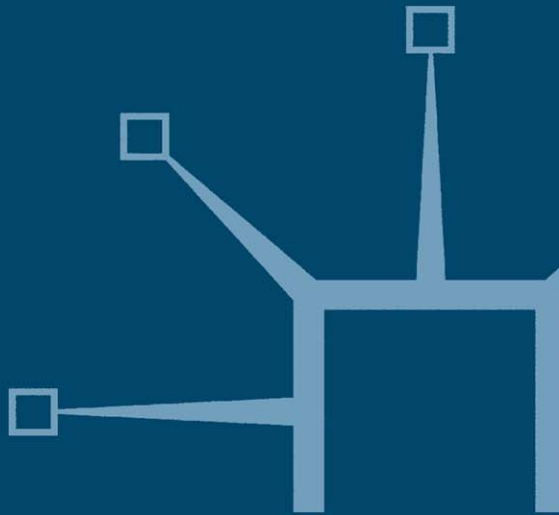


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Law and Transcendence

On the Unfinished Project of Gillian Rose

Vincent W. Lloyd



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On the Unfinished Project of Gillian Rose

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Series Editor's Preface

The project of *Renewing Philosophy* is to present works that either engage anew with the legacy of modernity or allow in some sense a connection between philosophy and something that touches on an understanding of the contemporary in a way that is unique to philosophy. This work engages in a response to a thinker of the late twentieth century who has yet to receive her due: Gillian Rose. Rose herself was certainly engaged in a critical reflection on modernity, a reflection intended to address the trends most significant in contemporary thought. In setting out this project Rose self-consciously aimed at recovering for social thought a sense of what was most significant in the Hegelian heritage. Whilst Hegel's shade was often invoked in the twentieth century it remains questionable whether his heritage has been one that the contemporary world has comprehended.

Hegel himself, in another preface, famously claimed that when philosophy paints its grey in grey, then has a form of life grown old. This statement has been consistently read as a conservative one with the result that it has seemed better to focus on the manner of making the world better or, as Marx famously put it in his riposte, to cease interpreting and start changing things. Since the twentieth century was, however, one in which the change called for by Marx produced renewed distortions and diremptions, cleavages in the social whole that produced further strife and not the harmony that was alleged to be their aim, it is perhaps time to reassess the question of whether his statement concerning philosophy was part of a conservative vision. Certainly not only those of a Marxist persuasion have thought this but it is also not only those of a Marxist persuasion who have reproduced violence through insistence on the change wrought by means of abstractions. It is in fact a problem about the nature of abstraction that is at the heart of Hegel's famous declaration concerning philosophy.

Just prior to making the claim that when philosophy paints its grey in grey then has a form of life grown old, Hegel cautions against the view that philosophy should give instructions on how the world ought to be. It is because the business of philosophy is with the concept that what it tends to produce is an intellectual world that is set out against the sensuous one and which in being so set against it produces not an alternative to it but rather a mirror of it that will in its turn reflect back on that

time in ways that will reproduce further tensions. The assessment of philosophy as a moral discipline that can externally relate to the world is what is problematic for Hegel. It is the *Philosophy of Right* that he is prefacing when he makes these comments and perhaps most important is the following: 'What lies between reason as self-conscious spirit and reason as present actuality, what separates the former from the latter and prevents it from finding satisfaction in it, is the fetter of some abstraction or other which has not been liberated into [the form of] the concept.'¹ We see here a vivid statement of the diremption of reason: it is presented both as a self-conscious spirit and a present actuality with the former failing to find satisfaction in the latter. The lack of such satisfaction is essential to the movement we term *history*. The basis of it is the abstraction from the present in the spirit of the reflection on that present. Within this spirit comes the need and drive to incarnate something that is abstracted and set against.

Hegel's movement of thought underscores both the necessity of the abstraction and its violence. Without violence no history but without violence no diremption and suffering; this is what Gillian Rose re-presented for us under the figure of the 'broken middle'. The middle is broken in the sense that the attempt at synthetic unification of the social whole in a move that would harmonize and dissolve tensions is a recurrent motif that ensures other divisions and diremptions arise in their turn. The attempt to close history, to declare it at an end is precisely the movement of resistance to Hegel's thought.² Hegel is not the one to declare history over or rather in his speculative thinking each movement of closure ensures the thinking of a new opening. We remain caught in the middle in the contest between beginning and end, a contest that is unwinnable and which becomes poisonous in the circumstances where a complete and total finality is claimed.

