corresponding systems of governance – e.g. the modern state’s rule of law and the market economy it fosters – have been inspired by the liberal ideals of rationality, freedom, and equality. Conversely, however, these liberal ideals are themselves only made possible by the re-patterning of behaviour brought about by the industrial revolution. In this way, the liberal tradition both provides us with the conceptual tools for legitimizing the violence enacted by our systems of governance and, at the same time, is a tradition whose development and promulgation was only made possible by these same systems. Historically, liberalism made sense of a new industrial society and legitimized the violence of its systems of governance by attempting to restrict and restrain excess violence. The communication revolution begun in the late 20th century, much like the industrial revolution, is altering our patterns of living in coordination with each other and changing our relation to our natural environment. New patterns of thought are arising from these new patterns of living as we endeavor to understand and legitimize our way of being in the world. At this time, it remains to be seen what patterns of thought will dominate the 21st century. My contention in what follows is that liberalism does not hold the theoretical and practical tools needed for legitimizing the violence of protocolic modulation that plagues our modern world. The tradition of liberalism has, despite its own self-understanding of emancipation and progress, made substantial contributions to the violence that is now at work in the world. The normative ideals of liberalism are therefore unable to provide us with inspiration for an undermining of protocolic domination in the 21st century. Instead, we will only be able to do this to the degree that we undermine liberalism itself. And, in order to

because these modulations go far beyond the power structures of state institutions.

begin this process, I will be inviting readers to not only begin problematizing liberal norms, but to consider anew the values and underlying normative logic of traditions pre-dating both industrialism and liberalism.

As mentioned above, there is a problematization of difference within our modern liberal approach to normative thought and judgment, I will argue, which stems from the fact that our legal, political, and economic theory has developed a dominant language of normative theorizing built upon the abstractionism of standardization. As a result of a widespread dualistic logic, there is a dangerous homogenizing impulse that runs through the very center of our liberal notions of justice and has been grafted onto our normative theory at the root. This grafting has led to dramatic tensions within theoretical traditions and, importantly, has also led to some significant blind spots in our concern for building a just society. For example, those peoples who find themselves outside the mainstream systems of power find themselves desperately struggling to legitimize their ways of life in the midst of a flood of standardized procedures of interaction. That is, conservatives of all kinds seek to protect their particularities against disruption and displacement and search for areas of belief and practice where they can stabilize their lives and develop a greater attentiveness and devotion to their unique traditions.

By positing a universal normative metric (i.e. all persons should be considered to be free and afforded equal concern and respect), we have abstracted from the lives of real peoples and begun a violent process of simultaneous assimilation and exclusion perhaps most easily seen in the push for a universal citizenry or a universal marketplace. The homogenizing impulse, within this universalism, is dangerous because it has become such a fundamental part of our conception of justice that it can be very difficult to recognize the violence it does to the diversities of life and thought present within the world. There is a hidden violence – a pervasive violation – that is enacted upon many of those who are drawn into the influence of modern liberal society through

the disruptive and unsettling power of abstract standardization. This violence, unfortunately, has been largely hidden by the normative logic that undergirds both egalitarian conceptions of justice as well as ideals of freedom rooted in a striving for self-determination or self-expression.

If, as I am suggesting, our patterns of life in the modern world are built upon normative standardizations, however, how might we begin conceiving of just relations that are not simply re-cognizing and re-iterating these same standardizations? We can really only contemplate just relations in a place and time where we are struck by the injustice of a situation. However, as George Grant has written in the beginning of “A Platitude”,

We can hold in our minds the enormous benefits of technological society, but we cannot so easily hold the ways it may have deprived us, because technique is ourselves. ... All coherent languages beyond those which serve the drive to unlimited freedom through technique have been broken up in the coming to be of what we are. ... We have been left with no words which cleave together and summon out of uncertainty the good of which we may sense the dispossession.⁵

The just relations of communities seeking the good in relation to each other and the natural world, in other words, hide from us because the injustices perpetuated by standardized systems of governance are deep within us and shape our lives – our technology, our socio-economic systems, and our normative reasoning. We understand that our lives are different than they used to be before industrialism and liberalism’s globalization. How, though, might we begin to understand the depth of the injustices that are enacted in and through our new ways of living in mass society?

In order to better understand our new ways of living and their significance for developing our conceptions of just relations, we need to reflect upon the philosophical, political, and economic thought that has given rise to these contemporary ways of living. If we are interested in exploring the potentials of a radical critique of our contemporary ways of living, we must not only have an understanding of liberalism, but also a sense of the traditions in response to which

⁵ George Grant, *The George Grant Reader*, ed. by William Christian & Sheila Grant (Toronto: University of Toronto Press, 1998) 448 at 448, 449, and 450.

liberalism arose. For, as I will be arguing below, a radical critique of liberalism – i.e. a critique that avoids replicating the violence of standardizations within the normative logic of the liberal tradition – requires a revival of pre-liberal traditions and a restoration of their place in governing our lives today.

Over the past few hundred years, liberal theory arose in response to the domineering totalizations of pre-modern authoritarian regimes. Building upon the Christian tradition's concern for the wellbeing of individuals, liberals engaged in a philosophical, political, and economic revolution that overturned previous assumptions regarding natural ordering and its origin in a divine creator. Liberals have engaged in furthering this revolution with varying degrees of concern for ontological, epistemological, legal, economic, or political matters as well as differing degrees of emphasis upon philosophical or practical policy questions. Nonetheless, although there are many different strains of thought within the liberal tradition, there is a common thread that may be summarized in a two-fold conviction:

1. a rejection of the belief in a transcendent ordering and, therefore, a rejection of the belief in a transcendent normative authority governing the universe, and
2. the belief that just socio-economic relations can be developed through an appropriate process of interaction between a multiplicity of actor-units.

Not surprisingly, then, the central mechanism for achieving the appropriate process of interaction is an elevation of the search for the right procedures above the search for the good life.⁶

Liberalism represents a truly innovative philosophical and political approach to

⁶ As I will be arguing below, however, the giving of primacy to the right inevitably leads to an eclipse of the good. This unfortunate reification of proceduralism comes about through an erasure of the relations within which normative judgment and action can be made – i.e. the complex interrelated associations of dependence that make up society. As Philip Blond explains, “the most extreme form of liberal autonomy requires the repudiation of society—for human community influences and shapes the individual before any sovereign capacity to choose has taken shape. The liberal idea of man is then, first of all, an idea of nothing: not family, not ethnicity, not society or nation. But real people are formed by the society of others. For liberals, autonomy must precede everything else, but such a ‘self’ is a fiction. A society so constituted would be one that required a powerful central authority to manage the perpetual conflict between self-interested individuals. So the unanticipated bequest of an unlimited liberalism is that most illiberal of entities: the controlling state.” Philip Blond, “Rise of the Red Tories,” in *Prospect* (February 28, 2009), online: Prospect Magazine <<http://www.prospectmagazine.co.uk/2009/02/riseoftheredtories>>.

understanding humanity, its place in the world, and, consequently, the nature of just relations between humans. Importantly, though, we should remember that the traditions against which liberalism distinguished itself did not simply come to an end but, as liberalism developed to become the dominant tradition, these traditions continued to develop as counter-traditions to liberalism. We might even say that modern conservatism has developed as a counter-tradition to revolutionary republican liberalism. Its beginning is marked by the publication of Edmund Burke's *Reflections on the Revolution in France* in 1790.⁷ The character of this counter-tradition begun by Burke may be further expressed and explicated in terms of a disposition and a set of guiding principles. It is this disposition and set of guiding values that offers us a starting-point for exploring the violence of liberalism.

What, then, is the character of conservatism? In "On Being Conservative" Michael Oakeshott has offered an explanation of conservatism in terms of a disposition to prefer certain kinds of actions. Here, he suggests that the characteristics of this disposition "centre upon a propensity to use and to enjoy what is available rather than to wish for or to look for something else; to delight in what is present rather than what was or what may be."⁸ The reason for this affection towards that which is present in space and time is quite simple. He writes, "[c]hanges are without effect only upon those who notice nothing, who are ignorant of what they possess and apathetic to their circumstances; and they can be welcomed indiscriminately only by those who esteem nothing, whose attachments are fleeting and who are strangers to love and affection."⁹ In other words, conservatives are deeply interested in the here and now and attached to that which they understand to make us who we are. Of course, though, "to be conservative is not merely to

⁷ Edmund Burke, *Reflections on the Revolution in France* (London: J.M. Dent & Sons, 1910 [1790]). Also see Russell Kirk, *The Conservative Mind: From Burke to Eliot*, 7th ed. (Chicago: Regnery Books, 1987 [1953]) at 6.

⁸ Michael Oakeshott, "On Being Conservative," in *Rationalism in Politics and Other Essays* (London: Methuen & Co., 1962) 168 at 168.

⁹ *Ibid.* at 170.

be averse from change (which may be an idiosyncrasy); it is also a manner of accommodating ourselves to changes and activity imposed upon all men. For, change is a threat to identity, and every change is an emblem of extinction.”¹⁰ Conservatives believe that innovation means certain loss and only possible gain. However, this inevitable loss can be mitigated to some degree if the innovation represents a kind of organic growth from what has already gone before, is in response to a specific problem in need of correction rather than a general search for the betterment of humanity, and is slow enough to allow for corrections and adjustments as it proceeds.¹¹

What this disposition means in terms of legal, political, and economic theory, is expressed by Anthony Quinton who outlines three basic principles that characterize conservative thought: (a) a respect for traditional institutions and customs, (b) belief in the organic nature of society, and (c) skepticism regarding abstract political theories.¹² Or, as Russell Kirk suggests, the conservatism of the last few hundred years has had the following six general characteristics:

1. belief in a transcendent order or natural law such that political problems are, at root, moral and religious problems;
2. appreciation for the variety and multiplicity in the mystery of humanity and nature;
3. conviction that a healthy society requires orders and classes rooted in the natural distinctions of persons;
4. an understanding that freedom requires access to capital –i.e. without the private ownership of property, the state will dominate;
5. distrust of those who would seek to re-design society based upon abstract principles; and
6. recognition that society must change in a piecemeal fashion in order to avoid the destructive implications of radical change.¹³

Although modern conservative tradition involves a diverse set of philosophical and political orientations, at root this disposition and set of principles typically arises from a belief that there is a transcendent ordering and therefore a transcendent normative authority governing the universe.

¹⁰ *Ibid.*

¹¹ See *ibid.* at 172.

¹² See Anthony Quinton, *The Politics of Imperfection: The Religious and Secular Traditions of Conservative Thought in England from Hooker to Oakeshott* (Boston: Faber & Faber, 1978). Also see Burke who wrote: “I reprobate no form of government merely upon abstract principles.” Burke, *supra* note 7 at 185.

¹³ See Kirk, *supra* note 7 at 8, 9.

This belief means that, as Kirk notes, “economics and politics are not independent sciences: they are no more than manifestations of a general order, and that order is moral.”¹⁴

Therefore, conservatives typically resist the inclination to view the rule of law as a distinct, disembedded and self-regulating system of norms to be constructed.¹⁵ Normative orderings are instead understood to be complex and multilogical expressions of the good and therefore characterized by “order, difference, and interdependence” as dialogical and diachronic patternings of behaviour. Disdain is shown, therefore, for proceduralism or formalisms that reflect “sameness, equality, and independence”.¹⁶ Due to their belief in an underlying ordering to the universe, conservatives view the revolutions caused by liberalism’s underlying procedural constructivism not simply as bad politics but as immoral and rebellious actions.¹⁷ Systems of governance that provide the structures for engaging in political and economic life, in other words, are run-through with normativity and must constantly be evaluated in relation to the transcendent orderings of the universe as expressed in tradition. If this is the case, however, how can we expect to develop a conservative theory of democracy in what follows? Isn’t the struggle to have society and its governing institutions accord with a transcendent ordering of the universe precisely what it means to *not* be democratic?

I would like to argue quite the opposite – we cannot be truly democratic without being conservative. But, a conservative approach to democracy begins with a consideration of what we mean by conservative political theory itself and what it means to engage in recovering the

¹⁴ *Ibid.* at 65.

¹⁵ For example, note the actions and attitudes of the Tory loyalists in Upper Canada in the early 19th century. See G. Blaine Baker, “‘So Elegant a Web’: Providential Order and the Rule of Secular Law in Early Nineteenth-Century Upper Canada” (1988) 38 *University of Toronto LJ* 184.

¹⁶ See *ibid.* at 194.

¹⁷ So, for example, François-René Chateaubriand suggests that “[r]evolutions commit ravages in their course, like the poisonous streams, which cause the flowers to wither as they flow along. The eye of the law is closed during the convulsions of a state, and no longer watches over the citizen, who yields to his passions, and plunges into immorality.” François-René Chateaubriand, *An Historical, Political, and Moral Essay on Revolutions, Ancient and Modern* (London: Cox & Baylis, 1815) at 386.

conservative tradition. And, the first step in recovering and restoring a genuinely conservative tradition begins by recognizing that liberalism has become the dominant normative tradition that pervades modern legal, political, and economic thought and practice. If we are to have any success in searching for ways of breathing new life into a tradition that has been marginalized as a counter-tradition, we need to get some sense of the depth of the challenge before us.

Additionally, part of the first step along the path to conservatism involves spending some time trying to understand the darker side of liberalism and its tendency towards domineering, universalized legal, political, and economic structures. That is, we need to become attentive to the following question: what kinds of violence and injustice have been, and are being, committed in the name of peace and justice within liberalism?

An essential part of developing a conservative orientation also involves resisting the urge to search for a grand vision of an ideal legal, political, and economic system of procedures that will include all peoples. Conservatives believe that, as Jacques Ellul has suggested, justice in this world cannot be defined; it cannot be conceived of as invariable or eternal and, therefore, cannot be universal. All we have are practical criteria that can be determined in various ways depending upon the persons, events, and environments involved.¹⁸ A conservative impulse, therefore, will shun all attempts to build universal systems based upon abstract principles and will instead re-orient us toward the piecemeal actions that are localized within our most immediate environments. It represents, therefore, a more thoroughgoing restraint in not only our normative theorizing, but in our application of this theory to the societies within which we live. So, as Keith Feiling writes, “[e]very Tory is a realist, he knows that there are great forces in heaven and earth that man’s philosophy cannot plumb or fathom.”¹⁹ Not only does conservatism depend

¹⁸ See Jacques Ellul, *The Theological Foundation of Law*, trans. by Marguerite Wieser (New York: The Seabury Press, 1969) at 86, 93.

¹⁹ Keith Feiling, *Toryism: A Political Dialogue* (London: G. Bell & Sons, 1913) at 37, 38.

upon a degree of epistemological humility, however, but also an ethic of submission to authority that transcends us. For example, as Burke taught, our “temporal order is only part of a transcendent order; and the foundation of social tranquility is reverence. Veneration lacking, life becomes no more than an interminable battle between usurpation and rebellion.”²⁰ Importantly, therefore, conservatives take a different approach to politics because they understand that legal and political problems are, at root, moral and religious problems that require submission to the authority of tradition.²¹

Because of their belief in the transcendent ordering of the universe, in *The Conservative Mind*, Russell Kirk states that “reverence for the wisdom of our ancestors, through which works the design of Providence, is the first principle of all consistent conservative thought.”²²

Conservatism involves a rejection of utilitarianism, positivism, and pragmatism in a struggle to align ourselves with orderings that are above and beyond ourselves. We cannot hope to begin this process of alignment, however, without an ethic of submission to that from which we come – physically, culturally, and spiritually. Indeed, the refusal to submit and acknowledge transcendent authority is what fuels innovation and the revolutionary spirit of liberalism. As Burke writes, “[a] spirit of innovation is generally the result of a selfish temper and confined views. People will not look forward to posterity, who never look backward to their ancestors.”²³ A spirit of conservation, in contrast, will seek protection from the disruption and displacement of innovation. A conservative will strive for deeper roots, not stronger wings.

We should also note that liberalism has captured our hearts and our minds but it has also captured our bodies. Not only has the liberal tradition of legal and political thought become so dominant that we struggle to conjure up a conception of justice that is not based upon the logic of

²⁰ Kirk, *supra* note 7 at 66, 67.

²¹ *Ibid* at 8.

²² *Ibid* at 65.

²³ Burke, *supra* note 7 at 31.

liberal normative thought, but we are living within governing systems that have been thoroughly shaped by this tradition. Our political institutions, our legal systems, our educational institutions, our science, our technology, our economy, etc. are all operating within the framework of liberal ideology. So, not only are our theoretical traditions dominated by liberalism, but our ways of life have been liberalized. How are we to gain perspective on this tradition when it is so pervasive? How can we possibly work, in a positive fashion, to revive a tradition so different from the one that has done so much to make us who we are today?

A conservative approach to legal and political theory, however, does not involve merely a theoretical or philosophical submission to abstract notions of transcendent orderings within the universe. Rather, if submission is a subversion of the liberal tradition, it requires embodied actions and a way of being in the world that is active in resisting the standardizing abstractions of liberalism's legal, political, and economic systems. Effective resistance means devotion to, and a lived embodiment of, specificity or traditional patterns of behaviour that cannot be universalized because they are particular to a unique people, culture, and/or geography. For example, the traditional relationship many indigenous peoples have to the land cannot be replicated or inclusive of all peoples because it necessarily involves a certain people in relation to a certain place as distinct from all other peoples and all other places. To put it simply, it is this kind of specificity that represents the rallying point for the restoration of a conservative tradition in the face of sweeping liberal standardizations. In a globalized and networked world, the importance of the asymmetrical resistance posed by this kind of specificity has been noted by others. For example, in *The Exploit*, Alexander Galloway & Eugene Thacker write that "[t]o be effective, future political movements must discover a new exploit. A wholly new topology of resistance must be invented that is as asymmetrical in relationship to networks as the network was in

relationship to power centers. Resistance is asymmetry. The new exploit will be an ‘antiweb.’²⁴ Instead of being concerned with the smooth functioning of the whole, attentiveness must be given to particular parts in particular places. Instead of being fascinated with a smooth interface between the local and the global, resistance to standardization is engaged in through devotion to the localization of heritage and place.²⁵ A restoration of conservatism, therefore, will take place through the practiced veneration of our traditions and a practical recognition of the authority these traditions hold within our lives.

If we are set upon tracing-back and exploring our own traditions rather than seeking to develop an ideal society to include all peoples, then we still have not answered the question posed above: why talk about democracy at all? Is democracy not a fundamentally liberal project? In the discussion below, I will define democracy as an ordering of society that possesses sufficiently resilient normative orderings to provide the foundation for legitimizing law. This resilience in normative orderings is manifest in a multiplicity of interacting localizations of power that make multiple, and most often competing, claims of authority upon persons and things.²⁶ And, in fact, democracy depends upon the distinctions and differentiations that arise between

²⁴ Alexander Galloway & Eugene Thacker, *The Exploit: A Theory of Networks* (Minneapolis: University of Minnesota Press, 2007) at 22 [emphasis removed].

²⁵ See Christopher Lasch, *The Revolt of the Elites and the Betrayal of Democracy* (New York: W.W. Norton & Company, 1995) at 35. This kind of circuit-breaking resistance through parochialism and localism may be understood as being in direct contrast with the lives of today’s elites. For example, as Christopher Lasch points out regarding the tourist behaviour of the new elite in America, “The new elites are in revolt against ‘Middle America,’ as they imagine it: a nation technologically backward, politically reactionary, repressive in its sexual morality, middlebrow in its tastes, smug and complacent, dull and dowdy. Those who covet membership in the new aristocracy of brains tend to congregate on the coasts, turning their back on the heartland and cultivating ties with the international market in fast-moving money, glamour, fashion, and popular culture. It is a question whether they think of themselves as Americans at all. Patriotism, certainly, does not rank very high in their hierarchy of virtues. ‘Multiculturalism,’ on the other hand, suits them to perfection, conjuring up the agreeable image of a global bazaar in which exotic cuisines, exotic styles of dress, exotic music, exotic tribal customs can be savored indiscriminately, with no questions asked and no commitments required. The new elites are at home only in transit, en route to a high-level conference, to the grand opening of a new franchise, to an international film festival, or to an undiscovered resort. Theirs is essentially a tourist’s view of the world – not a perspective likely to encourage a passionate devotion to democracy.” *Ibid* at 5, 6.

²⁶ For a helpful discussion of normative orderings and law as well as the competing claims of authority that are endemic to normative orderings, see Jeremy Webber, “Naturalism and Agency in the Living Law” in *Living Law: Reconsidering Eugen Ehrlich*, ed. by Marc Hertogh (Oxford: Hart Publishing, 2009) at 201-221.

multiple claims of authority. Democratic governance is a check upon forces that push for the universality of consensus and the monopolization of violence because democracy is found in the disagreement arising from the difference of dependency upon various traditions rather than the standardization of such ideals as freedom and equality. In other words, democracy is best understood as a conservative method of governance and is, I will argue, undermined by the ideals of liberalism and the institutions to which these ideals give rise.

Admittedly, we might still be tempted to think that because liberalism involves a prioritization of the right over the good, it best represents modern democracy. However, this prioritization leads inevitably to not simply a substitution of the right for the good, but also an undermining of the searches for the good that are needed to animate democratic processes. Liberalism's push to substitute the right for the good, in other words, entails a hidden universalization of the right because a substitution of the right for the good actually means a substitution of a singular right for multiple goods. Although we will discuss it in more detail below, the reason for this is quite simple: a search for the good life is, by definition, a localized endeavour – i.e. it depends upon a rootedness in a certain life – but a substitution of the right over the good means a search for procedures that transcend the specificity and locality of embodied living. It should come as no surprise, therefore, when the liberal tradition and its most prominent theorists of the day – e.g. John Rawls and Jürgen Habermas – consistently appeal to consensus and the normative singularity of egalitarianism in order to develop idealizations of democratic procedures. In contrast, a conservative thinker understands that we may theorize in order to identify a question (for example, “Is this certain kind of violence excessive?”) but the answers to this question must persist as multiple, competing claims. Searches for the right procedures, therefore, can be democratic but only if they remain restrained by specific searches for the good life by people beholden to physical, socio-economic, and spiritual traditions.

C. Outline and Summary of Argument

This work seeks to recover the critical spirit of conservatism and re-emphasize its goal of stability and resilience in society. In the next chapter, I will argue that we should strive to view ourselves as deeply dependent and persistently vulnerable beings rather than free, equal, and rational individuals. An understanding of ourselves as embodied and interconnected patternings-in-the-world – *res ecologia* – will allow us to better recognize a diffuse violence at work in the modern world. In chapter three, I turn to the nature of causation and suggest that the internal stability of *res ecologia*, when disrupted, should be a primary concern when considering the nature of violence and domination. In chapter four, I invite us to understand the violence and domination arising in modern liberal societies – protocolic modulations – as abstract standardization that ensures efficient synchronization between individuated or atomized actors. Further, I suggest that the rapid modulations of this kind of protocolic domination disrupt the structural causation within and between *res ecologia*. In chapter five, I begin to show how the kind of violence and domination I have outlined is manifest in and through the tradition of liberalism by tracing out a shared, underlying dualistic logic that simultaneously individuates and totalizes. In chapter six, I turn to the role of reason in creating freedom and legitimizing violence. Reason is seen to be contributing to both freedom and domination depending upon whether or not it creates resilience within society that resists standardizations. In chapter seven, I argue that the only way to effectively counter the excessive violence within the dualistic logic of liberalism is to cultivate an ethic of mutual support and restraint that invests society with stability and resilience. Finally, I conclude by contending that a resilient society requires intermediate structures and civil enterprises to instill tradition and reciprocal responsibilities in interdependent familial, socio-economic, and religious life.

II. RELATION

“[A] religious man respects the power of God’s creation to bear witness for itself.”²⁷

Introduction

There is a growing sense that something has gone very wrong with liberal capitalism and its modern welfare state. It is becoming increasingly obvious that the collusion between the liberal state and market (the “market state”) is disintegrating civil society, de-capitalizing the poor, and destroying natural ecosystems at a tremendous rate. It is becoming increasingly difficult, therefore, to legitimize the degree of violence that is produced in and through this collusion. This violence is destroying the in-between worlds of mutual support between families and communities as well as distorting our interdependence with the natural world. Despite a growing anxiety, however, proposed responses to contain and cope with the systemic violence of liberalism’s market and state systems are disturbingly few. Even more disturbing is the reproduction of these systems in and through the critical responses themselves. In other words, to the degree that we retain the core values underling our modern liberal institutions, we reiterate and re-enforce the violence despite our best intentions to avoid, and even undermine, its causes.

A radically new approach to understanding normativity in law and politics is needed. And by that I mean we need a narrative of normativity that reaches back before the rise of modern liberalism if we are to develop the ability to recognize and make visible the breadth and depth of violence enacted through the liberal search for independence (whether self-determination or self-expression) and equality. For, however uncomfortable it may be for us moderns, a language of normativity in political relations that is inspired and shaped by pre-liberal ideals leads us into a political ecology that is rooted in pre-liberal ontologies. For example, if we are to tell a story of just relations that is not centered upon a notion of freedom as self-determination or self-

²⁷ Thomas Merton, *The Seven Storey Mountain* (New York: Harcourt, Brace and Co., 1948) at 3.

expression, we need to begin conceiving of ourselves and our world as deeply interconnected and interdependent. Likewise, if we are to speak of a structural violence taking place within the increased rates of change in ourselves and the world, we need to begin seeing the integrity of ecological, social, and spiritual patternings in ourselves and the world.²⁸

In this chapter, therefore, I will begin laying the groundwork needed to recognize and articulate the structural violence hidden within the normative ideals of liberalism as well as its corresponding structures of economic and political life (e.g. the globalized market and the modern welfare state). After suggesting that we begin understanding the world as made up of nested patterns of material (visible) and immaterial (invisible) networks that possess both stability and flux, I will suggest that we reflect upon ourselves as embodied networks-in-the-world. In striving to view ourselves as deeply dependent and persistently vulnerable rather than free, equal, and rational individuals, we are challenged to begin seeing ourselves as beings that come from beyond ourselves. And, consequently, we are challenged to understand ourselves as having the capacity for normative judgment precisely because we are embodied beings that are able to project into the future along the trajectory of patternings that transcend ourselves. Further, if we are attentive to the persistence of patternings in ourselves and the world that come from beyond ourselves, we are able to gain some perspective on the damage that is done when these patterns are distorted through acceleration. In this manner, I am encouraging us to conceive of structural violence in terms of the disruption of patterning processes and, consequently, hoping that we will be able to effectively problematize the standardization of relations that leads to acceleration.

²⁸ In a manner similar to Jennifer Nedelsky's work in *Law's Relations*, the goal here is to develop "a new language and new concepts in which to express our subjectivities and through which to enact laws." Jennifer Nedelsky, *Law's Relations: A Relational Theory of Self, Autonomy, and Law* (New York: Oxford University Press, 2012) at 7.

A. Network Ecology

Before turning our minds to the problem of acceleration arising through standardization and what that might mean for our understanding of justice and democracy, we will do well to consider the potentials of a new political ecology rooted in a new political ontology – networks. Why begin with talk of a new political ecology and ontology?²⁹ Further, what *prima facie* reasons might we have for using networks as the central focal point in our analysis?³⁰

I begin with a re-consideration of our political ecology because, as outlined in the introduction above, the current attempts to legitimize power-use within the traditional ontological framework of liberal democratic theory are beginning to ring hollow. The politics of difference, eco-politics, and the rise of agonistic democratic theory have revealed the dramatic harms done by liberal rationalism as a result of its push toward political unity. The agonists, ecologists, and the politics of difference theorists, however, have themselves been unable to de-problematize difference as a result of their philosophical liberalism that prevents them from taking deep pluralism seriously. The fundamental ontological framework of liberal democratic theory –

²⁹ It is certainly out of style to speak of ontologies in this post-metaphysical age. Not only is our age post-metaphysical but it is decidedly anti-metaphysical because metaphysics is understood to hold the danger of tying us into the kind of grand narratives that characterized the “modern” era. For example, Jean-François Lyotard defines the modern as “any science that legitimates itself with reference to a metadiscourse of this kind making explicit appeal to some grand narrative, such as the dialectics of Spirit, the hermeneutics of meaning, the emancipation of the rational or working subject, or the creation of wealth.” Jean-François Lyotard, *The Postmodern Condition: A Report on Knowledge*, trans. by Geoff Bennington & Brian Massumi (Minneapolis: University of Minnesota Press, 1999) at xxiii. A legitimation of a search for truth that transcends our localized and parochial narratives has, in large measure, been abandoned by the anti-philosophy(ers) of our day. There is no transcendence, only immanence. The best we can do is seek out an experience of the sublime by approaching the limits of our own experience, a reflex of finitude in which a negative image of the self is projected beyond the limitations of the self. See Philip Blond’s critique of secularism in Philip Blond, “Introduction”, in *Post-Secular Philosophy: Between Philosophy and Theology*, ed. by Philip Blond (London: Routledge, 1998) at 16. Much of this critique of legitimation through an appeal to a grand narrative seems to stem from a concern regarding the link between an epistemic claim to a perception of the transcendent other and/or otherness (e.g. the “really real”) and a political claim to authoritative power. That is, an attempt to legitimize power-use based upon a purer representation of the world. And, surely this concern is appropriate given the fact that our understanding of that which *is* shapes and determines our understanding of that which *ought to be*.

³⁰ The significance of network thinking can only be expected to become transparent in and through the actual exercise of this approach in working out an understanding of violence, the legitimation of violence, and the impossibility of legitimizing some kinds of violence. Consequently, at this point, all that we need are some *prima facie* reasons why we might consider the potential benefits of a network approach to reworking our political ontology.

whether rationalist or agonist – continues to do significant violence through its inherent homogenizing impulse. For example, rationalist theorists like John Rawls and Jürgen Habermas and their followers are committed to a liberal ontology that, in order to posit a universal proceduralism, must simply exclude important ontological commitments regarding the self and its relation to the world from the realm of politics.³¹ These ontological commitments of those outside the mainstream that lead to very real political and economic ways of life are excluded as not being legitimately “public” in their orientation. For an agonist like Chantal Mouffe, the social (and, hence, the political) are conceived of quite differently and in a much more pluralistic manner such that her notion of legitimation is not as explicitly homogenizing.³² However, although Mouffe argues against the notion of a “universal consensus” (i.e. as liberal rationalists are prone to do), she nonetheless essentializes antagonism and thereby falls into the individuated/totalized dualistic trap of liberalism that we will discuss below. Both the rationalist and the agonist, in their own ways, obscure systemic power-flows that are shaping relational patternings in the space between the singular (subject) and absolute (object). Both, therefore, fail to develop what Val Plumwood calls, “a common, integrated framework for the critique of both human domination and the domination of nature.”³³ Theorists such as Charles Taylor, James Tully, and Jeremy Webber and others have developed important critiques of the underlying atomistic ontology of liberalism in order to avoid the dualism of liberalism we see in rationalists

³¹ See John Rawls, *A Theory of Justice* (Cambridge: Belknap Press, 1971), John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993) [Rawls, *Political Liberalism*], Jürgen Habermas, *The Theory of Communicative Action: Reason and the Rationalization of Society*, Vol. I, Translated by Thomas McCarthy (Boston: Beacon Press, 1981), and Jürgen Habermas, *On the Pragmatics of Communication*, ed. by Maeve Cooke (Cambridge: The MIT Press, 1998) [Habermas, *Pragmatics*].

³² Political questions, for her, “always involve decisions which require us to make a choice between conflicting alternatives” and, therefore, the political should be understood as “the dimension of antagonism which [is] constitutive of human societies”. Chantal Mouffe, *On the Political* (London: Routledge, 2005) at 10, 9. Therefore, the social is developed within a we-they dualism; it is constituted by the interplay between these two extremes.

³³ Val Plumwood, *Feminism and the Mastery of Nature* (London: Routledge, 1993) at 1, 2.

and agonists.³⁴ However, they have sought to do this while continuing to posit the proceduralistic politics of liberalism as a means to legitimize power-use and have, therefore, continued to replicate some of the harmful dualisms of liberalism. Further, there is a sense in which these critical approaches have not yet been brought together into a positive theory of democracy that sees past the liberal paradigm to focus on the systemic violence fueled by the political economy of liberalism. It is hoped that a turn to a network ontology will help us begin to theorize regarding the issues that have been so skillfully problematized by these thinkers and more effectively undermine the violence that continues to be hidden within the liberal political tradition.

Not only are the current theoretical approaches to legitimizing power-use within the liberal tradition beginning to ring hollow, but there are some key practical reasons for seeking a new political ontology. First, our current political ontology is out of synch with our 21st century science. Second, our current political ontology is fostering an unjust and unsustainable economic system. Third, contemporary liberal theorists suffer from some significant blind spots in their attempts to reduce violence in the world and a network approach holds the promise of allowing us to identify these problem areas with renewed vigor.

First, then, in what way are the ontological categories that make up our scientific understanding of ourselves and our world – our physics, biology, and cosmology – as well as our understanding of causation out of synch with the political ontology of liberal democratic theory? Our patterns of political organization and, more importantly, our methods of legitimizing power-use have developed in loose coordination with our scientific conceptions of the universe and

³⁴ For example, see Charles Taylor, *Philosophy and the Human Sciences: Philosophical Papers 1* (Cambridge: Cambridge University Press, 1985), Charles Taylor, *Philosophical Arguments* (Cambridge: Harvard University Press, 1995) [Taylor, *Arguments*], James Tully, *Public Philosophy in a New Key: Democracy and Civic Freedom*, Vol. I (Cambridge: Cambridge University Press, 2008), Jeremy Webber, “A Nationalism that is Neither Chauvinistic Nor Closed,” a lecture delivered to the Trudeau Foundation in Quebec City, and Jeremy Webber, “The Hobbesian Premise,” Draft Paper (22 October, 2007) [Webber, “Hobbesian Premise”].

humanity's place within it. Charles Taylor has rightly noted that there is often a dynamic relationship between one's ontology and policy commitments such that taking a position in one area (either ontology or policy) does not necessarily commit you to a certain position in the other area. And yet, as he rightly notes, the two areas are also not independent. So, although one's ontological commitments do not directly determine one's political priorities, they do form a kind of background language that determines the means of articulating political priorities.³⁵ Likewise, the interpretive language we use to describe the workings of the physical world provides us with the language of politics that we use to describe our social realities (and, indeed, vice versa). The interpretive circle of political theory is tied into the interpretive circle of the sciences and, when looking back on the historical development of scientific and political thought, it is not surprising to see parallel paradigm shifts.³⁶ Occasionally, however, our scientific and political ontologies become disconnected as one of the interpretive circles undergoes a paradigm shift before the other. And, if this takes place, a lack of resonance between our scientific and political understanding creates dissonance in our worldview and, what we are facing today, a crisis of legitimation.

The current crisis of legitimation has arisen, to some degree, because our scientific understanding of the world – especially in physics and biology – has shifted from the atomistic models of the modern era into the network models of the post-modern era. The “modern era” began in earnest in the 17th century and itself signaled a dramatic shift in conceptions of place

³⁵ Ontological questions, then, are those “terms you accept as ultimate in the order of explanation” whereas advocacy questions “concern the moral stand or policy one adopts.” And, two things can and do happen as a result of the dynamic connection between ontology and policy: (a) a person can have policy commitments that are out of synch with his ontological commitments and (b) a range of policy commitments can stem from any set of ontological commitments (i.e. there is no one-to-one linkage between ontological and policy commitments). See Taylor, *Arguments*, *supra* note 34 at 181.

³⁶ It should be noted that the connection between these stages and shifts in political thought was suggested by Lee Smolin, a theoretical physicist and founding member of the Perimeter Institute for Theoretical Physics in Waterloo, Ontario. See Smolin's talk on science and democracy at http://www.ted.com/index.php/talks/lee_smolin_on_science_and_democracy.html.

and order in the universe. No longer was there a centre of the universe as an absolute point from which to develop a hierarchy of place as there was in an Aristotelian universe.³⁷ Instead, the world was composed of atoms and all atoms were understood as equal and possessive of their properties independent of their relations with other atoms (i.e. they were interchangeable prior to their interactions).³⁸ These atoms became defined in relation to a fixed framework of space and time under the Newtonian science.³⁹ This kind of atomism was further advanced and re-enforced when Darwin's concept of natural selection not only undermined the idea of trans-temporally fixed species but, more importantly, also undermined the impetus to search for an understanding of ahistorical laws of organic form (i.e. the logic behind the apparent diversity of life).⁴⁰

This atomistic conception of the universe meant significant changes in politics – changes tied into notions of the person as an individual or self-contained being.⁴¹ As Taylor explains,

³⁷ Before the modern stage we might have considered the hierarchical stage that is found within medieval cosmology. This approach to understanding the universe is built primarily upon the natural philosophy of Aristotle and existed relatively unchanged for almost two millennia. See Aristotle, *On the Heavens*, trans. by W.K.C. Guthrie (Cambridge: Harvard University Press, 1953). For a detailed examination of medieval cosmology and its relation to social thought, see Edward Grant, *Planets, Stars, and Orbs: The Medieval Cosmos, 1200-1687* (Cambridge: Cambridge University Press, 1994). In this worldview, all things have their place and all things have a natural tendency to come to rest in their place. Specifically, Aristotle understood the elements (Fire, Earth, Water, Air) as all having a natural tendency – e.g. earth tends strongly downward whereas fire tends upwards. See Frank Durham & Robert Purrington, *Frame of the Universe: A History of Physical Cosmology* (New York: Columbia University Press, 1983) at 53, 54. The earth was at the centre of the universe and there were layers of nested spheres circling outward from the earth until one reached the celestial sphere (i.e. the universe may be mapped with a set of concentric circles). See, for example, *ibid* at 53ff. This thorough cosmography preempted any existential questions of being-in-the-world and provided the background for dramatically hierarchical regimes that relied upon a strong sense of social place and a belief in the divine right to rule. This means, as Charles Taylor explains, for Aristotle “[m]an is a social animal, indeed a political animal, because he is not self-sufficient alone, and in an important sense is not self-sufficient outside a polis.” Taylor, *supra* note 34 at 189. Persons, therefore, have their place within a multi-layered physical world and their place within a multi-layered political world. Again, as Charles Taylor says, “[f]reedom, on this view, consisted in a certain place within society.” Charles Taylor, “Kant’s Theory of Freedom,” in *Philosophy and the Human Sciences, Philosophical Papers 2* (Cambridge: Cambridge University Press, 1985) 318 at 318.

³⁸ See Bruno Latour, “Networks, Societies, Spheres: Reflections of an Actor-Network Theorist”, Keynote speech for the International Seminar on Network Theory: Network Multidimensionality in the Digital Age, Annenberg School for Communication and Journalism Los Angeles (February 19, 2010) at 12, online: Bruno Latour <<http://www.bruno-latour.fr/sites/default/files/121-CASTELLS-GB.pdf>>.

³⁹ See Durham & Purrington, *supra* note 37 at 156–162.

⁴⁰ See Stuart Kauffman, *The Origins of Order: Self-Organization and Selection in Evolution* (Oxford: Oxford University Press, 1993) at 3, 4 and Charles Darwin, *On the Origin of Species By Means of Natural Selection* (New York: D. Appleton, 1864).

⁴¹ See, for example, C.B. MacPherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford:

from the moderns' perspective, "[m]an is a free being in the sense that he is meant by God to find his paradigm purposes within himself, and not out of the order in which he is set. Hence, in the political realm, human freedom is prior to legitimate order, in that legitimate authority can arise only as the creation of human agents through consent."⁴² This autonomy of the person became the primary conceptional foundation for liberal political theory and fostered commitments to objective normative metrics such as equality. As Charles Taylor (and George Grant before him) has explained, this kind of radical distinction between subjective and objective (i.e. an eclipse of the middle ground between the self and world) lies at the root of both modern individualism and the rise of instrumental reason.⁴³ Importantly, this subjectification of the self in contrast to the objectification of the world also meant that, politically, human freedom (i.e. independence) was understood to be prior to legitimate order such that legitimate political authority can arise only

Oxford University Press, 1962).

⁴² Taylor, *supra* note 37 at 319. This commitment to the primacy of individual freedom was most clearly expressed in Kant's emphasis upon treating persons as ends-in-themselves. As he writes, "every rational being exists as an end in himself and not merely as a means to be arbitrarily used by this or that will" and "[rational] beings are not merely subjective ends whose existence as a result of our action has a worth for us, but are objective ends, i.e., beings whose existence in itself is an end." Immanuel Kant, *Foundations of the Metaphysics of Morals*, trans. by Lewis White Beck (New York: Macmillan, 1959) at 46. However, if persons reason as beings-in-the-world (and necessarily so), then how should we understand the moral imperative to treat others as autonomous ends-in-themselves? To put it bluntly, treating persons as end-in-themselves makes little sense if persons are understood to be tied into the happenings of their world rather than self-contained vessels of the moral law. As Rawls suggests, his theory of justice as fairness – and, especially, his understanding of the priority of rights – stems from Kant's notion of autonomy. And, he interprets Kant as saying that a person is acting autonomously when the "principles he acts upon are not adopted because of his social position or natural endowments, or in view of the particular kind of society in which he lives or the specific things that he happens to want." Rawls, *supra* note 31 at 252. And, as Lewis White Beck writes, for Kant, humans have dignity as a result of their autonomous personalities. That is, "[p]ersonality – that attribute which distinguishes rational beings from things – is freedom from the mechanism of nature through a capacity to be subject to laws given by itself (autonomy). Lewis White Beck, *A Commentary on Kant's Critique of Practical Reason* (Chicago: Chicago University Press, 1963) at 226. Also see Charles Taylor, *Sources of the Self: The Making of Modern Identity* (Cambridge: Harvard University Press, 1989) at 364, 65. Of course, I am suggesting (as many others have before me) that this commitment to autonomy is both impossible and undesirable as an ideal.

⁴³ See Charles Taylor, *The Malaise of Modernity* (Toronto: House of Anansi, 1991) [Taylor, *Malaise*]; Taylor, *supra* note 42 at 33, 34; Charles Taylor, "Understanding and Human Science" (1980) 34 *Review of Metaphysics* 24-38; and Thomas Nagel, *The View from Nowhere* (New York: Oxford University Press, 1986). Of course, this analysis of the modern self as subjectivized in relation to an objectivized world was clearly outlined years before by George Grant. For example, see Grant's lecture on Kant from 1977/78 in Grant, *supra* note 5 at 224. Also see George Grant, *Technology and Empire* (Toronto: Anansi, 1969) at 135ff [Grant, *Technology*] and George Grant, *English-Speaking Justice* (Toronto: Anansi Press, 1974) [Grant, *Justice*].

through consent or egalitarianism or some combination of both.⁴⁴ So, along with changes in science, the standard for legitimizing power-use changed. If each person was essentially self-contained (physically and spiritually), then law had to be written on each persons' heart. No longer could one appeal to an understanding of the ordering of the world as the touchstone for legitimate power-use. Instead, legitimacy itself was understood to be constructed in and through humanity's ability to transcend nature in a certain kind of interactional procedure between humans. One did not strive to attain access to a transcendent other/otherness, but one continually re-enforced the integrity of one's own self by bumping up against the other in political community. Indeed, this "bumping up against in political community" was legitimate only insofar as it re-enforced the boundaries of the self. It is this kind of fundamentally atomistic ontology underlying liberal democratic theory that is dramatically out of step with our current understanding of the world and its complexities.

In the 20th century what might be called the "network era" began with a shift from the fixed-frame reference of Newtonian physics to an Einsteinian theory of general relativity. Now, the universe becomes an ever-changing, pluralistic network of relations with no centre and no fixed frame of reference. There is no longer any "outside" from which to view and organize the universe – rather, the universe itself is understood to be, at least somewhat, self-organizing with all properties defined through the interconnected relations. In this way, the universe becomes understood not in atomistic or mechanistic terms, but in much more ecological and network terms. Causation, therefore, becomes less about self-contained bodies acting upon one another and more about resonance between networks as the whole of the network draws the parts into new relational patterns. An example of this kind of science can be seen in nonequilibrium (open system) thermodynamics which studies systems in which the "centers of flow, growth, and

⁴⁴ See Taylor, *supra* note 37 at 319.

change, are not static, still, or dead; they are not in equilibrium.”⁴⁵ This includes energy flow systems that bring about complex structures that maintain themselves as distinct from the environment but also grow and adapt in response to changes around them. This approach, therefore, understands biological processes as autocatalytic systems that “delay the instantaneous dissipation of energy and give rise to energy and material storage, cycling, and structure.”⁴⁶ Agency and causation, in short, becomes understood as distributed through asymmetrical patterns of interconnectivity. Although we will not dive into it now, current understandings of causation and the legitimation of action – especially through the immanentism of post-modern thinkers – has been affected by this shift to the “network era”. But, as we will see in the discussion that follows, the connection between current science and post-modern immanentists has not been thorough or unproblematic.⁴⁷

Second, to what degree is our current political ontology fostering an unjust and unsustainable economic system? The political ontology of liberalism, I think undeniably, operates hand in hand with the economic liberalism of the free market and a relentlessly expansionist capitalism. Our systems of global markets, mass consumerism, and ecological exploitation are demonstrative of an atomistic and immanentist ontology and its corresponding logic of seeking the right above the good that has been entrenched within both the modern state

⁴⁵ Eric Schneider & Dorion Sagan, *Into the Cool: Energy Flow, Thermodynamics, and Life* (Chicago: University of Chicago Press, 2005) at xii.

⁴⁶ *Ibid.* at 330.

⁴⁷ At a very basic level, by “immanentist” I refer to the dominant tradition of modern (and post-modern) philosophy which is founded upon a natural philosophy which has lost faith in “that which is beyond”. This denial of that which is beyond has significant implications for ontology, epistemology, phenomenology, and, of course, politics. The modern decent into immanentism, as Philip Blond notes, is best exemplified by Kant’s elevation of transcendentalism above transcendence. He writes, “[s]ince it was external faith (or rather faith in the external) that always limited the scope of the Kantian project, the loss of this empirical externality has meant that the totalizing ideas of reason have left the regulatory realm of the imaginary and demanded full actualisation in the world. This passage from transcendentalism to immanentism has its source in Kant’s decision to deny God’s mode of being phenomenological purchase; by consigning God to a purely noumenal realm Kant denied God’s indeterminacy and determinacy and as a result he fatally limited the ability of the infinite reflexively to contain and control the relentless impulses and drives of finite secular rationality.” Blond, *supra* note 29 at 43. Also see, Philip Blond, “Perception: From Modern Painting to the Vision in Christ,” in *Radical Orthodoxy: A New Theology*, ed. by John Milbank, Catherine Pickstock, and Graham Ward (London: Routledge, 1999) at 220ff.

and the free market.⁴⁸ Economic liberalism means a market system ostensibly operating independently of the interconnected ecological, social, and spiritual relations that make up our lives.⁴⁹ It means a methodology of contractual relations that is divorced from our everyday cooperative economic relations that are embedded within familial and communal relations that are deeply charged with normativity.⁵⁰ The liberal economy (the market economy) is a self-regulating system of markets that operates as a transcendent, amoral layering riding above ecological, social, and spiritual relations. The market economy is an elevation of material gain, in other words, above all other concerns; it is an economy that is understood to be divorced from its norms of reciprocity and redistribution. Of course, though, this elevation of material gain is rooted in a political ontology committed to viewing actors as individuals who are not only self-interested, but interested in nothing more than material gain. As Polanyi has suggested, modern (market) economics is actually liberal economics in the sense that it is focused upon material wealth as a separate field of study to be explored as a universe operating according to its own internal logic (e.g. see Adam Smith's *Wealth of the Nations*).⁵¹ Further, just as political liberalism depends upon the muscle of the modern welfare state, so too does the *laissez-faire* of economic liberalism depend upon the enforcements of the state. Importantly, however, the state does not dominate or control the market as a foreign power but actually develops in accordance with the

⁴⁸ By economic liberalism of the free market I mean the three classical tenets outlined by Karl Polanyi in *The Great Transformation*: “that labor should find its price on the market; that the creation of money should be subject to an automatic mechanism; that goods should be free to flow from country to country without hindrance or preference; in short, for a labor market, the gold standard, and free trade.” Karl Polanyi, *The Great Transformation* (Boston: Beacon Press, 1944) at 135. Interestingly, Polanyi was initially planning to name this work “The Liberal Utopia: Origins of the Cataclysm”. See Gareth Dale, *Karl Polanyi: The Limits of the Market* (Cambridge: Polity Press, 2010) at 45.

⁴⁹ Polanyi, *supra* note 48. This notion of the self-regulating market as the foundation for society is in contrast to the traditional understanding of the economy revolving around the management of a household. See Keith Hart & Chris Hann, “Introduction: Learning from Polanyi” in *Market and Society: The Great Transformation Today*, ed. by Chris Hann & Keith Hart (Cambridge: Cambridge University Press, 2009) 1 at 1.

⁵⁰ See, for example, J.K. Gibson-Graham, *A Postcapitalist Politics* (Minneapolis: University of Minnesota Press, 2006) and Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge: Cambridge University Press, 1990).

⁵¹ See Polanyi, *supra* note 48 at 111ff and 43ff.

logic of the market such that the state naturally fosters the *laissez-faire* of economic liberalism. The connection between liberal political ontology and liberal economics, therefore, can be seen in the submission of the liberal state to the market economy already in the late 18th century.⁵² Economic liberalism's isolation and elevation of material gain inevitably results in the liberal state-sanctioned appropriation of non-profitmaking spheres of life by the market.⁵³

As C.B. MacPherson and Philip Blond have noted, the liberal market state has become understood as a supplier of political goods and, in order to maintain its supply chain, supports a market that actually destroys society and operates out-of-synch with democracy.⁵⁴ For, if you understand democracy as a search for a moral ideal pertaining to the flourishing of all peoples, economic/political liberalism offers little to no support. Liberalism's system of power is designed (with self-determination as the highest goal) to facilitate and promote the process of making contracts for individual material gain.⁵⁵ This system of power at work in the liberal economy/polity, however, hides its own normative activity by elevating a search for the right procedures of political and economic interaction above a search for the good in political and economic relations. This formalism hides the morality (the inherent normativity) of the liberal system of power that operates as a simultaneous individuation and totalization of the self. In its dedication to the unhindered self-determination of the individual, the liberal system of power obscures the normativity promoted in and through this use of power. That is, the exercise of power is denied even as it is active in promoting an ethic of material gain for the individual through self-determination. And, although we will consider liberalism's eclipse of normative relations below in a discussion of its proceduralist turn, we should note that liberalism is

⁵² See *ibid.* at 111ff and 139.

⁵³ See Philip Blond, *Red Tory: How the Left and Right Have Broken Britain and How We Can Fix It* (London: Faber & Faber, 2010) at 186 and Michael Perelman, *The Invention of Capitalism: Classical Political Economy and the Secret History of Primitive Accumulation* (Durham: Duke University Press, 2000).

⁵⁴ See C.B. MacPherson, *The Real World of Democracy* (Toronto: Canadian Broadcasting Corporation, 1965) at 8, 9.

⁵⁵ See *ibid.* at 41, 54, and 62.

relatively successful in this denial insofar as its underlying ontology (and the substitutionalist logic that accompanies it) remains unquestioned. Therefore, we have a *prima facie* reason to seek out a new political ontology of network interconnection and patterning to the degree that we are dissatisfied with the market-state system of liberalism. If we are interested in re-moralizing the market, we need to develop a political ontology that will allow us to simultaneously re-moralize the state by focusing on our ecological, social, and spiritual interconnectedness rather than our ability to abstract into the realm of contractual procedures.

Third, what do we hope to highlight that previous ontologies – and, therefore, political ecologies – failed to bring to light? Or, alternately, how might a network ecology allow us to substantially re-work our conception of legitimate power-use?

A re-focus on our interconnectedness through the development of a network ontology, holds the promise of shedding light on some of the blind spots that have developed within a dominant tradition of liberalism. Specifically, the language of networks allow us to focus in a little more clearly on a couple things...

- (a) patterns of being that fundamentally transcend the individual (and, indeed, transcend humanity itself),
- (b) the structural persistence of these relational patterns – i.e. what might be called natural ordering within the world, and
- (c) opportunities for creating resistance to the structural violence that comes about through homogenizing impulses.

There is much to be said regarding these three points but, given the fact that this work is about the potentials of a network ontology, exploration of these three themes will best be taken up one step at a time in the chapters that follow rather than simply summarized here. But, before we get ahead of ourselves, let us consider what we might mean by networks, network ecology, the nature of things, and natural ordering in the world.

In our turning away from the atomistic conception of political ontology, let us begin

considering what we might mean by “network ecology”. By “network ecology” I mean understanding the world as being made up of (a) nested distributive patterns that are (b) both material and immaterial and (c) retain stability in their patternings while being perpetually in flux. As should become clearer in the discussion that follows, I refer to network “ecology” rather than simply “ontology” because I believe it is important to understand and direct our attention to (a) the world as made up of patterns of activity and (b) our participation in this activity (i.e. the inevitable connection between ontology and epistemology).

But, first, networks as nested distributive patterns... Networks are typically understood as three kinds: centralized, decentralized, and distributive.⁵⁶

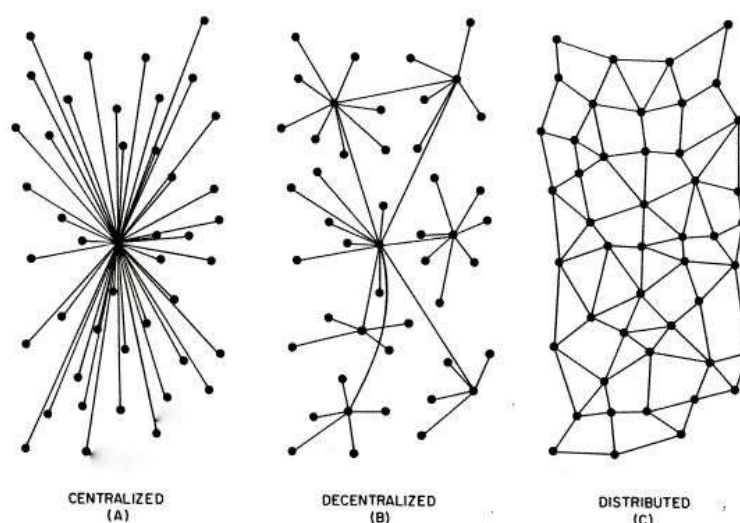


Figure 1⁵⁷

A distributive network, structurally speaking, may be defined as an internally inconsistent or

⁵⁶ As Galloway and Thacker note, “networks come in all shapes and flavors, but common types include centralized networks (pyramidal, hierarchical schemes), decentralized networks (a core ‘backbone’ of hubs each with radiating peripheries), and distributed networks (a collection of node-to-node relations with no backbone or center).” Galloway & Thacker, *supra* note 24 at 32. Simply put, a “network is a set of interconnected nodes. A node is the point at which a curve intersects itself.” Manuel Castells, *The Rise of the Network Society*, Vol. I of *The Information Age: Economy, Society and Culture* (Oxford: Blackwell, 1996) at 470.

⁵⁷ These three models of networks were put forward by Paul Baran as models to be considered in the development of a communications architecture that became the Internet. He suggested that the redundancy of the mesh-like pattern in the distributive network would be resilient enough to that would survive a Soviet nuclear strike. For this history and the above figure, see Albert-László Barabási, *Linked: The New Science of Networks* (Cambridge: Perseus, 2002) at 145.

asymmetrical pattern of interrelationality that contains tensions within its own form and is capable of heterogenous transformations and reconfigurations.⁵⁸ Not only are these patterns fundamentally asymmetrical in their architecture, but are highly complex in that they are also patternings nested within patternings. Or, in other words, each nodal point in Figure 1 above should be understood as being itself a distributive network; each actor/node is at the same time a network. Instead of focusing on the distinction between agent and structure as if these were two distinct realities, the nesting of the networks means that all “beings” are beings-in-the-network or, more precisely, network-beings. The agent/actor and structure/network are not simply reversible as Bruno Latour suggests but, because they are nested patternings, the agent/actor actually *is* a structure/network.⁵⁹ The question of agency (and hence of violence) is, therefore, a question of scoping. The patternings of networks can be seen and understood as active and internally stimulated at various levels depending upon one’s level of analysis. In this sense, there is, therefore a scaling of networks that goes both lower and higher than our political understanding allows. This nested distributive network ontology provides us with a model beyond the fixed-frame reference of Newtonian physics that has drawn us into using a universal metric to understand what it means to be part of a larger structure.

Second, networks as nested patterns of both material (*res extensa*) and immaterial (*res spiritus*) relations... Networks should be understood as material and immaterial patterns or systems of, for example, biological, semiotic, organic, inorganic, natural, technological interrelationality; they are bio-material, techno-mechanistic, social, and spiritual. Therefore, a network approach is a mode of inquiry that is neither materialist nor reductionist and, indeed, blurs over the lines that could be drawn between, for example, the biological and the semiotic in

⁵⁸ See Galloway & Thacker, *supra* note 24 at 61.

⁵⁹ See Latour, *supra* note 38.

order to draw attention to a broad, diffuse agency that is part of each entity patterning within the world. As such, networks should be understood much more as ecosystems than as computer networks – i.e. messy and dynamic in their interrelations rather than mechanistic and precise. Their boundaries are always resisting clear and definite definition – they are always negotiated and, indeed, change depending upon the negotiation process itself.

Third, networks as stable yet always in flux... Complex distributive networks are best conceived of as dynamic and open-ended systems that are constantly changing through reconfiguration and the addition of further nodes and links.⁶⁰ Networks *are* paterings of interconnection – i.e. processes of forming and re-forming patterns – that move matter, energy, information, etc. between network nodal points. These ever-changing process-flows of network formation simultaneously possess contingency and stability as network patterns develop over time; networks have both roots and wings. Roots because the patterning develops a kind of stability in its structure that resists change. Wings because networks are always active and in flux.⁶¹

What, then, is the significance of network paterings? What political implications might we expect to arise from this turn to a network ecology?

As we have already noted, engaging in the development of a network ecology as a mode of inquiry into politics and, especially, the legitimization of power-use, will (hopefully) allow us to move beyond some of the perpetually problematic conundrums of liberal democratic theory.

⁶⁰ See Barabási, *supra* note 57 at 106.

⁶¹ Change will inevitably find its way into political theory. One can acknowledge the flux within all network patterning structures from the very beginning, or the flux may come in later in insidious ways that disrupt and disturb in an excessively violent manner. Focusing upon the individual as the foundational building-block for political relations, for example, ignores the flux of all living systems and inevitably leads to excessively violent change in efforts to bring individuals together in political community. Instead, we should build flux into the most fundamental “units” of political theory – i.e. the flux must be present at the most basic levels of analysis and part of the most basic assumptions. Otherwise, it will find its way into theorizing as an external force acting upon the most basic units of political interaction – e.g. the public-in-the-state as a common political body or revolution as the means of creating a unified political body.

And, it will allow us to do this because, primarily, this network approach enables us to perceive the diffusion of agency or broaden our typical examination of how action is located and re-located. By re-imagining agency as network pattern flux, we are able to bring into focus a kind of power at work in the world that operates within the very architecture of our world. And, further, with this understanding of a pervasive or structural power active within the world, a whole new realm of opportunities for identifying and creating resistance to structural violence opens up for us.

As Bruno Latour stated in a 2010 lecture to the Annenberg School for Communication and Journalism, “[i]n its simplest but also in its deepest sense, the notion of network is of use *whenever action is to be redistributed*.”⁶² That is, the network approach to understanding ecological, social, and spiritual relations allows us to more fully perceive and account for – to recognize – the agency of attributes that was previously concealed within conceptions of the world as made up of self-contained entities. Or, again as Latour suggests, a network is “what takes any *substance* that had seemed at first self contained (that’s what the word means after all) and transforms it into what it needs to *subsist* through a complex ecology of tributaries, allies, accomplices, and helpers.”⁶³ To transform an object “from a matter of fact to a matter of concerns.”⁶⁴ The network, therefore, represents both a focal-point for a new political ecology as well as a mode of inquiry for understanding ourselves and the objects of our world – i.e. a new kind of politics. This new kind of politics rooted in a network ecology means a re-imagining of the individual/society and citizen/state relations within traditional political theory. Fundamentally, it is a re-consideration of the *res publica* – the public thing – and a turn to *res ecologia* – the ecological thing.

⁶² Latour, *supra* note 38 at 2 [emphasis original].

⁶³ *Ibid.* at 5 [emphasis original].

⁶⁴ *Ibid.*

By “ecology” I mean the study of the household (i.e. from *oikos* “household” and *logos* “principle of order and knowledge”). An ecosystem is a number of living and non-living organisms and elements interacting as a complex pattern of relations. Ecosystems are the systems of relations within which we as humans find ourselves dwelling: they are our households. However, this network ecology approach means that not only is our *environment* best understood in terms of an integrated system or a number of integrated systems, but the *things* that make up these larger systems are themselves best understood ecologically – i.e. as *res ecologia* or as things-within-which-we-dwell. In other words, we must re-evaluate our understanding of things themselves if we are to take the network approach seriously.

Understanding things as *res ecologia* means at least three things:

- a thing is a relational set of attributes that constitutes a whole,
- a thing is a matter of contestation (i.e. a matter of concerns rather than a matter of fact), and
- a thing is a whole that is greater than the sum of its parts.

In his sometimes confusing discussions of a thing, Heidegger is surprisingly helpful when considering these three ways of understanding things as *res ecologia*. Simply put, Heidegger suggests that a thing presences to us as a gathering and this presencing can be thought of as the thing’s essential nature.⁶⁵ Let us therefore briefly consider these three elements – presencing, gathering, and essential nature – for it is in considering these three elements that our understanding of *res ecologia* becomes more clear. It should be noted that I am playing off Heidegger’s terms and themes rather than simply discussing his considerations of things. So, we might say that although my approach is phenomenological, I seek to walk a middle path between the transcendentalist phenomenology of Husserl and the immanentist phenomenology of

⁶⁵ See Martin Heidegger, “The Thing,” in *Poetry, Language, Thought*, trans. by Albert Hofstadter (New York: Harper Colophon, 1975) quoted in *Making Things Public: Atmospheres of Democracy*, edited by Bruno Latour & Peter Weibel (Cambridge: MIT Press, 2005) 272 at 272.

Heidegger without falling into the humanist trap to which they have fallen prey.⁶⁶

First, the thing as presencing... A thing does not exist as a thing-in-itself that is lifeless and inactive – i.e. as nature (*res extensa*) has been for the modern mind (*res cogitan*). Kant’s Copernican Revolution was the denial of the power of reason in the realm of the supersensible and a turn to considering the manner in which phenomena becomes cognizable by humans. As he writes in his *Critique of Pure Reason*, “our faculty of cognition is unable to transcend the limits of possible experience” and, therefore, “our representation of things as they are given to us, does not conform to these things as they are in themselves, but that these objects, as phaenomena, conform to our mode of representation.”⁶⁷ Kant seeks to deny access to cognition of that thing (*noumena*) which transcends empirical experience (*phenomena*) and, therefore, to ensure we remain fixed upon the structures of our own conscious experience – i.e. remain focused upon the ability of *res cogitans* to take up and animate a lifeless *res extensa*. For Heidegger, and for us in this discussion, this denial of life to the thing-in-itself is unacceptable and we must embark upon a kind of counter-revolution to Kant’s revolution. So, importantly, we must focus upon the active disclosure or revelation that makes things manifest or presents things to humans as space-time gatherings.⁶⁸ For example, in contrast to Husserl’s reliance upon a transcendental subjectivity, Heidegger argues that the manifest givenness of phenomenon occurred regardless of any

⁶⁶ Cf. Phillip Blond, “Emmanuel Levinas: God and Phenomenology,” in Phillip Blond, ed. *Post-Secular Philosophy: Between Philosophy and Theology* (London: Routledge, 1998) at 195ff.

⁶⁷ Immanuel Kant, *Critique of Pure Reason*, trans. by J.M.D. Meiklejohn (London: Henry G. Bohn, 1855) at xxx.

⁶⁸ See Graham Harman, “Heidegger on Objects and Things,” in *Making Things Public: Atmospheres of Democracy*, edited by Bruno Latour & Peter Weibel (Cambridge: MIT Press, 2005) 268 at 270. Harman suggests that, “[a]lthough his ‘things’ are defined by their withdrawal from humans into a private reality, this privacy seems to have meaning *only insofar as it hides from humans.*” *Ibid.* at 271. He argues, therefore, that although Heidegger sought to breath life back into the thing with a counter-revolution against Kant, the thing’s ultimate fate lies in suffering under the burden of the modernist’s anthropocentric gaze. It has become quite commonplace to level the charge of anthropocentrism upon theorists but this seems somewhat unfair as a challenge against Heidegger. There is no doubt that there is a significant degree of anthropocentrism within phenomenology quite generally. However, to the degree that Heidegger (a) has realism in his idea of things existing or remaining themselves in their relations with humans and (b) understands things as active in this world, anthropocentrism is unfair. Anthropocentrism is best left as a charge against those who understand things and nature as either (a) pure, immanent constructions and, therefore, (b) inactive or lifeless *res extensa*.

transcendental constitution within the subjectivity of humans.⁶⁹ Or, in other words, things presence themselves to us as space-time gatherings.

Second, then, the thing as gathering... As Heidegger suggests, a thing things in its gathering. It presences to us in its gathering.⁷⁰ But, if we might add to Heidegger's language somewhat, we would do well to say also that the thing wholes in its gathering. Indeed, it presences as a whole. But, importantly, the presencing of the whole is not an activity accomplished in isolation. Rather, a thing presences as a whole in a two-fold relationality that is both "internal" and "external" to the whole. A thing is relational in its *gathering of the whole* (i.e. "internally") but it is also relational in its presencing to humans *as a whole* (i.e. "externally"). Therefore, things do not simply presence themselves to humans as singular, definite or finalized beings-in-themselves, but as a gathering, as a contested matter of pertinence. Therefore, a "thing" used to denote "anything that in any way bears upon men, concerns them, and that accordingly is a matter for discourse."⁷¹ Thing means a gathering, "and specifically a gathering to deliberate on a matter under discussion, a contested matter.... an affair or matter of pertinence."⁷² If we understand things as *res ecologia*, then we understand that a thing presences as an ecology – a *logos* (ordering principle) of an *oikos* (dwelling place). It makes itself known as an ordering of a dwelling-place that is, due to its relationality, at the same time both stable in its presencing as well as in flux. So, importantly, a thing does not presence simply as an ecosystem. It does not first whole and then move on to presence. Rather, it is wholing in and through its presencing. Again, it is relational both "internally" and "externally"; it is relational in its essence.

⁶⁹ See Blond, *supra* note 66 at 195ff. Also see Martin Heidegger, *Die Frage nach dem Ding* (Frankfurt: Vittorio Klostermann, 1984) at 246 quoted in Harman, *supra* note 68 at 269.

⁷⁰ Heidegger, *supra* note 65 at 174.

⁷¹ *Ibid.*

⁷² *Ibid.*

Third, the thing's essential nature... Heidegger suggests that we might think of a thing's presencing to humans as its essential nature. This presencing is a thing's essential nature, but a thing gathers as a whole that goes beyond its direct relations or encounter with humans. Like Heidegger, Latour is intent upon bringing to light the thing as a gathering and he seeks to understand this gathering as a democratic assembly in which the thing is both the assembled as well as that for which the assembled are assembled. For Latour, however, things do not presence themselves to humans as wholing things, but they do so as a data-set of disclosed and undisclosed attributes – i.e. as a whole realm of widely-distributed action.⁷³ Because things have no essence that remains regardless of their relational environments, an object is fully transformable in and through human considerations of it. This transformation is possible – at least in theory – all the way through the thing. Things are fundamentally contestable or, as he suggests, “we are not trying to go back to the old materialism of *Realpolitik*, because *matter itself* is up for grabs as well. To be materialist now implies that one enters a labyrinth more intricate than that built by Daedalus.”⁷⁴ It is problematic, therefore, for Latour to speak of a thing's essential nature because a thing is nothing but a set of attributes.⁷⁵ Thus, for Latour, wholes are no greater than their parts and, indeed, a whole is always *less* than its parts.⁷⁶

⁷³ See Bruno Latour, “From Realpolitik to Dingpolitik or How to Make Things Public,” in *Making Things Public: Atmospheres of Democracy*, edited by Bruno Latour & Peter Weibel (Cambridge: MIT Press, 2005) 14 at 23. Also see Richard Rorty, “Heidegger and the Atomic Bomb,” in *Making Things Public: Atmospheres of Democracy*, edited by Bruno Latour & Peter Weibel (Cambridge: MIT Press, 2005) at 274 at 274.

⁷⁴ Latour, *supra* note 73 at 24.

⁷⁵ This ontological constructivism is the reason why Latour argues for a wholesale disposal of the practice of critique. See, for example, Bruno Latour, “An Attempt at a Compositionist Manifesto” in (2010) 41 *New Literary History*, 2010 471 at 474ff and Bruno Latour, “Why Has Critique Run Out of Steam? From Matters of Fact to Matters of Concern,” (2004) 30:2 *Critical Inquiry* 225–48. Or, as Richard Rorty describes it, “things are what they are by virtue of their relation to everything else. This means that they have different features depending on the context in which they are put.” Rorty, *supra* note 73 at 274. Part of this radical relationalism means that Latour extends the meaning of thing (*Ding*) to those that Heidegger romantically excluded as mere objects (*Gegenstände*) – technology. See Latour, *supra* note 73 at 23 and Harman, *supra* note 68 at 270.

⁷⁶ See, for example, Bruno Latour, Pablo Jensen, Tommaso Venturini, Sébastien Grauwin, and Dominique Boullier, “The Whole is Always Smaller Than Its Parts: A Digital Test of Gabriel Tarde's Monads,” forthcoming in *The British Journal of Sociology*, online: Bruno Latour <<http://www.bruno-latour.fr/sites/default/files/123-WHOLE-PART-FINAL.pdf>>. Also see Bruno Latour, *Reassembling the Social. An Introduction to Actor-Network Theory* (Oxford:

Latour is certainly correct to speak of the widely distributed action of things. As we just discussed, things are best understood as gatherings. And, indeed, they are best understood this way because it brings to light the activity of their being-in-the-world – i.e. their being as relational activity. He is mistaken, however, to suggest that the whole is never greater than its parts. For, indeed, a thing wholes as much as it gathers and, therefore, it presences as a whole that has its being in its action as a whole. A thing should be understood as thoroughly relational, but its relationality is not flatly immanent. We do not, for example, encounter things as data-sets.⁷⁷ Rather, a thing presences on multiple levels and, as such, not only comes to us as parts *and* wholes (depending upon the nature of our encounter with the thing) but also transcends the encounter with humans. A thing is somewhat withdrawn from humans as something outside a space-time gathering-for-humans. Thus, things are not fundamentally contestable because they appear to us from beyond our perception as already engaged in a process of constituting and re-constituting. This process of constituting (or gathering together/wholing) therefore comes to us as something outside ourselves, as something that orders us and our world.⁷⁸

It is this wholing of things that allows them to exist and persist through time and, to a degree, persist despite changes in their relational environments. The integrity of wholes lies in their wholing, a process of which humans are a part but not the whole. A thing should be understood as a network that has integrity within its patterning. Admittedly, though, this integrity is not as an Aristotelian substance that persists regardless of its relations but an integrity that presences in and through relations that are relatively stable in and through time. We would do

Oxford University Press, 2005).

⁷⁷ Latour writes that, “there is no world of beyond. It is all about *immanence*.” Latour, *supra* note 75 at 475. It should be noted that truth is not found in an understanding of things as if reality could be broken up into pieces that can be grasped. Instead, truth is always piecemeal and always part of our practices and traditions. Our practices shed light on part of the reality of our being-in-the-world. So, when our practices change, light is shed on a different part of our being, a being which comes from beyond ourselves.

⁷⁸ Or as Blond explains, “the visible world is not a phenomenon that is determinable by human beings and their account of what is possible for them to experience.” Blond, *supra* note 66 at 207.

best to speak, therefore, of *res ecologia* rather than simply of *res publica*. *Res publica* has no integrity and is fully contestable in its immanence. It does not come from beyond but arises in the midst of the *demos*. Likewise, it will decompose or deconstruct as soon as the public disbands or is itself deconstructed.

Latour is quite correct to focus in on the fundamental inter-relationality of existence and, therefore, the corresponding inter-relationality between the inquirer and the entity. I share his emphasis upon using the network as a mode of inquiry with the goal of learning how to be attentive to a diffuse agency. For example, to help us recognize structural violence that has been hidden by liberalism or to make visible that which was previously invisible in an atomistic/organistic approach that can only contemplate entities as self-contained beings. However, it is not clear that, in turning to a network ontology, we need to be as dismissive of the notion of the whole as Latour is. For example, there is no such thing as society within Latour's radical relationalism; it is a mere phantom that has persisted as a leftover from the substantialism of Aristotle.⁷⁹ Laying a good deal of blame at the feet of Durkheim, Latour argues that "[t]o believe in the existence either of individual or of society is simply a way to say that we have been deprived of information on the individuals we started with; that we have little knowledge about their interactions; that we have lost the *precise conduits* through which what we call 'the whole' actually circulates. In effect, we have jettisoned the goal of understanding what the collective existence is all about."⁸⁰ In other words, the idea of the whole persisting through time, for Latour, is nothing more than an epistemic problem. Or, rather, it is a problem that is best

⁷⁹ In *Reassembling the Social*, he bemoans the fact that social theorists "never seem to tire in designating one entity as real, solid, proven, or entrenched while others are criticized as being artificial, imaginary, transitional, illusory, abstract, impersonal, or meaningless." Latour, *supra* note 76 at 28. However, he goes on to say, these entities are groupings that are all too often set up at the beginning of the sociological enquiry as if they existed outside the actual grouping process itself. But, the stability of these groupings is precisely what is in need of explaining. Neither society nor the social exists as if it is something out there to be discovered and explored. Rather, then, social connections are perpetually made and re-made as groupings are grouped and the process of tracing these connections itself to some degree determines the grouping. Latour, *supra* note 76 at 35, 36.

⁸⁰ Latour, *supra* note 38 at 5.

understood as an error rooted in epistemological failings. The whole is something we turn to when giving up on understanding the vast array of connections that make up the world.

Importantly, although I will argue precisely the opposite, Latour also suggests that this kind of neo-nominalism is necessary if there is to be politics. For example, he writes that “[i]f you accept the notion of organism as something different or superior or even emerging, you lose what an organization is (and I would add you ruin the possibility of doing politics). A phenomenon may be collective without being social.”⁸¹ However, Latour fails to recognize that the whole is fundamentally and simultaneously heterogeneous and is not this way despite its wholing but, rather, gathers without unifying. Additionally, as we saw above, a whole is a nested pattern of wholes and, therefore, contains within itself a perpetual multiplicity (i.e. the part is the whole within a whole or, to put it the other way, the whole is the part within a part). It is precisely this dynamism between the heterogeneous multiplicity of the network nodes and the unity of the networks that allows for, and fosters, the doing of politics. And, indeed, Latour himself seems to have some sense of this dynamism when he states that “the area ‘covered’ by any network is ‘universal’ but just as long and just where there are enough antennas, relays, repeaters, and so on, to sustain the activation of any work. Thanks to the notion of networks, universality is now fully *localizable*.”⁸² But, of course, the universalities of *res ecologia* are localizable only because they already contain within them a fundamental heterogeneity and multiplicity. So, in this sense Latour is correct – this dynamism and potential for genuine localizability within universality is necessary for the doing of politics. However, I am suggesting that the immanentism within Latour’s ontological constructivism does not allow for the dynamism of simultaneous unity and multiplicity. Or, in other words, Latour destroys the

⁸¹ *Ibid.* at 15. Latour believes this is the only way to be true to the scientific aspirations of social science. For, he correctly notes that defining what the social world is made up of is to engage in politics rather than science. Latour, *supra* note 76 at 40, 41.

⁸² Latour, *supra* note 38 at 8.

possibility of politics in his decomposing of the transcendental.

Latour's compositionism or neo-nominalism leads him to spurn the search for a world beyond this immanent world and to instead content himself with simply deranging and re-arranging or decomposing and composing the world around us.⁸³ His concept of relationality, therefore, seems to be both too shallow and too atomistic. It seems too shallow because, for Latour, to be part of a whole is not to enter into a higher entity but simply to share attributes in common.⁸⁴ This holds the danger of universalizing the attributes of various entities in an understanding that attributes are shared between entities as if they were transferable from relational set to relational set. Instead, attributes, just as much as the substances of substantialism, must be re-conceived in relational terms; an attribute of one entity is not the same as an attribute of another entity because the attribute itself is best understood as part of a whole network of relations. To speak of a common attribute is to give up on the task of understanding the relationality of networks. Additionally, his concept of relationality seems too atomistic because, as we saw above, it is entirely appropriate to understand there to be wholes that are greater than their parts. Simply focusing on the parts in a kind of neo-nominalism holds the danger of obscuring the very real importance of wholes. He is correct to write that we should search for universality without believing that universality is already there, waiting passively to be

⁸³ See Latour, *supra* note 75 at 474ff.

⁸⁴ See Latour, Jensen, Venturini, Grauwin, and Boullier, *supra* note 76. We are accustomed to speaking of an entity as something that possesses distinct and independent existence as a being. However, Latour understands things as being what they are entirely in terms of their relationship with everything else. He speaks of "overlapping entities", therefore, because he understands the relations of things to be discovered in and through an inquiry into the relations. And, so, depending upon the type of inquiry one is engaging in, the relations will be different. In his article, "The Whole is Always Smaller Than Its Parts," Latour argues that organizing a number of features into a set is not a recognition of the delineation of a role an entity plays within a larger structure, but a tentative recognition of the limits of its attributive content. The (relatively explicit) shift in this move is an abandonment of a search for predictive capacity and an attempt to engage in ongoing clarifications of provisional datasets (i.e. groups of attributes). See Latour, Jensen, Venturini, Grauwin, and Boullier, *supra* note 76 at 13. Also see Latour, *supra* note 38 at 2, 5. By an "entity", therefore, it seems he means (a) a set of attributes that is (b) determined based upon one's goals and abilities as an inquirer at the time.

discovered.⁸⁵ However, as we have seen, there is no reason to suggest that wholes do not actively make themselves known to us as wholes. In the same way that things presence as wholes coming to us as gathered from beyond our perception, so too does society come to us as gathered from beyond.⁸⁶

The dynamism at work within a gathering without unifying ensures that the essential nature of *res ecologia* remains somewhat hidden for us. Or, to put it another way, the Being of beings remains beyond and presences to us in beings that come from a plenitude that transcends our being. The political relevance of this plenitude and rejection of immanentism can begin to be seen in the notion of natural ordering and a contemplation of the significance of violations of this ordering.

There is no doubt that it is out of fashion to speak of a natural ordering to the world in this day and age.⁸⁷ To do so in the context of a network ecology immediately raises questions regarding the grand narratives that are so derided by the prophets of post-modernism.⁸⁸ It brings us very quickly into uncomfortable questions of how our own personal narratives or the

⁸⁵ See Latour, *supra* note 75 at 474.

⁸⁶ This is why Joseph de Maistre argued that “man cannot create a constitution; and no legitimate constitution can be written. The collection of fundamental laws, which must essentially constitute a civil or religious society, never has been written, and never will be, *a priori*. It is only when society finds itself already constituted, without being able to say how, that it is possible to make known, or explain, in writing, certain special articles; but in almost every case these declarations or explanations are the effect of cause of very great evils, and always cost the people more than they are worth.” Joseph de Maistre, “Essay on the Generative Principle of Political Constitutions” (Boston: Little and Brown, 1847) at 89-93 [emphasis removed].

⁸⁷ Nevertheless, the world is not a random succession of movements but composed of *res ecologia*. The world possesses patterning movements that persist throughout time and manifest as hierarchies of variables. It is almost certainly not a coincidence that humans find beauty in repeating patterns. For example, music is all about layers of repeating patterns and creative deviations in order to re-enforce the patterns. Additionally, our understanding of intelligence centres quite closely around pattern-recognition. For example, in a statement on the current state of intelligence studies, fifty-two professors stated that intelligence “involves the ability to reason, plan, solve problems, think abstractly, comprehend complex ideas, learn quickly and learn from experience. It is not merely book learning, a narrow academic skill, or test-taking smarts. Rather, it reflects a deeper capability for comprehending our surroundings – ‘catching on,’ ‘making sense’ of things, or ‘figuring out’ what to do.” Linda Gottfredson, “Mainstream Science on Intelligence: An Editorial with 52 Signatories, History, and Bibliography” (1997) 24:1 *Intelligence* 13 at 13. In all these areas – planning, solving problems, comprehending surroundings, etc. – it is pattern-recognition that makes the difference. Patterns are found in symbols, ideas, and things and the ability to discern them is essential to one’s ability to engage in effective communication.

⁸⁸ For example, see Lyotard, *supra* note 29.

narratives of our communities relate to the grand narrative of ordering in the world. As Charles Taylor and George Grant suggest, however, it is impossible to avoid all grand narratives because they are essential to our thought processes and our actions. Our behaviour depends upon narratives that contain considerations of what life is all about, what is taking place in human history, and how our lives might fit into this history.⁸⁹ In short, we inevitably depend upon assessments and articulations of how the movements of our lives map onto the movement of the world around us (i.e. what we will call “politicization” in the discussion that follows).

This kind of transcendental argument has purchase because it makes little sense to speak of movement without a background against which the movement can be perceived. Without a natural ordering in the world, all one can do is engage in self-referential, ad hoc negations that are perpetually immanent and, due to what I would argue is the persisting resonance of a grand narrative, continue to hold a vague promise of transcendence. The immediacy of deconstructionist immanentism seeks presence in the world as a self-exclusionary action but this reflexivity simply projects a negative image of its own self limitation and, in so doing, obscures the beyond that allowed the reflexive projection in the first place.⁹⁰ I would like to suggest that the attempt to move away from speaking about a natural ordering in the world is not only ultimately futile, but can actually be quite harmful in its denial of the political. The safety and

⁸⁹ See Charles Taylor, *A Secular Age*, (Cambridge: Belknap Press, 2007) at 573 and George Grant, *Philosophy in the Mass Age*, ed. by William Christian (Toronto: University of Toronto, 1995) at 14.

