### Case

#### American exceptionalism is an institutional logic that shapes the public sphere – it’s inevitable and only working within it can create effective policy

Paparella 12

(Giuseppe, student of International Relations at the London School of Economics, holds postgraduate degrees in International Studies and Political Science, “American Exceptionalism & The Shaping Of US Foreign Policy”, July 11, 2012, http://theriskyshift.com/2012/07/american-exceptionalism-the-shaping-of-us-foreign-policy/)

Despite some prominent scholars (such as Stephen Walt) having tried to debunk the myth of American Exceptionalism and to rule it out from the possible explanatory variables of US foreign policy, stressing that its conduct has been determined firstly by the relative power and the competitive nature of international politics, contemporary debate has refocused its attention on this issue. This resurgence has come about in no small part due to some surveys carried out by Gallup, according to which American nationalism is booming within the United States: 80% of its population believes in the unique character of their country because of its history and possession of a constitution that make it a different, and the greatest nation in the world.¶ Indeed, nationalism is quite a common means for uniting divided populations and can act on two different levels: domestic and international. As for the former, nationalism comes out as unifying and mobilizing factor when economic difficulties and political challenges arise. For instance, national reaction and popular refusal to the “Malaise Speech” by President Carter in 1979, gave a big thrust to the Reaganian propaganda on international level: as a matter of fact, the 40th President of the United States based his electoral campaign on the saving role of the American leadership against the Evil Empire led by the Soviet Union.¶ Currently, given the end of the unipolar moment, the beleaguered state of American economy combined with its military troubles (with its expenditure being cut and it being overstretched from East Asia to Western Europe), as well as an increasing dysfunctional governance and the decline of American legitimacy abroad, the United States is in a very uncomfortable position. The resort to the nationalist ideology of American Exceptionalism by both sides of the political spectrum is not just a temporary electoral trick, but a signal of a deeper state of uncertainty and concern rooted in the history of the American republic.

#### **Exceptionalism is good – causes social justice by criticizing the US for failing to uphold its own ideals – historically proven by abolition, civil rights, and labor movements**

Zimmerman 10

(Johnathan, teaches history and education at New York University, “Exceptionalism and the left”, December 13, 2010, http://articles.latimes.com/2010/dec/13/opinion/la-oe-zimmerman-exceptionalism-20101213)

Instead, the president should invoke America's long tradition of left-wing exceptionalism. The great warriors for social justice in our history all insisted that America had a providential destiny. Unlike present-day conservatives, however, they also indicted the nation for abandoning this mission. They used American exceptionalism to critique America's vices, not just to sing its virtues.¶ Consider the abolitionist movement of the 19th century, which routinely invoked the nation's divine purpose and its founding documents to condemn slavery. In the first editorial of his magazine, the Liberator, William Lloyd Garrison quoted the Declaration of Independence: "Assenting to the 'self-evident truth … that all men are created equal, and endowed by their Creator with certain unalienable rights — among which are life, liberty, and the pursuit of happiness,' I shall strenuously contend for the immediate enfranchisement of our slave population," Garrison wrote. "I will not equivocate — I will not excuse — I will not retreat a single inch — AND I WILL BE HEARD."¶ He was. So was the great African American abolitionist Frederick Douglass, whose famous Fourth of July address in 1852 cited the same document. "The Declaration of Independence is the ring-bolt to the chain of your nation's destiny," Douglass intoned. "The principles contained in that instrument are saving principles. Stand by those principles, be true to them on all occasions, in all places, against all foes, at whatever cost."¶ But by enslaving black Americans, the nation contradicted this core doctrine. It also violated the Constitution, Douglass insisted. "Interpreted as it ought to be interpreted, the Constitution is a glorious liberty document," he argued. "Read its preamble; consider its purposes. Is slavery among them?"¶ True, Douglass admitted, the Constitution did say that "those bound to service for a term of years" would be counted as "three-fifths of all other persons." But it made no explicit reference to African American bondage. "If the Constitution were intended to be … a slave-holding instrument," Douglass argued, "why neither slavery, slaveholding nor slave can anywhere be found in it?"¶ After the Civil War, as the nation industrialized, labor activists would likewise invoke America's providential origins. Even Socialists got in on the act, quoting Thomas Jefferson rather than Karl Marx.¶ "The Socialist Labor Party of the United States … reasserts the inalienable right of all men to life, liberty, and the pursuit of happiness," the party's 1896 platform declared. "With the founders of the American republic we hold that the purpose of government is to secure every citizen in the enjoyment of this right; but … no such right can be exercised under a system of inequality."¶ Finally, and most famously, the Rev. Martin Luther King Jr. would quote the Declaration in his "I Have a Dream" speech in 1963, calling on America to "live out the true meaning of its creed." And that creed, King made clear, was both distinctively American and divinely inspired.¶ But America doesn't have a monopoly on it. The creed is universal, after all: All men are created equal, and endowed by their creator with unalienable rights. America is exceptional because it is the foremost embodiment of these principles. So it also has a special responsibility to uphold them.¶ That's precisely the kind of exceptionalism that Obama and his party need to reinvigorate right now. To Obama's Republican critics, American exceptionalism is synonymous with American superiority: We're not just different, we're better. He should reply with a full-throated defense of a different kind of exceptionalism, one that underscores America's historic struggle to realize its proclaimed values.¶ That doesn't make us better than anyone else. But it does give us a special duty to fight injustice, wherever we find it. Especially in ourselves.

### K

#### Framework—the primary purpose of debate should be to improve our skills as decisionmakers through a discussion of public policy

#### Decisionmaking skills are necessary to decide between individual courses of action that affect us on a daily basis—flexing our muscles in the high-stakes games of public policymaking is necessary to make those individual decisions easier

#### The neg must connect their alternative to policy concerns and institutional practices—absent these questions shifts in knowledge production are useless – governments’ obey institutional logics that exist independently of individuals and constrain decisionmaking

Wight – Professor of IR @ University of Sydney – 6

(Colin, Agents, Structures and International Relations: Politics as Ontology, pgs. 48-50