The game of thought with itself that we term 'philosophy' is thus on an Hegelian reading no mere intellectual situation: it is formative of the nature of political life itself. Hegel is rare in being so bold as to completely identify philosophy with the given that we call our life. It is precisely this identity which is not one that is the secret of Hegel's thought, a secret re-told by Rose in the contemporary world as one in which the reinvention of neo-Kantianism prevents the emergence of a relation to the world that would permit a recognition of spirit with its own actuality. The tracking of the 'fetter' of abstraction within the middle in which we are broken is the main work of Rose, a work which she, late in her very short life, identified in Kierkegaardian fashion, as a work 'of love.' One of Hegel's first and philosophically finest efforts is entitled *The Spirit*

of *Christianity and Its Fate* and in it Hegel tracks the relationship between love and law. If love is something other than the personal relation of one to another, if it is capable of being a figure for something central to social and moral life, then it must be in terms of a structure that would express a connection of the members of a social bond with each other by means of a projection that is both of them and beyond them. This movement within and beyond the community is however also at work in law. Law is not merely a set of regulations, a group of statements concerning what should and should not be done but a tense bond that enables the narration of a set of actions into a meaningful whole. The connection between the meaningful whole and the movement of the community beyond itself is one that Hegel traces in this early piece through the patterns of religion. However the general message here is broader than can be told by means of religion alone. The connection of religion to the political is one whereby the former's request for transcendence has to come to be grounded in a pact that regulates life in rituals and movements that command something that will allow the movement of the group beyond any given particular settlement.

These general reflections are meant to express something of a context for what is attempted here by Vincent Lloyd. Rose's work had two central moments, the first was given in her early work *Hegel Contra Sociology* and the second in the work on which I have been drawing thus far, *The Broken Middle*. Whilst the first demonstrated the need for thinking law in a way which ceased to view it as external to society, the second by contrast focused on love as a relation in which we are caught prior to being able to 'control' it. The relation between the early thought of law and the later thought of love is one that remained to be set out further in her work and which Lloyd here takes on. Beginning from an engagement with jurisprudence Lloyd concludes with an investigation of *eros*. The movement from one to the other is part of a work that requires a sense of spirit coming to engage with its own fetters in a thought that will allow movement as well as enable a sense of the actual as rational. For Lloyd's thought to be one that we can become open to is for philosophy to again be something we see as requiring not merely work but a love that will not settle only on something personal but will free us from that which is only singular in order for the universality of Spirit to once more gather strength. Such a reawakening of the universal in the relation to the social bond would truly mark a *renewal* of philosophy.

Introduction

Disquietude is rare. The inertia of the ordinary sweeps us along, muting all but the most mundane worries. But in moments of tragedy, of deep decision, of disruption, of evil, in moments when we step out of the pull of the ordinary, we understand that something is amiss in the world. Everything does not hang together well. In those moments, when it is no longer possible to simply do what one does, it seems as if there is no authority. We have been thrown off our routine, out of our social world, and now its authority which once assured us that the thing one does is the thing to do looks hopelessly muddled. Norms conflict, violently competing to hold sway, revealing that their nature was arbitrary all along. It all looks so obvious: disquietude is not the truth buried beneath the ordinary world; it is the truth of the ordinary.

The simplest remedy is to be soothed by the enchanted ordinary. 'That's just what one does!' 'Don't ask for reasons, just do it!' Being so told often enough, curious children and intractable adolescents transform into well-adjusted adults. In a sufficiently thick community, even the most brutal convulsions of the world are merely variations on a continuous communal melody. Of course, such communities do not exist, and never have. There is always awareness of paths not taken, exclusions which necessarily accompany any order. Things are this way and not another. But the more one is swept up in the ordinary, the less such worries becomes manifest. The ordinary is seductive: it is enchanted, and we ourselves have a role in the magic. 'We are the People, history is our Story, this land is our World.' This enchantment provides normative force. *That* is how things are done by us in our world, a world replete with embellishments (angels and demons and taboos and other-worldly rewards) to remind us that this is how things are. But of course things were never entirely this way.