⁹⁰ See Blond, *supra* note 29 at 1-66. It should be noted that this claim regarding grand narratives is quite different than the claim that a theorist is a neo-conservative because he offers no “theoretical” reason to move society in one direction or another – i.e. because he does not appeal to a universal that can be applied to each and every situation as a kind of gold standard of normativity (a critical perspective). Habermas, unlike myself, understands grand narratives as being fundamentally susceptible to mythological and ideological corruptions that are rooted in the structural violence of communicative processes. As will hopefully become clear in what follows, I am suggesting that the parochial grand narratives should not concern us as much as the violence of undermining these narratives through abstract, universalized communicative procedures. See Jürgen Habermas, “Modernity versus Post-Modernity,” (1981) 22 *New German Critique* 3-14. Also see Jürgen Habermas, *Autonomy and Solidarity: Interviews*, ed. by Peter Dews (London: Verso, 1986) at 157-58 [Habermas, *Autonomy*] and Habermas, *supra* note 31 at 1, 35-55, 74-77, and 159 as well as Jürgen Habermas, “Martin Heidegger: On the Publication of the Lectures of 1935,” in *The Heidegger Controversy: A Critical Reader*, ed. by Richard Wolin (Cambridge: The MIT Press, 1993).

sterility of denying and undermining the dynamic interplay between grand narratives and personal narratives serves to obscure structural violence that comes from beyond ourselves.⁹¹ Let me try to explain this a bit more...

We cannot help but speak of a natural ordering to the world and we are led into trouble if we attempt to deny that we rely upon it. This argument will take much more work but, first, what might we mean by “natural”? Does natural mean, as is so commonly suggested, the material world that exists independently (i.e. without the control or influence of humans) of human activity? Or, by “natural” do we mean the innate or essential character or quality of something?⁹² Certainly, “natural” can be technically defined in a number of ways. In everyday life, though, we typically understand something as natural if it possesses a kind of relative permanence or persistence. And, indeed, both of the definitions above rely upon this conception of natural. Existence that is independent from humanity is perceived by us humans who, in a sense, look outwards from ourselves at a kind of background or environment within which we are living our lives. In the second definition, we understand an essential quality of something as that which persists despite relatively superficial changes to a thing’s character or environment.

So, naturally, change is a matter of perspective and the persistence that is “the natural” is no different. Persistence or permanence is relative; it is a stability that is relative to that which is changing around or in relation to it. Further, this relative persistence is only understood from our perspective as humans living as embodied, historical beings. Grand narratives, therefore, should

⁹¹ Although we will focus upon the immanentism of Latour here, it is important to remember that the procedural transcendentalism of Habermas and the deconstructive immanentism of Deleuze and Latour are actually two sides of the same universalist coin. Latour is greatly inspired by Gilles Deleuze’s philosophy of immanence which, decrying dualisms such as mind/body, inside/outside, and nature/culture, asserts that there is one level of existence, one immanent plane. See Anders Blok & Torben Jensen, *Bruno Latour: Hybrid Thoughts in a Hybrid World* (London: Routledge, 2011) at 14. This immanentist influence has been explicitly recognized by Latour who has said that he would not be opposed to renaming his Actor-Network Theory “actant-rhizome ontology” after Deleuze and Guattari’s rhizomes. See Bruno Latour, “On recalling ANT,” in *Actor Network Theory and After*, ed. by John Law & John Hassard (Oxford: Blackwell, 1999) at 15-25.

⁹² For example, see “Nature” in *Oxford Dictionary of English*, ed. by Catherine Soanes & Angus Stevenson (Oxford: Oxford University Press, 2005).

be understood as narratives against which or within which we can perceive ourselves as moving through our own personal narratives. (Just as we can only perceive grand narratives relative to our own personal narratives.)⁹³ The “natural” is what we understand to be relatively stable and persistent in ourselves and in the world around us. Finally, although we tend to categorize things into natural and unnatural, we should remember that the natural (a) is relative, (b) exists on a spectrum, and (c) is always contestable. In this sense, therefore, the natural is fundamentally political.⁹⁴

It seems quite clear that folks like Deleuze and Latour – being part of a rapidly changing technological society – no longer perceive a deeper persistence that we used to perceive. The exercise of self-determining freedom is the highest meaning that can be found by immanentists because all differentials between a personal narrative and a grand narrative have been eclipsed by a fixation upon one’s personal narrative manifest in techniques of control. A vision of the differential has dissolved into the quest for technique that will advance one’s personal narrative independently of any other narrative. In other words, the internalization of this quest for freedom has disallowed the perception and articulation of narrative differentials among immanentist philosophers.⁹⁵

If there is ordering or patterning that makes up our world and we can recognize (at least to some degree) the ordering, however, we are well placed to recognize and articulate structural violations of this ordering. We are better able to identify structural violence at work within our world. This new approach to focusing on structural violence, in turn, allows us to better address four core problems facing us in liberal capitalist countries – social isolationism, colonial relations

⁹³ We should also note that a grand narrative such as “natural ordering” is only seen – and only makes sense – to the degree that we view it in relation to ourselves. It is nonsensical, in other words, to speak of a kind of free-standing grand narrative. Indeed, to do so is actually to obscure the grand narrative – i.e. a grand narrative cannot be approached directly, it is always relative to the one approaching it, it is always political, it is always negotiated...

⁹⁴ Tersely put, I understand “the political” as an awareness of narrative differentials.

⁹⁵ See Grant, *Technology*, *supra* note 43 at 139.

with indigenous peoples, ecological destruction, and the cosmopolitan search for perpetual peace.⁹⁶

First, this network ecology holds the potential for giving us a lens through which we might recognize the violence of the liberal state-market collusion and begin working towards the densification of reciprocal social relations, the development of social capital. The loss of resilient, reciprocal communal relations in America and Britain since the 1960's has been thoroughly chronicled by Robert Putnam in *Bowling Alone* and Philip Blond in *Red Tory*.⁹⁷ A combination of market liberalism and state liberalism built upon an ontological and political individualism has created a social crises in liberal capitalist countries. As Philip Blond writes, “we can see and feel the effects of this social crisis all around us – our receding trust in others, the normalisation of antisocial behaviour, our fear of children in the streets, our political and civic disengagement, spiralling rates of drug and alcohol abuse, high levels of dependency on state income and personal debt....”⁹⁸ This social crisis has been fostered by an political ontology and political economy that oscillates between the individual (individuated subject) and the State (totalized subject). Alastair MacIntyre also picks up on the problem of this individual-state dualism when he notes that “the continuously re-established dominance of markets, factories and finally bureaucracies over individuals, themselves sometimes conceived of as independent, rational beings, prescribing their moral standpoint to themselves, and sometimes as anomic products of circumstance, whose happiness must be contrived for them.”⁹⁹ Therefore, a network ecology approach will hopefully allow us to develop a political ontology and economy that

⁹⁶ Cf. with Félix Guattari, *The Three Ecologies*, trans. by Ian Pindar & Paul Sutton (New York: Continuum, 2000) at 41.

⁹⁷ For example, see Robert Putnam's *Bowling Alone: The Collapse and Revival of American Community* (New York: Simon & Schuster, 2000).

⁹⁸ Blond, *supra* note 53 at 73.

⁹⁹ Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (London: Duckworth, 1981) at 212.

avoids the dualism disintegrating the civic middle and undermining democratic community.¹⁰⁰

Second, we can begin to see the opportunities for creating resistance to imperial violence when we consider anew the central reason behind our belief that imperialism is immoral.¹⁰¹ The classic liberal tale we are told is that imperialism violates an inherent right to self-determination. So, under the liberal model of self-government, there is a tendency to understand the reason for the liberty as simply being that which supports more liberty. For example, as Tully writes, “[s]elf-government enables Aboriginal peoples, just as it enables non-Aboriginal peoples, to participate in governing their societies in accord with their own laws and cultural understanding of democracy, to overcome alienation and to regain their dignity as equal and active citizens.”¹⁰² It should certainly be noted that liberal communitarians who tend to be skeptical of liberalism’s atomistic ontology (e.g. Tully, Taylor, Kymlicka, Webber, etc.) will resist the notion that the *only* thing wrong with imperialism is that it violates an inherent right to self-determination. Quite the contrary. They will contend that there is a fundamental link between negative and positive freedom such that collective self-determination is not achieved simply by doing away with (political, moral, or material) restraint, but is only achieved by allowing healthy cultures and communities to develop. In other words, there can be no collective will being exercised in self-determination without the existence of a collective to exercise its will.¹⁰³ Civic self-determination, therefore, is a primary good but vibrant communal relations (and perhaps healthy

¹⁰⁰ As Blond writes, “[t]his social recession doesn’t just rob increasingly isolated citizens of a rich, varied and socially meaningful life, it fundamentally affects the way that society functions, not least the relationship between individuals and the state.” Blond, *supra* note 53 at 72.

¹⁰¹ By “imperialism” I mean something between the imperialism of modern system of nation-states and the Empire discuss by Michael Hardt and Antonio Negri. That is, not simply “an extension of the sovereignty of the European nation-states beyond their own boundaries,” but also “a decentered and deterritorializing apparatus of rule that progressively incorporates the entire global realm within its open, expanding frontiers.” Michael Hardt & Antonio Negri, *Empire* (Cambridge: Harvard University Press, 2000) at xii [emphasis removed]. Imperialism, therefore, takes place within and through both the state and the market to destabilize and deterritorialize.

¹⁰² Tully, *supra* note 34 at 252.

¹⁰³ This approach to self-determination is in keeping with what Taylor has described as the “exercise-concept” at work within the positive notion of freedom. Namely, freedom does not lie in a bare opportunity to select options, but is tied into the ability to actually exercise those options. See Taylor, *supra* note 37 at 213.

relationships with the earth) are necessary means to this end. Or, put another way, liberalism depends upon the existence and persistence of a community that develops the background context from which judgments as to the relative importance of obstacles to action can be made.¹⁰⁴

The network ecology approach, however, provides us with an approach to political ontology that enables us to turn this logic on its head such that civic self-determination is understood not as the end, but the means to another end. Namely, that of being good, of being in non-dominating relation with each other and the earth. And, not only that, but self-determination is neither a necessary nor a sufficient condition of being good. So, not only does it rule out the romantic notion that “each person’s [or community’s] form of self-realization is original to him/her, and can therefore only be worked out independently”, the negative liberty approach in which “[i]t is a sufficient condition of one’s being free that nothing stand in the way,” and the republican approach “according to which men’s ruling themselves is seen as an activity valuable in itself.”¹⁰⁵ It also rules out the liberal notion that freedom itself (whether negative or positive or some combination of both) is an inherent good. Imperialism is a wrong, therefore, not because it denies indigenous peoples control, but because it poses an existential threat to indigenous peoples – it takes away their ability to be good people. For example, as Johnny Mack makes clear in “Hoquotist”, the Nuu-chah-nulth people have become deeply disoriented as a result of no longer knowing their storied traditions.¹⁰⁶ This disorientation that continues to take place through colonial relations represents an existential threat because the denial of the ability to be good – the denial of the ability to understand and fulfill their responsibilities to the land as Nuu-chah-nulth

¹⁰⁴ As Taylor writes, “the application even of our negative notion of freedom requires a background conception of what is significant, according to which some restrictions are seen to be without relevance for freedom altogether, and other are judged as being of greater and lesser importance. So some discrimination among motivations seems essential to our concept of freedom.” Taylor, *supra* note 37 at 219.

¹⁰⁵ See *ibid.* at 212 and 213.

¹⁰⁶ See Johnny Mack, “Hoquotist: Reorienting through Storied Practice,” in *Storied Communities: Narratives of Contact and Arrival in Constituting Political Community*, ed. by Hester Lessard, Rebecca Johnson, Jeremy Webber (Vancouver: UBC Press, 2011) 287-307.

people – means the Nuu-chah-nulth people are unable to be true who they are. Becoming re-connected with the perceptual orientation and responsibilities that flowed from the traditional stories, then, is not a *means* to an end (e.g. a means to self-determination), but it is the end itself.

If we understand ourselves and our world as *res ecologia* as outlined above, we will see the notion of self-determination as an attempt to avoid vulnerability and, therefore, as incoherent as a normative end. If we are able to focus on processes of pattern-making and what this does to the integrity of wholing patterns, we can better recognize standardizations that undermine the deep pluralism of network ecology. If we put the good of resilient communities foremost in our analysis and back it up with a robust ontology of interconnectedness, we will be better placed to undermine the structural domination of imperialism. Putting the right of liberal procedures foremost will, despite attempts to avoid an atomistic ontology, blind us to the structural shifts present in 21st century imperialism manifest through standardizations of communications processes and normative evaluations. Further, one of the implications of the network ecology approach is that imperialism is understood to be bad for not only those who have been denied self-determination, but also for those who have colonized as a part of their self-determination. So, imperialism is bad not only for those on the outside of the power-flow (i.e. indigenous peoples – “the determined”), but also for those inside the power-flow (i.e. settlers – “the self-determining”).¹⁰⁷

Third, there is an opportunity for creating resistance to the structural violence of

¹⁰⁷ This logic can already be seen in the Jewish Torah where it says “You shall not violate any of these rights; you shall not show partiality; and you shall not take a bribe, for a bribe blinds the eyes of the wise and subverts the cause of the righteous. Justice, and only justice, you shall follow, that you may live and inherit the land which the Lord your God gives you.” Deuteronomy 16:19-20 quoted in Ellul, *supra* note 18 at 80. Additionally, I understand this to be what George Grant is hinting at in *Technology and Empire* when he writes that “[a]ll of us [settlers] who came made some break in that coming. The break was not only the giving up of the old and the settled, but the entering into the majestic continent which could not be ours in the way that the old had been. When we go into the Rockies we may have the sense that gods are there. But if so, they cannot manifest themselves to us as ours. They are the gods of another race, and we cannot know them because of what we are, and what we did.” Grant, *Technology*, *supra* note 43 at 17.

ecological destruction through the development of the political ontology of network ecology. As Michael M’Gonigle has so aptly pointed out, the legal and political discourse rooted in liberal values and institutions have been propping up an unsustainable political economy that is rapidly leading to, for example, climate change, species extinction, loss of agricultural land, collapsing fisheries, the destruction of habitat.¹⁰⁸ He argues, therefore, for a green legal theory that “eschews the limited focus of environmental law on the physical environment in favour of a critical and more complete understanding of the social and institutional dynamics of unsustainability.”¹⁰⁹ Network ecology represents a political ontology in keeping with this challenge to burst the discourse of liberal political theory that upholds an unsustainable political economy. As we saw above in our discussion of Polyani and C.B. MacPherson, the connection between liberal political ontology and liberal economics is significant and a political ontology that is focussed on the rates of change in pattern formation holds the potential for fostering a political economy rooted in sustainable thought and practice. Indeed, it is one step toward the “common, integrated framework for the critique of both human domination and the domination of nature” that Plumwood has called for in *Feminism and the Mastery of Nature*.¹¹⁰

Fourth, a network ecology allows us to re-affirm the importance of a historical approach to political ontology. As should become clear in the discussion that follows, the dualistic logic of normativity underlying the liberal approach to ontology and political economy operates as a denial of history and presents itself as permanent order. It is, in this sense, in keeping with the logic of rule outlined by Hardt and Negri in *Empire*. As they write, “Empire presents its rule not as a transitory moment in the movement of history, but as a regime with no temporal boundaries and in this sense outside of history or at the end of history.” Or, “[i]n other words, Empire

¹⁰⁸ For example, see M’Gonigle, *supra* note 3 at 34-38 and M’Gonigle, “A New Naturalism”, *supra* note 3 at 8-39.

¹⁰⁹ M’Gonigle, *supra* note 3 at 35.

¹¹⁰ Plumwood, *supra* note 33 at 1, 2.

presents its order as permanent, eternal, and necessary.”¹¹¹ Unlike the dualistic logic of liberalism, a network ecology is all about the changes in history that shape and re-shape ourselves and our world. For, indeed, between the singular (subject) and the totality (object) everything is in flux and this relational flux disrupts all attempts to create a perpetual peace of absolute dualism.¹¹²

B. The Self as *Res Ecologia*

The network self is best understood in contrast to what has been described as the modern self. The modern self – clearly expressed by Kant – is a creature that is independent, rational, powerful, lonely, free, cold, calculating, and emotionally detached.¹¹³ This confident, yet deeply misguided, creature is increasingly alienated from the world around him because he is driven by a quest to avoid anthropocentrism or the subjectification of the world around him. Indeed, he is tragic in his futile struggle both to withdraw from the world and yet simultaneously grasp the nature of the world. As Latour notes, the Kantian dream of formulating a clear and distinct divide between subjective and objective was actually a kind of science-fiction nightmare – “the outside world now turns around the mind-in-the-vat, which dictates most of that world’s laws, laws it has extracted from itself without help from anyone else. A crippled despot now ruled the world of reality.”¹¹⁴ The network self is dramatically different than the detached and controlling modern self.

The network self is highly vulnerable to disruption and entirely dependent upon that which is outside ourselves.¹¹⁵ Further, this persistent vulnerability causes great anxiety and we

¹¹¹ Hardt & Negri, *supra* note 101 at xv and 11.

¹¹² Of course, see Immanuel Kant, *To Perpetual Peace: A Philosophical Sketch*, trans. by Ted Humphrey (Indianapolis: Hackett, 2003) and Hardt & Negri, *supra* note 101 at 11, 12.

¹¹³ See Iris Murdoch, *The Sovereignty of Good* (London: Routledge, 1971) at 78.

¹¹⁴ Bruno Latour, *Pandora’s Hope: Essays on the Reality of Science Studies* (Cambridge: Harvard University Press, 1999) at 6.

¹¹⁵ Again, I am not seeking to engage simply in socio-phenomenological ontology, but literally meta-physical

seek, in numerous different ways, to limit or even escape our fundamental dependence on the world around us.¹¹⁶ There have always been attempts to mediate or control this deep dependence, but the modern era represents a new development in our understanding of the relationship between ourselves and the world. And, indeed, the modern self is probably best characterized by the idea that we exist in sharp distinction from the rest of the world such that, whereas the self is a subject and is to be known subjectively, the world is objective and to be known objectively. As Charles Taylor (and George Grant before him) has explained, this radical distinction between subjective and objective (i.e. an eclipse of the middle ground between the self and world) lies at the root of both modern individualism and the rise of instrumental reason.¹¹⁷ Importantly, this subjectification of the self in contrast to the objectification of the world also means that, politically, human freedom (conceived of as independence) is understood to be prior to legitimate order such that legitimate political authority can arise only through some combination of

ontology – i.e. understanding that the self is an embodied being.

¹¹⁶ Is the self/world relation not dualistic logic even in the way I am speaking about it? No, the self exists within the world in a very different (asymmetrical) way than, say, individuals relate to the liberal state in direct and opposing relations. Dualistic logic simultaneously individuates and totalizes to eclipse the middle ground but the self/not-self relation is one in which the self organizes or patterns in a distinguishing, but dependent, manner that does not negate or eclipse. This relation can be seen, for example, in an understanding of life as a dissipative system that exists “some distance away from equilibrium” with the environment or, in other words, “nature abhors a gradient”. Schneider & Sagan, *supra* note 45 at 6. Also see James Kay & Eric Schneider, “Nature Abhors a Gradient,” in *Proceedings of the 33rd Annual Meeting of the International Society for the Systems Sciences*, Vol. 3, ed. by P.W.J. Ledington (Edinburgh, 1989) 19-23.

¹¹⁷ As Taylor explains regarding the rise of this fundamental distinction between subjective and objective, things in the world (human and nonhuman) were to be understood based upon the following four principles:

“The object of study is to be taken ‘absolutely’, that is, not in its meaning for us or any other subject, but as it is on its own (‘objectively’).

The object is what it is independently of any descriptions of interpretations offered of it by any subjects.

The object can in principle be captured in explicit description.

The object can in principle be described without reference to its surroundings.”

Taylor, *supra* note 42 at 33, 34. Also see Charles Taylor, “Understanding and Human Science” (1980) 34 *Review of Metaphysics* 24-38 and Nagel, *supra* note 43. This radical distinction between subjective and objective lies at the root of both modern individualism and the rise of instrumental reason as outlined in Taylor’s 1991 Massey Lectures, “The Malaise of Modernity”. See Taylor, *Malaise*, *supra* note 43. Importantly, this subjectification of the self in contrast to the objectification of the world also means that, politically, human freedom (i.e. independence) is understood to be prior to legitimate order (i.e. legitimate political authority can arise only through consent or egalitarianism or some combination of both). See Taylor, *supra* note 37 at 319. This analysis of the modern self as subjectified in relation to an objectified world was clearly outlined about a decade before Taylor by George Grant. For example, see Grant’s lecture on Kant from 1977/78 in Grant, *supra* note 5 at 224. Also see Grant, *Technology*, *supra* note 43 at 135ff and Grant, *Justice*, *supra* note 43.

egalitarianism and consent.¹¹⁸ Of course, though, this radical distinction between subject (self) and object (world) and the idea that the self can be self-determining, is no more than a myth. The modern self is a mythical creature (albeit a powerful one) that has developed in keeping with the increased anxiety stemming from the idea that the self was fundamentally isolated or self-contained within a disenchanted universe. In other words, the modern self has developed to protect us from our vulnerability through the myth that we are free in the sense that we develop our values and purpose in life from within ourselves rather than from our relation to the orderings of the world around us. The modern self, then, became a mythical monster that seeks to dominate humanity in order to stamp out the inhumanity of either mob rule or the evil dictator. The modern self is a benevolent dictator who uses the inhumanity of the objective world to subdue any inhumanity within humanity itself.¹¹⁹

Turning to the network self represents a rejection of the Kantian fantasy of humanizing (subjectifying) humanity by means of the inhuman (objective world outside the self). It means, along with Latour, a rejection of the subjective/objective divide and an embrace of the vitality of the world within which the self lives and moves and has its being. In other words, things – human and nonhuman – possess a persistent historicity by virtue of their ongoing presencing as beings-in-the-world (to use Heideggerian language) with reality of existence that is relative to their place within network patternings of the world.¹²⁰ The network self, as all things, does not simply exist or not exist but exists in various degrees through time and it articulates and is articulated in its relations with a whole ecology of *res ecologia*. The network self is, therefore, also itself understood as *res ecologia* – an ecological thing. The subject is best understood as not

¹¹⁸ See Taylor, *supra* note 37 at 319.

¹¹⁹ See Latour, *supra* note 114 at 15.

¹²⁰ Or, as Latour writes, “[r]elative existence means that we follow the entities without stretching, framing, squeezing, and cutting them with the four adverbs never, nowhere, always, everywhere.” Latour, *supra* note 114 at 156.

being one with itself or a complete whole in itself (contra Kant's account of the unity of consciousness in the transcendental unity of apperception), but is a plurality or multiplicity.¹²¹ In this sense, a search for a new political ecology rooted in the structure and processes of distributive networks means deconstructing the binary opposition between particularity and universality – i.e. in denying the dualistic logic of simultaneous individuation and totalization underlying the ontology and politics of liberalism. A purely particular singularity in a “subject position” is problematic because it contains within it the notion of a fixed position within a totality.¹²² The network self, as a nested network pattern that is in constant flux, has a position, but it is not fixed within a totality.¹²³ Likewise, the self has no centre, but it is a patterning that has an integrity that comes from beyond perception.

The self exists as a pattern development process that is highly vulnerable to disruption and entirely dependent upon the not-self. The story we tell of political action-coordination – the coming together in political community or corporatization – in liberal political theory is a tale of attempted escape from our fundamental (i.e. existential) vulnerability as “selves”.¹²⁴ The myth of the autonomous will developed as little more than a kind of fairy tale told to hide the reality of a deep dependence. The central problem that political theory is meant to solve then becomes one

¹²¹ See David Hoy, *Critical Resistance: From Poststructuralism to Post-Critique* (Cambridge: The MIT Press, 2004) at 21.

¹²² See Saul Newman, *Power and Politics in Poststructuralist Thought* (London: Routledge, 2005) at 148.

¹²³ Network formation as a dynamic process that transcends the particularity/universality oppositionalism. The particularity becomes limited by its reach beyond its own specificity and is no longer particularity in an absolute or finalized sense. The universality, then, becomes limited by its connections between particulars (in both time and space) and is no longer universality in an absolute or finalized sense. Also, as Castells writes, “Networks are open structures, able to expand without limits, integrating new nodes as long as they are able to communicate within the network.” Castells, *supra* note 56 at 470.

¹²⁴ Rousseau, for example, is very clear in *The Social Contract* that the primary law of nature for humans is self-preservation and it is this law that compels us to come together in political community. See Jean-Jacques Rousseau, *Discourse on Political Economy and The Social Contract*, trans. by Christopher Betts (Oxford: Oxford University Press, 1994). Admittedly, there is also a stream of thought that views an overcoming of vulnerability not as escape but as a heroic endeavour to be accomplished through lonely, self-determining individualism. This kind of romantic individualism may be seen, for example, in Henry David Thoreau, *Walden* (London: Bibliosis Books, 2010 [1854]) and Henry David Thoreau, *Civil Disobedience and Other Essays* (Amherst: Prometheus Books, 1998 [1849]). For the sake of my argument here, the denial of vulnerability, however, remains the same whether one sees oneself as escaping or as overcoming.

of legitimacy in relation to this idea of the autonomous will. That is, how might persons come together in political community and still retain autonomous wills? The political theory project, then, develops as an attempt to provide a solution for an imagined problem.¹²⁵ This failure to recognize the impossibility of escaping this vulnerability through the ideal of a transcendent self is the primary failure of modern political philosophy. The inability to recognize this inescapable vulnerability not only led to certain structures and processes of political organization, but was itself inspired and affirmed by these same organizational behaviours in a kind of vicious circle. For example, the practices of nation-building through the development of a common citizenry under common laws allowed blindspots to grow in our understanding of the self and its place in the world. For example, as Tully writes, “[m]odern citizenship was nationalized as local citizenship was subalternised. Generations of ‘locals’ were gradually socialized by education, urbanization, military duty, industrialization and techniques of citizenisation to see themselves first and foremost as members of an abstract and disembodied imaginary community of nation, *demos* and *nomos* of formally equal citizens.”¹²⁶

The pattern of the self is active, it is a struggle of re-configuration and this struggle is misguided and futile insofar as it represents a struggle for self-preservation through autonomy – i.e. preservation through an overcoming of vulnerability.¹²⁷ The process of abstraction and the regulation of the relations between the self and the not-self will be discussed in more detail below

¹²⁵ See Rousseau, *supra* note 124.

¹²⁶ James Tully, *Public Philosophy in a New Key: Imperialism and Civic Freedom*, Vol. II (Cambridge: Cambridge University Press, 2008) at 255. Also see *ibid* at 249, 250. Further, as Michael M’Gonigle notes, “in the English common law world, the emergent state gradually transferred lay or communal regulation from local authorities to an expert judiciary that substituted national for local customs in their decisions.” M’Gonigle, *supra* note 3 at 35. Further, this attempt to escape the deep vulnerability of our human condition is what has inspired liberal theorists to focus upon social contract rather than self-sacrifice as the foundational model for understanding political community. As Paul Kahn writes, “[l]iberal theory puts contract at the origins of the political community; political theology puts sacrifice at the point of origin.” Paul Kahn, *Political Theology: Four New Chapters on the Concept of Sovereignty* (New York: Columbia University Press, 2001) at 7.

¹²⁷ See Miroslav Volf, *Exclusion and Embrace: A Theological Exploration of Identity, Otherness, and Reconciliation* (Nashville: Abingdon Press, 1996) at 69.

in terms of protocolic control, but it should be noted at this time that I am not suggesting that the not-self is never in a domineering relation with the self (i.e. as if the relation of dependence were never problematic), it is just that the attempt to escape this domination – if it is to be more successful – must be more attentive to the inescapable nature of the dependence inherent within the self itself. What we are seeking is the development of political structures and processes that enhance the mutually creative process between the self and the not-self. This mutually creative process is also described as a process of legitimation – i.e. a projection of the imagination into the future or the development of a trajectory. Phenomenologically, this entails the building of hope for the future. So, at root, we are seeking the avoidance of excessive disruption (i.e. domination) in the relations between the self and the world.

What then does this mean for the self as an embodied being? In order to get at some idea of a localized or embodied self, we must consider our understandings of the good that arises from bodily instincts (i.e. arise from the nature of our bodies as a certain kind of organism) as well as habitual practices (i.e. arise from the nature of our lives within certain environments). What we might call instincts and practices form our understandings of our self and our place in the world that, in turn, form the foundation for politics as such. Not only *who* the “we” and the “they” are in our conceptions of community, but *how* we go about determining who the “we” and the “they” are is rooted in our notions of the self and its place in the world. Our instincts and practices (and their relation to the world around us) make up who we are – our onto-episteme, our knowing-being. For, indeed, knowing-being is the potentiality for becoming political-being.

Immediately, doubts arise. Why say it holds simply the *potential* for being political? Is not *all* of our being political? In order to answer these questions, we need first consider the implications of the network ontology – *res ecologia* – outlined above for our understanding of the ontology of the self. That is, what do we mean by the “knowing-being” of the self?

First, we should acknowledge that our being is best characterized as simultaneously a unity and a multiplicity (it is, in this sense, in the image of the triune godhead who articulates us into existence by saying “Let Us make Man in Our image”). This deep complexity within our being means we will do well to follow the basic insight of Marx, Kierkegaard, Freud, and Nietzsche that the true nature of the self is not open and transparent to itself. Further, following the structuralist and poststructuralist more radical de-centering of the self, we will do well to resist the inclination to view the self as a unitary subject, as an individual unit with a singular identity. As Alan How puts it, this means that “individuals are never fixed entities but always self-divided, they need to meet the needs of others to be themselves, but equally have an inner life, which pulls them away from being the stable product of socialization via others.”¹²⁸ I do, however, make a difference between a “de-centering of the self” on one hand (in which subjectivity is preserved – albeit as a fundamentally divisive subject) and a “destruction of the self” on the other hand (in which subjectivity is reduced to nothing more than an effect of a signifying system of discourse). I find the latter approach to be excessively reductionist and abstractionist in its own retreat from the real lives of persons in the world. On the one hand it is important, therefore, that we find an approach to understanding the self that does not become entrenched within a full-blown ontological description that would limit us to a singular idea of “the authentic self” that was inevitably based upon our current assumptions. However, it is also important that we do not reify symbolic patterns and disregard the social and material realities of our existence. Either approach – albeit in different ways – holds the danger of uncritically becoming satisfied with the current state of affairs in the world. Instead, we should focus upon a self (a self with real needs and interests) that exists, changes, and struggles to understand itself based upon the systemic conditions of society as a being that is both unity and multiplicity as a

¹²⁸ Alan How, *Critical Theory* (New York: Palgrave, 2003) at 150.

patterning process. This approach may be seen as a shifting balance that, due to its perpetual indeterminacy, means self-understanding is never fully satisfactory but is in keeping with our notion of an active, developing network self.

There is, therefore, a “mode” of our being that is not political-being. And, to develop a better awareness of being that is not political being (or the distinction between knowing-being and political-being), we can look to the ontological hermeneutics of Heidegger and Gadamer. According to Heidegger, hermeneutics within the enlightenment project was built upon a Cartesian conception of the self as an abstract and disembodied thinker and therefore ignored the pre-scientific elements of our being in the world.¹²⁹ Heidegger suggested that ontology becomes hermeneutics as this being produces the meaning of everyday life. Understanding is a basic mode of being in the world and interpretation is something that a person *is*, rather than an activity in which s/he consciously does or does not engage.¹³⁰ This means, for Heidegger, that our being is *fundamentally* hermeneutic and does not depend upon reflective cognitive activity for an interpretative impulse. Gadamer, as a student of Heidegger, then established this ontological turn in hermeneutics that his teacher began and endeavoured to demonstrate the historical situatedness of human existence. Our historical situatedness means, to put it very simply, that our understanding is determined within and through history. As Gadamer writes, “[r]eason exists for us only in concrete, historical terms, i.e. it is not its own master, but remains constantly dependent on the given circumstances in which it operates.”¹³¹ This means that all understanding is tradition-bound and even self-understanding and critical thought are coloured by the prejudices

¹²⁹ See generally, Martin Heidegger, *Being and Time*, trans. by Joan Stambauch (Albany: State University of New York Press, 1996).

¹³⁰ See Martin Heidegger, “Phenomenology and Fundamental Ontology: The Disclosure of Meaning” in Kurt Mueller-Vollmer, ed., *The Hermeneutics Reader: Texts of the German Tradition from the Enlightenment to the Present* (Oxford: Basil Blackwell, 1986) 214 at 215.

¹³¹ Hans-Georg Gadamer, “The Historicity of Understanding,” in Kurt Mueller-Vollmer, ed., *The Hermeneutics Reader: Texts of the German Tradition from the Enlightenment to the Present* (Oxford: Basil Blackwell, 1986) 256 at 260.

of our being-in-history. Indeed, Gadamer argued that the enlightenment thinkers' focus upon independent reason and the denigration of prejudices sought to move human understanding into the ideal realm of absolute reason.¹³² Habermas, failing to recognize the depth of being active and present "behind" or "beyond" understanding, seeks to understand all being. And, therefore, he simultaneously seeks to politicize all being. But, we will do well to remember the connection Imre Lakatos draws between the truth and the darkness in his correspondence with Paul Feyerabend. As he wrote, "Lucifer is the chap who brings false light... I am shrouding you in the darkness of truth."¹³³ And, truly, the network self transcends the division between light and darkness.

Our understanding of our ontological situation is determined by prejudices; they make up the horizon of a specific life-situation because they establish the limits of our being-in-the-world. But, this horizon of the present is under perpetual revision as prejudices are tested, in large part, by engagements with our past and our traditions. So, understanding, as a mode of our historical being in the world, involves a fusion of horizons – a testing of prejudices and perspective-building movement between seeing the whole in terms of the parts as well as seeing the parts in terms of the whole (i.e. a "hermeneutical circle"). Understanding, like our existence, always remains indeterminate and subject to revision – there is a fundamentally unshakable and ever-present ignorance. Our very existence is caught up in the interplay between the past and the present or, in other words, our being is always less conscious being than simple being.¹³⁴

¹³² See *ibid.*

¹³³ "Lakatos to Feyerabend," 23 January, 1973, in *For and Against Method: Including Lakatos's Lectures on Scientific Method and the Lakatos-Feyerabend Correspondence*, ed. by Matteo Motterlini (Chicago: University of Chicago Press, 1999) at 313 quoted in Matteo Motterlini, "Reconstructing Lakatos: a reassessment of Lakatos' epistemological project in the light of the Lakatos Archive," in (2002) 33 *Studies in History and Philosophy of Science* 487 at 507.

¹³⁴ Gadamer describes this notion as *wirkungsgeschichtliches Bewusstsein* (or, historically-effected consciousness). And as Foster explains, "the concept refers both to a 'consciousness of history's effect,' and a 'consciousness affected by history.'" Matthew Foster, *Gadamer and Practical Philosophy: The Hermeneutics of Moral Confidence* (Atlanta: Scholars Press, 1991) at 35. The task of philosophy, then, is to come to a fuller recognition of this ontological and

This notion of historical being is re-enforced by Latour's idea of distributive being. Latour suggests that we need to rethink our metaphysics of history such that a thing, a fact, a human, a non-human is understood to be persistently historical in its relative existence. What this means, to put it very simply, is that existence takes work, it takes a whole network of actions to exist and this existence is dependent upon, or relative to, these creative or supportive actions. As he writes, "[a]n entity gains in reality if it is associated with many others that are viewed as collaborating with it. It loses reality if, on the contrary, it has to shed associates or collaborators (human and nonhuman)."¹³⁵ There is, therefore, "no final stage in which historicity will be surpassed, with the entity *relayed into eternity by inertia, ahistoricity, and naturalness....*"¹³⁶ The history of being is brought to a halt when the self is solidified or reified as a self-contained beingness that self-perpetuates or self-directs its own being and identity. Without indeterminacy in the self, there can be no continued history of the self. If we apply this basic insight of Latour we realize that the self too is persistently historical – it is an inter-action that continues to take place as a succession of events, as an ongoing patterning of movements.

Importantly, the self is not simply historical such that, if we dig deeper we begin to realize that our being is given to us, but our very continued existence is dependent upon a network of actions. So, the historicity of the self goes down deep, deeper than our capacity for self-assertion, deeper than our understanding. The being of the self is knowable (by the self and the other), even outside the understanding, unlike the Kantian *Ding an Sich*. I say it is knowable because understanding is best thought of as the articulation of thought by the mind and, in this way, as akin to what is typically conceived of as self-reflective consciousness. The articulation of thought by the rest of the body (but not by the mind) is knowing without understanding, a kind of

epistemological reality rather than to avoid it or overcome it.

¹³⁵ Latour, *supra* note 114 at 158.

¹³⁶ *Ibid.* [emphasis original].

unreflective or unarticulated consciousness.¹³⁷ This knowing without understanding takes place in our instincts and practices and their relation to the world around us. This relation between understanding and knowledge is why our thought and beliefs are often developed by the practices of the body without conscious thought. For example, we come to understanding after repeated practices or patterns of action with our bodies acting in certain patterns of relations with the world around us. So, the self is never *fully* known by the self; it is never fully *knowable*. Historicity, then, goes as far as our knowing-being and, beyond that, is rooted into the mystery of our being that comes from beyond ourselves.¹³⁸

To summarize, we have briefly discussed the notion that our being is not all political-being. However, in this age of immanence, this is a bold claim that deserves more explanation. Let us go back, therefore, to the most basic explanation of *res ecologia* outlined above and, specifically, to the two central ways in which our existence transcends our understanding: ecologically and historically. In our discussion of *res ecologia* above we have outlined a portion of what is meant by “ecologically”. And, with the help of Gadamer in this section, we have considered the historical nature of the self in its knowing-being. In order to understand political-being, we need to now turn to consider what we mean by “the political”.

By now, in the self as *res ecologia*, we have clearly rejected out of the hand the modern conception of the self as a self-contained and self-directed being as well as the post-modern notion of the self as purely political being. But, where does the self as *res ecologia* leave us when it comes to questions of identity and the nature of the political? How might we conceive of the political if we were committed to a different political ontology? If we were committed to an

¹³⁷ Note that, given the relationship between knowing and understanding outlined here, understanding is seen as a turning of the mind to knowing. In this way, understanding is in keeping with the classic conception of human consciousness as a being with an awareness of its own thinking. For example, see E.F. Schumacher, *A Guide for the Perplexed* (New York: Harper & Row, 1977) at 17.

¹³⁸ By definition, we cannot understand our being that lies beyond our knowing-being as historical. For to understand it as historical is to articulate knowing-being.

ontology that is deeply relational rather than atomistic or simply antagonistic and if we viewed our relationality as extending beyond a bare social oppositionalism to encompass our social, material, and spiritual relations? If we understood ourselves as *res ecologia*?

The political of *res ecologia* is always present as a potentiality ready to be made incarnate because the political is a contestation regarding ourselves and our place in the world, a contestation of our being-in-the-world. There is always a latent or background politicization taking place insofar as we often understand ourselves and always act as beings-in-relation to others and the world. But, this diffuse political being only becomes acute or definite – becomes truly visible to us – when a contestation becomes localized. Indeed, all politics is local because it is the move from the local to the global that is the making of something political; this translation is what reveals, what articulates that which is already latent and diffuse. Articulating the global or broader significance of things is the making of things public, it is politicization. Therefore, the political is always at hand, it is always potentially made manifest. The political, then, is an “apocalypse” in the classic sense – a “revelation”, “revealing”, or “disclosure of what was previously invisible”.

Importantly, the political is also an attentiveness to the relations in patternings; it is a politicization of ourselves in relation to things (both human and nonhuman). Things (in the substantively relational sense), therefore, are political to varying degrees depending upon how directly they are contested with reference to public being, depending upon the degree to which they are politicized. Because politicization always involves someone (or group of people) acting in relation to some thing, politicization always also politicizes the self. The making of things public is always also the making of oneself public in relation to a thing such that politicization is a three-fold relation between things local, things global, and the self as local-global. It is not something achieved as the end of the story but is an ongoing relationship that is persistently

historical in its relationality. Because politicization is a three-fold relation, to the degree that a person is ungrounded, he is unable to make things public. He is unable to find the local in a way that he can articulate it sufficiently to translate it into the global in an ongoing revelatory relationship.

What then do I mean by the articulation of the local and how does it relate to the development of political identity? For, indeed, we cannot speak of the political and politicization without speaking of political identity. The political identity of the self takes place in and through the development of the relationship between knowledge and understanding we just discussed. Identity is a manifestation of self-understanding and self-understanding is politicized knowledge – i.e. knowledge that is internalized and articulated by the mind such that it is (a) localized and then (b) conceived in relation to the transcendent (in relation to the world of the self). The process of politicization, therefore, means the translation of knowledge into understanding. The development of knowledge, and hence the articulation of knowledge, takes place through communicative interactions (both human and non-human). What this means for the development of political identity, then, is that that which is outside the self (whether human or non-human) determines to a great degree the politicization of knowledge or the self-understanding of the self. In other words, the formation of political identity takes place within the interaction between the self and the world because knowledge is not possessed by the self, but accessed by the self in and through his acting in relation to the world around the self.¹³⁹ Of course, then, the self can be

¹³⁹ The great Jesuit poet Gerard Manley Hopkins, for example, picks up on the fact that the self is more than what is possessed or contained in understanding and therefore suggests that the self not only “selves” as a narrative, but also exists as something to be sensed. As Miller explains, “[t]he self for Hopkins, in the very first moment in which it recognizes itself, recognizes itself not as a lack, an appeal, but as a plenitude. The Hopkinsian self is, then, positive and definite, and it is vividly *sensed*, in the same way that objects in the exterior world are sensed.” J. Hillis Miller, “The Creation of the Self in Gerard Manley Hopkins,” (1955) 22:4 ELH 293 at 294 and 295. As Hopkins himself writes, one finds oneself as a “throng and stack of being, so rich, so distinctive.” Gerard Hopkins, *The Notebooks and Papers of Gerard Manley Hopkins*, ed. by Humphry House (London: Oxford University Press, 1937) at 310. Or, again, “Each mortal thing does one thing and the same: Deals out that being indoors each one dwells; Selves-goes itself; myself it speaks and spells; Crying *What I do is me: for that I came.*” Gerard Hopkins, *Poems of Gerard*

known by the other or understood by the other in a way that the self is not known or understood by the self or, indeed, *cannot* be known or understood by the self. Self-understanding, like the political more generally, is always present as a potentiality but the one whose understanding is as extensive as his knowledge – a fully conscious being – we call God.

It should be clear by now that the ability to politicize is not the ability of an individual as an isolated, self-contained being. It is not about individual self-expression because the very actions of politicization are, by definition, the self-in-relation-to-the-world and this relation is deeply reflexive in its re-articulation of the relations of the self-world.¹⁴⁰ Deviation from the givenness of patterning could, then, originate from either “within” or “without” the self – i.e. as an act of the imagination and will of the self or as a violation arising from a force of power working upon the self. What does it mean, in normative terms, to develop one’s political identity or the identity of another being (either human or nonhuman)?¹⁴¹ For, according to the notion of political identity outlined here, identity is not simply a romantic ideal of self-expression but arises from and is dependent upon a process of interaction between the self and the world in a way that reveals the deep dependence and persistent vulnerability of the self. Identity is primarily given to the self (we are more being than conscious or self-directed being) so deviation from the givenness of identity ensures one’s politicizations are (at least somewhat) disruptive of the existing patternings of the self and the world. It makes one’s politicization violent – disruptive – toward the self and the world and, of course, this violation of patternings in the self and the world has normative import. What this means, of course, is that there is a kind of identity one *should* have or, at least, there is a way one should have an identity. The historical/relational

Manley Hopkins, ed. by William Gardner, 3d ed. (London: Oxford University Press, 1948) at 95 quoted in J. Hillis Miller, “The Creation of the Self in Gerard Manley Hopkins,” (1955) 22:4 *ELH* 293 at 296.

¹⁴⁰ Therefore, politicization is not self-expression so much as it is communal expression, beings-in-the-world.

¹⁴¹ Charles Taylor was correct to note the “connections between senses of the self and moral visions, between identity and the good,” at the beginning of his *Sources of the Self*. Taylor, *supra* note 42 at x. In other words, “[s]elfhood and the good, in another way selfhood and morality, turn out to be inextricable intertwined themes.” *Ibid* at 3.

nature of political identity for the *res ecologia* means there is a *might be* as well as a *should be* in dependent relation to that which *has been*. Identity is not simply what *is* but what *might be* as a result of what is and has been. If it is too strong, the violence of politicization that disrupts existing patternings denies the possibility of making things public by denying a person or being's ability to locate things and translate them into contested things – there is a way of politicizing that takes away the ability of a thing to politicize itself in relation to the world around it.¹⁴² One should not politicize in a way that takes away a person's ability to politicize as they ought to. For, the potential for deviation to arise from both “inside” and “outside” the self means that both the self and the world have responsibilities pertaining to the development of one's identity.

The connection between the *is* and the *ought* of this approach to political identity has been expressed quite clearly by Alastair MacIntyre in *After Virtue*. As he writes,

I am never able to seek for the good or exercise the virtues only *qua* individual. But it is not just that different individuals live in different social circumstances; it is also that we all approach our own circumstances as bearers of a particular social identity. Hence what is good for me has to be the good for one who inhabits these roles. As such, I inherit from the past of my family, my city, my tribe, my nation, a variety of debts, inheritances, rightful expectations and obligations. These constitute the given of my life, my moral starting point.¹⁴³

This conception of a particular social identity has certain normative implications rooted in a historical conception of the self. MacIntyre continues to suggest that “I am what I may justifiably be taken by others to be in the course of living out a story that runs from my birth to my death; I am the *subject* of a history that is my own and no one else's, that has its own peculiar meaning.”¹⁴⁴ He emphasizes the importance of the fact that being the subject of a lifetime narrative means that one is responsible for certain actions and experiences – i.e. responsible in the sense that local events and relational patternings are connected to larger or more global

¹⁴² Democracy, then, is the search for a balance that allows for the politicization of all things – i.e. not the *actual* politicization of all things, but the *potential* for all things to be politicized.

¹⁴³ MacIntyre, *supra* note 99 at 204, 5.

¹⁴⁴ *Ibid.* at 202.

patterning. In this sense, then, being a subject of a history assumes a certain degree of politicization, but a politicization that is always purposive in the sense that its future will demonstrate a certain degree of continuity with its past. The self as *res ecologia*, therefore, has its identity shaped by its embeddedness and nesting within larger network paterings. This does not mean that, because the self has to develop its political identity in and through larger paterings, the self cannot (or should not) innovate through disruption. However, the self is not (and should not be understood to be) whatever the self chooses to be. Nor, for that matter, is there a creation of identity (or inherent moral worth) in bursting the boundaries of particularity by moving beyond the “moral *limitations* of the particularity of those forms of community” (e.g. MacIntyre)¹⁴⁵ or in the unrestricted ability to “*move around* within one’s history and culture, to *distance oneself* from particular cultural roles, to *autonomously choose* which features of the cultural tradition are most worth developing, and which are without value” (e.g. Will Kymlicka).¹⁴⁶ Instead, the self is *always* and *necessarily* embedded within network paterings so there are no boundaries to be burst to create the self. The paterings are shaped by moral innovation, but they always persist despite the violence of pattern disruption through politicization. The paterings are, for example, ecological, spiritual, and economic and therefore go well beyond human community or cultural particularities.¹⁴⁷

Before moving forward, we would do well to consider some of the implications this network ontology might have for our understanding of law and political economy. Kymlicka correctly argues that liberal freedom means an individual subject can transcend culture and

¹⁴⁵ *Ibid.* at 205.

¹⁴⁶ Will Kymlicka, “Liberalism and the Politicization of Ethnicity” (1991) 4 *Can. J. L. & Jurisprudence* 239 at 256.

¹⁴⁷ Indeed, as Nicholas Berdyaev writes, “[h]uman identity, like every authentic reality, is only conferred in that spiritual concretion which puts the seal of divine unity on the whole of human multiplicity. In abstraction and isolation it is lost. The process of modern Humanism is the passage from man in this spiritualized concretion, where everything is organically bound together, to a sundering abstraction, wherein man is changed into an isolated unit.” Nicholas Berdyaev, *The End of Our Time*, trans. by Donald Attwater (London: Sheed & Ward, 1933) at 37.

community – i.e. that the good life is one that is self-directed based upon our personal values and that each consumer-individual is free to question and rework these values as he or she sees fit.¹⁴⁸ However, as Slavoj Žižek has noted, this notion of cultural transcendence is rooted in a highly problematic Cartesian/Kantian understanding of the subject. He writes, “[t]his subject is conceived of as capable of stepping outside his particular cultural/social roots and asserting his full autonomy and universality - the grounding experience of Descartes’s position of universal doubt is precisely a ‘multicultural’ experience of how one’s own tradition is no better than what appears to us the ‘eccentric’ traditions of others....”¹⁴⁹ Based on this conception of the subject, justice is the setting of those conditions within society that will allow for individuals to engage equally in shopping around for values that fit their own understanding of the good life; the good of justice is transformed into the “right of moral independence”.¹⁵⁰

It is important to recognize that although Kymlicka is correct that the liberal idea of freedom is centered upon independent self-determination, he is fundamentally mistaken in his support for this approach to political identity. His seemingly attentive sensitivity to the pervasion of culture (and therefore the impossibilities of neutrality in governing institutions and processes) leads him to set aside the vision of the ideal *demos* in which all citizens are freely and equally united under a single common citizenry.¹⁵¹ Instead, though, he advances a vision of a common citizenry at the sub-state level in a drive toward a kind of sectional homogeneity or fractured universalisms that remains true to the ideal of equality. Culture then becomes little more than a context for individual choice within which each citizen has equal choice by virtue of their claim

¹⁴⁸ See Will Kymlicka, “Liberalism and Communitarianism” (1988) 18 *Canadian Journal of Philosophy* 181 at 183, 184.

¹⁴⁹ Slavoj Žižek, *Violence: Six Sideways Reflections* (London: Profile Books, 2008) at 121. A striking example of this kind of subject may be seen in Judith Butler’s notion of gender identity as performative. For example, see Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1999).

¹⁵⁰ See Kymlicka, *supra* note 148 at 184, 185.

¹⁵¹ For example, see Kymlicka, *supra* note 146.

to a (now contextualized and multicultural) universal citizenship.¹⁵² However, as Andrea Baumeister notes, this kind of multicultural citizenship is not only problematic, but openly rejected by advocates of diversity who understand that his “emphasis upon liberal values will threaten the long-term viability of cultural groups who value autonomy and individual liberty much less than liberals.”¹⁵³ That is, these kinds of attempts “to ground a theory of group rights in equality of respect and individual freedom continue to be premised upon the Enlightenment principles of self-conscious reflection and individual self-determination” and are, therefore, highly problematic.¹⁵⁴ The politics of difference we see in theorists like Kymlicka is certainly a positive step forward beyond what he calls “liberal orthodoxy”; there should be little doubt that it represents a kinder and gentler liberalism. However, this conception of multicultural citizenship continues to be rooted in a deeper theoretical commitment in which the pursuit of the good life is conceived of as a fundamentally personal project in which each person has the same stake.

The issue, at the political level, seems to come down to one of incorporation. The liberal approach is to privilege universal (and, by extension, individualistic) incorporation while more traditional approaches to citizenship privilege con-sociational (and, by extension, pluralistic communal) incorporation.¹⁵⁵ The “traditional liberal conception of citizenship has rested on the belief that differences, be they in terms of gender, race or ethnicity, should not affect our standing as citizens.”¹⁵⁶ Differences between individuals are, therefore, perceived to be merely contingent

¹⁵² Perhaps there is some irony in the fact that Schmitt (a right-wing socialist) and Kymlicka (a centre-left liberal) seem to share the notion that democracy depends upon a homogenous demos. The difference was that Schmitt understood pluralism at the state-to-state level and Kymlicka understands pluralism at the sub-state level.

¹⁵³ Andrea Baumeister, *Liberalism and the “Politics of Difference”* (Edinburgh: Edinburgh University Press, 2000) at 107.

¹⁵⁴ *Ibid.* at 171.

¹⁵⁵ For example, one might think of the all too common opposition to asymmetry within the Canadian federation on the grounds of equality and the need for a common citizenry. For a brief outline of this debate, see chapter 7 of Jeremy Webber, *Reimagining Canada: Language, Culture, Community and the Canadian Constitution* (Montreal: McGill-Queen’s University Press, 1993) at 229-259.

¹⁵⁶ Baumeister, *supra* note 153 at 6.

and secondary to the characteristics all humans hold in common.¹⁵⁷ This notion of justice rooted in subject-object dualism (i.e. a simultaneous individuation and totalization) at the theoretical level inevitably produces a homogenizing impulse at the political level in, for example, the notion of a common citizenry. Further, adherence to universal maxims (e.g. Kant's deontological or Mill's utilitarian or Rawl's hybrid) will inevitably lead to gross distortions of network patternings as they take place in the lives of individuals (and, these distortions dislocate so violently that they disallow people's ability to be good). Indeed, constructivist notions of justice cannot foster virtue as a wrestling with rules nor develop the morality of law needed for deep pluralism because, without understanding the teleological nature of life, morality is destined to be understood as embedded in the formal laws of the modern state (i.e. as Lon Fuller is prone to do).¹⁵⁸ This drive toward statism takes place because if, as Hume, Kant, Rawls, etc. suggest, virtues are simply dispositions toward following the rules, then we are in a bind because the rules must be determined before virtues can be determined. However, an atomistic ontology means that the development (rather than the discovery) of common rules is problematic and requires the top-down imposition of something like a modern state institution – i.e. the universal is understood to be pre-political. Thus, without understanding the narrative/teleological nature of life and political identity, the virtues lose their dynamic relationship with law and without this dynamism, law totalizes in its normativity.¹⁵⁹

C. Acceleration

The central, overarching concern here is how this dualistic logic disrupts patterning processes of ourselves and the world. We cannot adequately understand this disruption, however, unless we consider the changing rates of change within the flux of these patterning processes.

¹⁵⁷ See *ibid.* at 6.

¹⁵⁸ See, for example, Lon Fuller, *The Morality of Law* (New Haven: Yale University Press, 1964).

¹⁵⁹ See MacIntyre, *supra* note 99 at 216.

And, thus, we turn to the concept of acceleration...

Our world is accelerating. Capital has become hyper-mobile. Our transportation systems are moving people and products around the globe faster than ever before. Mobile communication technologies mean that, for the most part, we no longer plan ahead, we simply coordinate in real-time.¹⁶⁰ But, our world is not the only thing speeding up. *We* are speeding up, our very selves are accelerating. We not only hurry through life from event to event, meeting to meeting, task to task, but we are moving so fast forward that we are losing our connection with our past and this disconnection has existential and hence normative implications. Indeed, we are moving so fast that we are not even sure we have a history that defines who we are. We are going so fast we are experiencing a kind of tunnel vision that prevents us from recognizing the patternings in and around us. We can no longer see, hear, or feel ourselves and the world around us. We can no longer remember who we are and what we are doing on this earth. We are analogue beings living digital lives. Our speed is fragmenting our very being with immanent pattern-shifts that hold us captivated by nothing more than a vague promise of transcendence. But, this cannot last. We are not a-temporal. Our being is historical and a digitalization of life disconnects us from our past, from who we are. In so doing, our speed fragments our very being, it detaches us from our historical being, it denies us the ability to politicize as we should.

Before digging deeper into this notion of acceleration, we should note that acceleration is the central concern that guides the discussion throughout this work. The relational ontology of *res ecologia* serves as background for gaining perspective on the systemic violence of acceleration. A political ontology of network patternings aids us in assessing the connections between an atomistic political ontology and liberalism's political economy. We will also begin to

¹⁶⁰ See, for example, Clay Shirky, *Here Comes Everybody: The Power of Organizing Without Organizations* (New York: Penguin Books, 2008).

explore an understanding of structural causation in order to also gain perspective on the nature of the causes driving acceleration in the 21st century. But, first, what do I mean by “acceleration”?

By “acceleration” I mean the speeding-up of nearly all elements of our lives – computation, communication, transportation, resource extraction, manufacturing, consumption, increasing rates of change in familial relations, religious practices, sexual practices, vocations, fashions and lifestyles.¹⁶¹ Indeed, nothing remains untouched by this speeding up. And, it is important to remember up front that moving faster, acceleration, is not simply *more* movement – it is *different* movement. As Hartmut Rosa points out, “just as speeding up a sequence of images can bring them to life in the transition from photography to film, or the acceleration of molecules can transform ice into water into steam, changes in the temporal structures of modern societies transform the very essence of our culture, social structure, and personal identity (and, of course, our experience of nature, too).”¹⁶² The ontology of *res ecologia* discussed above should make it clear that our being is historical and, therefore, changes in the rates of flux within patternings means fundamental, qualitative changes in who and what we are. Or, as Rosa continues, “individual as well as collective human existence is in its very essence temporal and processual; changes in temporal structures are changes in individual and social existence.”¹⁶³ Changes in our temporal structures transform our culture, economy, understandings of personal identity, and our relation to nature. Hence acceleration is not simply a *quantitative* speeding-up, it is a *qualitative* change that takes place within material, social, and spiritual relations that make up our being-in-the-world.

¹⁶¹ As Hartmut Rosa writes, “rates of change themselves are changing. Thus, attitudes and values as well as fashions and lifestyles, social relations and obligations as well as groups, classes, or milieus, social languages as well as forms of practice and habits, are said to change at ever-increasing rates.” Hartmut Rosa, “Social Acceleration: Ethical and Political Consequences of a Desynchronized High-Speed Society,” in Hartmut Rosa & William Scheuerman, eds. *High-Speed Society: Social Acceleration, Power, and Modernity* (University Park: Pennsylvania State University Press, 2009) 77 at 83.

¹⁶² *Ibid.* at 97.

¹⁶³ *Ibid.* at 111.

So, everything in the world around us, and indeed, our very selves, is speeding up and not only is this acceleration pervasive, but it is transformative. The forward-thrust of acceleration has very real material, social, and spiritual consequences.

In his 1970 bestseller, *Future Shock*, Alvin Toffler described “the shattering stress and disorientation that we induce in individuals by subjecting them to too much change in too short a time.”¹⁶⁴ Toffler was careful to emphasize the fact that the *rate* of change has implications and significance distinct from the *direction* of change. As he writes, “[n]o attempt to understand adaptivity can succeed until this fact is grasped. Any attempt to define the ‘content’ of change must include the consequences of pace itself as part of that content.”¹⁶⁵ However, although Toffler was certainly correct to focus on rates of change in his diagnosis of the ills of modern industrial society, he lacked the foundational ontology of interconnectedness in network patterning that is required if we are to understand the depth of the transformations taking place in acceleration. He was correct to point to the increased levels of anxiety and disorientation among individuals living within advanced industrial societies, but he did not offer a deep analysis or critique of the underlying logic behind the drive to accelerate.

Much like Toffler, William Scheuerman argues that a heightened rate of technological innovation, accelerated patterns of change in the workplace and family, and the rise of high-speed communication and transportation have produced the social acceleration of time.¹⁶⁶ He notes that traditional institutions of liberal democracy (e.g. a separation of power) are grounded in temporal

¹⁶⁴ Alvin Toffler, *Future Shock* (New York: Bantam, 1970) at 2. Also, as Loren Eiseley writes, “[t]he technological revolution ... has brought a social environment altering so rapidly with technological change that personal adjustments to it are frequently not viable. The individual either becomes anxious or confused or, what is worse, develops a superficial philosophy intended to carry him over the surface of life with the least possible expenditure of himself.” Loren Eiseley, *The Firmament of Time* (New York: Atheneum, 1960) at 133 quoted in Stephen Bertman, *Hyperculture: The Human Cost of Speed* (Westport: Praeger, 1998) at 209, 210.

¹⁶⁵ Toffler, *supra* note 164 at 3. This is the same point Karl Polanyi made in *The Great Transformation* where he writes that “[t]he rate of change is often of no less importance than the direction of the change itself.” Polanyi, *supra* note 48 at 36, 37.

¹⁶⁶ See Scheuerman, *supra* note 2 at xv, xvi.

assumptions and, more importantly, “[t]he legitimacy of liberal democratic rule is predicated on the necessity of wide-ranging but time-consuming deliberation and debate.”¹⁶⁷ Therefore, he is concerned that our history has created a rift between our socio-economic life and our liberal institutions of deliberation and representation for self-governance.¹⁶⁸ However, although Scheuerman correctly points us toward the problem of change he, like Toffler, lacks the perspective of structural change and therefore lacks a certain depth in both the diagnosis and remedy for the problem. So, for example, he seeks to protect the liberal democratic model of governance from the pressures of acceleration, rather than problematizing the ontology and economy of liberal democracy itself. So, both Toffler and Scheuerman, because they do not seek to dissect the logic of acceleration – to unearth the ontological and epistemological underpinnings of the drive to accelerate – do not offer us either (a) a thorough diagnosis of the violence of acceleration or (b) a way of living and thinking that is resilient in its resistance to acceleration.

If we are to dissect the logic of acceleration, we need to be attentive to the high-speed global economy that forms our way of life by structuring the limits of our thought and action. For, as James Tully reminds us, “social action [or, for that matter, social theory] will be critical and effective only if it is based on an understanding of, and oriented in relation to, the specific relations of communication and governance in which it is situated.”¹⁶⁹ And, there can be little doubt that the liberal capitalist societies face some significant challenges as a result of globalized markets and rapid social change as we move into the 21st century.¹⁷⁰ Dramatic advances in

¹⁶⁷ *Ibid.* at 3, 4.

¹⁶⁸ See *ibid.* at 69, 70.

¹⁶⁹ Tully, *supra* note 126 at 186. Within this context of the global economy, we should keep an eye on the work of social theorists who are in tune with the social and economic particularities of advanced capitalistic societies (e.g. the “network society” analyzed by Manuel Castells, Yochai Benkler, Clay Shirky, etc.) See, for example, Castells, *supra* note 56, Yochai Benkler, *The Wealth of Networks: How Social Production Transforms Markets and Freedoms* (New Haven: Yale University Press, 2006), Shirky, *supra* note 160, Scheuerman, *supra* note 2, and Gilles Deleuze, *Negotiations: 1972 – 1990*, trans. by Martin Joughin (New York: Columbia University Press, 1990).

¹⁷⁰ See Christopher Pierson, *Beyond the Welfare State?: The New Political Economy of Welfare*, 3d ed. (University Park: The Pennsylvania State University Press, 2007) at 201-231. Also see Scheuerman, *supra* note 2. Scheuerman

transportation and communications technologies have led to the creation of global markets that are high-speed, volatile, and driven by capital mobility unimagined even one hundred years ago. Additionally, the shifting demographics of more mobile populations and aging citizens is redefining the formal economy, straining the traditional models of social security, and undermining traditional ways of life. Changes in family, church, and gender roles have added further complications to regulation and public service delivery.¹⁷¹ These challenges are present within liberal, capitalist countries around the globe and have been developing rapidly since the middle of the 20th century. What is very new, however, is the rise of the information age (e.g. the internet, mobile communications technology, etc.) and the re-definition of action-coordination that has arisen in response. No longer are organizational institutions necessary to reduce the transaction costs of action-coordination. With spectacular advancements in computation and communications technology, coordination costs have become dramatically cheaper. Communication networks, therefore, have formed and developed rapidly with user-generated content online and, indeed, as Castells notes, changes in communications have significant

argues that a heightened rate of technological innovation, accelerated patterns of change in the workplace and family, and the rise of high-speed communication and transportation have produced the social acceleration of time. See *ibid* at xv, xvi. He then suggests that traditional institutions of liberal democracy – e.g. a separation of power – are grounded in temporal assumptions and, more importantly, “[t]he legitimacy of liberal democratic rule is predicated on the necessity of wide-ranging but time-consuming deliberation and debate.” *Ibid* at 3, 4. The question, therefore, is as follows: has our history produced a social and economic life that can no longer be meaningfully guided by free and equal individuals who engage in deliberation regarding the specifics of their self-governance? See *ibid* at 69, 70.¹⁷¹ See, for example, Castells, *supra* note 56; Manuel Castells, *The Power of Identity*, Vol. II of *The Information Age: Economy, Society and Culture* (Oxford: Blackwell, 1997) [Castells, *Power of Identity*]; and Manuel Castells, *End of Millennium*, Vol. III of *The Information Age: Economy, Society and Culture* (Oxford: Blackwell, 1998). Increased global competition, capital hyper-mobility, and dramatic advancements in communications and information sharing have created a “radical indeterminacy” that requires a more flexible and adaptable structure of governance – indeed, a governance paradigm-shift. See Oliver Gerstenberg & Charles Sabel, “Directly-Deliberative Polyarchy: An Institutional Ideal for Europe?,” in Christian Joerges & Renaud Dehousse, eds., *Good Governance in Europe’s Integrated Market* (Oxford: Oxford University Press, 2002) 289 at 292. Also see Orly Lobel, “The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought” (2004) 89 Minn. L. Rev. 342 at 358. As modern life becomes more and more complex – say, as citizens become more mobile and more connected through communications and information transmission technologies – it is becoming more and more obvious that social programs, if they are to be effective, must be increasingly integrated and purposively interdependent. New governance scholars therefore suggest that the traditional model of public sector structures and practices that is based upon hierarchy and expertise has therefore begun to shift into a new model which includes more participatory and collaborative practices. The state-society relationship is being redefined as multiple stakeholders are increasingly encouraged to participate in governing projects. See *ibid.* at 344, 45.

implications. “Networks constitute the new social morphology of our societies, and the diffusion of networking logic substantially modifies the operation and outcomes in processes of production, experience, power and culture.”¹⁷² Therefore, acceleration may be understood as a distinct feature of modern industrial, capitalist society and its inherent push to achieve ever-increasing levels of efficiency within processes of interaction.¹⁷³

In the discussion of the self as *res ecologia* above, we noted MacIntyre’s explanation of political identity as historical being. The self, therefore, is not simply a succession of psychological states or events (as the empiricists would suggest), but is a subject of a unique history and this subject can be held responsible for certain actions and experiences at any time.¹⁷⁴ This responsibility can only take place, however, if the more local relational patternings are articulated in connection with larger, more global patternings. And, of course, this connection depends upon both continuity throughout time and resonance between patternings. The image I used above is that of the comparison between analogue and digital – we are analogue beings living digital lives.¹⁷⁵ The connection between patternings that makes up our identities, because it depends upon both continuity throughout time, relies upon a certain rate of change that begins to fragment if it is accelerated too much. And, of course, this should not surprise us given the fact that our lives are made up of biological processes that take place according to a certain rate of change and are limited in their speeds. Additionally, purposiveness in life is the imaginative projection or extension of a trajectory into the future. If our rate of change is so fast that we are

¹⁷² Castells, *supra* note 56 at 469. And, as Tully reminds us, “[t]his proliferation of networks of communication is in turn the communicative dimension of a larger and epochal trend – the emergence of networks as a key means of social ordering.” Tully, *supra* note 126 at 170.

¹⁷³ As Robert Hassan notes, acceleration “stems not simply from new industrial processes, but also rises up from the ways in which we interact and communicate across all walks of life.” Robert Hassan, *Empires of Speed: Time and the Acceleration of Politics and Society* (Leiden: Brill, 2009) at 19. Also see Rosa, *supra* note 161 at 88, 89.

¹⁷⁴ See MacIntyre, *supra* note 99 at 202.

¹⁷⁵ Roughly speaking, an analogue signal depends upon a continuous signal with a variable that serves as an analogy to another variable changing through time. A digital signal, in contrast, is a set of distinct quantities that represents a set of discreet values through time.

unable to retain contact with the past and our place within its narrative flow, however, we will likewise be unable to project ourselves into the future. Purposive imaginings rely upon memories so if the patternings are so disrupted that we can no longer recognize them, we will be unable to extend or expand them into the future. Without sufficient continuity and resonance, our being will be fragmented and dominated by the tyranny of the now, we will be smothered by an oppressive immanence.

It should be clear by now that acceleration does not refer simply to the speeding up of, say, events in the daily lives of individuals caught up in the rat race of career development. Nor is it simply a psychological phenomena that irritates those within major urban centers; it is altering our very being by changing how we understand ourselves and our relation to the world around us. But, acceleration cannot be adequately understood and its significance for political and legal theory cannot be fully appreciated until we recognize the causal logic underlying its rise in modern industrial societies and the essential role standardization plays in this logic.

So, in conclusion, let us briefly consider one aspect of the underlying logic behind the acceleration of industrial, capitalist society by looking at the development of mechanized time. Theorists of time often begin their analysis of social acceleration with the development of the mechanical clock and its dramatic acceptance, use, and internalization around the globe.¹⁷⁶ The “regime of the clock” or the “first empire of speed” during the modern, industrial era was a period within which “time was transformed from a mode of subjective experience into an abstract value.”¹⁷⁷ Clock time was, therefore, the imposition of a kind of mathematical grid overlaid upon natural, more fluid, timescapes. As Hassan writes concerning the mechanical clock, “[i]ts strict

¹⁷⁶ An analogous standardization may be seen in the development of national currencies and, especially, in floating exchange rates that synchronize currencies around the world. For a brief example of a look at the relationship between money and the shifting tempo of society, see Georg Simmel, *The Philosophy of Money*, 3d ed., trans. by Tom Bottomore & David Frisby, ed. by David Frisby (London: Routledge, 2004) at 498-504.

¹⁷⁷ Hassan, *supra* note 173 at 55, 56.

analogue logic cuts through the weaved intersections of times that constitute our ongoing temporal becoming. Instead it grids social and natural timescapes with a mathematical logic that produces a synchronization of the world in accordance with a Pythagorean *kosmos* where all things may be conceived of as number.”¹⁷⁸ The development of a common metric for measuring the movement of time meant the homogenization and universalization of an abstract evaluation process - hours, minutes, and seconds (all ordered across the globe since the introduction of Standard Time in the late 19th century). Without speculating too much, it is safe to say that this standardization of time measurement - i.e. coordination and universal synchronization - developed out of the human thirst for control. For, without standardization (a process of abstraction away from the different temporal experiences of various locales) there could be no effective prediction of events and, therefore, no effective coordination of actions across vast distances. The abstract common metric embodied in the use of the mechanized clock, therefore, did not directly create the social acceleration of time; it created the means of standardization which in turn allowed for acceleration based upon a human drive for control and efficiency. Acceleration, in this way, is facilitated and fueled by standardization. But, more on this below...

Conclusion

In this chapter, I put forward a bold proposal: we need to re-imagine our political ontology in order to begin seeing how things and our very selves come to us from beyond ourselves. I led us into a discussion, therefore, of how we might best conceive of the nature of a thing and the nature of ourselves as *res ecologia*. We saw how things and ourselves are patternings that are vulnerable to disruptions that distort their nature or their network integrity. Rejecting a radical immanentism that decries all talk of structures or patternings that come from beyond ourselves, we began developing a way of speaking that is attentive to natural ordering processes in ourselves

¹⁷⁸ *Ibid.* at 52.

and the world. I suggested, therefore, that our politicization of things as well as our political identities are best conceived of as processes in which we participate rather than create. It is the integrity of these larger processes that gives us normativity and the capacity to make normative judgments regarding disruptions to relations within and between things and ourselves.

Although much more work needs to be done, we have already begun to recognize that a re-working of our political ontology is needed if we are to develop a language of political normativity that is not reproducing the violence at work within the liberal tradition. Now, although we may see how acceleration in patterning processes could alter the nature of these processes, we have yet to explore in detail why this is so and why this change should be of concern to us. It is to this end that we now turn.

III. CAUSATION

“Higher than actuality stands *possibility*.”¹⁷⁹

Introduction

We concluded the last chapter with some discussion of the problem of acceleration and the fact that temporal changes in patterning processes are not simply quantitative, but are qualitative. Simply put, faster is not just more, it is different. In order to understand in what manner acceleration alters patternings, it is necessary to outline what is meant by “power”, “violence”, and “domination”. That is, if we are to come to some understanding of governance that is more attentive to the violence of liberalism, we need to have a clear sense of what we mean by “violence”. Only in this way can we begin to understand the injustices that are produced and re-produced by the liberal tradition.

In this chapter, therefore, I will begin with a suggestion that we view causation within patternings as producing a stability that persists through time and develops a kind of internal purposiveness. Violence, therefore, is best understood as a violation of the patternings and domination – rather than being rooted in a notion of dependence – is excessive violence that causes a significant disruption of the integrity (or nature) of network patternings.

Before we dive into these definitions in more detail, it is interesting to note with Niklas Luhmann that our level of satisfaction with the current state of society will significantly determine the degree to which we open up the definitions of “power”, “violence”, and “domination”. For example, he writes that “[i]f one is convinced in advance that the society in which we live is constructed improperly, then one will choose a very broad, limitless concept of power. In this way one devises for oneself and others an addressee of criticism.”¹⁸⁰ In other

¹⁷⁹ Heidegger, *supra* note 129 at 63.

¹⁸⁰ Niklas Luhmann, *Political Theory in the Welfare State*, trans. by John Bednarz Jr. (Berlin: Walter de Gruyter,

words, the problem of power, violence, and domination is defined with at least some sort of a solution – say, some notion of justice – already in mind. I am happy to acknowledge, therefore, that the definitions of “power,” “violence,” and “domination” that follow are developed with what I take to be the central challenges facing a search for just democratic governance in our liberal society.

Additionally, as Steven Lukes points out, engaging in disputes regarding the nature of power – that is, how power should be defined – is itself to engage in politics. In other words, a definition of power (and consequently any use of this definition) is inextricably tied into a set of value-assumptions that determine the range of applications available to the theoretical concepts involved.¹⁸¹ But, if our definitions are value-laden and developed in keeping with the normative ideals we already possess, how much can we really expect from such definitions?

In order to begin answering this question, it is helpful to note the shift that took place within the thinking of Ludwig Wittgenstein and his reaction to certainty sought within the analytic tradition. The analytic tradition in philosophy, with its roots firmly planted in the Enlightenment, places significant emphasis on precision in thought and language and tends to approach concepts of human nature, truth, and justice in ahistorical terms. Philosophers like Bertrand Russell, therefore, sought to develop a language of logic that would allow philosophers to conceptualize and communicate with what was understood to be a kind of scientific precision.¹⁸² Ludwig Wittgenstein, although beginning his philosophical work with this same quest for precision (see *Tractatus Logico-Philosophicus*)¹⁸³ soon became aware of the fact that it

1981) at 156.

¹⁸¹ See Steven Lukes, *Power: A Radical View*, 2d ed. (New York: Palgrave, 2005) at 30.

¹⁸² See, for example, Bertrand Russell, “Introduction to *Principia Mathematica*,” in *The Basic Writings of Bertrand Russell, 1903-1959*, ed. by Robert Egner and Lester Denonn (London: Routledge, 1992) at 161-163 and Bertrand Russell, “Vagueness,” (1923) 1 *The Australasian Journal of Psychology and Philosophy*, 84-92.

¹⁸³ See Ludwig Wittgenstein, *Tractatus Logico-Philosophicus*, trans. by David Pears & Brian McGuinness (London: Routledge, 1974).

was mistaken to demand excessive precision from human expressions (see *Philosophical Investigations*).¹⁸⁴ The meaning of words, he realized, was found in their use within a variety of “language games” and it was philosophy's task to serve as a therapeutic activity (a “critical hermeneutics”) to relieve persons from the bewitchment of language and the quest for hidden meaning.¹⁸⁵ Wittgenstein is certainly correct that the meaning of a word lies in its use. However, as Wittgenstein also suggests, although we might grasp the meaning of a word in a flash, we do not grasp its use extended through time.¹⁸⁶ It simply is not possible to comprehend the complete use of a word and, therefore, it is not possible to comprehend the complete meaning of a word. It is this perpetual and persistent indeterminacy within the meaning of words that ensures the pursuit of exactitude or finality in definitions is a wild goose chase.¹⁸⁷ It is this indeterminate and value-laden nature of meaning then that makes the question of the meaning (and hence significance of) violence a democratic question.¹⁸⁸

A. Structural Causation

In the process of outlining a political ontology of *res ecologia* we are inevitably led to consider our understanding of the nature of causation. For example, not only does the talk of diffuse agency in network ecology but the phenomenological discussions of the active gathering

¹⁸⁴ Ludwig Wittgenstein, *Philosophical Investigations*, trans. by Gertrude Anscombe (Oxford: Blackwell Publishing, 1953).

¹⁸⁵ See Allan Janik, “Wittgenstein's Critical Hermeneutics: From Physics to Aesthetics,” in *The Legacy of Wittgenstein: Pragmatism or Deconstruction*, ed. by Ludwig Nagl & Chantal Mouffe (Frankfurt: Peter Lang, 2001) 63 at 63.

¹⁸⁶ See Wittgenstein, *supra* note 184 at 46.

¹⁸⁷ We might take our lead, then, from Nietzsche who writes that instead of searching for hidden essences and meanings, we would do well to “stop courageously at the surface, the fold, the skin, to adore appearance, to believe in forms, tones and words, in the Olympus of appearance.” Friedrich Nietzsche, *The Gay Science: With a Prelude in Rhymes and an Appendix in Songs* (New York: Vantage Books, 1974) at 38 quoted in Tully, *supra* note 34 at 137.

¹⁸⁸ There is no single definition of “power”, “violence”, or “domination”. Instead, we do best if we (1) acknowledge this fundamental plurality within linguistic meaning and (2) use the multi-coloured nature of these concepts to develop a picture that will best serve our goals of non-domination. My hope is that we can begin with (i.e. assume) the acknowledgement of plurality and move directly into the more artistic enterprise of painting a conceptual picture of “power”, “violence”, and “domination.” In doing so, we are guided not by a quest for an understanding of the “real” meaning as if it were something to be grasped, but by a kind of normative aesthetic that seeks to inspire just ways of living.

and presencing of things – the coming to us as wholes from beyond – raise questions regarding causation. Further, it is quite clear that any definition of power, violence, and domination involves a background set of understandings regarding causation. To put it simply, talk of power is, at root, talk of someone or something (A) acting upon or influencing someone or something (B) – that is, A affects B in some way. And, if we are dissecting causation, we need to ask two fundamental questions: “How do things persist through history?” and “How do things change?” Underlying a concern for systemic power-flows as outlined in this project, is a set of assumptions regarding structural or systemic causation. How persons develop in and through history. How patterns of ecological, social, and spiritual interaction develop in and through history. How persons affect patterns of ecological, social, and spiritual interaction. Further, if the distributive networks we are discussing here are also understood to be in flux and persistently indeterminate, how are we to conceive of the notion of domination as “excessively disruptive”? Not only how is disruption caused, then, but how might we begin to understand “excessive” change within a process of structural development?

The ideas of force, resistance, and disruption employed in the following discussion on power, violence, and domination are rooted in an understanding of causation that can be viewed as somewhat of a return to a pre-modern approach. Aristotle, as is well known, proposed that we are able to understand why something is the case through an investigation into its four causes – material, efficient, formal, and final.¹⁸⁹ Put very simply, the *material* cause describes the material out of which something is composed. The *efficient* (or mechanical) cause is that (e.g. agent, event, or state of affairs) which initiates change or halts change. The *formal* cause is that form to which a thing progresses. In a real sense, then, the formal cause informs us as to the nature or

¹⁸⁹ See Aristotle, *Physics*, trans. by Philip Wicksteed & Francis Cornford (Cambridge: Harvard University Press, 1957) at 129 [II.3] Also see Aristotle, *The Metaphysics*, (London: Penguin, 1998) at 115 [IV.2].

essence of a thing; it tells us what is being unfolded within the historical existence of a thing. For example, the form of a chicken is present within the fertilized egg. The formal cause is an essential pattern that is made manifest throughout the existence of a thing. It is the macrostructure of the whole that causes the parts to behave in a certain manner and may, therefore, be understood as a kind of internal cause. The *final* cause (the *telos*) is the purpose for which something exists or for which something is accomplished. For example, a war is waged in order to enhance one's position in this world or the next. Of course, these four forms of causation were part of Aristotle's understanding of place and order and reflect his hierarchical approach to the universe.¹⁹⁰ These forms of causation possess an intrinsic hierarchy within Aristotelian thought in the sense that each form is operating at a different scale. The material and efficient causes operate most frequently within a limited subfield (from which their effects are understood to propagate up the scale of action). The formal cause is a meaningful focal point of observation and knowledge in that it maps out the essential nature or structure of something or some action. The formal cause, then, takes place beyond the thing itself and structures the entire existence of something or some action in relation to the rest of the world. The events at a certain level are contingent upon, but not necessarily determined by, events at the lower levels.¹⁹¹ However, all levels of cause are needed if one is to reach understanding because, as Aristotle writes, "we never reckon that we understand a thing till we can give an account of its 'how and why,' it is clear that we must look into the 'how and why' of things coming into existence and passing out of it, or more generally into the essential constituents of physical change...."¹⁹² In other words, Aristotle understands that we do not have understanding of the physical world until we understand the nature and purpose of things and for this understanding we need to see all the causes. I tend to

¹⁹⁰ See Aristotle, *supra* note 37 and Durham & Purrington, *supra* note 37 at 53ff.

¹⁹¹ See Robert Ulanowicz, *Ecology, the Ascendent Perspective* (New York: Columbia University Press, 1997) at 12, 13.

¹⁹² Aristotle, *supra* note 189 at 129 [II.3].

agree.