One important aspect of this relational ontology is that these relations constitute our identity as social actors. According to this relational model of societies, one is what one is, by virtue of the relations within which one is embedded. A worker is only a worker by virtue of his/her relationship to his/her employer and vice versa. ‘Our social being is constituted by relations and our social acts presuppose them.’ At any particular moment in time an individual may be implicated in all manner of relations, each exerting its own peculiar causal effects. This ‘lattice-work’ of relations constitutes the structure of particular societies and endures despite changes in the individuals occupying them. Thus, the relations, the structures, are ontologically distinct from the individuals who enter into them. At a minimum, the social sciences are concerned with two distinct, although mutually interdependent, strata. There is an ontological difference between people and structures: ‘people are not relations, societies are not conscious agents’. Any attempt to explain one in terms of the other should be rejected. If there is an ontological difference between society and people, however, we need to elaborate on the relationship between them. Bhaskar argues that we need a system of mediating concepts, encompassing both aspects of the duality of praxis into which active subjects must fit in order to reproduce it: that is, a system of concepts designating the ‘point of contact’ between human agency and social structures. This is known as a ‘positioned practice’ system. In many respects, the idea of ‘positioned practice’ is very similar to Pierre Bourdieu’s notion of habitus. Bourdieu is primarily concerned with what individuals do in their daily lives. He is keen to refute the idea that social activity can be understood solely in terms of individual decision-making, or as determined by surpa-individual objective structures. Bourdieu’s notion of the habitus can be viewed as a bridge-building exercise across the explanatory gap between two extremes. Importantly, the notion of a habitus can only be understood in relation to the concept of a ‘social field’. According to Bourdieu, a social field is ‘a network, or a configuration, of objective relations between positions objectively defined’. A social field, then, refers to a structured system of social positions occupied by individuals and/or institutions – the nature of which defines the situation for their occupants. This is a social field whose form is constituted in terms of the relations which define it as a field of a certain type. A habitus (positioned practices) is a mediating link between individuals’ subjective worlds and the socio-cultural world into which they are born and which they share with others. The power of the habitus derives from the thoughtlessness of habit and habituation, rather than consciously learned rules. The habitus is imprinted and encoded in a socializing process that commences during early childhood. It is inculcated more by experience than by explicit teaching. Socially competent performances are produced as a matter of routine, without explicit reference to a body of codified knowledge, and without the actors necessarily knowing what they are doing (in the sense of being able adequately to explain what they are doing). As such, the habitus can be seen as the site of ‘internalization of reality and the externalization of internality.’ Thus social practices are produced in, and by, the encounter between: (1) the habitus and its dispositions; (2) the constraints and demands of the socio-cultural field to which the habitus is appropriate or within; and (3) the dispositions of the individual agents located within both the socio-cultural field and the habitus. When placed within Bhaskar’s stratified complex social ontology the model we have is as depicted in Figure 1. The explanation of practices will require all three levels. Society, as field of relations, exists prior to, and is independent of, individual and collective understandings at any particular moment in time; that is, social action requires the conditions for action. Likewise, given that behavior is seemingly recurrent, patterned, ordered, institutionalised, and displays a degree of stability over time, there must be sets of relations and rules that govern it. Contrary to individualist theory, these relations, rules and roles are not dependent upon either knowledge of them by particular individuals, or the existence of actions by particular individuals; that is, their explanation cannot be reduced to consciousness or to the attributes of individuals. These emergent social forms must possess emergent powers. This leads on to arguments for the reality of society based on a causal criterion. Society, as opposed to the individuals that constitute it, is, as Foucault has put it, ‘a complex and independent reality that has its own laws and mechanisms of reaction, its regulations as well as its possibility of disturbance. This new reality is society…It becomes necessary to reflect upon it, upon its specific characteristics, its constants and its variables’.

#### Legal and rights based detention strategies are a critical form of resistance—even if it fails, the act of demanding habeas rights affirms the life of detainees and provides a check on state violence

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[2009, Muneer I. Ahmad is a Clinical Professor of Law, Yale Law School, “RESISTING GUANTÁNAMO: RIGHTS AT THE BRINK OF DEHUMANIZATION”, Northwestern University Law Review, Vol. 103, p. 1683, American University, WCL Research Paper No. 08-65]

This Article is about the work that rights do, and the work of the lawyers who assert them on their clients‘ behalf, particularly in the face of inordinate state violence, as is the case with Guantánamo. I write this story of Guantánamo based on my experiences of nearly three years of representing a prisoner there.14 While commentators can point to an unbroken record of legal victories in Guantánamo cases at the Supreme Court,15 the view from the prisoners‘ perspective is quite different, and throws into question the claim of transformative legal practice that the Court cases might otherwise suggest. This is not to say that the lawyering has itself been a failure. Rather, I argue that instead of expecting rights-based legal contest at and around Guantánamo to produce transformative results, we might better understand it as a form of resistance to dehumanization. Such a reframing of the Guantánamo litigation invites comparison with other forms of resistance, and helps explain both the power and the limitations of legal practice in extreme instances of state violence. When placed in a human rights frame, Guantánamo is often described in terms of the government‘s denial of rights to the prisoners, but equally important has been the denial of their humanity. Guantánamo has been a project of dehumanization, in the literal sense; it has sought to expel the prisoners—consistently referred to as ―terrorists‖— from our shared understanding of what it means to be human, so as to permit, if not necessitate, physical and mental treatment (albeit in the context of interrogation) abhorrent to human beings. This has been accomplished through three forms of erasure of the human: cultural erasure through the creation of a terrorist narrative; legal erasure through formalistic legerdemain; and physical erasure through torture. While these three dimensions of dehumanization are distinct, they are also interrelated. All are pervaded by law, and more specifically, by rights. This is to say that law has been deployed to create the preconditions for the exercise of a state power so brutal as to deprive the Guantánamo prisoners of the ability to be human. In this way, Guantánamo recalls Hannah Arendt‘s formulation of citizenship as the right to have rights.16 By this she meant that without membership in the polity, the individual stood exposed to the violence of the state, unmediated and unprotected by rights. The result of such exposure, she argued, was to reduce the person to a state of bare life, or life without humanity. What we see at Guantánamo is the inverse of citizenship: no right to have rights, a rights vacuum that enables extreme violence, so as to place Guantánamo at the center of a struggle not merely for rights, but for humanity—that state of being that distinguishes human life from mere biological existence.17 In order to better understand the work that rights do, this Article explores why prisoners‘ advocates, including myself, adopted a rights-based advocacy strategy in an environment defined explicitly by the absence of rights. Since the first prisoners arrived at Guantánamo, the Bush Administration‘s position had been that they lack any rights whatsoever, under any source of law.18 Thus did the Bush Administration attempt to define a rights-free zone, through a manipulation of rights which seemed demonstrably political. And yet, despite the overwhelming evidence of politics animating law at Guantánamo, as advocates we made a conscious decision to engage in rights-based argument, and ―rights talk‖ 19 more generally. This approach finds some support in the work of rights scholars (and critical race theorists in particular) regarding the continuing vitality of rights-based approaches and the promise of ―critical legalism‖ 20 or ―radical constitutionalism‖ 21—the very kinds of progressive constitutional optimism that the Rasul and Boumediene decisions inspire. But the subsequent litigation history demands further inquiry into the political, cultural, jurisprudential, and strategic value of arguing rights in the historical moment and place of Guantá- namo. I argue that while we might hope for rights to obtain transformative effect—to close Guantánamo, for example, or to free those who are wrongfully imprisoned—at Guantánamo and in other places of extreme state violence, rights may do the more modest work of resistance. Rather than fundamentally reconfiguring power arrangements, as rights moments aspire to do, resistance slows, narrows, and increases the costs for the state‘s exercise of violence. Resistance is a form of power contestation that works from within the structures of domination.22 While it may aspire to overturn prevailing power relations, its value derives from its means as much as from its ends. Through resistance, new political spaces may open, but even if they do not, the mere fact of resistance, the assertion of the self against the violence of the state, is self- and life-affirming. Resistance is, in short, a way of staying human. This, then, is the work that rights do: when pushed to the brink of annihilation, they provide us with a rudimentary and perhaps inadequate tool to maintain our humanity. In Part I of this Article, I discuss the cultural erasure of the Guantánamo prisoners through the creation of a post-September 11 terrorist narrative, or what I term an iconography of terror, their legal erasure through the crea-tion of the now abandoned ―enemy combatant‖ 23 category and their physical erasure through torture. I contextualize these discussions with narrative descriptions of the place and space of Guantánamo, which I argue are necessary to understand the contextual nature of rights and rights claims, and the integral connection between law and narrative. In Part II, I deepen the discussion of legal erasure through critique and analysis of my representation of a teenage Canadian Guantánamo prisoner, Omar Khadr, in military commission proceedings, and through a doctrinal analysis of the shifting meanings of core legal terms in the Guantánamo legal regime. In so doing, I suggest how the experience of lawyering in and around Guantánamo helped to prove up its lawless nature. Part III considers the tactical, strategic, and theoretical values of adopting rights-based legal approaches in the rights-free zone of Guantánamo, paying particular attention to the value of rights as recognition, and ultimately arguing the importance of rights as a mode of resistance to state violence. In Part IV, I build upon this discussion of resistance by considering direct forms of resistance in which prisoners themselves have participated. In particular, I suggest the hunger strike as a paradigmatic form of prisoner resistance, and argue the lawyers‘ rights-based litigation and the prisoners‘ hunger strikes share a conceptual understanding of the relationship between rights, violence, and humanity. I conclude by reflecting on the value and limitations of reframing the work of the Guantánamo prisoners‘ lawyers as nothing more, but also nothing less, than resistance. I suggest that neither the resistance of the lawyers nor that of the prisoners may be enough to gain the prisoners‘ freedom, but that they are nonetheless essential when, as at Guantánamo, state violence is so extreme as to attempt to extinguish the human.