2 *Law and Transcendence*

Surrender to the enchanted ordinary only works when there is a monopoly on enchantment. When we become aware that there are many ordinaries, each with its own enchantments, the pull of our own ordinary loosens. Normative force quickly evaporates in the light of day. What we are supposed to do now seems to require justification; simply doing what one does seems like surrender. 'Why should we?' Reason must be given. The curiosity once confined to childhood, and the defiant questioning once confined to adolescence, pervade life. Mathematics and the sciences offer reasons for things happening as they happen, for doing what one does. Earlier times were childish, reason has matured us. But again, things were never entirely this way. Reason and calculation, duty and obligation easily become just another enchantment of the ordinary. Normative force holds sway not through gods and demons but through bosses and regulations, quantified commitments and the duties of citizenship, all possible to justify through regurgitated reasoning. The rhetoric of enchantment has changed, but its substance remains.

The enchantment of the ordinary matters little. People will always do what is done, and an enchanted rhetoric will always soothe. Disquietude can only be momentary; it will be smoothed over by the ordinary which was its origin. What is troublesome is not the enchantment of the ordinary but the enchantment of philosophy, the enchantment of critical reflection on the ordinary. What is troublesome is when rhetoric is confused with philosophy. When this occurs, philosophy becomes impotent: its words regurgitate rather than interrogate the enchanted ordinary. With but a handful of exceptions, this has been the state of philosophy since its autonomy was secured by Socrates' rigorous diremption of dialectic from sophistry.

Gillian Rose was never bewitched. She bound herself tight to the ordinary with the ligature of law. She energetically identified and criticized the enchantment of her contemporaries, and of much of the philosophical tradition. She saw how enchantment and disquietude are two sides of the same coin, and how the desire to possess this coin animates much so-called philosophy. It is only by understanding philosophy as jurisprudence that we can see the ordinary as it is, translucent. Law always gets it wrong; we proceed with faith but without hope that justice will be done.

One of Gillian Rose's insights was that philosophy, since Kant (and before Kant), has most often conducted its investigation by placing certain privileged concepts in a transcendental register. These concepts determine the conditions of possibility for the empirical world. The content of the transcendental register is immune from criticism;

nothing in the empirical world can affect it. But where does the content of the transcendental register come from? What is the source of its authority? Perhaps it seems self-evident, perhaps it seems god-given, or perhaps it seems the result of exhaustive reflection.

In fact, any content of the transcendental register is merely an elevated, sanctified aspect of the ordinary world. Any content of the transcendental register is rhetoric usurping the place of philosophy. It is the enchanted ordinary claiming to reflect on itself, with the results that one would expect from any sort of institution charged with internal investigation. The results are necessarily skewed, but often skewed subtly, offering the semblance of critique but offering none of the substance of critique. Philosophy, when employing a transcendental register, simply serves to further the enchantment of the ordinary, adding complexity to that enchantment, placing new gods in the pantheon, offering all the more intriguing myths.

Kant and neo-Kantians explicitly appealed to a transcendental register. As Gillian Rose shows in *Hegel Contra Sociology* and *The Dialectic of Nihilism*, the content of this register varies in different philosophers – as well as sociologists and legal theorists – but the strict separation of transcendental register from empirical world remains. The rhetoric of reason was used to confirm the authority of the transcendental register, dovetailing with the rhetoric of reason that enchanted modernity. This alliance of philosophy, sociology, legal theory, and conventional wisdom had devastating effects. Mass death and humiliation in colonialism, the World Wars, and genocide shook confidence in reason in the same way that reason had once shaken confidence in pre-modern enchantment.