As noted in the last chapter, the 17th century marked a dramatic shift away from this kind of “Aristotelian” conception of the universe. Place, order, and causation began to be conceived of in what we now describe as modern terms. As Charles Taylor writes, “the world was no longer seen as the reflection of a cosmic order to which man was essentially related, but as a domain of neutral, contingent fact, to be mapped by the tracing of correlations, and ultimately manipulated in fulfillment of human purposes.”¹⁹³ This new conception of the universe, not surprisingly, meant significant changes in politics – changes tied into not only atomistic notions of place (i.e. individual atoms existing in relation to a fixed framework of space and time), but also mechanistic notions of causation. For, at the beginning of the 17th century, a clear division begins to be made between natural science and metaphysics. And, more importantly, natural science begins to be concerned exclusively with material and efficient causes and metaphysics with formal and final causes. For example, as Francis Bacon writes in 1605 in his *The Advancement of Learning*:

For as we divided natural philosophy in general into the inquiry of causes, and productions of effects: so that part which concerneth the inquiry of causes we do subdivide according to the received and sound division of causes. The one part, which is physic, inquireth and handleth the material and efficient causes; and the other, which is metaphysic, handleth the formal and final causes.¹⁹⁴

This two-fold division between the four causes of Aristotle is a significant step into what is now known as the modern era. This step was furthered by Hobbes’ emphasis upon material existence and by Descartes’ emphasis upon mechanical causation in his 1644 work *Principles of*

¹⁹³ Charles Taylor, *Hegel* (Cambridge: Cambridge University Press, 1975) at 539. Cf. Akeel Bilgrami, “Occidentalism, the Very Idea: An Essay on Enlightenment and Enchantment” (Spring 2006) 32 *Critical Inquiry* 381-411 and Akeel Bilgrami, “Value, Enchantment and the Mentality of Democracy: Some Distant Perspectives from Gandhi,” in *Democratic Culture: Historical and Philosophical Essays*, ed. by Akeel Bilgrami (London: Routledge, 2011) 23-63 [Bilgrami, “Mentality of Democracy”].

¹⁹⁴ Francis Bacon, *The Advancement of Learning*, 3d ed., ed. by William Wright (Oxford: Clarendon Press, 1885) at 114 [2nd Book VII.3]

Philosophy.¹⁹⁵ The final step into the era of modern science, however, came with the publication of Isaac Newton's *Philosophiae Naturalis Principia Mathematica* in 1687.¹⁹⁶ For, it is the *Principia* that solidified the paramountcy of mechanical causation in natural science and, therefore, established the positivistic assumption that "natural systems are at some fundamental level actually governed by purely abstract laws that can be specified in terms of mathematical equations."¹⁹⁷ In other words, this commitment to mechanical causation was a dramatic step forward in the objectification of the world and, importantly, this objectification extended beyond our natural environment to "englobe human life and society and the result is a certain vision of man, an associationist psychology, utilitarian ethics, atomistic politics of social engineering, and ultimately a mechanistic science of man."¹⁹⁸

If we are to move beyond reductionist conceptions of power and causation that objectifies the world and subjectifies the self, we need to begin looking beyond the material and efficient causes that have for so long dominated the modern worldview. As Menno Hulswit points out, in the classical (Aristotelian) conception, "causes are conceived as the active originators of a change that is brought about for the sake of some end" but in the modern approach there was "a strong tendency to understand causal relations as instances of deterministic laws. Causes were no longer seen as the active initiators of a change, but as inactive nodes in a law-like implication chain."¹⁹⁹

¹⁹⁵ For example, see Thomas Hobbes, "De Corpore (Concerning Body)," in *The English Works*, Vol. I., trans. by W. Molesworth (London: Scientia Aalen, [1655] 1839) at 9.7 and René Descartes, *Principles of Philosophy*, trans. by Valentine Miller & Reese Miller (Dordrecht: Kluwer, 1991) at 14, 15 [I:28].

¹⁹⁶ See Isaac Newton, *The Mathematical Principles of Natural Philosophy (Philosophiae Naturalis Principia)*, trans. by A. Motte (London: Dawson, 1729).

¹⁹⁷ Stephen Wolfram, *A New Kind of Science* (Champaign: Wolfram Media, 2002) at 859.

¹⁹⁸ Taylor, *supra* note 193 at 539. This fixation upon mechanical causation has fueled a drive to standardization within modern science. From a very specific local, a finite person is able to transcend to a global plan of being by tapping into a standardized protocol coding. For example, see Bruno Latour's discussion of the Munsell code as the official color system for soil research in *Pandora's Hope*. "Lost in Roraima, made so tragically local, he is able to become, through the intermediary of his code, as global as it is possible for a human being to be. The unique color of this particular soil sample becomes a (relatively) universal number." Latour, *supra* note 114 at 59. In this example, standardization takes place through an interface that translates local embodiments (e.g. a piece of soil with a certain color) into global abstracts (e.g. a number).

¹⁹⁹ Menno Hulswit, *From Cause to Causation: A Peircean Perspective* (Dordrecht: Kluwer, 2002) at 42 [emphasis

Therefore, not only was the efficient cause held to be the fundamental means of understanding the natural world, but the classical emphasis upon formal causation (the nature or patterning of a thing) gave way to the notion of pervasive or universal laws of nature.²⁰⁰ Both were attempts to explain the stability of the world around us: the former centered upon the *structure of things* whereas the latter centered upon the *relations between things*.²⁰¹ Moving beyond the reductionism of mechanical causation means beginning to once again appreciate how the structure of things persists and how these structures change through history.

The problem with the modern approach, then, is not the focus on relations between things in itself. Rather, the problem lies in the fact that this focus upon laws of nature leads to an objectivist approach to causation in which the relations between things are understood as universal laws. In other words, all agency of structures is denied within a totalized, deterministic universe; all action and, therefore the development of system processes and patternings, are reduced to mechanical causation in which the activity of the parts defines and determines the activity of the wholes (à la Latour). Causal relations, then, seem to be (at least in theory) reversible – i.e. if we go back in time, the effects of the causation would be undone.²⁰²

The modern reductionist/objectivist approach to causation has led to an unrealistic, bottom-up approach to understanding complex systems such that the prediction of all systems (regardless of their complexity) is considered to be theoretically possible; prediction is possible if only we have sufficient information regarding the parts of the system and the rules governing their behaviour. This failure to understand complexity has meant that, as Stephen Wolfram notes,

removed].

²⁰⁰ It should be noted that Descartes, for example, sought to reconcile the determinism of pervasive and mechanistic laws of nature with the lived reality of persons as free agents. See Descartes, *supra* note 195 at 18, 19 [I.39, 40].

²⁰¹ See Hulswit, *supra* note 199 at 42.

²⁰² Mechanical causation, according to Charles Peirce, involves three key properties: (a) the end is entirely dependent upon the beginning, (b) the end can only be reached through a single process, and (c) the process by which the end state is reached is completely reversible. See Richard Robin, *Annotated Catalogue of the Papers of Charles S. Peirce* (Amherst: University of Massachusetts Press, 1967) at 26 to 27. Also see Hulswit, *supra* note 199 at 82.

“[i]n the existing sciences much of the emphasis over the past century or so has been on breaking systems down to find their underlying parts, then trying to analyze these parts in as much detail as possible.”²⁰³ In the last few decades, scientists have increasingly run up against the limitations of this approach in, for example, measurement in quantum mechanics, prediction in chaos theory, and singularities in gravitation theory.²⁰⁴ More importantly for our discussion here, though, the limitation has been seen in complex systems theory in what Wolfram calls “computational irreducibility”. Computational irreducibility means, for Wolfram, that if one considers the evolution of a system as a computation, the evolution of a complex system cannot simply be predicted through an understanding of the underlying rules of behaviour governing the parts within the system – even if one knows all the rules. He writes,

even if in principle one has all the information one needs to work out how some particular system will behave, it can still take an irreducible amount of computational work actually to do this. Indeed, whenever computational irreducibility exists in a system it means that in effect there can be no way to predict how the system will behave except by going through almost as many steps of computation as the evolution of the system itself.²⁰⁵

The reason for this irreducibility lies in the fact that our system processes of observation and analysis are not more sophisticated than the system processes we are observing. Or, put another way, our powers of observation and analysis cannot outrun the computations of complex systems in our environment with more sophisticated computations. If we are seeking to understand how complex systems both persist and change despite our limited abilities, we have reason to focus our attention upon the self-structuring processes of complex living systems – i.e. what I am calling structural causation. We have reason to turn to structural causation because the reductionism of mechanistic causation is not only extremely limited, but tends to blind us to these

²⁰³ Wolfram, *supra* note 197 at 3.

²⁰⁴ See *ibid.* at 1135.

²⁰⁵ *Ibid.* at 739. What this means, therefore, is that “there is absolutely no reason to think that the specific concepts that have arisen so far in the history of mathematics should cover all of science....” *Ibid* at 860.

limitations.

Giving attention to structural causation may be understood as a reflexive process of observation; it is a more holistic combination of both the system processes being observed and the system processes of observation themselves. Importantly, by “reflexive” I do not mean simply a matter of turning our minds to the system processes of observation but, instead, reflection upon the connectivity between the two system processes. And, this connectivity may be understood by considering the computation of system processes. Engaging in a kind of computational reductionism that we must excuse for now, Wolfram explains that his “Principle of Computational Equivalence” means “any processes that are not obviously simple are equivalent in their computational sophistication. So this means that even though a system may have simple underlying rules its process of evolution can still computationally be just as sophisticated as any of the processes we use for perception and analysis.”²⁰⁶ What this means, then, is that we can observe a kind of formal causation within complex network systems because “once a rather low threshold has been reached, any real system must exhibit essentially the same level of computational sophistication” – i.e. “observers will tend to be computationally equivalent to the systems they observe – with the inevitable consequence that they will consider the behavior of such systems complex.”²⁰⁷ The phenomenon of complexity in system processes (e.g. complex network patterning) itself, in other words, arises as a result of the connectivity between the self and the not-self. This connectivity is important because, unlike modern mechanistic science in which perception and analysis of humans is idealized such that they are assumed to be infinitely powerful, we now understand that making helpful conclusions about complex network systems means including the processes at work within the network system that is making the conclusions

²⁰⁶ *Ibid.* at 736.

²⁰⁷ *Ibid.* at 737.

– i.e. ourselves.²⁰⁸ Focusing on structural causation, therefore, is a reflexive process of understanding ourselves as network systems deeply rooted in an environment of network systems.²⁰⁹ Again, seeking to understand ourselves as *res ecologia*.

So, we have some reason to consider a structural approach to understanding causation – it holds the promise of helping us understand ourselves and our place in the world. And, indeed, as Aristotle noted, causation is about how we know and understand ourselves and the world. But, how do we develop an approach to causation that allows us to better understand network relations and, consequently, better understand the analysis of power, violence, and domination? I propose we do this by turning to the science of ecological systems. For, the study of living systems represents an excellent realm within which to consider organizational principles and the causation at work in organizational patternings. However, before briefly setting out an approach to understanding the origins of order in living systems, it is important to recognize that we no longer need to retain the deterministic assumptions accompanying a mechanistic approach to scientific investigations. The mechanism of the modern approach to science led ecosystem scientists to “portray and ecosystem as a grand machine whose working parts are its component populations and whose linkages are its trophic and physical transfers.”²¹⁰ We will turn, instead, to something like Karl Popper’s post-positivist concept of indeterminacy in an attempt to better guide our consideration of the emergence and maintenance of order within living systems.²¹¹

Karl Popper is perhaps best known for his critical rationalism in which he rejects classic accounts of empiricism (and the observationalist-inductivist approach to science that developed

²⁰⁸ See *ibid.* at 736.

²⁰⁹ That is, structural causation – compared to computational irreducibility or computational equivalence – is more of an approach to understanding metaphysics than a statement regarding the need for epistemic humility. I suggest that Wolfram is more concerned with epistemology because of he seems to be very concerned with arguing against a strong rationalist tradition in mathematics with a theory of necessarily experimental mathematics. For example, see *ibid.* at 772ff and 863.

²¹⁰ Ulanowicz, *supra* note 191 at 3. Also see Robert Ulanowicz, “Perspectives: Oecologia ex machina?” (1993) 11:2 *Ecomod.*

²¹¹ See Karl Popper, *A World of Propensities* (Bristol: Thoemmes Antiquarian Books, 1990).

out of it) in favour of a falsifiablist account. However, Popper was also clearly in opposition to the determinism of previous philosophies of science and made this explicit later in his life. For example, in *A World of Propensities*, he argues for a fundamental incompleteness in the causality of the universe and suggests that indeterminacy can arise at any level of causation; he proposes a kind of diachronic and relationally probabilistic approach to science. In order to demonstrate this, he distinguishes his *propensity* interpretation of probability from the *classic* theory of probability. He describes the classic theory as relying upon the following definition: “The probability of an event is the number of the favourable *possibilities* divided by the number of all the equal *possibilities*.”²¹² He then notes, however, that it is quite inappropriate to understand possibilities as *equal* possibilities and we should not speak of probabilities in simply a numerical sense. Instead, all possibilities would be better understood as weighted possibilities; certain possibilities and probabilities are greater than others. What this means, then, is that “a tendency or propensity to realize an event is, in general, *inherent in every possibility*.”²¹³ More generally, he concludes that “[a]ll this amounts to the fact that *determinism is simply mistaken*: all its traditional arguments have withered away and indeterminism and free will have become part of the physical and biological sciences.”²¹⁴ The future is not fixed, it is objectively open (i.e. regardless of our knowledge of the future) much like the computational irreducibility of Wolfram’s complex systems. Past situations influence and change propensities which in turn influence future situations, but none of this influence determines situations in a unique way. Thus, the world is fundamentally open, but it is not unstructured; the world is not without stability because propensities provide form and structuration without determining events.²¹⁵

²¹² *Ibid.* at 9 [emphasis original].

²¹³ *Ibid.* at 11 [emphasis original].

²¹⁴ *Ibid.* at 17 [emphasis original].

²¹⁵ See *ibid.* at 18. Also see Robert Ulanowicz, “The Propensities of Evolving Systems,” in *Evolution, Order and Complexity*, ed. by Elias Khalil & Kenneth Boulding (London: Routledge, 1996) 217-233.

If we accept that the universe is open with a tendency (a propensity) inherent within every situation or step in the evolution of a system, then we should understand that both Newtonian reductionism and Aristotelian hierarchicalism are approaches to understanding causation that are fundamentally incomplete. As Robert Ulanowicz notes, under the propensity interpretation of probability, reductionism is incomplete because indeterminacy can arise at any level and hierarchicalism is incomplete because moving up through the higher levels of causal forms will not allow one to discover all the sufficient causes – even the full causal spectrum will have holes in it.²¹⁶ In contrast, what we might call an “ecological approach to causation” allows for a greater emphasis upon flux and process rather than place and individual organism. It allows us to recognize the fundamental indeterminacy that affects our observations at any scale of analysis. It allows us to also recognize, correspondingly, that causes might be originating at any scale of analysis. This ecological approach, therefore, provides us with the ideal domain in which to study organizational principles related to networks, an ideal place to re-think the nature of causation within and between *res ecologia*.

But, if causes might be originating at any scale of analysis, where do we begin this study of organizational principles? It is no longer productive to simply move to the lowest level and trace the causation up through the multiple system levels. Instead, we will do better if we not only look for the level of analysis at which the efficient cause is most clear, but also *look for the level at which the network system (patterning) appears to be self-structuring*, the level at which there is a persistence of form beyond the constituent parts. As Ulanowicz writes, “in an open universe, any configuration at a given scale can be somewhat autonomous of what transpires at finer resolutions. It becomes permissible, therefore, to concentrate on description at the focal

²¹⁶ Ulanowicz, *supra* note 191 at 37.

level, while keeping implicit most of the contributions from finer scales.”²¹⁷ Our focal level, therefore, becomes one that is, as much as possible, attuned to the ordering agencies of systems. In ecological study, then, this is typically known as an autocatalytic cycle. A three-component autocatalytic cycle takes place when an increase in a process (A) has a significant propensity to increase a second process (B), process B then has a significant propensity to increase a third process (C), and process C then feeds back positively into process A. Therefore, in an autocatalytic system, the propensities for positive feedback are greater than the decremental interferences; there is a power-flow internal to the system as a whole.²¹⁸ In order to make the persistence of the system-form more explicit, we need to consider the selection pressure within the system in which the system “whole” exerts a pressure upon the system “parts”. The system-whole influences the system-parts when, as Ulanowicz writes, “if a random change should occur in the behavior of one member that either (a) makes it more sensitive to catalysis by the preceding element or (b) accelerates its catalytic influence upon the next compartment, then the effects of such alteration will return to the starting compartment as a reinforcement of the new behavior.”²¹⁹ Further, the selection pressure within a system's autocatalytic behaviour is inherently asymmetric – i.e. there is a definite direction to the system in which the system-parts are driven towards higher levels of performance. We can, therefore, begin to see an ontology of systems emerging in which the autocatalytic cycle is not simply taking place as a result of the system's environmental pressure. Rather, the system has its own identity that develops in an active relation to its environment. Again, as Ulanowicz writes, “[a]lthough the system requires material and mechanical elements, it is evident that some behaviors, especially those on a longer

²¹⁷ *Ibid.* at 56.

²¹⁸ See *ibid.* at 42, 43. For more on positive interactions within natural systems, see Mark Bertness & Ragan Callaway, “Positive Interactions in Communities” (1994) 9:5 *Trends in Ecology & Evolution* 191-193.

²¹⁹ Ulanowicz, *supra* note 191 at 46. And, of course, the negative flip-side to this process is also possible.

time scale, are, to a degree, *autonomous* of lower-level events.”²²⁰ It is at this level of autonomous organizational development of systems that I would suggest we will find the most rewarding understanding of organizational principles and systemic causation. It is at this level that we are able to focus on patterning processes (and understanding flows as causes) rather than objects as self-contained, interacting beings.²²¹

How then does this brief discussion of causation in complex systems give us insight into the nature of power, violence, and domination? What does this outline of a systems ontology mean for understanding violence as a disruption (and displacement) of the other? Or, finally, how might we now speak about domination as the excessive disruption of a system's development?

First, then, how is disruption caused? As we saw above, the distributive networks we are discussing in *res ecologia* are in flux and persistently indeterminate; network structures are always shifting and pervasive power-relations that ensure a perpetual displacement and disruption (socially, materially, and spiritually). Ecological systems are always existing, changing, and developing in relation to their environment as material and energy are transferred between their system-parts and the world around them. As changes in these transfers take place, autocatalytic systems (which are dependent upon their material components, but not determined) exert pressure upon their constituent parts (or processes) to change and thereby enhance their performance.²²²

²²⁰ *Ibid.* at 49. The identity or autonomy of the system reveals a kind of formal and final causation. A kind of formal causation of systems might be seen in the autonomous development of the system in relation to its environment and a kind of final causation of systems might be seen in the *telos* of asymmetry within the autocatalytic process. See *ibid* at 47-49.

²²¹ There is a difference here between the top-down notion of causation in the living systems approach and the causation at work in organicism. Where the top-down causation in the living systems approach is a weak notion of causation – i.e. something more akin to influence, organicism has quite a strong notion of causation in which the top determines the bottom. Therefore, organicism has been used by dictatorial regimes to justify their totalitarian governments. See Robert Ulanowicz, *A Third Window: Natural Life beyond Newton and Darwin* (West Conshohocken: Templeton Foundation Press, 2009) at 96.

²²² As Ulanowicz writes, “[b]ecause autocatalytic loops naturally compete for resources, those links that are less efficient in augmenting autocatalysis are effectively pruned. (It is not that the links necessarily disappear; they

However, this natural development process in which the autocatalytic cycle merely induces competition within the system is not what we might mean by disruption. (This approach to disruption would be based upon the object-interaction approach to causation rather than the ecological patterning approach.) Instead, disruption is better understood as changes in a system's environment (or a sub-system's system) that induce a system to depreciate or replace a constituent part (or process) although the form of the system might still persist. For example, imagine there is an autocatalytic cycle comprised of three elements – A, B, and C – and a fourth element (D) is introduced. Now, D is both more sensitive to catalysis by A than B and more positively enhancing to C than B. In this situation, the introduction of D will disrupt the system as D either grows to overshadow B within the cycle or even entirely displaces B.²²³ Or, more practically, the introduction of high levels of toxins in the water table may disrupt an ecosystem when some species in the area are forced out or replaced by other species in response to the harsh conditions, but the ecosystem as a whole does not necessarily collapse. The disruption of a distributive network, therefore, is best understood as either a natural or an unnatural process – and, likewise as positive or negative – depending upon the severity of the disruption.²²⁴

Second, how are we to begin understanding what we might mean by *excessive* disruption? As Ulanowicz reminds us, “[i]n the absence of overwhelming external disturbances, living systems exhibit a natural propensity to increase in ascendancy. The word *overwhelming* quantifying *disturbances* implies that living systems are always subjected to disturbances... some minimal disturbance is required in order for a system to continue developing.”²²⁵ That is, an excessive disruption – i.e. one that is considered violent – may be seen as the change in a

simply shrink relative to the favored exchanges.)” Ulanowicz, *supra* note 191 at 64.

²²³ See Ulanowicz, *supra* note 191 at 48.

²²⁴ In either case, however, it is not merely changes in the system's environment that induce the enhancement of performance among the system's constituents, it is a depreciation or replacement of constituents.

²²⁵ *Ibid.* at 75 [some emphasis removed].

system's environment that brings about a new form or pattern to the system as a whole. It is the kind of change that does not allow the autocatalytic behaviour of the system to persist. It does not allow the system to increase its magnitude of activity and the coherency and organization of its internal processes – i.e. its ascendancy.²²⁶ In socio-political terms, we see that cultures are alive by witnessing their change and adaptation through history. What is really significant about this dynamism within cultures, though, is not the fact that they change, but that they retain their continuity through the dramatic changes. In fact, as Jeremy Webber has aptly noted, we must recognize not only the communal richness, diversity, and contestability of a society's cultural traditions, but understand that the conflicts within a society are one of the key crucibles within which a common identity is developed. Therefore, culture “can be conceived of as the set of references, the ways of framing questions and making arguments, that distinguish one language of public debate from another and that are always subject to growth and evolution.”²²⁷ If the continuity of this evolutionary growth is threatened, then it is clear that violence is being done to a culture. The continuity of a living system like a culture is threatened when, for example, the system's internal complexity is reduced such that it can no longer adapt and change in response to pressures and disturbances within its environment. When the complex living system becomes machine-like in its singularity it loses its adaptability and, consequently, becomes increasingly vulnerable to threats.²²⁸ Power becomes violent in its disruptive force when the thing upon which the power is acting is altered at a fundamental level; its identity or place in the world is shifted.²²⁹ Of course, there is a correspondence between the disruption of a society's culture and personal disruption. As Michael Chandler and Christopher Lalonde write regarding suicide rates within

²²⁶ See *ibid.* at 8, 9. Elsewhere, Ulanowicz suggests that ascendancy is the “power a system could bring to bear in ordering itself and the world around it.” Ulanowicz, *supra* note 221 at xxiii.

²²⁷ Webber, *supra* note 155 at 238. Also see Jeremy Webber, “A Nationalism Open Towards the World,” forthcoming.

²²⁸ Ulanowicz, *supra* note 191 at 77.

²²⁹ See Tully, *supra* note 34 at 23.

indigenous communities in Canada, “because it is constitutive of what it means to have or be a self to somehow count oneself as continuous in time, anyone whose identity is undermined by radical personal and cultural change is put at special risk to suicide for the reason that they lose those future commitments that are necessary to guarantee appropriate care and concern for their own well-being.”²³⁰ But, given this background discussion of structural causation, let us now go on to consider power and violence in more detail and in more political terms...

B. Power and Violence

One of the keys to de-problematizing difference lies in re-conceiving the problem of violence and the ideal of non-domination. Liberal theorists like Hannah Arendt and Habermas, for example, tend to misunderstand the problem of violence and, consequently, develop systems of liberal democracy that perpetuate significant degrees of violence and, indeed, fail to provide a theoretical approach to governance that is thoroughly committed to the ideal of non-domination. In other words, I would suggest that Habermas sets out to build a system of depth hermeneutics – a theory of communicative action – that itself provides a foundation for excessively violent politics. He understands ideology as inherently violent (or, at least, inherently prone to violence) and, consequently, works out a theory of rationality that is to provide us with a theoretical touchstone from which to overcome ideology – i.e. rationality essentially becomes ideological critique. However, if we are to avoid the finality of universalization present within liberal theory, it is much more appropriate to understand power (and violence) as unavoidably present and active within *both* ideology *and* rationality. As Mouffe writes, “[a]ccording to the deliberative approach, the more democratic a society is, the less power would be constitutive of social relations. But if we accept that relations of power are constitutive of the social, then the main

²³⁰ Michael Chandler & Christopher Lalonde, “Cultural Continuity as a Hedge Against Suicide in Canada's First Nations,” in *Healing traditions: The Mental Health of Aboriginal Peoples in Canada*, ed. by Kirmayer, L. & Valaskakis, G. (Vancouver: University of British Columbia Press, 2008) 221 at 221.

question for democratic politics is not how to eliminate power but how to constitute forms of power more compatible with democratic values.”²³¹ Mouffe is correct to say (1) that relations of power are (at least partially) constitutive of social relations and (2) that democratic politics is not a way of eliminating power relations (i.e. flattening them), but of changing these relations to ensure they are more democratic. The problem, as we will see, is that Mouffe seems to misunderstand the nature of values that are thoroughly democratic. Her continued commitment to liberal ideals blinds her to the need for a more radical democracy. The goal in the rest of this chapter, therefore, is to develop the concept of democratic values in terms of violence and domination within the context of *pervasive* power-relations within the structural causation at work within *res ecologia*.

Before moving on to talk about violence and domination, let us consider what we might mean by pervasive power-relations. In order to begin the discussion in a way that will be helpful for the development of a network theory of democracy (a theory of governance that, hopefully, helps us reduce and prevent excessive violence), it is important to understand the structure of power as well as the immanence of power within social, material, and spiritual relations.²³²

Power may be seen as change in network patternings. As we have just seen, these network patternings, although ever changing and subject to transformative reconfigurations, possess a kind of stability - a pattern of network formation that develops through time - such that change is always met with a degree of resistance. In fact, due to the underlying and all-pervasive structural patternings of social, material, and spiritual networks that make up the world, there can be no such thing as absolute power just as there can be no such thing as absolute freedom. In this

²³¹ Chantal Mouffe, *The Democratic Paradox* (London: Verso, 2000) at 100.

²³² As Mol and Law write, “[t]o make sense of multiplicity, we need to think and write in topological ways, discovering methods for laying out a space, for laying out spaces, and for defining paths to walk through these.” Annemarie Mol & John Law, “Complexities: An Introduction,” in *Complexities: Social Studies of Knowledge Practices*, ed. by John Law & Annemarie Mol (Durham: Duke University Press, 2002) 1 at 8.

sense, we may agree with Hegel's understanding of the destructive power of absolute freedom. Hegel's notion of absolute freedom was, as Taylor notes, "a conception of freedom which was sterile and empty in his eyes in that it left us with no reason to act in one way rather than another; and it was destructive, since in its emptiness it drives us to tear down any other positive work as a hindrance to freedom."²³³ And, indeed, because of the prevalent structures of networks that make up the world, it is impossible to conceive of absolute power or freedom in this sense. Power and freedom simply do not make sense without an accompanying notion of resistance. But, importantly, power is also inherently active. That is, it is never possessed by a subject or an organization as if it were a self-contained object.²³⁴ Power *is* the change; it is inherently active because it *is* the activity of reconfiguration pushing against resistance.²³⁵

Power is a reconfiguring push against resistance; a disruptive force that changes patternings. In this sense, then, there is actually no such thing as symmetrical power relations. A power-relation, by definition, involves an asymmetrical relation in which power is an active coercive push towards change within relations. As such, power is best understood in both

²³³ Taylor, *supra* note 193 at 557. As Hegel correctly noted, aspiration to this kind of freedom inspires and drives forward revolutionary impulses and inevitably leads to violent terror and totalitarianism. See *ibid* at 403ff.

²³⁴ Arendt seems to have a similar view on this point when she writes that "power cannot be stored up and kept in reserve for emergencies... but exists only in its actualization." Hannah Arendt, *The Human Condition* (Chicago: Chicago University Press, 1958) at 200.

²³⁵ Although he is mistaken to narrow the definition of power to the imposition of a will (and thereby seek to distinguish between human and non-human exercises of power), Max Weber is correct to note that power is a push against resistance. For example, he understands power (*Macht*) as "the probability that one actor within a social relationship will be in a position to carry out his own will despite resistance, regardless of the basis on which this probability rests." Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, Guenther Roth & Claus Wittich, eds. (New York: Bedminster Press, 1968) at 53. For another critique of this individualist approach to power, see Lukes, *supra* note 181 at 25, 26. Also, as Richard Emerson writes, the "power of actor A over actor B is the amount of resistance on the part of B which can be potentially overcome by A." Richard Emerson, "Power-Dependence Relations," (1962) 27:1 *American Sociological Review* 31 at 32. Also see Michel Foucault, "The Subject and Power," in James Faubion, ed., *The Essential Works of Foucault*, Vol. III (New York: New Press, 2000) at 342 quoted in Tully, *supra* note 34 at 24. The resistance in power-use need not be explicit, but it must always be present. For example, as John Gaventa wrote concerning situations of gross inequality, "the political response of the deprived group or class may be seen as a function of power relationships, such that power serves for the development and maintenance of the quiescence of the non-elite." John Gaventa, *Power and Powerlessness: Quiescence and Rebellion in an Appalachian Valley* (Chicago: University of Illinois Press, 1982) at 4. The resistance often festers below the surface as moral outrage and condemnation until it breaks out in open acts of rebellion or even mental illness and mood disorders. Finally, it should be noted that the notion of power within Weber and Emerson's thought outlined above needs to be re-thought based upon a networked conception of the self.

quantitative and qualitative terms such that we see it as existing on a continuum with violence and domination but also as conceptually distinct. Violence is dramatic power (i.e. a dramatic differential in power-relations) and domination is excessive violence. The qualitative distinction between power, violence, and domination may therefore be seen to be stemming from our negative normative judgment that the degree of power is “excessive”.²³⁶ This agonistic conception of power is somewhat different from the non-coercive model of power that has grown up within the liberal democratic tradition of thought. For example, Hannah Arendt made a sharp delineation between power and violence and suggested that “[p]ower corresponds to the human ability not just to act but act in concert. Power is never the property of an individual; it belongs to a group and remains in existence only so long as the group keeps together.”²³⁷ And, following Arendt's sharp delineation between power and violence, Habermas develops the notion of “communicative power” in which political power is produced through the coming together of beliefs (e.g. almost akin to the power produced in nuclear fusion).²³⁸ Habermas interprets this to mean that the roots of power are to be found in uncoerced communication – i.e. “the power of communication aimed at mutual understanding.”²³⁹ In order to have democratic legitimacy, then, Habermas argues that all manifestations of political power must derive from communicative power and law serves as the medium for translating communicative power into administrative power.²⁴⁰ Because power is understood as uncoercive in the ideal, Habermas and his followers struggle to bridge the divide between the non-violent ideal and the political realities of

²³⁶ Our judgment concerning excessiveness, of course, is itself rooted in a certain understanding of the causation inherent within the development of distributive networks (see chapter IV below).

²³⁷ Hannah Arendt, *On Violence* (New York: Harcourt, 1970) at 44 [emphasis removed]. Also see Arendt, *supra* note 234 at 199 – 207. Luhmann also makes a clear differentiation between power and violence (or, at least, physical violence). He writes that the “exercise of physical violence is not an application of power but an expression of its failure....” Luhmann, *supra* note 180 at 158.

²³⁸ See Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. by William Rehg (Cambridge: The MIT Press, 1996) at 147. Also see Arendt, *supra* note 234 at 202 and Hannah Arendt, *On Revolution* (London: Penguin, 1965) at 175.

²³⁹ Habermas, *supra* note 238 at 148.

²⁴⁰ See *ibid.* at 169 and 192.

asymmetrical power-relations. That is, the ideal of uncoercive power is so otherworldly that it cannot be patriated or acclimatized to political society.²⁴¹ Further, because it is akin to Hegel's absolute freedom in its impossibility and sterility, his uncoercive notion of power is destructive in its blinding us to its own power-use. Practically speaking, then, Habermas seeks to work out an institutional solution to the problem of transforming communicative power into administrative power. However, as Scheuerman rightly suggests, Habermas struggles (unsuccessfully) to adequately analyze how deliberative processes rooted in mutual understanding can effectively guide decision-making within the administration itself.²⁴² It should become clear in what follows that an agonistic or coercive understanding of power provides us with a more productive framework for moving toward a theory of democratic governance that is inspired by genuinely democratic norms – i.e. norms that facilitate their own critique and, hence, help minimize excessive violence.

Power can not only be understood structurally as reconfiguring shifts in network patterns (i.e. change taking place against resistance), but also as immanent within both citizens and society.²⁴³ Power as immanent within society means that, as Manuel Castells notes, power is “no longer concentrated in institutions (the state), organizations (capitalist firms), or symbolic controllers (corporate media, churches). It is diffused in global networks of wealth, power, information, and images, which circulate and transmute in a system of variable geometry and dematerialized geography.”²⁴⁴ In previous times, power could be seen primarily in the relationship between a governor and the governed such that power acted upon subjects from

²⁴¹ It should also be noted that an uncoercive conception of power assumes a substantial distinction between the social and material “worlds” of relations. However, as has been noted, a network approach to democracy does not make such a sharp distinction between social and material relations and seeks a common understanding of interconnectedness between both “worlds”.

²⁴² See William Scheuerman, “Between Radicalism and Resignation”, in *Discourse and Democracy: Essays on Habermas's Between Facts and Norms*, ed. by René von Schomberg & Kenneth Baynes (Albany: State University of New York Press, 2002) 61 at 78, 79.

²⁴³ See Tully, *supra* note 126 at 183.

²⁴⁴ Castells, *Power of Identity*, *supra* note 171 at 359.

outside their own actions. However, “[w]hat the theories of power of modernity were forced to consider transcendent, that is, external to productive and social relations, is here formed inside, immanent to the productive and social relations. Power, as it produces, organizes; as it organizes, it speaks and expresses itself as authority.”²⁴⁵ In addition, power as immanent within citizens means power relations (i.e. power differentials) work in and through persons to develop a certain kind of subject. As Tully (following Foucault) explains, “every form of social ordering also has distinctive relations of power by which the conduct (roles) of those subject to it is ordered (governed). Furthermore, being subject to these relations of governance... and acting in accordance with them over time gradually brings about and instils a corresponding form of subjectivity or subjectification.”²⁴⁶ Cognitive and behavioural patterns are developed in and through modes of relations whose shifts are internalized over time. Network selves are developed

through immersion in immaterial labour, of knowledge acting on knowledge, with its creativity, flexibility and openness, its compressed sense of time and space; its particular communicative and interactive skills of information processing, analysis of symbols, reduction of complex phenomena to an underlying and manipulable code, and problem-solving; its experience of being able to belong to contingent virtual communities and cultures and to modify or disconnect from them as one pleases; and its overriding sense of ‘creative destructiveness’ – that everything can be programmed and commodified.²⁴⁷

A network approach to democracy means, therefore, a focus primarily upon production through power-flows: both the production of objects for subjects (commodification) as well as the productions of subjects themselves (subjectification).²⁴⁸ In both areas, it is a *process* of production that is important.

It is important to note that, with its focus on structural processes and the deep dependence

²⁴⁵ Hardt & Negri, *supra* note 101 at 33. Also see Tully, *supra* note 126 at 183, 184.

²⁴⁶ *Ibid.* at 175.

²⁴⁷ *Ibid.* at 176, 177.

²⁴⁸ Hardt and Negri rightly describe subjectification as the “ultimate core of biopolitical production.” Michael Hardt & Antonio Negri, *Commonwealth* (Cambridge: Harvard University Press, 2009) at x.

of political subjects, the ontology of *res ecologia* leads us into a conception of power that is somewhat different than that which we find in Foucault or Tully. Foucault understands the subject as being free to the degree that he faces an unrestricted field of possible actions and power is a restriction on the field of possibilities open to a subject.²⁴⁹ This emphasis upon self-determination is, of course, quite out-of-step with our seeking to understand structural violations and, especially, the disruptions of rapid change in the patternings of the world. To be fair, Foucault does understand there to be a dynamic interplay between the subject as agent and the world as governing processes – i.e. he does not develop an essentialist conception of freedom.²⁵⁰ Thus, we arrive at a kind of immanent power that Tully describes as the governance of communicative relations in which power does not exclude the exercise of freedom (i.e. as self-determination) or impose upon passive subjects. Instead, power works in and through active and interactive agents as they alter communicative and material relationships.²⁵¹ However, this approach too is still somewhat lacking because, within this perspective – even if we are seeking to be attune to changing rates of change – one may still conceive of power as a degree of change in which the agency of the person is becoming diminished. That is, power takes place in and through relations between agents that have some set of options available to them in response to the pressures of change. As these options diminish – say through an overwhelming pressure – power becomes violent in its disruptive force.²⁵² In the approach to power I am outlining here, however, the reduction of possible actions is not necessarily significant because there is no assumption of self-determination. In other words, the opening up of options can be at least as disruptive as a restriction of options when we believe there are patternings already at work in the world, patternings that make up ourselves and our world. Within the ontology of *res ecologia*,

²⁴⁹ See Michel Foucault, “The Subject and Power” (Summer 1982) 8 *Critical Inquiry* 777 at 790.

²⁵⁰ See *ibid.*

²⁵¹ See Tully, *supra* note 126 at 185.

²⁵² See Tully, *supra* note 34 at 23.

therefore, disruption itself rather than disruption that restricts an agent-subject is the focal point – power that dramatically either restricts or unrestricts will be problematic and violent by virtue of its disruption.

Given our understanding of power as reconfigurative action operating against resistance, violence may be best conceived of as power that is forceful enough to *significantly* alter network patterns of social, material, and spiritual relations. Again, from a structural perspective, violence may be best understood as taking place through rapid/dramatic change of network structures and processes. There is always change and flux in network patternings, but *dramatic* change is violence – it is doing violence to the integrity of the network system as a pattern of relations existing and persisting through time. For example, when discussing distributive networks, a change in the network pattern – i.e. to make a centralized or decentralized pattern – should be seen as undermining the integrity of the system. Likewise, movement toward Cartesian grid-like structures would be excessive change not only because it would be fundamentally altering the network pattern, but because it would remove a network from its nesting within larger distributive networks (or isolate a distributive network with a grid-like pattern).

In keeping with the network approach to democratic politics and the importance of interconnectedness within this approach, violence should be understood as inherently relational and taking place in the displacement and disruption of the other and/or the not-self. Or, perhaps more correctly, violence should be understood to take place in a *deep* disruption and displacement of the other and/or the not-self. As we saw above, network structures are always shifting and pervasive power-relations ensure a perpetual displacement and disruption (socially, materially, and spiritually). What then do we mean by “deep”? In very general terms, deep disruption means power that is manifest in a violation of social, material, and spiritual network structures and processes such that the speed and degree of change threatens the stability of the patterning

through history. Our ability to assess both the speed and the degree of change, of course, will depend very much upon our own patterning processes and relation to the patternings in question.

For now, if we take the approach to understanding power and violence outlined above, it becomes quite clear that agonists such as Mouffe are correct to argue that every creation of a “we” is accompanied by the creation of a “them”.²⁵³ Two basic conclusions follow from this insight: (1) the violence of agreement takes place internally and externally and (2) there can be no thoroughly non-violent political action - i.e. political actions are disruptive by definition and, consequently, violent by definition.

The violence of agreement may be seen within the creation of the “we” (internal political relations) as well as the creation of the “them” (external political relations).²⁵⁴ When we encounter an other, we do so from a certain contextual perspective – a human perspective that is not simply meted and bounded by presuppositions but, more accurately, lived in and through patterns of life. Therefore, when we do come together in agreement, what we are doing is developing a kind of *modus vivendi* (a way of living with some enhanced degrees of commonality). Likewise, when we disagree, we take up or continue in differing ways of life. An appropriately non-dominating politic, therefore, is not to be found in agreement or consensus (which would be excessively violent insofar as those with dramatically different patterns of life would be deeply displaced), but in a certain *way of disagreeing* – i.e. in a certain kind of lived opposition within one’s form of life in one’s economy and spirituality. In the process of creating a “we”, patterns of life are transformed to come into greater accord. Also, in the process of creating a “we”, patterns of life are transformed such that they begin to take on a significantly different role within broader patterns of social and material existence. The nesting patterns of

²⁵³ For example, see Chantal Mouffe, “Deconstruction, Pragmatism and the Politics of Democracy,” in *Deconstruction and Pragmatism*, edited by Chantal Mouffe (London: Routledge, 1996) 1 at 9.

²⁵⁴ See Amartya Sen, *Identity and Violence: The Illusion of Destiny* (London: Penguin, 2006) at 2.

society could be seen as becoming more fractal as those within the “we” become more and more similar. In contrast, the patterns of those within the “we” become increasingly unlike (or disconnected) the patterns of those within the “them”. Indeed, the patterns of the “we” are created and nested in order to align those within the “we” in opposition to those within the “they” and thereby transform the patterning beyond the self.²⁵⁵

The violence inherent within political action may be seen within the teachings of Mohandas Gandhi. According to Gandhi, satyagraha is a holding on to truth and this holding on to truth excludes violence because humans are finite and unable to know the absolute truth (and, consequently, are not competent enough to punish those who might oppress or abuse them).²⁵⁶ However, it is precisely this “holding on to truth” that makes Gandhi's political philosophy of satyagraha violent. Indeed, although satyagraha involves the renouncement of all forms of physical violence towards others, it demands a significant degree of violence enacted upon his initiates (e.g. fasting, restrictions upon the diet, active embrace of physical violence enacted upon oneself, etc.) and upon others (i.e. through the coercion - be it the force of moral, psychological, etc. pressure - used to transform the other). A simple example of the kind of violence present within satyagraha may be seen in Gandhi's autobiography where he recounts a story of how he dealt with his wife Kasturba's illness. In order to allow her to heal, he suggested that she stop eating salt and pulses (i.e. high protein legumes such as beans and lentils) and, when she disagreed, he vowed to give them up for one year whether or not she did. She was deeply disturbed and eventually promised to abstain. He notes that this made her very sorrowful and that she sought relief in tears. However, he also stated that he “would like to count this incident as an instance of

²⁵⁵ Jean-Jacques Rousseau puts this opposition between the “we” and the “them” as follows: “[n]ow as men cannot generate new strength, but only unify and control the forces already existing, the sole means that they still have of preserving themselves is to create, by combination, a totality of forces sufficient to overcome the obstacles resisting them, to direct their operation by a single impulse, and make them act in unison.” Rousseau, *supra* note 124 at 54.

²⁵⁶ For example, see M.K. Gandhi, *Non-Violent Resistance* (New York: Schocken Books, 1961) at 3.

Satyagraha and as one of the sweetest recollections of my life.”²⁵⁷ He then went on to admit that medically there were two opinions regarding the value of a saltless and pulseless diet but morally it was always beneficial to engage in self-denial.

The political philosophy of satyagraha is rooted in the *active* engagement of oppressors in order to transform the relationship between the oppressor and the oppressed. Instead of seeking to destroy the oppressor as if he were an enemy, the satyagrahi seeks to appeal to the goodness within the oppressor and redeem the relationship. In order to achieve a thoroughly non-violent way of life, one must become as passive as possible (the non-resistant passivity of those within the Mennonite tradition might come closer to achieving a more thoroughly non-violent approach to “political life”).²⁵⁸ For, indeed, it is the active pursuit of political engagement to fundamentally transform power-relations – i.e. the force of restructuring network patterns – that ensures politics remains violent by definition. This explanation is not, of course, intended as a critique of Gandhi’s political strategy or ethics. Far from it, I will later argue for a politic and ethic much akin to Gandhi’s as being the only genuinely democratic politic. Instead, this example is meant to reveal the nature of violence and its relation to power (as well as its moral neutrality).²⁵⁹

C. Re-thinking Domination

If we are at least somewhat sympathetic to the political ontology of *res ecologia* outlined above in chapter one, we will need to rework our conception of domination in political theory and how it relates to our conception of violence we just outlined. That is, if we understand persons as

²⁵⁷ *Ibid.* at 5.

²⁵⁸ The difference between the activism of Gandhi and the passivism of the Mennonite tradition may be found in the Christian belief that God will ensure justice ultimately prevails. That is, just as God the Father elevated Christ to rule with him (the doctrine of the ascension) and thereby proving the efficacy of his sacrifice, so too will God elevate those who follow Christ in his suffering and death (i.e. a personal God will himself enact the violence of the transformation). For Gandhi, this process of elevation seems to be found within the political process itself.

²⁵⁹ It is important to note that under the definition given here, violence is (like power) morally neutral in itself. So, although it holds the potential to be excessive in its disruptive power, it is also a part of political action and requires additional normative input (i.e. a judgment regarding what constitutes excessive) if it is to be moral or immoral.

deeply dependent and perpetually vulnerable patternings that politicize themselves and the world around them in a purposive articulation of their relationship to their world, we will need to re-imagine domination in terms of pattern disruption rather than simply in terms of interference. And, in order to do this, we will need to move somewhat beyond the republican ideal of non-domination.

Neo-republicans such as Philip Pettit have argued that domination should be understood as the capacity to arbitrarily interfere.²⁶⁰ More specifically, he writes that “someone dominates or subjugates another, to the extent that they have the capacity to interfere on an arbitrary basis in certain choices that the other is in a position to make.”²⁶¹ Pettit then makes it clear that he wants to distinguish interference and domination and contends that one may suffer domination without interference.²⁶² For example, he writes,

I may be the slave of another... without actually being interfered with in any of my choices. It may just happen that my master is of a kindly and non-interfering disposition. Or it may just happen that I am cunning or fawning enough to be able to get away with doing whatever I like. I suffer domination to the extent that I have a master; I enjoy non-interference to the extent that that master fails to interfere.²⁶³

Importantly, he also suggests that the concept of domination depends upon the intention of the dominating party (at least to some degree). This means for him, then, that the domination cannot

²⁶⁰ See Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997) at 52, 79. Also see Henry Richardson, *Democratic Autonomy: Public Reasoning about the Ends of Policy* (New York: Oxford University Press, 2002) at 34.

²⁶¹ Pettit, *supra* note 260 at 52. He also suggests that, “[t]his conception is negative to the extent that it requires the absence of domination by others, not necessarily the presence of self-mastery, whatever that is thought to involve. The conception is positive to the extent that, at least in one respect, it needs something more than the absence of interference; it requires security against interference, in particular against interference on an arbitrary basis.” *Ibid* at 51. Also see Philip Pettit, “Keeping Republican Freedom Simple: On a Difference with Quentin Skinner,” (2002) 30:3 *Political Theory* 339 at 340. Also, by “arbitrary”, Pettit means “that the dominating party can interfere on an arbitrary basis with the choices of the dominated: can interfere, in particular, on the basis of an interest or an opinion that need not be shared by the person affected. The dominating party can practice interference, then, at will and with impunity: they do not have to seek anyone’s leave and they do not have to incur any scrutiny or penalty.” *Ibid* at 22.

²⁶² Also see Quentin Skinner, *Liberty before Liberalism* (Cambridge: Cambridge University Press, 1997) at 50–53 [Skinner, *Liberty*] and Quentin Skinner, “A Third Concept of Liberty,” (2002) 117 *Proceedings of the British Academy* 237.

²⁶³ See Pettit, *supra* note 260 at 22, 23.

come from a system or network – the dominating party must be a personal or collective agent.²⁶⁴

Pettit is very clear in his explanation but, as I hope to show below, his concept of domination – and therefore his concept of non-domination – is reliant upon a number of mistaken ontological and normative assumptions and, consequently, quite unhelpful when seeking to develop what I understand to be more genuinely democratic norms of governance.

The republican notion of domination as the potential for the arbitrary imposition of negative consequences mistakenly assumes:

- a) the autonomy of persons,
- b) the need for an intention to dominate, and
- c) the kind of imposition is what determines whether or not there is domination – i.e. it is the *kind* of imposition rather than both the kind *and degree* of imposition.

These three assumptions may be seen in the republican concern regarding dependence. Neo-republicans like Pettit and Quentin Skinner might argue whether or not republicans are concerned with domination or if they are concerned about both domination and interference,²⁶⁵ but at root both – I would argue – are (mis)concerned regarding dependence.²⁶⁶ Indeed, the shared notion that domination and interference can be separated is itself rooted in the misunderstanding that dependence is closely tied into domination. This misunderstanding is expressed by Skinner, for example, when he writes that “[i]t is never necessary to suffer this kind of overt coercion in order

²⁶⁴ See *ibid.* at 52, 53.

²⁶⁵ For example, see Pettit, *supra* note 261.

²⁶⁶ This uneasiness regarding dependence has very deep roots in western thought and, indeed, may be understood as a key concern underlying the rise of modern philosophy. As Philip Blond notes, the notion that God and his creation are distinguishable simply on qualitative terms (e.g. God has an absolute plenitude of being while creatures have finite quantities of being), once mixed with and analysis of power, allows those after William of Ockham to stress the utter defenselessness of creatures before God and the potentiality of his malign will. The moderns, therefore, seek to escape this potentiality through the self-assertion of humans in constructivism – i.e. an attempt to find an existential footing outside the continued benevolence of God. See Blond, *supra* note 29 at 8, 9. Also see chapter 1 (“Construction as the Mark of the Modern”) of David Lachterman, *The Ethics of Geometry: A Genealogy of Modernity* (London: Routledge, 1989). For example, the methodological skepticism of Descartes allows him to eliminate all ontology but that which is in relation to the ego. And, this skepticism stems from a re-conception of God as a demon (the *dieu trompeur* in Descartes’ *Meditations*) who is “supremely powerful and clever, who has directed his entire effort at deceiving” such that the entire external world could be an illusion. Rene Descartes, *Meditations on First Philosophy*, 3d ed., translated by Donald Cross (Indianapolis: Hackett, 1993) at 16. Or, as Joseph de Maistre writes, “[b]ecause man acts, he thinks he acts alone; and because he has the consciousness of his liberty, he forgets his dependence.” Maistre, *supra* note 86 at 42.

to forfeit your civil liberty. You will also be rendered unfree if you merely fall into a condition of political subjection or dependence.”²⁶⁷

Dependence, for the neo-republican, is the ultimate concern but exploring this concern a little more will allow us to tease out the three mistaken assumptions noted above before going on to develop what I am calling a network conception of domination stemming from an ontology of *res ecologia*. Let us begin with a consideration of three scenarios that give us hints regarding the misplaced concerns within the neo-republican notion of domination. The first demonstrates that the neo-republican definition is too broad, the second and third demonstrate that the neo-republican definition is too narrow. All three show that the neo-republican concerns regarding dependence are misplaced.

First, consider the loving father of a child (or, for that matter, God within Judaism, Christianity, and/or Islam) who possesses the capacity to interfere on an arbitrary basis in certain choices that the child or devotee is in a position to make but the father or God refrains from doing so. Instead of harming the child or devotee, the father or God provides for the child or devotee and even ensures he is protected from violence at the hands of enemies or potential enemies. The neo-republican conception of domination applies in these situations – i.e. the child and devotee are dominated because of the father’s and God’s *capacity* for arbitrary impositions.²⁶⁸ However, despite their dramatic degree of dependence upon their father and God, surely neither the child

²⁶⁷ Skinner, *Liberty*, *supra* note 262 at 69. Also see Quentin Skinner, “The Republican Ideal of Political Liberty,” in Gisela Bock, Quentin Skinner, & Maurizio Viroli, eds., *Machiavelli and Republicanism* (Cambridge: Cambridge University Press, 1990) 293-309 and Quentin Skinner, *Hobbes and Republican Liberty* (Cambridge: Cambridge University Press, 2008). Not surprisingly, Pettit agrees with this concern regarding dependence and, in fact, tends to simply call dependence domination. See Pettit, *supra* note 261 at 341, 342.

²⁶⁸ This same point may be made with the more counter-intuitive example of a benevolent slave-master. For example, as Pettit writes, “I may be dominated by another – for example, to go to the extreme case, I may be the slave of another – without actually being interfered with in any of my choices. It may just happen that my master is of a kindly and non-interfering disposition.” Pettit, *supra* note 260 at 22. And, again, “[t]he kindly master does deprive subjects of their freedom, dominating them without actually interfering.” *Ibid.* at 41. Or, again, “[w]hat constitutes domination is the fact that in some respect the power-bearer has the capacity to interfere arbitrarily, *even if they are never going to do so.*” *Ibid.* at 63 [emphasis added].

nor the devotee in this scenario should be considered persons who are dominated. Something beyond dependence is needed for us to make the negative normative judgement of domination because the father and God are not disrupting and/or undermining the healthy development of the child and devotee. Rather, they are affirming the development of the child and devotee and providing protection from those who would seek to do violence. Now, if the father or God had either (1) a history of making negative impositions upon the child or devotee or (2) something in his nature that inclined him toward negative impositions, then things might be different. In other words, for there to be domination, those who are potentially subject to negative impositions must have a real sense of danger or a kind of pessimism concerning their relationship to the one possessing the capacity for negative impositions.

Second, consider an indigenous tribal community that has lived as hunter/gatherers for thousands of years, has traditions and laws that are rooted in a specific area of geography, and has only engaged in limited trade with similar tribes from time to time. Now, imagine a significant number of European capitalist settlers immigrating into the lands around this community and beginning to engage in trade and commerce with members of the tribal community. The settlers have every intention of engaging in extensive and fair negotiation with the community and ensuring not only that traditional lands and customs are unharmed, but that the community sees significant material benefit as a result of the trade. Despite the settlers' continued adherence to their initial positive intentions, over a couple of generations the indigenous community is pushed away from its traditional ways of life and gradually integrated into the capitalist economic system of the settlers. This movement, although it means a loss of traditional economic systems and a loss of their traditional legal system, allows the community, by any standard of the settler society, to grow materially wealthy from the trade. Would we not call this domination even if the impositions of the settlers were neither arbitrary nor based upon any intentions to harm. In other

words, can we not quite easily understand systemic violence (in which there is no intentional agent, but a highly disruptive clash of two systems of economic exchange rooted in dramatically different worldviews – one system dramatically more powerful than the other) as domination?

Third, consider the development of biotechnologies and intellectual property laws that allow corporations to build economies in which uniformity is produced through ever expanding monocultures. The development of biotechnologies and the creation of intellectual property laws facilitating the commodification of life are intended to allow for “fast-growing species” in forestry and “high-yielding varieties” in agriculture that are to increase productivity.²⁶⁹ However, as Vandana Shiva has rightly argued, “[c]orporate strategies and products can lead to diversification of commodities, they cannot enrich nature’s diversity.”²⁷⁰ Instead, “biotechnologies are, in essence, technologies for the breeding of uniformity in plants and animals” because the commodification of life means that biodiversity becomes simply an input into an industrial machine rather than “the basis and foundation of production and economic activity.”²⁷¹ In other words, the commodification of life forms and biodiversity means that “[o]ur relationship with the rest of the living world is no longer that of partner, but one of consumer and, for the corporations, that of creator.”²⁷² Surely this abusive relation to the natural systems of the earth is one of domination and is relevant to political philosophy.²⁷³ Importantly, this relationship

²⁶⁹ See Vandana Shiva, “Biodiversity, Biotechnology and Profits,” in *Biodiversity: Social & Ecological Perspectives*, ed. by Vandana Shiva (London: Zed Books, 1991) 43 at 48.

²⁷⁰ *Ibid.* at 45. For example, the capacity to transfer genetic material between species is a means for engineering uniformity across species. See Jack Kloppenburg, *First the Seed* (Cambridge: Cambridge University Press, 1988) at 2 cited in 45. See also Vandana Shiva, *Monocultures of the Mind: Perspectives on Biodiversity and Biotechnology* (London: Zed Books, 1993) at 95–128.

²⁷¹ Shiva, *supra* note 269 at 45, 44 [emphasis removed]. Also see Vandana Shiva, *Earth Democracy: Justice, Sustainability, and Peace* (Cambridge: South End Press, 2005) at 42.

²⁷² *Ibid.* at 41. Further, as Shiva has aptly pointed out, the commodification of life and the corresponding push for uniformity is rooted in the inevitably violent conception of the earth as passive. For example, she writes that “[t]he colonial construct of the passivity of the earth and the consequent creation of the colonial category of land as *terra nullius* (empty land), served two purposes: it denied the existence and prior rights of original inhabitants and it obscured the regenerative capacity and processes of the earth.” *Ibid.* at 22. But, of course as I have argued, the passivity of the earth is not enough to make it domination – it must be disrupted deeply to be dominated.

²⁷³ Pettit rejects the notion that political philosophy should be concerned with relations between humans and the

of domination with the earth is not unidirectional – the earth also dominates human communities through the imposition of storms, droughts, and disease. Of course, as humans dominate the earth more and more, the earth will correspondingly dominate humans more and more. There is a cycle of domination that takes place between humans and the natural world.²⁷⁴

What are we to conclude from these three scenarios? The first scenario reveals that the neo-republican definition of domination casts the net too wide and takes in healthy relationships of dependence based upon the mistaken assumption that persons should be politically autonomous (i.e. either that they are already autonomous (ontologically) or should be made to be autonomous). The second scenario reveals that the neo-republican definition of domination is too narrow and fails to capture destructive relationships between systems of economic exchange and their corresponding worldviews. The third scenario also reveals that the neo-republican definition of domination is too narrow insofar as it fails to capture destructive relationships between humans' industrial economic activity and the natural bio-systems of the earth. All three scenarios demonstrate that the neo-republican conception of domination fails to provide us with an adequate basis for developing norms of non-domination. The mistaken assumptions regarding dependence (and, therefore, autonomy of persons, the role of intentions, and the nature of negative impositions) are rooted in concerns regarding totalitarian state powers that impose upon subjects primarily from the outside.²⁷⁵ The primary concern regarding domination in this day and

earth. For example, he writes, “[w]ere non-intentional forms of obstruction also to count as interference, that would be to lose the distinction between securing people against the natural effects of chance and incapacity and scarcity and securing them against the things that they may try to do to one another. This distinction is of the first importance in political philosophy, and almost all traditions have marked it by associating a person's freedom with constraints only on more or less intentional interventions by others.” Pettit, *supra* note 260 at 52, 53.

²⁷⁴ Much like actor-network theory understands agency as something beyond the activity of humans, I am suggesting that we understand the activity of the non-human world as enacting, or at least potentially enacting, violence such that it becomes domineering.

²⁷⁵ This concern for protection against totalitarian state powers lead to division of powers theories as means of staving off tyrannical oppression. For example, in his 1748 work entitled *The Spirit of the Laws*, Montesquieu wrote that “[w]hen the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical

age, however, is power that works in and through the social, material, and spiritual patternings of life to destroy economic, social, and biological diversity. Domination from the perspective of the relational ontology or *res ecologia*, therefore, is not dependent upon assumptions regarding the autonomy of persons, the need for negative intentions, or the nature of negative impositions.

And, it is to this relational approach to domination that we now turn.

In the discussion above, we began to understand power as reconfigurative action operating against resistance and to see violence as power that is strong enough to significantly alter network patternings. Domination is, then, an excessive alteration of network patternings. For example, the violent push towards singularity – e.g. when a distributive network becomes Cartesian grid-like – may be understood as a primary example of domination within liberal capitalist societies.²⁷⁶ As such, domination is excessively disruptive in its power-push against the stability and diversity of network patternings always shifting and changing in asymmetrical relations. Because networks and nested patterns of networks are constantly in flux, the introduction of a singularity represents dramatic or violent change.

Within the modern framework, the singularity of domination was imposed upon agents as if from the outside (e.g. in totalitarian regimes) through confinement. Within a network/control society, however, this singularity is introduced within the agents themselves through the

laws, to execute them in a tyrannical manner. Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.” Charles de Montesquieu, *The Spirit of Laws*, trans. by Thomas Nugent (public domain), book 11, chapter 6, online: Constitution Society, <http://www.constitution.org/cm/sol_11.htm#016>. In keeping with this tradition, Canadian constitutionalism (especially since the creation of the *Charter of Rights and Freedoms*) has been dominated by judicial review of the Parliament.

²⁷⁶ The singularity of regular grid-formation is found in its finality. Cartesian grid-formation alters space and time as space is condensed and time accelerated. In other words, regular grid-formation allows for hyper-processes of network formation and thereby creates perpetual displacement as the network becomes a totality. This principle could also be put in terms of an end-point in relation to the conditional probability within systems. That is, as Robert Ulanowicz explains, “[d]uring the course of development [i.e. when a system is engaged in a process of becoming a more organized pattern], propensities tend to become progressively isolated from their environment and in the end to approximate forces that are characteristic of mechanical behavior.” Ulanowicz, *supra* note 191 at 41 [emphasis removed]. Also see Popper, *supra* note 211.

protocolic drive toward harmonization and universalization. The “problem of diversity” has always been a problem for those who have the domineering perspective whether through a totalitarian regime or through a common protocol. The domineering perspective is rooted in norms that are tied into ideal abstractions that push toward a singularity. Further, the singularity of totalitarian regimes, I would argue, is actually less insidious than that which is at work in the modulations of protocolic control if we take the diachronic patterning nature of *res ecologia* seriously. For, indeed, there is something more deeply violent about a re-structuring of systems of meaning and action – i.e. existential development – compared to external violence and the impositions of a top-down regime.

In order to understand the significance of domination and the extreme violence of this push toward the totality of singularity, we might benefit from a brief look into Emmanuel Lévinas’ conception of the transcendent other. It is a conception of the other as beyond containment that will provide us with a conceptual touchstone for understanding the dangers of domination in liberal capitalist societies and how we might re-envision political norms such that they help us develop an economy that is resilient to protocolic domination.

Lévinas’ primary concern lies in moving beyond a totalized conception of being and he seeks a new approach through the development of a phenomenology of the other. He understands there to be two basic approaches within the history of philosophical approaches to morality and politics – egoism and totalism. In the former, the individual is a mere projection of the self or an *alter ego* (e.g. Sartre’s existentialism). In the latter, the individual derives meaning from the totality; the self relates to the other as if s/he were an object that is best understood within a universal system (e.g. Hegel’s dialectic of the Spirit). Lévinas understands both of these approaches to be egocentric and reductive and, importantly, out of step with our experience of other persons – Sartre reduces the other to an object and Hegel reduces the other to an extension

of the self. He also understands both perspectives to involve an inappropriate conception of persons as historical beings. For the egoist, the individual is wholly outside history and, for the totalist, the individual is wholly within history. He turns, therefore, to embrace an eschatological approach to understanding the self and the other. For him, “[e]schatology institutes a relation with being *beyond the totality* or beyond history, and with being beyond the past and the present. It is a relationship with *a surplus always exterior to the totality*, as though the objective totality did not fill out the true measure of being, as though another concept, the concept of *infinity*, were needed to express this transcendence with regard to totality, non-encompassable within a totality and as primordial as totality.”²⁷⁷ Thus, the eschatological vision “institutes a relation with the infinity of being which exceeds the totality.”²⁷⁸

The transcendent “beyond”, to be clear, is not simply a negative concept. Rather, the “beyond” is reflected within experience, within history insofar as being overflows history. In this manner, he hopes to submit all of history – not simply the totality, but each instant – to judgment because it is within and through history that the living and breathing individuals are judged. Individuals have their identity before the fullness of time in their relationships with each other rather than in their relationship to history as a whole. But, how do we come to understand this eschatological vision? We cannot prove it through philosophical argumentation. This kind of argumentation is born out of a thirst for evidence of a totality that exists beyond the individual – a universal which, ultimately, explains all the particulars. Instead, “without philosophically ‘demonstrating’ eschatological ‘truths,’ we can proceed from the experience of totality back to a situation where totality breaks up, a situation that conditions the totality itself. Such a situation is

²⁷⁷ Emmanuel Lévinas, *Totality and Infinity: An Essay on Exteriority*, trans. by Alphonso Lingis (Pittsburgh: Duquesne University Press, 1969) at 22, 23.

²⁷⁸ *Ibid.* at 23.

the gleam of exteriority or of the transcendence in the face of the Other.”²⁷⁹ This transcendental method does not lead to dogmatic content for Lévinas, but creates a space for thought in the idea of infinity.

Further, the eschatological vision is made manifest in and through discourse because it is dialogical, face to face encounters that allow a relation with the absolutely other that always overflows thought.²⁸⁰ Utilizing signs (e.g. a phrase or sentence) allows the self to render things offerable – i.e. to detach them, alienate them, or render them exterior and place them in the perspective of the Other. Language puts possession into question and, indeed, places the subject at a distance from himself.²⁸¹ Consciousness, then, does not lie in squaring being with representation but in overflowing the immediate phenomenology of the subjective self and accomplishing events whose meanings perpetually contain mystery.²⁸²

The self and the other are locked in a perpetual intersubjective relation in which independence and difference always remain and prevent either the self or the other from being drowned in a fusion or torn apart in an absolute polarization.²⁸³ However, the self is driven to seek out the face of the other by an unquenchable desire for the infinite. This desire provides the connection between the self and the other. And, this desire is too great to be fulfilled or satisfied – it represents an infinite task of responsibility toward all others.²⁸⁴

What then does this responsibility entail and how might it be manifest? Specifically, how might it be manifest within collective actions such as those taken up through governing bodies?

²⁷⁹ *Ibid.* at 24.

²⁸⁰ Lévinas understands Heideggerian ontology as that which “subordinates the relationship with the Other to the relation with Being in general” and, therefore, “remains under obedience to the anonymous, and leads inevitably to another power, to imperialist domination, to tyranny.” See *ibid.* at 46, 47.

²⁸¹ See *ibid.* at 209.

²⁸² See *ibid.* at 27, 28.

²⁸³ As Peperzak writes, “[a]gainst the thesis that all truths and values can ultimately be reduced to the transcendental activity of an autonomous subject, Lévinas insists forcefully on the irreducible moments of heteronomy.” Adriaan Peperzak, *To The Other: An Introduction to the Philosophy of Emmanuel Lévinas* (West Lafayette: Purdue University Press, 1993) at 19.

²⁸⁴ See *ibid.* at 22.

In order to answer this question, consider how Lévinas would deal with the suggestion that his intersubjective dualistic philosophy leads to chauvinistic politics – i.e. that one is to have consideration only for those in one’s immediate presence. According to Peperzak, Lévinas suggests that in the other’s face, I see the virtual presence of all other persons. That is, “the situation makes it necessary for me to gather all others by means of a universal category that allows me to speak about them in general terms.”²⁸⁵ In other words, Lévinas seems to be suggesting that universal norms are appropriately developed as analogies of the face-to-face encounter with the other. Peperzak continues to note that, for Lévinas, politics has its

true source in the high esteem of individuals for other individuals. All social tasks are consequences of, and preparations for, the possibility of adequate face-to-face relationships and good conversations. If they are not directed toward this end, collective measures lose their human meaning because they have forgotten or masked real faces and real speech. This forgetfulness is the beginning of tyranny.²⁸⁶

So, not only does the face-to-face encounter with the other form the foundation of our universal norms that encompass all persons, but the face-to-face encounter provides a kind of critical reference-point from which to evaluate our bodies politic.²⁸⁷ There is, however, a kind of ironic tragedy to the pursuit of justice within the collective action-coordination of politics. As Lévinas suggests, “the origin of the meaningful in the face of the other, confronted with the actual plurality of human beings – calls for justice and knowledge; the exercise of justice demands courts of law and political institutions, and even, paradoxically, a certain violence that is implied in all justice.”²⁸⁸ Politics is to be rooted in the face-to-face intersubjective engagement and held

²⁸⁵ *Ibid.* at 31.

²⁸⁶ *Ibid.*

²⁸⁷ Of course, there is another question that arises here. What about non-human “others”? Is Lévinas not assuming some common essence within all humans – e.g. a soul? That is, what is it about humans that makes them something other than simply another phenomena? (Did not Kierkegaard say that *all* beings disturbed him? It seems Lévinas is only disturbed by humans. Why is that?)

²⁸⁸ Emmanuel Lévinas, *Alterity and Transcendence*, trans. by Michael Smith (New York: Columbia University Press, 1999) at 172.

accountable to that experience but, at the same time, it is, by definition, erasing the faces of those within its reach.

What then does this mean for our understanding of domination? Lévinas accurately touches upon the notion of domination within modern liberal capitalist societies when he writes that “violence [i.e. what we have come to describe as domination] does not consist so much in injuring and annihilating persons as in interrupting their continuity, making them play roles in which they no longer recognize themselves, making them betray not only commitments but their own substance, making them carry out actions that will destroy every possibility for action.”²⁸⁹

There are, therefore, two key points we can take from Lévinas in order to understand domination in more socio-political terms: (1) values such as non-domination should be understood based upon the interaction between the self and the other – i.e. dialogically, and (2) domination takes place in the excessively violent displacement and/or confinement of the other. Excessively violent displacement and confinement stem from reductionist approaches to ethics in which the other is located and grasped within a universal metric of normativity (i.e. simultaneously individuated and totalized within dualistic logic).

Domination is excessive violence. It is a speed and degree of change that disrupts and displaces so much that it creates, for example, an existential threat. We can see three key, interrelated features within this definition of domination: (a) an interruption of continuity, (b) a denial of self-recognition, and (c) a prevention of projection into the future. Disruption, therefore, should be understood as an interruption of patterning processes already taking place. Displacement as a denial of self-recognition insofar as the patternings of the self no longer can connect with the patternings of the past and the patternings of the family, tribe, community, and land. In this sense, displacement denies the re-cognition of the self – the ability to continue

²⁸⁹ Lévinas, *supra* note 277 at 21.

patterning and re-collecting what has gone before. And, finally, an existential threat can be found in disruption and displacement, but it means – when it comes down to it – a prevention of a future. A future is not something that simply begins in the new; a future only exists with a past as a projection of a trajectory forward beyond the now in an imaginative extension of the will. Disruption and displacement that prevents this looking-forward threatens the existence of that which is dominated.

How do we know when these three elements are at work within patterning processes? They are identified through a combined empirical and normative judgment such that the question of excessive violence itself is a democratic question – it is dependent upon negotiation through the exercise of political resistance.

This conception of domination and, of course, the corresponding conception of non-domination will become clearer in the discussions that follow but it should be noted at this point that an appropriate conception of non-dominating political relations is rooted in an understanding of human nature and our relation to the world (much of which is already contained in the notion of *res ecologia*). We may seek to avoid talk of human nature – e.g. as many post-structuralist thinkers do – but any and all attempts to develop political norms ultimately rest upon some conception of human nature. To speak of human nature is to (unfashionably) raise questions of natural ordering and grand narratives that are so derided by the prophets of post-modernism.²⁹⁰ It brings us into uncomfortable questions of how our own personal narratives or the narratives of our communities relate to the grand narrative of ordering in the world. As Charles Taylor and George Grant suggest, however, it is impossible to avoid all grand narratives because they are essential to our thought processes and our actions. Our behaviour depends upon narratives that contain considerations of what life is all about, what is taking place in human history, and how

²⁹⁰ For example, see Lyotard, *supra* note 29.

our lives might fit into this history.²⁹¹ In short, how the movements of our lives map onto the movement of the world around us.²⁹²

Without going into great detail regarding this problem of narrative differentials and human nature, I think we can take it that there are two fundamental drives within persons:

1. a drive toward individuality and autonomy, and
2. a drive toward collectivity and solidarity.

The first is a seeking of immanence or presence in which the self is established as the focal point for understanding and relating to the world. The second is a seeking of transcendence within which the self moves beyond itself to connect to the world and, in a sense, become other than itself. These two drives within humans create a kind of forward-moving impulse. These two drives are in tension and when both are present as they are in humans, create a disquieting or even intolerable situation that must be left behind.²⁹³ This situation is somewhat comparable to Hegel's contradictory starting point for his historical and ontological dialectics. The forward-moving impulse of these drives has the potential to lead toward a political association that is non-domineering in an appropriate balancing of these two basic impulses.

The appropriate balance between these two basic impulses is important – i.e. attention to the social psychology of humans is important – because domination is a certain relationship between persons or between persons and their social/material/spiritual environment. What this

²⁹¹ See Taylor, *supra* note 89 at 573 and Grant, *supra* note 89 at 14.

²⁹² We should note that a grand narrative such as “natural ordering” is only seen – and only makes sense – to the degree that we view it in relation to ourselves. It is nonsensical, in other words, to speak of a kind of free-standing grand narrative. Indeed, to do so is actually to obscure the grand narrative – i.e. a grand narrative cannot be approached directly, it is always relative to the one approaching it, it is always political, it is always negotiated... The attempt to move away from speaking about a natural ordering in the world is not only ultimately futile, but can actually be quite harmful in its denial of the political.

²⁹³ Structurally, this process may be seen as something akin to Hobbes' state of nature in which humans have two fundamental, conflicting drives: one, to harm others and two, to preserve the self. The state of nature, therefore, is intolerable and must be left behind. See Norberto Bobbio, *Thomas Hobbes and the Natural Law Tradition*, trans. by Daniela Gobetti (Chicago: Chicago University Press, 1993) at 90. As Latour shows, this antisocial state of nature began well before Hobbes with Plato and his use of Socrates in *Gorgias* to strip a basic morality from the people of Athens. See Latour, *supra* note 114 at 256, 257.

means, therefore, is that it is unhelpful to try to objectify the notion of domination as if domination could always be seen from outside the relationship in question. For example, as we saw in the example above regarding the slave-master and God, those who are potentially subject to negative impositions must have a real sense of danger or a kind of pessimism concerning their relationship to the one possessing the capacity for negative impositions if there is to be domination. Domination takes place in and through the relations and is therefore not adequately understood without concern for the intersubjective nature of the relationship.²⁹⁴ The objectification of domination in republicanism is also a kind of individualization of the concept of domination. That is, republicanism leads to individualism when dependence is understood as domination regardless of the nature of the dependence.²⁹⁵ In a network approach to democracy rooted in the ontology of *res ecologia*, however, dependence is essential – the issue is: *what kind of dependence* and *dependence upon whom/what*? William Paley is correct to point out that freedom as non-domination “places liberty in security; making it to consist not merely in an actual exemption from the constraint of useless and noxious laws and acts of dominion, but in being free from the *danger* of having such hereafter imposed or exercised.”²⁹⁶ Of course, though, dependence can serve as protection against the danger of domineering power-relations.

Dependence itself allows for a kind of transcendence beyond the self and, if it is a healthy kind of

²⁹⁴ Interestingly, Pettit comes close to understanding the need for an intersubjective perspective but then gets hung up in egalitarian ideals and again fails to see importance of dependence. For example, he writes that domination takes place when “the power-victim cannot enjoy the psychological status of an equal: they are in a position where fear and deference will be the normal order of the day, not the frankness that goes with intersubjective equality.” Pettit, *supra* note 260 at 63, 64.

²⁹⁵ And, indeed, this kind of liberalization can be seen in the importance placed upon non-interference. Further, if we move toward the view that dependence is an evil and an indication of domination, then there is less need to emphasize virtues within citizens. That is, the focus becomes centered upon establishing appropriate governing structures to ensure domination cannot occur regardless of the dispositions of the citizenry. For example, see the founding fathers of the American republic who had significant concerns regarding the need to build in a highly resilient protection against negative interference. However, it is questionable whether a turn away from the centrality of virtuous living actually leads to a more robust and resilient protection against negative interference.

²⁹⁶ William Paley, *The Principles of Moral and Political Philosophy*, Vol. iv of *Collected Works* (London: C. and J. Rivington, 1825) at 357 [emphasis original] quoted in Pettit, *supra* note 260 at 45.

dependence, it is a transcendence that never uproots the self. The network patterning of the self, we could say, is nested within a larger patterning that re-invigorates and re-enforces the patterning of the self-network. Dependence may thereby provide protection from the danger of excessive disruption and displacement – protection from domination.

In seeking to come to a more nuanced understanding of relations of dependence and more aptly identify domination (or, rather, more effectively engage in political action to undermine relations of dominance), we can build upon the ethical relation between the self and the transcendent other. For example, as Todd May points out, Lévinas' ethical relation between the self and the transcendent other (the infinite obligation to the other) does not allow for the thoroughgoing solidarity or singularity of egalitarianism. As May writes, “[t]he relation between self and other in Lévinas' approach is grounded on a double asymmetry rather than equality. Instead of a community of equals, there is an inequality running from other to self and back from self to other. In this double asymmetry, there is never a *we*. The *you* and the *I* in our double asymmetry are never surmounted into a community of equals.”²⁹⁷ Whereas Todd May suggests that, from the perspective of Rancière, this infinity obligation is problematic, from a network democracy perspective, we might understand this asymmetry of mutual inequality to be appropriate and, indeed, a helpful non-egalitarian approach that avoids the violent push toward singularity.

Conclusion

It is important to note that, in a network approach, power, violence, and domination are understood as existing on a continuum – i.e. violence is excessive power and domination is excessive violence. The distinction between these concepts, however, is not simply quantitative.

²⁹⁷ Todd May, *The Political Thought of Jacques Rancière: Creating Equality* (Edinburgh: Edinburgh University Press, 2008) at 150.

We distinguish between these concepts because we see something qualitatively different between violence and mere power or between domination and violence. That is, the use of the term “excessive” means we are making a negative normative judgment regarding a quantitative increase (i.e. an increase in coercive power). Our distinctions between power, violence, and domination, therefore, should be viewed as both quantitative and qualitative in nature. Further, our understanding of power, violence, and domination – if developed with the complexities of embodied existence in mind – will necessarily lack precision and will inherently be worked out with an eye to the normative ideals we already possess. In other words, we can sketch out a basic conceptual framework for understanding power, violence, and domination, but the lines of this sketching will always blur as we attempt to make definite distinctions apart from real-life situations. And, indeed, even in real-life situations, our understanding of these three concepts will always be dependent upon our position within, or relation to, the situation itself. In a sense, then, we may do best to think of power as the basic concept and both violence and domination as different ways of conceptualizing power-relations. That is, as we saw, there is no reason to make a value judgment regarding power or, indeed, violence, *in itself*. However, as power becomes increasingly intense, we begin to get more and more concerned. So, it seems appropriate to say that violence can be morally acceptable or unacceptable depending upon the level of violence (which is dependent upon the relations in question) but domination is always morally unacceptable. Qualitative interpretation, however, remains a democratic art rather than a theoretical science.

IV. MODULATION

“[T]he view dies hard that Babel was the occasion of a curse being laid upon mankind from which it is the business of the philosophers to deliver us, and a disposition remains to impose a single character upon human speech.”²⁹⁸

Introduction

If we accept, at least tentatively or provisionally, the political ontology of patternings and the structural causation outlined above, we are now in a place where we can problematize anew diffuse violence taking place in ourselves and the world around us as consumer citizens in the market state. As soon as we re-problematize the violence at work in ourselves and our world, we are invited to focus upon a deeply pluralistic politic and understand the dangers posed by standardization processes in the modern world that are fuelled by universal normative metrics. We are able to develop a perspective that allows for a radically difference process of politicization than that which occurs within the liberal worldview. For example, instead of continuing to elevate the independence of self-determination and self-expression as a fundamental value guiding our politicization processes, we begin to see ourselves and those things that are important to us as existing in relations of dependence upon larger patternings in the world around us. And, if the radical relationality that transcends our being-in-the-world becomes a focal point for us, we are able to begin recognizing the violence of the dualistic logic we find at the heart of liberalism (i.e. simultaneous individuation and totalization) and manifest in protocolic domination. We are stuck anew by the importance of specificity in the localization of politicization outlined above.

The importance of specificity arises when the political is understood to be an articulation of the relations between oneself and particular entities persisting and patterning through space-time. There is an inherent immediacy in the politicization process itself that cannot be

²⁹⁸ Michael Oakeshott, *Rationalism in Politics* (London: Methuen & Co., 1962) at 197.

standardized without destroying the relations that make up the political. This kind of standardization through a dualistic logic, however, is exactly what is taking place in the development of protocol – i.e. shifts in the procedures for interaction that, by virtue of their homogenizing impulse, deny the localized embodiment that is necessary for politicization. The relationship between the dualistic logic of protocolic control and liberalism will be discussed in the next chapter but, first, let us consider further the phenomenon I am calling “protocol” and how it operates according to a dualistic logic.

A. Protocol and Dualistic Logic

Although you will see that I head off in a somewhat difference direction, our discussion of protocol should begin with Deleuze’s notion of control and a recognition of its usefulness in understanding the nature of governance within modern, network society. Deleuze builds upon Foucault’s historio-critical social analysis of disciplinary society in, especially, the 18th and 19th centuries and seeks to turn our attention to the power-processes of “control society” in the 20th and 21st centuries.²⁹⁹ The following breakdown outlines the basic historical mapping that provides the framework for Deleuze’s analysis.

Period	Diagram	Manager
Sovereign Society	Centralization	Hierarchy
Disciplinary Society	Decentralization	Bureaucracy
Control Society	Distribution	Protocol ³⁰⁰

Whereas Foucault focused primarily (at least in his earlier works) on the key characteristic of disciplinary society – confinement, Deleuze seeks to explicate the key characteristic of control society and contrast it with disciplinary society. He writes, “[w]e’re definitely moving toward ‘control’ societies that are no longer exactly disciplinary.... We’re moving toward control societies that no longer operate by confining people but through continuous control and instant

²⁹⁹ See Deleuze, *supra* note 169 at 174ff.

³⁰⁰ For this mapping, see May, *supra* note 297 at 27.

communication.”³⁰¹ Protocol is the manager of modern society and operates as a set of procedures that govern interactions within and through complex network patternings. In a general sense, a protocol is a standard or convention that enables connections and interaction between network nodal-points. We might, for example, begin thinking of the standardizations of protocol in terms of the design and functionality of computer interfaces. Browser updates ensure an interface is efficiently allowing a user the opportunity to access the Internet. However, these updates do not simply “allow a user the opportunity”; they alter the governing processes of interaction between the machines and users involved by periodically shifting the patterning of the interface. Further, updates affecting millions of users around the world reveal the standardization within the processes of interaction that has been achieved in order to facilitate more efficient communication between consumer-users and their product-computers.

In complex network systems, protocol is typically not singular, but multi-layered and tailored to effectively control the processes of network development. In a distributive network system, we should not be surprised to see multiple layers of protocol – layers that exist as mixes of social and physical standardizations.³⁰² However, it is also important to notice that protocol, if it is to be effective in governing interactions between units/agents and coordinating their actions, will homogenize through standardization. As Alexander Galloway writes, “in order for protocol to enable radically distributed communications between autonomous entities, it must employ a strategy of universalization and homogeneity. It must be anti-diversity. It must promote

³⁰¹ Deleuze, *supra* note 169 at 174.