#### The aff is good—Second generation Guantanamo issues require a more detailed focus on the legal system—student advocacy enables us to make change

Marguiles 11, Professor of Law

[February 9, 2011, Peter Margulies is Professor of Law, Roger Williams University., “The Ivory Tower at Ground Zero: Conflict and Convergence in Legal Education’s Responses to Terrorism”Journal of Legal Education, Vol. 60, p. 373, 2011, Roger Williams Univ. Legal Studies Paper No. 100]

If timidity in the face of government overreaching is the academy’s overarching historical narrative,1 responses to September 11 broke the mold. In what I will call the first generation of Guantánamo issues, members of the legal academy mounted a vigorous campaign against the unilateralism of Bush Administration policies.2 However, the landscape has changed in Guantánamo’s second generation, which started with the Supreme Court’s landmark decision in Boumediene v. Bush,3 affirming detainees’ access to habeas corpus, and continued with the election of Barack Obama. Second generation Guantánamo issues are murkier, without the clarion calls that marked first generation fights. This Article identifies points of substantive and methodological convergence4 in the wake of Boumediene and President Obama’s election. It then addresses the risks in the latter form of convergence. Substantive points of convergence that have emerged include a consensus on the lawfulness of detention of suspected terrorists subject to judicial review5 and a more fragile meeting of the minds on the salutary role of constraints generally and international law in particular. However, the promise of substantive consensus is marred by the peril of a methodological convergence that I call dominant doctrinalism. Too often, law school pedagogy and scholarship squint through the lens of doctrine, inattentive to the way that law works in practice.6 Novel doctrinal developments, such as the president’s power to detain United States citizens or persons apprehended in the United States, get disproportionate attention in casebooks and scholarship. In contrast, developments such as an expansion in criminal and immigration law enforcement that build on settled doctrine get short shrift, even though they have equal or greater real-world consequences. Consumers of pedagogy and scholarship are ill-equipped to make informed assessments or push for necessary changes. If legal academia is to respond adequately to second generation Guantánamo issues, as well as issues raised by any future attacks, it must transcend the fascination with doctrine displayed by both left and right, and bolster its commitment to understanding and changing how law works “on the ground.” To combat dominant doctrinalism and promote positive change, this Article asks for greater attention in three areas. First, law schools should do even more to promote clinical and other courses that give students first-hand experience in advocacy for vulnerable and sometimes unpopular clients, including the need for affirming their clients’ humanity and expanding the venue of advocacy into the court of public opinion.7 Clinical students also often discover with their clients that legal rights matter, although chastened veterans of rights battles like Joe Margulies and Hope Metcalf are correct that victories are provisional and sometimes pyrrhic.8 Second, legal scholarship and education should encourage the study of social phenomena like path dependence—the notion that past choices frame current advocacy strategies, so that lawyers recommending an option must consider the consequences of push-back from that choice. Aggressive Bush Administration lawyers unduly discounted risks flagged by more reflective colleagues on the consequences of push-back from the courts. Similarly, both the new Obama Administration and advocates trying to cope with Guantánamo’s post-Boumediene second generation failed to gauge the probability of push-back from the administration’s early announcement of plans to close the facility within a year. In each case, unexpected but reasonably foreseeable reactions skewed the implementation of legal and policy choices. Students should learn more about these dynamics before they enter the legal arena. Third, teachers need to focus more on ways in which bureaucratic structures affect policy choices. For example, terrorism fears gave conservative politicians like John Ashcroft an opportunity to decimate asylum adjudication, harming many victims of persecution who have been unable to press meritorious claims for refugee status and other forms of relief. Similarly, creation of the Department of Homeland Security turned a vital governmental function like disaster relief into a bureaucratic orphan, thereby paving the way for the inadequate response to Hurricane Katrina. Students need more guidance on what to look for when structure shapes substance.

#### Bottom up legal development results in more violence and recreates state hegemonies—only western legal norms provide room for counterhegemonic struggles

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(Trevor, “Review Essay A Just Rule of Law” aura.abdn.ac.uk/bitstream/2164/2175/1/Trevor\_Stack\_Review\_Essay\_A\_Just\_Rule\_of\_Law\_Social\_Anthropology.doc Trevor Stack Review Essay A Just Rule of Law Social Anthropology.doc)