Such events demonstrate the tragic consequences of positing a transcendental register; indeed, they demonstrate the hubris that is always involved in positing theoretical infrastructure that elevates elements of our ordinary world to the timeless realm of the gods. But philosophers, ever at the vanguard of changing enchantment, and never shy about taunting the gods, responded by replacing the contents of the transcendental register while keeping its structure intact. However, the rhetoric of twentieth-century philosophy has disclaimed the transcendental register with the same vehemence that the philosophy of modernity disclaimed commitment to pre-modern divinities.

On the one hand, ordinary language philosophy elevated a snapshot of the ordinary, words frozen in space and time, into the transcendental register. The critical practice of philosophy, in this tradition, became the practice of analyzing the meaning of sanctified words. Only in extreme

cases, and then only debatably, could the existence of a concept given by a word be questioned. We might disagree about what justice, or dispositions, or beauty, or love are, but they certainly are something which, with linguistic prestidigitation, we can know. The material that we have to start with in our analysis of any given word is the content of the transcendental register, namely, all of the other words of the language, curiously recorded in the holy book of 'ordinary usage.' Philosophy has not collapsed into rhetoric (as is sometime alleged), but philosophy has been thoroughly corrupted by rhetoric.

On the other hand, Nietzsche, Heidegger, and (in various and complicated ways) their French devotees reject ordinary language as the starting point for philosophy, but they still make use of the transcendental register. This is one of the great achievements of Gillian Rose's critical project: she demonstrates how the will to power (for Nietzsche), Being (for Heidegger), the virtual (for Deleuze), *différance* (for Derrida), and power (for Foucault) are all avatars of the same deity. All are concepts placed in the transcendental register where they are used to critique the ordinary world without themselves being subject to critique. These philosophers, like the ordinary language philosophers, ostensibly reject the transcendental register ('metaphysics'), yet they make use of it all the same.

Unlike pre-modern enchantment, and unlike rationality in modernity, the two paths of twentieth-century philosophy make much less explicit their normative claims. They do not, at least on the face of it, offer an answer to why we ought to do what we do. They do not seem to offer a new cultural enchantment that could replace the modern enchantment with reason. They talk around normative issues: the ordinary language philosopher by claiming only to be analyzing normative language, while the French enthusiasts of Nietzsche and Heidegger commend openness to difference and 'the other.' Instead of offering a robust defense of the ordinary, twentieth-century philosophy, perhaps because of the realization that such a defense is futile, remains silent. Or, rather, realizing that the world is amiss, that fully defending the ordinary is an impossible task, and one that dips the defender's hands in the blood shed in the violent ordinary, twentieth-century philosophy retreats to its own insular, solipsistic agenda. Disquietude was muted, paradoxically, by accepting, and then ignoring, its cause, focusing philosophical work on problems on which something could definitively be said (how a word is used, that a text never has closure).

Gillian Rose rejected all such palliatives. Yes, there is something amiss in the world. This realization – which is not unique to philosophers, but

which is indicated by the everywhere-present and everywhere-hidden experience of disquietude – is a realization of loss. What in childhood seemed like a world of endless possibilities, and in adulthood seemed like a comfortable world stabilized by the old gods of the heavens above or the new gods of human reason within, is irreparably rended. Following Freud, Rose argues that there are two ways of dealing with this loss: mourning and melancholy. Philosophy has suffered from melancholy, she charges: grieving never stops for the lost object, grief intensifies until the whole world is viewed in light of the lost object. Something is amiss in the world, and the monumental efforts of reason in modernity, and unreason in postmodernity, are responses to that loss. The world is fallen, and the melancholic soul can only be soothed by the intellectual quest for salvation. Derrida writes, ‘I mourn, therefore I am.’

In contrast, mourning does not take over existence; loss inflects existence. Mourning inflects the mourner’s world, but also allows the mourner to return to her ordinary world. Loss is significant, but inevitable and temporary. That the world is amiss should not provoke fixation – not fixation on the lost sense of security in the world and not fixation on replacements for that sense of security. Yet there remains a distinctive role for philosophy, a role the practice has often abandoned: to critically reflect on the ordinary, on what one is to do. The role of philosophy, when it does not allow itself to be subordinated to rhetoric, is neither to applaud what is done nor to ignore what is done, but to display the contours of what is done – more precisely, what it is possible to do – in a way that the enchantment of the ordinary will always obfuscate.