³⁰² Simply put, a complex distributive system may be understood as a system the consists of multiple (relatively) autonomous nested nodal connections that nonetheless communicate and interact to coordinate actions. As Alexander Galloway writes, protocolic control in diverse, distributive networks “is not monolithic. It proceeds in multiple, parallel, contradictory, and often unpredictable ways. It is a complex of interrelated currents and counter-currents.” Alexander Galloway, *Protocol: How Control Exists After Decentralization* (Cambridge: MIT Press, 2004) at 143.

standardization in order to enable openness.”³⁰³ Protocolic control, therefore, is a set of standardized procedures that governs processes of interaction between units/agents and fuels acceleration through the destruction of resistance found in specificity and asymmetry.

Life involves multiple levels of physical, social, and spiritual interaction and these interactions pattern in such a way as to give rise to both simple and complex things. Protocol is what governs the changes within the interactional patternings of things. Or, put another way, processes and procedures are patterns of interaction; protocol is what governs the way these patterns shift and change. Analogously, then, we might think of protocol as a second-order language (or code) that determines the systems of meaning (the syntax, semantics, etc.) that are *possible* within our first-order languages. Protocol is a domain of discourse that includes and transcends the entities within our domain of discourse, system of meaning, or normative ordering. In this sense, it is akin to the kind of government that Foucault defined in “The Subject and Power” because it structures and determines “the possible field of action” as action acting upon the actions of others.³⁰⁴

A kind of protocol can be seen, for example, within the frameworks of information processing that translate human language into computational coding and back again. The interface of a computer allows for what seems to be very natural movements and instructions on the part of the user. This interaction, however, involves multiple levels of rule-governed translation to ensure the actions of the user have the desired effect in the computational processes of the computer machine. In a basic sense, a computer is a machine that manipulates data (coded items combined with organizing variables) in keeping with a sequence of instructions designed to perform a task. And, programmers develop this set of instructions – a computer program – using

³⁰³ *Ibid.* at 142.

³⁰⁴ See Foucault, *supra* note 249 at 790.

source code that is written with a certain syntax and semantics that allow for the efficient development of algorithmic processes (rules to determine linear patterns of discrete actions). Source code, in turn, is itself a translation of machine code that is a set of atomic or singular instructions executed by the central processing unit of the computer in rapid succession.

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source code	machine code

Figure 2

The challenge for programmers, then, is to develop the source code in a way that the algorithms of the programs allow users to access computational resources through discrete entry-points – interfaces. In other words, the challenge is to develop points of access to computation that is as natural and intuitive, as user-friendly, as possible without losing precision in computation.

Protocol, therefore, arises as a determining factor in multiple locations throughout the communicative processes involved in programming and using computers. For example, machine code is developed in a certain fashion in order to effectively *compute* – atomic instructions that can be interpreted by a central processing unit of a computer operating in a systematic, linear fashion. Source code determined by a certain kind of syntax and semantics to ensure adequate precision in the development of *rules for computation*. These rules of computation (programs) are then designed within a certain set of constraints (e.g. usability, marketability, etc.) that determine the kind of interface a user encounters. The nature of the interface, in turn, affects how one's own thought processes develop and pattern when communicating with and through a

computational machine. Protocol governs at all these points of translation or interaction between information systems.

Protocol is a management system or set of procedural determinants that may appear to be detached from or unrelated to the interactional processes or the communicative content that it affects. For example, protocol has been described as information wrappers that “tend to be ignorant of their contents” and “encapsulate information inside a technically defined wrapper, while remaining relatively indifferent to the content of information contained within.”³⁰⁵ However, there should be no doubt that protocol has a significant effect upon the content of information flows within information systems. This effect, though is hidden by a dualistic logic at work within protocol that facilitates the eclipse of its qualitative input.³⁰⁶ As Galloway has aptly noted, protocol is a kind of standardizing determinant that develops best in contexts where there are two, radically contrasting processes at work – strict hierarchy and radical decentralization. In the Internet, for example, Transmission Control Protocol/Internet Protocol (TCP/IP) model of establishing communications between computers “uses an anarchic and highly distributed model, with every device being an equal peer to every other device on the global Internet.”³⁰⁷ On the other hand, the Domain Name System (DNS) which associated information with domain names for each entity (computer, service, etc.) connected to the Internet is hierarchical and top-down with a strict “inverted-tree” model of control.³⁰⁸ Within the Internet itself, therefore, the protocols develop within a dualistic logic of standardization that not only allows protocol to control information flows but also helps facilitate the erasure of protocol’s

³⁰⁵ Galloway, *supra* note 302 at 7, 8, and 81.

³⁰⁶ The significance of this tendency towards proceduralism should become explicit below in our discussion of the substitutionalism of liberalism.

³⁰⁷ Eric Hall, *Internet Core Protocol: The Definitive Guide* (Sebastopol: O’Reilly, 2000) at 407 quoted in Galloway, *supra* note 302 at 8.

³⁰⁸ See *ibid.* at 9. As Galloway explains, “[a]t the top of this inverted tree are a handful of so-called ‘root’ servers holding ultimate control and delegating lesser control to lower branches in the hierarchy.” *Ibid.*

political implications or an eclipse of its qualitative input.

First, what do I mean by “dualistic logic”? And, second, in what manner does it obscure its own effects? Dualistic logic is a process of simultaneously individuating and totalizing through multilayered standardizations. In its simultaneous parsing and uniting, dualistic logic is constantly restless; it is never resolved and persists as a continuous polarization between two extremes. Dualism denies genuine dependency in the relationality of the units/agents it governs because interdependency represents an asymmetry that is at odds with the symmetry of the individual-universal polarization. Nevertheless, dualism persists in and through its extremes existing in a symmetrical dependence and this radical dependency manifests a polarity that dominates or disrupts all the partial relations of dependency that make up ourselves and our embodied relations in the world.³⁰⁹ That which lies between the extreme poles of singular and universal is stripped bare as those things participating in asymmetrical relations of dependence are transformed into individuals-in-relation-to-the-universal. Dualism’s domination can be seen in this restless undermining of asymmetry in relations of partial dependency.

This notion of the restlessness within polarization of dualistic logic is in keeping with Deleuze’s description of control society that is characterized by its “ultrarapid forms of free-floating control that replaced the old disciplines operating in the time frame of a closed system.”³¹⁰ As such, protocol may be understood as “a system of distributed management” that is “robust, flexible, and universal”, “can accommodate massive contingency”, and “facilitates peer-to-peer relationships between autonomous entities” while controlling through “inflection,

³⁰⁹ Due to this denial of interdependency, there has been an ongoing attack on dualism within feminist thought and, for example, Val Plumwood has argued that dualism has a “characteristic logical structure of otherness and negation”. Plumwood, *supra* note 33 at 2. Although I agree with the otherness/negation structure of dualistic logic, I should note that Plumwood’s conception of dualism is somewhat different than mine. She understands there to be an inherent hierarchy within dualism whereas I believe the dichotomy of dualism itself can be non-hierarchical. So, for example, she understands $\neg p$ as being entirely dependent upon p in classical logic, but I understand p to also be entirely dependent upon $\neg p$ in a kind of binary oppositionalism (e.g. something like the positive and negative charge of protons and electrons). See *Ibid* at 47ff.

³¹⁰ Gilles Deleuze, “Postscript on the Societies of Control,” (Winter, 1992) 59 October 3 at 4.

connectivity, contextualization”.³¹¹ This decentralized flexibility, of course, is only effective when coupled with a totalizing universality that facilitates the contingent co-ordinations of interaction between decentralized units/agents. Due to the nature of our bodies, our ways of life, and our history of life on this earth, our systems of meaning and normative orderings can only take on a certain range of defining characteristics.³¹² Our politics, therefore, are naturally bounded and temporally restrained by the locality of our being-in-the-world. There are numerous natural constraints upon our political activity that persist in and through our bodies and environment, but protocol is a set of controls that governs in standardized processes of interaction. However, in its ultra-rapid and flexible forms of control, protocol is radically unnatural and rests not on tradition but simply on previous procedural shifts. It universalizes and then moves and modulates too fast to remain in synch with or to resonate with lived and embodied traditions or normative orderings.³¹³

I have described protocol as the ways in which processes and procedures that govern interactions change; the rules that, say, govern the patterns of communicative action that make up our systems of meaning, the semiotic ecology in our industrialized world. “Rules” are patternings imposed or layered upon differing patternings that have their own distinct

³¹¹ See Galloway, *supra* note 302 at 81, 82.

³¹² Our communicative processes are bounded by our physical, social, and spiritual existence such that, although we can (to some degree) know about things we have never experienced, our knowledge is inescapably linked back to our experience. There can be no knowledge without a history.

³¹³ Compare with Jacques Ellul’s description of technique which “no longer rests on tradition, but rather on previous technical procedures; and its evolution is too rapid, too upsetting, to integrate the older traditions.” Jacques Ellul, *The Technological Society*, trans. by John Wilkinson (New York: Vintage Books, 1964) at 14. “Technique”, for Jacques Ellul, means a set of methods that are rationally derived and efficient in their use. *Ibid* at xxv. As Ellul writes, “[technique] clarifies, arranges, and rationalizes; it does in the domain of the abstract what the machine did in the domain of labor. It is efficient and brings efficiency into everything.” *Ibid* at 5. In other words, patterns of action that are developed in order to minimize risk by predicting the variables that will arise and restricting them when they do. It should be clear, then, that although technique is not the same thing as machines, it is the stabilization of variables and, as such, represents the creation of a kind of predictability akin to a machine. Or, as Ellul writes, “technique transforms everything it touches into a machine.” *Ibid* at 4. This should not be too surprising given the fact that technique is a particular sociological phenomenon (a socio-political logic) that has developed within modern, industrial society. So, by technique of communication, I mean a particular set of determinants that govern communicative processes in modern, industrial society – determinants that allow for the effective prediction and coordination of action.

developmental structure. In this sense, protocol is, by definition, an imposition upon what we earlier described as a natural ordering within the world. And, although protocolic imposition is not simply a linguistic matter, as an example, we could speak of this imposition in linguistic terms to highlight the depth within us at which protocol can operate – i.e. the degree to which we have “naturalized” protocol in our modern world.³¹⁴ Protocol in communication could be seen as pattern shifts (modulations) within four kinds of rules: semantic, syntactic, pragmatic, and systemic. Semantic rules determine the ways in which we are able to symbolically represent or indicate things in the world around us. If we are to articulate the relative significance of a thing, we rely upon a set of symbols that we might use to refer to a thing. Indeed, we might even say that a thing only possesses a partial existence for us insofar as we have an unclear definition of that thing. (Of course, this partiality only becomes known in retrospect – the owl of semantic rules flies at dusk). Syntactic rules determine the ways in which we are able to combine symbols in order to enunciate relations between ourselves and the world. Grammatical patterns allow for certain connections and disconnections to be made and, like semantic rules, the exclusionary nature of these patterns can only be seen to the degree that that which was excluded begins to be included – i.e. second order syntactical rules are always and necessarily accompanied by first order syntactical rules. Pragmatic rules determine the ways in which the context within which articulations are made affects the meaning of the articulations. For example, the locutionary, illocutionary, and perlocutionary acts taking place in an utterance are all shaped by the context within which the utterance takes place. And, further, it is often the context that allows a sentence to shed its ambiguity and become a concrete utterance between two or more communicators. Systemic rules determine the ways in which the use of symbols or systems of meaning affect

³¹⁴ To be clear, protocol is never truly naturalized. It is “naturalized” in the modern world in the sense that it thoroughly obscures its own destructive effects. Truly naturalized relations are resilient due to their deep asymmetrical dependence. But, as we have discussed, there is no genuine or asymmetrical dependence within protocol as a result of its dualistic logic.

those who use them or participate in them. In other words, there is a set of patternings that determine how participation in a system of meaning adapts one to further participation in that system – i.e. a kind of reverse second-order cybernetics.³¹⁵ These four types of rules change the means and mediums of communication; they make some things visible and others invisible. Ultimately, these rules greatly affect the way we can or cannot develop hierarchies of variables, the way we are able or unable to politicize ourselves and the things around us.

These four rules are in turn developed or altered in a few key ways: altered *rates* of information flows and altered *spatial* patterns in information transmission. That is, changes in the rates of information flows alters the significance of the information and transforms the ecological, social, and spiritual effects of the information patterns. Throughout the communicative processes, for example, intermediate gatekeeping (e.g. a throttling or suppressing of the spread of a message rather than the outright denial of the message) and/or flooding (e.g. an acceleration of associated messages that diversify and distribute the potential impact of a clear and distinct message) can develop patterns of communicative action that perform rule-like functions within the production and reproduction of communication technique. Additionally, changes in the spatial patterns within an environment (symbolically and physically) affect the transmission of information and, hence, the nature of the information itself. Thus, protocolic advancement as seen in the four rules outlined above is also developed through changes in both the nature of the sequential procession as well as the spatial layout pertaining to information production and reproduction.

It may be thought at this point that protocol sounds quite like Bourdieu's notion of habitus or, at least, sounds like a certain kind of habitus. However, there is a significant difference.

³¹⁵ As Wiener writes, cybernetics is about the feedback loops of systems of communication. See Norbert Wiener, *Cybernetics: Or Control and Communication in the Animal and the Machine*, 2d ed. (New York: M.I.T. Press, 1961) at 24.

Whereas Bourdieu seeks to explain the production and reproduction of behavioural habits generally, my goal is to explain the production and reproduction of certain interactions particular to modern industrial life and to consider the political implications of these interactions.³¹⁶ We should also note that protocol is not simply about human behaviour, it is about patterns of interaction in modern industrial society more generally. Examples such as communicative action are used simply to make the concept more approachable and more easily tied into the notion of politicization. There are, therefore, a couple key differences between habitus and protocol. First, Bourdieu is careful to note that describing social habit formation as rules, grammar, law, etc. is misleading because these things govern behaviour in quite different ways than habitus.³¹⁷ Bourdieu's concern applies, albeit to a lesser degree, to protocol. For, although protocol is inculcated in largely unrecognized ways through bodily practice and repeated/re-enforced actions, it is, by definition an imposition in a way that habitus is not. Therefore, whereas it is problematic to describe habitus in terms of rules, protocol functions much more like rules. Second, protocol is also somewhat different than habitus in the sense that protocol is defined by the homogenizing impulse within it whereas habitus is the transmission of social behaviour more broadly. As we have seen, protocol, to the degree that it is effective in governing through coordinating action between decentralized units/agents, homogenizes through standardization. For, in order for protocol to transcend the variations and deep diversity within the patterns of the world, it must universalize; it must develop a kind of homogeneity. It must develop standardization in order to open up interaction and ensure effective co-ordination.

So, protocol may be understood as related to habitus but as a standardizing process that develops and reproduces within modern industrial societies to disrupt and displace us in and

³¹⁶ For a helpful work on the nature of modernity, see Lachterman, *supra* note 266.

³¹⁷ See Pierre Bourdieu, *Outline of a Theory of Practice*, trans. by Richard Nice (Cambridge: Cambridge University Press, 1977) at 19.

through our being-in-the-modern-world. It is a kind of power at work in the world or a patterning imposition upon the patternings of the world. It is an active homogenizing impulse that pushes toward synchronization and coordination across great naturalized differences and divisions and these patterns of behaviour develop in the cosmopolitan society of advanced industrial nations such that practices are produced and reproduced in synchronization regardless of the physical location. We encounter protocol *within and through* people, machines, computational interfaces, markets, and institutions of the modern welfare state rather than as an objective system or set of rules against which we are explicitly measured. So, it is like habitus in the sense that, “[i]f agents are possessed by their habitus more than they possess it, this is because it acts within them as the organizing principle of their action, and because this *modus operandi* informing all thought and action (including thought of action) reveals itself only in the *opus operatum*.”³¹⁸ In other words, protocol is made manifest for us as a certain kind of objective patterning in and through our practice (and through the interaction between humans and, especially, their machines) rather than through the conscious intentions of individual actors. It is the historical development and propagation of modern industrial life as it becomes more and more naturalized.³¹⁹

The patterning of protocol produces inherent censorships within persons living in modern industrial society such that it can never be fully revealed or understood by those who live modern lives – i.e. in the thinking and naming of protocol, we moderns *ipso facto* reproduce protocol that is unthinkable and unnameable.³²⁰ It is unthinkable and unnameable to the degree that we engage in the practices that are governed by protocol because it develops in and through us as protocolic beings to the degree that we live as beings-in-the-modern-world. The structures of the

³¹⁸ *Ibid.* at 18.

³¹⁹ Compare with Bourdieu’s description of habitus as “history turned into nature.” See *ibid.* at 78.

³²⁰ See *ibid.* at 18. So, like the habitus of Bourdieu, discussion of protocol may be conceived of as an outsider-oriented discourse that requires a stepping-outside the behaviour to even recognize the patternings that govern behaviour. See *ibid.*

technological society produce and reproduce protocol which, on one hand, opens up types of mental, physical, and spiritual knowing while simultaneously producing ignorance in our mental, physical, and spiritual being. In addition, because it is produced and reproduced within our behaviour as beings-in-the-modern-world, we can articulate it only to the degree that our behaviour is out-of-synch with its patternings. It is like habitus in that

it is a *learned ignorance* (*docta ignorantia*), a mode of practical knowledge not comprising knowledge of its own principles. It follows that this learned ignorance can only give rise to the misleading discourse of a speaker himself misled, ignorant both of the objective truth about his practical mastery (which is that it is ignorant of its own truth) and of the true principle of the knowledge his practical mastery contains.³²¹

Put simply, the eclipse of protocol takes place within the inculcation and reproduction of protocol itself. The reason for this lies, as we have seen above, in the restlessness of protocol's dualistic logic. This restlessness we will discuss further in our description of protocolic modulations below.

B. Protocolic Modulations

As I noted at the beginning of this chapter, my purpose in turning to the idea of protocol lies in my desire to open up and theorize regarding the violence taking place in the modern world – i.e. what Deleuze refers to as “control society” in his “Postscript on the Societies of Control.”³²² And, in order to better understand the kind of violence taking place within protocolic control, it may be helpful to remember and contrast it with Foucault's notion of spatial distribution in a disciplinary society. For example, in *Discipline and Punishment*, he writes that “discipline proceeds from the distribution of individuals in space” such that (a) a specific space is enclosed (e.g. prison, school, monastery, barracks, etc.), and (b) partitioned such that each individual has his own space, and (c) the space is functionalized such that each space corresponds to a certain

³²¹ *Ibid.* at 19.

³²² See Deleuze, *supra* note 310 at 3-7.

use.³²³ Discipline through distribution, therefore, acts as a kind of molding that shapes and defines the development of one's subjectivity, an "architecture that would operate to transform individuals".³²⁴

As Deleuze notes, this disciplinary architecture of control acts upon an actor "to allocate, to classify, to compose, to normalize" and to regulate through a logic in which the "different internments or spaces of enclosure through which the individual passes are independent variables."³²⁵ In our current technological or control society, these enclosures are no longer distinct but inseparable variations that control through perpetually shifting modulations. Or, in other words, "enclosures are *molds*, distinct castings, but controls are a *modulation*, like a self-deforming cast that will continuously change from one moment to the other, or like a sieve whose mesh will transmute from point to point."³²⁶ Protocolic control is like a self-transmuting molding that is continually changing from one moment to the next. It operates as a standardizing set of norms and practices constantly reforming and re-organizing to govern and transform not only ourselves, but the world in which we live.³²⁷ It is the violent imposition dualistic standardizations enact within and upon complex natural patternings. Control society, therefore, is characterized by structures and processes that continually reorganize and reform to ensure standardization in simultaneous individuation and universalization.

We will discuss this further, but it should be noted up front that the key to understanding the significance of modulations in protocolic control lies in contemplating anew our assumptions

³²³ See Michel Foucault, *Discipline and Punish: The Birth of the Prison*, 2d ed., trans. by Alan Sheridan (New York: Vintage Books, 1995) at 141ff.

³²⁴ See *ibid.* at 172.

³²⁵ Gilles Deleuze, *Foucault*, trans. by Seán Hand (London: Continuum, 1999) at 25 and Deleuze, *supra* note 310 at 4.

³²⁶ Deleuze, *supra* note 310 at 4 [emphasis original]. Also, as Castells writes, in network society, "the power of flows takes precedence over the flows of power" and is "characterized by the preeminence of social morphology over social action." See Castells, *supra* note 56 at 469 quoted in Tully, *supra* note 126 at 187.

³²⁷ An example of this control through continual modulation may be seen in the breakdown of the previous (disciplinary) separations between education and work as persons are led into perpetual life-long training and the continual monitoring of bureaucrat-students. See Deleuze, *supra* note 310 at 5.

regarding power and freedom and in re-orienting them away from the self-determinism of liberal conceptions of freedom. For example, as we noted, Foucault understands the subject as being free to the degree that he faces an unrestricted field of possible actions.³²⁸ In “The Subject and Power”, he writes that government is the exercise of power or modes of action that act upon the possibilities of action of others. However, he is also clear that “[p]ower is exercised only over free subjects, and only insofar as they are free” and “[b]y 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.”³²⁹ Power, for Foucault, is a restriction of the field of possibilities open to a subject; it dissolves freedom wherever it is exercised.³³⁰

If this Foucaultian approach represents our conception of power and freedom, then we will likely see little significance in the shift from governmental enclosure to protocolic control. Both enclosure and control restrict the so-called self-determination of subjects. However, if our conception of freedom centers more upon notions of stability and security than self-determination (and upon the behaviour of both individuals and systems rather than simply individuals), the difference between enclosure and control becomes significant. First, in this approach to power and freedom, enclosure is not always problematic. We are concerned about disruption rather than containment. Second, if we see freedom as groundedness, we are in a much better position to highlight the destructive and domineering nature of control through protocol. We are able to recognize the dualistic logic at work within protocolic control and its violence at work in eclipsing the political-being of *res ecologia*.

³²⁸ It should be noted that this idea of an unrestricted field of possible actions is an inherently abstract and impersonal concept that is never realized in the world. It is, in a sense, an idealized imaginary point from which to attempt to understand power-flows.

³²⁹ Foucault, *supra* note 249 at 790.

³³⁰ To his credit, Foucault is also quite keen to note that the workings of power upon the freedom of the subject should be understood as dynamic interrelations. For example, he writes that “[r]ather than speaking of an essential freedom, it would be better to speak of an ‘agonism’ – of a relationship which is at the same time reciprocal incitation and struggle, less of a face-to-face confrontation which paralyzes both sides than a permanent provocation.” *Ibid.*

So, if we are attune to the behaviour of complex systems and the dynamic interplay between persons *qua* patternings within patternings, we can begin to recognize the problematic nature of the dualistic logic at work in the modulations of protocolic control. As noted above, protocol is best conceived of as a set of governing standards that develop in and through two, radically contrasting processes – individuation and universalization. In other words, protocol layers universalized processes that are designed to coordinate and synchronize self-directing individuals and, in so doing, disintegrates the intermediate or localized processes of partially dependent coordination. It operates according to a dualistic logic that simultaneously individuates and totalizes and, if it is to be effective in coordinating action, will homogenize through standardization. Standardization is needed to bring about synchronization between heteronomous entities and this standardization depends upon a process of abstraction away from the different ways of being in the world that differ between various embodied locales. It is only in the abstract that the universal coordination and symmetrical synchronization of standardization can take place. In this manner, the standardizations of dualistic logic collapse space and time through universal co-ordinations and symmetrical synchronizations that are only possible through a kind of abstraction away from the difference and diversity of patternings that make up ourselves and the world. (Hence my reason for saying earlier that protocol cannot accord with tradition and moves too fast to remain in synch with lived and embodied normative orderings.)

But, why should we be concerned about the layerings of protocolic control that develop within the dualistic logic of simultaneous individuation and totalization? In short, protocolic control is harmful because it modulates at such high speeds and these rapid modulations do violence to the ecological, social, and spiritual patternings of the world – the natural ordering of the world. Rapid change violates relational patternings and creates a kind of protocolic

domination through systemic processes of destabilization, disruption, and displacement.³³¹ In other words, protocolic control “controls” through a perpetual re-making of relational patternings to undermine interrelations of partial dependence. Modulations are standardized and synchronized violations that continually disrupt the internal pattern-developing or pattern-re-enforcing changes.

The instability of protocolic control is taking its toll. We described domination above in chapter three as an interruption of continuity that denies, for example, self-recognition and a projection of oneself into the future. In other words, it is disruption that undermines the past-present-future trajectory within a self-patterning and this disruption manifests in deviant and unhealthy behaviour and can even lead to existential threats. Detachment and disorientation have become widespread as a deep, underlying sense of purposelessness pervades liberal capitalist societies. The symptoms appear with dramatic frequency as more and more people are struggling with depression, disassociation, narcissism, health and eating obsessions, sexual frustration and deviance, stress, and anxiety. Rapid protocolic modulations destroy social cohesion and oppose individuals against each another by dividing each person within.³³² This kind of division creates irrational behaviour as well as harmful pathologies such as dissociative disorders where there is a sense of alienation and dramatic internal conflict.³³³ In other words, protocolic modulations perpetually displace and re-make the self such that the self does not know what it is or for what

³³¹ I say acceleration violates the patternings of the world because, as noted above, I understand the network patterns of the world to possess a kind of inherent stability within their structures. There is a kind of natural ordering, a kind of natural law, that makes up the world. So, although these structural patterns are ever-changing and subject to transformative reconfigurations, they nevertheless possess a kind of stability. Indeed, there are reconfigurations that develop through time but these patterns of change are always met with a degree of resistance within and between networks. There is always change and flux in network structures, but dramatic change is violence – it is doing violence to the integrity of the network system as a pattern of relations existing and persisting through time.

³³² See Deleuze, *supra* note 310 at 5.

³³³ According to Deleuze, Kafka, who had in *The Trial* “already placed himself at the pivotal point between two types of social formation, described the most fearsome of juridical forms. The *apparent acquittal* of the disciplinary societies (between two incarcerations); and the *limitless postponements* of the societies of control (in continuous variation)....” *Ibid.* at 5.

purpose it exists. Transformative modulations are continuous, always immanent with a vague promise of transcendence but the closest many in today's world may come to transcendence is a fleeting sense of the sublime as they reach the end of themselves and see nothing beyond.³³⁴ The modulations, in other words, undermine tradition and disrupt enough to give rise to a widespread nihilism.

Due to its dualistic logic that abstracts away from the relational patternings that make up our being-in-the-world, protocolic control tends to cover over its own political tracks. The political – as we have defined it above – takes place in the spaces between totality and individuality. It is a process of articulating a normative re-organization of relational priorities between the local and the global but there can be no genuine (i.e. non-paradoxical) relations between individuality and universality. The prevalence of this dualistic logic, therefore, has led to a widespread de-politicization in social theory or, more accurately, an obscuring of the depth of normative orderings in contemporary social theory. And, as should become clearer in our discussion of liberalism's proceduralist turn, the de-politicization of social theory means that social theory fails to provide the tools needed for building resilience into our communities that can withstand the domineering disruptions of protocolic control. For example, this obscuration of de-politicization can be seen in how folks like Bruno Latour and Chantal Mouffe understand and theorize regarding "the social" or "the political".

To put it simply, Latour's immanentism obscures the patternings of the world and, in so doing, facilitates the modulations of protocolic control. Because he flattens all reality into one immanent plane, Latour argues that the social is only seen in the discreet moment where things are re-organizing, re-grounding, re-composing, etc.³³⁵ Focussing on viewing the social as Latour

³³⁴ Cf. Blond, *supra* note 29 at 14-16.

³³⁵ See Latour, *supra* note 76.

suggests, makes us susceptible to the modulations of protocolic control because we are left with no options other than being swept along by the transforming movements of the social; we have nothing outside the immanent that we might look to for stability or resistance against the modulations. This is problematic because, as we just noted, protocol modulates rapidly and creates dramatic instability within the world. As constantly modulating layerings of patterning upon the deeper patternings of the world, protocol disrupts, destabilizes, and displaces at increasing rates of change.

This immanentism affords us no resistance to the modulations of protocolic control because if we are on an immanent plane, how can we see a shift in associations? Do we not rely upon some background assumptions of order or patterning in order to recognize the change taking place within the shift? And, moving beyond this more epistemological problem with immanentism, what is the more ontological concern with this notion of the social? Put simply, viewing all as an immanent plane plunges us into the change that is taking place. Without the means of recognizing and articulating order in the world (i.e. patternings that exist and persist beyond our re-cognition of them), we have no way to resist the change – we simply become part of the change. We are moved along in a re-organization of association and interaction according to the governing protocol. The underlying orderings do not guide us or hold us back. We descend to a plane of immanence where we are smoothly guided along according to shifting protocols without resistance.³³⁶ Moments of disorganization are moments open to deconstruction for Latour, but this deconstruction takes place according to the protocol that controls as a layering upon everything – construction, deconstruction, and re-construction.

For an agonist like Mouffe, the social and the political are conceived of somewhat

³³⁶ As Wittgenstein writes in *Philosophical Investigations*, “[w]e have got on to slippery ice where there is no friction and so in a certain sense the conditions are ideal, but also, just because of that, we are unable to walk. We want to walk: so we need *friction*. Back to the rough ground!” Wittgenstein, *supra* note 184 at 40e.

differently but, I would argue, no less problematically. Following in the steps of contrarian theorists Carl Schmitt and Jacques Rancière, Mouffe understands the political as “the dimension of antagonism which [is] constitutive of human societies”.³³⁷ The political is developed within a we-they dualism; it is constituted by the interplay between two extremes.³³⁸ For example, she argues that “all forms of political identities entail a we/they distinction” such that “every consensus exists as a temporary result of a provisional hegemony, as a stabilization of power, and that it always entails some form of exclusion.”³³⁹ Further, her notion of identity is wrapped up in the creation and re-creation of difference or, in other words, she contends that “the affirmation of a difference is a precondition for the existence of any identity, i.e. the perception of something ‘other’ which constitutes its ‘exterior’”.³⁴⁰

Although Mouffe is certainly correct to argue against the totalization in the liberal rationalists’ ideal of a “universal consensus” in her work, she does tend to essentialize antagonism in her understanding of the political and thereby fall into the individuation/totalization trap of dualistic logic.³⁴¹ In other words, my concern is that her conception of the political as an antagonism that constitutes a society is, in a sense, excessively Schmittian. She is careful to note that the we/they distinction does not *necessarily* mean a friend/enemy distinction as Schmitt argues, but she does maintain that there is always a

³³⁷ Mouffe, *supra* note 32 at 9. Political questions, therefore, “always involve decisions which require us to make a choice between conflicting alternatives.” *Ibid* at 10.

³³⁸ Rightly so, she therefore understands the central problem with deliberative democrats to be found in the fact that they are drawn into the illusion that it is possible to build a “we” without also creating a “them.” For example, see Mouffe, *supra* note 253 at 9.

³³⁹ Mouffe, *supra* note 32 at 16 and Chantal Mouffe, “Deliberative Democracy or Agonistic Pluralism,” (2000) 72 Political Science Series (Institute for Advanced Studies, Vienna) at 17. This concept of provisional hegemony shapes and defines her understanding of politics and, specifically, democratic politics. As she explains, “[p]olitics aims at the creation of unity in a context of conflict and diversity; it is always concerned with the creation of an ‘us’ by the determination of a ‘them’”. The novelty of democratic politics is not the overcoming of this us/them opposition – which is an impossibility – but the different way in which it is established. The crucial issue is to establish this us/them discrimination in a way that is compatible with pluralist democracy.” Mouffe, *supra* note 231 at 101.

³⁴⁰ Mouffe, *supra* note 32 at 15.

³⁴¹ And, as we will see in chapter five, tends to totalize the self-other relations.

possibility that the we/they relation could become a friend/enemy conflict if the “they” threatens the identity of the “we”.³⁴² Not only does this persistent possibility of friend/enemy antagonism define the political for Mouffe, but the antagonism itself seems to rest upon a somewhat simplistic friend/enemy dualism.³⁴³

She inevitably falls into a dualist approach because she denies the deeper patterns of persistence that allow relations between oneself and others/other things to exist and become articulated outside a simple binary friend/enemy distinction.³⁴⁴ Then, in order to avoid the friend/enemy antagonism, she must assume an abstract (i.e. non-political) unity in order to allow us to perceive and articulate political behaviour. In other words, by resting the concept of “the political” upon the we/they distinction, she sets up a requirement that there exist a deeper unity that brings together and guides the way we make the we/they distinction. This abstractionism takes place because, if she invests her notion of the political in the localized consensus of binary antagonism, she has little choice but to either:

- a. move into Schmitt’s friend/enemy distinction and the mortal enemy model that follows from it (and thereby forsake democracy altogether), or

³⁴² See Mouffe, *supra* note 32 at 15. As Schmitt writes, the political “can be understood only in the context of the friend/enemy grouping, regardless of the aspects which this possibility implies for morality, aesthetics and economics.” Carl Schmitt, *The Concept of the Political*, trans. by George Schwab (Chicago: University of Chicago Press, 1996) at 35.

³⁴³ As Crowder has pointed out, “all political positions rely on essentialist claims, because all propose norms that imply conceptions of human nature and the human good. Mouffe’s own position is no exception”; her antagonistic dimension of the political is (as it is for Schmitt) an essential element of human nature. See George Crowder, “Chantal Mouffe’s Agonistic Democracy,” refereed paper presented to the Australasian Political Studies Association conference, University of Newcastle (September 25-27, 2006) at 15. According to Mouffe, political theory is meant to delve into “the essence of ‘the political’” and this essence is a tendency toward antagonism which, “as Schmitt says, is an ever present possibility; the political belongs to our ontological condition.” Mouffe, *supra* note 32 at 8, 16. That is, antagonism is “inherent in human ends” and an unavoidable feature of “our human form of life.” *Ibid* at 11; Mouffe, *supra* note 231 at 98. Cf. Mouffe’s comments on the “crowd” phenomenon as described by Elias Canetti which she suggests is “part and parcel of the psychological make-up of human beings” or her appeal to “the aggressive instinct” noted by Freud. See Mouffe, *supra* note 32 at 24, 26. In other words, this antagonistic dimension of political life is for Mouffe an essential element of human nature. See Crowder, *supra* note 343 at 15.

³⁴⁴ She writes, “[w]hat is at a given moment considered as the ‘natural’ order – jointly with the ‘common sense’ which accompanies it – is the result of sedimented practices; it is never the manifestation of a deeper objectivity exterior to the practices that bring it into being.” Mouffe, *supra* note 32 at 18. Or, again, “[t]hings could always be otherwise and therefore every order is predicated on the exclusion of other possibilities.” *Ibid*.

- b. assume a higher unity that guides the way the we/they distinction itself is created and re-created (i.e. rely upon the universalisms of political liberalism).

Of course, she picks that latter approach by seeking a certain way of drawing the we/they distinction and, in so doing, seeks a unity that transcends the distinction itself (i.e. in the legitimization of one's opponents). So, for example, she writes that members of democratic societies, "while in conflict, they see themselves as belonging to the same political association, as sharing a common symbolic space within which the conflict takes place."³⁴⁵ In so doing, she falls back into a kind of abstract standardization characteristic of liberal proceduralism that facilitate rather than restrict the modulations of protocolic control. But, more on this below...

Agonistic liberals like Mouffe, therefore, are putting forward an important critique of rationalist liberalism, but are unable to mount a radical critique due to their somewhat superficial conception of the political. By understanding the political world as sheer contingency, the agonistic liberals view political identity in simple, oppositional terms. Like the immanentists above, the agonists deny the depth of transcendence in natural ordering and therefore are caught in the awkward situation where they are left with little choice but to both posit and obscure the background ordering within which political identity exists. It is within this obscurity and inability to find the stability of patternings that protocolic control is able to flourish and develop in its domineering modulations.

C. Protocolic Domination

I understand domination as an excessive violation of patternings in the world – a speed and degree of change that disrupts and destabilizes so much that it cannot (or should not) be

³⁴⁵ Mouffe, *supra* note 32 at 20. She writes that "[c]onsensus is needed on the institutions constitutive of democracy and on the 'ethico-political' values informing the political association – liberty and equality for all – but there will always be disagreement concerning their meaning and the way they should be implemented." *Ibid* at 31. Therefore, Mouffe seems to do something analogous to what Karena Shaw sees as the "reproduction of sovereignty as the precondition for the political". Karena Shaw, *Indigeneity and Political Theory: Sovereignty and the Limits of the Political* (London: Routledge, 2008) at 152.

considered legitimate. Further, we noted above that the domination of humans can be understood as an interruption of continuity such that persons can no longer recognize themselves or project themselves and the things around them into the future from within the trans-temporal trajectory of tradition. Those who are dominated are, in this way, inhibited in their ability to politicize themselves and the things in the world around them. How, then, might we begin to understand the particular features of the logic at work within *protocolic* domination? Further, how might we best understand its relation to, and distortions of, the politicization process?

Protocolic domination is the illegitimate violence caused by the disruptive power taking place through the modulations of protocolic control. It is the excessive violation of structural causation within the patternings of the world – a kind of violence that has been simultaneously enhanced and obscured by the dualistic logic of normative theorizing exemplified in liberal conceptions of justice. The rapid modulations of protocolic control, I would argue, are therefore the most problematic and under-theorized domination at work in the worlds of the market state. Politicization is a three-fold relation between things local, things global, and the self as a local-global being such that the making of things public is always also the making of oneself public in relation to a thing. And, because politicization is this three-fold relation, to the degree that a person is ungrounded as a result of standardized modulations in protocolic control, he is unable to make things public. He is unable to locate and lock onto the specificity of the local in a way that he can articulate and translate it into the global in an ongoing revelatory relationship. So, simply put, by talking about protocolic domination, we are interested in widespread violations of patternings within the market state that are illegitimate due to their undermining of the very capacity for politicization. By focusing in on protocolic domination, we are seeking to become more attentive to a kind of violence that is active within our own systems of meaning and action-coordination, disturbances to the patternings that make meaningful action such as politicization

possible for us as beings-in-the-modern-world.

Although, if we are seeking to identify and describe violations in our systems of meaning and action coordination we should immediately be struck by the kind of question George Grant raised in *Technology and Empire*. With his piercing insight into the illnesses of our modern world, Grant highlights the difficulty we have in recognizing and acknowledging that of which our modern technological society has deprived us. But, he not only notes the difficulty. He also helps us understand the depth of this difficulty through a process of lamenting and, in so doing, allows us to better understand the problem we are facing when we seek to recognize the domination taking place within the modulations of protocolic control. He writes,

We can hold in our minds the enormous benefits of technological society, but we cannot so easily hold the ways it may have deprived us, because technique is ourselves. ... It is difficult to think whether we are deprived of anything essential to our happiness, just because the coming to be of the technological society has stripped us above all of the very systems of meaning which disclosed the highest purposes of man, and in terms of which, therefore, we could judge whether an absence of something was in fact a deprivation. ... All coherent languages beyond those which serve the drive to unlimited freedom through technique have been broken up in the coming to be of what we are. Therefore it is impossible to articulate publicly any suggestion of loss, and perhaps even more frightening, almost impossible to articulate it to ourselves. We have been left with no words which cleave together and summon out of uncertainty the good of which we may sense the dispossession.³⁴⁶

Grant laments the difficulty we have in sensing the loss of what we have forgotten when we cannot form the thoughts needed to consider what it is that we have forgotten. How do we recognize the losses caused by our systems of meaning when it is these very systems that make us who we are and shape our normative orderings as beings-in-the-modern-world? Our systems of meaning have been stripped of certain patterns of thought regarding the good life and it seems impossible to even imagine how we might restore them if we cannot normatively contextualize them.

³⁴⁶ Grant, *Technology*, *supra* note 43 at 137, 139.

Although Grant is dealing with a somewhat different set of problems, we face an analogous problem with regard to protocolic domination. How do we recognize modulating violations of structural causation in the world if we are ourselves being shaped and changed by the same modulating patterning-shifts? Or, more to the point, how do we recognize a violation of patterning as something more problematic than simply a *different* patterning than that to which we are accustomed? If we accept the network ontology of *res ecologia* outlined earlier, I think we have to admit up front that we are poorly placed to understand such matters and, no matter how well we are able to gauge structural violations, we will never arrive at anything more than a provisional estimation of patterning-shifts that we evaluate from our own localized time/space perspective.³⁴⁷ In other words, our ontological situation should give us great epistemic humility. This is not to say, however, that we *cannot* identify protocolic domination at work within ourselves and our world whatsoever. But, as with all domination, protocolic domination is identified through a judgment that combines both *empirical and normative* elements such that the question of excessive violence is a question to which an answer will always be contingent, contested, and negotiated.³⁴⁸ Indeed, we might say that the question: “What is excessive violence?” is a fundamentally democratic question such that no final answer or universal definition can be given.

We should note, however, that the process of recognizing protocolic domination is somewhat different than the process of politicization (i.e. local-global-local). The political is latent and diffuse and only becomes acute or definite – is made truly visible – through a process

³⁴⁷ As Philip Blond writes, “[w]e fondly imagine that we differ in our private thoughts and opinions – but this is Solzhenitsyn’s mechanism for imagining freedom whilst imprisoned in the Gulag.” Blond, *supra* note 53 at 24.

³⁴⁸ In order to develop a coherent and practically applicable theoretical approach to democracy, we need to be attune to the underlying descriptive social theory that provides us with answers to questions like “What are the key social and material conditions of our society that might give rise to domination?” And, further, “Given these background conditions, what might the primary causal characteristics of this domination be?” That is, we need to engage in considerations of the causal logic at work in the standardizations of protocol that allow its modulations to disrupt in a liberal, capitalist society.

of localization. The revealing or disclosure of politicization takes place as one moves from the local to the global (i.e. manifests the broader significance of things in an apocalypse) and then back again to the local (i.e. articulates the relation between the *res publica* and oneself as *res ecologia*). In politicization, this process involves a historical (diachronic) three-fold relation between things local, things global, and the self as local-global. At least two capacities are therefore needed for someone to engage in the politicization process (a) the ability to localize oneself in relation to the thing and (b) the ability to project this relation of localization outward in relation to a *res publica*. In this manner, the broader significance of a thing can be articulated or made manifest.

This apocalypse of politicization, however, does not work when we are seeking to make the domination of protocolic modulations visible. Why is this? Why can we not simply politicize protocolic domination and thereby make its significance visible to ourselves and the world? I can point to a couple of key reasons – reasons that give us further insight into what I mean by both the “protocolic” and the “domination” elements of protocolic domination: (a) it cannot be politicized because, unlike things that whole, protocolic domination cannot be localized in relation to the self and (b) to the degree that we are able to politicize those things that are affected by the power-shifts of protocolic domination, we are actually shielding those things from domination.³⁴⁹ Protocolic domination cannot be politicized because it cannot be localized in relation to the self as *res ecologia*. Just as politicization cannot be accomplished insofar as one is not grounded in specificity (one is unable to localize), so too the politicization of protocolic domination cannot take place due to its fundamental non-locality. Indeed, this is what protocolic means – protocolic modulations violate the structural causation of the world but do not

³⁴⁹ Although we will briefly explain why this is so in this chapter, this point will become a lot clearer through the analysis of legitimation in chapter six.

themselves localize within any wholing thing. Protocolic domination is itself not a thing and, therefore, does not whole or present but simply disrupts the wholing and presenting of things as *res ecologia* (and *res publica*).³⁵⁰ There is an immediacy or specificity in the politicization process that cannot be standardized without destroying the relations that make up the political. This kind of destructive standardization, however, is what takes place in the development of protocol – i.e. shifts in the procedures for interaction that, by virtue of their homogenizing impulse, deny the localized embodiment that is necessary for politicization. We can see dualistic logic at work in the attempt to universalize normative relations (which, of course, cannot be universalized or they lose their relationality and hence their normativity). This push towards universalization undermines our ability to localize within the politicization process. In contrast, the revealing of *res ecologia* and its manifestation as *res publica*, therefore, actually serves to temper the excessive violence of protocolic domination by re-enforcing the patternings of the thing.

Despite the fact that protocolic domination cannot be made visible through politicization, however, we can nonetheless to some degree recognize its disruptive effects within ourselves and the things around us. As we just noted, it is identified through the combination of an empirical and a normative judgment because, like all domination, it is by definition an excess of violence and what we mean by “excessive” requires not only empirical but also normative judgment. Further, much like how we cannot remember what we have forgotten, we cannot form judgments regarding protocolic domination directly. We can only form judgments regarding those things in

³⁵⁰ But, we might ask if domination can ever be politicized. Because, surely, it is never a thing? The difference between structural domination and other kinds of domination is found in the persistent diffusion of structural domination. For example, if we consider a case of excessive violence being acted upon a localized body (a singular thing) through, say, torture we can imagine the revealing effect a politicization of that thing will have. That is, by politicizing the thing being tortured, we are effectively politicizing the domination that was being enacted directly upon that thing. This is not the case, however, with structural domination – it is not direct and is not localized in its effect upon a singular thing.

the world that are disrupted by the modulations of protocolic control – i.e. form judgments regarding those things that are registering the effects, those patternings that are being violated. So, in this manner, we can form partial judgments regarding those things that we perceive to have a dualistic logic at work within them even though we cannot politicize the logic itself. And, as we proceed in the discussion that follows, we will focus upon understanding the patternings that are disrupted by protocolic modulation and those things within and around us that are shaped and driven forward by its dualistic logic. We should also note that, to the degree that we are able to direct our judgment concerning diffuse disruptions of structural causation toward some thing that is being disrupted, we are simultaneously obscuring another patterning disruption just outside the gaze of our judgment. Our judgments therefore remain *inescapably* partial.

Before we continue to outline the nature of patterning disruption taking place in protocolic modulations, however, let us consider the differences between protocolic domination and structural violence more generally. Or, in other words, why am I not describing this kind of patterning disruption simply as structural domination? Put simply, I am not referring to structural domination because if it is structural, it can be localized; if it is structural, then we are not talking about something that is driven forward by the dualistic logic at work in the modulations of protocolic control. Dualistic logic denies dependency in its abstraction away from the relational patternings that make up our being-in-the-world.³⁵¹ There is, therefore, no structuration process or patterning at work within this polarity, it is inherently unstable and nonlocal in its reductive simplicity. Through its abstraction, it covers over or hides the normative and political effects it leaves in its wake of patterning disruptions. Protocolic control not only shapes the ways we are able to understand and articulate violence, but it obscures the structural violence it causes because

³⁵¹ There is a sense in which this logic doubly totalizes – it totalizes as one end of its two extremes but it also pushes towards a totalization of the binary relationality. The significance of this secondary totalization will be seen in our discussion of liberal agonism below.

it hinders our ability to politicize the violence. The power of protocol is most deeply disruptive in the continual transformations that displace the self in its being-in-the-world and undermine the processes of politicization. The transformations are perpetual: always immanent through standardized and synchronized modulations that abstract away from the embodied relations of *res ecologia*. The rapid modulations of protocolic control disrupt and dislocate us such that we lose our ability to politicize violence. So, in obscuring violations and preventing politicization, protocolic control fosters further violations that dig down into our very nature as beings-in-the-modern-world.

Before going on to consider some of the violence of standardized modulations in more practical terms, how might we understand the causation that is taking place in the domination of protocolic modulations? Quite recently, domination was typically viewed as the imposition of singularity from outside through confinement (e.g. a totalitarian regime). In the network/control society that is liberalism manifest in relation to the market state, however, this singularity arises in and through agents themselves as they are guided into standardized and synchronized patterns of interaction. Domination, in this sense, has become internalized within and through the diverse patternings of modern life. This internalization can be seen as taking place in at least two related ways. First, persons are guided into standardized and synchronized modes of interaction through a layering of uniform, albeit multi-layered, representations and interpretations of the self and things in the world around them. These modes of interaction are standardizations layered upon patterns of bio-material diversity. Through representations and interpretations of the spatial relations and patterns of connect/disconnect in the bodies and eco-systems of the material world, protocolic control acts to lift us out of our finite bodies and into an abstract realm of rationalized unity. Second, persons are guided through a layering of techno-mechanistic standardizations upon diverse familial and socio-political patterns of interaction. The standardization of the

material mediums of interaction guide the patterns and substance of thought and action. Through the common use of mechanical appendages or tools and mediums of communication, the patterns of socio-political thought and action – as well as our understanding of the bio-material patterns of life – are shaped and re-shaped.

Protocolic domination in a network/control society can be viewed as a kind of power at work in relation to both formal and final causation.³⁵² Both of these causes are simply examples of causation or causal contexts that help us better understand the perpetual displacement of protocolic control. In relation to formal causation, the standardization of protocol works to homogenize not simply from the bottom up – i.e. from the parts (e.g. genes, persons) to the whole (e.g. persons, society) – but within and upon the whole in a way that shapes and determines the constituent parts. This is not a denial of bottom-up causation that takes place in terms of material and efficient causes, but a re-emphasis upon the nature of complex systems and their persistence and agency *as systems* or, of course, as *res ecologia*. It is a recognition that protocolic modulations are undermining the formal causation taking place within complex systems. In terms of final causation, the standardization of protocol works to homogenize the patterns of network formation and unify the power-flows internal to the network systems.³⁵³ That is, the autocatalytic processes of complex systems are asymmetrical and thereby demonstrate a kind of final cause. Homogenization takes place, however, as the purpose of, say, life itself is altered and destroyed in synchronized modulations.³⁵⁴ Hence, final causation is also undermined. Put more broadly, structural domination serves to limit the internal diversity of complex systems – i.e.

³⁵² Following Charles Peirce, I would not suggest that causes (e.g. efficient and final) are fundamentally distinct. Instead, they are best viewed as complementary perspectives. See Hulswit, *supra* note 199 at 95.

³⁵³ A final cause, then, is not to be understood as a future event (i.e. backwards efficient causation), but as a possibility that is realized through a process that is open to different means and irreversible. See Menno Hulswit on Peirce's notion of final causation at Hulswit, *supra* note 199 at 95.

³⁵⁴ Admittedly, more analysis in terms of formal and final causation, and how this fits into the notion of an open universe, is needed here. In addition, we might ask how this protocolic causation should be understood differently than the idea of causation implicit within Foucault's notion of governmentality and subjectivisation.

move them toward a decentralized (Cartesian grid-like) pattern – and thereby reduce the adaptability of the network patterning. In socio-political terms, this process is a kind of mechanization of society and, consequently, a mechanization of the self as the network systems become more machine-like. This push toward grid-like patterns with very limited formal or final causation is domineering in that it excessively disrupts the stability and resilience of distributive networks that relies upon a significant degree of internal diversity and complexity.

But, the question still remains – how do we recognize what violence is excessive such that we might call it domination? How do we make that normative judgment regarding the violence caused by protocolic control if we are ourselves swept up in the modulations?

The second part of the combined empirical/normative judgment for identifying the violence caused by protocolic control involves an articulation of the patternings of the self and the world and the relative values of these patternings. It involves coming to recognize the violence at work in the way in which the dualistic logic of protocolic control prevents politicization. An appeal to a universal normative metric, however, is inappropriate. It facilitates the universalization of relations – and, hence, the destruction of patterning relations – as well as a retreat from the real through abstractionism and idealization that obscure the violence being enacted. As we have seen above, an appeal to universal norms does violence to the inherent diversity and flux of network patternings through an appeal to the singularity of a universal finality. Further, an appeal to universal norms is dependent upon ontological commitments that obscure the violence of protocolic control. Indeed, we might say that, by definition, an appeal to universal norms is a furthering of protocolic control if one accepts the network ontology of *res ecologia* and the accompanying understanding of violence outlined in the previous two chapters. There is a domineering impulse of patterning disruption that develops through the ongoing interrelations between an appeal to universal norms and its corresponding ways of life such as a

liberal political economy. If we are to recognize protocolic control at work, therefore, we will need to value the integrity of patterning systems and, perhaps most relevant for our concerns here, we will need to value the integrity of other persons and things as patterning systems that come to us as wholes from beyond. We will need to avoid universal normative metrics. The domination of the “empire of uniformity” promulgated by our universal norms (and manifest in the liberal political economy) may therefore be seen in the denial of the other as “the other” – i.e. the domination may be best seen in the *overcoming* of the other or the de-patterning of the other.³⁵⁵

The domination of overcoming the other may be seen in an internalized domination in which the processes of identity formation is disrupted and displaced. Identity formation is so important in a network/control society because, as Manuel Castells writes, identities “build interests, values, and projects, around experience, and refuse to dissolve by establishing a specific connection between nature, history, geography, and culture.”³⁵⁶ In other words, healthy identity formation is a process of putting down roots and developing a specificity or particularity; it is a process of localization through embedded interconnections that makes politicization possible. And, it is this specificity that makes one a self and, simultaneously, an other to others. The “otherness” is overcome, however, by uprooting the process of identity formation from the interrelations of being-in-the-world and conceiving of and treating it as if it existed in some abstract realm detached from embodied ways of life. Of course, influencing and shaping identity formation (or participation in the construction of identity) is not problematic in itself. Our concern comes in the dualistic logic of simultaneous individuation and totalization at work within universal norms and liberal political economy. The domination of overcoming the other is born

³⁵⁵ By “other” I simply mean those who are not the self or, in a collective sense, not part of the group. The key point is that the other is different in some way. I do not use it in Schmitt's oppositional and violent sense where the other is an enemy, a stranger, or someone who presents an existential threat. See Schmitt, *supra* note 342 at 27.

³⁵⁶ Castells, *Power of Identity*, *supra* note 171 at 360.

in the lack of reciprocity and therefore a lack of stability and resilience – for example, talk of equality involves a one-way or unidimensional positing of moral worth without the negotiation process of embodied relation. In this sense, then, the singularity of equality is illegitimate insofar as it lacks the dynamic interplay of dialogical relations. Its very logic is contrary to the reflexive logic of legitimation.

The process of identity formation should be understood from a number of different perspectives, but one of the most important approaches to understanding the nature of the self as *res ecologia* capable of resisting modulations of protocolic control will come about through the development of a new political economy. We need new techniques for ontological reframing that break from the domination of protocolic control and re-conceptualize the economic self as a political self (and, likewise, the economic other as a political other). For example, as Gibson-Graham write, “[w]here once we believed that the economy was depoliticized largely through its representations, we have more recently come to understand that its repoliticization requires cultivating ourselves as subjects who can imagine and enact a new economic politics.”³⁵⁷ Part of the re-politicization of the economy (i.e. the re-politicization of the self as economic-being) will surely involve movement away from a reliance upon talk of abstract (and mechanistic) laws in macro-economics and a conscious attempt to understand the embedded nature of economic transactions. Again, Gibson-Graham suggests that “as we begin to conceptualize contingent relationships where invariant logics once reigned, the economy loses its character as an asocial body in lawful motion and instead becomes a space of recognition and negotiation.”³⁵⁸ We will begin to develop a non-dominating discourse of political norms as we develop an approach to economic interrelations that has the processes of real-world economic lives as its focal-point.

³⁵⁷ Gibson-Graham, *supra* note 50 at xxviii.

³⁵⁸ *Ibid.* at xxx.

That is, the patterning ontology of the self outlined above will need to not only be worked out as a theoretical touchstone for critiquing the individualism and abstractions of neo-liberal economics, but the real-world economic exchange-processes of communities existing outside the global, neo-liberal regime will provide a practical touchstone for developing the network ontology itself.

The understanding of domination as the disruption and displacement of identity formation processes not only involves a serious engagement with identities as economic relations but also involves a recognition of the fundamental incompleteness of persons and the perpetual vulnerability to which this gives rise. Kant is correct to note that persons are fundamentally incomplete (and cannot, therefore, be understood as ends-in-themselves in any absolute sense) but he is quite misguided in supposing that persons can be completed through an infilling of an abstract and universal moral law.³⁵⁹ As we discussed in chapter two, persons are best conceived of as network patternings that are developing in and through the relations of their ecological, socio-economic, and spiritual world. The self, therefore, is dependent upon the earth and others for this process of development. Just as a distributive network requires asymmetrical relations with its world to develop *as a distributive network*, the incomplete self is not only dependent upon the earth and the other, but is dependent upon relations with the earth and the other that are real-world relations (which are fundamentally asymmetrical) rather than idealized relations of abstract moral worth. To disrupt these real-world relations of dependency is to banish the patterning of the self, and hence the identity of the self, to a perpetual incompleteness with no genuine hope of development.³⁶⁰

³⁵⁹ For example, see Immanuel Kant, *The Doctrine of Virtue*, trans. by M. J. Gregor (Philadelphia: University of Pennsylvania Press, 1971) quoted in Andreas Teuber, "Kant's Respect for Persons," (1983) 11 *Political Theory* 369 at 376.

³⁶⁰ This asymmetry is mirrored in the work of nonequilibrium thermodynamic theorists who study energy flow systems that bring about complex structures that maintain themselves as distinct from the environment but also grow

The kind of disruptive and de-politicizing domination we are looking at here can be seen in, for example, the ongoing struggle to create a common citizenry participating in a single market (i.e. the bringing of all persons under a single market state). These patterning violations of protocolic domination continue especially to be felt by indigenous peoples as universal normative metrics and a liberal political economy are “naturalized” within their ecological, socio-economic, and spiritual lives. In relation to settlers and their descendants, the other of specificity in indigeneity is overcome through seemingly virtuous ideals such as equality, a common citizenry, and economic prosperity (i.e. participation in a common market in the commodification of land and labour). Those who find themselves outside the power-flow of mainstream liberal society, however, resist standardization and its resulting homogenization and acceleration. Traditionalists seek a protection of their particularities against disruption and displacement while those who find themselves threatened by the standardizations of protocolic modulations seek areas of belief and practice where they can decelerate and stabilize their lives, their families, and their communities. For example, the problematization of difference outlined above is most explicit in the doctrine of egalitarianism where the abstractionism of an idealization driven by a logic of universalization and homogenization is made manifest. This homogenizing impulse involves a commitment to universality in its positing of a common normative metric. But, before going on to consider the violence of liberalization and its problematization of difference, let us first get our bearings by considering a little further the struggle for a common consumer-citizen.³⁶¹

Beginning with the first colonial explorers and settlers arriving on North American soil,

and adapt in response to changes around them. For example, see Schneider & Sagan, *supra* note 45.

³⁶¹ The other explicit application of this idealization of universality may be found in the Universal Declaration of Human Rights. See “Universal Declaration of Human Rights,” online: Office of the High Commissioner for Human Rights, United Nations, <<http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/043/88/IMG/NR004388.pdf?OpenElement>>.

there have been a number of prominent ongoing struggles against the homogenizing effects of idealized universal political norms in the Western hemisphere. Those indigenous and immigrant peoples who to this day find themselves outside the power-flow of dominant governing systems very often resist the drive toward a common citizenry. For example, indigenous peoples have persistently pressed for self-preservation and self-government as a means of asserting their particularity. French Canadians have worked hard to preserve and protect their distinct place within an English North America and more traditionalist immigrants (e.g. Mennonites, Hutterites, Doukhobors, Amish, and conservative Muslims) have sought to live according to their unique traditions without disruption. Recently, too, we have seen the development of a critical reaction to the acceleration of society in the modern era through deliberate attempts to create unique personal identities that might slow down one's life and carve out shelters from the break-neck speeds of a monolithic hyperculture. These attempts to resist the accelerations of modern society, albeit often self-defeating behaviours, also represent a kind of struggle against the standardizations of protocolic modulations. Although we cannot go into the details of the struggles against homogeneity, it is important to note that these struggles continue to take place and that there is an important logic at work within these struggles that is significant for the restoration of conservative political ethics. The logic of resistance begins with a material, social, and spiritual environment divided by deep diversity and difference, moves into the introduction of the homogenizing impulse of a universal normative metric (and accompanying socio-economic standardizations), and then becomes manifest in defiance to the violence of universal normalization and a re-assertion of difference. The logic of resistance, therefore, involves a push-back against the logic of homogeneity through a refusal to be individuated within a universal normative metric; it is an attempt to localize and embody the norms of political theory in order to bring the difference of diversity down into the very roots of our understanding of

justice. Although the ideal of a common citizenry is most often pursued with the seemingly virtuous intention of building a just society for all, these struggles of resistance against a common, equal citizenry reveal the problematic nature of idealized universal political norms. These counter-struggles tip us off to the fact that there is a darker underside to the struggle for commonality in the name of justice.

One of the most infamous examples of the homogenizing impulse within egalitarianism (as well as the corresponding push-back from subaltern communities) may be seen in the Liberal government's "Indian Policy" of 1969.³⁶² Canada's federal government, under Prime Minister Pierre Trudeau and the Minister of Indian Affairs and Northern Development Jean Chrétien, issued this policy statement as an explicit call for changes that were designed to bring about equality for all peoples in Canada.³⁶³ The federal government argued that "[s]pecial treatment has made of the Indians a community disadvantaged and apart" and that "[t]o be an Indian must be to be free – free to develop Indian cultures in an environment of legal, social and economic equality with other Canadians."³⁶⁴ The problems of the past were not said to be rooted in policies and practices of cultural genocide or assimilation but, instead, they were the result of *difference itself*; the problem was that indigenous peoples did not hold the *same* legal standing as non-

³⁶² See "Statement of the Government of Canada on Indian Policy, 1969," online: Indian and Northern Affairs Canada, <<http://www.ainc-inac.gc.ca/ai/arp/lis/pubs/cp1969/cp1969-eng.pdf>>.

³⁶³ This initiative was in keeping with Trudeau's vision for a Canada unified through the creation of a common citizenry. For example, in his 1967 address to the Canadian Bar Association, Pierre Trudeau explained that the entrenchment of a Bill of Rights in the constitution of Canada was an opportunity to come together in "agreement on the fundamental rights of *the* citizen, on their definition and protection in all parts of Canada" (as it would be binding both the provincial and federal governments rather than simply the Bill of Rights as federal legislation that only bound the federal government.) Pierre Trudeau, *Federalism and the French Canadians* (Toronto: Macmillan, 1968) at 55, 57 [emphasis added]. It should also be remembered that equality often simply means equality for the citizens of a certain nation-state; equality of citizens is used as a way to solidify the "we" in opposition the "they". As Adrian Little has noted, "all democracies are exclusive and antagonistic to their Others, to some extent, in order to regulate the behaviour of and conduct between those who are included." Adrian Little, *Democratic Piety: Complexity, Conflict and Violence* (Edinburgh: Edinburgh University Press, 2008) at 176. Also see Slavoj Žižek, *Iraq: The Borrowed Kettle* (London: Verso, 2004) at 91 and Bonnie Honig, *Democracy and the Foreigner* (Princeton: Princeton University Press, 2001).

³⁶⁴ *Supra* note 362 at 2.

indigenous peoples.³⁶⁵ In other words, “[t]rue equality presupposes that the Indian people have the right to full and equal participation in the cultural, social, economic and political life of Canada” and, indeed, “[s]eparate but equal services do not provide truly equal treatment.”³⁶⁶ It was further argued that “[t]he treatment resulting from their different status has been often worse, sometimes equal and occasionally better than that accorded to their fellow citizens. *What matters is that it has been different.*”³⁶⁷ Not surprisingly, many indigenous peoples across Canada were deeply offended by this attempt to assimilate them into modern liberal society and began in earnest to organize in resistance.³⁶⁸ Some, like Harold Cardinal, were explicit in stating that this push toward a common citizenry was “a thinly disguised programme of extermination through assimilation” in which “the only good Indian is a non-Indian.”³⁶⁹ One of the central problems with the 1969 White Paper, as identified by indigenous peoples, was the fact that the call for equality rests upon an assumption of a universal metric that is able to contain the other. In other words, indigenous peoples recognized that the egalitarian policies meant that “Indians are to become brown white men.”³⁷⁰ The deep cracks of cultural difference that made up life in Canada were to be covered over, sanded smooth, and polished bright; everyone was expected to join in celebrating the dazzling equality of the new just society.

³⁶⁵ See *ibid.* at 4.

³⁶⁶ *Ibid.* at 7, 15. That is, “[s]ervices must come through the same channels and from the same government agencies for all Canadians. This is an undeniable part of equality. It has been shown many times that separation of people follows from separate services. There can be no argument about the principle of common services. It is right.” *Ibid.* at 14.

³⁶⁷ *Ibid.* at 4 [emphasis added]. And, it was declared that to argue against equality for First Nations peoples was to argue for “discrimination, isolation and separation.” *Ibid.* at 11.

³⁶⁸ See Peter McFarlane, *Brotherhood to Nationhood: George Manuel and the Making of the Modern Indian Movement* (Toronto: Between the Lines, 1993) 108-121. For an articulate and timely response, see Harold Cardinal, *The Unjust Society: The Tragedy of Canada's Indians* (Edmonton: M.G. Hurtig, 1969).

³⁶⁹ *Ibid.* at 1. Walter Dieter of the National Indian Brotherhood stated that this policy would be “the destruction of a nation of people by legislation and cultural genocide.” Walter Dieter, Canadian Facts on File, 16-20 June 1968, at 289 quoted in McFarlane, *supra* note 368 at 109.

³⁷⁰ Cardinal, *supra* note 368 at 2. Cardinal also writes that “[n]ow and then Indians run into a situation where a non-Indian makes his presence obnoxious by attempting to show that he feels you are no different than he is. He may think this is a great compliment, but you know damned well you *are* different from him – and, as often as not, you are glad of it.” *Ibid.* at 9 [emphasis original].

Conclusion

In conclusion, it should be quite clear by now that there is no absolute or objective reference-point from which to recognize protocolic domination. But, of course, this should not surprise us. We identify protocolic violence – or any kind of excessive violence – through a combined empirical and normative judgment because we need to (a) take stock of the current relational dynamics at work within and around us, (b) evaluate the relative importance of the patternings involved, and (c) evaluate the severity of the violations taking place. A conclusion arrived at through this kind of complex, reflective evaluative process will always be contingent upon not only our ability to recognize and articulate the nature of the violations taking place at a particular time, but our place within the relational patternings. And, because others will always have different abilities to recognize and articulate violations that they employ from different places within relational patternings, the question of excessive violence is always changing and therefore is always subject to further negotiation. Indeed, as mentioned above, this should not be surprising because the question of excessive violence is itself a fundamentally (if not *the* fundamental) democratic question.

V. LIBERALIZATION

“[T]he worst injustice, the most bloody and unjustifiable transgressions of justice, are... committed daily in the name of justice, under the protection of the name of ‘justice’.”³⁷¹

Introduction

In *Strange Multiplicity*, James Tully argues that members of culturally diverse societies negotiating between their differences often appear to us as a “strange multiplicity.” He goes on to suggest that the strangeness of this multiplicity is rooted in the fact that “the language of modern constitutionalism which has come to be authoritative was designed to exclude or assimilate cultural diversity and justify uniformity.”³⁷² In a similar way to Tully’s uncovering of the homogenizing impulse within modern constitutionalism, I would like to engage in an archeological exploration of a totalizing logic hidden within the liberal democratic tradition. Unequal vulnerability and asymmetrical dependence often appear to us as problems that are to be overcome and the fact that they do so should cause us to pause and question our approach to theorizing regarding normativity and political community. What hidden assumptions are lying behind and motivating this problematization of difference?

In this chapter, I will suggest that the problematization of difference stems from the fact that our modern, liberal political theory is built upon a dualistic logic that simultaneously individuates and universalizes. That is, I believe we can see a dangerous totalizing impulse that has been grafted onto our democratic theory at the root and runs through the very centre of our notion of justice. This grafting has led to significant tensions within the liberal tradition and, importantly, has also led to some blind spots and negative normative externalities that are diminishing our ability to create more just societies. Part of this project, therefore, involves a

³⁷¹ John Caputo, *Against Ethics: Contributions to a Poetics of Obligation with Constant Reference to Deconstruction* (Bloomington: Indiana University Press, 1993) at 86.

³⁷² James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995) at 58.

focus upon the inclusion of negative normative externalities and, insofar as this inclusion leads to a reform of the metrics used to evaluate progress, may be understood as analogous to ecological economics.

Two apologies should be made at the outset. First, my analysis of the logic at work within the liberal tradition is not intended to be a wholesale rejection of the practical outworkings of the liberal tradition. Although, for example, I contend that a commitment to an egalitarian ideal has many inevitable negative consequences in practical politics, my concern is primarily with the nature of political theorizing that gives rise to this kind of ideal. An appeal to egalitarianism belies the fact that something has gone wrong in our broader approach to democratic theory and normative reasoning. Second, my analysis is not intended to capture the depth and diversity within the liberal tradition. I will move very quickly through a number of very different thinkers without seeking to deal with the details or do justice to the depth of their thought. I do this because I am simply seeking to suggest one way of understanding what it is that allows the liberal tradition to hang together even as it manifests itself in numerous ways.

But, enough apologies, what do I mean by “liberalism”? There is no doubt that liberalism has developed as a varied and complex tradition over approximately the past 400 years. It can be difficult, therefore, to determine and define its key characteristics without slipping into (a) gross oversimplifications and generalizations that distort the tradition and/or (b) simply using methods liberals have developed to describe themselves and their liberal interlocutors. In what follows, I will do my best to avoid both of these traps.³⁷³

Liberalism, in its most general sense, can be roughly defined as a belief and a normative commitment – a *belief* that a multiplicity, if interacting in the correct manner, will come together

³⁷³ Admittedly, I am simplifying beyond my better judgment in this chapter. For, as Russell Kirk has noted, “[a]ny informed conservative is reluctant to condense profound and intricate intellectual systems to a few pretentious phrases; he prefers to leave that technique to the enthusiasm of radicals.” Kirk, *supra* note 7 at 7.

into a singular progressive change combined with a *commitment* to creating the procedures that will make this progression a reality. This belief and normative commitment is seen most clearly in an analysis of the three inter-related “modes” of liberalism:

- a) the constitution of a universal public realm through proceduralism,
- b) the commitment to the ideals of self-determination and equality, and
- c) the cosmopolitan pursuit of progress.

The central mechanism for accomplishing progressive change – “the good” – is a refusal to search directly for it. Instead, the liberal seeks to substitute “the right” for “the good” by subsuming the search for the good under a primarily proceduralist account of normative obligations.³⁷⁴ This substitutionalism of liberalism means that liberal thinkers deny that there is one single correct kind of procedures (i.e. “the good”). Inevitably, however, the three modes actually do contribute to defining and defending a certain kind of procedures. So, as I will argue, not only do these three modes of liberalism all operate according to a common dualistic logic, but it is this logic that at least partially constitutes “the good” of liberalism. Further, this dualistic logic simultaneously individualizes and universalizes and, in so doing, undermines deep pluralism by disallowing the acknowledgement of deep diversity.

Before jumping into this argument, let us give a little more consideration to the concept of liberalism. For, as Charles Taylor has noted, in the last four hundred years liberalism has developed and diversified to include a wide range of values and priorities. When exploring the tradition, therefore, it is important to distinguish between what he calls “ontological issues” and “advocacy issues”. Ontological questions may be thought of as those “terms you accept as ultimate in the order of explanation” whereas advocacy questions “concern the moral stand or

³⁷⁴ As Charles Taylor describes it, these liberals argue that “a liberal society should not be founded on any particular notion of the good life. The ethic central to a liberal society is an ethic of the right rather than the good. That is, its basic principles concern how society should respond to and arbitrate the competing demands of individuals.” Taylor, *Arguments*, *supra* note 34 at 186.

policy one adopts.”³⁷⁵ Taylor is correct to also note that although the two types of questions are not independent of each other, taking a position in one area does not necessarily commit a person to a certain position in the other area. Although a person’s ontological commitments do not directly determine his political priorities, they nonetheless form a kind of background language that determines the *means* of articulating political priorities. Therefore, at least two phenomena can arise from this dynamic connection: (a) a range of policy commitments can stem from any set of ontological commitments and (b) a person can have policy commitments that are out of synch with his ontological commitments. In other words, there is no direct or necessary one-to-one linkage between commitments to ontology and policy.

But if the liberal tradition includes such a wide range of perspectives on both ontology and policy priorities and there is no direct or necessary connection between commitments to ontology and policy, how am I justified in saying that it possesses a dualistic logic that problematizes difference? Am I being excessively reductionist? I do not believe so. First, there is *something* we call the liberal tradition that involves agreement and disagreement regarding both ontological and policy issues; there is some conversation that possesses enough consistency throughout history to identify it as a coherent tradition. And, I am arguing that it is actually an acceptance of something like what I am calling dualistic logic that serves to hold the tradition together – that helps make liberalism a coherent conversation. Second, because there is a great deal of diversity within the liberal tradition, it is important to approach it from a number of angles if we are to tease out a common thread running through various strains of thought. And, indeed, this is the reason for my approaching liberalism through three “modes”. Third, I am not suggesting that I am able to reduce the entire tradition down to one simple progression of thought. A tradition is fundamentally irreducible and its central logic is persistently negotiable.

³⁷⁵ *Ibid* at 181, 182.

We have good reason, therefore, to seek out a “logic of liberalism” but equal reason to remain always attentive to the need for epistemic humility.

With the challenges of identifying the central logic of a tradition in mind, let us move on to consider one of the ways we might approach liberalism. Let us begin with a discussion of liberalism’s procedural turn and what the prioritization of procedure might mean not only for our understanding of the tradition as a whole, but also for how it fosters a persistent problematization of difference.

A. The Proceduralist Turn and Dualistic Logic

Let us now turn to consider liberalism more directly. For, I would like to argue that it is in liberalism that we can best see the method of theorizing about political relations that facilitates the advancement of protocolic control. And, in so doing, liberalism also fuels the acceleration outlined in chapter one above. This should not be surprising on first blush, of course, because both protocolic control and liberalism depend upon the same kind of technological world – a world that divides and unites at the same time. But, before we get too far ahead, what do I mean by “liberalism”? Liberalism can be provisionally defined as a commitment to building societies that realize a vision of all persons as free and equal individuals. The central mechanism for accomplishing this within the liberalism that is dominant today is a substitution of “the right” for “the good” – i.e. the search for the good is subsumed under a primarily proceduralist account of normative obligations.³⁷⁶

³⁷⁶ As Charles Taylor describes it, these liberals argue that “a liberal society should not be founded on any particular notion of the good life. The ethic central to a liberal society is an ethic of the right rather than the good. That is, its basic principles concern how society should respond to and arbitrate the competing demands of individuals.” Taylor, *Arguments*, *supra* note 34 at 186. Also see Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982) at 1. Therefore, the state is typically understood as possessing a legitimate claim to monopolized violence only if we can (at least theoretically) trace its origin back to a set of contractual procedures that granted individuals the opportunity to lose some individual liberty in order to gain some degree of collective security and prosperity. This kind of contractarianism is seen most explicitly, of course, in the work of Rousseau. For example, see Rousseau, *supra* note 124 at 56, 57. This double contract with all others (i.e. as the sovereign) and with the sovereign (i.e. as an other) represents a political manifestation of the constructivism that began with doubt

In “Cross-Purposes”, Taylor rightly highlights the differences between issues of ontology (atomism-holism) and issues of policy (individualism-collectivism) in order to reveal the depth of the complexity involved in the debate between liberals and communitarians. However, there exists yet another level of complexity that he seems to miss in his analysis. A further category should be added to ontology (i.e. structuralism) as well as a further distinction to issues of policy (i.e. conservatism-liberalism). He focuses on the slippage between ontology and policy, but fails to recognize that there is actually a key distinction that is making, I would argue, an even greater difference between the way one understands the *changes* in the relations between individuals, collectives, and, importantly, larger patterning processes that shape the systems of meaning within which we live as historical beings. Indeed, the political implications of one’s understanding of these issues surrounding the various kinds of change in space/time are dramatic. Therefore, the variables involved in the debate could more accurately be outlined in an enhanced table such as the following:

	Socio-Phenomenological		Eco-Logical
	Ontological Atomism	Ontological Holism	Ontological Structuralism
Political Individualism			
Political Collectivism			
Political Conservatism			
Political Liberalism			

Figure 3

This added diachronic variable of relationality allows us to draw attention to the difference between two different kinds of ontological analysis – what I would call “socio-phenomenological” and “eco-logical” ontologies – and highlights the nature of the methodology

regarding the benevolence of God and the attempt to make epistemology a distinct and ultimate ground of philosophy. See Descartes’ re-conception of God as a demon (the *dieu trompeur* in Descartes’ *Meditations*) who is “supremely powerful and clever, who has directed his entire effort at deceiving” such that the entire external world could be an illusion. Descartes, *supra* note 266 at 16.

employed throughout the discussion of *res ecologia* above as well as the rest of this chapter.

By “socio-phenomenological” I mean a focus on the development of, and relations between, subjectivities or the social and cultural allegiances that might be described in inter-subjective, sociological terms. So, for example, Taylor focuses on the realm of socio-phenomenological ontology when he writes of a “we-identity” that is different from an “I-identity” and the consequent differentiation between common goods and convergent goods.³⁷⁷ This kind of ontological analysis sets out a language that determines a certain means of articulating political relations or the kinds of choices one can make in developing political priorities. For example, the “we-identity” accords more closely with a conception of positive freedom (e.g. participation in the public life of the republic) whereas the “I-identity” fits more closely with negative freedom (e.g. lack of restrictions).³⁷⁸ Notice, though, that this experiential ontology captures *a certain kind of phenomena* – relations between persons and groups of persons.

In contrast, by “eco-logical” I mean an eco-systems (embodied, relational, systemic) approach which, instead of focussing upon the experiences of subjects in social life, seeks to develop a language of the shifting patterns of being-in-the-world and endeavours to articulate, for example, how changes in bodies and environments change the nature of thought and action. Or, how changing rates of relational patternings shape the systems or structures of meaning within which we live and have our being.³⁷⁹ Like the discussion of *res ecologia* above in which we

³⁷⁷ The “we-identity” that Taylor writes of should be differentiated from the civic nationalism of someone like Pierre Trudeau or the more communitarian liberalism in Will Kymlicka’s notion of “shared identity” in *Multicultural Citizenship*. Whereas Trudeau sought to construct constitutional patriotism through an allegedly neutral and legal common citizenry united under the *Charter of Rights and Freedoms*, Kymlicka takes Taylor’s notion of “deep diversity” more seriously and seeks a kind of multi-national or community-accommodating federal state. See, for example, Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995) at 189; Webber, *supra* note 34; and Charles Taylor, “Shared and Divergent Values,” in *Options for a New Canada*, ed. by Ronald Watts & D. Brown (Toronto: University of Toronto Press, 1991) 53-76.

³⁷⁸ See Taylor, *Arguments*, *supra* note 34 at 192, 193.

³⁷⁹ We might compare this kind of relationality with what George Grant describes as “mutual orgasmic intercourse

described eco-logical as the ordering principle of the spaces within which we dwell, so too does this approach focus us upon the patternings of ourselves and our world. This is, of course, in keeping with the kind of structural causation I outlined in chapter two above – i.e. a focus on the structure of things rather than simply the relations between things. The analysis of protocolic control outlined above, for example, is an attempt to engage in this kind of ontological analysis; it is an attempt to develop a language to recognize and assess changes in the rates of change within and around us. Ultimately, it is this kind of analysis that allows us to focus in on the real differences between conservatism and liberalism as well as the connections between liberalism (whether it is rooted in ontological atomism or holism) and the violence of protocolic modulations outlined above.

With this brief glimpse into the different methods of approaching political traditions and the impact these different methodologies have upon our understanding of political ontologies in mind, let us return to our discussion of liberalism. Let us consider the logic at work within liberalism’s proceduralist turn and the dangers that arise when the eco-logical ontologies (the ordering principles of the structures and processes) of our political traditions go unexamined. Liberalism, in its most general sense, is rooted in the belief that either (a) there is no natural ordering process in the world, or (b) if there is a natural ordering process in the world, it is

[which] cannot finally be brought under the rules of contract, because it takes one beyond the realm of bargains.” Grant, *Justice*, *supra* note 43 at 11. Or, we might consider Bilgrami’s notion of engaging with the world with the understanding that the world is full of normativity because values are not created, but discovered through our engagement with the world around us. See Bilgrami, “Mentality of Democracy”, *supra* note 193 at 23-63. Liberalism’s procedural turn relies upon the belief that the values present within normative judgement are either constructed or posited by humans rather than a part of the world within we as humans live. Therefore, it is believed that “though we are capable of bad things, the bad in us can be constrained by *good politics*.” See *ibid.* at 25. Bilgrami rightly traces the origin of this disenchantment of the world back to Hume and Kant in which values are either created and projected onto the world (Hume) or within the abstract noumenal realm of pure will and practical reason (Kant). See *ibid.* He then outlines a very different approach to politics in Gandhi. See Akeel Bilgrami, “Gandhi, The Philosopher” (September, 2003) 38:39 *Economic and Political Weekly* 4159-65. However, this is a misunderstanding of politics. Our evil cannot be buried beneath good politics; it will always resurface because the process of politicization outlined above involves engagements (localizations) in relation to our own bodies. So, evil inevitably comes out in our politics because there is evil within our selves as embodied beings-in-the-world. And, taking evil seriously enough to understand it as going down into the inalienable depths of our being works as a check upon our impulses towards developing or being complicit in narratives of progress.

epistemically inaccessible with any adequate degree of certainty.³⁸⁰ If this definition of liberalism is correct, substitutionalism (i.e. prioritizing the “right” over the “good”) is the key identifier between liberalism and conservatism. Namely, liberals are those who engage in a substitution of the “right” for the “good” and conservatives eschew the taking of this proceduralist turn by putting the good before the right.

But, an important point of clarification should be made here. Conservatism also involves the use of “right” procedures (as, indeed, all political thought does). The question, then, is not *whether or not* one seeks to develop procedures for living together, but *how* one goes about developing these procedures and what relation they have to articulations of the good life. For conservatives, it is essential that procedures are directly derived from, and subservient to, a search for the good life. It is not a matter, therefore, of either completely abandoning the good and adopting a search for the right procedures or completely abandoning procedures in a bare, parochial, or chauvinistic assertion of one’s conception of the good.³⁸¹ What I am calling the “proceduralist turn” or “proceduralism” is a description of the logic behind the prioritization of the right ahead of the good and a recognition that folks engage in this turn to varying degrees.

If, as we discussed regarding the various methods of viewing political ontologies, liberalism includes such a wide range of varying perspectives and policy priorities, how can we draw a connection between liberalism and protocolic control? One can approach the relationship between the right and the good in different ways as a liberal but, to the degree that one is engaging in the proceduralist turn, one is becoming subject to a dualistic logic and, consequently, is unable to effectively articulate resilient ways of life that are able to withstand the rapid

³⁸⁰ Further, because liberalism is a political orientation (or, a political outworking of ontological and epistemological beliefs), (b) tends to equate with (a) – i.e. if there is no meaningful epistemic access to the ordering, for all political intents and purposes, it does not exist.