Reading Mattei and Nader as well as Holston, I came to feel that I was wrong to advise the Citizen Power leader to take law more seriously. In showing how unjust the rule of law can be, however, the authors give all the more reason to take it seriously rather than simply ignoring it. Their books also hint at the following paths towards a just rule of law: Championing local or indigenous or popular law Mattei and Nader do not quite give up on the rule of law. Their subtitle hints that the rule of law is not always illegal and may even be just. Firstly, although they spend much of the book accusing the United States of using the rule of law as a means to the end of plunder, both in colonial and post-colonial times and in recent years, they note that during the Cold War the United States did stand for the rule of law and democracy, as a counter to Soviet totalitarianism and imperialism. In other words, the Cold War was a kind of “special period” during which the United States showed the political will required to hold itself and others to law (200-1). Secondly, Mattei and Nader contemplate the counter-hegemonic rule of law. Their final chapter takes up the cause of the various non-imperial uses of law that I have already mentioned: …it lies outside the purview of state law or cosmopolitan law. It might involve alliances or exploit counter-hegemony, but it remains a different force not grounded, as is the imperial rule of law, in the needs of corporate capitalist development masked as efficiency… Their efforts are legitimized by social necessity. Innovative legal restructuring may be what will allow us to pass this planet on to our grandchildren (211). In other words, salvation may come from sources of law other than those of the imperial state and its allies. For example, Mattei and Nader observe of the wave of protests in the Mexican state of Oaxaca in August 2006 by a coalition of teachers, peasants, workers, directed at removing the state governor from office, that: “People [in those protests] began to contemplate their relations with the state based on indigenous Oaxacan understandings of collective responsibility and customary law” (205). Being local and/or collective is of course no guarantee of being just. There are local hegemonies and states have sometimes undone them, while local collectives often turn out to be complicit in state hegemony. Mexico’s agrarian reform is an example. On the one hand, the federal government undid the local hegemonies of hacienda-owners. On the other hand, it replaced those local hegemonies with corporatism: peasant collectives were bound into the “peasant sector” of the ruling party, not least because they had only use rights to the lands, which remained state property. More broadly, the political scientist José Antonio Aguilar has complained that the Mexican state left power in the hands of all kinds of collectives, many of them local: it did so both by sins of commission, preferring to work through often unscrupulous leaders, and of omission, by failing to provide public services as well as security and justice. In this context, community autonomy has been used to justify a variety of nefarious practices: imprisoning Protestant converts for not contributing to Catholic town festivals, for example (Aguilar Rivera 2004). Seeking post hoc legalisation Holston observes that the illegal settling of São Paulo’s peripheries helped to unsettle the hierarchy of Brazilian society. Citizens went beyond the law in order to build (literally) a measure of autonomy or indeed to survive: “[t]he very illegality of house lots in peripheries makes land accessible to those who cannot afford the higher sale or rental prices of legal residence” (207). Moreover, the never-ending work of building their homes, known as autoconstrução, gave settlers a sense of entitlement – they had played their part in building the city. That sense of entitlement made for a kind of “insurgent citizenship”, one that challenged the inequality of “historical citizenship” and fuelled, for example, the election of Lula, who was from the urban peripheries (5-6). If illegal residence is a road to justice, it is not the rule of law’s road to justice. Arguably peripheral settlers were themselves profiting from illegality. But Holston notes that the urban poor had not yet given up on law: residential illegality eventually prompts a confrontation with legal authorities in which residents generally succeed, after long and arduous struggle, in legalizing their precarious land claims. Illegal residence is, therefore, a common and ultimately reliable way for the urban working classes to gain access to land and housing and to turn their possession into property. (207) The experience of “illegality” pushed them back to national law, to “make law an asset”, even if simply to keep that law at bay (207). That is classic counter-hegemony. However, Holston is ambivalent about post hoc legalisation. Legal limbo had historically kept people unequal and, even when used by subalterns, could still mean violence and impunity (271-5). My fieldwork in Mexico suggests likewise the need to distinguish between legalisation as a move toward a just rule of law and legalisation that simply creates opportunities to profit from illegality. Elites were fully complicit in the “informality” about which they liked to complain: they themselves hired workers without giving them legal benefits; politicians and leaders lived off the protection they afforded to informal businesses; lawyers, of course, had a field day. Organised crime has been parasitic on the informality of so many people’s livelihoods - the first to be charged protection by the formidable mafias were street sellers of pirate music and imitation clothing. Recent attempts at a government crackdown on organised crime, itself bypassing law, has unleashed an extraordinary wave of violence. In turn, lynch mobs in lower-class and rural areas as well as armed self-defence groups in wealthy suburbs claim to dispense the justice that the government has failed to provide.

#### No link – we are certainly not the worst example of what they’re talking about.

#### The permutation is best—legal reforms can utilized to protect vulnerable populations if we remain conscious of its dangers—the alternative leaves groups stranded

Lobel 7, Assistant Professor of Law

[February, 2007; Orly Lobel is an Assistant Professor of Law, University of San Diego. LL.M. 2000 (waived), Harvard Law School; LL.B. 1998, Tel-Aviv University, “THE PARADOX OF EXTRALEGAL ACTIVISM: CRITICAL LEGAL CONSCIOUSNESS AND TRANSFORMATIVE POLITICS”, 120 Harv. L. Rev. 937]