This task can be accomplished only when philosophy understands itself as the study of law, of individuated social norms. The only way for philosophy to refuse to be subordinated to rhetoric is for philosophy to understand itself as jurisprudence. This may seem like a peculiar claim because of the ordinary sense of law, which only concerns a small corner of the social world. But I argue that thinking about the world in terms of law offers a way to avoid appeals to the transcendental register without castrating the philosopher in the process. Normative language begs for enchantment. What one does seems to need a justification. We feel as if an authority is needed, some place where we can double check that what we are doing is actually what we are supposed to be doing, that can reassure us that our seemingly arbitrary practices are not arbitrary at all.

A law says: in *those* circumstances, *these* are the things to do. When a set of facts is presented to the court, the court makes a decision by

applying the law. Law brings with it a normative vocabulary. Following the law is right (and correct, and just), breaking the law is wrong (and incorrect, and unjust). To be able to talk about the social world in terms of law, to say that we do what we do because we are following a law, would be reassuring but not enchanting. It would help make sense of our normative vocabulary (better: our normative phenomenology, the feeling that some actions are correct and others incorrect) and it would give us a way of talking about disquietude. Laws can be arbitrary and unfair; indeed, they always are. But laws are also debatable and revisable. Decisions made by a court can be appealed. Courts can make systematic errors, getting laws wrong. In short, the jurisprudential idiom offers bountiful resources for critical reflection on the ordinary.

Have we not just shifted the terms of the debate? Now, instead of asking what authorizes our social practices, we instead have to ask what authorizes our laws. Are they god-given laws? Are laws the products of human reason? Are they entirely arbitrary, with no authority at all? Happily, as I discuss in Chapter 1, there is an extensive literature addressing just these issues and offering a quite palatable solution. H. L. A. Hart offers an account of laws as based in social practice. There are particular types of social practice that help us recognize some practices as laws, and other types of social practice that help adjudicate disputes on what a law is, and still other types of social practice that enforce laws. On Hart's account, which is the foundation for contemporary positive law theory in the Anglophone world, laws need no authorization from the transcendental register: they are individuated and authorized by the practices that make up the ordinary.

Is the jurisprudential idiom just a metaphorical language to help us better understand and reflect on social practice? I argue, counter-intuitively, just the opposite. The jurisprudential idiom is the solid floor; to speak of social practices is to speak metaphorically. The difference here is crucial, as it distinguishes my project (and Rose's) from pragmatism. For the pragmatist, theoretical languages are convenient, if sometimes misleading, metaphors for talking about social practice, about what one does. On my account, laws are as real as it gets. People try to do what they are supposed to do, but often they fail. Our starting point for critical reflection on the ordinary must be the authority governing successes and failures of social practice, that is, our starting point must be law.

The difference with pragmatism becomes clearer as we explore the jurisprudential idiom further (and I explore it much further in Chapters 5 and 6). What matters to a court are not the facts, but the facts

as represented in the courtroom. There are rules for the admissibility of evidence, and there are limits to how evidence can be presented. A ruling applies the law to representations of the facts, not to the facts themselves. The jurisprudential idiom I develop acknowledges that we never have direct access to the facts, that we are always working with representations, representations which never fit the grooves of the world. This creates a space for mistakes, and revisions, that is not available to the pragmatist. The pragmatist wants to acknowledge that social practices can change, and perhaps to encourage some sorts of changes, blithely ignoring that there is something fundamentally amiss in the world. In contrast, the jurisprudential idiom builds in the imperfection of the world, and takes a textured view of the world as the prerequisite for critique.

A few words are due about other sense of 'law' which might cause some queasiness for the reader. There is talk about scientific laws and laws of nature. I am suspicious of this usage because it is closely tied with the elevation of science into the transcendental register. The present results of science are part of the ordinary; to elevate them to the transcendental register is just as problematic as sanctifying any other element of the ordinary. What is appealing about science is the method it employs of extracting laws from practice, the method of scientific investigation. This method resonates with the process of philosophical inquiry when philosophy is understood as jurisprudence.