³⁸¹ As Schumacher notes, “[a]ll human activity is a striving after something thought of as good. This is not more than a tautology, but it helps us to ask the right question ‘Good for whom?’...” E.F. Schumacher, *Small is Beautiful: A Study of Economics as if People Mattered* (London: Vintage Books, 2011 [1973]) at 74.

modulations of protocolic control. For, it is my contention that the procedural turn is animated by a dualistic logic.

As we will remember, dualistic logic involves a simultaneous individuation and totalization. We can see dualistic logic at work within the proceduralist turn insofar as actors and procedures are defined and constituted in *direct and opposing relation to each other*. The actors to be governed by the procedures are individuated and, simultaneously, the nature of their participation is totalized in universalized procedures (or, at least, the universalized character of the procedures).³⁸² Dualistic logic simultaneously individuates and totalizes in its abstraction away from the relational patternings that make up our being in the world. To the degree that we have abandoned the search for the good life in favour of the search for the right procedures that can govern behaviour sufficiently to allow everyone to live together, we have been led into the dualistic, individuate/totalize (or assimilate/exclude) logic. In this manner, the dualistic logic at work within the proceduralist turn facilitates the eclipse of its normative input – i.e. an obscuring of the politics of procedural change, the politics of protocolic control. But, in order to understand this normative eclipse, let us briefly consider the underlying abstractionism of protocol and how this abstraction relates to proceduralism...

The simultaneous individuation and totalization – i.e. the mutual definition or constitution of the individuated actor and the totalized procedures – eclipses mediating relations of dependence and vulnerability that make up the normative worlds of beings-in-the-world. (Individuation is a process of normative reasoning in which, at some point, it is necessary to consider a person or thing in isolation from its environment.) Dualistic logic hollows out or

³⁸² It should be noted that the procedures themselves could differ from region to region or in applicability to various actors. However, they will take on a common character nonetheless. For example, for different peoples within an egalitarian state, the ways they relate financially to the state could be different depending upon their communal differences. However, the overarching impulse or *telos* of the procedures will be the same. The universalization, then, is somewhat less direct, but it is universalization nonetheless.

dissolves the relations of dependence and vulnerability by setting up symmetrical relations between an individuated subject and a totalized subject (object). This symmetry denies dependence and, consequently, denies normative relations and, ultimately, the possibilities of searching for the good life. Normativity is a patterning that creates a history. However, there is no patterning in dualism, there is only abstract and a-historical standardizations. The tyranny of the now. A patterning is historical and, because it has a past-present-future trajectory, allows for the projection into the future and thus a weightiness of normativity. As MacIntyre astutely notes regarding the historicity of our lives that gives us our ability to make moral judgments, [I]like characters in a fictional narrative we do not know what will happen next, but none the less our lives have a certain form which projects itself toward our future.”³⁸³ The moral view – rather than being a view from eternity, a view from nowhere, or a view from the noumenal self – is a view from within history, it is a patterning of being-in-the-world. Normative judgment, for good or for ill, is in this sense quite literally an exercise of one’s historic prejudices rather than an individual operating under the constraints of impartiality.³⁸⁴

As we have seen in chapter three, modern science was founded upon the elevation of mechanistic causation as well as the notion that natural systems were governed by abstract or objective laws that were deterministic in their causal connections. We also observed that this kind of reductionist approach to causation led to the idea that behaviour in complex systems could be predicted if one simply had enough information. In contrast, the structural causation approach to complex systems means that the past influences and changes propensities, but does

³⁸³ MacIntyre, *supra* note 99 at 201. As Taylor explains regarding Hegel’s notion of *Sittlichkeit*, “*Sittlichkeit* refers to the moral obligations I have to an ongoing community of which I am part. The crucial characteristic of *Sittlichkeit* is that it enjoins us to bring about what already is. [T]he common life which is the basis of my *sittlich* obligation is already there in existence. It is in virtue of its being an ongoing affair that I have these obligations; and my fulfillment of these obligations is what sustains it and keeps it in being.” Charles Taylor, *Hegel and Modern Society* (Cambridge: Cambridge University Press, 1979) at 83.

³⁸⁴ See Sandel, *supra* note 376 at 180. Also, compare with Jeffrey Stout’s explanation of Kant and Rawls’ notion of the moral point of view in Jeffrey Stout, *The Flight from Authority: Religion, Morality, and the Quest for Autonomy* (London: University of Notre Dame Press, 1981) at 232.

not determine – the future is open. This indeterminacy, when it comes to speaking of normative relations, is rooted in reciprocity, a mutual giving of the self where the self is given without the certainty of return. This lack of predictability cannot be bargained or negotiated because it is fundamentally indeterminate in its asymmetry. Normativity, therefore, is a trajectory without certainty – a relationality that is doubly asymmetrical and, consequently, dramatically out of synch with dualistic logic.

In order to govern or control in an environment of complexity and diversity, protocol must transcend the variations, must create symmetries to rise above the asymmetries of being-in-the-world. Relational patternings must be co-ordinated and synchronized. But, this kind of synchronization can only take place by lifting us out of our finite, corporeal bodies into a realm of abstract, totalizing unity. If universal coordination and effective communication is to take place, the local and particular in ecological, social, and spiritual relations must be transcended through a process of abstraction. It is only in the abstract that universal coordination and synchronization can take place. So, if effective coordination is to take place through space/time, we must – at some level – move away from the life-worlds of persons to minimize asymmetry and specificity while maximizing symmetry and universality. We must engage in a process of de-personalization, de-localization, de-territorialization, and atomization by simultaneously individuating and totalizing.³⁸⁵

This kind of synchronization, for example, can be found in the requirement that we commit to liberal ideals if we want to engage in a process of legitimizing our political actions. In other words, liberalism does not allow for the recognition of any action as legitimate political action unless it is a part of a certain kind of proceduralism. However, as we will see, the

³⁸⁵ A dualistic logic in which violence in an abstraction and we are caught up in “displacement without a destination time or space” Paul Virilio, *Speed and Politics: An Essay on Dromology*, trans. by Mark Polizzotti (New York: Semiotext(e), 1986) at 40.

proceduralism required for legitimate action is so demanding that it serves to either assimilate or exclude and this substitution of the right for the good allows no more than a thin pluralism.

Liberalism, therefore, is fundamentally unable to develop a thick pluralism of the kind needed to avoid fuelling the domination of protocolic control at work in the modern world.

All too often, only those who accept liberal ideals – i.e. consider all persons to be self-determining individuals deserving of equal concern and respect – are understood to be engaged in projects of legitimizing their exercise of power. Leaving aside for now what *is* legitimate, within the liberal approach one cannot even begin to explain what *might* be legitimate unless one commits to these core liberal values up front. So, we can see a standardization already taking place in proceduralism as a requirement for legitimate political action – either you are some kind of liberal or you are simply unable to begin legitimizing power. This is the totalitarianism underlying liberalism – assimilate or exclude.

Much of liberal democratic theory has centered on trying to bring liberal ethical norms and popular sovereignty together in such a way as to establish a kind of deliberation that is thought to be both rational and democratic at the same time. In order to accomplish this, rationalist liberal theoreticians like Rawls and Habermas (and those who follow in their theoretical footsteps) employ various methods of limiting the deliberation to ensure liberal ideals are adequately preserved throughout the deliberative process. That is, they seek an ideal theoretical realm that is not subject to the pluralism of values that we find in everyday life and where moral consensus can be reached without the exclusion of persons. This process of limiting deliberation, however, is highly problematic insofar as they are simply unable to find consensus without significant exclusions. In other words, Rawls and Habermas' attempts to develop a meta-political position effects a process of de-politicization in which the limits of democratic political conduct are heavily policed.

One of the places where we can see this assimilate-or-exclude gatekeeping is in the requirement that all reasons for political action be undergirded by *public* reasons or *open participation* in *public* forums. Or, one must at least hold reasons that are translatable into public reasons should the need arise.³⁸⁶ This is, in fact, a kind of gatekeeping that is used by liberals to cover their political tracks. In other words, a refusal to recognize the legitimacy of any political action that is not contributing to an overarching project of *constructing universal procedures* for living together in peace obscures the fundamentally political nature of a commitment to liberal substitutionalism.³⁸⁷ And, the political nature of substitutionalism is made manifest when substantive disagreement about the good arising from, say, traditional communities is stretched and twisted into a process of universal comparison through “public reasoning”. That is, “the good” becomes simply “one good among many” such that someone seeking to pursue “the good” must instead begin understanding themselves as pursuing “a good” within the terms of “the right”. The right, however, always also represents the good no matter how much one attempts to deny the search for the good.

For a hint of the good lurking behind liberalism’s search for the right, consider the commonality (or should I say overlapping consensus) between Rawls and Habermas. For example, both Rawls and Habermas seek to use a certain method to arrive at a set of principles that are to guide us into an understanding of a just society. For Rawls, this means a thought experiment – the veil of ignorance. For Habermas, this means a transcendental uncovering of the

³⁸⁶ For example, for Rawls, public reason is (1) “the reason of the public”, (2) “its subject is the good of the public”, and (3) “its nature and content is public”. Rawls, *Political Liberalism*, *supra* note 31 at 213. In this sense, his notion of public reason rests upon two key assumptions regarding commonality: (1) that it is directed toward the good of society (i.e. as a whole), and (2) it is engaged in by persons sharing a common/equal citizenship. See *Ibid* at 213. Also see Rawls definition of reasonable which is rooted in the same two principles of commonality. He writes, “[p]ersons are reasonable in one basic aspect when, among equals say, they are ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so. Those norms they view as reasonable for everyone to accept and therefore as justifiable to them....” *Ibid* at 49.

³⁸⁷ As Mouffe has insisted, “drawing the frontier between the legitimate and the illegitimate is always a political decision.” Mouffe, *supra* note 32 at 121.

structures of communication. But, both Rawls and Habermas inevitably build the key principles of liberalism into their method itself. In other words, both develop a method upon the assumption that all persons are to be considered free, equal, and rational. Not only are they building the principles into the methods, but both of their methods also assume (or build in) the notion that the principles of a just society can be spoken of in abstract and impersonal terms – i.e. as if justice and moral worth were ascertainable apart from real-life relations of persons. It is behind this abstractionism that we can find their hidden Kantian metaphysics regarding human nature, their *de facto* metaphysics of persons as atomistic (i.e. interchangeable at core). And, interestingly, there is a deontic shift in their abstractionism that further belies their Kantian commitments. For, when we abstract away from embodied persons and their inherently messy political relations, interests and inclinations are emptied of their empirical content and thereby become universal duties – i.e. for liberals in the Rawlsian and Habermasian schools of thought, commitment to the principles of a just society (e.g. considering persons as self-determining and equal individuals) is a duty much like that produced by Kant’s categorical imperative.³⁸⁸ In other words, it is not the relationship between real persons that stimulates and shapes the political norms (indeed, both those who are theorizing and those who are being theorized about are considered free and equal individuals), it is the positive assertion that liberal principles hold true.³⁸⁹ Importantly, Rawls and Habermas did not suppose that their methods were neutral in an absolute sense. But, they deem them appropriate because of the results to which they lead (i.e. the principles of a just society). Of course, though, this is really a process of circular reasoning that is intended to justify liberal principles and preserve them against any doubt caused by

³⁸⁸ See May, *supra* note 297 at 9, 10.

³⁸⁹ As Rawls himself writes, “[t]he original position may be viewed, then, as a procedural interpretation of Kant’s conception of autonomy and the categorical imperative. The principles regulative of the kingdom of ends are those that would be chosen in this position, and the description of this situation enables us to explain the sense in which acting from these principles expresses our nature as free and equal rational persons. Rawls, *supra* note 31 at 256.

democratic political thought. And, the standardizing abstractionism this circular reasoning employs actually provides the foundation for structural domination through protocolic modulations.

Thus, proceduralism is problematic to the degree that one presumes the demands it places upon people to be pre-political or somehow trans-political. For example, Rawls builds equality into his theory of reasonable pluralism such that uniformity and commonality are held to be unquestionable if one is to be considered reasonable or even dealing with a political rather than personal matter. Any request or demand for unequal treatment is, by definition, held to be unreasonable by Rawls and therefore not a request or demand that is up for political debate.³⁹⁰ In short, genuinely political aspirations which are always requests/demands for differential treatment or some kind of distinction are disallowed and discounted from the outset because commonality is required for entrance into the realm of the political.³⁹¹

More recently, Anthony Laden has attempted to reconcile liberalism and identity politics with a Rawlsian version of liberalism termed “deliberative liberalism.”³⁹² He seeks a kind of liberalism that is more open to difference and a deeper pluralism and looks to reasonable political deliberation as the basis for the development of a common political will.³⁹³ In outlining the

³⁹⁰ Rawls assumes equality as an ideal of democracy from the very beginning and builds his understanding of “public,” “reasonable,” “consensus,” and “political” upon this assumption. It is not surprising, then, when he understands a well-ordered society to be one that is rooted in uniformity – i.e. “a society in which everyone accepts, and knows that everyone else accepts, the very same principles of justice.” Rawls, *Political Liberalism*, *supra* note 31 at 35. Further, in *A Theory of Justice*, he describes equality as “essentially justice as regularity” - i.e. it “implies the impartial application and consistent interpretation of rules according to such precepts as to treat similar cases similarly...” Rawls, *supra* note 31 at 504.

³⁹¹ Rawls' unquestioned, metaphysical commitments that are held to be beyond the realm of politics ensures he serves as an apologist for the status quo. For example, his demand for public reason detached from moral/religious/philosophical/emotional perspectives contains within it an inherent, tacit acceptance of current power structures. For, as soon as “the political” and “the social” are divided and held to be necessarily distinct, genuinely political concerns and demands are drained of their passion and dramatically limited in their scope of potential application. For example, see Rawls, *Political Liberalism*, *supra* note 31 at 14.

³⁹² See Anthony Laden, *Reasonably Radical: Deliberative Liberalism and the Politics of Identity* (Ithaca: Cornell University Press, 2001).

³⁹³ He writes, “[t]hrough what I call reasonable deliberation, people who do not have any identity in common can come to share an identity and thus a will.” *Ibid.* at 12.

notion of deliberative liberalism, Laden does not stray too far from Rawls for, by requiring “reasonable” deliberation, Laden means that deliberators “must exchange only public reasons” and (ironically) suggests that exclusion and assimilation undermine the reasonableness of deliberation.³⁹⁴ In other words, political deliberation demands the giving of public reasons such that, if the identity of a public citizen does not square with some other aspects of a person’s identity, the private elements of a person’s identity must be abandoned or, at least, fenced off in some manner. However, importantly and to his credit, his requirements of non-exclusion and non-assimilation also mean that the demand for abandonment or fencing-off cannot be overly burdensome to individuals.³⁹⁵

This attempt to deepen the very thin pluralism of Rawls is certainly a step in the right direction, a step away from standardization. However, the proceduralist turn in Laden’s work continues to undermine the thickening of the pluralism in a denial of politics. We can see this in the restrictions he places upon deliberation which seem to be rooted not only in his status quo approach to politics, but also in his political ontology regarding citizenship. He outlines what he calls a “political conception of citizenship” - i.e. a concept of citizenship that is built upon a form/content dualism. Citizens have form features (elements of identity that are determined by social systems and, in turn, place limits on the development of content features) that are beyond the reach of politics and they have content features (elements of identity that are contingent features – the reasons an identity authorizes) that are deliberatively constructed.³⁹⁶ Personal identities, then, are “identities with minimal form features” and social identities are “identities all of whose content features are determined by their form features”.³⁹⁷ However, not only are the form features determined outside politics, but the content features are constructed through a

³⁹⁴ *Ibid.* at 13.

³⁹⁵ See *ibid.* at 14.

³⁹⁶ See *ibid.* at 108, 112, 113.

³⁹⁷ *Ibid.* at 110.

deliberative process that is highly artificial and limited to universal considerations. Therefore, Laden leaves us with a notion of citizenship that is excessively focused on public/universal features of identity and downplays collective identities that are social, but much narrower than universal. That is, the individual content of identity is said to be contingent and open to change by the form of identity that is common to all within society.

Laden sometimes seems to come close to addressing the problem I am raising here, but then goes on to write “[s]ince we are understood to be reasoning together as citizens, public reasons are the appropriate sorts of reasons to offer” and, further, “if we are to deliberate reasonably with our fellow citizens, we must regard them as equal.”³⁹⁸ But, that is precisely the point – the assumption regarding reasoning together *as citizens* is what determines from the outset that the political engagement must be on liberal terms. He builds liberalism into his conception of deliberation and then attempts to demonstrate how pluralistic his notion of deliberation is. But, of course, it is only pluralistic insofar as everyone is already willing and able to be liberals. Further, the fundamental commitment to commonality underlying the procedural turn becomes quite clear when Laden describes a theory of reasonable deliberation is one that “analyzes the intrinsic character of deliberation rather than its reliability or the choices it yields.”³⁹⁹ This presumption of underlying unity within proceduralism has significant implications for his understanding of legitimate governance. For example, he writes, “[a] government that acts on nonpublic reasons as if they were public reasons requires that some citizens submit to its authority without consenting to it. It is thus not acting legitimately.”⁴⁰⁰ By arguing in this way, Laden is actually suggesting that only states committed to liberal values may

³⁹⁸ *Ibid.* at 120 and 114. Laden also states that “[p]olitical deliberation is reasonable only when we both offer public reasons and are prepared to enact only those principles and policies that are supported by reasons taken up and endorsed by our fellow citizens. Treating the uptake of our fellow citizens in this way is what is involved in treating them as free and equal.” *Ibid.*

³⁹⁹ *Ibid.* at 75.

⁴⁰⁰ *Ibid.* at 105.

be legitimate. Simply put, “the public” often seems to be another way of saying “the state.”⁴⁰¹

Thus, public reasons are reasons one gives as a citizen – i.e. as a member of a state made up of a common citizenry.⁴⁰² Public debate on political matters that is aimed at promoting or defending an interest narrower than the common citizenry within a state is not to be understood as serving a legitimating role through reasonable political deliberation. In addition, reasonable political deliberation must be directed toward questions of the good of all citizens and must be concerning the power of the state.⁴⁰³ By demanding commonality in their proceduralism both Rawls and Laden build a kind of individual-state dualism (and state-centrism) into their systems of thought.

Those committed to liberal proceduralism feel compelled, as Jeffrey Stout explains, “to reify a sort of all-purpose, abstract fairness or respect for others because [they] cannot imagine ethical or political discourse *dialogically*.”⁴⁰⁴ There is, however, no reason why we should remain wedded to the Kantian notion of universal normativity we see at work in proceduralism. Indeed, for the expressivist, for example, norms are not universal abstractions but

creatures of the social process in which members of a community achieve mutual recognition as subjects answerable for their actions and commitments. The social process in which norms come to be and come to be made explicit is dialectical. It involves movement back and forth between action and reflection as well as interaction among individuals with differing points of view. Because this process takes place in the dimension of time and history, the beliefs and actions one is entitled to depend in large part on what has already transpired within the dialectical process itself.⁴⁰⁵

In contrast, proceduralism operates within a conceptual framework that forecloses against the possibilities of “epistemological and sociological dimensions of discursive practices” that

⁴⁰¹ Considering his clear concern for the status quo, however, this perverse kind of conservatism within Rawls should not be too surprising. For example, see Rawls, *Political Liberalism*, *supra* note 31 at xviii.

⁴⁰² See Laden, *supra* note 392 at 13, 101.

⁴⁰³ See *ibid.* at 102-104. When the state is understood as uniting individuals in political community, the only justification for the despotic means of unification can be found in egalitarianism. However, the justification then becomes a further contribution to the problem in need of justification. That is, the more the social contract is justified, the more it needs to be justified. Hence, the modern welfare state, and now the reach of the market state, expands at a furious rate.

⁴⁰⁴ Jeffrey Stout, *Democracy and Tradition* (Princeton: Princeton University Press, 2004) at 74.

⁴⁰⁵ *Ibid.* at 78.

necessarily give us a multiplicity of norms and normativities.⁴⁰⁶ The line between “political” and “non-political” is set out in advance through the process of developing the right procedures. Put another way, the proceduralist turn actually betrays an unwillingness to accept the politics of numerous communities and represents a search for the means to construct a shared, communitarian politic.⁴⁰⁷ It is wrong, therefore, to pit communitarianism against liberalism; the proceduralism of liberalism ensures a search for a *universal* community united by common terms and practices. But, more on this below...

To put it tersely, the proceduralist turn leads inevitably to a thin pluralism. Perhaps the most interesting kind of thinker to consider here is the one who – using the variables outlined by Taylor and then modified by myself – is an ontological holist and a political liberal. Indeed, it should be quite obvious how the one who is committed to ontological atomism and political individualism cannot be committed to a thick notion of pluralism. It is the more difficult case of the one who, for example, understands that a person’s political priorities are shaped within the interplay between a cultural environment that is not of their own making and a reflexive engagement with the political language that takes place in and through history.⁴⁰⁸ This person, therefore, believes in the existence of irreducible social goods that are created along with the formation of what Taylor might call a “we-identity”.⁴⁰⁹ This kind of collectivist-liberal focuses on the socio-phenomenological ontology in an attempt to combat atomistic ontologies and extreme proceduralism but, due to this sociological approach, is nonetheless inevitably drawn into the proceduralistic turn as a kind of pragmatic liberal. The pragmatic liberal, therefore,

⁴⁰⁶ See *ibid.* at 74.

⁴⁰⁷ See Nicholas Wolterstorff & Robert Audi, *Religion in the Public Square: The Place of Religious Convictions in Political Debate* (London: Rowman & Littlefield, 1997) at 109.

⁴⁰⁸ Webber, *supra* note 155.

⁴⁰⁹ See, for example, Taylor, *Arguments*, *supra* note 34 at 181ff. and 127ff. This notion of irreducibility may be contrasted with Mouffe’s description of the more typical liberal conception of pluralism where “we live in a world in which there are indeed many perspectives and values and that, owing to empirical limitations, we will never be able to adopt them all, but that, when put together, they constitute an harmonious and non-conflictual ensemble.” Mouffe, *supra* note 32 at 10.

imposes an artificial, formalized pluralism because the ability to develop a deeper, more authentic pluralism is destroyed to the degree that he abandons the primacy of the good.

I am suggesting that to the extent that one puts the right before the good, one is drawn into a totalizing logic that precludes a thick pluralism. There is a difference, therefore, between putting the good first and putting the right first when it comes to being a pluralist. This is because the difference between the right and the wrong operates through a different logic than the difference between the good and the bad. The search for the right is dualistic in a way that the search for the good is not or, put another way, the search for the good can be dialogical in a way the search for the right cannot be. Perhaps ironically (and surprisingly to the liberal), the logic of the right is a search for a universal or totalized community populated by individual actor-subjects defined in relation to the totality-object. The right must be totalized because, as soon as we are able to seek multiple procedures for negotiating the nature of the good (i.e. multiple “rights”), questions concerning the right procedures suddenly are seen for what they truly are – questions of the good. A substitution of the right for the good can only be thorough if one seeks *the* right (and, hence, *the* good). A search for the good – if properly understood as a dialogical endeavour – is actually governed by a discursive logic of multiplicity.⁴¹⁰

The dualistic logic of the right stems from the kind of thinking Deleuze and Guattari have

⁴¹⁰ There is also a dynamic, two-way causation at work within the search for the good that facilitates a deep pluralism. The mind and the body change together in a dynamic, two-way causal relationship and the abandonment of this mind-body causal connectivity has led to unhelpful (if not outright harmful) conceptions of pluralism that are thinned out on abstractions of common thought and practice. There is a two-way relationship between techno-environmental change and psycho-social change such that changes in our patterns of life change our patterns of meaning, changes in our patterns of meaning change our patterns of life, and so on... Therefore, in order to keep pace with a rapidly changing world, we had to leave behind our conceptions of natural law that rooted us in commitments to patternings outside ourselves (individually and socially). We had to move away from the idea that our environment and our very selves possessed a natural ordering that undergirds our conceptions of morality because this kind of thinking was out of synch with the rapid modulations of our modern life. Likewise, however, our abandonment of natural law as an attempt to adapt to change around us in turn served to inspired even greater rates of change. Without attention to this two-way change, we might be tempted to assume (a) that our ability to change our way of thinking is limited only by our imagination, or (b) that a change in our patterns of thinking is the primary cause in a change in our patterns of living.

described as arboreal or tree-like and, as such, is unable to comprehend genuine multiplicity. As Karena Shaw explains, thinking like a tree “begins with the assumption of a strong central unity and proceeds through a binary logic of division. Through this process it achieves the appearance of diversity, multiplicity, and universality, but this appearance is always dependent on a primary unity.”⁴¹¹ There can, within this mode of thought, be no fundamental or deep articulation of multiplicity and no striving for an ordering outside oneself because there is a persistent re-iteration of the original unity throughout the thought process. The original unity controls or totalizes all along the way. As Deleuze and Guattari write, “[b]inary logic is the spiritual reality of the root-tree. [And], this system of thought has never reached an understanding of multiplicity: in order to arrive at two following a spiritual method it must assume a strong principal unity.”⁴¹² Or, again, they write

Multiplicities are rhizomatic, and expose arborescent pseudomultiplicities for what they are. There is no unity to serve as a pivot in the object, or to divide in the subject. There is not even the unity to abort in the object or ‘return’ in the subject. A multiplicity has neither subject nor object, only determinations, magnitudes, and dimensions that cannot increase in number without the multiplicity changing in nature (the laws of combination therefore increase in number as the multiplicity grows).⁴¹³

Although Deleuze and Guattari go too far in their understanding of the implications of the falsity or artificiality of multiplicities in arborescent thought, their central point of critique is well-placed.⁴¹⁴ A dualistic logic of individuation and totalization cannot genuinely comprehend multiplicity. Or, in more policy-oriented terms, the individual-state logic at work within liberalism does not allow it to de-problematize difference.

The violence of dualistic logic and its politic of individual-state relations, when seen

⁴¹¹ Shaw, *supra* note 345 at 161.

⁴¹² Gilles Deleuze & Félix Guattari, *A Thousand Plateaus*, trans. by Brian Massumi (Minneapolis: University of Minnesota Press, 1987) at 5.

⁴¹³ *Ibid.* at 8.

⁴¹⁴ Deleuze and Guattari go too far when they begin promoting the notion of an immanent plane in which, for example, there is no subject-object distinction. See *ibid.* at 8.

through this contrast between arboreal or network modes of thought, is revealed as a kind of violence that is difficult to pinpoint because it universalizes while simultaneously positing the legitimacy of its universalization. As Deleuze and Guattari note, this kind of state violence presents itself as pre-accomplished so “it consists in capturing while simultaneously constituting a right to capture.”⁴¹⁵ The existence of multiple, horizontal communities of thought and practice will always stand in tension with the possibilities that a direct relation between the individual and the state will offer in seeking to create a society where all people are free and equal individuals.⁴¹⁶

The form of thinking underlying the proceduralist turn builds upon ontological assumptions by requiring all thoughts to be structured or standardized according to the individual and the totality. The entire structure of thought, therefore, stems from the base ontological assumptions in a kind of necessary fashion such that, if you accept the assumptions, the whole structure will follow. The foundational ontologies, then, are not held to be constituted as political commitments because the logic of structuration relies upon unidirectional or necessary causation. This form of life – it should be becoming clear by now – advances the standardizations of protocolic control.⁴¹⁷ The challenge, then, is to develop rhizomatic (or network) thought that resists this totalizing unity with multiple sites of localization, to deepen pluralism through a discursive logic of seeking the good in and through embodied, historical beings-in-the-world.

To conclude the discussion of the first mode of liberalism, let me sum up my argument so far:

⁴¹⁵ *Ibid.* at 447, 448.

⁴¹⁶ As Shaw writes, the state “operates through the organization of power into concentric systems of resonance, structures which produce and reinforce the unity and identity of the state.” Shaw, *supra* note 345 at 166. Also see Deleuze & Guattari, *supra* note 412 at 443.

⁴¹⁷ As Bilgrami describes Gandhi’s critique of modern pluralism, “it is precisely because [a] more authentic pluralism was destroyed by modernity that modernity had to impose a quite unsatisfactory form of secularist pluralism in a world that it had itself disenchanting....” Bilgrami, *supra* note 193 at 394.

- a) liberalism is characterized by proceduralism,
- b) proceduralism operates according to a dualistic logic,
- c) dualistic logic has a totalizing impulse that creates a normative eclipse,
- d) the totalizing impulse and its corresponding normative eclipse does not allow for a thick pluralism and therefore problematizes difference, and
- e) both dualistic logic and its totalizing impulse may, for example, be seen in liberalism's requirements of public reasoning.

However, the dualistic logic of liberalism and its relation to the problematization of difference cannot be convincingly shown simply by looking at one example or one aspect of liberalism.

More is needed. For example, we also need to reconsider the normative ideals that are guiding and shaping the liberal tradition. And, hence, it is to these ideals that we now turn...

B. Liberalism's Normative Standardizations

In addition to the proceduralist turn itself, the central ideal of liberalism belies an underlying standardization at work – namely, the ideal that all persons be considered self-determining individuals deserving of equal concern and respect. So, what about the values that are guiding the proceduralist turn? In what way does a normative commitment to building a society in which all persons are considered to be free and equal individuals lead us into standardizations (and therefore cause acceleration)? Within even a brief overview, I believe we can already see this kind of standardization at work in both ideals – freedom and equality.

Before we begin, however, it should be noted that much like my analysis of the proceduralist turn above, the following explanations of freedom and equality are descriptions of the central thrust of the logic behind these ideals within the liberal tradition and we should therefore remember that folks are committed to this logic in varying degrees. Although we do not have time or space to dig down deep into anything resembling a comprehensive genealogy of liberal ideals, we can briefly sketch out the basic logic underlying the commitment to self-determination and egalitarianism as normative political ideals. Additionally, there are many sects and counter-traditions that should be explored, but we will only concern ourselves at this time

with the orthodox notions of self-determination and equality as they have developed within the canon of liberal democratic theory. To begin, let me outline the central narrative of the story I would like to tell regarding the historical and conceptual development of these ideals.

In order to discuss self-determination as freedom, I think we need to go back to the basics. We live on this earth as beings that cannot escape our existential vulnerability and this fact causes us great anxiety. However, instead of overcoming this anxiety, we aggravate it by disenchanting the world through a struggle to control our environment.⁴¹⁸ This disenchantment is followed by the creation of a philosophical and political transcendent self that mediates between the self and the world by simultaneously individuating and totalizing the self (the kind of thing we have described above as dualistic logic). The false freedom of self-determination is thereby created in the space between individualized subjects and the totalized subject (e.g. the objective state operating under the rule of law). This self-determining freedom, however, is little more than a denial of the deeply vulnerable self in an eclipse of the in-between worlds through the polarization of this dualistic logic. But, let us go through the details of this misadventure a little more carefully...

First, if we are seeking to understand the self as *res ecologia*, we will understand our existence as patterning processes that are highly vulnerable to disruption and entirely dependent upon that which is outside ourselves. But, we persist in seeking to escape this vulnerability by simultaneously subjectifying ourselves and objectifying the world around us. Additionally, though, the story we tell of political action-coordination (the coming together in political community) in modern political theory is largely a tale of attempted escape from our fundamental

⁴¹⁸ Note the work of Max Weber and Jacques Ellul in this regard. For example, see Max Weber, *The Protestant Ethic and the Spirit of Capitalism*, trans. by Talcott Parsons (New York: Charles Scribner's Sons, 1958) and Ellul, *supra* note 313.

or existential vulnerability.⁴¹⁹ The liberal conception of freedom as self-determination represents the latest chapter in a story of civilization in which we attempt to build a transcendent self that will serve as a buffer between the direct and immediate relation of the self and the world.⁴²⁰ The development of the transcendent self reaches a new level as part of the rise of modernism in Europe when the political solution to vulnerability began to be seen in the formation of the *demos* as a universal self: a self that transcends the immediate self and shields it from its direct dependence upon that which is outside itself.⁴²¹ This transcendent self, then, represents a kind of mediating interface between the self (understood both meta-physically and socio-phenomenologically) and the world; it is an attempt to see oneself and one's relation to the world from a universal position that is abstracted outside the lived realities of one's dependent relations.⁴²² The transcendent self is a manifested projection of the self onto the world around the self through, for example, the instrumentalized practices of science, technology, and the state.⁴²³

⁴¹⁹ Rousseau, for example, is very clear in *The Social Contract* that the primary law of nature for humans is self-preservation and it is this law that compels us to come together in political community. See Rousseau, *supra* note 124. As Taylor explains, this has meant that, "in the political realm, human freedom is prior to legitimate order, in that legitimate authority can arise only as the creation of human agents through consent." Taylor, *supra* note 37 at 319. If each person was essentially self-contained (physically and spiritually), one could no longer appeal to an understanding of the ordering of the world as the touchstone for legitimate power-use.

⁴²⁰ The transcendent self as a kind of insulation between the self and the not-self has developed for hundreds of years within the traditions of political theory of the West. For example, we can see Augustine outlining a theory of Christian realism already in the 5th century AD to explain how the distinction between the City of God and the City of Man is eschatological rather than political. That is, Christians and pagans hold the same ideal of a political ordering that brings peace and stability and both are unable to reach this ideal. See Paul Weithman, "Augustine's political philosophy," in Eleonore Stump & Norman Kretzmann, eds., *The Cambridge Companion to Augustine* (Cambridge: Cambridge University Press, 2001) at 237. Also see Augustine, *The City of God against the Pagans*, ed. by R.W. Dyson (Cambridge: Cambridge University Press, 1998).

⁴²¹ As M'Gonigle notes, this philosophical transcendent self was advanced in the development of positivism and the "loss of the cultural duty to make society accountable to something outside of itself" – e.g. "a philosophy of social separation from nature." M'Gonigle, *supra* note 3 at 37.

⁴²² As Tully, explains, "[a] modern person must be able to see him- or herself and others from the 'universal' standpoint of abstraction and freedom from relationships with others and, as such, independent rather than dependent (in relationships with others) or autonomous rather than 'heteronomous' (determined by something other than one's self-legislating will)." Tully, *supra* note 126 at 250, 251.

⁴²³ The political totalization of the self may be seen in the development of our central governing institutions such as the modern state, the corporation, and international governance projects. In the 18th century, the modern state began to take shape based upon the contractarianism of Hobbes, Locke, and Rousseau (e.g. in the French and American Revolutions). Although more explanation of the nature of bureaucracy is needed, it is not difficult to see that the administrative bureaucracy of the modern welfare state represents a hierarchical "abstract regularity" that sweeps the self up into a system of political interactions that transcend the personal relations of the self with others. See Weber,

However, if we understand the depth of our dependence and our persistent vulnerability, we must wholly reject the classic (i.e. 17th-19th century) notion of freedom as being a power manifest according to the determination of an individual's will. For example, Spinoza's notion of freedom as absolute or pure self-determination could also be mentioned in opposition to the freedom of the network self. He writes, "[t]hat thing is called free, which exists solely by the necessity of its own nature, and of which the action is determined by itself alone."⁴²⁴ Then, as Algernon Sidney wrote in his *Discourses Concerning Government*, "liberty consists only in being subject to no man's will, and nothing denotes a slave but a dependence upon the will of another...".⁴²⁵ And, as Locke writes in his *Essay Concerning Human Understanding*, "Liberty... is the power a man has to do or forbear doing any particular action, according as its doing or forbearance has the actual preference in the mind, which is the same thing as to say, according as

supra note 235 at 983. In the 19th century, the corporation developed as an artificial community that exists and persists as a distinct being beyond the lives of the individual members (i.e. directors and shareholders). Then, in second half of the 20th century, international governance projects began to be manifest in the form of the United Nations, Universal Declaration on Human Rights, the North Atlantic Treaty Organization (NATO), the North American Free Trade Agreement, the European Union, the International Criminal Court, etc. It should be acknowledged that all three of these institutional structures depend upon the regularity and predictability of the rule of law – i.e. that no one is beyond the law – to flourish. This notion of the rule of law means that every individual finds his rights and duties in direct relation to the legal regime because no one is above the law and, therefore, cannot stand in between an individual and the law. In order to be successful, the rule of law must be abstract and formal enough to limit the discretionary powers of individuals. At the same time, therefore, the rule of law (manifest in the state, the corporation, and the international governance projects) quite clearly represents the political transcendent-self. The failure to recognize the inescapability of vulnerability not only led to certain structures and processes of political organization, but was itself inspired and affirmed by these same organizational behaviours in a kind of vicious circle. For example, the practices of nation-building through the development of a common citizenry under common laws allowed blind spots to grow in our understanding of the self and its place in the world. As Tully writes, "[m]odern citizenship was nationalized as local citizenship was subalternised. Generations of 'locals' were gradually socialized by education, urbanization, military duty, industrialization and techniques of citizenisation to see themselves first and foremost as members of an abstract and disembodied imaginary community of nation, *demos* and *nomos* of formally equal citizens." Tully, *supra* note 126 at 255. Also see *ibid* at 249, 250. Further, as Michael M'Gonigle notes, "in the English common law world, the emergent state gradually transferred lay or communal regulation from local authorities to an expert judiciary that substituted national for local customs in their decisions." M'Gonigle, *supra* note 3 at 35.

⁴²⁴ Benedictus de Spinoza, *The Ethics*, at part I, definition VII. For Spinoza, God is free because God is pure self-determination. However, we should note that it does not make sense to speak of freedom in a manner so divorced from the real lives of people; it does not make sense to speak of God as free when trying to do democratic theory. There is a sense in which Kant took up Spinoza's of freedom as pure self-determination and applied it to the subject - i.e. the subject gives an autonomous moral law to himself as a rational will. See Taylor, *supra* note 383 at 4, 5.

⁴²⁵ Algernon Sidney, *Discourses Concerning Government*, vol. II (Edinburgh: G. Hamilton and J. Balfour, 1750) at 126.

he himself wills it.”⁴²⁶ Or, again, as Hume suggests in his *Enquiry Concerning Human Understanding*: “By liberty..., we can only mean a power of acting or not acting, according to the determinations of the will; that is, if we choose to remain at rest, we may; if we choose to move, we also may”.⁴²⁷ Although there is much more to be said about the subtle differences between these notions of freedom, there should be no doubt that these classic conceptions of freedom are all centered upon the notion of independent or autonomous self-determination and self-expression.

We should note a few underlying assumptions at play in this classic conception of freedom and made explicit in Locke’s and Hume’s philosophy. First, as Richard Schacht has noted, “what is at stake is the source of determination of some particular course of action.”⁴²⁸ Although there is more to be said about freedom, we can note that the freedom of the self as *res ecologia* is much less focused upon actions than it is upon actualizing potentials within the structures and processes of its patternings. Second, it is a person’s own individual will that is the determining factor in the course of action to be or not to be taken. This notion of freedom as action undertaken according to an individual’s self-determining will is a denial of the deeply vulnerable self in an eclipse of the localized in-between worlds of ecological, social, and spiritual dependence through the polarization of a dualistic logic. It is fundamentally out of step with an understanding of the self as *res ecologia* – i.e. deeply and persistently interconnected, indeterminate, and actualizing potentialities.⁴²⁹

⁴²⁶ John Locke, *Essay Concerning Human Understanding* (London: T. Tegg and Son, 1836) at 155 (II.21.15).

⁴²⁷ David Hume, *Enquiry Concerning Human Understanding*, edited by Eric Steinberg, 2d ed. (Indianapolis: Hackett, 1977) at 63 (VIII.I).

⁴²⁸ Richard Schacht, “Hegel on Freedom,” in Alasdair MacIntyre, ed. *Hegel: A Collection of Critical Essays* (New York: Doubleday, 1972) 289 at 291.

⁴²⁹ In these two senses, then, the freedom of the *res ecologia* may be viewed as more Aristotelian and Hegelian than Lockean/Humean and Kantian. Additionally, the ideal of agency at work within this actualizing of potentialities is expressed by Hölderlin when he writes that “[t]here are two ideals of our existence: one is a condition of the greatest simplicity, where our needs accord with each other, with our powers and with everything we are related to, *just through the organization of nature*, without any action on our part. The other is a condition of the highest

The ideal of freedom as self-determination (and self-expression) is developed through a deepening of the separation between facts (as the given) and value (as the constructed). This distinction makes possible the individuation of the self as a self-contained being that is universalized in political community through consensual value-construction (i.e. contractualism).⁴³⁰ Thus, the liberal tradition as it has developed over the past 400 years has viewed the individual as the foundational political unit who is only truly free when he is self-determining. For example, as we will see in our discussion of Habermas below, he argues that “the modern legal order can draw its legitimacy only from the idea of self-determination: citizens should be able to understand themselves as authors of the law to which they are subject as addressees.”⁴³¹ To view all people as free in the sense of independent (i.e. rather than understanding freedom as security or peaceful participation) is, however, to understand the social, material, and spiritual constraints of living in community as a burden. That is, freedom *to* construct political values as individuals is necessarily freedom *from* the dependence and vulnerability of community. (This is why I refer to it as an abstracted, universal position outside the lived realities of our existence.)

Thus, there is no “natural” political community for the liberal but, rather, the individual is naturally in a state of opposition to all others. He must be pressed into political community from the top-down by a universal political body – e.g. the state. The totalizing unity of the state is understood as being a necessity if we are to free the individual from those associations that inevitably restrict the flourishing of the individual *as an individual*. Freedom itself, then, is

cultivation, where this accord would come about between infinitely diversified and strengthened needs and powers, *through the organization which we are able to give ourselves.*” Friedrich Hölderlin, *Hyperion Fragment*, quoted in Taylor, *supra* note 383 at 8.

⁴³⁰ The notion that a moral conclusion cannot be entailed by a set of non-moral premises is commonly ascribed to Hume. However, this interpretation of Hume is quite likely incorrect. See Alasdair MacIntyre, “Hume on ‘Is’ and ‘Ought’” (1959) 68:4 *The Philosophical Review* 451-468 and MacPherson, *supra* note 41 at 82.

⁴³¹ Habermas, *supra* note 238 at 449.

understood to be a bare kind of transcendence in which the self as an autonomous individual is able to ascend above the domineering interrelations and ties of nature, family, and tradition to de-localize as a universal self.⁴³² Of course, Rousseau and Kant represent the preeminent philosophers representing this kind of metaphysical groping for a transcendent, universal self that is meant to allow us reprieve from the existential domination of dependence upon the world.⁴³³

We might ask, however, why this individual-universal connection must be made and must, therefore, destroy the in-between worlds of localized dependencies upon nature, family, and tradition. Why can we not simply localize the contract to, in a sense, naturalize the political community of the free? To put it simply, if we universalize the individuation (understand all humans as individual persons), we are necessarily also universalizing the constitution of political community – political community becomes totalized as an all or nothing affair.⁴³⁴ In other words, if all are free and self-determining, then there simply is no reason or rationale for localized political community other than as a stepping stone towards the universal – nature, family, and tradition become instrumentalized as simply the means to a cosmo-political end. Therefore, although not all liberals will be wholeheartedly committed to the vision of freedom or the mechanisms employed to achieve it as outlined above, the logic underlying the attempt to escape the vulnerability of dependence should be quite clear. The simultaneous individuation and universalization of the self totalizes the constitution of political community and thereby eclipses

⁴³² For example, this appears to be how Kymlicka understands freedom. See Kymlicka, *supra* note 148 at 183, 184.

⁴³³ We should also note that this same totalization is central to utilitarian thought insofar as individual agents are conceptualized as being neutral with regard to their claims on the good – i.e. the “good” is to be maximized in an impartial manner.

⁴³⁴ As a result, note the resistance liberals have traditionally had to giving equal concern and respect to all humans. For example, as Domenico Losurdo has aptly noted regarding the outworkings of the logic of liberal egalitarianism, “[o]n the one hand, the [rebel American colonists] began by demanding equality, while on the other [they] reasserted inequality and further deepened it. The two demands were indissolubly linked: precisely because they established a marked superiority over blacks and redskins, the colonists felt themselves completely equal to gentlemen and property-owners residing in London, and demanded that such equality be recognized and consecrated at every level. The dialectic that issued in the Glorious Revolution was not very different.” Domenico Losurdo, *Liberalism: A Counter-History*, trans. by Gregory Elliott (London: Verso, 2011) at 301.

the localized political communities rooted in natural, familial, and traditional dependencies.

Next, let us turn to the other central ideal of liberalism and consider the manner in which the logic of egalitarianism standardizes our normative relations and, in so doing, actually eclipses or disintegrates our normative relations much like the ideal of freedom as self-determination. Our western democratic tradition has embraced egalitarianism wholesale, but it is essential that we ask ourselves what we are actually committing to when we continue to cling to equality as a normative ideal. Once again, the explanation that follows is not intended to capture the full spectrum of egalitarian thought but to tap into the underlying logic of egalitarianism and the manner in which this logic standardizes our normative relations.

What do we mean by “egalitarianism”? Although a detailed definition could be developed, for our purposes here, we only need to refer to egalitarianism in a general sense. So, by “egalitarianism” I mean the promotion of equality as a normative ideal in which all persons are considered, at some basic level, to have the same moral worth or to be deserving of the same concern and respect. This fundamental normative ideal has, almost without exception, become an unquestioned presumption in modern Western political theory. Will Kymlicka, therefore, speaks of the fact that the core argument in contemporary political theory “is not whether to accept equality, but how best to interpret it” and describes the current consensus as an “egalitarian plateau.”⁴³⁵ Furthermore, not only has the ideal of equality become a fundamental

⁴³⁵ Will Kymlicka, *Contemporary Political Philosophy: An Introduction*, 2d ed. (Oxford: Oxford University Press, 2002) at 4. Or, as Sen explains, “a common characteristic of virtually all the approaches to the ethics of social arrangements that have stood the test of time is to want equality of something – something that has an important place in the particular theory.” Amartya Sen, *Inequality Reexamined* (Cambridge: Harvard University Press, 1992) at ix. And, as Colin Macleod and Avigail Eisenberg note, “an egalitarian consensus has emerged according to which all citizens of a political community, irrespective of race, sex, ethnicity, or religion, are to be regarded as entitled to equal social and political standing.” Colin Macleod & Avigail Eisenberg, “Normative Dimensions of Equality,” in David Green & Jonathan Kesselman, eds., *Dimensions of Inequality in Canada* (Vancouver: UBC Press, 2006) 33 at 33. This egalitarian consensus is certainly tied into the rise of liberalism and its ascendancy to the level of meta-ideology. For example, as Saul Newman writes, “in mainstream political theory, liberalism functions as a kind of meta-ideology or ‘metanarrative’; it has become an embedded, universal discourse that determines the conceptual limits of the practice of politics and defines its very terms of enquiry.” Newman, *supra* note 122 at 2.

assumption of democratic theorists across the board, but this normative ideal has been elevated to a place of preeminence by many democratic theorists.⁴³⁶ For example, Ronald Dworkin even goes so far as to argue that “[n]o government is legitimate that does not show equal concern for the fate of all those citizens over whom it claims dominion and from whom it claims allegiance. Equal concern is the sovereign virtue of political community – without it government is only tyranny....”⁴³⁷ It is safe to say, then, that equality is now understood to be the foundation or prerequisite of justice in modern industrial societies.⁴³⁸ There is a nearly sacred assumption that all persons should be afforded equal concern and respect.

We should note, too, that almost all contemporary theorists committed to the ideal of equality are keen to point out that the ideal also demands an acknowledgement of and a respect for difference.⁴³⁹ For example, the “politics of difference” theorists suggest that we should begin with concerns about domination and oppression and follow more relational conceptualizations when theorizing about justice for social groups. Iris Marion Young argues, therefore, that “a denial of difference contributes to social group oppression” and that “basic equality in life situation for all persons is a moral value” and necessary for groups to have full participation in

⁴³⁶ For example, Amartya Sen writes that “a common characteristic of virtually all the approaches to the ethics of social arrangements that have stood the test of time is to want equality of *something* – something that has an important place in the particular theory.” Sen, *supra* note 435 at ix.

⁴³⁷ Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge: Harvard University Press, 2000) at 1. In other words, equal concern and respect for all citizens is actually “a precondition of political legitimacy.” Dworkin suggests that equality is “a precondition of the majority’s right to enforce its laws against those who think them unwise or even unjust....” *Ibid.* at 2. He also writes that “[g]overnment must not only treat people with concern and respect, but with *equal* concern and respect.” Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1978) at 272, 73 [emphasis added] [Dworkin, *Taking Rights*].

⁴³⁸ For example, the Preamble to the Universal Declaration of Human Rights begins with the following statement: “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...” See “Universal Declaration of Human Rights,” online: Office of the High Commissioner for Human Rights, United Nations, <<http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/043/88/IMG/NR004388.pdf?OpenElement>>.

⁴³⁹ Brian Barry is one exception in that he stubbornly maintains a position of liberal individualism and argues that the (group) politics of multiculturalism are undermining the (individual) politics of redistribution. See Brian Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism* (Cambridge: Harvard University Press, 2002) at 8 and 292ff.

political life.⁴⁴⁰ In keeping with the shift towards the “politics of difference” in the 70’s, 80’s, and 90’s, egalitarians are increasingly careful to remind their readers that treating people equally does not preclude differential treatment (e.g. various degrees of legal, political, social, and economic rights or recognitions).⁴⁴¹ Or, to put the emphasis on difference another way, Dworkin suggests that we need to clearly distinguish between “equal treatment” and “treatment as an equal.” Thus, for Dworkin, treatment as an equal is a foundational principle that is essential to political morality (i.e. the right “to be treated with the same respect and concern as anyone else”), but equal treatment is a manifestation of this principle that may or may not be appropriate given our particular set of circumstances (i.e. “the right to an equal distribution of some opportunity or resource or burden”).⁴⁴² However, despite this heartening shift toward emphasizing difference and an increasing sensitivity to systemic violence against social groups that remain outside the mainstream power-flows of society, it is important to note that a commitment to equality as an ideal continues to entail a commitment to equal moral worth at some abstract level of theoretical analysis.⁴⁴³ Indeed, egalitarianism means precisely that one believes that at a certain theoretical

⁴⁴⁰ Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990) at 10, 14. For example, one might also quite broadly ask “equality between whom?”, “equality of what?”, or “equality in what type of relationship?”. See Iris Marion Young, “Equality of Whom? Social Groups and Judgments of Injustice,” (2001) 9 *Journal of Political Philosophy* 1-18 and Amartya Sen, “Equality of What?,” in Amartya Sen, ed., *Choice, Welfare and Measurement* (Oxford: Blackwell, 1982) at 353-369. In addition, within a theory of distributive justice one might commit to “strict egalitarianism” (in which one is committed to ensuring everyone is equally well off), “sufficient egalitarianism” (in which one is committed to ensuring everyone has their basic needs met), or “priority egalitarianism” (in which one is committed to ensuring priority is given to those who are most in need). See Matthew Clayton & Andrew Williams, eds., *The Ideal of Equality* (New York: Palgrave Macmillan, 2002) and John Baker, Kathleen Lynch, Sara Cantillon, & Judy Walsh, *Equality: From Theory to Action*, 2d ed. (New York: Palgrave Macmillan, 2009) at 22.

⁴⁴¹ For example, see Macleod & Eisenberg, *supra* note 435 at 35.

⁴⁴² See Dworkin, *Taking Rights*, *supra* note 437 at 227.

⁴⁴³ As has been stated recently, “[b]asic equality is the cornerstone of all egalitarian thinking: the idea that at some very basic level all human beings have equal worth and importance, and are therefore equally worthy of concern and respect.” Baker, Lynch, Cantillon, & Walsh, *supra* note 440 at 23. The four standard forms of equality - legal, political, social, and economic - may be emphasized to varying degrees and approached in more individualistic or more communitarian manners depending upon the types of relationships most troubling to the theorist, but it is appropriate to understand all of these approaches as rooted in a single, fundamental moral commitment. And, further, the moral weight of this commitment to egalitarian social arrangements may be stemming from more transcendent and metaphysical values (e.g. Habermas) or more immanent and political values (e.g. Rorty), but both are moral commitments nonetheless. One may commit to an ideal of equality - say, for example, legal equality -

level all persons possess essentially the same moral worth. In other words, “treatment as an equal” – if it is to be meaningful – necessarily means “equal treatment” *at some level*.⁴⁴⁴

Given our discussion of standardization and protocolic control above, warning bells should be ringing as soon as we begin talking about equality. For, affording all persons “equal concern and respect” simply makes no sense if it is to be a *personal* normative ideal. It only makes sense as a principle for developing and shaping the actions of something totalizing like *a singular, bureaucratic state institution*. Equality as a normative ideal relies upon a universal normative metric such that *each and every* person is individuated and included within the same fundamental framework that shapes and bounds the articulation of normative consideration. However, a universal normative metric such as this must, by definition, be abstracted beyond the lived relations of one person, his family, friends, neighbors, clan, tribe, nation, etc. In order to be an egalitarian, one must try to think like a state and, in so doing, maintain a wide gulf between thought and practice (because no one can live as a state).⁴⁴⁵ As we saw above in our discussion of freedom as self-determination, the administrative bureaucracy of the modern welfare state represents a hierarchical “abstract regularity” that sweeps the self up into a system of political

because legal equality is understood to have instrumental value. That is, one might believe that having all members of a given community subject to the same laws is simply a means to achieving a relatively stable and peaceful society. This kind of instrumental commitment is nonetheless a moral commitment insofar as the ideal of legal equality is understood to be a necessary condition of a relatively stable and peaceful society. Indeed, what political ideal is not understood in instrumental terms? In other words, one does not have to commit to the ideal of equality as if it were inherently just and fair in order for it to be a moral commitment. A moral commitment need not be anything more than a sustained sense of good behaviour.

⁴⁴⁴ Indeed, if this were not the case, if our ideal of equality did not at least include some notion of valuing persons the same way, we should be happy with simply using language such as “non-domination”, “justice”, “reciprocity”, etc. rather than “equality”.

⁴⁴⁵ Theoretically, one could, in a sense, hold equality as a personal aspirational goal – e.g. “I hope to treat everyone I encounter with the same concern and respect” – but this goal can never become more than metaphorical. Indeed, treating everyone in one’s life with equal concern and respect in any literal sense is clearly undesirable and unhealthy behaviour – i.e. the one who endeavors to live this way will be seen as unhuman and antisocial. Cf. the example of the missing child and the comparison between the response of the police, the father, and the villager in David Miller, “Cosmopolitanism: A Critique” (2002) 5:3 *Critical Review of International Social and Political Philosophy* 80 at 81-82. If it is not unhealthy behaviour, then – as Miller points out – there is “a gap between our moral assessments of states of affairs and the reasons we have for acting in relation to those states of affairs.” *Ibid* at 81. So, if there is no gap, I am suggesting, then one will be acting dramatically out of synch with what has been normal ethical behaviour for thousands of years and you will therefore be understood to be engaged in deviant behaviour.

interactions that transcend the personal relations of the self with others.⁴⁴⁶ Indeed, it is only in this transcendent realm of abstract regularity that equality can be meaningful as a normative ideal. Equality is at best quasi-normative ideal and only truly meaningful as a policy within the framework of a unitary state institution because commitment to the ideal involves conceiving of moral worth as an abstract ideal rather than an assessment that takes place within the actual relations people have with the world around them.⁴⁴⁷ In other words, one views moral worth as if it were something that is independent of the one who is doing the recognizing (i.e. the one who posits the moral worth drops out of the picture) and also disembodies and de-contextualizes the person(s) to which one refers (i.e. the one who is said to have the moral worth drops out of the picture).⁴⁴⁸ In this manner, not only does the normative ideal of equality have within it a logic of idealization and abstraction away from the real, asymmetrical world of persons and interpersonal relations, but this “retreat from the real” facilitates a totalization of norms to accord with a totalized subject – i.e. the state – and an individuation of individual subjects living as beings-in-common.⁴⁴⁹

⁴⁴⁶ See Weber, *supra* note 235 at 983. As Christopher Lasch writes, “[t]he capacity for loyalty is stretched too thin when it tries to attach itself to the hypothetical solidarity of the human race. It needs to attach itself to specific people and specific places, not to an abstract ideal of universal human rights. We love particular men and women, not humanity in general.” Christopher Lasch, *The True and Only Heaven: Progress and Its Critics* (New York: Norton, 1991) at 36.

⁴⁴⁷ By “quasi-normative ideal” I mean that equality as an ideal – even if it is understood as equality with regards to a certain particular kind of concern (e.g. equality in voting for representatives in a legislative body) – appears to us as a normative ideal, but it is not arising from a localized relationality and is not, therefore, a genuine *normative* ideal.

⁴⁴⁸ It is not correct to say that the theorist and the subjects of the theory do not drop out because the differences of persons are still acknowledged (e.g. various natural talents, etc.). It is true that when theorists use the term “equal” they seem to mean “different, but the same.” However, the “different” element seems to simply “attach” to the descriptive assumptions behind the phrase (i.e. the assumed actual differences between men and women) and the “the same” element “attaches” to the normative aspiration (i.e. the intention to ensure men and women are treated the same in some sense). And, it is precisely this strict separation between the descriptive and the prescriptive that is of concern in this paper.

⁴⁴⁹ This tendency toward universalization can be seen within the abstraction and idealization of both John Rawls’ employment of the veil of ignorance as well as Jürgen Habermas’ critical approach rooted in a teleology of rational consensus. For example, see Rawls, *supra* note 31 and Habermas, *supra* note 31. This attraction to universalization can be most clearly traced back to Immanuel Kant and seems to be the reason why Rawls (following Kant) finds it necessary to grossly limit the knowledge of moral actors and thereby hem in the alternatives available to them. Rawls and Kant seek a unanimous (i.e. objective) conception of justice and are therefore lured into the painful processes of rational reductionism. See Rawls, *supra* note 31 at 140, 141 and Kant, *supra* note 42 at 46.

The normative totalization of liberalism may be seen in the logic of liberal moral theory outlined already in Adam Smith's *The Theory of Moral Sentiments*. It is here that Smith argues for a vision of the perfection of human nature rooted in social interaction but also, importantly, a kind of interaction governed by a universal or totalized perspective called the "impartial spectator". As we go through the thought of Smith, we should be struck by the dramatic similarities between the "impartial spectator" in Smith and the person behind the "veil of ignorance" in Rawls. Both Smith and Rawls depend upon the use of the individual's imagination to extract them out of their lived, embodied situation and into the fictional perspective of an abstract, universal person who can judge based upon the certainty of a singular normative metric. This fictional person possessing the singular view of the universal normative metric and holding no interest in one side or another is judged, because of his universality, by no one but God himself.⁴⁵⁰ But, how does Smith come to rest his moral theory upon a fiction...

Smith begins with a statement that "[h]ow selfish soever man may be supposed, there are evidently some principles in his nature, which interest him in the fortune of others, and render their happiness necessary to him, though he derive nothing from it except the pleasure of seeing it."⁴⁵¹ The propensity to feelings of sympathy is inherent within human nature and, therefore, gives us the starting point for understanding moral behaviour. But, how do we sympathize? We come to sympathize through our imagination which copies our own impressions of our senses and projects them onto others (or projects us into the other's situation). Sympathy, therefore, arises in and through social interactions – i.e. as one becomes a spectator of others who are themselves directly affected in their senses (e.g. feelings of pain).⁴⁵² But, sympathy itself is not enough for we surely discriminate between proper and improper feelings of sympathy. On the

⁴⁵⁰ See Lionel Robbins, *A History of Economic Thought: The LSE Lectures*, ed. by Steven Medema & Warren Samuels (Princeton: Princeton University Press, 1998) at 134.

⁴⁵¹ Adam Smith, *The Theory of Moral Sentiments*, 2d ed. (London: A. Millar, 1761) at 1.

⁴⁵² See *ibid.* at 2-4.

one hand, to approve of others is to say that we sympathize with them and to not approve is to say that we do not sympathize with them. On the other hand, being the object of resentment or gratitude only means something to us to the extent that we judge these feelings to be appropriate in others. How do we know if feelings of sympathy are appropriate or not? Simply put, if we can say that the feelings would be approved of by an impartial and indifferent spectator, then we can say they are natural or appropriate.⁴⁵³

Importantly, Smith argues that people are not only naturally selfish and inclined towards their own feelings (either direct or sympathetic) but also naturally inclined to seek the perspective of an impartial spectator as the judge between moral and immoral feelings. We are inclined to seek the perspective of an impartial spectator because, he suggests, everyone understands one's own happiness to be of the greatest importance but no one can hold to this as a moral position when facing mankind as a whole. So, in order to develop the rationale for the morality of an action, one must take the perspective of an impartial spectator; one must place oneself in the position of an imaginary singular, abstract representative of the whole of humanity.⁴⁵⁴ It is posited, in this way, that it is natural (and the only way to really justify normative judgment) for each individual to project themselves outside themselves by imagining what humanity as a universal collective might think of a particular behaviour.

Further, equality (e.g. in terms of citizenship) means the individual stands in a direct and immediate relation to the state (or, in more socialist terms, to society as a whole). I say direct and immediate relation to the state because if all persons (citizens) are to be considered equal, then no single person or group of persons short of the whole of the society may function as the "object"

⁴⁵³ See *ibid.* at 7, 114.

⁴⁵⁴ See *ibid.* at 140, 141. Smith presents a similar argument in *The Wealth of Nations* when he suggests that cooperation and mutual aid are best obtained through mutually beneficial contracts. So, he writes, "it is in vain for him to expect it from their benevolence only. He will be more likely to prevail if he can interest their self-love in his favour, and shew them that it is for their own advantage to do for him what he requires of them." Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, Vol. I (Edinburgh: William Creech, 1806) at 19.

that stands in relation to us as the person-subjects. It is the totality of the state that subjectivizes us, we are subjects-in-common. However, our identity is actually relational rather than free-standing; we live out moral lives precisely because we have the kind of interconnections and relations denied by the totalization. The condition of existence of every identity, therefore, also depends upon the affirmation of a difference, the determination of an ‘other’ that gives us our outside. The egalitarian identity allows the state (or society as a whole) to overshadow the individual as a distinct being – it puts the individual in a dualistic existential relation to the seemingly benevolent Leviathan that is the state institution.

The ideal of equality hands down a judgment upon the other in an effort to overcome their otherness – i.e. they are just like everyone else deep down in their essence and it is this essence that should determine (at least to some relevant degree) others’ moral relations with them (whomever these others might be). The ideal of equality leads us to seek consensus (i.e. to achieve agreement) or reconciliation (i.e. to restore harmony) but we know that this involves a reductionism that essentializes persons and commits them to a *telos* of unified patterns of living. This kind of homogenizing impulse should therefore be understood as the illegitimate use of power (i.e. domination) insofar as it is an overcoming of the other – a destruction of reciprocal identity in political relations (as we saw in our discussion of Lévinas and the transcendent other above). This impulse issues forth from the ideal of equality and is made manifest as the domination present within the drive to singularity that characterizes a universal metric of moral worth. The universal metric denoted by the language of equality as an ideal does violence to the other insofar as it promulgates a myth of containment and definement in the name of justice and thereby inspires policy measures designed to create a common citizenry. That is, the ideal of equality represents an illegitimate use of power that, rather than providing us with an ideal of democracy, actually does violence to the diversity that is at the theoretical core of democracy.

The deep pluralism at the heart of democracy demands the recognition of the other *as that which is other* and, in this sense, provides us with a critical approach that undermines the current domineering processes of protocolic control. The standardization is born in the lack of reciprocity – i.e. the talk of equality involves a one-way or unidimensional positing of moral worth without the negotiation process of relation. The dynamic interplay of dialogical relations is something that cannot take place between a bureaucracy (the institutionalization of abstract regularity) and real, flesh and blood persons. It should not be surprising, therefore, that the underlying theoretical moves assumed in the egalitarian ideal inevitably lead to a problematization of difference both theoretically and practically.

In conclusion, although there is much more to be said about the ideals of liberalism, we are beginning to see the basic shape of a logic at work within the liberal tradition. Just as proceduralism possesses a dualistic logic that eclipses normative and political relations, so too do the central ideals of liberalism – self-determination and equality – deny the possibility of localized political community and the normative relations of which they are composed. And, insofar as these ideals demand a universal political community, they disallow a multilogical approach to diversity in the world. We have roughly sketched an outline of dualistic logic and suggested that it is the defining feature of liberalism, but its nature and manifestations should become much clearer in our analysis of the third mode of liberalism.

C. The Free Market, Science, and Cosmopolitanism

The third mode of liberalism – seen most clearly in the political economy of the free market and the modern scientific method – is perhaps the most powerful and disturbing. Although there is much to be said regarding the structural violence that takes place within the markets of liberal economies and the relentless advancement of science, in what follows we will remain quite focussed on the cosmopolitan social theory underlying both a market-based political

economy and the modern scientific method. And, the cosmopolitanism of liberalism is driven forward by a logic which says that the best way to achieve material prosperity, accurate knowledge, and moral perfection is through interaction and exchange with others – i.e. that intercourse between the multiplicity will lead to a common or singular advancement.⁴⁵⁵ This inter-actionist logic forms the foundation of liberal capitalist economics (the free market) and the modern scientific method (universalizable hypothesis testing) as well as, importantly, liberalism’s commitment to a common public sphere of political interaction. Although this logic can be traced throughout the liberal tradition, we can perhaps see it best in the work of the founder of modern economics (Adam Smith) a key pioneer of experimentalism (Robert Boyle), and the foremost contemporary theorist on the public sphere (Jürgen Habermas). We can see the dualistic logic of liberalism running through the centre of their work and activating their understanding that economic, moral, and political progress is to be achieved through the material and social interaction of individual subjects.

The theme of progress through material and social interaction can be traced through both Smith’s theorizing regarding political economy as well as his work on moral sentiments. In his discussions of the economy and morality, Smith depends upon some important conclusions regarding human nature and the human situation and, therefore, the *telos* that arises from this nature and the condition within which it finds itself. For example, in *The Wealth of Nations*, he writes that there is “a certain propensity in human nature... the propensity to truck, barter, and exchange one thing for another” and this propensity seems to be “the necessary consequence of the faculties of reason and speech.”⁴⁵⁶ In *The Theory of Moral Sentiments*, he writes that “[h]ow selfish soever man may be supposed, there are evidently some principles in his nature, which

⁴⁵⁵ As Hart & Hann note, “[t]he founders of modern social theory all considered markets to be progressive in that they broke up the insularity of traditional rural society and brought humanity into wider circles of discourse and interaction.” Hart & Hann, *supra* note 49 at 3, 4.

⁴⁵⁶ Smith, *supra* note 454 at 18.

interest him in the fortune of others, and render their happiness necessary to him, though he derive nothing from it except the pleasure of seeing it.”⁴⁵⁷ Both the propensity to contractual exchange and to feelings of sympathy are inherent within human nature and, therefore, give us the starting point for understanding economic prosperity and moral behaviour.

However, we cannot understand the relevance of these propensities within humans until we understand the situation within which humans find themselves. Interestingly, Smith suggests that the propensity for exchange is driven by the fact that an individual human is vulnerable and “stands at all times in need of the co-operation and assistance of great multitudes” for, whereas mature animals are almost entirely independent, “man has almost constant occasion for the help of his brethren.”⁴⁵⁸ Or, in *Moral Sentiments*, he writes that “[a]ll the members of human society stand in need of each others assistance, and are likewise exposed to mutual injuries.”⁴⁵⁹ So, given the fact that we are vulnerable and dependent beings who are in need of interactions to subsist and prosper, we possess a nature that propels us toward material and social exchange. Both material and moral progress, in this way, are understood to be achieved through a process of exchange and, consequently, any hindrance to this exchange is a hindrance to progress and the forward drive toward the perfection of human nature. Adam Smith who, as the Karl Polanyi says, developed the “paradigm of the bartering savage” and founded modern economics by treating material wealth as a distinct field of study, established not only a vision of humans as beings which engage in exchange in order to survive but humans as beings that seek the perfection of their nature as exchanging beings.⁴⁶⁰ With his vision of humans as the exchanging animal, he was able to separate financial from cultural relations (i.e. insofar as cultural ties threaten the free exchange of the market). The political and economic implications of this

⁴⁵⁷ Smith, *supra* note 451 at 1.

⁴⁵⁸ Smith, *supra* note 454 at 19.

⁴⁵⁹ Smith, *supra* note 451 at 146.

⁴⁶⁰ Polanyi, *supra* note 48 at 46, 116.

progress-through-exchange vision are tremendous and have dramatic reverberations throughout the theorizing of the liberal tradition to this day. But, before we turn to its implications for contemporary theorizing regarding the public sphere, let us briefly consider the pioneering work of Robert Boyle and how its focus on progress-through-interaction forms the background for Smith's interactionalism.

One hundred years before Smith published his *Moral Sentiments*, Boyle published his *New Experiments Physico-Mechanical* as a set of forty-three experiments with a new machine to be used in the generation of scientific facts – an air-pump.⁴⁶¹ Boyle, of course, not only developed a technique of mechanized experimentation but, in the process, developed a parallel technique of social interaction to verify experimental results and thereby transform experimental results into scientific facts. Differing philosophical forms of life necessarily entail differing political organizations as the boundaries guiding and shaping knowledge generation, verification, and propagation determine the nature of political life. Hence, as Steven Shapin and Simon Schaffer write, solutions to the problem of knowledge acquisition are, in an important way, solutions to the problem of social order.⁴⁶² The means of establishing matters of scientific fact necessarily also served as means of establishing the rules of social interaction. For, matters of scientific fact are not simply mirror images of nature, but *socially determined ways of imaging nature*. Therefore, as Shapin and Schaffer explain, assumptions regarding matters of fact bring with them assumptions of social interaction. They write, “[a]n experience, even of a rigidly controlled experimental performance, that one man alone witnessed was not adequate to make a matter of fact. If that experience could be extended to many, and in principle to all men, then the result could be constituted as a matter of fact. In this way, the matter of fact is to be seen as both

⁴⁶¹ Robert Boyle, “New Experiments Physico-Mechanical, touching the Spring of the Air,” in *The Works*, ed. by Thomas Birch, Vol. I (Hildesheim: Georg Olms Verlagsbuchhandlung, 1965) at 1 to 117.

⁴⁶² See Steven Shapin & Simon Schaffer, *Leviathan and the Air-Pump: Hobbes, Boyle, and the Experimental Life* (Princeton: Princeton University Press, 1985) at 332.

an epistemological and a social category.”⁴⁶³ Accompanied by a social theory of interactionism, therefore, Boyle’s mechanized experimentation became nothing less than scientific fact-production. Let us consider this social theory of interactionism a little further for it is here that we see the key to Smith’s moral and economic theory as well as the liberal notion of the public sphere more generally.

Put simply, progress in knowledge production came to be seen as residing in the objectification of phenomena. That is, the establishment of scientific facts depends upon a coming to recognize certain phenomena as given to humans rather than created by them. And, as Shapin and Schaffer point out, Boyle’s innovations and influence throughout the past 400 years rests upon a bringing together of a material and a social technology in order to achieve this goal of objectifying phenomena.⁴⁶⁴

First, his *material technology* was found in his air pump or a “new pneumatical engine” which was a brand new design constructed specifically for the conducting of his experiments. Like the microscope and the telescope, the air pump (a) allowed human senses to go beyond their natural reach (cf. the imaginary projection of the senses in Smith) and, simultaneously, (b) placed certain boundaries upon the process of fact production. Perhaps most obviously, the use of the machine disciplined the inter-action associated with the production of facts insofar as it limited access to the experimentation process. For example, not only could very few people make use of the machine, but only certain people were allowed access to witness the experimentation process itself within the laboratory. Additionally, the use of the machine facilitated a sharp delineation between “physical” and “metaphysical” questions by allowing Boyle to focus on the idea of a vacuum as “not a space, wherein there is no body at all, but such as is either altogether, or almost

⁴⁶³ *Ibid.* at 25.

⁴⁶⁴ They actually discuss three technologies – a material, a literary, and a social technology – but for our purposes here the literary and social may be combined into one social theory of interactionism. See *ibid.* at 25 and 76ff.

totally devoid of air”.⁴⁶⁵ In this manner, he was able to shift the debate away from the plenist idea in which a container devoid of air would be replenished by some etherial matter to a simply experimental question regarding the precise nature and effects of a “natural” vacuum as produced by the pneumatical engine.⁴⁶⁶ The advancement of the senses and the governance of the interaction by the dependence upon the machine, however, would have been of limited historical significance if not for its coupling with a social technology that would ensure the objectification of phenomena.

Thus, second, and more importantly for our discussion here, he advanced a *social technology* rooted in a theory of interactionalism whereby experiments with a machine (i.e. the production of phenomena) could be witnessed and reproduced by others wherever they might be in time/space. Collective witnessing of phenomena facilitated objectification but only in a limited or localized fashion. The writings of Boyle were therefore essential in allowing the universalization – and thereby objectification – of the experimental phenomena. As Shapin and Schaffer write, “[t]he literary technology of virtual witnessing extended the public space of the laboratory in offering a valid witnessing experience to all readers of the text.”⁴⁶⁷ Of course, this technique of experimental learning depended upon the technology of publishing and disseminating literary works and Boyle makes it very clear that he is writing so that others might replicate the experiments in their own time and space in order to thereby advance the “commonwealth of learning”.⁴⁶⁸ What he was calling “experimental learning” was, therefore, accomplished in the process of objectifying phenomena for all people in all places at all times.⁴⁶⁹

Immediately, however, a problem arises – if we are relying upon the witnessing of

⁴⁶⁵ Boyle, *supra* note 461 at 10.

⁴⁶⁶ See Boyle, *supra* note 461 at 37, 38 and Shapin & Schaffer, *supra* note 462 at 38-40, 45, 46.

⁴⁶⁷ *Ibid.* at 77.

⁴⁶⁸ See Boyle, *supra* note 461 at 6, 10, 117.

⁴⁶⁹ See *ibid.* at 6.

phenomena as a means of objectifying it, then how do we translate each individual and diverse witness report into one single and coherent account of the phenomena? Or, as Shapin and Schaffer note, “[t]he problem with eye witnessing as a criterion for assurance was one of *discipline*. How did one police the reports of witnesses so as to avoid radical individualism?”⁴⁷⁰ In order to be able to advance the objectivity of the phenomena, Boyle insisted that the witnesses must be multiplied in such a manner so as to transform their individual acts of testimony into a collective act of certain verification.⁴⁷¹ Of course, the means of policing the process of translating multiple witness accounts into one universal account were numerous. From the initial limitations placed upon access to the machine and the experimental practices themselves to the development of an experimental community that would govern and shape the story of the phenomena in and through history, the creation of universal account of the phenomena was a social and political affair. But, because the establishment of scientific facts depends upon a coming to recognize certain phenomena as *given* to humans rather than *created* by them, the second key problem arises – is the process of creating scientific facts reaching its final end precisely when the process of fact-creation is itself obscured?

This finality would not be problematic if, for example, a fact simply meant “a temporarily agreed-upon understanding of a certain phenomena”. For, if this was all that was meant by a scientific fact, then it would be entirely understandable that the process of creating scientific facts reaching its end precisely when the process of fact-creation was no longer taking place. Or, in other words, if a scientific fact was simply defined as a unity of thought then, by definition, a scientific fact would exist precisely at the point where we cease disagreeing. However, I would argue that something more is meant by “fact” in modern science for, as we noted above, a

⁴⁷⁰ Shapin & Schaffer, *supra* note 462 at 56.

⁴⁷¹ See *ibid.* at 56ff.

scientific fact was understood as being something that was objective in the sense that it was *given to* rather than *created by* humans. It is problematic and somewhat deceptive, therefore, to deny the policing of interaction between witnesses simply because the policing is effective enough to generate relative consensus. It is deceptive in the sense that the denial at the point of consensus inevitably projects backwards in history to conduct an erasure of the entire policing process. In this sense, then, the interaction process is constantly being re-interpreted as singular progressive movement that encompasses and unifies the multiplicity active within the diversity of interaction. This is, of course, the kind of erasure of politics that I am suggesting the dualistic logic within liberalism is guilty – i.e. the activity of the multiplicity is abstracted away into a common procedure of interaction that eclipses the persistence of the diversity. And, the social theory of Habermas is a key example of this logic of progress-through-interaction.

In a sense, Habermas' work can be seen as an attempt to bring material and social interaction together into one unified theory of communicative action that will produce economic, moral, and political progress. Or, put somewhat more precisely, his project is to develop a normative foundation for the critique of ideology (understood as power's systematic distortion of communication) through the reconstruction of the universal conditions of possible mutual understanding between individuals.⁴⁷² As a post-war German intellectual, he was concerned that the post-Hegelian (e.g. Nietzsche), post-modern (e.g. Foucault, Derrida, Lyotard, Rorty, etc.), and hermeneutical (e.g. Heidegger, Gadamer) lines of thought were unable to resist the rise of harmful ideologies. He turned, therefore, to the Enlightenment project of building a just society: a project in which the development of philosophical theory is understood to be the emancipatory tool for the liberation of reason from the corruptions and distortions of mythological superstition

⁴⁷² See Habermas, *Pragmatics*, *supra* note 31 at 1-3.

and parochial ideology.⁴⁷³

In his attempt to develop what he understands to be a genuinely liberal social theory, Habermas sets out to re-work the notion of rationality because it is the internal functioning of rational exchange that operates as his reference-point for human progress. He begins by suggesting that every consensus rests on an intersubjective⁴⁷⁴ recognition of criticizable validity claims and we can therefore presuppose that those acting communicatively are capable of mutual criticism. The rationality of communication lies not in any correspondence with an absolute ideal, but in the fulfillment of expectations regarding communication; rationality itself must be understood in a socio-pragmatic sense – i.e. it must be rooted in the lifeworlds of the society.⁴⁷⁵

In the development of his theory of communicative action, Habermas focuses upon creating a thoroughly critical social theory by bringing together the theoretical and critical rigor of philosophy and the empiricism of the social sciences.⁴⁷⁶ This pragmatic synthesis of philosophy and the social sciences, for Habermas, allows the philosophy of history – as a project of historical materialism or social evolution – to be more genuinely post-metaphysical and critical

⁴⁷³ Indeed, conceptions of justice and reason or rationality have gone hand in hand for thousands of years in the Western philosophical and political tradition. See Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame, University of Notre Dame Press, 1988). Due to this singular notion of rationality, from Habermas' perspective, thinkers like Foucault, Lyotard, and even Gadamer, are neo-conservatives in the sense that they do not offer a "theoretical" reason to move society in one direction or another. See Habermas, *supra* note 90 at 3-14. Also see Habermas, *Autonomy*, *supra* note 90 at 157-58.

⁴⁷⁴ The term "intersubjective" is technically insufficient because it denotes a number of subjects coming together. Habermas' emphasis is more upon radical intersubjectivity or dialogical being-in-the-world.

⁴⁷⁵ See Habermas, *supra* note 31 at 302.

⁴⁷⁶ See Thomas McCarthy, "Translator's Introduction," in Jürgen Habermas, *Communication and the Evolution of Society*, trans. by Thomas McCarthy (Boston: Beacon Press, 1979) at vii and Richard Bernstein, "Fred Dallmayr's Critique of Habermas," (1988) 16 *Political Theory* 580 at 581-583. Habermas understands his synthetic project as a kind of third way between absolutizing either the participant (e.g. Richard Bernstein) or the observant (e.g. Richard Rorty). In the third way, philosophy surrenders its exclusive tendencies and shares a fallibilistic consciousness with the empirical sciences – i.e. abandons the aspirations of a first philosophy without abandoning its role as "the guardian of rationality." See Jürgen Habermas, "Questions and Counterquestions," in *Habermas and Modernity*, ed. by Richard Bernstein (Cambridge: Polity Press, 1985) 192 at 196 and Jürgen Habermas, *The Theory of Communicative Action: Lifeworld and System*, trans. by Thomas McCarthy, vol. II (Boston: Beacon Press, 1987) 374-403.

instead of transcendental and dogmatic.⁴⁷⁷ His critical theory is designed to allow philosophers to actively resist the commodification and bureaucratization of social relations. In other words, the pathological inclinations of modernity that displace communicative forms of solidarity can be resisted through an understanding of the processes of discourse and the relationship between the plurality of value-spheres and the universality of validity-claims. Habermasian critical theory, therefore, represents an attempt to develop a dialectical method of formulating the necessary – albeit hypothetical and fallible – conditions of societal evolution.

Unlike the empiricists and the rationalists of the Enlightenment, Habermas asserts that rationality has little to do with knowledge of, or correspondence with, the object-world. He argues instead that rationality means that an action or statement can be criticized or defended such that the persons involved are able to justify them through the exchange of argumentation.⁴⁷⁸ In this sense, rationality itself assumes the interaction of communication insofar as something is rational only if it meets the necessary conditions of generating understanding in common with others.⁴⁷⁹ Importantly, validity claims necessarily engage would-be interpreters of speech and require their response as participants within the dialogical process. “An interpreter cannot,” he writes, “interpret expressions connected through criticizable validity claims with a potential of

⁴⁷⁷ See Habermas, *supra* note 476 at 407. Also see Thomas McCarthy, *The Critical Theory of Jürgen Habermas* (Cambridge: The MIT Press, 1978) 75-91.

⁴⁷⁸ Habermas denies that the pragmatic dimension of language must be left to exclusively empirical analysis. See Habermas, *Pragmatics*, *supra* note 31 at 26.