B. Conceptual Boundaries: When the Dichotomies of Exit Are Unchecked At first glance, the idea of opting out of the legal sphere and moving to an extralegal space using alternative modes of social activism may seem attractive to new social movements. We are used to thinking in binary categories, constantly carving out different aspects of life as belonging to different spatial and temporal spheres. Moreover, we are attracted to declarations about newness - new paradigms, new spheres of action, and new strategies that are seemingly untainted by prior failures. n186 However, the critical insights about law's reach must not be abandoned in the process of critical analysis. Just as advocates of a laissez-faire market are incorrect in imagining a purely private space free of regulation, and just as the "state" is not a single organism but a multiplicity of legislative, administrative, and judicial organs, "nonstate arenas" are dispersed, multiple, and constructed. The focus on action in a separate sphere broadly defined as civil society can be self-defeating precisely because it conceals the many ways in which law continues to play a crucial role in all spheres of life. Today, the lines between private and public functions are increasingly blurred, forming what Professor Gunther Teubner terms "polycorporatist regimes," a symbiosis between private and public sectors. n187 Similarly, new economic partnerships and structures blur the lines between for-profit and nonprofit entities. n188 Yet much of the current literature on the limits of legal reform and the crisis of government action is built upon a privatization/regulation binary, particularly with regard [\*979] to social commitments, paying little attention to how the background conditions of a privatized market can sustain or curtail new conceptions of the public good. n189 In the same way, legal scholars often emphasize sharp shifts between regulation and deregulation, overlooking the continuing presence of legal norms that shape and inform these shifts. n190 These false dichotomies should resonate well with classic cooptation analysis, which shows how social reformers overestimate the possibilities of one channel for reform while crowding out other paths and more complex alternatives. Indeed, in the contemporary extralegal climate, and contrary to the conservative portrayal of federal social policies as harmful to the nonprofit sector, voluntary associations have flourished in mutually beneficial relationships with federal regulations. n191 A dichotomized notion of a shift between spheres - between law and informalization, and between regulatory and nonregulatory schemes - therefore neglects the ongoing possibilities within the legal system to develop and sustain desired outcomes and to eliminate others. The challenge for social reform groups and for policymakers today is to identify the diverse ways in which some legal regulations and formal structures contribute to socially responsible practices while others produce new forms of exclusion and inequality. Community empowerment requires ongoing government commitment. n192 In fact, the most successful community-based projects have been those which were not only supported by public funds, but in which public administration also continued to play some coordination role. n193 At both the global and local levels, with the growing enthusiasm around the proliferation of new norm-generating actors, many envision a nonprofit, nongovernmental organization-led democratization of new informal processes. n194 Yet this Article has begun to explore the problems with some of the assumptions underlying the potential of these new actors. Recalling the unbundled taxonomy of the cooptation critique, it becomes easier to identify the ways extralegal activism is prone to problems of fragmentation, institutional limitation, and professionalization. [\*980] Private associations, even when structured as nonprofit entities, are frequently undemocratic institutions whose legitimacy is often questionable. n195 There are problematic structural differences among NGOs, for example between Northern and Southern NGOs in international fora, stemming from asymmetrical resources and funding, n196 and between large foundations and struggling organizations at the national level. Moreover, direct regulation of private associations is becoming particularly important as the roles of nonprofits increase in the new political economy. Scholars have pointed to the fact that nonprofit organizations operate in many of the same areas as for-profit corporations and government bureaucracies. n197 This phenomenon raises a wide variety of difficulties, which range from ordinary financial corruption to the misrepresentation of certain partnerships as "nonprofit" or "private." n198 Incidents of corruption within nongovernmental organizations, as well as reports that these organizations serve merely as covers for either for-profit or governmental institutions, have increasingly come to the attention of the government and the public. n199 Recently, for example, the IRS revoked the tax-exempt nonprofit status of countless "credit counseling services" because these firms were in fact motivated primarily by profit and not by the not-for-profit cause of helping consumers get out of debt. n200 Courts have long recognized that the mere fact that an entity is a nonprofit does not preclude it from being concerned about raising cash revenues and maximizing profits or affecting competition in the market. n201 In the [\*981] application of antitrust laws, for example, almost every court has rejected the "pure motives" argument when it has been put forth in defense of nonprofits. n202 Moreover, akin to other sectors and arenas, nongovernmental organizations - even when they do not operate within the formal legal system - frequently report both the need to fit their arguments into the contemporary dominant rhetoric and strong pressures to subjugate themselves in the service of other negotiating interests. This is often the case when they appear before international fora, such as the World Bank and the World Trade Organization, and each of the parties in a given debate attempts to look as though it has formed a well-rounded team by enlisting the support of local voluntary associations. n203 One NGO member observes that "when so many different actors are drawn into the process, there is a danger that our demands may be blunted ... . Consequently, we may end up with a "lowest common denominator' which is no better than the kind of compromises the officials and diplomats engage in." n204 Finally, local NGOs that begin to receive funding for their projects from private investors report the limitations of binding themselves to other interests. Funding is rarely unaccompanied by requirements as to the nature and types of uses to which it is put. n205 These concessions to those who have the authority and resources to recognize some social demands but not others are indicative of the sorts of institutional and structural limitations that have been part of the traditional critique of cooptation. In this situation, local NGOs become dependent on players with greater repeat access and are induced to compromise their initial vision in return for limited victories. The concerns about the nature of both civil society and nongovernmental actors illuminate the need to reject the notion of avoiding the legal system and opting into a nonregulated sphere of alternative social activism. When we understand these different realities and processes as also being formed and sustained by law, we can explore new ways in which legality relates to social reform. Some of these ways include efforts to design mechanisms of accountability that address the concerns of the new political economy. Such efforts include [\*982] treating private entities as state actors by revising the tests of joint participation and public function that are employed in the state action doctrine; extending public requirements such as nondiscrimination, due process, and transparency to private actors; and developing procedural rules for such activities as standard-setting and certification by private groups. n206 They may also include using the nondelegation doctrine to prevent certain processes of privatization and rethinking the tax exemption criteria for nonprofits. n207 All of these avenues understand the law as performing significant roles in the quest for reform and accountability while recognizing that new realities require creative rethinking of existing courses of action. Rather than opting out of the legal arena, it is possible to accept the need to diversify modes of activism and legal categories while using legal reform in ways that are responsive to new realities. Focusing on function and architecture, rather than on labels or distinct sectors, requires legal scholars to consider the desirability of new legal models of governmental and nongovernmental partnerships and of the direct regulation of nonstate actors. In recent years, scholars and policymakers have produced a body of literature, rooted primarily in administrative law, describing ways in which the government can harness the potential of private individuals to contribute to the project of governance. n208 These new insights develop the idea that administrative agencies must be cognizant of, and actively involve, the private actors that they are charged with regulating. These studies, in fields ranging from occupational risk prevention to environmental policy to financial regulation, draw on the idea that groups and individuals will [\*983] better comply with state norms once they internalize them. n209 For example, in the context of occupational safety, there is a growing body of evidence that focusing on the implementation of a culture of safety, rather than on the promulgation of rules, can enhance compliance and induce effective self-monitoring by private firms. n210 Consequently, social activists interested in improving the conditions of safety and health for workers should advocate for the involvement of employees in cooperative compliance regimes that involve both top-down agency regulation and firm-and industry-wide risk-management techniques. Importantly, in all of these new models of governance, the government agency and the courts must preserve their authority to discipline those who lack the willingness or the capacity to participate actively and dynamically in collaborative governance. Thus, unlike the contemporary message regarding extralegal activism that privileges private actors and nonlegal techniques to promote social goals, the new governance scholarship is engaged in developing a broad menu of legal reform strategies that involve private industry and nongovernmental actors in a variety of ways while maintaining the necessary role of the state to aid weaker groups in order to promote overall welfare and equity. A responsive legal architecture has the potential to generate new forms of accountability and social responsibility and to link hard law with "softer" practices and normativities. Reformers can potentially use law to increase the power and access of vulnerable individuals and groups and to develop tools to increase fair practices and knowledge building within the new market.

#### Patriarchy not the root cause of war – they suffer from causal oversimplification

Crenshaw, Communication Professor at Alabama, ‘2 (Carrie, “Dominant Form and Marginalized Voices: Argumentation about Feminism(s)” pub in ‘Perspectives in Controversy: Selected Essays from Contemporary Argumentation and Debate’ by Kenneth Broda-Bahm, p 119-126)

Substantive debates about feminism usually take one of two forms. First, on the affirmative, debaters argue that some aspect of the resolution is a manifestation of patriarchy. For example, given the spring 1992 resolution, “[rjesolved: That advertising degrades the quality of life," many affirmatives argued that the portrayal of women as beautiful objects for men's consumption is a manifestation of patriarchy that results in tangible harms to women such as rising rates of eating disorders. The fall 1992 topic, "(rjesolved: That the welfare system exacerbates the problems of the urban poor in the United States," also had its share of patri- archy cases. Affirmatives typically argued that women's dependence upon a patriarchal welfare system results in increasing rates of women's poverty. In addition to these concrete harms to individual women, most affirmatives on both topics, desiring "big impacts," argued that the effects of patriarchy include nightmarish totalitarianism and/or nuclear annihilation.

On the negative, many debaters countered with arguments that the some aspect of the resolution in some way sustains or energizes the feminist movement in resistance to patriarchal harms. For example, some negatives argued that sexist advertising provides an impetus for the reinvigoration of the feminist movement and/or feminist consciousness, ultimately solving the threat of patriarchal nuclear annihilation. likewise, debaters negating the welfare topic argued that the state of the welfare system is the key issue around which the feminist movement is mobilizing or that the consequence of the welfare system - breakup of the patriarchal nuclear family -undermines patriarchy as a whole.

Such arguments seem to have two assumptions in common. First, there is a single feminism. As a result, feminists are transformed into feminism. Debaters speak of feminism as a single, monolithic, theoretical and pragmatic entity and feminists as women with identical motivations, methods, and goals. Second, these arguments assume that patriarchy is the single or root cause of all forms of oppression. Patriarchy not only is responsible for sexism and the consequent oppression of women, it also is the cause of totalitarianism, environmental degradation, nuclear war, racism, and capitalist exploitation. These reductionist arguments reflect an unwillingness to debate about the complexities of human motivation and explanation. They betray a reliance upon a framework of proof that can explain only material conditions and physical realities through empirical quantification.

The transformation of feminists 'Mo feminism and the identification of patriarchy as the sole cause of all oppression is related in part to the current form of intercollegiate debate practice. By "form," I refer to Kenneth Burke's notion of form, defined as the "creation of appetite in the mind of the auditor, and the adequate satisfying of that appetite" (Counter-Statement 31). Though the framework for this understanding of form is found in literary and artistic criticism, it is appropriate in this context; as Burke notes, literature can be "equipment for living" (Biilosophy 293). He also suggests that form "is an arousing and fulfillment of desires. A work has form in so far as one part of it leads a reader to anticipate another part, to be gratified by the sequence" (Counter-Statement 124).