Much more worrisome is the sociological sense of 'law.' Sophisticated marketers can now pinpoint customers based on statistical analysis of vast aggregates of information, from their magazine subscriptions, car ownership, children's school, employer, and favorite breakfast cereal. Given a few pieces of data about a person, a wealth of other information can be discerned with a high probability of success. If the rationalism of modernity was harnessed to the natural sciences, might my jurisprudential idiom be harnessed to the social sciences, or might it even reflect the subtle contemporary cultural domination of the social sciences? Are the laws that I am interested in – in *those* circumstances, one ought to do *these* things – not just sociological facts under another name?

This suggestion misses its target not because the laws I propose reflect on underdetermine practice (sociological facts are merely statistical, they underdetermine reality as well), but because of the separation between facts and representations of facts that is built into the jurisprudential idiom. The circumstances named in laws are one level removed from 'reality' – they are representations produced in the courtroom for the purpose of adjudication. And these representations are necessarily

in the language of law, for there is nothing else. Just as law gets the world wrong, representations gets the world wrong. Sociology does not offer this built-in humility. Sociological laws are stated as facts, as if the language they use directly corresponds to things in the world.

Gillian Rose rejected the pretensions of sociology and gestured toward a jurisprudential idiom for philosophy, but she did not develop it. One of the things that she did do, in her last works, was to rethink in terms of law two concepts that normally are understood in terms of the transcendental register: faith and love. On Rose's account, these concepts do not involve the enchantment of the ordinary or an escape from the ordinary; they do not involve directly accessing the transcendental register (Chapter 1 sketches Rose's account). Rather, Rose offers accounts of faith and love in terms of the phenomenology of law. In leaps of faith, it is as if law is suspended momentarily, forcing a renewed commitment to engagement with the world, to a life of navigating law. In love, law is put in question and reconfigured as the practices of two individuals come in productive tension with each other. In Chapter 6, I extend Rose's unfinished project by sketching the outlines of a phenomenology of law, organized around eight key terms. Unlike the usual accounts of them, which appeal to the transcendental register, my analyses begin with law.

Many books say one thing very slowly. This book says one thing briskly and repeatedly. Chapter 1 introduces and develops the jurisprudential idiom through direct engagement with Rose's work and with the work of H. L. A. Hart. Chapters 2–4 extend Rose's critical project by examining three currents in contemporary thought, asking to what extent they make use of the transcendental register. They note resources useful for philosophy understood as jurisprudence, while noting the ways in which this idiom is rejected by the writers in question. Chapter 5 develops the jurisprudential idiom by addressing some issues of concern to analytic philosophy, both in its conventional and in its pragmatic hues. While what might seem like a cacophony of voices speaks in the first five chapters, in Chapter 6 these voices are distilled in a constructive phenomenology. Chapter 7, the final chapter, looks for philosophy in rhetoric, reading Georges Bataille's writings alongside Michel Houellebecq's and arguing that the fiction of the latter demythologizes the ordinary by holding fast to law.

Rose's critical energies were focused on an impressively diverse array of theorists, from French post-structuralists to nineteenth-century German natural law theorists to various Jewish philosophers. I contend that Rose's critical method, reading theorists in order to determine

what they locate in the transcendental register, is still useful, and indeed indispensable, today. I offer critical engagements with six contemporary theorists, all with philosophical interests although from quite different backgrounds. My taxonomy into Dualists, Traditionalists, and Quietists is based on the content of the transcendental register in each case. Each theorist makes an account of social norms central to his or her theory, but each makes claims that cannot be put in terms of social norms. I use the term 'social norms' instead of 'law' in these critical engagements, reserving law for norms that are rigorously individuated and 'go all the way down.'