⁴⁷⁹ See Anthony Giddens, “Reason Without Revolution?” in *Habermas and Modernity*, ed. by Richard Berstein (Cambridge: Polity Press, 1985) 95 at 99. Any actor who is oriented toward reaching understanding necessarily raises at least the following three validity claims: (a) That the statement made is true (or that the existential presuppositions of the propositional content mentioned are in fact satisfied), (b) that the speech act is right with respect to the existing normative context (or that the normative context that it is supposed to satisfy is itself legitimate), and (c) that the manifest intention of the speaker is meant as it is expressed. Habermas, *supra* note 31 at 99. These three validity claims correspond to three worlds – the objective, the social, and the subjective. Habermas makes it clear that “[c]ommunicative action relies on a cooperative process of interpretation in which participants relate simultaneously to something in the objective, the social, and the subjective worlds, even when they thematically stress only one of the three components in their utterances.” Habermas, *supra* note 476 at 120. In other words, “the interpreter understands the meaning of a text only to the extent that he sees why the author felt himself entitled to put forward (as true) certain assertions, to recognize (as right) certain values and norms, to express (as sincere) certain experiences.” Habermas, *supra* note 31 at 132.

reasons (and thus represent knowledge) without taking a position on them.”⁴⁸⁰ Reasons can always be expanded into arguments which are understood only when they are evaluated against some standard of rationality (at least intuitively). And, from the evaluative perspective – i.e. the perspective of the participant – “rationality standards must always claim general validity.”⁴⁸¹ Therefore, validity claims are internally linked to reasons and “a speaker owe[s] the binding (or bonding: bindende) force of his illocutionary act not to the validity of what is said, but to the coordinating effect of the warranty that he offers: namely, to redeem, if necessary, the validity claim raised with his speech act.”⁴⁸² This coordinating effect goes out to all would-be participants and therefore necessitates a warranty that is offered as good against the whole world.⁴⁸³ By this he means that, if argumentations continued long enough and in an open enough manner, the disagreement would be resolved and consensus achieved.⁴⁸⁴

In order to develop his concept of reason as the normative grounding for critical theory Habermas turns to the notion of an ideal speech situation.⁴⁸⁵ His ideal speech situation is one in which every possible perspective or interpretation is heard without coercion – the place where the only goal of the participants is pure communication unbiased by power-relations. That is, reason, rather than power, is what directs actors to come to mutual understanding within the ideal speech situation. Importantly, this ideal is “[n]either an empirical phenomenon nor a mere construct, but rather an unavoidable supposition reciprocally made in discourse. This supposition can, but need

⁴⁸⁰ *Ibid* at 116.

⁴⁸¹ Habermas, *supra* note 476 at 204.

⁴⁸² Habermas, *supra* note 31 at 302 [emphasis removed].

⁴⁸³ Habermas continues to argue against subjectivism and relativism by suggesting that, in principle, rationally motivated agreement is always available in disagreements. Also see Taylor, *Arguments*, *supra* note 34 at 34-60.

⁴⁸⁴ He explains that “unity of rationality in the multiplicity of value spheres rationalized according to their inner logics is secured precisely at the formal level of the argumentative redemption of validity claims. Validity claims differ from empirical claims through the presupposition that they can be made good by means of arguments.” Habermas, *supra* note 31 at 249.

⁴⁸⁵ It should be noted that, according to Habermas, “[o]ne should not imagine the ideal speech situation as a utopian model for an emancipated society. I use it only to reconstruct the concept of reason, that is, a concept of communicative reason....” Habermas, *Autonomy*, *supra* note 90 at 90.

not be, counterfactual; but even if it is made counterfactually, it is a fiction that is operatively effective in the process of communication.”⁴⁸⁶ Therefore, it is neither a mere regulative principle against which we could measure our discourse nor an existing concept as if it were present in our world – it is in fact the “constitutive condition of rational speech.”⁴⁸⁷

Habermas is consistent in his search for a theoretical framework that will provide a robust and ongoing critique of ideology through reason. However, due to the dualistic logic at work within his notion of communicative action, he has an unfortunate tendency to eclipse the politics of his own power-use and ideology in the process of developing his social theory. The more Habermas develops a theory of law and politics, the more he needs to account for the present reality of the modern state power-structures (if he continues in keeping with his goals of developing a dialectical theory that includes both philosophy and the empirical sciences). So, for example, he seeks to develop a concept of the ideal connection between communicative action and the production of law – i.e. democratic decision-making – in order to talk of the legitimacy of law. However, there is good reason to be suspect of the notion that decision-making through democratic deliberation can be the ideal that will ground legal legitimacy and protect it from the corruptions of ideology. For, as we saw above, the corruptions of ideology required reason’s ability to transcend the immediacy of history and the relativism of contextualism to provide a robust critical impulse that could move beyond systematically distorted communication. Reason, as conceived by Habermas, could only accomplish this opposition to ideological distortion by means of its singularity – its ability to transcend the multiplicity of history-bound life of reasoning persons and identify the universal conditions of rationality itself. Singularity, however,

⁴⁸⁶ Jürgen Habermas, “Wahrheitstheorien,” in *Wirklichkeit und Reflexion: Festschrift für Walter Schulz*, ed. by Helmut Fahrenbach (Pfullingen: Neske, 1973) 211 at 258-259 quoted in McCarthy, *supra* note 477 at 310.

⁴⁸⁷ *Ibid* at 310. The ideal speech situation plays an important role, then, in Habermas’ conception of truth. Namely, a proposition is true if it could win argumentatively reached agreement in an ideal speech situation. See Habermas, *Pragmatics*, *supra* note 31 at 365.

is not appropriate when considering democratic deliberation or legal legitimacy. Indeed, consensus absolutized (i.e. singularity that can transcend the corruptions of ideology) cannot function as the normative ideal of democracy or, by extension, legal legitimacy.⁴⁸⁸ Again, despite Habermas' valiant attempts to develop a dialectical theory that moves between philosophy and the empirical sciences, we are seeing a failure to truly recognize multiplicity – an inability to deeply acknowledge and theorize regarding pluralism – within liberal social theory.

Why is this so? As we have seen above, Habermas' project involves the development of a normative foundation for the critique of ideology through the reconstruction of the universal conditions of possible mutual understanding. His understanding of the universal conditions, however, was developed within an idealized speech situation that was devoid of any coercion. This idealized communicative world grants the social theorist the perspective needed to critique systemic distortions of communication within history. The problem, however, is that this idealized speech situation does not give an outside perspective from which to evaluate the distortions within democratic processes; absolute consensus is itself a distortion of democracy. Indeed, power imbalances represented in social and material inequalities are a necessary foundation for democratic decision-making. There is good reason to contend, therefore, that the idealization and universalization underlying Habermas' critical social theory fails to provide a theoretical foundation for democracy or legal legitimacy unless his notion of rationality is dramatically reinterpreted as multiple and embodied. That is, if it is understood as a process in which world-embedded communicative actors make context-transcending validity claims and reciprocally acknowledge (or not) their co-communicators' validity claims from within their own context. This process, however, does not allow for an ideal of society as a whole – the ideal itself

⁴⁸⁸ For Habermas, the creation of a democratic society involves “finding arrangements which can ground the presumption that the basic institutions of the society and the basic political decisions would meet with the unforced agreement of all those involved, if they could participate, as free and equal, in discursive will-formation.” Habermas, *supra* note 476 at 186.

must be multiple because it, or rather they, exist in relation to beings-in-time throughout history and, in this sense, allow for normative orientations that are politically efficacious – i.e. they neither absolutizes singularity nor reifies present communicative processes. To do this would be to deny the dualistic logic within the proceduralist turn of liberalism and seek to become more attune to what might be called the natural ordering of our world and ourselves. Indeed, it would be an abandonment of liberalism.

By turning to this third mode of liberalism, we were able to trace out in very broad strokes another area in which we can see dualistic logic at work within the connections between knowledge generation and socio-political coordination. Comparing modern economics, the scientific method, and the cosmopolitan ideal, offers us a glimpse into the totalizing impulse within dualistic logic. We are able to see more clearly how liberalism’s inability to localize translates into a drive to moral and material progress as well as an inability to develop politics that are accepting of a deep pluralism. We were able to begin seeing some of the rationale behind liberalism’s perpetual problematization of difference.

Conclusion

In conclusion, I have moved very quickly through dramatic historical shifts in thought and practice that are complex and multifaceted. My claim, once again, is not that this brief discussion captures the liberal tradition in all its multiple manifestations, but that we can see some of the commonality that allowed liberals to engage in a conversation with each other over the past 400 years. And, further, we are able to begin seeing how the gains achieved in the development of the liberal tradition have been accompanied by a corresponding intolerance toward diversity. I have argued that the “problematization of difference” so prevalent among democratic theorists, indicates that there is something fundamentally wrong with the way we are theorizing within the liberal tradition. That is, if we feel that differences within society are a problem that needs to be

dealt with in our political theorizing, then we are on the wrong track. This chapter, therefore, represents an invitation to begin a de-problematization of difference. It is my hope that we can instead begin problematizing dualistic logic and resisting its totalizing impulse by fostering resilience in localized political communities that are rooted in nature, family, and tradition.

We began the third section of this chapter with a brief look at Adam Smith's role in the development of modern economics and traced out the connection between his theories of political economy and moral sentiments. We noted that, in both areas, a unified progress would be achieved through the interaction of a multiplicity of individuals. Both the market economy and cosmopolitanism relies upon a sweeping away of certain barriers to interaction between individual actors while, at the same time, seeking to determine the nature of the interactions from within the actors themselves. And, we discussed the dualistic logic underlying the proceduralist turn and how this logic governed the normative reasoning one used in approaching the idea of the public sphere. We looked at how Rawls was unable to escape from the slippery slope to universalism inherent within a substitution of the right for the good and, further, the limits he was forced to put upon the interaction between individual actors that would lead to something he could accept as progress of the whole. And, of course, we see the same thing in Habermas insofar as he is forced to develop an otherworldly notion of power that is categorically distinct from violence in order to explain how the discreet interactions of communicative action could lead to legitimate power-use within the institutions of the totalized state. Indeed, the proceduralist turn, the ideals of self-determination and equality, as well as the free economic and cultural exchange of the free market and cosmopolitanism each in complementary ways serve to govern the removal of barriers to interaction while simultaneously shaping the interaction process itself in hopes of a certain, transcendent or universal outcome. This governing and shaping is achieved through dualistic logic insofar as simultaneous individuation and totalization

disintegrate the barriers to interaction (i.e. in the push to individuation) while requiring a kind of universal scoping within the structures and processes of interaction (i.e. in the push to totalization). Further, as we saw above in our discussion of protocolic control and acceleration, we are now in a place to begin seeing how the dualistic logic of liberalism not only feeds on acceleration (i.e. in order to disintegrate barriers to interaction between individuated subjects), but fuels acceleration through the facilitation of interaction scoped as widely as possible (or, at least, always scoping wider and wider as relevant opportunities arise).

Our project here is to root out and understand the effectiveness of the logic underlying liberalism and begin developing the capacity to recognize the violence at work within this logic. Part of this project means, therefore, a re-thinking of liberal normative ideals and the hope in turning to interaction itself (or a story of rationality as a certain kind of non-violent interaction) as a means of achieving some progress in reaching ideals. And, if we are to go further toward a reconceptualization of interaction as a means to progress, and a recognition of the violent implications of this proceduralist *turnaround*, more will need to be discussed regarding rationality, interaction, and progress than what has been sketched out above. We will need to begin groping toward a conception of rationality that will legitimize violence without advancing the protocolic domination of dualistic logic.

VI. LEGITIMATION

Introduction

In the last chapter, we sought to de-problematize difference and instead problematize dualistic logic with a view to begin fostering network patternings that resist standardization. The liberal market, science, and cosmopolitanism rooted in liberal ideals of independence and equality were therefore understood as bringing with them a logic that undermines resilient natural, familial, and traditional patternings. But, the question remains, how are we to begin theorizing regarding the norms of democratic politics in a positive manner? How, for example, are we to avoid domination within nature, family, and traditions? Or, more generally, how are we to understand the legitimization of violence? What role does reason and freedom play in the processes of legitimization?

As we have seen above in the discussion of politicization in chapter two, politics is all about the interconnections and interactions of embodied people in history and their localized place within their environment. Hence, the deep pluralism at the heart of democracy must be acknowledged and embraced. Abstractionism should be resisted and idealizations avoided. However, a kind of Habermasian question remains: is it not still important to abstract away from real life in order to develop a critical impulse that can be applied as a reforming principle that will not be corrupted by the domineering power-dynamics of life?⁴⁸⁹ I began with a quote from Wittgenstein's *Philosophical Investigations* in which he speaks of the danger of a rationalism that is not rooted in the actual practices of people, but instead leads us into believing that we need to

⁴⁸⁹ Rawls believes that “[t]he nature of the self as a free and equal moral person is the same for all....” Rawls, *supra* note 31 at 565. Therefore, his methodology (not unlike Habermas) is to set out in search of a conceptual position that transcends the politics of life. Perhaps not surprisingly, his value monism falls into step with Hobbes’ “shift from a dialogical to a monological style of moral [and political] reasoning.” See Quentin Skinner, *Reason and Rhetoric in the Philosophy of Hobbes* (Cambridge: Cambridge University Press, 1995) 15-16 quoted in Tully, *supra* note 373 at 115.

“repair a torn spider’s web with our fingers” through abstractions away from every-day life.⁴⁹⁰ In response to rationalism’s presuppositions of uniformity and universalism that distort our thinking through formalistic constraints, Wittgenstein’s call challenges us to return to the rough ground for it is only upon the rough ground that we find the friction we need to walk. However, if the ideals of independence and equality are understood to be antidemocratic insofar as they are driving forces within the “empire of uniformity,”⁴⁹¹ then where do we turn for a check upon the evils of domination that have so often been rooted in the hierarchies of tyrannical regimes or the violence of nature, family, and tradition? If we do not hold fast to the ideals of independence and equality, from where do we obtain a critical approach? Are we simply left with the injustice of domination within the status quo?

Before going on to suggest some ways in which we might theorize regarding the normative “rough ground” of politics, it is worthwhile to briefly consider what we are looking for in a critical approach that takes the real lives of people seriously. James Tully, following the lead of Wittgenstein and Foucault, has also emphasized the centrality of practice and, consequently, the need for multi-logical critical approaches. For example, he has argued that we would do well to free ourselves from the idea that political life is free and rational only if it is grounded in some ideal form of critical reflection.⁴⁹² Tully seeks to temper the hegemonic aspirations of certain practices of critical reflection – specifically the justificational form (e.g. Habermas) and the interpretational form (e.g. Taylor) – and bring each one back down into the messy back-and-forth of political life as a practice of reflection among many different practices. He writes that “no type of critical reflection can play the mythical role of founding patriarch of our political life

⁴⁹⁰ Wittgenstein, *supra* note 184 at 46e. Of course, although his statements certainly apply to the moral abstractions of liberal rationalism, Wittgenstein was largely speaking of his earlier work and the extremities to which logical positivism was prone. For example, see Wittgenstein, *supra* note 183.

⁴⁹¹ See, especially, Tully, *supra* note 372 at 58.

⁴⁹² See Tully, *supra* note 34 at 39ff and James Tully, “Wittgenstein and Political Philosophy: Understanding Practices of Critical Reflection” (1989) 17 *Political Theory* 172.

presumed of it in the debate, because any practice of critical reflection is itself already founded in the popular sovereignty of our multiplicity of humdrum ways of acting with words.”⁴⁹³ It is Tully’s approach to critical reflection that provides the starting point for our discussion of reason and the legitimization of violence that we will discuss in this chapter – rationality is rooted in embodied practice rather than ideal singular processes of disembodied thought and is therefore multi-logical and supportive of a plurality of critical approaches. In the discussion that follows, then, I will proceed in a Tullian manner and suggest a few different (but interrelated) ways in which we might ensure that our concerns regarding the dualistic logic of liberalism manifest in the ideals of independence and equality does not lead to a bare acceptance of the status quo.

A. Reason and the Violence of Transcendence

The ontology of *res ecologia* outlined above highlights the fact that we are connected to our ecological, social, and spiritual environment as well as (importantly) dependent upon this connectedness and vulnerable to changes and disturbances in this larger network. Indeed, the concern regarding the threat of protocolic domination that runs through this discussion is built upon the idea of political subjects as *res ecologia*. The notion of legitimizing violence – the central notion in political morality and the topic of this chapter – is motivated by an acute awareness of persistent vulnerability and fragility. So, as we begin to consider the legitimation of violence and, more specifically, the role of reason in legitimation processes, let us consider the degree to which *res ecologia* differs from the modern conceptions of the independent, self-determining political subject. And, further, let us remember that, if we have a different ontology, we will develop a different morality in seeking to understand the legitimization of violence.⁴⁹⁴

⁴⁹³ *Ibid.* at 199.

⁴⁹⁴ As Virginia Held has correctly noted, “[m]oralities built on the image of the independent, autonomous, rational individual largely overlook the reality of human dependence and the morality for which it calls.” Virginia Held, *The Ethics of Care: Personal, Political, and Global* (Oxford: Oxford University Press, 2006) at 10. She continues to note that “[d]ominant moral theories tend to interpret moral problems as if they were conflicts between egoistic individual

We will do well to avoid the mistakes of the classic moral philosophers who have typically avoided discussion of human dependence and weakness and, consequently, have misunderstood its importance in understanding reason and the legitimation of violence.⁴⁹⁵ The depth of our dependence means that we do not simply create or posit moral judgments. Rather, normativity in actions and thought is by definition dialogical and diachronic such that we are born into allegiances and responsibilities and can only alter these based upon patternings that come from beyond ourselves. Not only do we inherit numerous responsibilities as a result of our embeddedness in ecological, familial, and social relations, but we unavoidably create a multiplicity of responsibilities for others as we go through life.⁴⁹⁶ As Alasdair MacIntyre rightly notes, “[i]t is most often to others that we owe our survival, let alone our flourishing, as we encounter bodily illness and injury, inadequate nutrition, mental defect and disturbance, and human aggression and neglect.”⁴⁹⁷ Therefore, given this pervasive dependence as well as the persistent vulnerability and ignorance that accompanies it, it is appropriate that we begin a consideration of reason and freedom with a certain degree of skepticism.⁴⁹⁸

Importantly, we should also note up front that this emphasis upon the dependency of the political subject is not to deny the agency of the self as a being that projects its will, it is simply to recognize that the agency of the self is of a certain kind – namely, an agency that is dependent upon its nature as an embodied, vulnerable, and dependent being-in-the-world. Or, to put it another way, we possess two fundamental drives – one towards autonomy (multiplicity) and one towards solidarity (unity). The first drive is the self’s push to establish itself as the focal point for

interests on the one hand, and universal moral principles on the other. The extremes of ‘selfish individual’ and ‘humanity’ are recognized, but what lies between these is often overlooked.” *Ibid* at 12.

⁴⁹⁵ As MacIntyre notes, “when the ill, the injured and the otherwise disabled are presented in pages of moral philosophy books, it is almost always exclusively as possible subjects of benevolence by moral agents who are themselves presented as though they were continuously rational, healthy and untroubled.” Alasdair MacIntyre, *Dependent Rational Animals: Why Human Beings Need the Virtues* (Chicago: Open Court, 1999) at 2.

⁴⁹⁶ Sandel, *supra* note 376 at 179.

⁴⁹⁷ MacIntyre, *supra* note 495 at 1.

⁴⁹⁸ See *ibid.* at 4.

understanding and relating to the world. The second drive is the self's push to move beyond and become other than itself.⁴⁹⁹ These two drives produce a forward-moving impulse insofar as they are intolerable as a resting-place; the network self contains within it a tension between independence and dependence that works itself out (dialogically and diachronically) in history. An appropriate conception of reason, legitimation, and freedom will be rooted in this understanding of the irreducibly complex nature of the political subject.

This understanding of the dynamic nature of the political subject shapes the problem we seek to overcome in our appeal to reason when talking about legitimizing violence. Habermas appeals to reason in order to find some escape from what he sees as the deep-seated violence of ideology. However, it was also made clear above that Habermas has fundamentally misunderstood the nature of the problem of violence and has therefore advanced a legal and political philosophy that obscures some very real excesses of violence taking place in the world (i.e. tends to justify some illegitimate uses of power and structural violence) while at the same time overplays the dangers of some other uses of power. We might ask, then, for what kind of problem are we seeking a solution? Or, perhaps more accurately, what is the trap within the human condition from which we seek to escape?

In chapter three, I outlined the problem of protocolic control that formed the background for the turn to a network approach to democracy. It was made clear that protocolic control has a logic of universalization or a homogenizing impulse present and active within its dualistic logic. Given the dualistic logic and its universalization or homogenizing impulse within protocolic control, the problem is not how best to assert the independence of the self – e.g. to disagree with, or transcend, traditions and collective ideologies – but how to avoid an excess of structural

⁴⁹⁹ In Buberian terms, the fusion with the transcendent is lined up with the I-Thou relation and the fission in autonomous interaction with others is lined up with the I-It relation. See Martin Buber, *I and Thou*, trans. by Walter Kaufmann (New York: Charles Scribner's Sons, 1970).

violence. As we saw above, dependence, unlike the liberalized notion of domination within republicanism, is not inherently problematic and domineering. In fact, in a network approach to democracy, dependence is essential. The question is: *what kind of dependence?* For, again, as we saw above, there can be great security and stability in relations of dependence such that dependence can serve as protection against the danger of domineering power-relations. As we will discuss below, dependence itself allows for a kind of transcendence beyond the self and, if it is a healthy kind of dependence, it is a transcendence that never uproots (i.e. excessively disrupts) the self. The network self is nested within a larger network that re-energizes and re-enforces the patternings of the self-network. Dependence (e.g. grounding in the particularity of a specific tradition) may thereby provide some much needed protection from the danger of excessive disruption and displacement. The goal, therefore, is to avoid domination by legitimizing violence through structures and processes of governance that encourage self-transcendence *through immanence*. What then do we mean by “legitimation”, “transcendence” and “immanence”?

As noted, an appropriate conception of reason, legitimation, and freedom will be rooted in an understanding of the tension within the very nature of the political subject. If we understand the network self (our political subject) as persistently dependent and vulnerable while at the same time striving to overcome itself and transcend its own particularities to unite with the other, then we are faced with the challenge of a balancing act. How can we stay true to the immanent specificity of the embodied network self while at the same time recognizing its struggle for transcendence? What’s more, how can we walk this line between immanence and transcendence in a way that promotes structures and processes of governance that resist excessive violence? Indeed, what do we mean by “excessive” if the self contains within it’s own nature a drive to transcend its own immanent specificity?

First, how might we understand this fundamental drive to transcendence within the

political subject given the pervasive immanence of persons as *res ecologia*? What do we mean by “transcendence” in both socio-phenomenological as well as structural terms? How might we understand transcendence and immanence in terms of the developmental processes of network patterning?

Phenomenologically, transcendence includes the workings of an imaginative will – i.e. a projection from one’s life patterning in two dimensions (1) temporally – projecting into the future and into the indeterminacy of this future, and (2) existentially – projecting outside oneself and the limits of one’s direct control as well as outside the limits of one’s dependence.⁵⁰⁰ Transcendence, by definition, is therefore violent in its disruption of the self through the creation of a kind of independence. As the self projects beyond itself, it becomes unsettled and, to some degree, uncontrolled or unstable in its projection; it is in a unsettled state of being-beyond-itself. Of course, a network approach to democracy means persons are understood as beings that live and move and have their being as distributive network patternings nested within broader network patterns. Therefore, transcendence within this network ontology means a making or a re-enforcing of connections to network patternings outside (or larger than) the immediate network pattern of the self. Transcendence through immanence, then, involves the creation or re-enforcing of connections in the patternings most local to the immediate patterning. Transcendence through immanence, therefore, means more than a bare transcendence of the self; it means *transcendence in and through dependence*. Instead of transcendence coming through a bare communicative connection with the other (i.e. as the cosmopolitanism of liberal rationalism suggests), transcendence through immanence means a return or a greater exploration of the self as well as the resulting communicative relationship with the other that develops out of this

⁵⁰⁰ In this sense, it is not entirely unlike the imaginative expansion of sympathy outlined by Adam Smith in his psychological account of normative relations where we come to sympathize through an imaginative process that maps our senses and then projects them outward onto others in the world. See Smith, *supra* note 451 at 2-4.

actualization process of self-realization. Transcendence without immanence involves connections that do not support the immediate network pattern; this process of ungrounded transcendence represents the creation of instable fragility and opens the self up to uprooting and displacement – i.e. domination. And, because – given the realities of embodied existence – there is a finite number of connections that can be made, there is a dynamic within these nested patternings such that connections to patternings near the immediate patterning can necessitate disconnections from patternings farther from the immediate patterning. Likewise, disconnections from the distant patternings can precipitate connections with the more local patternings. What this means, therefore, is that sequential connection-making is highly significant if the dangers of transcendence without immanence are to be avoided. We should also note that, this process of creating and re-enforcing connections could be originating from within the immediate pattern or from patterns outside the self; it could be originating at any level of the nesting. The level of origination is not of importance so much as the nature of the connection-making taking place. Connection-making that does not build in the resilience of sequential patterns – i.e. making connections from one level of nesting to the next – threatens the self and leads to domination in its instability.⁵⁰¹

The original drive toward transcendence can be seen, perhaps most clearly, in the use of reason. Given our understanding of network selves as dependent and vulnerable beings, though, we will do well to approach reason with a significant degree of caution and skepticism. Certainly, the significance of reason lies in its role within processes of self-transcendence; reason is powerful and politically relevant precisely because it is a process of the self making

⁵⁰¹ Of course, this notion of resilience in sequential patternings is rooted in the concept of a natural ordering in the universe we discussed above. For example, as Berdyaev writes, “the new middle age, like the old, is hierarchical in structure, whereas modern history everywhere repudiates such an organization. Man is not a unit in the universe, forming part of an unrational machine, but a living member of an organic hierarchy, belonging to a real and living whole.” Berdyaev, *supra* note 147 at 109.

connections beyond itself. Reason is a process of making connections beyond oneself but these connections have the potential to develop either more fragile or more resilient inter-relational structures and processes. And, in this way, reason holds the promise of freedom in one hand and the potential for domination in the other.⁵⁰²

In its promise of freedom, reason offers what is not to be thought of as independence or autonomy in the realm of action (i.e. an isolation that is nothing more than false or distorted notion of genuine freedom). Rather, the freedom that reason offers is found in stable and secure relational dependence upon the environment of the self. That is, reason can lead to a freedom in transcendence through immanence that is quite different from the contractual transcendence that is said to lie in the ability to calculate what is in one's own best interest in the rationalist's creation of a *demos* (e.g. Rousseau, Habermas, etc.) But, it is also quite distinct from the meta-traditional transcendence as suggested by feminists like Virginia Held and multiculturalists like Kymlicka. The freedom sought within the ethics of care as advanced by Held is similar to that which is advanced by Kymlicka in that it is seen as a kind of autonomy in which a person develops or exercises "a capacity to reshape and cultivate new relations, not to ever more closely resemble the unencumbered abstract rational self of liberal political and moral theories."⁵⁰³

However, although the freedom sought within a network approach to democracy shares this strong rejection of the liberal rationalist approach to radical, individualistic autonomy, the concept of freedom within the ethics of care and multiculturalism is still missing the problem of protocolic control and the disruptive power of domination. We have already considered the

⁵⁰² It may be said, therefore, that independence (which is, really, a kind of disconnect between the immediate pattern and the next pattern) is more prone to domination than dependence because it is inherently unstable and prone to disruption. And, as we saw above in chapter two and three, the development of grid-like patterns around the immediate pattern represents the facilitation of connections that are not sequential, not in keeping with the nesting of distributive networks. As such, not only does the grid represent a distortion of the immediate pattern, it develops connective patterns that are lacking resilience and stability insofar as connections and disconnections can be (and are) made far from the immediate pattern, but nonetheless isolate the immediate pattern. This is, of course, what takes place in the development of protocolic control.

⁵⁰³ Held, *supra* note 494 at 14.

notion of freedom in Kymlicka's multiculturalism, but we see a similar problematic at work in the ethics of care theorists' reluctance to leave liberal ideals of self-determination and equality behind. For example, Held understands the "ethics of justice" and the "ethics of care" to be two conceptually distinct, but nonetheless necessary, approaches to moral theory.⁵⁰⁴ She suggests that in the ethics of justice, "the values of equality, impartiality, fair distribution, and noninterference have priority; in practices of justice, individual rights are protected, impartial judgments are arrived at, punishments are deserved, and equal treatment is sought."⁵⁰⁵ However, the ethics of care involves "the values of trust, solidarity, mutual concern, and empathetic responsiveness... [and,] in practices of care, relationships are cultivated, needs are responded to, and sensitivity is demonstrated."⁵⁰⁶ Or, to put it simply, "[w]hereas justice protects equality and freedom, care fosters social bonds and cooperation."⁵⁰⁷ By clinging to this conception of justice as rooted in persons as "free and equal", the ethics of care approach as well as the multicultural approach problematize dependency in a way that the network approach does not. And, further, by problematizing dependency, the use of reason as a means of transcendence is embraced with a dangerous enthusiasm.

For liberal rationalists like Habermas (as well as Rawls and Kymlicka), reason offers the freedom of transcendence beyond the pervasive parochialism of one's traditions and ideologies – i.e. a kind of independence. Habermas puts forward a socio-psychological model within his conception of rationality and suggests that the transcendence of idealization achieved through reason is best understood as therapeutic.⁵⁰⁸ He sees the ideal speech situation as anticipated and

⁵⁰⁴ See *ibid.* at 16.

⁵⁰⁵ *Ibid.* at 15.

⁵⁰⁶ *Ibid.* at 15, 16.

⁵⁰⁷ *Ibid.* at 15.

⁵⁰⁸ As Shapiro writes, "Habermas, following here a psychoanalytical model writ large to account for the functioning of institutions, suggests that systematic distortion is a repression, a censoring and excommunicating from the public realm of discourse, and that its symptoms are unrecognizable to the 'patient' who is repressing this material. What is

presupposed in every act of communication but, importantly, the unity of reason within the ideal speech situation also provides a kind of mirror or therapeutic perspective from which one can come to recognize systemic distortions in communication. If we explore this therapeutic perspective and its underlying assumptions concerning reason a little further, however, we will come to realize that the transcendence of reason sought by liberal rationalists holds the promise of freedom, but actually undergirds the standardized modulations of protocolic control and, therefore, causes protocolic domination.

Viewing the transcendence of reason in the ideal speech situation in therapeutic terms, we can imagine a therapist that will simultaneously communicate two messages to us:

1. we should be ourselves, and
2. we should, at least in some way, be different than we presently are.

The first message is needed because a therapist will do no good if he simply tells you that you should be as he (or someone else) is. What this means is that it is quite obviously not therapeutic to be given a uniform message that everyone receives despite their unique personal characteristics and social situation.⁵⁰⁹ The second message is needed because the therapist must have some prescriptive weight and not simply say “everybody is different and that is just fine.” Indeed, without this normative element, we are back into the absurdity, inactivity, and narcissism of the relativist – i.e. the kind of thing we set out to overcome with a turn to reason. If we accept the necessity of both of these messages, then a problem remains – how do we reconcile the multiplicity of relativism with the singularity of a universal normativity? In other words, how do we re-conceptualize the use of reason such that we maintain a robust normative impulse without

required for cure, he argues, is a therapist, or at least a therapeutic viewpoint that would precisely be outside of the distorted communication situation.” Ian Shapiro, *Democracy’s Place* (Ithaca: Cornell University Press, 1996) at 131. Also see Jürgen Habermas, *Knowledge and Human Interests*, trans. by Jeremy Shapiro (Boston: Beacon Press, 1971) at 274-300, 310.

⁵⁰⁹ This normative essentialism is the problem with cosmopolitanism. And, indeed, it is the problem with Habermas’ theoretical framework if taken as pure transcendentalism.

absolutizing its singularity? Or, again, how do we then develop a normative foundation for critically evaluating power-uses – i.e. how do we identify and avoid “excessive” violence given our fundamental dependence as network selves?

Habermas, like so many rationalists before him, understands the transcendent power of reason lying in its unity (i.e. the coordinating effect of warranty offered in speech is good against the whole world).⁵¹⁰ He further contends that the unity of reason assumes an ideal speech situation in which there is a complete absence of coercion through power and, therefore, *complete and total consensus* is theoretically achievable.⁵¹¹ The critical impulse cherished by Habermas – the ability of the self to realize and manifest its drive towards transcendence – relies upon this pure or absolute unity of reason. However, there are two key problems with this conception of transcendence through reason. First, this notion of reason as a metaphysical unity existing in the nether realm and waiting for us to abstract away from our real lives enough to access its transcendent glory is dramatically out of step with our lived experiences with ourselves and others as embodied, reasoning beings (as Gadamer has so convincingly argued).⁵¹² But, more on this abstractionism below... Second, and more importantly for our discussion of reason, transcendence, and the legitimation of power-use, reason conceived in this universalized, power-free way cannot serve as a theoretical foundation for freedom, democracy, and the legitimation of power-use.

⁵¹⁰ See, for example, Habermas, *supra* note 31 at 302. He explains that “unity of rationality in the multiplicity of value spheres rationalized according to their inner logics is secured precisely at the formal level of the argumentative redemption of validity claims. Validity claims differ from empirical claims through the presupposition that they can be made good by means of arguments.” Habermas, *supra* note 31 at 249.

⁵¹¹ The singularity of the ideal speech situation could be compared to John Rawls’ idea of an original position behind the “veil of ignorance.” Here, Rawls says, “it is clear that since the differences among the parties are unknown to them, and everyone is equally rational and similarly situated, each is convinced by the same arguments.” Rawls, *supra* note 31 at 139. Of course, Rawls’ notion of justice is monological (there is nothing that requires inter-subjective communication in his thought experiment) whereas Habermas’ ideal speech situation is inherently dialogical.

⁵¹² As Gadamer writes, “[r]eason exists for us only in concrete, historical terms, i.e. it is not its own master, but remains constantly dependent on the given circumstances in which it operates.” Gadamer, *supra* note 131 at 260.

The ideal speech situation and its underlying assumption regarding the unity of reason cannot provide a perspective from which to recognize and avoid excessive violence because what is excessive must be determined diachronically from the bottom up rather than from an imagined singularity existing outside space/time. In other words, the excesses of power-use must be multiple insofar as the power-flows within network patternings are multiple in both their particular structures and processes as well as in their different flux-patterns through time – i.e. different networks can absorb and maintain different degrees of adaptation and re-configuration. The degrees of power (i.e. change acting against resistance) at work within network patternings, therefore, are inherently relative to the relevant networks' background rates of change. Our judgements concerning power-use, therefore, must also be multiple; our understanding of “excessive” must develop in and through the connections between ourselves as *res ecologia* and our world. In terms of legitimizing democratic governance, the unity of reason simply cannot serve as a critical or therapeutic perspective from which to gain an understanding of systemic power-distortions of democratic processes because, as will be made explicit below, democracy has the multiplicity of power imbalances at its theoretical core. In other words, deep or complete consensus represents the vanishing point of democracy.⁵¹³ Put another way, interests cannot be generalized completely or they will cease to be meaningful in any political sense – i.e. there must

⁵¹³ Richard Bernstein has pointed out that, although there is nothing wrong in principle with a counterfactual in a scientific theory, it is not at all obvious what kind of “evidence would even be relevant to supporting or refuting such a claim. ... What evidence or arguments would even be relevant to refute the counterfactual claim that despite all signs to the contrary every speaker who engages in communicative action is committed to the presupposition of the discursive redemption of universal normative validity claims?” Richard Bernstein, *Beyond Objectivism and Relativism: Science, Hermeneutics, and Praxis* (Philadelphia: University of Pennsylvania Press, 1983) at 193. I would like to suggest that my approach to his ideal speech situation – i.e. arguing that it does not achieve the intended outcome of democratic governance – is an example of a kind of refutation of Habermas' counterfactual. That is, Habermas is engaged in positing hypothetical universals that are necessary conditions. However, these conditions are not only subject to empirical justification and therefore fallible, but they are developed in order to provide a normative foundation for law and politics. His dialectic synthetic project involves a re-definition of *scientific* endeavours (it is, for Habermas, rooted in moral-political concerns) and so the simple Popperian call for falsifiability must also be re-defined. If it can be shown that Habermas' counterfactual does not provide an adequate normative foundation *in the ideal*, then there is good reason to question the counterfactual itself as a necessary condition for practical thought. That is, if the counterfactual involves a situation in which democracy has been dissolved, to what degree can it serve as the foundation for a critical impulse?

be opposition or limitations pushing up against the interest for it to be politically efficacious.⁵¹⁴

Consensus cannot provide an operative ideal for democracy because democracy, by definition, remains a process of dealing with conflicting values and norms. That is, inequality of difference should be understood as a *structural necessity* rather than an *ideological contingency* that is to be overcome through a critical theory.⁵¹⁵ Or, to put this same point in more Habermasian terms, democracy – even in the ideal – includes a lack of confidence in validity claims and argumentative discourse. Habermas suggests that communicative action may be consensual (where speech takes place within an already present consensus) or dialogical (where speech takes place based upon common recognition of validity claims and with the goal of agreement).⁵¹⁶ But, due to their reliance upon the singularity of consensus, neither consensual nor dialogical communicative action can point us toward the ideal of democracy. Quite simply, democracy involves the *questioning* of validity claims not the *redemption* of validity claims.

Some questions remain: If there is no transcendent unity of reason from which to gain a critical perspective, what then do we have to say regarding reason and its potential for contributing to freedom and limiting systemic violence? Or, more specifically, how do we avoid

⁵¹⁴ Or, as Derrida says, there is no politics without *différance*. See Thomas McCarthy, “The Politics of the Ineffable: Derrida’s Deconstruction,” in Michael Kelly, ed., *Hermeneutics and Critical Theory in Ethics and Politics* (Cambridge: MIT Press, 1991) at 161. But, of course, this notion of *différance* has implications beyond an *ideal* of democracy and challenges the very notion of a rational consensus – i.e. perhaps it belies some of the difference between deconstructionism of Derrida and the reconstructionism of Habermas. Also see Lyotard, *supra* note 29 at 65, 66 and Chantal Mouffe, *Deconstruction and Democracy* (London: Routledge, 1996) at 8. Also see Cheryl Misak, *Truth, Politics, Morality: Pragmatism and Deliberation* (London: Routledge, 2000) at 131, 144, 45 and Ian Shapiro, *Democracy’s Place* (Ithaca: Cornell University Press, 1996) at 121 cited in *ibid* at 131. It should also be noted that, following Arendt, Habermas seems to suggest that there is political energy produced through the coming together of beliefs (e.g. almost akin to the power produced in nuclear fusion). See Habermas, *supra* note 238 at 147.

⁵¹⁵ See John Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations* (Oxford: Oxford University Press, 2000) at 20. Note that Dryzek makes this distinction, but does not – as I do – argue that inequality is a structural necessity.

⁵¹⁶ See McCarthy, *supra* note 477 at 290. When faced with disagreements, coordinated actions may allow for the development of cooperative norms. Habermas writes, “[i]f this commonality cannot be presupposed, the actors have to draw upon the means of strategic action, with an orientation toward coming to a mutual understanding, so as to bring about a common definition of the situation or to negotiate one directly – which occurs in everyday communicative practice primarily in the form of ‘repair work.’” Habermas, *supra* note 476 at 121. That is, working within a teleological framework (i.e. realizing one’s aims) will lead to a communicative framework (i.e. one where there is agreement).

excessive violence when violence is systemic within ourselves and our very processes of self-transcendence through reason?

Reason, as outlined above, can be understood as manifesting the drive toward transcendence in the political subject in two primary ways: (a) a bare transcendence that reaffirms an independent self or detaches and isolates a self from its social and material environment or (b) a transcendence that rejuvenates the connections that make up the self and works outward in a sequential manner from the most immediate patterns of the self. In short, the former manifestation of reason leads to domination and the latter to freedom. That is, reason working in the service of freedom allows a self to better realize its place within ecological, social, and spiritual environments that are not of its own making; reason in the service of freedom grounds and re-enforces the self as a kind of rationally dependent being. Developing immanence means a struggle to ground the self through a process of deepening the patterning of the self in its relation to the world around it (i.e. stabilizes and embeds it). Reason is the self re-enforcement and replication or the projection of the self outward after a stage of moving inward.⁵¹⁷ It is this rejuvenating process of both deepening and re-configuring that allows the self to resist domination by patterning after a larger pattern, a transcendent self of a certain kind. Reason operating in the service of freedom, then, should be understood as inherently and fundamentally relational.⁵¹⁸ Phenomenologically, it may be seen as the process of coming to acknowledge,

⁵¹⁷ Compare with Hegel's notion of Spirit as absolute freedom – i.e. self-consciousness as pure being. See Taylor, *supra* note 193 at 403.

⁵¹⁸ For Hegel, what is rational is real and what is real is rational. In other words, history is the self-realization of reason. See Georg Wilhelm Friedrich Hegel, *Philosophy of Right*, trans. by S.W. Dyde (New York: Cosimo, 2008) at xix and Taylor, *supra* note 193 at 422. As such, Hegel was correct to understand the rational as what exists in the world and what the world is becoming, but he was wrong to take such an objectivist perspective. That is, he speaks of the rational and the world as if from a perspective outside it. But, a more subjectivist approach is needed. The point of the rational is to develop a grounding of sorts for appropriate political behaviour – i.e. to avoid the whimsical emotivism of romanticism. However, it is too rationalistic to consider the world-in-itself. Rather, we should consider the rational as that which exists in the world *from our perspective as embodied beings-in-the-world*. What this means, then, is that rationality is a way of expressing our striving for a kind of network formation that is coordinating with that which we are embedded within – i.e. it is a becoming one with the world. It is a self-

understand, and embrace one's vulnerability as a dependent being (i.e. as piety). Structurally, it may be seen as the process of creating, re-enforcing, and re-building the connections of dependence that make up, support, and enhance the self.

Although we cannot avoid violence insofar as it is within our nature to strive for transcendence, we can legitimize violence and thereby avoid the excessive violence that is domination. And, further, we can come to recognize excessive violence to the degree we can come to an understanding of the limits of our legitimization of violent power-use (that which is not legitimate is excessive by definition). How then do we legitimize the power-use of violence?

Legitimation is a process of coming to recognize and embrace the violence that leads to greater resilience.⁵¹⁹ However, at this point, it may be helpful to once again consider how we might best understand legitimation in terms of transcendence through dependence. And, in order to begin recognizing the dialectical activity of legitimation, we need to begin seeing democratic legitimation as:

- a dialogical process of self-realization and self-determination – a reflexive process of self-legitimation; and
- not simply a theoretical process, but a practical, embodied process of social and material relations taking place in and through history – a diachronic process.

Legitimacy involves an ongoing recognition and positive normative judgment regarding one's participation in the power at work within processes of reconfiguring network patternings – i.e. a judgment that one is helping create freedom rather than domination. This dialogical and diachronic approach is founded upon the fact that we ourselves and our understanding of

actualization driven by a thirst for transcendence but guided by the structures and processes of network patterns beyond oneself. Reason, therefore, is neither within oneself nor within "the world" as if it were a thing-in-itself. Reason exists (i.e. is made manifest) within the relationship between the self and the world.

⁵¹⁹ Legitimacy, then, is a recognition that one's participation in the power at work within patternings is contributing to greater freedom rather than greater domination. It is (a) a dialectical process of self-other legitimation and (b) a diachronic process – i.e. an ongoing, embodied process of relational development that takes place through time.

ourselves are determined within and through history.⁵²⁰ As Gadamer explains, “we stand always within tradition, and this is no objectifying process, i.e. we do not conceive of what tradition says as something other, something alien. It is always part of us, a model or exemplar....”⁵²¹ Put another way, the authority of tradition comes from within and, at the same time, the degree to which we recognize the authority of tradition (or even notice traditions) is motivated by our present interests and concerns.⁵²² Thus, recognizing our inherent prejudices and the depth of their role within our understanding helps us to gain a more appropriate conception of ourselves as historically situated, inter-dependent beings and, therefore, a better awareness of our epistemological situation.

The interplay between the authority of tradition and our present interests and concerns, if it is to guide us in avoiding excessive violence, may be understood in terms of legitimate and illegitimate power-use. Illegitimate power-use may be best understood as being excessively violent or domineering. The liberal rationalist tradition has come to elevate deliberation and public reason as the sole means of legitimation because it continues to be fixated a concept of freedom as self-determined action that is attuned to universal reason. This obsession with deliberation and public reason as the only means of legitimation has led to imperialistic standardizations in order to facilitate communication across radically different cultures and societies. Because, for the liberal, there can be no legitimation without sufficient commonality, standardization in the face of deep difference is itself understood to be legitimate. For one concerned with the domination that is manifest in and through the modulations of protocolic

⁵²⁰ I say, “is determined” because ourselves and our understanding of ourselves should be understood not as two fundamentally distinct things or processes, but as one reflexive process of actualization.

⁵²¹ See Gadamer, *supra* note 131 at 265. This inner historicity of experience makes objective interpretation impossible. See Stanley Rosen, *Hermeneutics as Politics* (New York: Oxford University Press, 1987) at 165.

⁵²² See Gadamer, *supra* note 131 at 267. For Gadamer, “[o]ur self-understanding is tradition bound. If it criticizes aspects of that tradition, it does so only in the tradition’s own terms.” Georgia Warnke, “Social Identity as Interpretation” in Jeff Malpas, Ulrich Arnsward, and Jens Kertscher, eds., *Gadamer’s Century: Essays in Honor of Hans-Georg Gadamer* (Cambridge: The MIT Press, 2002) at 317.

control, however, this continued obsession with deliberation and public reason represents an unfortunate and unsuccessful attempt to justify what should be understood as excessive systemic violence.

Finally, in addition to sociological terms, legitimation may be understood in psychological terms. In this sense, legitimation takes place as one gains hope or optimism regarding what kind of relationship one may develop with the other. In this sense, legitimacy is not only best understood diachronically, but is best understood as being primarily future-oriented. It may be seen in the willingness to suspend some negative judgments for a time in hope of a future in which one will be more free.

The problem of legitimacy is indeed highly problematic if it includes an ideal requirement that the violence of, say, state law encapsulate fundamental or finalized norms and procedures at any given point in time as a fully legitimate standard of behaviour.⁵²³ Understanding a body of laws as having not only its content, but also its source (e.g. the state) caught up in a continuing political process of reform and correction that (fallibly) develops restraint as an educative and interpretive process tempers this problematic somewhat.⁵²⁴ As Jack Balkin writes, “[l]egitimacy is a gamble about what the future will bring. This faith cannot be reduced to the existing content of the laws or of the system of government at the present, because those laws and that system may change. Rather, the faith that legitimacy requires is faith despite uncertainty about how

⁵²³ Another way to put this is to say that the constitution represents some sort of “higher law”—for example, a set of “eternal and immutable” principles. Edward Corwin, *The “Higher Law” Background of American Constitutional Law* (Ithaca: Cornell University Press, 1971) at 4 quoted in Keith Whittington, “Extrajudicial Constitutional Interpretation: Three Objections and Responses” (2001-2002) 80 N.C. L. Rev. 773 at 774.

⁵²⁴ This type of law is actually formed to encourage later amendments rather than a view of law as an un-amendable set of standards that encapsulates the identity of the polity. This is different from Michaelman’s notion of legitimization which seems to simply require the assent of all relevant people to the content of the constitution and system of government as they reasonably understand it. Like Jack Balkin, I am suggesting that the assent needs to go back into history as well. See Jack Balkin, “Respect-Worthy: Frank Michelman and the Legitimate Constitution” (2004) 39 Tulsa L. Rev. 485 at 494.

things will turn out.”⁵²⁵ It is appropriate, therefore, to conceive of a highly legitimate legal system as an on-going process in which those who do not agree with the law nevertheless put up with it in the sense that they presume that the dominant power-flow is temporarily legitimate *even if it is illegitimate according to their ideal notion of justice and will one day become recognized as illegitimate.*⁵²⁶ This does not depend upon meaningful legitimacy at the time of authorship (e.g. for a law or constitution) or the Rousseauian notion of a homogenous and/or super-virtuous citizenry but, instead, requires some sort of minimal degree of internal acceptance regarding the *future* potential of the law. There is, then, somewhat of a parallel here between democratic legitimacy and the future orientation of the warranty given in rational discourse as outlined by Habermas. He suggests that although a speaker owes the binding force of his illocutionary act to the coordinating effect of the warranty he offers – i.e. to redeem, if necessary, the validity claim raised with his speech act – it should be understood that this redemption will *always* be compromised and partial. The rationality of the communication lies not in any correspondence with an absolute ideal, but in the fulfillment of present, embodied *expectations* regarding communication taking place in the future.⁵²⁷

⁵²⁵ *Ibid.* at 495.

⁵²⁶ See Habermas, *supra* note 238 at 474, 75. Here, Habermas is explaining Fröbel’s idea of a total will from 1847 as he expressed it in Julius Fröbel, *System der sozialen Politik*, 2d ed. (Mannheim: Scientia Verlag, 1975).

⁵²⁷ See Habermas, *supra* note 31 at 302. Indeed, there is some indication that Habermas himself actually does understand reason in a dialectical manner not terribly unlike what I have roughly sketched out above. He suggests that the singularity of reason (in its inherent universalization) is actually a *condition* of the multiplicity of value-spheres. For example, he argues that “the transitory unity that is generated in the porous and refracted intersubjectivity of a linguistically mediated consensus not only supports but furthers and accelerates the pluralization of forms of life and the individualization of lifestyles. More discourse means more contradiction and difference. The more abstract the agreements become, the more diverse the disagreements with which we can *nonviolently* live.” Jürgen Habermas, “The Unity of Reason in the Diversity of Its Voices,” in Jürgen Habermas, *Postmetaphysical Thinking: Philosophical Essays*, trans. by William Hohengarten (Cambridge: The MIT Press, 1992) 115 at 140 [Habermas, “Unity of Reason”]. Further, communicative reason “comprises *only* formal determinations of the communicative infrastructure of *possible* forms of life and life histories; it does not extend to the concrete shape of an exemplary life-form or a paradigmatic life history. Actual forms of life and life-histories are embedded in unique traditions.” Jürgen Habermas, “A Reply to My Critics,” in John Thompson & David Held, *Habermas: Critical Debates* (Cambridge: The MIT Press, 1982) at 228. Also see *ibid* at 261-62. Of course, to be truly dialectical, there would actually need to be a kind of *co-dependency* upon multiplicity and singularity. And, indeed, this is in keeping with the concept of rationality rooted in intersubjectivity or dialogical being-in-the-world

Not only is it helpful to understand legitimation as taking place in the development of hope for the future development of resilient network connections, but it is appropriate to conceive of political legitimation taking place through two central strategic processes – deliberation and resistance. The former, quite understandably, holds more potential for those close to the power-flow rather than those more outside the power-flow of their society.

Deliberation, understood strategically, is something political theorists know all too well – it is a process of re-enforcing communicative connections, it is a kind of agreement or agreement-reaching process. What we tend to focus too little on, though, is the broader, structural changes that need to take place to facilitate (and even encourage) this process of communicative connections. And, of course, some of these changes have already been outlined above in terms of the standardization of protocolic control. Deliberation, therefore, represents a process of developing dependence as communicative connections (ecological, social, and spiritual) are created and re-enforced. This dependence may be understood as developing in a two-fold relationship – first, dependence upon the other with whom one is deliberating and, second, dependence upon the means of communication itself. Because legitimation is fundamentally a process of self-legitimation (as should become clear in what follows), the processes of

that Habermas has put forward. He has been quite explicit in his suggestion that this notion of reason provides a third way between the unitary thinking of metaphysics and the multiplicity (or relativism) of contextualism. See Habermas, “Unity of Reason”, *supra* note 527 at 141, 42. Communicative reason involves, he suggests, “a tension between the unconditional character of context-bursting, transcendent validity claims on the one hand and, on the other hand, the factual character of the context-dependent ‘yes’ and ‘no’ positions that create social facts *in situ*.” *Ibid.* at 142. Critical social theory, therefore, does not engage in an attempt to overcome the gap between the intelligible and the empirical by either absolutizing the subject or a historicized spirit, but understands this gap as an ongoing tension within the world of communicators themselves. See *ibid.* at 142. Compare with G.K. Chesterton’s understanding of mysticism. He writes, “[t]he whole secret of mysticism is this: that man can understand everything by the help of what he does not understand. The morbid logician seeks to make everything lucid, and succeeds in making everything mysterious. The mystic allows one thing to be mysterious, and everything else becomes lucid.” G.K. Chesterton, *Orthodoxy* (Whitefish: Kessinger, 2004) at 17. Or, this unresolved dialectic between unity and multiplicity could be conceived in terms of Charles Taylor’s interpretation of William James’ Augustinian thesis in *The Varieties of Religious Experience* that truth is undiscoverable without desire. That is, James is suggesting that “there are some domains in which truths will be hidden from us unless we go at least halfway towards them.” Charles Taylor, “What is Pragmatism?,” in Seyla Benhabib & Nancy Fraser, eds., *Pragmatism, Critique, Judgment* (Cambridge: The MIT Press, 2004) at 81.

deliberation (in terms of both its end and its means) are taken up into, and begin to alter the trajectory of, the network self. Deliberation, therefore, can represent a certain kind of dependence-building, but also will look differently depending upon the other with whom communicative connections are made. That is, depending upon the other and the means of communication with the other, the trajectory of the network self will be altered in very different ways. In this sense, deliberation itself (like reason) can be legitimizing or de-legitimizing depending upon the kind of dependence that is developed in and through the processes of building communicative connections. Deliberation, therefore, is not enough to legitimize all violence (especially if dramatic power-imbalances are at work) and we must turn to another concept – resistance.

B. Freedom as Resistance

As we have seen above, Habermas seeks to develop a concept of the ideal connection between communicative action and the production of law in order to talk of the legitimacy of state-centered law.⁵²⁸ However, there is good reason to be suspect of the notion that decision-making through democratic deliberation can be *the* ideal that will ground legal legitimacy and protect it from the power at work within ideology. For, as he argued in his debates with Gadamer, the corruptions of ideology could only be pushed back through reason's ability to provide a robust critical impulse that could overcome systematically distorted communication by

⁵²⁸ Habermas' critical theory is an attempt to outline the conditions for emancipation in undistorted communication and therefore set out the possibilities of protecting the symbolic reproduction of the lifeworld from the material reproduction of the system. But, as some critics have noted, this analysis is too simplistic in that it does not differentiate between various forms of power and diverse methods of lifeworld protection. See, for example, Omid Shabani, *Democracy, Power, and Legitimacy: The Critical Theory of Jürgen Habermas* (Toronto: University of Toronto Press, 2003) at 122. Indeed, if lifeworld colonization and the distortion of power are everywhere, there is no clear critical analysis that allows for meaningful political action and reform on the ground. In order to rectify this lack of specificity and applicability in his theory of communicative action, Habermas, therefore, turned to an analysis of law and democracy in *Between Facts and Norms*. It is here that he outlines the legitimacy of law's position between system and lifeworld. Indeed, Habermas writes that "the modern legal order can draw its legitimacy only from the idea of self-determination: citizens should be able to understand themselves as authors of the law to which they are subject as addressees." Habermas, *supra* note 238 at 449.

transcending the immediacy of history and the relativism of contextualism.⁵²⁹ The systematic distortion of communication, then, can only be recognized and understood in contrast to the ideal speech situation in which every possible interpretation can be heard without the influence of power-relations – i.e. the distortion can only be recognized *from without*.⁵³⁰ Reason for Habermas, as we noted, could only accomplish this opposition to ideological distortion by means of its singularity in the ideal – its ability to transcend the multiplicity of history-bound life of reasoning persons and identify the *universal* conditions of rationality itself.⁵³¹

We also took note of the fact that the idealization and universalization underlying Habermas' critical social theory – his *telos* of consensus – fails to provide an adequate theoretical foundation for democratic legitimacy.⁵³² The problem is that singularity is not appropriate when

⁵²⁹ See, for example, Habermas' conception of the ideal speech situation in Habermas, *supra* note 31 at 294. Only by taking a critical approach from the standpoint of the ideal speech situation are we able to recognize the systemic, negative historical effects that are carried on through communicative processes. In addition, he has stated that “[h]ermeneutic consciousness remains incomplete as long as it does not include a reflection upon the limits of hermeneutic understanding.” Jürgen Habermas, “The Hermeneutic Claim to Universality,” in Josef Bleicher, ed., *Contemporary Hermeneutics: Hermeneutics as Method, Philosophy and Critique* (London: Routledge & Kegan Paul, 1980) 181 at 190. Of course, Gadamer argues that the enlightenment thinkers' focus upon independent reason and the denigration of prejudices sought to move human understanding into the ideal realm of absolute reason. And, as he writes, “[t]he overcoming of all prejudices, this global demand of the enlightenment, will prove to be itself a prejudice, the removal of which opens the way to an appropriate understanding of our finitude....” Gadamer, *supra* note 131 at 260. Also see Susan Shapiro, “Rhetoric as Ideology Critique: The Gadamer-Habermas Debate Reinvented,” in (1994) 62:1 *Journal of the American Academy of Religion* 123 at 129.

⁵³⁰ This kind of ideal situation seems to be built into Habermas' conception of communicative action itself. For example, he writes, “I have called the type of interaction in which *all* participants harmonize their individual plans of action with one another and thus pursue their illocutionary aims *without reservation* ‘communicative action.’” Habermas, *supra* note 31 at 294.

⁵³¹ Habermas argued that the universalistic claims of hermeneutics have obscured the fundamental problem of systemic ideological distortion and a kind of “depth hermeneutics” is needed to incorporate the role of work and power into our understanding of culture and society. See Bernstein, *supra* note 513 at 43. Admittedly, it should be noted that Habermas sought to expound a more modest and fallibilist account of rationality and universality in *The Theory of Communicative Action* than he seems to suggest in *Knowledge and Human Interests*. For example, compare Habermas, *supra* note 508 with Habermas, *supra* note 31. However, it seems quite clear that he never abandons the quest for an ideal that transcends the power-relations embedded within history.

⁵³² For Habermas, the creation of a democratic society involves “finding arrangements which can ground the presumption that the basic institutions of the society and the basic political decisions would meet with the unforced agreement of all those involved, if they could participate, as free and equal, in discursive will-formation.” Habermas, *supra* note 488 at 186. Since the operative notion within the term “equality” is “sameness” – i.e. “equality” tends to mean simultaneously “difference” and “sameness,” but the difference part, when present, is redundant – Habermas has a notion of deep consensus at the root of his conception of democracy. In addition, following Hannah Arendt, Habermas seems to suggest that there is political energy produced through the coming together of beliefs (e.g. almost akin to the power produced in nuclear fusion). For example, see Habermas, *supra*

considering democratic deliberation or legal legitimacy; consensus absolutized (i.e. singularity that can transcend the corruptions of ideology) cannot function as the normative ideal of democracy or, by extension, legal legitimacy. In other words, the ideal speech situation does not provide a perspective from which to critique the social power-imbalances that may be distorting the democratic processes because *democracy has the multiplicity of power imbalances at its theoretical core and deep or complete consensus means the dissolution of democracy*. Therefore, consensus cannot provide the operative ideal for democracy because democracy, by definition, remains a process of dealing with *opposing or conflicting* values and norms – indeed, a way of dealing with conflicting ways of life. There is, therefore, a deep conflict within the theoretical work of Habermas that stems from his simultaneous commitment to democracy and opposition to the power-imbalances present within a deep pluralism.⁵³³

This notion that inequality is a structural necessity within democracy runs contrary to Habermas' liberal cosmopolitan bent. Instead, it picks up conservatism's emphasis upon difference and situated oppositionalism that we can see in, say, the political philosophy of Carl Schmitt. For example, his *The Concept of the Political* is an attempt to achieve state unity by defining the content of politics as opposition to the "other" – i.e. an enemy, a stranger, someone or thing that presents an existential threat.⁵³⁴ He does not understand this friend/enemy distinction as a metaphor or a moral dilemma but as a concrete antagonistic opposition.⁵³⁵ The

note 238 at 147. However, as we saw above, power exists only with resistance – i.e. in opposition.

⁵³³ "Deep pluralism" is a recognition and embrace of "deep diversity." And, by "deep diversity" I refer to what Anthony Laden has described as "human diversity that is not thought to stop at some common core of human nature. It is diversity that goes all the way down...." See Laden, *supra* note 392 at 1. It should be noted that Laden himself takes this idea from Charles Taylor. See Taylor, *supra* note 377 and Charles Taylor et. al., *Multiculturalism and the Politics of Recognition*, Amy Guttmann, ed. (Princeton: Princeton University Press, 1992).

⁵³⁴ As Schmitt writes, "[t]he political enemy need not be morally evil or aesthetically ugly; he need not appear as an economic competitor, and it may even be advantageous to engage with him in business transactions. But he is, nevertheless, the other, the stranger; and it is sufficient for his nature that he is, in a specially intense way, existentially something different and alien...." Schmitt, *supra* note 342 at 27.

⁵³⁵ He suggests that liberalism has erred in attempting to "transform the enemy from the viewpoint of economics into a competitor and from the intellectual point into a debating adversary." *Ibid* at 28.

political is “only the intensity of an association or dissociation of human beings whose motives can be religious, national (in the ethnic or cultural sense), economic, or of another kind and can effect at different times different coalitions and separations.”⁵³⁶ Further, the enemy is not to be understood as a personal or private adversary, but a public enemy – an enemy of the state. As a right-wing German scholar in the inter-war period, Schmitt was concerned with the shameful treatment of Germany by the victors of World War I and sought to develop a justification for a highly unified German state.⁵³⁷ His conception of the “other”, therefore, quite quickly becomes understood as *external* to a unified nation-state rather than *internal* to the state or society as a pluralist might suggest. In other words, for Schmitt, the state is the exclusive bearer of politics and the enemy is an oppositional force to the state’s existence as an organized political entity.⁵³⁸

Although the universalism underlying the liberal cosmopolitanism of Habermas is drastically inappropriate, the state-centric oppositionalism of Schmitt is also inappropriate. Where, then, do we find the road between Habermas’ ideal of egalitarian consensus and Schmitt’s ideal of violent opposition to the enemy?

This middle road is to be found in an understanding of freedom and political resistance. As we saw above, legitimation is a process of coming to recognize and embrace the violence that leads to greater resilience. And, political resistance is the creation of political space and time through the development of resilient networks that resist standardization. Freedom, then, is an engagement in the process of political resistance (and democracy is the logic of political resistance at work in the world). Power-use comes to be legitimized to the degree that it is

⁵³⁶ *Ibid* at 38.

⁵³⁷ Indeed, in 1932 Schmitt served as counsel for the Reich government when the “*Preussen contra Reich*” wherein the leftist government of the state of Prussia disputed its dismissal by the right-wing government under Franz von Papen. This struggle led to the *de facto* destruction of federalism in the Weimar republic (i.e. the *Preußenschlag*).

⁵³⁸ He argues that the political should not be understood as equivalent to party politics. The state is an all-embracing political unit and antagonisms between political parties represent the destruction of the political in their push to civil war. See Schmitt, *supra* note 342 at 32.

understood to be developing resilience or, in other words, creating freedom.

We not only have reason to be cautious regarding reason and the appeal to reason in our understanding of freedom and transcendence, we have reason to understand freedom as a process of network development that stabilizes and embeds the immediate patterning of the self. In contrast, the creation of instability within the patterning of the self and its nesting within larger patternings opens up the greater possibility of domination. Resistance to domination, therefore, lies in the development of resilience within the nested network patterns. This resilience is developed as a certain kind of connections are made; namely, connections that are in keeping with the nesting of the patternings. Sequential connections, therefore, that either develop one “level” of networks or join one “level” of networks to the next “level” are connections that build resilience by preventing the universalization of certain connections. In terms more common to political theory, we might say that local community-building develops the kind of resilience that allows for resistance to domination; the development of asymmetrical nestings of network patterns prevents the standardization needed for protocolic control. That is, patterns of connections that are inherently limited or local have built-in circuit breakers that prevent the violence of power-use that disrupts and displaces through standardization.

Resistance is the development of resilience and a refusal to be contained; it is the development of a kind of specificity or particularity that cannot be smoothed over and shifted through the layerings of uniformity within the modulations of protocolic control. Political resistance takes place in a dialectical processes that (a) begins with political subjects as dependent beings (immanence) that (b) push outward to disrupt and displace (transcendence) only to (c) develop greater selves (transcendence-through-immanence). For example, resistance to the modulations of protocolic control can take place through a fixing upon a single mode – e.g. a re-traditionalizing of the self to become more rooted. Resistance, understood in this dialectical

manner is not only in keeping with the contradictory nature of the political subject that was discussed above, but is focused upon the development of resilient network systems that prevent standardization and, therefore, prevent rapid change within patternings of the self and the world.⁵³⁹

Resistance as a process of legitimation, because it is in opposition to the homogenizing impulse within liberalism, is much less understood, but no less important than deliberation. Resistance is a process of preventing or un-making communicative connections, say, because they are excessively violent or have the real potential for excessive violence. This kind of uncommunicative action is important when there is a dramatic power-imbalance between two communities such that deliberation will be inherently and unavoidably dominating (i.e. delegitimizing) or, indeed, in cases where there is a pervasive structural violence at work such as protocolic control. In this sense, then, resistance is a way of disengaging or disagreeing that is stronger than toleration. It can be engaged in by either the powerful or the powerless; the powerful restrict or remove themselves in order to preserve and protect the vulnerable other whereas the powerless withdraw or remove themselves in order to preserve and protect

⁵³⁹ Hartmut Rosa has outlined five kinds of deceleration and spatial expansion that serve as resistance to the acceleration of standardization found in liberal capitalist societies. First, natural and anthropological speed limits: “[s]ome things cannot be accelerated in principle. Among these are most physical processes, like the speed of perception and processing in our brains and bodies or the time it takes for most natural resources to reproduce.” Rosa, *supra* note 161 at 93. Second, isolation and marginalization. Resistance takes place in and through “[t]erritorial as well as social and cultural niches that have not yet been touched by the dynamics of modernization and acceleration. They have simply been (totally or partially) exempted from acceleration processes, although they are accessible to them in principle.” *Ibid* at 94. Third, pathological forms of deceleration. This category includes individual deceleratory reactions to excessive pressures of acceleration like psychological depression as well as, say, the structural exclusion of workers through long-term unemployment. Or, on the other hand, economic recessions could also be interpreted as this same kind of pathological deceleration. *Ibid*. Fourth, intentional or ideological deceleration (and these could be seen as two different approaches). On the one hand, “[l]imited or temporary forms of deceleration that aim at preserving the capacity to function and further accelerate within acceleratory systems.” *Ibid*. This could include such things as deliberate reductions in work-time, self-help, yoga and meditation, etc. - i.e. short-term slow-downs designed to increase energy and productivity in the long-term. On the other hand, “[d]iverse, often fundamentalist, antimodernist social movements for (radical) deceleration. Among these we find radical religious as well as ‘deep ecological’ or politically ultraconservative or anarchist movements.” *Ibid* at 95. Fifth, extreme paralyzation at the end of history. End of history theorists suggest that “there are no new visions and energies available to modern society, and hence the enormous speed of events and alterations is a superficial phenomenon barely covering up deep-rooted cultural and structural inertia.” *Ibid* at 96.

themselves. The powerless may also understand that a relation of domination is destructive not only of themselves, but also of the dominator as well and distance themselves in order to prevent destruction of the other. For example, as we will see in our discussion below, in a relationship of power-imbalance such as colonial relations, the domineering relations do great harm to not only the colonized, but the colonizer as well. However, an act of resistance can be motivated, in the most immediate sense, by an attempt to help others. Resistance, therefore, represents legitimation as transcendence through immanence in the sense that dependence is developed through a process of disconnection from the other and the world. That is, the dependence is developed as the structures and processes of the network self are re-enforced in opposition to structures and processes of the network other and the world.

Of course, it is important to also remember that there is a sense in which both deliberation and resistance will be taking place and will be mutually re-enforcing. For example, deliberation within a community will strengthen the community's self-understanding as a "we" and, in so doing, strengthen the community's understanding of the other as a "they". In a similar fashion, the resistance of one community against another will involve the strengthening of the community's understanding of the other as a "they" and, in so doing, strengthen the community's self-understanding as a "we".

Rather than understanding freedom as some abstract or essential quality of human beings as has been typical in the liberal tradition, we do best to see freedom as an engagement in the dialectical process of resistance. As Foucault noted, "[r]ather than speaking of an essential freedom, it would be better to speak of an 'agonism' – of a relationship which is at the same time reciprocal incitation and struggle; less face-to-face confrontation which paralyzes both sides than

a permanent provocation.”⁵⁴⁰ Freedom, then, should not be conceived of as pure self-determination because, just as one’s political identity has its being in opposition to the other, so too does freedom exist in opposition to resistance – i.e. there is no freedom without freedom from. In this way, we should understand positive and negative freedom as two sides of the same coin. Positive and negative freedom come together when we realize that capacity (e.g. positive freedom) only exists in and through the overcoming of obstacles (e.g. negative freedom) and vice versa. In other words, freedom is not the *absence* of obstacles (be they internal or external), but an *overcoming* of obstacles (albeit only to a limited degree). Freedom, then, is best understood as a close kin to power. The self exists in opposition to the other – i.e. in overcoming the other (to a limited degree) – so a realization of the self’s capacity (positive freedom) is only possible in an overcoming of obstacles (negative freedom). This is so because it makes little sense to speak of freedom in terms of exercising capacity if these capacities are not limited in some manner – e.g. self-control, moral discrimination, self-awareness, etc.⁵⁴¹ But, how could there be this kind of reflexivity without the opposition of the other against the self – i.e. something beyond the pure self-positing of the self as if it were a *ding an sich*?

If we understand freedom as an engagement in resistance, then deliberation and negotiation between communities that are marked by deep differences must remain perpetually open to resistance if violence is to be legitimized. A simple, unidirectional movement from antagonism to agonism as Mouffe suggests is insufficient and even inappropriate in some

⁵⁴⁰ Michel Foucault, “Afterword: The Subject and Power” in *Michel Foucault: Beyond Structuralism and Hermeneutics*, ed. H.L. Dreyfus (Chicago: University of Chicago Press, 1983) at 222. Or, as Charles Taylor observed regarding the difference between liberals and conservatives: “[w]ith his belief in man’s essential freedom, the liberal regards the landscape as something to be subdued and exploited in the name of progress. There is neither reverence nor any sense of roots: nature is something to be used. To the conservative, on the other hand, man and his world are part of an organic whole – a unity which includes other races, other species and the land itself. His view is always touched with awe: the landscape is important not only for what it can provide, but also for what it has meant to earlier generations, for how it feeds our imaginations, and for the place it holds in some larger natural order of which man is only one component. Charles Taylor, *Radical Tories: The Conservative Tradition in Canada* (Toronto: House of Anansi Press, 1982) at 79, 80.

⁵⁴¹ See Taylor, *supra* note 37 at 215.

instances. As we briefly saw above, Mouffe's notion of transformation from antagonism to agonism holds, like the deliberative democrats' notion of transformation, the danger of domination through the homogenizing impulse of standardization and its resulting vulnerability to rapid modulations. This danger exists because Mouffe's transformative process is fueled by a recognition of the legitimacy of one's opponents. However, legitimation of power-relations takes place primarily in a process of self-legitimation rather than a process of legitimizing the other. And, if the notion of transformation is rooted in a process of other-legitimation, the transformative process is unidirectional and perpetually holds the threat of the stronger community transforming the weaker community rather than a transformation of the we-them relationship itself. That is, without adequate room made for resistance as a means of legitimation, Mouffe puts forward a transformative process that begins to look quite like a process of liberalization and its accompanying modulations. One of the reasons for this is the fact that the transformation from antagonism to agonism as conceived by Mouffe is somewhat unrealistic when communities possess dramatically asymmetrical power-relations and exist side by side in ongoing conflictual relationships. Instead of legitimizing violence, it is a recipe for domination.

In order to avoid domination as much as possible, both the powerful community (e.g. the state) and the powerless community (e.g. a small indigenous nation) must remain open to periods of resistance within their relationship if domination at the hands of the state is to be avoided as much as possible.⁵⁴² Further, not only is this kind of openness needed, but the communities must engage (at least periodically) in actual practices of resistance. Mouffe argues that a relational conception of identity

⁵⁴² For what is quite likely a number of reasons, state actors quite often appear prone to downplay or even ignore resistance from local communities. However, this strategy of downplaying local resistance has the unfortunate effect of preserving the state's power-use and allowing it to go on unhindered in the face of assertions of difference.

does not mean of course that such a relation is necessarily one of friend/enemy, i.e. an antagonistic one. But we should acknowledge that, in certain conditions, there is always the possibility that this we/they relation can *become* antagonistic, i.e. that it can turn into a relation of friend/enemy. This happens when the ‘they’ is perceived as putting into question the identity of the ‘we’ and as threatening its existence.⁵⁴³

The violence of “overcoming the other” in a process of deliberation is precisely a putting into question the identity of the other such that his/her/their existence is threatened. This threat can come from a relation in which there is no dialogical dynamism that allows for an ongoing re-definition of the relations of power. Finality represents a threat because self-other (master-slave/colonizer-colonized) relations are “constitutive of subjectivity: one becomes an individual subject only in virtue of recognizing, and being recognized by another subject.”⁵⁴⁴ This relational ontology of identity, of course, is rooted in Hegel’s notion that “[s]elf-consciousness exists in and for itself when, and by the fact that, it so exists for another; that is, it exists only in being acknowledged.”⁵⁴⁵ Importantly, though, the master-slave relation of Hegel’s *Phenomenology* embodies a dialectical tension that seeks resolution in transcendence beyond the relation itself. And, an existential threat develops when the relationality of the self-other is totalized – i.e. the other is unable to hold an internal dynamic of relationality within himself. If the other is excessively transformed by the relation between the self and the other (i.e. when the self has dramatically more power), then the existence of the other begins to be threatened.⁵⁴⁶ And, without the periodic assertions of power stemming from the internal dynamism of the other, the powerless other begins to be standardized in and through the self-other relations. Therefore, the possibility of becoming antagonistic must at least be periodically realized or the relationship

⁵⁴³ Mouffe, *supra* note 32 at 15, 16.

⁵⁴⁴ Nancy Fraser and A. Honneth, *Redistribution or Recognition? A Political–Philosophical Exchange* (London: Verso, 2003) at 11.

⁵⁴⁵ G.W.F. Hegel, *The Phenomenology of Spirit* (Oxford: Oxford University Press, 1977) at 178.

⁵⁴⁶ Identity is purposive in this sense. It is not something that is simply self-made, but it is a way of talking about a dynamism or aliveness within the network of the self.

between the powerful and the powerless will develop into a process of standardizing the powerless community's ecological, social and spiritual relations – i.e. an overcoming of the other.⁵⁴⁷ For example, this overcoming of the other may be seen (from the perspective of the colonized rather than the colonizer) in the subjection that takes place through the internalization of colonized relations. As Glen Coulthard writes,

without transformative struggle constituting an integral aspect of decolonization the Indigenous population will not only remain subjects of imperial rule insofar as they have not gone through a process of purging the psycho-existential complexes battered into them over the course of the colonial experience – a process of strategic desubjectification – but they will also remain so in that the Indigenous society will tend to come to see the forms of structurally limited and constrained recognition conferred to them by their colonial ‘masters’ as their own.⁵⁴⁸

In other words, “[i]n contexts where recognition is conferred without struggle or conflict, this fundamental self-transformation... cannot occur, thus foreclosing the realization of authentic freedom.”⁵⁴⁹ The need for (at least) periodic resistance is applicable to, for example, co-management regimes (whether there are, say, extended land claims negotiations between the state and indigenous peoples, systems of governmental regulation, etc.).⁵⁵⁰ That is, it is essential that there is a dialectical process in which the relationship is best characterized as co-management and then moves into conflict, back to co-management, again into conflict, etc. Depending upon the communities involved, the conflict could take place inside (e.g. legal action, lobbying politicians, filing official complaints, etc.) or outside (e.g. blockades, protests, direct action, etc.) the state

⁵⁴⁷ This is why, as Taiaiake Alfred writes, ‘[f]undamentally different relationships between Onkwehonwe and Settlers will emerge not from negotiations in state-sponsored and government-regulated processes, but only after successful Onkwehonwe resurgences against white society’s entrenched privileges and the unreformed structure of the colonial state.’ Taiaiake Alfred, *Wasáse: Indigenous Pathways of Action and Freedom* (Peterborough: Broadview Press, 2005) at 21.

⁵⁴⁸ Glen Coulthard, “Subjects of Empire: Indigenous Peoples and the ‘Politics of Recognition’ in Canada” (2007) 6 *Contemporary Political Theory* 437 at 449, 450.

⁵⁴⁹ *Ibid.* at 449.

⁵⁵⁰ As Spaeder explains, “[c]o-management refers to decentralized institutional arrangements involving the sharing of management responsibilities between community-level and state-level actors.” Joseph Spaeder, “Co-management in a Landscape of Resistance: The Political Ecology of Wildlife Management in Western Alaska” (2005) 47:2 *Anthropologica* 165 at 165.

institutions; the important thing, of course, is that the conflict manifests and re-affirms a “we” in opposition to the “they” of the state.

In the past, centralized governmental structures have exerted control over commonly held property resources and this exertion of control has generated a significant degree of conflict between state and non-state actors.⁵⁵¹ As Joseph Spaeder and Harvey Feit explain,

In efforts to either mitigate these conflicts, or work around them and provide for sustainable resource management, a plethora of new co-management regimes has evolved over the past decade and a half in contexts where neither strictly local resource control nor state resource control is possible or effective. In practice, different kinds of co-management exist from informal consultation to full and equal sharing of authority.... Uses of co-management have thus ranged from serving as a means of enlisting uncontrolled social groups and movements in the conservation of resources, while simultaneously and covertly co-opting them into compliance with nation state regimes, to being a means of empowerment of disenfranchised rights claimants, to serving as a vehicle for continuing socio-political struggles.⁵⁵²

In other words, powerful and centralized bureaucratic structures of governance hold within them an inherent exertion of protocolic control when engaged with more traditionalist communities.

The unidirectional process of deliberation alone, therefore, will not allow for the minimization of domineering power-relations because it will totalize the self-other relation by locking the relations into a binary oppositionalism that possesses only one possible future – an identity formed through opposition to the other of the state. It is only through a dynamic back-and-forth dialectical process of moving between deliberation and resistance that we come to understand the dynamic nature of legitimation as truly dialogical and diachronic.

Resistance, if we are to dig a little deeper into its exercise in relation to state law, may take place through two primary strategies: avoidance and confrontation. In the strategy of avoidance, the powerless act so as to disregard the state law and govern themselves while

⁵⁵¹ See Joseph Spaeder & Harvey Feit, “Co-management and Indigenous Communities: Barriers and Bridges to Decentralized Resource Management: Introduction” (2005) 47:2 *Anthropologica* 147 at 148.

⁵⁵² *Ibid.* at 149.

avoiding the state-imposed sanctions for illegal activity. For example, as Joseph Spaeder recently wrote concerning state-indigenous relations in Alaska, “[i]n Western Alaska indigenous hunters practice a broad array of such anonymous and unorganized strategies of resistance including widespread disregard for most game laws, stealth in harvesting, avoidance of agency personnel in the field and nearly total non-compliance with mandatory paperwork, such as game permits and harvest reporting...”⁵⁵³ This kind of resistance is typically neither organized nor focused on the transformation of legal regimes directly and is instead dedicated to the minimization of risk for those within the powerless community. Confrontation, on the other hand, represents an overt, antagonistic engagement with the state’s power-use. Further, in order to deepen the resistance, the subaltern community needs to assert its own power not only against the state’s assertion of power, but it may need to do so in a way that disengages itself from the administrative and judicial structures of the state. That is, the subaltern community may need to assert its radical differences in opposition to the standardizing institutions of the state; it may need to enter a process of explicitly legitimizing itself in the face of de-legitimizing state processes.

This two-fold kind of resistance may be understood as a kind of distancing or a non-exclusionary differentiation. Differentiation, as explained by Miroslav Volf, is “the creative activity of ‘separating-and-binding’ that results in patterns of interdependence.”⁵⁵⁴ It is not, therefore, a bare separation but a simultaneous separation *and* binding. Separation by itself would lead to self-enclosed, self-identical, and autonomous beings.⁵⁵⁵ And, indeed, the radical distancing of a bare separation represents an exclusionary attempt to construct an autonomous self and, therefore, leads inevitably to domineering relations.⁵⁵⁶ Again, as Volf writes, “exclusion

⁵⁵³ Spaeder, *supra* note 550 at 167.

⁵⁵⁴ Volf, *supra* note 127 at 65.

⁵⁵⁵ See *ibid.*

⁵⁵⁶ Both the need for separation and the dangers of separation depend upon the context. In a situation of radical power-imbalance, more separation may be essential to the development of resilience. However, this kind of

can entail cutting of the bonds that connect, taking oneself out of the pattern of interdependence and placing oneself in a position of sovereign independence. The other then emerges either as an enemy that must be pushed away from the self and driven out of its space or as a nonentity – a superfluous being – that can be disregarded and abandoned.”⁵⁵⁷ Resistance as non-exclusionary differentiation, in contrast, is most often thought of as a legitimation strategy of political communities on the weak side of asymmetrical power-relations. The question is: in the face of resistance from a weak community against power-use, how should a strong community respond if it is to ensure its power-use is legitimized? Put simply, resistance to the state from a subaltern community has the effect of de-legitimizing the state’s power-use. In response, those within the state need to engage in processes of re-legitimation of their uses of power in relation to the subaltern community. This process of re-legitimation in the face of de-legitimation through resistance needs to involve the distancing or withdrawal of the strong community – i.e. a process of self-legitimation by means of self-restraint or, again, a process of transcendence through immanence. As noted above, the mere engagement of a dramatically more powerful community has domineering effects as power-flows become aligned with those internal to the powerful community.

The following question regarding legitimation remains: How are we to develop stability and security while we are advancing patterns of resistance to homogenizing forces? That is, is there not something inherently or inevitably unsettling and disruptive in resistance to domineering forces? The short answer is that if we are to develop stability and security we need to advance patterns of resistance that are enacted in and through grounding processes (i.e. transcendence through immanence). Of course, though, resistance itself is not necessarily a

separation must remain related to binding in a kind of balance between the two. Radicalized separation – i.e. separation taken to its farthest extreme – will lead to domineering relations just as radicalized binding will.
⁵⁵⁷ Volf, *supra* note 127 at 67.

grounding process, but it will only be effective resistance in the long-term if it is a strategic process of grounding; both avoidance and conflict must be of a certain nature if resistance is to be successful in the long-term.