Burke observes that there are several aspects to the concept of form. One of these aspects, conventional form, involves to some degree the appeal of form as form. Progressive, repetitive, and minor forms, may be effective even though the reader has no awareness of their formality. But when a form appeals as form, we designate it as conventional form. Any form can become conventional, and be sought for itself - whether it be as complex as the Greek tragedy or as compact as the sonnet (Counter-Statement 126).

These concepts help to explain debaters' continuing reluctance to employ rhetorical proof in arguments about causality. Debaters practice the convention of poor causal reasoning as a result of judges' unexamined reliance upon conventional form. Convention is the practice of arguing single-cause links to monolithic impacts that arises out of custom or usage. Conventional form is the expectation of judges that an argument will take this form.

Common practice or convention dictates that a case or disadvantage with nefarious impacts causally related to a single link will "outweigh" opposing claims in the mind of the judge. In this sense, debate arguments themselves are conventional. Debaters practice the convention of establishing single-cause relationships to large monolithic impacts in order to conform to audience expectation. Debaters practice poor causal reasoning because they are rewarded for it by judges. The convention of arguing single-cause links leads the judge to anticipate the certainty of the impact and to be gratified by the sequence. I suspect that the sequence is gratifying for judges because it relieves us from the responsibility and difficulties of evaluating rhetorical proofs. We are caught between our responsibility to evaluate rhetorical proofs and our reluctance to succumb to complete relativism and subjectivity. To take responsibility for evaluating rhetorical proof is to admit that not every question has an empirical answer.

However, when we abandon our responsibility to rhetorical proofs, we sacrifice our students' understanding of causal reasoning. The sacrifice has consequences for our students' knowledge of the subject matter they are debating. For example, when feminism is defined as a single entity, not as a pluralized movement or theory, that single entity results in the identification of patriarchy as the sole cause of oppression. The result is ignorance of the subject position of the particular feminist author, for highlighting his or her subject position might draw attention to the incompleteness of the causal relationship between link and impact Consequently, debaters do not challenge the basic assumptions of such argumentation and ignorance of feminists is perpetuated.

Feminists are not feminism. The topics of feminist inquiry are many and varied, as are the philosophical approaches to the study of these topics. Different authors have attempted categorization of various feminists in distinctive ways. For example, Alison Jaggar argues that feminists can be divided into four categories: liberal feminism, marxist feminism, radical feminism, and socialist feminism. While each of these feminists may share a common commitment to the improvement of women's situations, they differ from each other in very important ways and reflect divergent philosophical assumptions that make them each unique. Linda Alcoff presents an entirely different categorization of feminist theory based upon distinct understandings of the concept "woman," including cultural feminism and post-structural feminism. Karen Offen utilizes a comparative historical approach to examine two distinct modes of historical argumentation or discourse that have been used by women and their male allies on behalf of women's emancipation from male control in Western societies. These include relational feminism and individualist feminism. Elaine Marks and Isabelle de Courtivron describe a whole category of French feminists that contain many distinct versions of the feminist project by French authors. Women of color and third-world feminists have argued that even these broad categorizations of the various feminism have neglected the contributions of non-white, non-Western feminists (see, for example, hooks; Hull; Joseph and Lewis; Lorde; Moraga; Omolade; and Smith).

In this literature, the very definition of feminism is contested. Some feminists argue that "all feminists are united by a commitment to improving the situation of women" (Jaggar and Rothenberg xii), while others have resisted the notion of a single definition of feminism, bell hooks observes, "a central problem within feminist discourse has been our inability to either arrive at a consensus of opinion about what feminism is (or accept definitions) that could serve as points of unification" (Feminist Theory 17). The controversy over the very definition of feminism has political implications. The power to define is the power both to include and exclude people and ideas in and from that feminism. As a result, [bjourgeois white women interested in women's rights issues have been satisfied with simple definitions for obvious reasons. Rhetorically placing themselves in the same social category as oppressed women, they were not anxious to call attention to race and class privilege (hooks. Feminist Wieory 18).

Debate arguments that assume a singular conception of feminism include and empower the voices of race- and class-privileged women while excluding and silencing the voices of feminists marginalized by race and class status. This position becomes clearer when we examine the second assumption of arguments about feminism in intercollegiate debate - patriarchy is the sole cause of oppression.

Important feminist thought has resisted this assumption for good reason. Designating patriarchy as the sole cause of oppression allows the subjugation of resistance to other forms of oppression like racism and classism to the struggle against sexism. Such subjugation has the effect of denigrating the legitimacy of resistance to racism and classism as struggles of equal importance. "Within feminist movement in the West, this led to the assumption that resisting patriarchal domination is a more legitimate feminist action than resisting racism and other forms of domination" (hooks. Talking Back 19).

The relegation of struggles against racism and class exploitation to offspring status is not the only implication of the "sole cause" argument In addition, identifying patriarchy as the single source of oppression obscures women's perpetration of other forms of subjugation and domination, bell hooks argues that we should not obscure the reality that women can and do partici- pate in politics of domination, as perpetrators as well as victims - that we dominate, that we are dominated. If focus on patriarchal domination masks this reality or becomes the means by which women deflect attention from the real conditions and circumstances of our lives, then women cooperate in suppressing and promoting false consciousness, inhibiting our capacity to assume responsibility for transforming ourselves and society (hooks. Talking Back 20).

Characterizing patriarchy as the sole cause of oppression allows mainstream feminists to abdicate responsibility for the exercise of class and race privilege. It casts the struggle against class exploitation and racism as secondary concerns.

Current debate practice promotes ignorance of these issues because debaters appeal to conventional form, the expectation of judges that they will isolate a single link to a large impact Feminists become feminism and patriarchy becomes the sole cause of all evil. Poor causal arguments arouse and fulfill the expectation of judges by allowing us to surrender our responsibility to evaluate rhetorical proof for complex causal relationships. The result is either the mar-ginalization or colonization of certain feminist voices. Arguing feminism in debate rounds risks trivializing feminists. Privileging the act of speaking about feminism over the content of speech "often turns the voices and beings of non-white women into commodity, spectacle" (hooks, Talking Back 14). Teaching sophisticated causal reasoning enables our students to learn more concerning the subject matter about which they argue. In this case, students would learn more about the multiplicity of feminists instead of reproducing the marginalization of many feminist voices in the debate itself.

The content of the speech of feminists must be investigated to subvert the colonization of exploited women. To do so, we must explore alternatives to the formal expectation of single-cause links to enormous impacts for appropriation of the marginal voice threatens the very core of self-determination and free self-expression for exploited and oppressed peoples. If the identified audience, those spoken to, is determined solely by ruling groups who control production and distribution, then it is easy for the marginal voice striving for a hearing to allow what is said to be overdetermined by the needs of that majority group who appears to be listening, to be tuned in (hooks, Talking Back 14).

At this point, arguments about feminism in intercollegiate debate seem to be overdetermined by the expectation of common practice, the "game" that we play in assuming there is such a thing as a direct and sole causal link to a monolithic impact To play that game, we have gone along with the idea that there is a single feminism and the idea that patriarchal impacts can account for all oppression.