In the category of Dualists I place Judith Butler and Jean-Yves Lacoste. I argue that Butler makes a subtle appeal to the transcendental register to give normative force to the practices she commends, practices that hold the potential to reconfigure gender and sexuality norms. Moreover, while both Butler and Rose are deeply indebted to Hegel, Butler occasionally appeals to a Hegelian concept of desire – placed in the transcendental register – to fuel subversive practices. Rose, in contrast, takes from Hegel, *inter alia*, an emphasis on the primacy of law and the tragic nature of a world of law. Lacoste, a French philosophical theologian, develops an understanding of liturgical practices as practices that set aside social norms. The world is bracketed and it becomes possible to encounter the Absolute. Although Lacoste's project would seem to crudely employ the transcendental register, I show how he can be read as offering a subtle view of Gestalt switching away from the world of social norms without leaving the world of social practice. The bracketing technique that he develops can, I argue, be part of the repertoire of techniques addressed by a philosophy of law.

Traditionalists make an even subtler use of the transcendental register Dualists. Traditionalists hold that social norms make up all the world, but they make a further claim about social norms – a further claim that can only be located in the transcendental register. Jeffrey Stout is an example of a pluralist Traditionalist: he holds that there are many traditions, each with distinct sets of social norms. John Milbank is a monist Traditionalist: he holds that there is only one tradition of which we are all a part (the Christian tradition). On Milbank's Christian view, all social norms should be in harmony with each other, but the origin of the normative force behind this 'should' can only be located in the transcendental register. Stout's pluralist view encounters difficulties accounting for the possibility of translation between multiple autonomous traditions. Also, Stout argues that we have an obligation to protect and defend the tradition

in which we find ourselves, but, again, the normative force behind this claim can only be located in the transcendental register.

Most vexing of the groups of contemporary theorists I discuss are the Quietists. Philosophers in this category seem to be just as committed to rooting out appeals to a transcendental register as Rose and I am. But the Quietist takes this critical component of philosophy's task – rooting out appeals to the transcendental register – to be philosophy's entire task. The Quietist is left impotent, bereft of resources to critically reflect on the enchanted ordinary. I examine the work of John McDowell and some Quietist moments in the work of Jean-Luc Marion. I argue that Marion avoids the transcendental moves made by Heidegger and Husserl, but he leaves himself without resources to individuate norms. McDowell, on the other hand, allows for individuated concepts and intuitions but does not provide a robust account of how they are integrated into the social world. Typically, both Quietists are so afraid of the transcendental register that they fail to make claims that could be falsified – and so their work fails to gain traction, effectively elevating the world as a whole to the transcendental register.

The theorists whose work I discuss in detail significantly influenced my constructive work in Chapters 5 and 6, as well as my general understanding of philosophy as jurisprudence. The vigor of my critiques should simply be indicative of the promise that I feel the theorists hold for the project I am advancing. I have found the work of many others highly instructive as well, and the choice of those discussed in detail here was made primarily for the sake of the architectonics of the argument. Additionally, conversations with a number of individuals, sometimes about earlier versions of material from this book, have been very valuable. These include Daniel Boyarin, Marianne Constable, Andrea Sun-Mee Jones, Jean-Yves Lacoste, Jean-Luc Marion, Masumi Matsumoto, Paul Mendes-Flohr, Jun Gyu Min, Elliot Ratzman, Julia Salzman, Henry Staten, and Jeffrey Stout.

This book is not about Gillian Rose, it is about a philosophical project aligned with her thought (Andrew Shanks' *After Innocence*, an introduction to Rose's thought from a Christian perspective, has recently been published). However, a brief biographical note is in order. Solitary and bookish as a child, Rose was the eldest daughter of middle-class English Jews (the literary scholar Jacqueline Rose is her sister). Before going to Oxford to study philosophy as an undergraduate, Rose enjoyed reading philosophy in the broadest sense. But she found the atmosphere at Oxford, where she attended an all-female college (St. Hilda's) and was assigned J. L. Austin's wife as a tutor, sterile and inhibited by the