In order to understand the requisite nature of effective resistance, we may benefit from a consideration of the dialectical processes at work within political communities. A community – not unlike an ecosystem – possesses an internal logic of development and, therefore, a *telos* or a teleological impulse within its structural causation. However, a community cannot realize or actualize itself without relations of resistance with the other. It is, therefore, fundamentally and simultaneously complete and incomplete in a manner not unlike the contradiction that begins Hegel’s ontological dialectics. As Charles Taylor explains, in Hegel’s *Phenomenology of Spirit*, both his historical and his ontological dialectics begin with the recognition of a dialectical contradiction. That is, “[w]e start off with something which is intrinsically characterized by the purpose it is bent on realizing or the standard it must meet. We then show of this thing that it cannot effectively fulfill this purpose or meet the standard (and the ‘cannot’ here is one of conceptual necessity). We are up against a contradiction.”⁵⁵⁸ There is, likewise, a contradiction of independence and dependence that needs to be worked out dialogically and diachronically. Hence, there is a need for a back-and-forth between deliberation and resistance if communities are to be realized. We should remember, as Hegel also points out to us, that all forms of life are destined to be replaced by others. The goal is not, therefore, to halt this process entirely, but to understand and mitigate against rapid change and the inevitable harms of excessive violence that come with it.⁵⁵⁹

⁵⁵⁸ Taylor, *supra* note 383 at 57.

⁵⁵⁹ Finally, our inadequate (or simply partial) understanding of our purpose is part of the reason why we fail to achieve our purpose. (When I say “reason why”, I do not mean simply in a psychological-behavioural way, but in an historical-ontological way.) We so fail to achieve our purpose – i.e. living in relative harmony with the earth and each other – because we misconceive our purpose as being the achievement of greater independence and

In situations of significant power differentials between differing political communities, not only is deliberation doomed to descend into domination of the weaker community if it is unaccompanied by resistance, but resistance alone will also inevitably result in excessive violence. As we saw above, powerful structures of governance hold within them an inherent exertion of structural violence when engaged in relations of either deliberation or resistance. The unidirectional process of deliberation alone (i.e. moving toward greater and greater standardizations of social, material, and spiritual relations), therefore, will not allow for the minimization of domineering power-relations; communities with less power will be forced to change rapidly in ways that excessively disrupt and displace. Resistance, likewise, without being accompanied by deliberative relations (at least periodically), will inevitably lead to relations of domination. Resistance by itself has the tendency to develop into antagonistic relations that are unstable and prone to replications of domineering power imbalances. For example, as Gandhi rightly pointed out, subaltern communities that do not undermine the oppressive regimes with the development of moral authority are destined to imitate the violence of their oppressors. The singularity of a unidirectional push towards the antagonism of resistance will be prone to the development of illegitimacy whether you are viewing it from the perspective of the powerful or the powerless. Further, as we will see below, non-domination as redemptive politics means that non-domination is an ongoing transformative process rather than a finalized, abstract ideal to be obtained. Indeed, non-domination is the relational process of legitimation outlined above – i.e. both the self and the other are redeemed in their ecological, social, and spiritual relations. The redemption happens in the legitimation of the other; the other is redeemed through a process of self-legitimation as they enter into ways of life that give hope and optimism regarding their future being-in-the-world. When it comes down to it, this kind of transformation is a process of

network formation that is violent, but is violent primarily towards oneself rather than towards the other. Resistance without deliberation, however, is a projection of violence toward the other without the reflexivity – i.e. the self-legitimation – needed to legitimize the power-use of the other.

It is also important to keep in mind that, although this notion of dialectical relations between deliberation and resistance has been worked out in bilateral terms (i.e. as if there was one single powerful community and one single powerless community involved), the same approach should be taken when there are (as there almost inevitably is) multi-lateral relationships between multi-layered political communities. In fact, it should be noted that consideration of the multilateral power-relations that so often exist allows us to recognize the importance of focusing upon legitimation of power-use as a process characterized primarily as self-legitimation.⁵⁶⁰ Legitimation, therefore, must be understood as a process that is *primarily* reflexive.

C. Redemptive Politics and the Legitimation of Violence

Legitimate violence and, conversely, excessive violence are determined through an ongoing normative judgment that is primarily reflexive. That is, “Am I contributing to increased fragility in network structures and processes and, therefore, making them more susceptible to rapid change or am I developing resilience within network patternings?” The classical approach to understanding the legitimacy of power-use involved a two-step process for justifying one’s own participation in systemic violence: (a) describe the self’s actions as “power-use” and the other’s actions as “violence”, and (b) take up a position from which one assumes one can judge from afar the other’s actions as legitimate or illegitimate violence. However, there are a couple key reasons why a judgment between legitimate and illegitimate is primarily reflexive: (a)

⁵⁶⁰ As Volf notes, domination is not something apart from us – it is a kind of barbarity within civilization, an evil among the good, a crime against the other within the self. See Volf, *supra* note 127 at 60.

because of the fundamentally interdependent nature of political subjects and the world within which they live, and (b) because a normative judgment is only relevant to the degree that one is involved in processes of building more fragile or more resilient network patternings. Further, the importance of reflexivity in this normative judgment becomes clear when one considers a situation in which one has the greater power in a relation with dramatic power imbalance.

Mouffe's transformative process from antagonism to agonism is driven forward by a recognition of the legitimacy of the other (i.e. one's opponents) and, to the degree that the judgment regarding legitimacy is outward-looking, is therefore a projection of the self in an overcoming of the other (i.e. rather than a transformation of the self-other/we-them relationship itself).⁵⁶¹ If, on the other hand, one is in the powerless position in a relation of dramatic power imbalance, one has no viable option but reflexive legitimation. That is, from the victim's perspective, the oppressive or domineering actions of the other can only be legitimized through a removal of oneself from the position of the victim. The focus of legitimation must always be upon the we-them relationship from the perspective of the "we" rather than simply upon the "them".

A central question underlying this discussion concerning the legitimation of violence and the we-them (or self-other) relationship I take to be the following: What is the nature of agreement and disagreement? And, more specifically, in what sense does our fostering of structures and processes of agreement and/or disagreement relate to the realities of our life-situation? We come to this question for two key reasons. First, there is a sense in which deliberation may be understood as a kind of agreement and resistance as a kind of disagreement and we have yet to fully examine these processes in terms of democratic normative ideals lived within embodied beings. Second, we come to this question because the goal of our discussion is

⁵⁶¹ As we saw, this overcoming was the result of a totalization of the self-other relation rather than a transformation of the self-other relation in relation to the patterning process of the self.

to understand how the differences of inequality are at the root of democratic disagreement as well as to point toward some ways in which we might foster the *appropriate* – i.e. non-domineering – kind of political disagreement.⁵⁶²

In order to gain a clearer picture of what is meant by political disagreement (or, indeed agreement), I would like to once again emphasize that our existence as *res ecologia* means we are embedded beings-in-the-world. That is, all knowledge is situated knowledge that is embodied in time and space and, as we have seen, our reason takes places within certain embodied life-narratives.⁵⁶³ Two things follow from this shift away from reason as an abstract process of disconnecting and re-connecting some ghostly symbols of a formal language: (1) a reinterpretation of rationality and (2) a reinterpretation of moral worth.

To this end, Wittgenstein provides us with a helpful perspective from which to begin understanding communication and the process of coming together in agreement. As he writes in *On Certainty*, “[g]iving grounds, however, justifying the evidence, comes to an end;—but the end is not certain propositions striking us immediately as true, i.e. it is not a kind of *seeing* on our part; it is our *acting*, which lies at the bottom of the language-game.”⁵⁶⁴ In other words, because the meaning of our language lies in its use, agreement takes place not simply through a connection of signs and significations, but through a coming together of forms of life – a kind of

⁵⁶² I take this to be an appropriate project for a pragmatist. As Cheryl Misak suggests, the pragmatists’ project is not to overcome disagreement but “to say some things about how best to get agreement where we can, to say what the character of such an agreement is (if the belief would remain the best belief, then it is true), and to say something normative about which methods of inquiry are justified and which are not.” Misak, *supra* note 514 at 145.

⁵⁶³ See Richard Rorty, *Philosophy and the Mirror of Nature* (Princeton: Princeton University Press, 1979). Of course, one can find this same, or at least similar, critical refrain regarding situated knowledge is much third-wave feminist literature. For example, see Susan Bordo, *The Flight to Objectivity: Essays on Cartesianism and Culture* (Albany: State University of New York Press, 1987); Lorraine Code, *What Can She Know?* (Ithaca: Cornell University Press, 1991) at 110-172; and Sandra Harding, *Whose Science? Whose Knowledge?* (Ithaca: Cornell University Press, 1991) at 105-190.

⁵⁶⁴ Ludwig Wittgenstein, *On Certainty*, trans. by Denis Paul & G.E.M. Anscombe, edited by G.E.M. Anscombe & G.H. von Wright (Oxford: Blackwell, 1969) at 28e [emphasis original].

co-configuring of patterns in human existence.⁵⁶⁵ A chorus of voices takes place in common forms of life rather than in certain abstract connections made in the recesses of a disembodied mind.⁵⁶⁶ The “retreat from the real” that runs through the liberal rationalist tradition(s) – e.g. in the normative idealization of equality – reveals a significant misunderstanding of the nature of rationality and, by extension, political agreement.⁵⁶⁷ For, as Schmitt writes in *The Crisis of Parliamentary Democracy*,

In the domain of the political, people do not face each other as abstractions, but as politically interested and politically determined persons, as citizens, governors or governed, politically allied or opponents—in any case, therefore, in political categories. In the sphere of the political, one cannot abstract out what is political, leaving only universal human equality; the same applies in the realm of economics, where people are not conceived as such, but as producers, consumers, and so forth, that is, in specifically economic categories.⁵⁶⁸

Political agreement and disagreement, then, should not be understood as a matter of some abstract thought or connections made in the heavenly places, but as a coming together in real-life practices that exist in time and space. What is needed is an awareness that our forms and processes of argumentation are rooted in and determined by our practices, our being-in-the-world. To be sure, our ideas and conceptions of the self are not to be understood in a bare, deterministic manner as if they were nothing more than a simple projection of the patterns of life. Rationality should be understood as both structure and agency because persons are

⁵⁶⁵ Wittgenstein provides us with an appropriate perspective from which to understand communication and the process of agreeing and disagreeing. As he writes in *On Certainty*, “[g]iving grounds, however, justifying the evidence, comes to an end;—but the end is not certain propositions striking us immediately as true, i.e. it is not a kind of *seeing* on our part; it is our *acting*, which lies at the bottom of the language-game.” *Ibid.* at 28e. Wittgenstein demonstrated how the meaning of words resides not in any correspondence with particular objects in the world. Rather, the meaning of words is the way in which they are used in social interactions. For example, see Wittgenstein, *supra* note 184 at 20e.

⁵⁶⁶ See Mouffe, *supra* note 339 at 12.

⁵⁶⁷ It represents a misunderstanding of politics in potentially two ways: first, regarding the oppositional nature of politics and second, regarding the pervasive nature of politics – i.e. it is a mistake to believe that one can step outside the realm of the political in order to develop a conception of justice that is beyond the rough-and-tumble power-relations of human interaction.

⁵⁶⁸ Carl Schmitt, *The Crisis of Parliamentary Democracy*, trans. by Ellen Kennedy (Cambridge: The MIT Press, 1985) 11.

simultaneously both subject and object, instrument and agent in their contemplative processes.⁵⁶⁹

We need not abandon argumentation or a commitment to the importance of creative thought within this approach, therefore, we simply need to recognize the embeddedness and embodied nature of our thought.⁵⁷⁰

Understanding agreement as a coming together of forms of life means that political disagreement is correspondingly rooted in divergent ways of life. Therefore, because forms of life are all different (i.e. our bodies and histories are all unique) there can actually be no complete or absolute agreement on any matter.⁵⁷¹ The result being, as Webber writes, “[p]eople of good

⁵⁶⁹ See Frederick Barnard, *Herder on Nationality, Humanity, and History* (Montreal: McGill-Queen's University Press, 2003) at 93.

⁵⁷⁰ In addition to Wittgenstein, the other philosophical approach that rejects Cartesian dualism and recognizes the centrality of our being-in-the-world (albeit in a very different way) is the philosophical hermeneutic approach of Heidegger and Gadamer. Hermeneutics within the enlightenment project, according to Martin Heidegger, was built upon a Cartesian conception of the self as an abstract and disembodied thinker and therefore ignored the pre-scientific elements of our being-in-the-world. See generally, Heidegger, *supra* note 129. That is, understanding is a basic mode of being-in-the-world (a faculty of *Dasein*) and interpretation does not depend upon reflective cognitive activity – i.e. it is something that a person *is*, rather than an activity in which s/he consciously does or does not engage. See Heidegger, *supra* note 130 at 215. Hans-Georg Gadamer, as a student of Heidegger, sought to fully establish the historical situatedness of human existence. As he writes, “[r]eason exists for us only in concrete, historical terms, i.e. it is not its own master, but remains constantly dependent on the given circumstances in which it operates.” Gadamer, *supra* note 131 at 260. This means that all understanding is tradition-bound and even self-understanding and critical thought are coloured by the prejudices of our being-in-history. Gadamer rightly argued that the enlightenment thinkers’ focus upon independent reason and the denigration of prejudices sought to move human understanding into the Ideal realm of absolute reason. However, as he writes, “[t]he overcoming of all prejudices, this global demand of the enlightenment, will prove to be itself a prejudice, the removal of which opens the way to an appropriate understanding of our finitude...” *Ibid*. Prejudices determine our onto-hermeneutical situation; they make up the horizon of a specific life-situation because they establish the limits of our being in the world. But, this horizon of the present is under perpetual revision as prejudices are tested, in large part, by engagements with our past and our traditions. “Hence the horizon of the present cannot be formed without the past. There is no more an isolated horizon of the present than there are historical horizons. Understanding, rather, is always the fusion of these horizons which we imagine to exist by themselves.” *Ibid* at 272. When occupied with the interpretation of documents, for example, fusion takes place in a co-determination of the text and the interpreter when the interpreter engages the historical text and is herself subject to the effects of being-in-history. This process of co-determination is seen as a dialogical relationship with the past. Hans-Georg Gadamer, *Truth and Method*, trans. by Joel Weinsheimer (New York: Continuum, 1994) at 190 quoted in *ibid* at 321. Understanding, like our existence, always remains indeterminate and subject to revision—there is a fundamentally unshakable and ever-present ignorance. The humble task of hermeneutical philosophy is to come to a fuller recognition of this ontological and epistemological reality rather than to avoid it or overcome it. Importantly, however, Tully (making good use of Wittgenstein’s focus upon real-life practices) demonstrates how it is inappropriate to suggest that the most fundamental way in which we understand ourselves is an interpretation. Instead, we should realize that interpretation is subordinate to understanding. “Like practices of justification, it is a practice we engage in when our understanding and use of signs [rules] is in some way problematic or in doubt.” Tully, *supra* note 492 at 196.

⁵⁷¹ Indeed, this seems to be the reason why Rawls (following Kant) finds it necessary to grossly limit the knowledge of moral actors and thereby hem in the alternatives available to them. Rawls and Kant seek a unanimous (i.e.

faith disagree. In part this is the result of the fact that each person necessarily formulates their position on the basis of their inevitably partial experience. As a result, we can have no confidence that a more perfect reason will produce concord. Disagreement is endemic.”⁵⁷² In the same sense, then, because we are all alike (i.e. our bodies and histories are all shared to some degree as we are all humans living on earth) there can be no complete or absolute disagreement. When we encounter the other, we do so from a certain contextual perspective – a human perspective that is not simply meted and bounded by presuppositions but, more accurately, lived in and through patterns of life. When we do come to agreement, what we are doing is developing a way of living with some enhanced degrees of commonality and interdependency. Likewise, when we disagree, we take up or continue in differing ways of life and relative independence.

One may dwell on this further. Given this understanding of agreement and disagreement, it makes little sense to speak of political disagreement taking place if two or more persons share the same life-situation (i.e. if they were to be thoroughly equal). (In actuality, of course, it makes little sense to speak of persons sharing the same life-situation or being thoroughly equal precisely because they are *different persons*). Even if we are to speak of equality in rough terms, however, it makes little sense to speak of two persons disagreeing regarding anything of political significance if they share the same intellectual abilities, have the same emotional dispositions, share the same economic and social background, etc. These are the processes and patterns of life within which our language lives and breathes and has its being and it should make no significant difference whether it is fundamental abstract conceptions of justice or simply particular and local policy questions that are the subject of the disagreement. In a sense, then, the point here is quite simple – if disagreement is a different way of life it cannot be found in the same way of life.

objective) conception of justice and are therefore lured into the painful processes of rational reductionism. See Rawls, *supra* note 31 at 140, 141.

⁵⁷² Webber, “Hobbsian Premise”, *supra* note 34 at 6.

This understanding of agreement and disagreement in democratic terms also leads us to consider effective means of agreeing and disagreeing in seeking to avoid excessive violence. For example, we will do well to consider Gandhi's clear arguments against the notion that the struggle for justice is understood to be a direct confrontation with the other in an attempt to reverse the power-relations. Instead, he suggested that the relationship between the self and the other needed to be transformed if genuine progress was to be made in the struggle for justice. In this "non-violent" paradigm, the oppressed could not simply attack the oppressor in order to create a new, peaceable relation; the oppressed needed to manifest the new relation by fostering the development of the other's true self as a peaceable being. Gandhi believed there was an underlying unity to reality and it could only be realized through an undermining of oppressive power-relations, a changing of the rules of the oppressor-oppressed game by clinging to a notion of this underlying reality regardless of the suffering and self-sacrifice that may be required.

Although I would certainly question Gandhi's notion of the underlying unity of all, his asymmetrical approach to transforming the oppressor-oppressed relation is entirely in keeping with the network approach to democracy. That is, his approach is asymmetrical because it is the self that is to take action to transform the relationship rather than to transform the other (i.e. as we discussed in the reflexivity of legitimation); the self's duty to open itself up to the other is absolute. If one is seeking equality, however, the motivation is not found in changing the rules of the game or in transforming the self-other relationship through self-sacrifice. Instead, pursuing equality leads one to seek a direct or binary reversal of power-relations and, therefore, a continuance of violence (i.e. the dominated become the new dominator).⁵⁷³ This reversal is

⁵⁷³ Frantz Fanon's notion of decolonization – at least in his later, more political-economic work – is quite a clear example of this notion of inverting the power-structures. For example, in *The Wretched of the Earth*, he suggests that decolonization is the putting into practice Jesus' saying "the last shall be first and the first shall be last." He continues to write that "if the last shall be first, this will only come to pass after a murderous and decisive struggle between the two protagonists [i.e. the colonizers and the colonized]." Frantz Fanon, *The Wretched of the Earth*,

trans. by Constance Farrington (New York: Grove Press, 1963) at 37. Or, again, “[t]he zone where the natives live is not complementary to the zone inhabited by the settlers. The two zones are opposed, but not in the service of a higher unity.” *Ibid* at 38. Fanon is correct that Jesus taught that the inversion of the master-slave relation would take place. However, he parts ways fundamentally with Jesus insofar as Jesus taught that this inversion would take place on judgment day under the direction of the Creator, rather than on earth at the hands of revolutionaries. Jesus understood the “Kingdom of the World” as an order that was diametrically opposed to the “Kingdom of Heaven” and his understanding of the inversion of power-structures was something that took place upon the final judgment – i.e. in the age to come. As an example of this kind of teaching in which the two Kingdoms are set up in contrast and in opposition to each other one can look to what Jesus said about not being able to serve both God and Money in Matthew 6:24 and his insistence that those who seek the Kingdom of Heaven must forsake all worldly treasures and honour. (e.g. a brief survey of the gospel of Matthew reveals the following teachings on this theme: 6:25-34; 8: 18-22; 10:8-10, 28, 37-39; 16:24-28; 19:16-20:16; 20:24-28; 23:1-39). These two “kingdoms” were not opposed merely on some abstract or metaphysical level, but were, in a fundamental way, directly opposed in all their manifestations and embodiments. Jesus’ teachings regarding the two kingdoms was dominated by ethical and pragmatic concerns that nearly eclipsed his underlying metaphysical assumptions. A kingdom for Jesus was very much a practical matter—it was something among people, something made manifest through social interaction, something worked out in people’s lives as they went about their day. A person lived as a member of either the Kingdom of Heaven or the Kingdom of the World for their essential opposition makes it impossible to make both manifest simultaneously. In a sense, this is also what James says when he writes, “have you never learned that love of the world is enmity to God? Whoever chooses to be the world’s friend makes himself God’s enemy.” (James 4:4). A kingdom, in its essence, is an ethic, a way of life. Opposition between the two kingdoms takes place through opposing ways of life. This same kind of pragmatic opposition seems to be indispensable to Jesus’ understanding of the nature of these two Kingdoms—the way in which people live within the kingdoms is how they are defined in opposition to each other. For, the Kingdom of the World is manifest when a person lives in service of herself and the Kingdom of Heaven is realized within the service of others. Therefore, gain in the Kingdom of the World would consist of things like monetary gain, status, and prestige for one’s own sake. On the other hand, “gain” in the Kingdom of Heaven would be found in self-sacrifice and suffering for the sake of the poor—i.e. suffering for the sake of those to whom the Kingdom of Heaven belongs. For example, Jesus taught that the Kingdom of Heaven belongs to the poor. (Matthew 5:3). Also he proclaimed that “blest are those who have suffered persecution for the cause of right; the kingdom of Heaven is theirs. How blest you are, when you suffer insults and persecution and every kind of calumny for my sake. Accept it with gladness and exultation, for you have a rich reward in heaven; in the same way they persecuted the prophets before you. You are salt of the world. And if salt becomes tasteless, how is its saltiness to be restored? It is now good for nothing but to be thrown away and trodden underfoot.” Matt. 5:10-13. Jesus seemed to extrapolate from this idea of the two opposing ways of life and carry the opposition into the afterlife. Thus, he not only talks of wheat and tares but also talks of sheep and goats.

It should come as no surprise that if the Kingdom of Heaven and the Kingdom of the World exist insofar as they were made manifest within people’s lives and the two kingdoms are in fundamental opposition to each other, then members of the Kingdom of Heaven will be in direct conflict with members of the Kingdom of the World. And, in fact, this is what Jesus taught when he said “If the world hates you, it hated me first, as you know well. If you belonged to the world, the world would love its own; but because you do not belong to the world, because I have chosen you out of the world, for that reason the world hates you.” John 15:18-19. Those who live in the Kingdom of the World hate and despise those who live out the Kingdom of Heaven because they do not belong to the same kingdom—they do not have the same way of life. Therefore, Jesus taught that the Kingdom of Heaven is made manifest through his own suffering and death as well as the suffering and death of his followers as those in the Kingdom of the World attack and abuse. Those who belong to the Kingdom of Heaven may expect to suffer as they live in conflict with the ethic of the world and should even encourage such conflict to the detriment of their own bodies. Jesus embraced righteous suffering and made it clear that his intention was to bring the Kingdom of Heaven into greater conflict with the Kingdom of the World even to the point where he would have to die to bring this about. For example, Jesus said, “I know my own sheep and my sheep know me—as the Father knows me and I know the Father—and I lay down my life for the sheep. No one has robbed me of it; I am laying it down of my own free will.” (John 10:14-18). Or, more directly, Jesus proclaimed the following: “I have come to set fire to the earth, and how I wish it were already kindled! I have a baptism to undergo, and how hampered I am until the ordeal is over! Do you suppose I came to establish peace on earth? No indeed, I have come to bring division.” Luke 12:49-52. Eternal life, for Jesus, came from uniting with him in his embrace of suffering and death through a faith infused with mortal dread. As Jesus said, “[i]n truth, in very truth I tell you, unless you eat the flesh of the Son of Man and drink his

justified because of the posited equality (which hides notions of equivalence or interchangeability). This kind of reasoning seems to come out in Todd May's writings on Jacques Rancière where he argues that the active equality (politics) of Rancière can take place in and through dramatically high levels of violence. For example, he writes,

There seems no bar to placing side by side the claims that one's adversary is one's equal and that, because of the adversary's refusal to recognize one's own equality, one must injure or kill her. To defend oneself against another does not require a denial of that other's equality. It requires instead an embrace of one's own. The emergence of violence in such a struggle [i.e. a democratic struggle] arises on the basis of a persistence in one's own equality, of the effort to maintain the expression of the presupposition of equality in the face of steadfast refusal to allow that expression. Seen in these terms, although the effect of violence may be a denial of the other, it is not because of the attempt to deny the other but to preserve one's own democratic expression that violence can be resorted to without violating the ethical strictures of a democratic politics.⁵⁷⁴

Rancière's notion that democratic politics is the process of actively struggling towards egalitarianism allows one to justify one's violent actions as being simply an act of political self-defence. There is, in this egalitarian notion of justified violence, a temporal collapse of the means and end insofar as violence (the means) may be justified to the extent that it is simultaneously an act of democratic expression (the end). This collapse, however, is sustained only to the extent that one feels justified in limiting the concept of democratic expression to be nothing more or less than the struggle for egalitarian power-relations. And, as we have seen above, there is no good reason to cling to such an odd, narrow conception of democratic expression.

Furthermore, there are at least three things to note in Rancière's notion of politics as

blood you can have no life in you. Whoever eats my flesh and drinks my blood possesses eternal life, and I will raise him up on the last day." (John 6:53, 54). This unification, if it is to be genuine and life-giving, must be made manifest through an ethic of suffering and death for the sake of the Kingdom of Heaven—a sacrificing of oneself for the poor and the oppressed of the world in a sacramental embodiment. In other words, death at the hands of those within the Kingdom of the World means life eternal at the side of the Creator within the Kingdom of Heaven. An inversion of the power relations is impossible on earth because the world is ruled by the Kingdom of the World. So, a manifestation of the Kingdom of Heaven within the world will be met with suffering and death in this life.

⁵⁷⁴ May, *supra* note 297 at 138.

active egalitarianism. First, the idea that politics is a disruption of the harmony of distinctive bodies that were previously understood as having a *telos* is problematic. As Rancière writes, “[p]olitical activity is whatever shifts a body from the place assigned to it or changes a place’s destination.”⁵⁷⁵ As such, his notion of politics as active equality seems to be an unavoidable step down the path toward excessive violence due to its inherent disruptive impulse (i.e. in its contrast to policing as the project of creating and maintaining order and harmony).⁵⁷⁶ Second, the idea that politics is the creation of a single, common world is dangerous. Again, as he writes, “[p]olitics exists because those who have no right to be counted as speaking beings make themselves of some account, setting up a community by the fact of placing in common a wrong that is nothing more than this very confrontation, the contradiction of two worlds in a single world....”⁵⁷⁷ As we know from our discussion of agreement and disagreement above, however, the notion of a coming together in a common world – i.e. as if all were to be considered equal in the abstract – is an inappropriate and undemocratic conception of democratic politics. Third, the idea that there is a heavy burden placed upon the powerless insofar as their struggle is understood to be a process of inverting power structures to pull power down from the powerful to be used by the relatively powerless is highly questionable. For him, the burden is on the powerless (or, at least, weighing most heavily upon the powerless) to make citizenship happen.⁵⁷⁸ In this sense, then, those who are relatively powerless are drawn into a struggle in which they are understood to be on even terms with the powerful (if not in a practical sense, then at least in an ideal-being-

⁵⁷⁵ Jacques Rancière, *Disagreement: Politics and Philosophy*, trans. By Julie Rose (Minneapolis: University of Minnesota Press, 1999) at 30.

⁵⁷⁶ See May, *supra* note 297 at 43.

⁵⁷⁷ Rancière, *supra* note 575 at 27. He continues to write that he reserves the term “politics” for “an extremely determined activity antagonistic to policing: whatever breaks with the tangible configuration whereby parties and parts or lack of them are defined by a presupposition that, by definition, has no place in that configuration – that of the part of those who have no part.” *Ibid* at 29, 30.

⁵⁷⁸ As Rancière writes, “[p]olitics... does not recognize relationships between citizens and the state. It only recognizes the mechanisms and singular manifestations by which a certain citizenship occurs but never belongs to individuals as such.” Rancière, *supra* note 575 at 31.

manifest sense).

However, a very different struggle faces the one engaged in the asymmetrical power-relations of redemptive politics. In redemptive politics, the symmetry of equality never serves as a normative ideal; asymmetry rather than symmetry serves as the guide all the way through the struggle (i.e. in conceptualizing the struggle, to understanding one's place within the struggle, to understanding the strategies and tactics to be used in resisting domination, etc.). Therefore, the goal is to change the nature of the relations between the self and the other by changing the self rather than seeking to change the other or even by seeking to change the relationship directly. In this way, redemptive politics involves a more thorough and convincing collapse of means and ends and, consequently, a more effective approach to resisting domination. As we will see below, redemptive politics involves a striving for justice in embodied reciprocity and reflexivity rather than abstract and universalizable impartiality; it is a relational process of legitimation in which the self, the other, and the world are redeemed in and through the transformation of the relations between the self, the other, and the world. This deep-seated reflexivity ensures that the disruptive domination in the modulations of protocolic control are resisted. The self-referential nature of redemptive politics simply does not allow for the excessive violence of the dualistic logic at work within protocolic control.

What might a transformation of the self-other relationship look like in patterns of deep disagreement and dependence? Unfortunately, examples of the self-sacrifice of redemptive politics do not abound within Canadian politics. And, indeed, we can point to examples of the opposite of what this kind of sacrifice might look like. For example, in *Delgamuukw v. British Columbia* the Supreme Court of Canada decided that Aboriginal rights could be infringed if the infringement is (a) "in furtherance of a legislative objective that is compelling and substantial" and (b) "consistent with the special fiduciary relationship between the Crown and aboriginal

peoples.”⁵⁷⁹ And, as Chief Justice Lamer writes, a compelling and substantial legislative objective can include nearly any economic activity. For example,

the development of agriculture, forestry, mining, and hydroelectric power, the general economic development of the interior of British Columbia, protection of the environment or endangered species, the building of infrastructure and the settlement of foreign populations to support those aims, are the kinds of objectives that are consistent with this purpose and, in principle, can justify the infringement of aboriginal title.⁵⁸⁰

The Supreme Court of Canada, therefore, decides that the collective rights of indigenous peoples, although formally recognized, will be overridden if an upholding of these rights might hamper the power of the Canadian state – i.e. the rights of indigenous peoples will only be recognized in practical terms “insofar as this recognition does not throw into question the background legal, political and economic framework of the colonial relationship itself.”⁵⁸¹ The self-sacrifice of redemptive politics, therefore, could be understood as a reversal of the logic displayed by the Supreme Court of Canada in *Delgamuukw*.

Instead of justifying infringements upon the rights of indigenous peoples if settlers have any interests in the economic development of the land, the logic of self-sacrifice will mean a denial of settler interests if these interests might cause harm to indigenous peoples. And, of course, there is sacrifice in terms of limits placed upon the economic development of the settlers and the restraint upon the Canadian state’s legal, political, and economic power-use.

Conclusion

We began this chapter with questions concerning how we might begin theorizing in a positive way regarding democratic norms given our central concern regarding acceleration fueled by the standardizations of dualistic logic. Specifically, we sought to understand the roles reason

⁵⁷⁹ *Delgamuukw v. British Columbia*, [1997] 3 SCR 1010 at paras. 161, 162 [*Delgamuukw*]. Also see James Tully, “Aboriginal Peoples: Negotiating Reconciliation,” in J. Bickerton & A. Gagnon, eds., *Canadian Politics*, 3d ed., (Peterborough: Broadview Press, 2000) at 413.

⁵⁸⁰ *Delgamuukw*, *supra* note 579 at para. 165.

⁵⁸¹ Couthard, *supra* note 548 at 452.

and freedom play in the process of legitimizing violence. Freedom was seen as an engagement in the process of political resistance - the creation of political space and time through the development of resilient networks that resist standardization. Reason, therefore, is a process of making connections beyond oneself (i.e. transcendence) which could be either stabilizing or destabilizing and, therefore, could contribute to freedom or domination. The democratic question, therefore, is an assessment of whether or not the processes at work in the patternings of oneself and one's environment are leading to freedom or domination. If the judgment tends toward viewing the patternings as developing greater freedom, then the violence of the patterning changes is being legitimized. That is, as we saw above, legitimacy is an ongoing recognition and positive normative judgment regarding one's participation in the power and violence at work within processes of patterning reconfiguration. The judgment of legitimization is democratic because it must be made within the dialectical movement of transcendence through immanence and, therefore, is both a dialogical and diachronic process.

This more thoroughly democratic approach to normativity, it is hoped, will give us a greater ability to build resilience and resistance into our systems of social and economic governance. Put another way, in response to the homogenizing process of standardization underlying protocolic control, this kind of network democracy is an attempt to not only provide support for traditionalists resisting a common citizenry, but support for intentional resistance through de-synchronization and deceleration. The normative ideals of democracy, therefore, must be such that they support and promote resistance to the domination of the homogenizing impulse that comes through standardization; the normative ideals of democracy must foster asymmetry, particularity, and specificity rather than symmetry, commonality, and universality. Resistance to the modulations of protocolic control, therefore, will be found in the development

of these normative ideals of democracy.⁵⁸² And, in the next chapter, we will discuss the challenges facing attempts to translate these democratic norms into patterns of life in the modern, liberal world and how we might begin to democratize our lives and our communities.

⁵⁸² As Galloway and Thacker write, “[t]o be effective, future political movements must discover a new exploit. A wholly new topology of resistance must be invented that is asymmetrical in relationship to networks as the network was in relationship to power centers. Resistance is asymmetry. The new exploit will be an ‘antiweb.’” Galloway & Thacker, *supra* note 24 at 22. Resistance is processes of asymmetry, particularity, and specificity because these processes allow for temporal deceleration and spatial expansion. The logic of resistance involves a push-back against the logic of homogeneity through a refusal to be contained within an abstraction of universalization; it is an attempt to humanize the norms of political theory and bring the difference of diversity down into the very roots of political theorization.

VII. DEMOCRATIZATION

Introduction

In 1934, T.S. Eliot wrote a poem – “The Rock” – about the troubles of modernity and lamented the emptiness of so many of our actions in an accelerating world. This poem also contains an astute phrase that mocks the foolishness of those who would seek to build an ideal political system. He describes them as constantly trying to “escape from the darkness outside and within by dreaming of systems so perfect that no one will need to be good.”⁵⁸³ The liberal market state should be seen as a primary example of the kind of monstrous systemic violence and an undermining of the struggles to find the good that can arise out of this kind of idealist attempt to build a just society for all that transcends all. Further, this same idealism is what prompts George Grant to write in *Technology and Empire* that “the drive to the universal and homogenous state remains the dominant ethical ‘ideal’ to which our contemporary society appeals for meaning in its activity. In its terms our society legitimizes itself to itself. Therefore any contemporary man must try to think the truth of this core of political liberalism, if he is to know what it is to live in his world.”⁵⁸⁴

As we have discussed above, the legitimization of violence through democratic politicization must be worked out piece-meal in the rough-and-tumble of embodied and localized lives; it cannot be done in advance for all people in all times and all places because normative judgment itself depends upon the extension of an embodied trajectory that is dialogical and diachronic. Democratic freedom itself depends upon an ethic of non-domination enlivened and worked out within the complex inter-relations of a healthy civil society and local economy. Whereas the dualistic logic of liberalism debases democratic governance and the capacity for

⁵⁸³ T.S. Eliot, “The Rock”, (1934).

⁵⁸⁴ Grant, *Technology*, *supra* note 43 at 88, 89.

politicization, the interconnections of the institutions of civil society and a civil economy build resistance to standardization. Or, in other words, the only way to effectively counter the normative eclipse within the dualistic logic of liberalism is to cultivate an ethic of mutual support and restraint that builds upon and re-enforces stability and resilience within society. Likewise, a resilient society requires intermediate structures and civil enterprises to instill tradition and reciprocal responsibilities in social, political, and economic life.

A. Justice as Restoration

The liberal state and the liberal market – insofar as they are governed by a shared dualistic logic – destroy *res ecologia* and prevent the politicization process. As such, they foster the advancement of protocolic control and its rapid modulations by undermining the capacity for living in a way that is governed by moral judgment and mutual support within communities. We have seen this destruction of community take place with unprecedented speed in recent years. As Blond writes, “[u]nder the auspices of both the state and the market, a vast body of disenfranchised and disengaged citizens has been constituted. They have been stripped of their culture by the left and their capital by the right, and in such nakedness they enter the trading floor of life with only their labour to sell.”⁵⁸⁵ Insofar as our ability to live a moral life is undermined, we lose our capacity for engaging in politics. As we saw above in our discussion of the self as *res ecologia*, politicization is best understood as a revealing (an apocalypse) of a contestation between ourselves and the world that takes place through a movement from the local to the global and back again. It is, in this sense, an articulation of the broader significance of things – the process of making things *res publica*. I say a contestation between ourselves and the world because, in the process of making a public thing, one is making *oneself* public as a thing-in-

⁵⁸⁵ Blond, *supra* note 53 at 281. Also see Jacob Hacker & Paul Pierson, *Winner-Take-All Politics: How Washington Made the Rich Richer and Turned Its Back on the Middle Class* (New York: Simon & Schuster, 2010).

relation-to-a-thing. That is, in order to make a thing public, we cannot simply re-cognize this thing in some internal sense, but must demonstrate in a communicative manner the significance this thing has for ourselves as *res ecologia*. And, this entails a contestation between oneself and the world because the significance one gives this thing is necessarily relative to the *insignificance* that others communicate regarding this same kind of thing. Consequently, a de-stabilization and de-localization of the self diminishes the self's ability to engage in the politicization process because, to the degree that it is unable to locate itself, the self will be unable to articulate its relation to a thing and, indeed, will be unable to articulate the significance of the relation itself.

It should be clear at this point in the discussion that the liberal state and the liberal market (and, especially the collusion between the two) de-localize the self by means of their dualistic logic of simultaneous individuation and totalization. The self as *res ecologia* exists only in the in-between world of localized relations. The absolute polarization of subject and object operating within liberalism's market state creates an erasure of the self as a relational being-in-the-world that is always ready to politicize. That is, the self is either radically subjectified as an isolated individual existing in opposition to the world or radically objectified as a universalized self existing in opposition to the parochialism of specificity. The moral and political subject exists only in the between world of interconnected and incarnate relations that are neither absolute nor final in their contestations.

Therefore, the only way to effectively counter the normative eclipse within the dualistic logic of liberalism is to cultivate an ethic of mutual support and restraint that invests society with stability and resilience. As Blond writes in *Red Tory*, mere procedural reforms are not enough. An ethic of mutual support that can inspire and guide us in our search for just and democratic governance is needed. He writes, "[t]here is no point in changing the institutions or their rules if the values we enthrone within them are the same values that have corroded us in the first place.

Projects for constitutional reform, no matter how worthy they might be, do not get to the heart of the matter.”⁵⁸⁶ Or, as E.F. Schumacher writes, the deepest problems of our age “cannot be solved by organization, administration, or the expenditure of money, even though the importance of all these is not denied. We are suffering from a metaphysical disease, and the cure must therefore be metaphysical.”⁵⁸⁷ We need to recreate and restore a genuine ethos of mutual support and civil engagement – an ethic of non-domination – that will manifest in renewed and resilient social, political, and economic communities that are able to resist the totalizing impulse of protocolic control.⁵⁸⁸

The ethic of non-domination I am speaking of here involves a notion of justice that is neither utilitarian nor deontological because it is not centered around the universalizing normative ideals of liberalism and, hence, not beholden to the totalizing impulse within liberalism’s dualistic logic. At the same time, it is not entirely accurate to describe this ethic of non-domination as Aristotilean because it also resists a fixed hierarchicalism. In order to move beyond the current injustice of domination taking place within the modulations of protocolic control, we need a vision of justice that will more directly apply the democratic concern for non-domination to every-day political life. That is, we need “an account of the common good that is cultivated organically from within” in such a way as to instill restraint and stability in societies through the development of “intermediate structures and the politics of community and

⁵⁸⁶ Blond, *supra* note 53 at 167, 168.

⁵⁸⁷ Schumacher, *supra* note 381 at 80. He also writes, “[i]t is obvious, indeed, that no change of system or machinery can avert those causes of social *malaise* which consist in the egoism, greed, or quarrelsomeness of human nature. *Ibid* at 221. Or, as Belloc notes, a revolution of the system of material conditions within which we find ourselves also cannot be depended upon to right all wrongs. For example, he writes, “[y]ou cannot impose conviction by a system; changes may result from, they will not produce, a political faith; and least of all can one trust to that unhappy modern fetish, material event, to save us from the decay of ideals.” Hilaire Belloc, “The Liberal Tradition,” in *Essays in Liberalism: by Six Oxford Men* (London: Cassell & Co., 1897) 1 at 17.

⁵⁸⁸ As Christopher Lasch suggests, “[m]odern bureaucracy has undermined earlier traditions of local action, the revival and extension of which holds out the only hope that a decent society will emerge from the wreckage of capitalism.” Christopher Lasch, *The Culture of Narcissism: American life in an Age of Diminishing Expectations* (New York: W.W. Norton & Co., 1978) at xv.

reciprocity”.⁵⁸⁹ We need a conception of justice as restoration. Only in this way can we begin to understand justice as a conservative vision of society that resists the protocolic modulations outlined above.

Justice is best conceived of as a process of restoration that takes place within network patternings in response to violence.⁵⁹⁰ There is, therefore, a very close connection between political resistance, freedom, and justice. Whereas political resistance is the *development of* resilience within network patternings to resist standardization, justice may be understood as the *manifestation* of a network’s resilience in response to violations of the network’s structures and processes. There is, then, an even closer connection between freedom and justice such that whereas freedom is an engagement in the process of political resistance that involves a dialectical process from immanence to transcendence-through-immanence, justice is simply part of the third step (i.e. the “through-immanence” part) in the dialectical process. In other words, justice is more conservative than freedom in that it is simply a response to violence rather than a process that is driven forward by a drive to transcendence. This understanding of justice is rooted in conceptions of inter-connected or networked identities and therefore does not point to inherent rights (which are rooted in a concept of identity as either originating entirely from within or as existing in relation to a divine being), but instead serves as the inspiration for relational rights and duties within social and economic networks.⁵⁹¹ This shift toward notions of inter-relational selves and networked identities as well as a commitment to non-domination provides the foundation for new normative ideals of justice – reciprocity and resilience – that can only be found in the specificity of embodied, localized relations of mutual dependence.

⁵⁸⁹ Blond, *supra* note 53 at 153, 171.

⁵⁹⁰ Structural justice, then, is a diffuse process of restoration in response to structural violence. Also, whether redistribution or some kind of retribution, justice is always reactive as a response to some problem or injustice.

⁵⁹¹ For an interesting approach to relational rights, see the work of Jennifer Nedelsky. For example, see Nedelsky, *supra* note 28.

It should be noted that I am not arguing that just relations are somehow *captured* in reciprocity – i.e. in reciprocal relations of dependence. Rather, I am arguing that reciprocity is *one central element* in just relations whereas impartiality – due to its underlying dualistic logic – is not. Admittedly, the dominant theory of justice in modern political philosophy, almost without exception, is centered upon the notion of impartiality.⁵⁹² The issue of impartiality has loomed large in modern legal theory. In fact, a great number of debates in jurisprudence revolve around questions of impartiality and various thinkers’ underlying assumptions regarding partiality and impartiality.⁵⁹³ Further, not only have jurisprudential debates been coloured by the distinction between partiality and impartiality, but the ethic of impartiality has become the dominant characteristic of what is understood to be good governance and a kind of “natural justice” in the administration of the modern welfare state. The centrality of impartiality in the modern conception of justice has been made manifest in an ethic of impartiality (along with accompanying degrees of functional differentiation) that has become a key characteristic of modern bureaucratic governance.⁵⁹⁴

Impartiality has been most prominent within liberal contractarian schools of thought. For example, Rawls uses the notion of a veil of ignorance to get at his contractarian concept of justice as fairness and, in so doing, seeks to develop a universalist justification for a conception of

⁵⁹² Although one can certainly get specific regarding various kinds of impartiality or the distinction between “first order impartiality” and “second order impartiality”, I am content with a very general definition at this stage. So, by “impartiality” I simply mean a lack of regard for particular characteristics or one’s particular relationship to an other when making normative judgments.

⁵⁹³ Ofer Raban, for example, argues that the issue of impartiality has shaped most major jurisprudential debates. See Ofer Raban, *Modern Legal Theory and Judicial Impartiality* (London: The GlassHouse Press, 2003) at 2.

⁵⁹⁴ For example, as Weber wrote, public officials are to be characterized by an ethic of impartiality and, consequently, bureaucratic governance leads to “[t]he dominance of a spirit of formalistic impersonality... without hatred or passion, and hence without affection or enthusiasm. The dominant norms are concepts of straightforward duty without regard to personal considerations. Everyone is subject to formal equality of treatment; that is, everyone in the same empirical situation. This is the spirit in which the ideal official conducts his office.” Weber, *supra* note 235 at 225.

justice as impartiality.⁵⁹⁵ This project is, of course, following in the footsteps of Kant and his search for a pure, a priori moral philosophy. For example, as Kant writes in his *Groundwork of the Metaphysic of Morals*

a pure moral philosophy, completely cleansed of everything that may be only empirical and that belongs to anthropology... that there must be such a philosophy is clear of itself from the common idea of duty and of moral laws. Everyone must grant that a law, if it is to hold morally, that is, as a ground of obligation, must carry with it absolute necessity;... [it must be] a priori simply in concepts of pure reason....⁵⁹⁶

Kant argued for the Categorical Imperative but, by the middle of the 20th century, it was considered too explicitly metaphysical. So, Rawls developed what came to be seen as a non-metaphysical strategy for attempting to abstract away from any partialities one might possess and thereby freely come to universal agreement.⁵⁹⁷ In other words, Rawls sought to define the reasonable or free person and he did this through an appeal to an ideal, albeit hypothetical, place from which to begin reasoning. The reasonable person is one who has no consideration for its own particular characteristics or being-in-the-world and simply considers all persons alike – i.e. just like itself.⁵⁹⁸ The reasonable person is said to be self-interested, but is unable to distinguish between itself and another and, therefore, is able to be fair to all others. Universal agreement is sought in the darkness of a universal epistemic blindness behind the imaginary veil of ignorance.

The search for universal agreement is central to the impartialists' theoretical projects.

Brian Barry's soft constructivist position is no different. Like all impartialists, he seeks to justify social and political institutions such that all persons could approve of them.⁵⁹⁹ The problem with

⁵⁹⁵ Barry calls Rawls' *Theory of Justice* "the most fully developed variant of justice as impartiality." Brian Barry, *Justice as Impartiality* (Oxford: Clarendon Press, 1995) at 8.

⁵⁹⁶ Immanuel Kant, *Groundwork of the Metaphysics of Morals*, trans. and ed. by Mary Gregor (Cambridge: Cambridge University Press, 1997) at 3.

⁵⁹⁷ See Barry, *supra* note 595 at 9.

⁵⁹⁸ I refer to this hypothetical person as an "it" because in the original position, the reasoning is done by a sexless being.

⁵⁹⁹ For example, see Barry, *supra* note 595 at 6.

this approach, to put it simply, comes not in the attempt to justify social and political institutions, but in the attempt to do so *for all persons*. For indeed, this is simply impossible. The disagreements between persons run deep because our conceptions of good and evil are tied deep down into our ways of life and the lives of our ancestors. But, revealing his assumption that disagreements actually do not run deep among persons, Barry argues that any theory of justice – if it is to be a theory of justice rather than a theory of, say, hurricanes – must be acceptable to all “reasonable” persons. This is an important move. Faced with the impossible task of justifying for all persons, the impartialist seeks to limit the number of persons to which one needs to justify a theory and, in order to accomplish this, excludes those who would disagree by making a distinction between “reasonable” and “unreasonable” persons. In this manner, the “problem of partiality” is moved from the question of justification (e.g. “the good”) to the question of rationalization (e.g. “the right”). So, the distinction between the good and the evil is redescribed as a distinction between the right and the wrong. The distinction between the right and the wrong is then spoken of as a distinction between the rational and the irrational.

By appealing to the distinction between rational and irrational, Barry seeks a neutral way of resolving conflicts regarding various goods. But, of course, in so doing, he is revealing his own notion of “the good”. Like Rawls, Barry is a constructivist, but he believes that, in the ideal hypothetical situation, the actors must be conceived of as more than merely self-interested beings – they must be reasonable beings. Barry suggests that the motivation for behaving justly – acting impartially – “is not reducible to even a sophisticated and indirect pursuit of self-interest.”⁶⁰⁰ Rather, the motivation comes from a desire to be able to justify our actions to ourselves and others without self-reference. As he writes, “the desire to be able to justify our actions to ourselves and others on a basis capable of eliciting free agreement is, as common experience

⁶⁰⁰ Brian Barry, *Theories of Justice* (Los Angeles: University of California Press, 1989) at 7.

attests, widely shared and deeply grounded.”⁶⁰¹ This notion of reasonable as free agreement has moral content and, admits Barry, it *necessarily* has moral content.⁶⁰² Indeed, Barry admits openly that “the whole idea that we should seek the agreement of everybody rests upon a fundamental commitment to the equality of all human beings.”⁶⁰³ Or, again, “[a] theory of justice which makes it turn on the terms of reasonable agreement I call a theory of justice as impartiality. Principles of justice that satisfy its conditions are impartial because they capture a certain kind of equality: all those affected have to be able to feel that they have done as well as they could reasonably hope to.”⁶⁰⁴ There is an important subplot taking place here in terms of the moral content of his appeal to reasonable agreement. That is, he speaks of reasonable agreement because he suggests that reasonable agreement is available without being exclusive because if it is reasonably agreeable it is universally agreeable by definition.⁶⁰⁵ It is understood to be universally agreeable because it is understood to be treating all people the same in some manner. He admits, however, that this commitment to egalitarianism as a grounding for the appeal to universal reason is a circular argument. But, he suggests, it is not a vicious one. I tend to agree. It is not illogical, it is simply posited as a good. But, as I have been arguing, we have good reason to question the “goodness” of this “good”.

In keeping with the game of redefining “good” as “right”, Barry seeks to redefine “reason” as “free” in order to – it seems – appeal to some moral intuitions that uncoerced agreement is an ideal to which we should strive. Therefore, he writes, “‘reason’ means reasoned argument, from premises that are in principle open to everyone to accept.” Namely, “premises which reasonable people, seeking to reach free, uncoerced agreement with others, would

⁶⁰¹ Barry, *supra* note 600 at 284.

⁶⁰² For example, see Barry, *supra* note 600 at 272.

⁶⁰³ Barry, *supra* note 595 at 8.

⁶⁰⁴ *Ibid.* at 7.

⁶⁰⁵ See *ibid.* at 7.

accept.”⁶⁰⁶ So, now we see that the question has moved once again. No longer is it a question of reasonable and unreasonable (because “reason” is simply that which “reasonable people” agree upon), but free and unfree. Free people agree or, at least, agree in theory. So, he concludes, the “principles of justice are inconsistent with claims to special privilege based on grounds that cannot be made freely acceptable to others.”⁶⁰⁷ However, this is, of course, simply a continuation of his game of redefinition. More specifically, it is a game of redefining the rules of the game.⁶⁰⁸ And, this redefinition takes place based upon the assumption that (a) reason is universal and (b) universally accessible. That is, disagreements between very different people are actually not as deep and insurmountable as they may appear and the job of the enlightened political theorist is to peel away the superficial differences to reveal the underlying commonality and thereby continue the Enlightenment project. His willingness to superficialize the deep difference and disagreement between peoples can be seen even in his confidence that he can define the central problem in theories of justice. For example, he writes, “the central issue in any theory of justice is the defensibility of unequal relations between people.”⁶⁰⁹ In other words, equality does not need to be justified, only departures from equality.

Before moving on to consider what I mean by embodied reciprocity and reflexivity in justice, it will be useful to take a step back and consider some the core theoretical commitments that Rawls (Justice as Reciprocity) and Barry (Justice as Impartiality) share. Both Rawls and Barry are moral constructivists and, as such, believe that moral principles arise in and through the

⁶⁰⁶ *Ibid.* at 7.

⁶⁰⁷ *Ibid.* at 7, 8.

⁶⁰⁸ Barry seeks what he calls “second-order impartiality”: “principles and rules that are capable of forming the basis of free agreement among people seeking agreement on reasonable terms.” *Ibid.* at 11. In other words, impartiality is sought in the decision-making process (i.e. rather than the outcome). And, therefore, partiality is said to happen when there are unjustified preferences in the decision-making process. See Raban, *supra* note 583 at 1. But, certainly, second-order impartiality does not demand universal first-order impartiality – i.e. never being motivated by private considerations. See Barry, *supra* note 595 at 11, 12.

⁶⁰⁹ Barry, *supra* note 600 at 3.

social interactions of moral agents.⁶¹⁰ As Allan Gibbard explains, under this kind of constructivism, the theorist “specifies an ideal, hypothetical situation in which people choose the principles that shall govern them. He then proclaims that whatever principles would be chosen in that situation are, by virtue of this very fact, valid principles of justice.”⁶¹¹ However, quite naturally, both the nature of the *agents* and the nature of the *structure* within which the agents may act are defined according to the underlying metaphysical and epistemic presuppositions regarding the nature of persons and their environment.

For Rawls and his liberal theory of justice as reciprocity, persons are discrete individuals engaged in moral relations that look much like contracts in which the contracting parties are very aware of their own desires and needs. That is, even before they are considered to be in the “original position” or behind the “veil of ignorance”, the persons that are considering Rawls’ approach to justice are understood by Rawls to be self-interested individuals seeking their own notion of “the good”. As Barry explains, though, “the addition of the veil of ignorance means that this pursuit of advantage fails to take off, so that we finish up with a prudential calculation by one person under conditions of radical uncertainty.”⁶¹² In this sense, the idea of justice (or fairness as “the good”) as a worthy goal is assumed to exist before considering the hypothetical situation and assumed to persist through the entire process. Or, as Rawls writes, a well-ordered society is one in which “everyone accepts and knows that the others accept the same principles of justice” and one whose “members have a strong and normally effective desire to act as the

⁶¹⁰ Liberal interactionalism means not that the universe is without order and meaning, but that it is entirely dependent upon the interactions of subjects constructs meaning for themselves. See Sandel, *supra* note 376 at 176. This kind of constructivism was clearly expressed by Bruce Ackerman when he stated that “[t]he hard truth is this: There is no moral meaning hidden in the bowels of the universe.... Yet there is no need to be overwhelmed by the void. We may create our own meanings, you and I.” Bruce Ackerman, *Social Justice in the Liberal State* (New Haven: Yale University Press, 1980) at 368. And yet, as Sandel has noted, despite this bold claim that there is no meaning in the universe unless it is created by humans, Ackerman still claims that liberalism is not committed to any particular metaphysic or epistemology. See *ibid* at 356, 57, 61 and Sandel, *supra* note 376 at 176.

⁶¹¹ Allan Gibbard, “Constructing Justice” (1991) 20 *Philosophy and Public Affairs* 264 at 265.

⁶¹² Barry, *supra* note 595 at 60.

principles of justice require.”⁶¹³ Further, there is an underlying conception of persons as independent actors that make calculations regarding their actions as if they were engaged in discreet interactions, completely disconnected but for the precise moment of the particular moral transaction. In this model, causation takes place in a linear procession from cause to effect as individual actors (the parts) interact to make up a just society (the whole). Admittedly, this general orientation toward reciprocity is attractive because reciprocity (in a general sense) is quite in keeping with our intuitions concerning justice and just action. As Allan Gibbard notes, “[m]any of our chief moral sentiments are reciprocal overtly: a sense of fair dealing, feelings of gratitude, urges to retaliate.”⁶¹⁴ However, a problem arises when one considers the blind spots one might have regarding the breadth of one’s morally relevant community. Consequently, if one did not see how one could possibly have an interaction with an other that was beneficial for oneself, there was no reason to engage in a moral transaction. In this manner, then, those beings that are seen as having nothing to contribute are excluded from society.⁶¹⁵

Barry and his theory of justice as impartiality admits the fundamental ignorance of those making the normative judgments such that, when they are seeking the principles of justice, they are not making self-interested calculations regarding their needs and wants. Instead, he suggests that we need to simply abstract away to a general category of actors in order to include them all (and include them all equally). This notion of justice relies upon the idea that (a) persons are the same in some fundamental, yet morally relevant, manner such that we can abstract away from their real lives to some non-political, power-less realm of normative interaction, (b) the hypothetical interactions of abstract moral agents are relevant to our considerations of our social

⁶¹³ Rawls, *supra* note 31 at 454.

⁶¹⁴ Allan Gibbard, *Wise Choices, Apt Feelings: A Theory of Normative Judgment* (Oxford: Oxford University Press, 1990) at 261.

⁶¹⁵ Additionally, this kind of interactionalism leads people to community shop and, in this manner, unwittingly destroy their community.

and political governance, and (c) that this abstractionism does not foster the advancement of structural domination like protocolic modulations. As we have seen above, there are some significant problems with the process of abstracting away into realms of thought that are understood to be devoid of power relations. Additionally, we simply cannot understand the relations of moral agents apart from a consideration of persons as embodied and historical beings that interact within their environment.

Therefore, my conception of justice as restoration should be distinguished not only from Barry's notion of justice as impartiality, but also from Rawls' interpretation of justice as reciprocity. Rawls understands justice as reciprocity to be a hybrid theory that combines a pursuit of mutual advantage with a sense of fairness.⁶¹⁶ A network approach to justice is developed with attention paid to the interconnected nature of the self and its environment. What this means, then, is that justice as reciprocity must be highly reflexive in a way that Rawls is not. Or, in other words, justice involves the way one's action will necessarily transform *oneself* as a result of transforming one's relations with the other. Reciprocity, then, means making a normative judgment to evaluate the appropriateness of an action or inaction with the purpose of improving the relation between oneself and the other. It is the relation itself rather than the self or the other as discreet beings that has priority within this conception of justice. The principle of reciprocity is one of the keys to a network conception of justice because – when it is properly conceived – it does not place an emphasis upon any known benefits (as if they were epistemically transparent), but upon the underlying relations between the self and other. Further, an emphasis upon reciprocity (a) brings out the reality that the self is created and sustained in relation to the other and (b) that normative judgments must be made with consideration to the *relation between the self and the other* rather than *the self or the other* as if they were discreet and independent

⁶¹⁶ See Barry, *supra* note 595 at 46.

moral beings.

It should be very clear by now that the notion of justice as impartiality as both Rawls and Barry have outlined it is undergirded by a corrosive individualism and universalism that disallows the reciprocity of mutual dependence. This individualism, despite its appeal to our intuitions concerning the relationality of justice, nevertheless produces relations of justice that are best conceived of as a process of radical subjectivization. This process, rather than resisting protocolic modulations through an ethic of non-domination, is nihilistic and destructive of the embodied interdependencies needed for normative judgment. The progression of this process is perhaps best characterized by Max Stirner's dialectic of liberalism. In basic terms, his dialectic proceeds as follows:

- A. "Political Liberalism" – the doctrine of equal rights reduces persons to a general, universal political identity... citizen. In this stage, the state dominates through direct, unmediated relations with the individual.
- B. "Social Liberalism" – equality is extended to the realm of social and economic life. In this stage, the individual is alienated by, and subject to, the abstract generality of society.
- C. "Humane Liberalism" – individual differences are overcome as the drive for the essence of humanity proceeds. In this stage, the individual ego is abolished and the particular is dominated by the general.⁶¹⁷

As Deleuze suggests, Stirner (like Nietzsche) thereby represents "the dialectician who reveals nihilism as the truth of the dialectic."⁶¹⁸ The impartiality of equality places persons in a direct citizen-state relation that develops a radical subjectification of domination. All persons that fall into the category of citizen find themselves in an unmediated relationship with the state or its market – i.e. bare subjects in relation to a pervasive state-object and naked individual actors in a

⁶¹⁷ Newman, *supra* note 122 at 16-21. Also see Max Stirner, *The Ego and Its Own*, ed. by David Leopold (Cambridge: Cambridge University Press, 1985) at 93-125.

⁶¹⁸ Gilles Deleuze, *Nietzsche and Philosophy*, trans. by Hugh Tomlinson (London: The Athlone Press, 1992) at 161 [emphasis removed]. And, as Newman notes, Stirner's dialectic reveals how liberalism "operates by constructing the individual around a certain subjectivity which actively *desires* its own domination." Newman, *supra* note 122 at 21.

competitive market.⁶¹⁹ This kind of individualism, of course, can tolerate no genuine reciprocity that represents the resilience of mutual dependence and will inevitably fall into some kind of impartiality between individualized subjects.

Genuine reciprocal relations (i.e. those that are restorative) are those connections between persons and their environments – those societies – that are fostered and governed by an ethic of non-domination. They are relations that transcend the modern notion of society as a contract between self-interested individuals seeking to escape the state of nature.⁶²⁰ Instead of a universal conception of the good that finalizes an ideal set of relations, an ethic of non-domination involves a diachronic perspective in which dialogical relations with the other are engaged in with a view to the future. That is, organizing-oriented interaction with the other relies upon a relation built upon what the other may become.⁶²¹ Indeed, identities change through time and it must be recognized that the other may become less or more antagonistic in the future. There is, therefore, never finality to agreement and disagreement and it is inappropriate to establish structures and processes that fail to reflect this indeterminacy. Further, it is essential that the ethic of interaction is colored by a humility rooted in the recognition that there is no final arbiter in the present and that all disagreements will be judged by future generations. So, it is important to resist the domination of uniform protocol even if a reassertion of difference is not coming from an ideal

⁶¹⁹ This kind of impartial reciprocity may be further understood as a divinization of the state. That is, the state, as the pervasive object or universal orientation point, takes up the place of God. And, of course, retributive justice furthers this divinization of the state when it is fueled by impartial/egalitarian reciprocity.

⁶²⁰ This modern liberal conception of society developed such that relations between persons and their environment were understood to be market relations. As Crawford Macpherson writes, “[t]he individual in market society is human as proprietor of his own person. However much he may wish it to be otherwise, his humanity does depend on his freedom from any but self-interested contractual relations with others. His society does consist of a series of market relations.” MacPherson, *supra* note 41 at 275. Also see James Tully, *An Approach to Political Philosophy: Locke in Contexts* (Cambridge: Cambridge University Press, 1993) at 71 ff.

⁶²¹ See Eamonn Callan, “The Better Angels of Our Nature: Lincoln’s Patriotism and Dirty Hands,” online: UVic Law <http://www.law.uvic.ca/demcon/victoria_colloquium/documents/THEBETTERANGELSOFOURNATURE.pdf>. Also, Charles Taylor points to the potential of humans as a reason for looking beyond present hindrances and how “we have a powerful sense that the status of being a creature defined by its potential for these capacities cannot be lost.” Taylor, *supra* note 34 at 196.

alternative. Indeed, this emphasis upon indeterminacy is important in the de-problematization of difference.⁶²²

As we saw above in the discussion regarding the legitimization of violence, non-domination can mean increased engagement or disengagement with the other through a celebration of diversity in the restraint that exists within the localized specificity of embodied living.⁶²³ That is, it is important to note that part of non-domination, and hence justice as restoration, means a legitimization of violence through an undermining of violence by refusing to retaliate in retributive actions and instead forgive those who are domineering. Admittedly and understandably, talk of forgiveness is radically out of synch with current conceptions of justice. For, indeed, forgiveness is unjust if one is operating within the terms of abstract or non-relational ideals of justice rooted in universalized principles. Forgiveness is self-sacrifice or suffering in the forsaking of retribution. In a sense, the injustice of domination that destroys patterning processes needs to be countered with the creative and restorative “injustice” of forgiveness, rather than the further destructive power of revenge.⁶²⁴ To the degree that forgiveness is violent in its disruption of existing relations, it is a fully legitimized violence that cannot lead to domination; it is deeply restorative.

B. Towards Resilience

If we understand justice as restoration and we are concerned about the illegitimate violence of protocolic modulations fostered by the liberal market state, we are well placed to begin searching for practical means of developing resilient relations. It is the resilience of

⁶²² For an example of this approach to resistance, see Slavoj Žižek, “Holding the Place,” in Judith Butler, Ernesto Laclau, & Slavoj Žižek, *Contingency, Hegemony, Universality: Contemporary Dialogues on the Left* (London: Verso, 2000).

⁶²³ That is, diversity and difference are values because they contribute to resilience and restoration and, as we saw above, both inclusion and exclusion of the other may be unjustified or justified depending upon the power-relations at play.

⁶²⁴ See Volf, *supra* note 127 at 120-125.

relational patternings that allows them to be restored in the face of violations and avoid the homogenizing impulse within protocolic domination. The problem is: if our political norms and structures of governance have been dominated by the dualistic logic of liberalism for the past approximately three hundred years, how can we move forward into practical policy in a way that does not replicate the problems from which we seek to escape?

Although we cannot expect to leave liberalism behind anytime soon, there are steps that can be taken to begin moving into a post-liberal political arrangement. The first, and most important step, we have already identified – the need for us to be committed to developing an ethic of non-domination that undermines the violent dualism of liberalism. Any structural or procedural changes must be guided by a sense of the good and the need for mutually supportive interdependencies. There can be no deep or lasting change without virtuous citizens, families, and associations guided by a search for the communal good. The second step, I would like to suggest, is the need to move beyond the hierarchies of the modern welfare state. Because it is the modern state structure that develops legal systems and maintains the infrastructure of the market, we must set out to not only fracture state monopolies, but begin to develop the means of infusing legal systems with reflexivity and restraint such that markets are no longer stripped of their governing norms. In other words, we need to democratize the social, political, and economic systems that govern our everyday lives in order to move away from the fragility of a direct individual to state relation or the vulnerability of isolated individual actors within a globalized, competitive market.⁶²⁵ “Instead of the vertical sanction of the state, which citizens can only

⁶²⁵ As Stout notes, democracy may be understood as a tradition. “It inculcates certain habits of reasoning, certain attitudes toward deference and authority in political discussion, and love for certain goods and virtues, as well as a disposition to respond to certain types of actions, events, or persons with admiration, pity, or horror. This tradition is anything but empty.” Stout, *supra* note 404 at 3. Additionally, we may note that a relation of democratic governance does not *directly* constrain the relevant agents but, instead, guides their conduct through changes to the relations the agent has with the structure of their social and material environments – i.e. the environment within which their communities and associations exist. A relation of domination, on the other hand, disrupts the agent’s relations with

experience as an act of external coercion,” writes Blond, “a good politics requires the horizontal sanction of our peers, friends and colleagues. Crucial to a revival of virtue is the restoration of a genuine liberty, which must be organically embedded in particular social formations with particular privileges and duties.”⁶²⁶ We need a stable and resilient civil society and civil economy governed by norms outside the state-market system.

In what follows, therefore, we will consider (a) some means of moving beyond the state’s monopoly on violence in the rule of law and, then, (b) some means of re-moralizing the market.

The problem of the monopolizing hierarchies of the modern welfare state – or, the problem of bureaucratic domination – tends, among liberal theorists, to focus on the sluggardly nature of the modern welfare state’s hierarchical administrative institutions. Most notably, new governance theorists complain that the structures and processes of the state institutions are outdated and unable to meaningfully respond to the complex and every-changing world in the 21st century.⁶²⁷ Indeed, new governance theory brings some important concerns and critiques of the modern state to the forefront. There seems to be no doubt that the hierarchical model or abstract regularity of the modern welfare state’s bureaucracies is clearly out dated and out of touch with the lives of many of the citizens in Canada. The technological revolution begun in the late 20th century is changing everything.⁶²⁸ Increased global competition, capital hyper-mobility, and dramatic advancements in information-sharing have created a “radical indeterminacy” in

the structure of their social and material environments such that the agent as subject is left in a direct relation to a governing institution.

⁶²⁶ Blond, *supra* note 53 at 171, 172.

⁶²⁷ See Michael Dorf & Charles Sabel, “A Constitution of Democratic Experimentalism” (1998) 98 *Columbia Law Review* 267. And, further, it is understood that Max Weber was the primary thinker that took on the logic underlying the modern welfare state and its bureaucracy – that his conception of “formal rationality” looked to law as a set of universal rules applied to specific situations. See Weber, *supra* note 418 and Weber, *supra* note 235.

⁶²⁸ As Castells, as early as 1986, explains regarding the pervasiveness of the current technological revolution, “[t]wo major features characterize this technological revolution: it is aimed at generating and processing information; its outcome is process-oriented and, therefore, its effects are pervasive, cutting across the entire realm of human activity.” Manuel Castells, “High Technology, World Development, and Structural Transformation: The Trends and the Debate” (1986) 11:3 *Alternatives* 297 at 297. As he notes, this increased ability to generate and process information changes the way we “work, produce, consume, manage, enjoy ourselves, live and die.” *Ibid.*

social and economic interactions that are not matched by a flexible and adaptable structure of governance.⁶²⁹ As the modern life accelerates – e.g. as citizens become more mobile and instantly connected through communications technologies – it is becoming increasingly obvious that government legislation, regulation, law enforcement, adjudication, and service delivery must be more integrated and purposively interdependent if it is to be effective. Without attention to diversity and an ability to dynamically engage with the citizenry, a bureaucratic system becomes domineering in its top-down, expert-based inflexibility.

However, the question is: should the sluggishness that new governance theorists have identified be the primary concern when we are faced with the specter of domination through accelerating protocolic modulations? Is there not a very real danger that procedural reforms seeking greater flexibility and nimbleness in government will actually facilitate the dualistic logic of liberalism and thereby fuel the rapid modulations of protocol that are creating so much violence?

If we accept the political ontology of *res ecologia* and the dangers of acceleration fueled by liberalism's dualistic logic, the concern regarding the cumbersome nature of hierarchical bureaucracies and their inability to represent individual citizens from the bottom-up should not be primary. Rather, our primary concern should be the push toward standardized uniformity that takes place within governance insofar as it represents a manifestation of protocolic control. We should be concerned about standardizing impulses that universalize within the state as well as standardizing impulses that are at work within the marketplace. And, more specifically, we should be concerned about the accelerating modulations that are fueled by the standardization

⁶²⁹ See Gerstenberg & Sabel, *supra* note 171 at 292. Also see Lobel, *supra* note 171 at 358. As Magnusson & Walker explain regarding capital hyper-mobility, "capital itself has been de-centered. The new global financial system is illustrative: capital, in its money form, circles the globe endlessly, touching ground when and where it is needed and vanishing whenever it is threatened." Warren Magnusson & Rob Walker, "De-Centring the State: Political Theory and Canadian Political Economy" (1988) 26 *Studies in Political Economy* 37 at 54.

resonating between these two systems.

There should be little doubt that the hierarchical administrative model of the modern bureaucracy standardizes and, perhaps even more importantly, facilitates standardizations in and through other spheres of life. Before the rise of the modern welfare state, Max Weber already aptly described the inherent push for standardization within the structures and processes of modern bureaucratic institutions in his *Economy and Society*:

bureaucracy inevitably accompanies modern mass democracy in contrast to the democratic self-government of small homogeneous units. This results from the characteristic principle of bureaucracy: the abstract regularity of the execution of authority, which is a result of the demand for 'equality before the law' in the personal and functional sense – hence, of the horror of 'privilege' and the principled rejection of doing business 'from case to case.'⁶³⁰

Weber's notion of "the abstract regularity of the execution of authority" rooted in a quest for impartiality lays bare the nature of bureaucratic domination. The indeterminacy of real-world political communication processes are distorted in the process of abstracting into standardized processes within the hierarchical and command/control administrative model. In other words, bureaucratization is an objectification of persons and their behaviours in an attempt to maximize linear models of efficiency. He further describes this objectification process as follows:

Bureaucratization offers above all the optimum possibility for carrying through the principle of specializing administrative functions according to purely objective considerations. Individual performances are allocated to functionaries who have specialized training and who by constant practice increase their expertise. 'Objective' discharge of business primarily means a discharge of business according to *calculable rules* and 'without regard for persons'.⁶³¹

There is a connection, therefore, between bureaucratization and the egalitarianism of the welfare state that Weber notes. "Bureaucratic organization has usually come into power on the basis of a leveling of economic and social differences."⁶³² Again, we can see the problematization of

⁶³⁰ Weber, *supra* note 235 at 983.

⁶³¹ *Ibid.* at 975.

⁶³² *Ibid.* at 983.

difference fostering a monopolizing state structure that creates a worldview that can only conceive of the complex and multilateral organizations in the associations of civil society as being irrational and illegitimate.

In contrast to the abstract standardizations of bureaucratic organizational processes, a new institutional design theory – a theory that outlines structures of governance that are more dynamic and better suited to handle complex dissonance – is needed. New governance theorists or “democratic experimentalists” suggest that the traditional model of public sector structures and practices has already begun to shift into a new model that includes more participatory and collaborative practices. The state-society relationship is being redefined as multiple stakeholders are increasingly encouraged to participate in the governance project.⁶³³ In this shift to more dynamic systems of governance, experimentalists rightly argue that power needs to be moved out and down from the centre/top and invested in the civil associations of local communities.⁶³⁴

This decentralizing impetus, however, is contrasted by centralized bodies that are understood to coordinate, facilitate, guide, and monitor performance for the policy experimentation taking place at the local level – say, to prevent local organizations from simply acting in their own, limited self-interest rather than the public good. But, the administrative centre should focus upon being a provider of infrastructure, a definer of broad projects and

⁶³³ See Lobel, *supra* note 171 at 344, 45.

⁶³⁴ This decentralization is important for several reasons. First, it promotes diversity, competition, experimentation, and greater participation and thereby facilitates greater responsiveness to changing circumstances. Second, decentralization reaffirms the pragmatists’ understanding of human knowledge as partial, incomplete, and embedded in history through an embrace of subsidiarity. Third, the new governance theorist picks up on psychological and anthropological indications that successful relations are dependent upon scale and a sense of social identity/“rootedness.” So, decentralization allows for more personal and immediate relations which, in turn, allow for greater problem-solving and more lasting resolutions to conflict—i.e. as Orly Lobel says, “the creation of relational density and synergy.” Lobel, *supra* note 171 at 383. Finally, they suggest that decentralization is built on the fact that increased engagement will contribute to the building of deliberative and collaborative capacities, thus sustaining an environment for democratic engagement. These reasons were outlined in *ibid* at 381-85. Of course, the decentralization of new governance – if it is to translate into improvements within the design process – depends upon significantly increased information flows (both vertically and horizontally) and a significantly increased interest in considering alternatives. See Charles Sabel, “A Quiet Revolution of Democratic Governance: Towards Democratic Experimentalism,” in OECD Secretariat, *Governance in the 21st Century* (Paris: Organisation for Economic Co-operation and Development, 2001) 121 at 134.

societal goals, and a locus of information for performance evaluations. It is suggested that this process of orchestration by the central body ensures problems do not become isolated and opportunities for improvement lost. The decentralization is accomplished through an interpenetration of policy boundaries, new public/private partnerships, negotiated rulemaking, performance-based rules, decentralized problem solving, disclosure regimes, and coordinated information collection.⁶³⁵

There is a very real danger, however, that the information flows and methods of real-time action coordination within democratic experimentalism will be standardized such that the deep diversity of peoples and nations are eroded in and through their interactions with the state's administrative structures and processes and they are made susceptible to the destructive violence of radical change. In other words, there is a danger that the decentralization of formal governance structures, although ostensibly being less prone to standardizations that fuel acceleration, will actually bring with them a more insidious standardization in protocolic modulations that move much faster than any hierarchical administrative model of state governance. Therefore, we should view the democratic experimentalism of new governance

⁶³⁵ Admittedly, this is still quite general and abstract. However, democratic experimentalists have pointed to a number of state-society relationships that are being redefined as multiple stakeholders are encouraged to participate in the governance project and have suggested that a more collective and dynamic approach is being used (and should be used) to deal with complex and diverse problems of governance. For example, they have pointed to the following areas: drug treatment, restorative justice, education reforms, EU governance in areas of racial discrimination, employment, health care, environmental governance, etc. See Charles Sabel & Michael Dorf, "Drug Treatment Courts and Emergent Experimentalist Government," (2000) 53 *Vanderbilt L. Rev.* 831; Megan Stephens, "Lessons From the Front Lines in Canada's Restorative Justice Experiment: The Experience of Sentencing Judges" (2007) 33 *Queen's Law Journal* 19; John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford: Oxford University Press, 2002); James Liebman & Charles Sabel, "A Public Laboratory Dewey Barely Imagined: The Emerging Model of School Governance and Legal Reform" (2003-2004) 28 *N.Y.U. Rev. L. & Soc. Change* 183; Charles Sabel & Jonathan Zeitlin, "Learning from Difference: The New Architecture of Experimentalist Governance in the EU," (2008) 14 *Euro. L. J.* 271; Gráinne de Búrca, "EU Race Discrimination Law: A Hybrid Model?," in Gráinne de Búrca & Joanne Scott, eds., *Law and New Governance in the EU and the US* (Portland: Hart Publishing, 2006) 97-120; Claire Kilpatrick, "New EU Employment Governance and Constitutionalism," in Gráinne de Búrca & Joanne Scott, eds., *Law and New Governance in the EU and the US* (Portland: Hart Publishing, 2006) 121-151; Tamara Hervey, "The European Union and the Governance of Health Care," in Gráinne de Búrca & Joanne Scott, eds., *Law and New Governance in the EU and the US* (Portland: Hart Publishing, 2006) 179-210; and Joanne Scott & Jane Holder, "Law and New Environmental Governance in the European Union," in Gráinne de Búrca & Joanne Scott, eds., *Law and New Governance in the EU and the US* (Portland: Hart Publishing, 2006) 211-242.

theorists with a certain degree of skepticism. If we are to move outside the dualistic logic of liberalism, this move toward more dynamic systems of governance must actually build patterns of resistance to standardization and resilience to rapid change into structures of governance. And, in order to begin doing this, the state must not only be increasingly responsive to the lived diversity of citizens in its own administrative structures, but also be increasingly oriented towards empowering resistance to standardization and rapid change in familial, religious, and localized socio-economic governing structures. Put in general terms, resistance to protocolic control, therefore, will be found in the development of particularity and asymmetry not in more nimble forms of governing institutions. Admittedly, the resistance of particularity and asymmetry does not throw up a wholesale blockade against the open communication patterns of standardized information flows but, instead, helps build in a kind of circuit breaker or dampener that will simply retard the homogenizing impulse. This resistance may take the form of a broad level approach (e.g. the decolonization process from the 1960's onward) or a narrow approach (e.g. the re-enforcement of local traditions and patterns of communication). Either way, this kind of piecemeal resistance in the face of an immovable flood allows for movement towards open-ended and constantly changing (i.e. indeterminate) administrative structures and processes, but can only allow small degrees of change in localized areas if it is to be resilient against the violence of protocolic modulations.

If we are successful in this approach, we will be able to focus not merely on the organizational infrastructure of governing institutions, but also on the broader processes of governance and become more attuned to the violence of universalization. In moving beyond the state infrastructure, we need to also ensure we do our best to avoid the enclosure and standardization of diverse peoples, socio-political movements, and economic systems – i.e. avoid

the destruction of society itself.⁶³⁶ As Magnusson notes, the local politics of municipal institutions are designed “to provide an enclosure for popular politics, and so to render that politics safe for the state, the market, and the other forms of government to which we are subject. The state in turn encompasses these enclosures and formally centres politics upon itself.”⁶³⁷ This process of state enclosure, then, is accompanied by a process of standardization and an important part of this standardization process involves the development of a universal market able to facilitate the penetration of protocolic control into all areas of life. As we will see in the discussion below, it is the standardizations of the market state that operate so as to destroy the very means of resisting protocolic domination – that is, society and its market rooted in the specificity of locality.

One area where there is a potential for building resistance to state-centered, and state-facilitated standardization is in our understanding and practice of citizenship. So, let us consider citizenship under the governing institutions of the modern state and trace the basic process of enclosure and standardization taking place through governance in history. Through these two primary mechanisms of enclosure and standardization, the institutional structure of the state posits, as Magnusson and Walker note, “a false opposition between identity and community within, difference and anarchy without.”⁶³⁸ As Tully suggests, modern citizenship has been developed in terms of the constitutional rule of law (*nomos*) and representational government

⁶³⁶ For example, as Taiaiake Alfred suggests, the idea of “aboriginal” itself is a state-imposed construction that has developed out of a history of colonization. See Alfred, *supra* note 547. And, as Philip Blond has written, “[l]ook at the society we have become: we are a bi-polar nation, a bureaucratic, centralised state that presides dysfunctionally over an increasingly fragmented, disempowered and isolated citizenry. The intermediary structures of a civilised life have been eliminated, and with them the Burkean ideal of a civic, religious, political or social middle, as the state and the market accrue power at the expense of ordinary people. But if both 20th-century socialism and conservatism have converged on the market state, they have done so by obeying the insistent dictates of modernity itself. And modernity is nothing if not liberal.” Blond, *supra* note 6.

⁶³⁷ Warren Magnusson, *The Search for Political Space: Globalization, Social Movements, and the Urban Political Experience* (Toronto: University of Toronto Press, 1996) at 10.

⁶³⁸ Magnusson & Walker, *supra* note 629 at 60.

(*demos*).⁶³⁹ The modern citizen, in this sense, is constituted through a corralling into a space demarcated by the development of *nomos* and *demos* and, in this process of corralling, is standardized as a single unit operating in relation to the singular whole of the *nomos/demos*.⁶⁴⁰ The institutional structure of the state serves to dominate political life such that the self *qua* citizen lives, moves, and has its being in relation to the state.

However, citizenship is best understood not as something given by an institution from above, but as a lived activity in the process of developing and engaging with community that transcends the self. Again, “[c]itizenship is not a status given by the institutions of the modern constitutional state and international law,” suggests Tully, “but negotiated practices in which one becomes a citizen through participation.”⁶⁴¹ Further, he writes that

agents (individual or collective) *become* civic citizens only through actual participation in civic activities. It is only through apprenticing in citizenship practices that one comes to acquire the characteristics of a citizen: linguistic and non-linguistic abilities, modes of conduct and interaction in relationships with others, forms of awareness of self and other, use of equipment, the abilities of questioning and negotiating any of these features and of carrying on in new and creative ways.⁶⁴²

Of course, though, this participation need not be participation in re-iterating the *nomos* or re-constituting the *demos* in direct relation to the state or the universal market. Additionally, and importantly, participation in a universal marketplace is a key mode of being and becoming a modern citizen. As Magnusson writes, “the market is at least as important a feature of contemporary political arrangements as the state. It is a grave error to attribute politics to the state and economics to the market and to attempt to analyse the latter as a natural rather than as a

⁶³⁹ See Tully, *supra* note 126 at 249, 250.