#### No single cause of conflict – be suspicious of their “master variable”, authors exaggerate problems their programs have the best chance of solving

Barnett et al 7

Michael, Hunjoon Kim, Madalene O’Donnell, Laura Sitea, Global Governance, “Peacebuilding: What is in a Name?”, Questia

Because there are multiple contributing causes of conflict, almost any international assistance effort that addresses any perceived or real grievance can arguably be called "peacebuilding." Moreover, anyone invited to imagine the causes of violent conflict might generate a rather expansive laundry list of issues to be addressed in the postconflict period, including income distribution, land reform, democracy and the rule of law, human security, corruption, gender equality, refugee reintegration, economic development, ethnonational divisions, environmental degradation, transitional justice, and on and on. There are at least two good reasons for such a fertile imagination. One, there is no master variable for explaining either the outbreak of violence or the construction of a positive peace but merely groupings of factors across categories such as greed and grievance, and catalytic events. Variables that might be relatively harmless in some contexts can be a potent cocktail in others. Conversely, we have relatively little knowledge regarding what causes peace or what the paths to peace are. Although democratic states that have reasonably high per capita incomes are at a reduced risk of conflict, being democratic and rich is no guarantor of a positive peace, and illiberal and poor countries, at times, also have had their share of success. Second, organizations are likely to claim that their core competencies and mandates are critical to peacebuilding. They might be right. They also might be opportunistic. After all, if peacebuilding is big business, then there are good bureaucratic reasons for claiming that they are an invaluable partner.

### Framework

#### Calculating key to ethical engagement in the world – trying to identify with suffering directly fails

Santilli, Philosophy Professor at Siena College, ‘3 (Paul, May 22, “Radical Evil, Subjection, and Alain Badiou’s Ethics of the Truth Event” World Congress of the international Society for Universal Dialogue, www.isud.org/papers/pdfs/Santilli.pdf)

From the standpoint of an ethics of subjection there is even something unnecessary or superfluous about the void of suffering in the subject bearers of evil. For Levinas, the return to being from the ethical encounter with the face and its infinite depths is fraught with the danger the subject will reduce the other to a "like-me," totalizing and violating the space of absolute alterity. As Chalier puts it, "Levinas conceives of the moral subject's awakening, or the emergence of the human in being, as a response to that pre-originary subjection which is not a happenstance of being."28 But if there really is something inaccessible about suffering itself, about the 'other' side of what is manifestly finite, subjected, and damaged, then to a certain extent it is irrelevant to ethics, as irrelevant as the judgment of moral progress in the subject-agent. Let me take the parent-child relation again as an example. Suppose the child to exhibit the symptoms of an illness. Are not the proper "ethical" questions for the parent to ask questions of measure and mathematical multiples: How high is the fever? How long has it lasted? How far is the hospital? Can she get out of bed? Has this happened before? These are the questions of the doctor, the rescue squads and the police. They are questions about being, about detail, causes and effects. Ethically our response to the needs of must be reduced to a positivity simply because we have access to nothing but the symptoms, which are like mine. Our primary moral responsibility is to treat the symptoms that show up in being, not the radically other with whom I cannot identify. Say we observe someone whose hands have been chopped off with a machete. How would we characterize this? Would it not be slightly absurd to say, "He had his limbs severed and he suffered," as though the cruel amputation were not horror enough. Think of the idiocy in the common platitude: "She died of cancer, but thank God, she did not suffer", as though the devastating annihilation of the human by a tumor were not evil itself. For ethics, then, the only suffering that matters are the visible effects of the onslaught of the world. All other suffering is excessive and inaccessible. Therefore, it is in being, indeed in the midst of the most elemental facts about ourselves and other people, that we ethically encounter others by responding to their needs and helping them as best we can.

It is precisely by identifying being and not pretending that we know any thing about suffering, other than it is a hollow in the midst of being, that we can act responsibly. What worries me about Levinas is that by going beyond being to what he regards as the ethics of absolute alterity, he risks allowing the sheer, almost banal facticity of suffering to be swallowed in the infinite depths of transcendence. Indeed, it seems to me that Levinas too often over emphasizes the importance of the emergence of the subject and the inner good in the ethical encounter, as though the point of meeting the suffering human being was to come to an awareness of the good within oneself and not to heal and repair. I agree with Chalier's observation that Levinas's "analyses adopt the point of view of the moral subject, not that of a person who might be the object of its solicitude."29 Ethics has limits; there are situations like the Holocaust where to speak of a moral responsibility to heal and repair seems pathetic. But an ethics that would be oriented to the vulnerabilities of the subjected (which are others, of course, but also myself) needs to address the mutilation, dismemberment, the chronology of torture, the numbers incarcerated, the look of the bodies, the narratives, the blood counts, the mines knives, machetes, and poisons. Evil really is all that. When the mind does its work, it plunges into being, into mathematical multiples and starts counting the cells, the graveyards, and bullet wounds. Rational practical deliberation is always about the facts that encircle the void inaccessible to deliberation and practical reason.

#### Failing to prevent a horrible outcome is just as bad as causing it – the aff is moral evasion

Nielsen – philosophy prof, Calgary - 93

Kai Nielsen, Professor of Philosophy, University of Calgary, Absolutism and Its Consequentialist Critics, ed. Joram Graf Haber, 1993, p. 170-2

Forget the levity of the example and consider the case of the innocent fat man. If there really is no other way of unsticking our fat man and if plainly, without blasting him out, everyone in the cave will drown, then, innocent or not, he should be blasted out. This indeed overrides the principle that the innocent should never be deliberately killed, but it does not reveal a callousness toward life, for the people involved are caught in a desperate situation in which, if such extreme action is not taken, many lives will be lost and far greater misery will obtain. Moreover, the people who do such a horrible thing or acquiesce in the doing of it are not likely to be rendered more callous about human life and human suffering as a result. Its occurrence will haunt them for the rest of their lives and is as likely as not to make them more rather than less morally sensitive. It is not even correct to say that such a desperate act shows a lack of respect for persons. We are not treating the fat man merely as a means. The fat man's person‑his interests and rights are not ignored. Killing him is something which is undertaken with the greatest reluctance. It is only when it is quite certain that there is no other way to save the lives of the others that such a violent course of action is justifiably undertaken. Alan Donagan, arguing rather as Anscombe argues, maintains that "to use any innocent man ill for the sake of some public good is directly to degrade him to being a mere means" and to do this is of course to violate a principle essential to morality, that is, that human beings should never merely be treated as means but should be treated as ends in themselves (as persons worthy of respect)." But, as my above remarks show, it need not be the case, and in the above situation it is not the case, that in killing such an innocent man we are treating him merely as a means. The action is universalizable, all alternative actions which would save his life are duly considered, the blasting out is done only as a last and desperate resort with the minimum of harshness and indifference to his suffering and the like. It indeed sounds ironical to talk this way, given what is done to him. But if such a terrible situation were to arise, there would always be more or less humane ways of going about one's grim task. And in acting in the more humane ways toward the fat man, as we do what we must do and would have done to ourselves were the roles reversed, we show a respect for his person. In so treating the fat man‑not just to further the public good but to prevent the certain death of a whole group of people (that is to prevent an even greater evil than his being killed in this way)‑the claims of justice are not overriden either, for each individual involved, if he is reasonably correct, should realize that if he were so stuck rather than the fat man, he should in such situations be blasted out. Thus, there is no question of being unfair. Surely we must choose between evils here, but is there anything more reasonable, more morally appropriate, than choosing the lesser evil when doing or allowing some evil cannot be avoided? That is, where there is no avoiding both and where our actions can determine whether a greater or lesser evil obtains, should we not plainly always opt for the lesser evil? And is it not obviously a greater evil that all those other innocent people should suffer and die than that the fat man should suffer and die? Blowing up the fat man is indeed monstrous. But letting him remain stuck while the whole group drowns is still more monstrous. The consequentialist is on strong moral ground here, and, if his reflective moral convictions do not square either with certain unrehearsed or with certain reflective particular moral convictions of human beings, so much the worse for such commonsense moral convictions. One could even usefully and relevantly adapt herethough for a quite different purpose‑an argument of Donagan's. Consequentialism of the kind I have been arguing for provides so persuasive "a theoretical basis for common morality that when it contradicts some moral intuition, it is natural to suspect that intuition, not theory, is corrupt."" Given the comprehensiveness, plausibility, and overall rationality of consequentialism, it is not unreasonable to override even a deeply felt moral conviction if it does not square with such a theory, though, if it made no sense or overrode the bulk of or even a great many of our considered moral convictions, that would be another matter indeed. Anticonsequentialists often point to the inhumanity of people who will sanction such killing of the innocent, but cannot the compliment be returned by speaking of the even greater inhumanity, conjoined with evasiveness, of those who will allow even more death and far greater misery and then excuse themselves on the ground that they did not intend the death and misery but merely forbore to prevent it? In such a context, such reasoning and such forbearing to prevent seems to me to constitute a moral evasion. I say it is evasive because rather than steeling himself to do what in normal circumstances would be a horrible and vile act but in this circumstance is a harsh moral necessity, he allows, when he has the power to prevent it, a situation which is still many times worse. He tries to keep his `moral purity' and avoid `dirty hands' at the price of utter moral failure and what Kierkegaard called `double‑mindedness.' It is understandable that people should act in this morally evasive way but this does not make it right.