⁶⁴⁰ As Magnusson and Walker note, “[t]he state provided a framework for political idealism, a protected space where timeless truths could be realized.” Magnusson & Walker, *supra* note 629 at 50.

⁶⁴¹ Tully, *supra* note 126 at 248.

⁶⁴² *Ibid.* at 271.

political phenomenon.”⁶⁴³ Avoiding the excessive violence of standardization, therefore, means re-imagining citizenship by moving away from a state-centric, market-based conception of citizenship and toward an understanding of citizenship as a mode of being in the world that demonstrates democratic politicization – i.e. a certain kind of engagement in the patterns and processes of one’s environment such that freedom is achieved.

Further, we need to avoid a notion of citizenship that falls into the trap of counter-hegemonization that takes place when one attempts to create a monolithic counter-bloc to the state-centrism by uniting and standardizing diverse social movements in opposition. For example, as Magnusson and Walker write concerning the leftist vision of Laclau and Mouffe, “[t]hey may not want a working class party, but they do want a counter-hegemonic force to contend with capitalist hegemony. Recognizing the unity of capital and the diversity of the social movements that respond to it, they want somehow to reduce that diversity to a unity – to hegemonize it – and so create a unified force capable of overcoming capital itself.”⁶⁴⁴ However, as Magnusson and Walker continue to argue, the question is not so much whether a movement is working within or without the state’s institutional apparatus, but the degree to which a movement is able to undermine the governing processes underlying the hegemonic processes themselves. They write, “[t]he crucial question is not where [a social movement] acts in the political space defined by states, but whether it can create for itself new political spaces that transect and disrupt the space established by bourgeois politics.”⁶⁴⁵ Or course, though, our concern is not specifically with bourgeois politics (whatever that might mean) but with the homogenizing impulse that leads to rapid protocolic modulations. We must seek, therefore, to develop social movements that

⁶⁴³ Magnusson, *supra* note 637 at 9.

⁶⁴⁴ Magnusson & Walker, *supra* note 629 at 46. Cf. Andrew Schaap’s critique of Mouffe’s attempt to employ an antagonistic understanding of the political in a pluralistic manner. See Andrew Schaap, “Political Theory and the Agony of Politics” (2007) 5 *Political Studies Review* 56 at 64.

⁶⁴⁵ Magnusson & Walker, *supra* note 629 at 67.

disrupt the political space of the state insofar as it is facilitating the advancement of standardization through protocolic control. And, importantly, we must seek to develop diverse familial, religious, and socio-economic movements that can provide some resistance to the standardization of protocolic control that inevitably arise in and through both the state institutional structures and through processes of counter-hegemonization.

In addition to a re-conceptualization of citizenship, if we are to begin moving outside the dualistic logic of the modern welfare state, we need to undermine the monopoly the state has over education and violence. Under the monopoly of the market state, the purpose of education is inevitably the well-being of the state and, more precisely, the well-being of the state via the universal market that it nurtures.⁶⁴⁶ Mass education under the supervision of the state historically developed for two key reasons – (a) to produce enlightened, problem-solving liberals who were loyal to the modern state structure, and (b) to train a workforce that could continue working effectively despite their vulnerability as labourers divorced from their capital.⁶⁴⁷ As Blond notes, the method of liberalism’s mass education, therefore, centers upon “inscribing the blank slates of childish minds with the procedures of an information economy and a late modern technology.”⁶⁴⁸ It should also be no surprise, given our discussion of the dualistic logic of liberalism above, that the mass education of the state typically oscillates between transmitting pure facts and creating space for pure self expression. Without a lived tradition fostered within localized communities, either the fact-giving teacher or the expressive student are absolutized. Within the particularity of these localized traditions, however, neither the teacher’s nor the student’s place within the

⁶⁴⁶ See Ivan Illich, *Deschooling Society* (London: Marion Boyars, 1999).

⁶⁴⁷ See Lasch, *supra* note 588 at 130. For a history of mass education in Canada, see Paul Axelrod, *The Promise of Schooling: Education in Canada, 1800-1914* (Toronto: University of Toronto Press, 1997).

⁶⁴⁸ Blond, *supra* note 53 at 175. Also see George Grant, “The Minds of Men in the Atomic Age” in Grant, *supra* note 5 at 55, 56.

education process can be absolutized; both are kept in play and dualism is resisted.⁶⁴⁹ If dualistic logic undermines the embodiment of tradition, the curriculum of mass education is centered upon the institutions of the state and instilling confusion, indifference, and dependency upon its bureaucratic institutions. As veteran teacher John Gatto writes, “[t]he first lesson I teach is confusion. Everything I teach is out of context. I teach the un-relating of everything. I teach disconnections. Fortunately the children have no words to define the panic and anger they feel at constant violations of natural order and sequence fobbed off on them as quality in education. ... I teach students to accept confusion as their destiny.”⁶⁵⁰

The modern liberal state is also constituted and said to be legitimized through a consolidation of violence that has been conceived of as an assertion of sovereignty. As William Cavanaugh writes, “[t]he conceptual leap which accompanies the advent of the state in the sixteenth century is the invention of sovereignty. The doctrine of sovereignty asserts the incontestable right of the central power to make and enforce laws for those people who fall within recognized territorial borders.”⁶⁵¹ Therefore, as Philip Bobbitt writes, “[t]he State exists to master violence: it came into being in order to establish a monopoly on domestic violence, which is a necessary condition for law, and to protect its jurisdiction from foreign violence, which is the basis for strategy. If the State is unable to deliver on these promises, it will be changed; if the reason it cannot deliver is rooted in its constitutional form, then that form will change.”⁶⁵²

⁶⁴⁹ See Blond, *supra* note 53 at 176, 77. For more on the importance of tradition in education for work that is not divorced from capital and destructive of mutual association, see E.F. Schumacher, *Good Work* (New York: Harper & Row, 1979) at 112ff.

⁶⁵⁰ John Gatto, *Dumbing Us Down: The Hidden Curriculum of Compulsory Schooling* (Gabriola Island: New Society Publishers, 2005 [1992]) at 2, 4 [emphasis removed].

⁶⁵¹ William Cavanaugh, “Killing for the Telephone Company: Why the Nation-State is Not the Keeper of the Common Good” (2004) 20:2 *Modern Theology* 243 at 250-251. He explains that “[s]overeignty is a departure from earlier forms of governance in which people’s political loyalties were based not necessarily on territoriality, but on feudal ties, kinship, religious or tribal affiliation.” *Ibid* at 245. Also see Daniel Philpott, *Revolutions in Sovereignty* (Princeton: Princeton University Press, 2001) at 16-17 and Martin Loughlin, *The Idea of Public Law* (Oxford: Oxford University Press, 2004) at 73ff.

⁶⁵² Bobbitt, *supra* note 4 at 216.

Further, Bobbitt points out that war is not best conceived of as a pathology of the state, but as a means of constituting healthy states. For, both law and war sustain the state and provide it with the means of protecting and preserving the integrity of its sovereignty over land and a collective population.⁶⁵³ We might best think of war, then, as an exertion of sovereignty over foreign violence and law as a monopoly over domestic violence. Both are the state's means of legitimating a mastery over violence. Not only is war conceived of as law by other means, therefore, but law may rightly be understood as war by other means.

The era of the nation-state was characterized by total war but the era of the market-state may be characterized by total law.⁶⁵⁴ By definition, monopolized violence, however, is domineering in its excess. For, indeed, not only does monopolized violence displace and degrade other legitimate violences, but the only way to restrain and limit (or legitimize) violence is to have multiple power-pushes acting and counter-acting each other.⁶⁵⁵ Monopolized violence simply cannot be legitimized. The de-centering of the state, therefore, requires a diversity of power centers that can govern our lives in different in ways that are in keeping with the specific locality of our being-in-the-world – i.e. a multiplicity of violences in our lives.⁶⁵⁶ A rethinking of

⁶⁵³ See *ibid.* at 780. Simone Weil was also aware of the domestic implications of war and its role in constituting a nation state. For example, she writes, “[t]he great error of almost every study on war – an error into which all the socialists, especially, have fallen – is to consider war as an episode in foreign policy, when above all it constitutes a fact of domestic policy, and the most atrocious one of all.” Simone Weil, *Formative Writings: 1929-1941*, ed. and trans. by Dorothy McFarland & Wilhelmina van Ness (Amherst: University of Massachusetts Press, 1987) at 242. Also see Athanasios Moulakis, *Simone Weil and the Politics of Self-Denial*, trans. by Ruth Hein (Columbia: University of Missouri Press, 1998) at 169.

⁶⁵⁴ For the connection between the nation-state and total war, see Bobbitt, *supra* note 4 at 216, 217.

⁶⁵⁵ For example, “[t]he myth of religious violence – that violence is a necessary or inevitable manifestation of religion – is, as William Cavanaugh notes, a “foundational legitimating myth of the liberal nation-state” and it “helps to construct and marginalize a religious Other, prone to fanaticism, to contrast with the rational, peace-making, secular subject.” William Cavanaugh, *The Myth of Religious Violence: Secular Ideology and the Roots of Modern Conflict* (Oxford: Oxford University Press, 2009) at 4.

⁶⁵⁶ As Bradley Karkkainen points out, “there appears to be a two-fold ‘de-centering’ of the state: first a shift from central to decentralized (though not necessarily state-level) decision-making; and second a new permeability of public decision-making to direct participation by non-state actors.” Bradley Karkkainen, “Collaborative Ecosystem Governance: Scale, Complexity, and Dynamism,” (2002-2003) 21 Va. Env'tl. L.J. 189 at 238. And, again, “[t]he process is, in part, about forging new regional identities, and new sets of preferences and interests, organized around the idea of ecosystem, a shared mission to protect and restore its health (whatever that may mean in principle, and

how governance ought to work, therefore, means not only a move to de-center the state, but an active development of alternate modes of life in areas of national security, law enforcement, correctional services, etc. in order to resist standardization.⁶⁵⁷

But, before going into more detail regarding the means of moving beyond the state, let us consider further the ways in which the market state destroys society. I understand society as that set of patterned groupings and interactions that make up our daily lives and provide the environment within which substantive moral goals might be pursued dialogically and diachronically. By definition, as Gene Sharp notes, society is constituted by interconnected institutions that are operating independent of the state. As he writes,

The institutions of civil society are generally composed of organized groups that are neither vertically controlled by, nor integrated into, that part of political society regulated by the State. Examples of civil society groups include sports clubs, gardening associations, certain labor unions and business associations, religious institutions, organized social movements, and all classes of nongovernmental organizations. They can exist at the local, regional, or national level.⁶⁵⁸

These organizations or patterns of interactions are governed by our virtues – i.e. our understanding and practice of the good life rather than a monopolized threat of violence.⁶⁵⁹ The various interactions are also almost always complex and inter-connected due to their specificity

whatever it may require in practice), and a consequent redefinition of personal and institutional identities, missions, goals, and priorities, embracing this larger shared regional goal and sense of mission.” *Ibid* at 242. Cf. with John Dewey’s remarks on democratization. “The old saying that the cure for the ills of democracy is more democracy is not apt if it means that the evils may be remedied by introducing more machinery of the same kind as that which already exists, or by refining and perfecting that machinery. But the phrase may also indicate the need of returning to the idea itself, of clarifying and deepening our apprehension of it, and of employing our sense of its meaning to criticize and remake its political manifestations.” John Dewey, *The Public and Its Problems* (Athens: Swallow Press, 1927) at 144.

⁶⁵⁷ As Simone Weil wrote in 1933, “no matter what name it bears – fascism, democracy, or dictatorship of the proletariat – the principal enemy remains the administrative, police, and military apparatus; not the apparatus across the border from us, which is the enemy only to the degree that it is the enemy of our brothers, but the one that calls itself our defender and makes us its slaves.” Weil, *supra* note 653 at 248.

⁶⁵⁸ Gene Sharp, *Waging Nonviolent Struggle: 20th Century Practice and 21st Century Potential* (Boston: Porter Sargent, 2005) at 477, 78. He also notes that “[o]ther important independent institutions may at times include small governmental bodies, including local town governments, schools, and legislative, executive, taxation, and judicial units.” *Ibid* at 478.

⁶⁵⁹ The erasure of society and the denial of virtue has left us fearfully clinging to a posited direct relation between the state and the citizen. The weight of this fear bears upon us and ensures that we dare not think of any form of just relations other than egalitarianism.

and locality. So, for example, labour associations are tied into social and recreational associations, economic associations connected to familial or tribal, etc.

The individual-state relation fueled by the dualistic logic of the liberal market state, however, undermines these associations by not only undermining these associations from within, but by reducing the complex connections that make up these “second-order” associations – the associations between associations such as the connections between economic and familial life.

Social, political, and economic relations within the individual-state model are negotiable and superficialized in a way that hollows out the richness of complex interrelations in society and makes them dangerously fragile. As William Cavanaugh writes, “[t]he history of the state is the creation of an increasingly direct relationship between state and individual by the state’s absorption of powers from the groups that comprise what has come to be called ‘civil society’.”⁶⁶⁰ Many mutual interrelations of dependence are non-negotiable in the sense that they are non-fungible. For example, relations between a mother and child, two lovers, a master and student, a priest and parishioner, etc. are not contractual in nature. Each of these relations, if they are healthy in their mutual dependence – that is, if they are based upon hope rather than the predictability of control – involve a double-asymmetry.⁶⁶¹ And, it is this doubling of the asymmetry that prevents the reductionism of monetarization needed for negotiability. In other words, an attempt to negotiate, if pushed to a certain degree, will reduce the mutuality so much that it will destroy the double asymmetry of the relations – it will destroy the resilience of the relation.⁶⁶² Indeed, relations of double asymmetry are resilient in a way that symmetrical contractual relations are not because their double asymmetry works to constantly re-focus and re-center the relationship in a disallowal of ulterior motivations. The reductionism of dualism, in

⁶⁶⁰ Cavanaugh, *supra* note 651 at 256.

⁶⁶¹ See Illich, *supra* note 646 at 108.

⁶⁶² See *ibid.* at 100, 101.

contrast, de-centers the relationship such that it no longer maintains its ability to be self-perpetuating – it becomes dependent upon ulterior motivations to continue.

There seems to be no doubt that our schools, courts, hospitals, churches, labour associations, corporations, recreational clubs, etc. – the associations that, in their interconnections, make up society – have been de-centered by this dualistic logic.⁶⁶³ The means of societal destruction are numerous and often subtle, but some of the key elements can be summarized into five areas: identity formation, legalization of relations, professionalization, resource allocation, and rationalization of socio-economic patternings.

First, society is destroyed through the market state's influence over identity formation. A large bureaucratic institution such as the state orients identity formation – political, economic, sexual, spiritual, etc. – toward an individual-state relation. Simply put, who we are becomes tied up in our status as those who can claim access to the rights afforded by the state. This can be seen even to some degree in the introduction and advancement of the Charter of Rights and Freedoms in Canada where residents begin to understand themselves as citizens in the sense that they are those subjects that possess Charter rights.

Second, society is destroyed through a legalization (and hence corruption) of relational interdependencies. The service delivery of the liberal state creates dependencies and a welfare model of understanding social and economic relations. Importantly, through its dualistic logic, the market state not only problematizes healthy dependency relations, but reduces genuine independence with a false sense of freedom rooted in its market logic. The false freedom of

⁶⁶³ Putnam, *supra* note 97 and Blond, *supra* note 53. Polanyi mirrors this concern regarding the destruction of society but speak of it in terms of market domination. For example, he writes, “[t]o allow the market mechanism to be sole director of the fate of human beings and their natural environment would result in the demolition of society. Robbed of the protective coverings of cultural institutions, human beings would perish from the effects of social exposure; they would die as the victims of acute social dislocation... Nature would be reduced to its elements, neighbourhoods and landscapes defiled, rivers polluted, military safety jeopardized, the power to produce food and raw materials destroyed.” Polanyi, *supra* note 48 at 76.

choice for the consumer-citizen isolates persons as lonely, self-interested individuals within the global marketplace.⁶⁶⁴

Third, society is destroyed through the professionalization and regulation of service delivery. The accreditation/certification/standardization model of the liberal state institution undermines trust in those who are not defined as professionals and formally sanctioned by the state. Consequently, front-line workers in the public sector are disempowered while citizens and communities are disengaged. And, as a result, this model causes the emphasis to become focused upon consumer choice at the risk of further de-capitalizing the poor and upon procedures and due process at the expense of substantive outcomes.⁶⁶⁵

Fourth, society is destroyed through the (mis)allocation of resources into the state infrastructure rather than the intermediary associations of civil society. Social and material resources get funneled into the state's bureaucracy and away from non-state associations such that, for example, economic systems begin to solidify within the state as universal service deliverer and singular sanctioner of violence. Localized service providers are not only increasingly de-legitimized, but also gradually excluded from the market as their economic agency becomes undermined.

Fifth, society is destroyed through a rationalization of socio-economic patternings in the state's pursuit of broad political goals. As Oakeshott points out in "Rationalism in Politics", under this universalization of community, society loses its "rhythm and continuity" because "all sense of what Burke called the partnership between the present and the past is lost."⁶⁶⁶ The capacity for normative reasoning – i.e. moral judgments and actions – that reinforce communal

⁶⁶⁴ See, for example, Hilaire Belloc, *The Servile State*, 3d ed. (London: Constable and Co., 1927) at 3. And, as MacIntyre has pointed out, the key to genuine independence is an acknowledgment rather than a destruction of dependencies. See MacIntyre, *supra* note 495 at 85.

⁶⁶⁵ See Blond, *supra* note 53 at 239-79. Also see Illich, *supra* note 646.

⁶⁶⁶ Oakeshott, *supra* note 298 at 3, 23. Also see Robert Devigne, *Recasting Conservatism: Oakeshott, Strauss, and the Response to Postmodernism* (New Haven: Yale University Press, 1994) at 10.

aims and the coordinations that make up society are only possible in localized environments.

The resilience of a society and a civil economy can only be fostered if these five means of destruction are undermined. However, more is needed. We must begin questioning the rule of law itself.

If we agree that the dualistic logic of the liberal market state is destroying society in at least some of the ways I have just described, how might we respond in more practical legal and political terms? For example, is it not simply the hierarchies of the modern bureaucracy but also the abstract regularity of the rule of law itself that upholds and ensures the advancing reach of the market state? We have discussed the importance of moving away from the understanding of justice as impartiality and into a search for restoration and increased capacity for restoration – namely, the resilience of a healthy civil society that is not dominated by the state’s monopolization of service delivery and the legitimization of violence. However, if law is constitutive of the market state (it facilitates and legitimates its existence) insofar as it monopolizes authority over domestic violence in relation to the land and the population within its borders, how might we best approach the problem of the rule of law as a universalizing system?

The liberal market state has adopted and abstracted the sovereignty claimed by monarchies in pre-modern days.⁶⁶⁷ This advancement of sovereignty may be seen in, for example, the centrality of the rule of law in the modern state.⁶⁶⁸ The rule of law as the

⁶⁶⁷ For example, by about the 12th century, crimes began to be understood and dealt with as offenses against the “king’s peace” rather than as crimes that were simply injurious to persons, their family, and their community. In this manner, crimes began to be understood as crimes against the state. However, the state continued to be understood as embodied in the monarchy until the 16th century where there arose a notion of an “abstract ‘state’ which is independent of both ruler and ruled.” Cavanaugh, *supra* note 651 at 245-246. Also see Quentin Skinner, *The Foundations of Modern Political Thought*, vol. II (Cambridge: Cambridge University Press, 1978) at 352-358 cited in *Ibid*.

⁶⁶⁸ Sovereignty is advanced in the establishment of the rule of law in the sense that power is built into the workings of the state’s institutional infrastructure which draws all citizens – regardless of their place within society – into formalized and standardized relations with the state. Or, as Carl Schmitt writes regarding the diffusive use of power within the legislative state, “[w]hoever exercises power and government acts ‘on the basis of law’ or ‘in the name of law’. He does nothing other than what a valid norm permits jurisdictionally. Laws establish a legislative organ;

monopolization of domestic violence entails an attempt to bring the entire population under the aegis of the state in a direct, individual-state and individual-marketplace relation. The monopoly is upheld and reproduced through a system of law that is designed to be as precise and clear as reasonably possible in its application to particular events and practices within the jurisdiction of the state. The monopoly is solidified in and through an isolation of specific, localized practices and ways of life and an establishment of a singular relationality between these ways of life and the logic of the state and universal market. That is, diverse local customs and practices are both partitioned out as distinct techniques of living and then these specific “techniques” are conceptualized and assessed in relation to the universalized totality of the state or the liberal marketplace. But, before getting into the problem of standardization arising from the drive to precision in law as a generalized normative ordering, it is helpful to consider what we mean when we discuss “law” and its rule as a problematic.

The very nature of law has been the subject of significant jurisprudential debate and no more so than in the conflicting understandings of the state’s role in the production and reproduction of law as represented by the positivists and the pluralists. For the positivist, the state’s transcendent role in promulgation and enforcement is essential to the creation and maintenance of law. For the pluralist, the state is of little consequence because normative orderings immanent within the behaviour of communities are legal orders just as state-centric systems of ordering can be legal orders. The positivists, therefore, have tended to over-emphasize the importance of the state and their dependence upon the universalism of the state has exacerbated distrust and a disregard for normative orderings governing behaviour outside the

however, this law-making body does not govern directly, nor does it execute laws itself. It merely establishes valid norms, in whose name officials bound by statute to enforce the law exercise state power.” Carl Schmitt, *Legality and Legitimacy*, trans. and ed. by Jeffrey Seitzer (London: Durham, 2004) at 4.

state's purview.⁶⁶⁹ The pluralists, on the other hand, have tended to over-naturalize the non-state normative orderings they seek to describe as legal orderings in order to undermine the state-centrism of the positivists.⁶⁷⁰

There is, however, a kind of third way between the positivist/pluralist debate that avoids both the state-centric and the anti-statist extremes. As Jeremy Webber has cogently argued, the division between positivists and pluralists has been exaggerated because both camps have tended to minimize the persistence of conflict within, or the fundamental contestability of, legal orders. This division is exaggerated because, as he writes, “non-state norms share a fundamental characteristic with state norms: they all confront the fundamental problem of how to establish a common standard in the face of pervasive normative disagreement.”⁶⁷¹ For, indeed, law – be it state law or non-state law – possesses two related dimensions: (a) an *interpretive* dimension in which “participants propose and deliberate about rules, justifying their solutions on the basis of the exigencies of the situation, the lessons of experience, and broader attitudes already established within society” and (b) a *decisional* dimension in which “a collective resolution is established from among the proposed interpretations.”⁶⁷² In this sense, all law is “both interpretive and, to a degree, peremptory” in its imposition of uniformity upon a multiplicity of behaviours and practices within societies; law “necessarily imposes a socially determined rule against a more complex and ambiguous background of normative assertion and counter-assertion.”⁶⁷³ Therefore, all law – be it understood as primarily statist or non-statist – is at least somewhat problematic.

⁶⁶⁹ For example, see H.L.A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961).

⁶⁷⁰ For example, see Eugen Ehrlich, *Fundamental Principles of the Sociology of Law*, trans. by Walter Moll (New York: Arno Press, 1975). For an excellent analysis of the challenges facing positivists and pluralists along these lines, see Webber, *supra* note 26 at 201.

⁶⁷¹ *Ibid.* at 203.

⁶⁷² *Ibid.* at 211.

⁶⁷³ *Ibid.* at 211, 209.

To put it simply, law is problematic as a peremptory, universalized or standardized imposition because it is a normative ordering that is not fully legitimized.⁶⁷⁴ Although, as Webber has pointed out, no normative ordering is ever *fully* legitimized, law is best understood as being active in the world as a particular kind of violence, a particular kind of illegitimate violence (i.e. domination). There should be no doubt that law is very often legitimized to a significant degree in its violent imposition for, indeed, it must be somewhat legitimized or it will not even be recognized as law at all. Thus, we should see law as carrying with it both the blessing of moral legitimacy as well as the curse of illegitimacy.

Why do I suggest that law represents a particular kind of illegitimate violence? As we saw above, the localization of politicization is needed if violence is to be legitimized but the peremptory nature of law, in its push to universalization and monopolization, disallows the localism needed for a thorough politicization.⁶⁷⁵ We are unable to localize the normative ordering of law in a way that we can effectively legitimize it. Law, by definition, persists as an imposition that may be recognized and interpreted as an imposition. Normative orderings, to the degree that they are localizable (and, hence, politicizable) are not capable of being re-cognized as such an imposition or disruptive force; they disappear from view as we draw near to them. Law presents before us as *res publica* and therefore cannot be written on our hearts without ceasing to be law. For example, because the state prevents the legitimization process by virtue of its monopolization, the normative orderings of the state institutions are quite clearly law in the sense I am describing it here. Understanding the difference between law and normative orderings in this manner allows us to tune ourselves in to the violence of law without falling into the pluralist

⁶⁷⁴ Hence, an insistence upon the description of, say, indigenous normative orders as legal orders by legal pluralists. These pluralists are working within a settler society that continues to not legitimize indigenous normative orders and are therefore seeking a kind of pseudo-legitimization by describing these orders as “legal”. An indigenous person fluent in his traditions, however, presumably has no pressing need to describe the normative orderings of his people as legal orderings.

⁶⁷⁵ Cf. Webber, *supra* note 26 at 221.

trap of vilifying the state and romanticizing the non-state normative orderings while at the same time allowing us to avoid the positivist's state-centrism. With this understanding of law and violence, we are better able to concern ourselves with understanding legitimacy and illegitimacy as well as the changes taking place in the law that threaten to further prevent the legitimization brought about through of democratic politicization.

Democracy, in addition to being a process of political resistance at work in the world as described in political terms above, may be understood in more legal terms as an ordering of society that possesses the resilience needed to support a sufficient degree of legitimacy in law.⁶⁷⁶ Democracy, therefore, may be seen in the relation between a certain kind of society and a certain kind of law – a society that is healthy and resilient enough in its normative orderings to provide the foundation for politicization that adequately legitimizes the violence of law.⁶⁷⁷ A certain richness in normative orderings (i.e. an embodied ethic of non-domination) is needed for democracy to exist and flourish and, as we discussed in chapters four and five above, to the degree that normative orderings are destroyed or undermined by dualistic logic, the legitimization of law is undermined.⁶⁷⁸ Thus, my central concern throughout this project has been the development of an ethic of non-domination that is able to foster relational connections that are resilient in their ability to resist the domineering dualistic modulations of protocolic control. Practically speaking, I would like to argue that the ethic of non-domination can be best realized and made manifest in a search for reflexivity and restraint in the legal systems of the market state

⁶⁷⁶ Democracy, then, is not to be conceived of as an order of government. Fascism, communism, parliamentarianism, are orders of governance. Democracy, though, is a method of governance that may be at work within any of the orders.

⁶⁷⁷ Democratic society, therefore, exists as an opening or a possible future in which law is more fully legitimized. Hence, the connection between the existence of hope and democracy mentioned above in chapter six.

⁶⁷⁸ Hence, we are well justified in understanding the liberal market state as undermining democracy itself. Additionally, we might understand a different kind of corporatism to the conservatism outlined above – i.e. fascism – as an undemocratic form of governance. Fascism is the unity of corporations and the state because corporate bodies reflect the differing roles and responsibilities (morally and politically) of persons. Fascism arises in the entrenchment of these differences through the centralizing power of the state – i.e. a perverse combination of unity and multiplicity. I say perverse because, in fascism, all multiplicity exists for the unity not as something in-itself.

– i.e. in a democratization of modern life. Admittedly, however, given the advancement of formal law by the liberal market state (i.e. what we described earlier as the era of “total law”), the fostering of reflexivity and restraint will be no easy task.

In looking at the possibilities of moving beyond the totalizing unity within the state’s monopolies on service delivery and violence above, I pointed to new governance theorists who are keen to develop more nimble and bottom-up responsive state institutions. However, we should also note that new governance theory is changing not only the traditional (post-WWII) models of regulation and administration, but is also introducing a new model of adjudication. As Orly Lobel has suggested, in the new governance model, “[l]awmaking shifts from a top-down, command-and-control framework to a reflexive approach, which is process oriented and tailored to local circumstances.”⁶⁷⁹ Within the modern welfare state, emphasis was placed upon understanding law as “an instrument for purposive, goal-oriented intervention.”⁶⁸⁰ In contrast, reflexive law – according to Gunther Teubner – is characterized by a new type of legal self-restraint. Rather than simply taking over regulatory responsibility for the outcome of social processes, reflexive law will restrict itself to the establishment, correction, and refinement of democratic self-regulatory mechanisms.⁶⁸¹ Reflexive law does not authoritatively determine social functions so much as provide “norms of procedure, organization, and competences that aid

⁶⁷⁹ Lobel, *supra* note 171 at 345.

⁶⁸⁰ See Max Rheinstein, *Max Weber on Law in Economy and Society* (Cambridge: Harvard University Press, 1954) cited in Gunther Teubner, “Substantive and Reflexive Elements in Modern Law,” (1983) 17 *Law and Society Rev.* 239 at 240.

⁶⁸¹ See *ibid.* at 240. Reflexive law, as expressed by Teubner, may be understood as an attempt to transcend the debates between functionalist (e.g. Niklas Luhmann), critical theorists (e.g. Jurgen Habermas), and responsive law theorists (e.g. Philippe Nonet and Philip Selznick) as well as the debates between those who emphasize variables internal to the current modern legal system (e.g. Nonet and Selznick) and those who focus upon external relations between law and society (e.g. Luhmann and Habermas). See Philippe Nonet & Philip Selznick, *Law and Society in Transition: Toward Responsive Law* (New York: Harper, 1978). In all of this, Teubner seeks to demonstrate the significance of overlapping agreements within an integrated model of legal evolution that he calls “reflexive law.” See Teubner, *supra* note 680 at 244, 245. The distinction between classic models of law and reflexive law has also been understood as a parallel to the distinction between Newton’s and Einstein’s physics. Or, instead of having bodies exert direct force on other bodies, the legal space has a form that shapes and guides the flow of energy. See John Sitton, *Habermas and Contemporary Society* (New York: Palgrave Macmillan, 2003) at 132.

other social systems in achieving the democratic self-organization and self-regulation.”⁶⁸² The “hard” orders within the regulatory model are thereby replaced by “softer” procedures that are intended to foster a flexible policy environment.⁶⁸³ In other words, reflexive legal strategies restructure subsystems through incentives and disincentives that promote reflection regarding behaviour rather than simply prescribing substantive commands. Reflexive law limits itself to looking at the competences and capacities of social actors and institutions, considering the appropriate division of responsibilities, and the maintenance of self-regulatory processes.⁶⁸⁴ For example, as Cristie Ford has observed, the Supreme Court of Canada in the Quebec *Secession Reference* accomplished something like the reflexive law envisioned by new governance theorists.⁶⁸⁵ That is, instead of giving a clear judicial determination of Quebec’s place inside or outside the Canadian federation, the Court “sets out only the broad normative framework within which democratic constitutional deliberation is to take place – that is, the four pillars of the Canadian constitutional tradition: democracy, federalism, constitutionalism and the rule of law, and respect for minorities – and leaves the resolution of the details to the political process.”⁶⁸⁶ Throughout, the Court has procedural expectations that are to govern the constitutional debates going forward.

This reflexive approach to law within new governance theory is better able to deal with the traditional problem of legal indeterminacy.⁶⁸⁷ The problem of indeterminacy, in a basic sense, can be understood as follows: “If the application of a rule requires deliberation about its

⁶⁸² See Teubner, *supra* note 680 at 275.

⁶⁸³ Lobel, *supra* note 171 at 388.

⁶⁸⁴ See *ibid.* at 364, 401, 403.

⁶⁸⁵ See Cristie Ford, “In Search of the Qualitative Clear Majority: Democratic Experimentalism and the Quebec *Secession Reference*,” (2001-2002) 39 *Alta. L. Rev.* 511. Also see *Reference Re Secession of Quebec*, [1998] 2 SCR 217.

⁶⁸⁶ Ford, *supra* note 685 at 517. It seems the Court was ready to do something this open-ended because it was not a decision, but a reference.

⁶⁸⁷ Also, as Scheuerman has noted, reflexive law may be more well-suited to the high-speed world. See Scheuerman, *supra* note 2 at 215.

meaning, then the rule cannot be a guide to action in the way that a commitment to the rule of law appears to require; similarly, if the content of a constitutional right (or other constitutional provision) can only be determined by extensive deliberation, then the Constitution does not entrench rights (or other principles) in the sense of providing foundational assurances.”⁶⁸⁸ If one is looking for clear rules with (at least largely) determinative applications, then indeterminacy is certainly a problem. If, on the other hand, law is conceived of largely as a process of assessing relative competencies, the need for ongoing interpretations of rules need not come as a surprise. And, more importantly, if the courts themselves are understood to be institutions without a fixed or determinative societal role, then the fact that they must engage in continual reinterpretation of legal propositions is also not a surprise. And, as Michael Dorf points out, courts do not need to solidify or fill in all the constitutional norms and can initiate societal reform through working with other institutions.⁶⁸⁹

In this way, the role of the courts is redefined as law becomes reflexive and the problem of indeterminacy fades into the background. The problem has not been solved – in fact, some new governance theorists seem to celebrate the indeterminacy of law and suggest that “deliberation thrives on uncertainty”⁶⁹⁰ – but the indeterminacy has been embraced within a redefined role for the courts as experimental bodies. Experimentalist courts will deliberately give open-ended rulings, incomplete answers, and normative guidelines that provide some direction without over-determining the required response with a hard, specific ruling.⁶⁹¹ In doing so, these redefined courts would explicitly rely upon the relevant actors to operate within the guidelines to

⁶⁸⁸ Michael Dorf, “Legal Indeterminacy and Institutional Design” (2003) 78 N.Y.U. Law Rev. 875 at 877.

⁶⁸⁹ See *ibid.* at 882, 883.

⁶⁹⁰ See Craig Thomas, “Habitat Conservation Planning,” in Archon Fung & Erik Olin Wright, eds., *Deepening Democracy: Institutional Innovations in Empowered Participatory Governance* (London: Verso, 2003) 144 at 168.

⁶⁹¹ See Dorf & Sabel, *supra* note 627 at 430.

establish workable solutions within the political realm.⁶⁹² Although it may seem like this is not resolving the problem of indeterminacy so much as it is exacerbating the problem, experimentalist courts will not simply give *less* in their judgments, their judgments will be *different*. As Dorf writes, “[e]xperimentalist appellate courts self-consciously rely on the participation of affected actors to explore the implications of the framework rules that they create and use the record of such actors’ efforts continually to refine such framework rules.”⁶⁹³ The jurisprudential inputs will be explicitly rooted in the practices and experiences of the relevant actors, but the outputs will also explicitly guide social deliberations rather than simply removing a question from the realm of majoritarian politics.⁶⁹⁴

The more innovative feature of experimentalist courts, therefore, will be found in their interactions with other governing bodies. The adjudicative process is a process of self-explication where fundamental legal norms can be declared, but they are always to be explicitly subject to future change within the process of experimentation. Also, experimentalist courts would demand reasons from political actors – reasons which are intended to link principle and practice – and access their ability to deliberate upon their own process of experimentation. Therefore, courts would primarily be working to develop transparency and understanding – i.e. drawing out the actors’ reasons and assessing the degree to which (and the process through which) these actors have considered their options within the broad framework of their constitutional limitations.⁶⁹⁵

⁶⁹² See Dorf, *supra* note 688 at 886-888.

⁶⁹³ Dorf, *supra* note 688 at 881.

⁶⁹⁴ Perhaps this is simply a more explicit commitment to Dworkin’s understanding of judicial review as taking place within, and contributing to, majoritarian rule. That is, he suggests that majoritarian processes may begin to subsume an important principle in time and constitutional cases provide a time for resurrecting and re-stimulating the public discussions of political morality. See Ronald Dworkin, *Freedom’s Law: The Moral Reading of the American Constitution* (Oxford: Oxford University Press, 1996) at 30-31.

⁶⁹⁵ See Dorf & Sabel, *supra* note 627 at 389, 390.

Dorf and Sabel highlight the fact that the courts are currently faced with the task of making what are largely speculative determinations regarding the connection between legislative means and ends. And, given this problem of interpretability, the courts are faced with the less than ideal choice of either deference to the lawmakers (and, in doing so, inviting capriciousness into the process) or scrutinize the legislation and employ balancing tests (and thereby place limitations on the democratic processes and raise questions regarding their own institutional legitimacy within a democracy). The problem of interpretability, Dorf and Sabel point out, has not been created by the courts but by the process under review and, therefore, cannot simply be solved by a shift in judicial doctrine – the process of lawmaking itself needs to change.⁶⁹⁶ They suggest that all movements toward experimentalism within the law-making process will help allow the courts to avoid being torn between deference and intrusion. They write, “[e]xperimentalism provides the polity with the institutional means to ask the questions that courts otherwise need to, but cannot ask, in hard cases, and to ask them in the way most relevant – connecting means to ends – to practical decisions and judicial review.”⁶⁹⁷ The problem of judicial review arises when there is an appearance of finality within the traditional model of adjudication. And, it is this traditional model that is to be transformed into an open-ended process through experimentalism.

So, within the traditional administrative governance model, courts are primarily concerned with the level of deference they grant to either elected legislatures or appointed administrative rule-makers. However, within the new governance approach, courts provide a unique oversight role over civic self-governance.⁶⁹⁸ Instead of destroying the Madisonian tradition of limited government through a separation of powers (i.e. to protect the people from the

⁶⁹⁶ See *ibid.* at 390-395.

⁶⁹⁷ *Ibid.* at 395.

⁶⁹⁸ See Liebman & Sabel, *supra* note 635 at 279.

state), in the new governance model “the performance of local unity, the center’s response to that performance, and the legislature’s response to that reaction can be scrutinized by the other actors, the public and eventually the courts in a way that is currently impossible.”⁶⁹⁹ Like the internal information flows that are understood to enliven the democratic process and legitimize the governance through the very process of experimental governing, reflexive law is said to allow for court supervision that is limited within its very practice of oversight. For, courts would not simply rely upon judicial doctrine and abstract legal concepts, but would interact with other institutions of governance as a social co-educator. Or, as James Liebman and Charles Sabel put it,

this new kind of judicial review effaces familiar distinctions between public and private and between the sovereign and the citizen subjects. Because the legislative authorization is more a general framework for institutional experimentation in the elaboration of principle than the enactment of a well-defined public mandate, the court’s role as constitutional guardian is not primarily to police the permissibility of the legislature’s delegation of authority or the delegate’s fidelity to legislative intentions. Rather, it is to collaborate via the continuing definition of standards with an emergent public in giving meaning to constitutional principle.⁷⁰⁰

The “open-endedness” of reflexive law, therefore, cannot simply be injected at the judicial review stage – it must be there from the beginning (e.g. in rolling best-practice requirements). Within the experimentalist model, then, the courts would not set out to make judgments on, say, the actual regulatory practice (i.e. if it was in fact the best regulation to accomplish the goals of the legislation), but would look to see if the governing body actually engaged in the organization and coordination of information needed to develop rolling best-practice standards. Consequently, the experimentalists’ vision of judicial review is largely procedural insofar as the court looks at the

⁶⁹⁹ *Ibid.*

⁷⁰⁰ *Ibid.* at 282.

practices of the governing bodies in searching for a solution, rather than seeking to determine whether or not the solution selected was indeed appropriate.⁷⁰¹

In response to Teubner's rejection of classic rule of law values such as clarity and precision, Ingeborg Maus has argued that the reflexive law model left those who were socially and economically disadvantaged open and vulnerable to the interests of the privileged. That is, those with the greater amount of *de facto* economic power are able (and willing) to exploit those with lesser power through interpretations of the vague or open-ended law. Therefore, although she does not retreat to a hard-line formalist solution, Maus suggests that law should at least be accompanied by very clear and precise procedural and organizational norms.⁷⁰² However, Teubner has good reason to avoid attempting to make a sharp distinction between the means and the ends of law and therefore avoid thinking that we could move beyond the problem of the rule of law if we retained clear and precise procedures. Indeed, procedural rules and organizational norms bring with them substantive outcomes; clear and precise procedures inevitably mean standardized legal norms centered upon the state institution.⁷⁰³

A more pressing critique, therefore, comes from Erhard Blankenburg who has argued that Teubner's suggestion that reflexive law is evolutionary – that it develops and changes its very nature through time – is unfounded. He suggests that reflexive forms of law simply add to current legal regulation and expand the social arenas of regulation rather than lead to deregulation.⁷⁰⁴ Regulating by procedure rather than substantive rules has been used before by

⁷⁰¹ Dorf and Sabel are quick to point out that because the pragmatism of the experimentalists collapses means and ends, this kind of procedural judicial review is intended to avoid the threat of dry and empty formalism. See Dorf & Sabel, *supra* note 627 at 397. Also see William Scheuerman, "Democratic Experimentalism or Capitalist Synchronization?: Critical Reflections on Directly-Deliberative Polyarchy" (2004) 17 *Can. J. L. & Jurisprudence* 101 at 115, 116.

⁷⁰² See Maus, "Perspektiven reflexiven Rechts im Kontext gegenwärtiger Deregulierungstendenzen," (1986) *Kritische Justiz* 390 at 400-05 cited in Scheuerman, *supra* note 2 at 216.

⁷⁰³ See Scheuerman, *supra* note 701 at 116.

⁷⁰⁴ See Erhard Blankenburg, "The Poverty of Evolutionism: A Critique of Teubner's Case for 'Reflexive Law,'" (1984) 18 *Law & Soc'y Rev.* 273 at 275.

shrewd legislators when they were seeking to begin regulating in an area previously unregulated; it is not the next step in the evolution of law. So, Blankenburg concludes that reflexive law is little more than “a legislative attempt to exert some control in areas where *ex ante* substantive regulation seemed particularly difficult or inappropriate. The technique is similar to that of delegating administrative discretion, for in both cases substantive regulation grows out of the process of implementation.”⁷⁰⁵ That is, there is nothing particularly responsive about regulation through procedure; it is simply regulation that is attentive to its own limitations.⁷⁰⁶ Blankenburg’s point here may be re-enforced if we understand reflexive law as still having a minimum level of regulatory rules promulgated and enforced (at least provisionally) by a central organization as William Scheuerman suggests it needs.⁷⁰⁷

As we have discussed, Teubner seems to understand reflexive law primarily as legal self-restraint. However, restraint cannot simply be a proceduralist self-restraint that operates within the institutional realm of the market state because, as Blankenburg points out, this will inevitably lead to regulation-through-procedure. Or, in other words, the opposite of restraint would be achieved as the law’s reach would extend further and further. If it is to be effective and meaningful, restraint must shape and guide the governing procedures as much as it alters and affects the substantive regulatory outcomes. And, if it is to be effective, this restraint must come from outside the structure and processes of the state...

Although the liberalism underlying and shaping his approach to law is quite concerning, it should be noted that Teubner is at least somewhat attune to this problem of restraint. For example, as Teubner argues, the state-centred mindset of global constitutionalists – i.e. those who continue to understand a constitution as primarily a framework for state-political activity – has

⁷⁰⁵ *Ibid.* at 287.

⁷⁰⁶ In the criminal context, Blankenburg suggests that this method of procedural regulation first has led to hyper-criminalization. See *ibid.* at 288.

⁷⁰⁷ See Scheuerman, *supra* note 701 at 112, 115.

led them into many problems. For example, the state-centric constitutionalism leads to an exclusion of many important actors such as non-governmental organizations and labour organizations and the denial of protection for those suffering at the hands of non-state actors. Therefore, he argues for a constitutionalism that moves beyond the state-political framework and gradually begins to embrace civil relations. He writes, “[t]he constitution of world society comes about not exclusively in the representative institutions of international politics, nor can it take place in a unitary global constitution overlying all areas of society, but emerges incrementally in the constitutionalisation of a multiplicity of autonomous subsystems of world society.”⁷⁰⁸ A multiplicity of civil constitutions is needed. He argues that, since the 18th century, constitutionalism has been pre-occupied with the problem of forming, defining, and restraining political power in relation to the state but today’s constitutional question must be focused on quite different social dynamics. Within the societal constitutionalism model, the Madisonian checks and balances within government begin to expand outward and incorporate civil society to a much greater degree. That is, instead of simply having multiple levels of government ready to limit any overstepping of boundaries or jurisdictional spheres (or, indeed, to limit the state’s infringement upon citizens’ personal liberties), the new governance theory allows for checks and balances between levels of government and civil society. Or, in other words, the organizational strength of associations within society – within the process of deliberation, resistance, and democratic experimentation – limit the powers and influence of government and each other and thereby protect against widespread structural corruption and domination.

⁷⁰⁸ Gunther Teubner, “Societal Constitutionalism: Alternatives to State-centred Constitutional Theory,” (Storrs Lectures 2003/04 Yale Law School) at 5, online: Social Science Research Network <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=876941#PaperDownload>. Not surprisingly, the driving force behind this movement beyond the state-political framework and toward a societal constitutionalism is understood to be the rise of digitization, privatization, and globalization.

We are here beginning to see some potential for genuine restraint within constitutionalism. And, indeed, as Teubner writes, “the historical role of the constitution is not, especially when it comes to fundamental rights, exhausted in norming state organisation and individual legal rights, but consists primarily in guaranteeing the multiplicity of social differentiation against swamping tendencies.”⁷⁰⁹ This has historically meant that the constitution would act as a break against expansionist tendencies within the political system that would threaten the social heterogeneity of the polity. For example, in this sense, a model of minority rights protection was established to ensure the government itself did not become homogenized by one autonomous social movement within society.⁷¹⁰ Likewise, however, restraints must be placed upon the state itself to prevent homogenization under the totalizing standardizations of the rule of law.⁷¹¹

⁷⁰⁹ *Ibid.* at 9.

⁷¹⁰ See *ibid.*

⁷¹¹ The constitutional limitations placed upon the creations of law – e.g. to limit the swamping effects of majorities – must also be matched with limitations on the review of law. That is, if there is to be robust democratic governance, there must be not only rules for the production of law, but also for the review or reform of law. Again, reflexive law is intended to serve as a method of allowing for both self-production and self-review while still limiting any expansionary inclinations. Neil Walker suggests that re-thinking of the constitution in reflexive terms may allow us to “think of constitutionalism as the carrier of a generic idea of responsible self-government” which “involves a self-assertion and a taking of responsibility as two sides of a single coin.” Neil Walker, “EU Constitutionalism and New Governance,” in Gráinne de Búrca & Joanne Scott, eds., *Law and New Governance in the EU and the US* (Portland: Hart Publishing, 2006) 15 at 34. Reflexive constitutionalism also means an avoidance of essentialism or attempts to personify an abstract political community – concepts that allow for the development of hierarchical structures and the pretensions of traditional constitutionalism. Additionally, new governance theorists, at least in the context of an increasingly globalized economic regime, place a number of qualifications upon the concept of self-governance and challenge us to re-evaluate the traditional notion of constitutionalism as nation-defining. So, instead of, say, understanding the constitution as a legal summary of a collective political self, societal constitutionalism involves a future-looking and pragmatic program for the processes of democratic life more broadly conceived (i.e. in civil society). See *ibid.* at 33, 35, 36. There may be a concern that a pragmatic and future-oriented constitution will allow the “fundamental” laws of the nation to become excessively politicized. Because the constitution would be comprised of a set of norms that are foundationless and (even intentionally) subject to constant review, reassessment, and reformulation, it could be said that the law has lost its essential features – namely, its principled and logical coherence. As William Simon suggests, this is where the new governance theorist may move away from those who advocate a more rights-and-principles perspective of the law. He points to H.L.A. Hart and Dworkin as the preeminent examples of this perspective and notes how this perspective is primarily concerned with interpretation (i.e. of social norms) but notes that the new governance conception of law emphasizes problem-solving and, therefore, deliberation. See William Simon, “Toyota Jurisprudence: Legal Theory and Rolling Rule Regimes,” in Gráinne de Búrca & Joanne Scott, eds., *Law and New Governance in the EU and the US* (Portland: Hart Publishing, 2006) 37 at 38, 39, 64. Also see Hart, *supra* note 669 and Ronald Dworkin, *Law’s Empire* (Cambridge: Harvard, 1986). Of course, though, the more formalistic one is regarding the law or the more one seeks stable epistemological

So, the problem of self-restraint still persists. If it is the state's monopoly on domestic violence (i.e. law) that is problematic insofar as its totalizing effect is domineering, then self-restraint *within* the creation and reform of law inevitably produces a further extension of the state's monopoly.⁷¹² For example, not only is the market state responsible for standardizing and centralizing the law, but it is now responsible for reducing the ill effects of its own actions but can only do so by bringing non-state actors into circuits of power that are shaped and guided by the de-localizing standardization of its structures and processes. As we noted above in discussing Magnusson and Walker's critique of counter-hegemonization in the work of Laclau and Mouffe, the question is not so much whether or not we are working within the state's formal institutional apparatus, but the degree to which we are able or unable to undermine the governing processes underlying standardizing or totalizing processes themselves.⁷¹³ Or, as Webber writes, "[i]t is better to think about law as driven by an aspiration towards order, by a will to live in an ordered community, but where that order has to be made and remade. The agent that makes this order need not be the state."⁷¹⁴ Our concern here should remain focused on the generalization and imposition of norms beyond the community within which they are developed and re-enforced.⁷¹⁵ The market state simply acts as an important focal point in working out our concerns regarding standardization. The question, therefore, is how we can develop social, political, and economic

groundings for the law, the more this would be seen as a problem. Really, whether or not one thinks that conceiving of the constitution as a fundamentally political set of doctrines is a problem comes down to a matter of expectations and philosophical presuppositions. There is no necessary reason to conceive of constitutionalism as a coherent body of laws that is nation-defining and rule-of-law-upholding. As Neil Walker writes, "the very idea of a conceptual anchorage, however light, contingent and flexible, retains an idea of content-independent authoritative foundations about which partisans of new governance remain highly ambivalent." Walker, *supra* note 711 at 35, 36.

⁷¹² There is a real sense in which societal constitutionalism, as outlined by Teubner, may be viewed as an attempt to drive out demons by the power of Beelzebub despite the fact that he calls for a kind of "social institutionalisation" that is not dependent upon "the formal existence of a constituent assembly, a constitutional document, norms of explicitly constitutional quality, or a court specialised in constitutional questions." Teubner, *supra* note 708 at 5.

⁷¹³ See Magnusson & Walker, *supra* note 629 at 67.

⁷¹⁴ Webber, *supra* note 26 at 214. Webber is certainly correct here. However, I would also add that law is not driven by a simply aspiration to order, but by a will to control by means of ordering one's community and environment – i.e. in order to deal effectively with the anxiety caused by the stranger, the darkness, and the wilderness.

⁷¹⁵ Although my analysis parts ways with him in some important ways, for an important example of this kind of concern, see Ehrlich, *supra* note 670 at 124-25.

ways of life that disrupt the political space of the market state insofar as it is facilitating the advancement of standardization through protocolic control. How can we limit the rule of law without simply re-iterating and re-enforcing the very problem we set out to escape?

If we are to develop an understanding of what might be truly resilient patternings in our lives and so avoid the problem of the rule of law, we will need to recognize not only that law is problematic in its standardization of norms, but also that laws depend upon something outside law to give them their authority. Indeed, the Anglo-American tradition of legal philosophy has explored the question “What is law?” precisely because what we understand law to be tells us what is outside the law. And, it is that which is outside the law that defines who we are. That which is outside the law constitutes us because it constitutes our law and the law constitutes us by defining our agency. For example, in the liberal (impartialist) conception of the rule of law, the individual-state relation is outside the law. The individual-state relation is outside the law in the sense that it is not contested and subject to legitimization; it is the assumed undergirding framework that allows the liberal ideal of the rule of law to have coherence and meaning. The liberal rule of law defines our agency as individuals-in-relation-to-the-state. It therefore holds out the promise of opening up all actions to the individual – i.e. “obedience to the law is freedom”. But, in so doing, it destroys the genuine agency of the *res ecologia* in its totalization. Further, within the modern liberal conception of the rule of law, justified power use in and through various laws is quite often understood to be the universalism of legality itself; the mere fact that a law is binding upon all persons within a recognized jurisdiction is seen as justification of that law’s imposition of a standardized norm. Although this kind of law appears to be internally justified (i.e. law is justified simply as a result of its legality), it actually depends upon normative assumptions quite outside the laws and indeed outside legality itself.

In his defense of right-wing socialism (i.e. fascism), Schmitt argued that authority resided in the one who was able to define the state of exception to the rule of law.⁷¹⁶ However, it should be quite clear by now that that which is outside must be multiple or the domineering standardizations of the rule of law will simply be replicated and, indeed, re-enforced. Appeal to a dictator or even a counter-hegeminizing force such as a coordinated and activated public cannot give law authority through legitimacy because, as we have discussed, that which universalizes cannot be localized adequately in a legitimization process. The democratic question – whether violence is excessive or not – must be asked and answered outside the law but must be asked and answered dialogically and diachronically in the diverse ethical lives of *res ecologia*. And, in order to foster restraint within laws promulgated and enforced by the market state, not only must political subjects and their democratic agency be defined and re-defined – constituted – in multiple ways without direct relation to the state and its rule of law, but the institutional design of our state must be guided by an ethic that pre-exists and continues to be fostered outside the state structure (e.g. in a multiplicity of familial relations and religious traditions).⁷¹⁷

Practically speaking, we should not deny the fact that there is benefit in procedural circuit breakers that afford some degree of resistance to standardizations in universalizing institutions (e.g. the Supreme Court of Canada). For example, s.33 (the notwithstanding clause of the Canadian *Constitution Act* of 1982) and principles of subsidiarity rather than federal paramountcy within the Canadian federation are beneficial. However, there is a need to push the subsidiarity

⁷¹⁶ See Carl Schmitt, *Dictatorship* (Somerset: Wiley, 2013 [1921]) and Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (Chicago: University of Chicago Press, 2006 [1922]).

⁷¹⁷ The notion of one unitary society that matches up to the unitary state is, as Cavanaugh and Anthony Giddens suggest, highly exceptional. Cavanaugh, *supra* note 651 at 246 and Anthony Giddens, *The Nation-State and Violence* (Berkeley: University of California Press, 1987) at 1-2, 52-53 cited in *Ibid.* As Ernest Gellner writes, “[i]n a traditional social order, the languages of the hunt, of harvesting, of various rituals, of the council room, of the kitchen or harem, all form autonomous systems: to conjoin statements drawn from these various disparate fields, to probe for inconsistencies between them, to try to unify them all, this would be a social solecism or worse, probably blasphemy or impiety, and the very endeavour would be unintelligible. By contrast, in our society it is assumed that all referential uses of language ultimately refer to one coherent world, and can be reduced to a unitary idiom.” Ernest Gellner, *Nations and Nationalism*, (Ithaca, NY: Cornell University Press, 1983) at 21 quoted in *Ibid.*

principle down below the state level – i.e. even the most localized government needs to perpetually draw moral legitimacy from outside itself from families, corporations, churches, etc. That is, we are in need of not just procedural circuit breakers, but moral/political ones – i.e. restraint requires an ongoing openness to escape the system and resist it from the outside. Say, to be able to claim a kind of moral superiority that has real bearing upon the law. There is a need for genuine reciprocity in which the relationship one has with the state institution is open to transformation (i.e. not just a transformation of the subject, but also a politicization of the relation in a revealing of resilient localized normative orderings). Guardians of tradition, therefore, become sources of authority in the politicization process – i.e. one's connectivity to a tradition will determine in large part the possibilities of politicizing the relations one has (and hence the relationship one's community has) with law. Additionally, not just guardians of tradition (i.e. social resilience), but also sustainability (i.e. ecological and economic resilience) is necessary for building resistance to the standardizations of the market state. So, in this manner we might conceive of a coupled critique that can guide the process of re-moralizing or re-politicizing the law.

The re-moralizing of law, therefore, will only be successful if we are able to recover the moral foundations of law and recover some degree of respect for authority that comes from beyond the formal, monolithic rules of consensual law. That is, until we re-invigorate the normative orderings within which law lives and breathes in resistance to the standardized modulations of protocolic control, we are doomed to the tyranny of an illegitimate universalization of rules. For, to the extent that we are unable to politicize law, we are unable to be virtuous people living democratic lives in healthy community with each other and our natural environment.

This understanding of the authority that comes from beyond the law harkens back to pre-

modern conceptions of moral and legal authority. For example, an understanding of the embeddedness of formal law may be seen in the conservative Tory loyalists as they struggle with reformist Whig republicans in the first half of the 19th century in Upper Canada. In June of 1826, a group of lawyers and law students destroyed a print shop owned by William Lyon Mackenzie for its contributions to undermining the authority of the legal-administrative elite.⁷¹⁸ This conflict reveals two strikingly different conceptions of normativity, authority, and law and provides us with a focal point for understanding how we might begin again to democratically politicize the law and move beyond the rule of law. Blaine Baker has demonstrated how understanding the rule of law as a distinct, self-regulating system – much like the modern disembedded economy outlined by Polanyi in *The Great Transformation* – is relatively new. Such things as the “abstract juridical equality of the subjects of formulaic, statist conventional law, notions of due process, and the ideal of an independent judiciary” is a recent phenomenon and should not be idealized as the only conception of just governing relations.⁷¹⁹ The older view of orderly governance understood that the constitution of the province “was not the set of explicit rules that defined its formal organs of government, but rather the unwritten, and often unspoken, spiritual and social premises upon which this Loyalist community was to be based.”⁷²⁰ Or, in other words, spiritual, social, and governmental orderings were regarded as inseparable insofar as they were representative of greater orderings that transcended human knowledge and the experience of any individual. Therefore, “abstracted statements of ‘legal’ rules capable of expression in a coherent form were only one among many ‘codes’ for the description and

⁷¹⁸ For an historical account of this event, see, for example, William Kilbourn, *The Firebrand: William Lyon Mackenzie and the Rebellion in Upper Canada* (Toronto: Dundurn Press, 2008 [1956]) at 67ff and William L. Mackenzie, *The History of the Destruction of the Colonial Advocate Press by Officers of the Provincial Government of Upper Canada and Law Students to the Attorney & Solicitor General* (York: Colonial Advocate, 1827) online: <http://ia600707.us.archive.org/19/items/cihm_92892/cihm_92892.pdf>.

⁷¹⁹ Baker, *supra* note 15 at 186.

⁷²⁰ *Ibid.* at 188.

perpetuation of providential distributions of responsibility and power in the great chain of being.”⁷²¹ So, for example, according to the long-time treasurer of the Law Society of Upper Canada... “society is formed of so elegant a web that every violence done [its patterns of order] makes a breach which however repaired will long remain a blemish. In all [life’s] rich tapestry distinction is necessary; this is nature or more properly speaking, the order of providence.”⁷²² The monolithic, standardized rule of law did not therefore provide liberty and security. Quite the contrary. A focus upon the standardized rule of law eclipsed the multiplicity of democratic orderings and led down a destructive path to arrogant and irreverent tyranny. The only true guarantee of liberty and security is to be found in ordering the structures of society according to the pre-ordained orderings of the world. Democratic freedom is worked out under the authoritative leadership of virtuous persons rooted within resilient communities and seeking that great ordering that transcends their own finite notions of justice.

In addition to developing reflexivity and restraint in our legal orderings through the rule of virtue, we must re-moralize the marketplace. For, as Stefano Zamagni suggests, a civil society that fosters an ethical legality also requires a civil marketplace that fosters a re-moralization of the market or it will be undermined at every turn.⁷²³ When discussing the market state above, we noted that modern economics is best understood as coming about in the notion that the dynamics of generating material wealth could be isolated from the rest of life and analyzed as a separate field of study to be explored as a universe operating according to its own internal logic.⁷²⁴ As Gudeman writes, “[c]ompetitive trade reverberates in markets and usually cascades into new spaces leading to the expansion of the competitive arena and the increased use of calculative

⁷²¹ *Ibid.* at 193.

⁷²² William Warren Baldwin to Richard Cartwright Robinson, 23 March 1823, 9 *Journals of the Advocate Society*, 67-74 quoted in Baker, *supra* note 15 at 193.

⁷²³ See Luigino Bruni & Stefano Zamagni, *Civil Economy: Efficiency, Equity, Public Happiness* (Berne: Peter Lang, 2007) at 2 and Blond, *supra* note 53 at 185.

⁷²⁴ See Polanyi, *supra* note 48 at 111ff and 43ff.

reason in practices and discourse. As the market realm expands, it *colonizes* and *debases* the mutual one on which it also relies.”⁷²⁵ The isolation and elevation of material gain within economic liberalism also inevitably results in the liberal state-sanctioned appropriation of non-profitmaking spheres of life by the market.⁷²⁶ Therefore, instead of contributing to this ongoing collusion between the liberal state and the liberal market, which leads to a socialization of risk and a privatization of wealth, we need to search for a new kind of capitalism – a popular capitalism that is undergirded, sustained, and guided by an ethic of non-domination and mutual support.⁷²⁷

It should be noted up front that the liberal market, although it is certainly true that it continues to undermine the non-market normative orderings of localized communities, does so through the development of its own set of domineering quasi-norms. Indeed, liberal markets destroy non-market norms in two ways – one, by exerting and entrenching their own set of illegitimate quasi-norms and two, by destroying the very capacity for normative ordering through their dualistic logic.⁷²⁸

As Dorf and Sabel note, “[t]he organizing features of the... economy play an important role in shaping our governmental institutions, and, beyond that, our ideas of what public administration and even the democratic public can do.”⁷²⁹ Or, as Michael Sandel points out, a market mechanism inevitably becomes entrenched as a kind of market norm “because markets

⁷²⁵ Stephen Gudeman, “Necessity or Contingency: Mutuality and Market” in *Market and Society: The Great Transformation Today*, ed. by Chris Hann & Keith Hart (Cambridge: Cambridge University Press, 2009) 17 at 19. He continues to write that “[d]isembedded economies cannot exist without mutuality; however, market practices and models erase their contingency and dialectically undermine their existence by continuously expanding the arena of trade, by cascading, by appropriating materials, labor, and discourse, and by mystifying and veiling the mutuality on which they are built.” *Ibid* at 37. Also see Stephen Gudeman, *Economy’s Tension: The Dialectics of Community and Market* (Oxford: Berghahn Books, 2008) [Gudeman, *Economy’s Tension*].

⁷²⁶ See Polanyi, *supra* note 48 at 111ff and 139; Blond, *supra* note 53 at 186; and Perelman, *supra* note 53.

⁷²⁷ See Blond, *supra* note 53 at 213, 208, and 209.

⁷²⁸ See Michael Sandel, *What Money Can’t Buy: The Moral Limits of Markets* (New York: Farrar, Straus and Giroux, 2012) at 113ff.

⁷²⁹ Dorf & Sabel, *supra* note 627 at 292.

don't only allocate goods; they also express and promote certain attitudes toward the goods being exchanged."⁷³⁰ Market systems do not simply facilitate interaction between market actors. Through their structures and processes, market systems shape the very nature of the actors themselves because, of course, actors in a marketplace are not self-contained, autonomous beings but deeply and fundamentally inter-connected and hence inter-determined. If market systems are dynamic in the sense that their nature is not only determined by the market actors, but they also determine the nature of the market actors themselves, then what is it about the liberal marketplace specifically that determines the nature of market actors in a way that destroys normative orderings?

First, what do I mean by liberal marketplace? To put it in general terms, a liberal marketplace means an economic system governed by the dualistic logic we discussed above. This means, therefore, (a) an economic system in which prices and wages are predominantly subject to supply and demand rather than what might be called non-market concerns and considerations or (b) an economic system in which the state regulates and restricts economic activity in order to satisfy political objectives based upon a model of all citizens being free, equal, and rational individuals.⁷³¹ The first scenario is typically associated with right-wing liberalism in which the free market is idealized as the means to freedom. The second scenario is typically associated with left-wing liberalism in which the market is a means of supplying an idealized welfare state with the means to achieve greater equality. Of course, these are both caricatures and the market state represents a combination of these two approaches. Nonetheless, it is important to understand the two wings of liberalism as they pertain to economic management because as we

⁷³⁰ Sandel, *supra* note 728 at 9, 61, 64, and 65.

⁷³¹ I do not include right-wing socialism (i.e. fascism) in this discussion of liberal economic systems because, although the state-centrism of fascism creates a normative eclipse that might be compared to the domination of the dualistic logic of liberalism, the hierarchical corporatism of fascism means it may be understood as a uniquely non-liberal economic system with a somewhat different form of domination at work within it.

come to see their common dependence upon dualistic logic we begin to perceive the de-moralizing nature of our modern economic system. So, to the degree that economic actors are treated as if they were interchangeable (either as freely interacting economic actors or as equal citizens under a common regime of state regulation), it is helpful to understand the marketplace as being “liberal” and therefore de-moralizing.

Second, what do I mean when I suggest that liberal marketplaces destroy normative orderings? To put it briefly, they undermine the capacity for normative judgment and action by disrupting and displacing such that the specificity of locality is quite literally rendered meaningless. As we will remember from our discussion above, dualistic logic is a process of simultaneously individuating and totalizing (e.g. an economic actor) such that it eclipses multiplicity and denies history by totalizing the relationality between an isolated unit and a whole. In the context of our modern market state in which the market is undergirded and sustained by the liberal state, there is a logic at work which destroys *res ecologia* and prevents the politicization process. This prevention of the politicization process takes place for one simple reason – the universalizability of the marketplace – say, in the fungibility of its currency – washes over and through the economic actor in a way that disallows the localization needed to politicize. Conversely, as we will see below, in a localized market the market will not have such an effect because the market processes will themselves be invested with politicization processes.⁷³²

This phenomenon of politicization prevention, may be seen in what has been dubbed the “the commercialization effect” as outlined in Fred Hirsch’s 1976 work *The Social Limits to Growth*. Here, Hirsch writes that commercialization is “the effect on the characteristics of a product or activity of supplying it exclusively or predominantly on commercial terms rather than on some other basis – such as informal exchange, mutual obligation, altruism or love, or feelings

⁷³² Cf. Sandel, *supra* note 728 at 9.

of service or obligation.”⁷³³ Practically speaking, the commodification within a liberal marketplace de-politicizes through, say, the undermining or crowding out of civic duty. For example, in the case where citizens are motivated by civic duty to engage in self-sacrificial activity for the sake of the communal good but, when offered financial compensation for their activity, no longer understand themselves to be engaged in benevolent behaviour. Once persons are given financial compensation for their behaviour, they are suddenly operating within a very different metric of value calculations – say, individual time or risk for a common currency rather than a voluntary effort embedded within a community working for their common good.⁷³⁴

Finally, then, how might we begin to not only counteract the negative effects of the liberal market, but to resist and undermine this de-moralizing system itself? Just as we could not expect a procedural solution to the destruction of civil society in our discussion above, so too should we not expect anything less than a revival of ethical living to bring about a genuine re-moralizing of the market and a restoration of a civil economy. Not only is it the case that, as Blond and others have noted, moral relations based upon trust and mutual support are the precondition for a healthy economy, but it is futile to try and limit the market simply by increasing the power and reach of the state.⁷³⁵ For the reasons outlined above in our discussion regarding moving beyond the state and the problem of the rule of law, an appeal to an increase in state power will only compound the problem of a de-moralizing market.⁷³⁶ Instead, put in as general terms as possible,

⁷³³ Fred Hirsch, *The Social Limits to Growth* (Cambridge: Harvard University Press, 1976) at 87 also see Sandel, *supra* note 728 at 120ff.

⁷³⁴ Notably, the commercialization effect also means that paying someone to do something may elicit less effort than having them do it for free. An example of this very thing can be seen in the early 90’s in Switzerland when the Swiss government was attempting to build a nuclear waste facility in the village of Wolfenschiessen. The majority of residents were willing to accept it until they were offered financial compensation in an annual payment. See Sandel, *supra* note 728 at 116 and James Heyman & Dan Ariely, “Effort for Payment” (2004) 15:11 *Psychological Science* 787-93 cited in *ibid* at 121.

⁷³⁵ Blond, *supra* note 53 at 185. Also see Gudeman, *supra* note 725 at 20, Gudeman, *Economy’s Tension*, *supra* note 725, and Martin Hollis, *Trust Within Reason* (Cambridge: Cambridge University Press, 1998).

⁷³⁶ For example, as Blond writes, “[w]elfare merely licenses an original immorality by limiting the market’s more unacceptable social consequences and welfarism reinforces a utilitarian, impersonal and individualistic

a re-moralizing of the market means ensures that actions pertaining to supply and demand within the market are governed by non-market norms arising from the interdependencies of a healthy civil society – i.e. the responsibilities arising from relations within family, church, community associations, etc.⁷³⁷

In our analysis of liberalism above, we noted that the false freedom of self-determination becomes manifest in the space between individualized subjects and a subject that has been totalized. We also pointed to the objective state operating under the rule of law as a primary example of this false freedom at work in modern society. The falsity of this freedom is found in the denial of our deeply dependent and persistently vulnerable nature and in the erasure of the in-between worlds that are eclipsed by the polarizations within dualistic logic. Genuine freedom, in contrast, is realized in an engagement in the process of political resistance; freedom exists in the creation of political space and time through the development of resilient networks that resist standardization. Freedom is, therefore, a process of network development that stabilizes and embeds the immediate patterning of the self. The institutions of the market state have the unfortunate effect of creating unhealthy dependence upon a centralized bureaucracy and an impersonal, de-localized market such that, instead of fostering freedom, they tend to trap people in a state of unfreedom by undermining their ability to develop resilient political and economic networks.⁷³⁸ The ties of dependency and mutualism are severed and replaced by a domineering dependency operating with bureaucratic rationality to isolate individuals as little more than welfare consumers.⁷³⁹ In short, the centralized bureaucracies of the market state (i.e. the market state's extreme collectivism) undermine the capacity for moral behaviour and moral activity

understanding of human goods.” Blond, *supra* note 53 at 187.

⁷³⁷ Again, see Blond, *supra* note 53 at 187.

⁷³⁸ See Belloc, *supra* note 664 at 3 and note that the market exists and thrives because of the state. See John Restakis, *Humanizing the Economy: Co-operatives in the Age of Capital* (Gabriola Island: New Society Publishers, 2010) at 10 and Polanyi, *supra* note 48.

⁷³⁹ See Christopher Lasch's writing regarding a state-supported capitalism. Lasch, *supra* note 588 at 218.

within the market. Therefore, if we are to effectively re-moralize the market, we will need to take steps to simultaneously bring together labour and capital as well as production and consumption. Without a broad-based uniting of these market elements, the capacity for politicization will not be realized.

First, the bringing together of labour and capital... In short, the problem with capitalism operating under the aegis of the market state is that there are not enough capitalists.⁷⁴⁰ As Blond writes,

The state-market relationship is symbiotic. As the role of the state grows, it becomes more reliant on the stability of the market – and the tax receipts that provides – and the market then has to be managed primarily for maximised profit. These interests are not wholly economic, however, but also encompass the social agenda of the state, and its maximal delivery. For big business is best able to absorb the cost of the bureaucratic burdens and social aspirations of the state – of health and safety regulation, of every complex tax returns, of holiday pay, of sickness pay, of pension contributions and of national insurance contributions. Big business is the friend of the state, because it both funds it and is capable of delivering its agenda.⁷⁴¹

The harsh effect of this nefarious collusion between the state and big business has been a dramatic de-capitalization of those families and communities that previously held small amounts of capital assets as well as a fostering of enslavement to wage labour.⁷⁴² As Schumacher points out in *Small is Beautiful*, it is essential that private property be an aid to creative, cooperative work rather than a substitution for it. And, in order for this to be the case, capital ownership must

⁷⁴⁰ As G.K. Chesterton and Hilaire Belloc made clear at the beginning of the 20th century, insignificant amounts of capital simply bolsters a problematic capitalism. See Belloc, *supra* note 664 at viii. Also see Blond, *supra* note 53 at 205ff.

⁷⁴¹ *Ibid.* at 286.

⁷⁴² Simply put, we have failed to develop a political economy for the poor that is not state-centric but instead works through local communities and civil society. Thus, the years of equality in ideology (i.e. 1950 onward) have been, in reality, the years of inequality in fact as wealth is being stripped from the poorest half of the population and piled up under the control of a few. Private debt is rapidly enslaving families in liberal capitalist states as they work to service debt rather than to cultivate family assets that can last for generations. See Blond, *supra* note 53 at 39ff. and 201ff. Although this is not the place to go into detail regarding the on-the-ground changes that need to happen if the poor are to be re-capitalized, we can be encouraged to see that there have been some important works in recent years outlining necessary changes such as the importance of cooperatives or the need for a decentralized, distributed banking sector to sustain the development of local small and medium-sized corporations. For example, see Bruni & Zamagni, *supra* note 723, Restakis, *supra* note 738 and Blond, *supra* note 53.

be widely distributed rather than centralized and monopolized. For, as he writes, “in this matter of private ownership the question of scale is decisive. When we move from small-scale to medium scale, the connection between ownership and work already becomes attenuated; private enterprise tends to become impersonal....”⁷⁴³ When capital and labour become separated through scale and geography, the capacity for governance through norms is undermined. Indeed, the ability to work collectively in a way that re-enforces mutualism and community – i.e. working with others in a localized way such that one is building upon capital assets owned by oneself and others – is central to re-moralizing the market and creating widespread, distributive prosperity.

In addition to bringing together labour and capital, we need to re-localize the economy by bringing together production and consumption. This means bringing demand and supply closer together so that the non-market norms guiding these two elements might begin to re-enforce each other and develop symbiotically. For example, if we are geographically and temporally removed from witnessing the negative effects associated with supplying products and services to meet our demands, we have little inspiration or context for adapting our demands based upon considerations other than the bare financial costs associated with satisfying them. In more practical governance terms, then, this localization of the economy means moving away from goods and services provided by professionals certified and guaranteed by the state. For example, to quote Blond again, “[i]n a new model of public-sector delivery, services could be provided by social enterprises. These would be led by front-line workers, owned by them and the communities they serve. These new social businesses would exchange (often illusory) economies

⁷⁴³ Schumacher, *supra* note 381 at 223. The work not only becomes impersonal, but labour divorced from capital is no longer able to fulfill the three central purposes of labour as outlined by Schumacher in *Good Work*: (a) “to provide necessary and useful goods and services”, (b) “to enable every one of us to use and thereby perfect our gifts like good stewards”, and (c) “to do so in service to, and in cooperation with, others, so as to liberate ourselves from our inborn egocentricity.” Schumacher, *supra* note 649 at 3, 4. Also see Berdyaev, *supra* note 147 at 94ff.

of scale for the real economies that derive from empowered workers and an engaged public.”⁷⁴⁴

Finally, it should be clear now that it is somewhat misleading to say that the market itself is the problem or that economies are either embedded or dis-embedded.⁷⁴⁵ Rather, it is more accurate to say that the liberalism of the market or an excessive dis-embeddedness is the problem. So, as Blond astutely writes,

Through civil enterprises, a new type of market regulation becomes possible via shared ethos rather than state imposition. [A]n ethical attitude towards salaries, prices and product quality is actually allied with sustaining market competition, whereas a total refusal of this logic tends to abolish the market in favour of oligarchic corporate control, which tends to become quickly allied to, or synonymous with, the bureaucratic operations of the state.⁷⁴⁶

In short, a re-moralized market will mean contracting understood as the building of a common horizon or a collective enterprise with substantive moral content rather than simply a functionalized technique for pursuing naked self-interest devoid of any common morality. This means, therefore, movement away from the idea that the market is simply a realm of activity for individual actors and recognizing the importance of cooperative trust within interdependent corporations and between businesses and their patrons.

Conclusion

We began chapter one above by noting that something has gone very wrong with liberal capitalism and its modern market state. The collusion between the state and the market systems that seems so recalcitrant is increasingly illegitimate in the excessive violence of their destruction of civil society, localized economies, and the natural environment. The collusion is fueling a destruction of the in-between worlds of mutual support between families and communities as

⁷⁴⁴ Blond, *supra* note 53 at 241.

⁷⁴⁵ As Stephen Gudeman suggests, “all economies are both embedded and disembedded. Economy contains two value realms, mutuality and market, or community and impersonal trade. The difference between these two realms might be characterized as the distinction between a commitment and a contract, or the difference between an activity undertaken ‘for its own sake’ and one done ‘for the sake of’ something else.” Gudeman, *supra* note 725 at 18.

⁷⁴⁶ Blond, *supra* note 53 at 190, 191.

well as distorting our inter-dependence with the natural world. We also noted that attempts to move outside the framework of the liberalism undergirding the destructive capacity of the state and the market are strikingly few. In the discussions above, we have attempted to halt the replication of these modern systems in our theorizing regarding political normativity and propose a way of thinking about democracy that harkens back to pre-modern conceptions of moral judgment and the patternings upon which they depend.

I have suggested that the only way to effectively counter the normative eclipse within the dualistic logic of liberalism is to cultivate an ethic of mutual support and restraint that invests society with socio-economic stability and resilience. Further, I have argued that the only way to avoid undermining the stability and resilience of a healthy society and economy is to cultivate intermediate structures and civil enterprises that instill tradition and reciprocal responsibilities in social, political, and economic life. The integrity of ecological, social, and spiritual patternings in the world depends upon nothing less than a widespread struggle to avoid falling into the trap of a dualistic logic and, instead, increasingly find places and times where these patternings might align ourselves to their structures and processes.

VIII. CONCLUSION

There is indeed a growing sense that something is very wrong with the collusion between the liberal state and market. This collusion is rapidly disintegrating civil society, de-capitalizing the poor, and destroying ecosystems in a process of acceleration-through-standardization. The acceleration of modern industrial society is pushing forward and causing legal, economic, and political interactions to take place with ever-increasing rapidity. Everything in the world is speeding up. The flux of the network patternings of the world are speeding up and this acceleration, by threatening the stability and interdependencies of the networks, is changing the nature of these patternings. Most importantly, as a result of this acceleration, it is becoming increasingly impossible to legitimize the violence that is produced in and through the state-market collusion of liberalism. Liberalism is producing what I am calling a normative eclipse.

As we have discussed, the legitimization of violence requires resilient normative orderings that can withstand the disruptive force of violations to their patternings. However, the dualistic logic of liberalism undermines normative patternings by simultaneously individuating and totalizing. In order to understand the violation of patternings, I proposed that we need to re-imagine our political ontology in order to begin seeing how things (and ourselves) come to us from beyond ourselves. This approach brought us into a discussion of how we might best conceive of the nature of a thing and the nature of ourselves as *res ecologia*. The patternings of *res ecologia* are vulnerable to disruptions that distort their nature or their fundamental integrity. Rejecting a radical immanentism that decries all talk of structures or patternings that come from beyond ourselves, I encouraged us to become attentive to natural ordering processes in the world. Therefore, our politicization of things as well as our political identities are best conceived of as processes in which we *participate* rather than *create*. Importantly, normativity and the capacity to make normative judgments regarding disruptions to relations within and between things and

ourselves comes from the integrity of these larger processes. Liberalism, insofar as it promulgates a dualistic logic, undermines these processes as well as our ability to recognize and legitimize violations of these processes because liberalism advances the standardizations that cause an acceleration that destroys society.

As should be clear by now, the goal in all of this is to uncover and make explicit the logic underlying and motivating liberalism so that we might begin developing a greater capacity for recognizing previously unseen violence at work in the modern world. This project involves a re-thinking of liberal normative ideals of freedom, equality, and rationality as well as a consideration of the standardizing nature of interaction idealized by liberal thinkers in their attempt to see some progress in reaching these ideals. We have, therefore, considered some of the dangers lurking within the idea that a certain kind of interaction will give us ever-increasing progress in society. We began groping toward a conception of rationality that will legitimize violence without advancing the protocolic domination manifest in and through dualistic logic.

Although much more work needs to be done, it is my hope that we are beginning to recognize that we need to re-work our political ontology and begin seeking an understanding of transcendent authority if we are to develop a language of legal and political normativity that does not reproduce the violence at work within liberalism. Liberalism arose in response to the domineering totalizations of pre-modern authoritarian regimes and represents a truly innovative philosophical and political approach to understanding the nature of just relations between humans. However, the violence that is destroying the in-between worlds of mutual support between families and communities as well as distorting our interdependence with the natural world is fueled by this same liberalism. And, proposed responses to contain and cope with the systemic violence of liberalism's market state are disturbingly few. Liberalism's economic, social, and political systems are most often reproduced in and through these seemingly critical

responses. For, insofar as we remain committed to the underlying logic of our modern liberal institutions, we continue to reiterate and re-enforce the violence. Despite our best intentions to avoid or even undermine its causes, the violence will continue unabated unless we are able to counter the normative eclipse within the dualistic logic of liberalism by cultivating an ethic of restraint and mutual support that invests society with stability and resilience. A stable and resilient society requires intermediate structures and civil enterprises to instill tradition and reciprocal responsibilities in interdependent familial, socio-economic, and religious life.

Instead of perpetuating the long-standing debates between liberal constructionists and liberal positivists or between rationalists and agonists, I have suggested that we begin to rediscover and revive conservative legal and political theory. The first step in this process lies in a growing devotion to tradition and submission to its expression of transcendent authority. To the degree that we are successful in doing this, we will be successful in radically undermining the dominant liberal paradigm of modern thought. In so far as we are able to begin living our lives according to traditions that pre-date liberalism, we will be able to begin avoiding the violence of standardization within the logic of liberalism. To do so is to become better aligned with the normative ordering of the world for submission to that which comes to us from beyond ourselves is to foster more democratic ways of life.

We began with a quote from Wittgenstein: “[w]e have got on to slippery ice where there is no friction and so in a certain sense the conditions are ideal, but also, just because of that, we are unable to walk. We want to walk: so we need friction. Back to the rough ground!”⁷⁴⁷ It is my hope that we return to the rough ground and learn to walk again for the sake of peace, order, and good government. For, as Burke taught, the foundation of social tranquility is reverence.⁷⁴⁸

⁷⁴⁷ Wittgenstein, *supra* note 184 at 46e.

⁷⁴⁸ See Kirk, *supra* note 7 at 66, 67.

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