#### Language can describe reality but does not shape it

Rorty 82

[Richard, Professor of Comparative Literature at Stanford University, “Consequences of Pragmatism”, University of Minnesota Press: <http://www.marxists.org/reference/subject/philosophy/index.htm>, MW]

This Davidsonian way of looking at language lets us avoid hypostatising Language in the way in which the Cartesian epistemological tradition, and particularly the idealist tradition which built upon Kant, hypostatised Thought. For it lets us see language not as a tertium quid between Subject and Object, nor as a medium in which we try to form pictures of reality, but as part of the behaviour of human beings. On this view, the activity of uttering sentences is one of the things people do in order to cope with their environment. The Deweyan notion of language as tool rather than picture is right as far as it goes. But we must be careful not to phrase this analogy so as to suggest that one can separate the tool, Language, from its users and inquire as to its “adequacy” to achieve our purposes. The latter suggestion presupposes that there is some way of breaking out of language in order to compare it with something else. But there is no way to think about either the world or our purposes except by using our language. One can use language to criticise and enlarge itself, as one can exercise one’s body to develop and strengthen and enlarge it, but one cannot see language-as-a-whole in relation to something else to which it applies, or for which it is a means to an end. The arts and the sciences, and philosophy as their self-reflection and integration, constitute such a process. of enlargement and strengthening. But Philosophy, the attempt to say “how language relates to the world” by saying what makes certain sentences true, or certain actions or attitudes good or rational, is, on this view, impossible.¶ It is the impossible attempt to step outside our skins – the traditions, linguistic and other, within which we do our thinking and self-criticism – and compare ourselves with something absolute. This Platonic urge to escape from the finitude of one’s time and place, the “merely conventional” and contingent aspects of one’s life, is responsible for the original Platonic distinction between two kinds of true sentence. By attacking this latter distinction, the holistic “pragmaticising” strain in analytic philosophy has helped us see how the metaphysical urge – common to fuzzy Whiteheadians and razor-sharp “scientific realists” – works. It has helped us be sceptical about the idea that some particular science (say physics) or some particular literary genre (say Romantic poetry, or transcendental philosophy) gives us that species of true sentence which is not just a true sentence, but rather a piece of Truth itself. Such sentences may be very useful indeed, but there is not going to be a Philosophical explanation of this utility. That explanation, like the original justification of the assertion of the sentence, will be a parochial matter – a comparison of the sentence with alternative sentences formulated in the same or in other vocabularies. But such comparisons are the business of, for example, the physicist or the poet, or perhaps of the philosopher – not of the Philosopher, the outside expert on the utility, or function, or metaphysical status of Language or of Thought.¶ The Wittgenstein-Sellars-Quine-Davidson attack on distinctions between classes of sentences is the special contribution of analytic philosophy to the anti-Platonist insistence on the ubiquity of language. This insistence characterises both pragmatism and recent “Continental” philosophising. Here are some examples:¶ Man makes the word, and the word means nothing which the man has not made it mean, and that only to some other man. But since man can think only by means of words or other external symbols, these might turn around and say: You mean nothing which we have not taught you, and then only so far as you address some word as the interpretant of your thought... ... . the word or sign which man uses is the man himself Thus my language is the sum-total of myself; for the man is the thought. (Peirce)¶ Peirce goes very far in the direction that I have called the de-construction of the transcendental signified, which, at one time or another, would place a reassuring end to the reference from sign to sign. (Derrida)¶ ... psychological nominalism, according to which all awareness of sorts, resemblances, facts, etc., in short all awareness of abstract entities – indeed, all awareness even of particulars – is a linguistic affair. (Sellars)¶ It is only in language that one can mean something by something. (Wittgenstein)¶ Human experience is essentially linguistic. (Gadamer)¶ ... man is in the process of perishing as the being of language continues to shine ever brighter upon our horizon. (Foucault)¶ Speaking about language turns language almost inevitably into an object ... and then its reality vanishes. (Heidegger)¶ This chorus should not, however, lead us to think that something new and exciting has recently been discovered about Language – e.g., that it is more prevalent than had previously been thought. The authors cited are making only negative points. They are saying that attempts to get back behind language to something which “grounds” it, or which it “expresses,” or to which it might hope to be “adequate,” have not, worked. The ubiquity of language is a matter of language moving into the vacancies left by the failure of all the various candidates for the position of “natural starting-points” of thought, starting-points which are prior to and independent of the way some culture speaks or spoke. (Candidates for such starting-points include clear and distinct ideas, sense-data, categories of the pure understanding, structures of prelinguistic consciousness, and the like.) Peirce and Sellars and Wittgenstein are saying that the regress – of interpretation cannot be cut off by the sort of “intuition” which Cartesian epistemology took for granted. Gadamer and Derrida are saying that our culture has been dominated by the notion of a “transcendental signified” which, by cutting off this regress, would bring us out from contingency and convention and into the Truth. Foucault is saying that we are gradually losing our grip on the “metaphysical comfort” which that Philosophical tradition provided – its picture of Man as having a “double” (the soul, the Noumenal Self) who uses Reality’s own language rather than merely the vocabulary of a time and a place. Finally, Heidegger is cautioning that if we try to make Language into a new topic of Philosophical inquiry we shall simply recreate the hopeless old Philosophical puzzles which we used to raise about Being or Thought.