hegemony of linguistic analysis. After taking her undergraduate degree, Rose traveled to New York for what she thought would be a brief holiday. It turned into a year of personal and intellectual exploration. Her interest in philosophy was renewed as she taught herself German by reading Adorno in the original. She continued her studies in Germany and England, completing a dissertation on the Frankfurt School advised by Steven Lukes and Leszek Kolakowski. Her first books were critical studies of Adorno and Hegel, with a particular emphasis on their relevance to sociology. In *Dialectic of Nihilism* (1984), Rose aligns herself with Hegel against Nietzsche's French enthusiasts. Her last writings, including *The Broken Middle* (1992) and the essays collected in *Judaism and Modernity* (1993) and *Mourning Becomes the Law* (1996), brought Rose's critique, now aligned with both Hegel and Kierkegaard, to bear against a dazzling variety of writers, from Martin Buber to Jacques Lacan. Rose died of cancer in 1995 at the age of 48. She wrote a vivid account of her illness that had broad popular appeal. This memoir, *Love's Work* (1995), and *Paradiso* (1999), a posthumously published and uncompleted sequel, are not only autobiographical but also penetrating philosophical meditations on love, loss, and faith.

Rose's direct engagement with religious questions in her philosophical writing is striking, particularly since she wrote well before the present spate of philosophical interest in such questions. Although born Jewish, for the first decades of her life Rose had little substantive interest in Judaism. In the last decade of her life, she rediscovered Jewish thought and culture, studying Hebrew, reading Jewish religious thought, and participating in a Holocaust commission. In her later years, Rose was equivocal about her religious identity, calling herself 'too Christian to be Jewish and too Jewish to be Christian,' a phrase reflecting the equivocation she commended in her philosophy (on her deathbed Rose converted to Christianity, puzzling many of her friends and colleagues). Perhaps the tension in Rose's religious commitments worked itself out in her philosophical endeavors, as she at once praised law and praised the seemingly Christian virtues of faith and love. Indeed, perhaps Rose's work as a whole can be understood as an attempt to escape from the supersessionist logic that opposes Law and Grace, fallen world and redemptive, justifying force. Each time a philosopher or theorist makes use of the transcendental register, supersessionist logic is reinforced – and this logic has deadly consequences.

1

Gillian Rose, Philosopher of Law

We should not historicize before we've even tasted.

Gillian Rose (Jay 1997, p.45)

Of all subjects none is more worthy of study than the authority of Laws, which happily disposes things divine and human, and puts an end to iniquity.

Justinian (d'Entrèves 1970, p.24)

Shortly before her death, Gillian Rose was asked to name a few philosophers whose work she admired, whose work evaded the neo-Kantian problematic which she found in the work of so many philosophers. 'I don't think there are any. I think that's what is missing from philosophy at the moment and what I'm trying to restore with my work' (Rose 2008).¹ Over the last several years the philosophical landscape has changed considerably: French post-structuralism, if there ever was such a thing, is beginning to sound *passé* and new philosophical currents are taking hold: a renewed interest in theology, in ontology, in technology. Given this shifting landscape, what is the status of Rose's project, both critical and constructive? It is the contention of this chapter, and this book, that Rose's work still offers invaluable resources for recognizing avatars of an invidious neo-Kantianism, and for beginning to think beyond the neo-Kantian problematic.

Much if not all of the recent literature on Rose takes her constructive philosophical project to involve a focus on the 'broken middle' (e.g., Williams 1995). Such an understanding of Rose's work sees a shift from expository and critical readings of other figures in her early works to a constructive focus on the difficult and risky yet necessary work of 'the middle' in her later works. In contrast, this chapter will examine all

of Rose's work together, reading her early critical work along with her discussions of 'the middle' and her late autobiographical writings. This method will allow us to focus on the underlying concerns animating Rose's work, and to reconstruct the thrust of her philosophical project around those concerns.

This will necessarily involve detailed considerations of Rose's critiques of others. Consider Rose's comment: 'All the important thinkers of the last two hundred years start out by debunking, by skepticism. What is underlying that is a positive vision which they want to reinsinuate. And they do it cleverly, through the skepticism' (Rose 2008). This well describes Rose's own philosophical work. In most of the hundreds of pages of her extremely dense prose, she criticized the work of others. By noting the direction of that criticism, the animating concerns, and the few attempts where Rose is explicit about what it is that she wants to reinsinuate into the philosophical tradition, we can begin to work through her suffocating cleverness.

I will start with an examination of the core of Rose's philosophical project by focusing on her reading of Hegel. Then I will follow Rose in developing a jurisprudential idiom in which to understand a philosophical question – in this case, the question of the content of Rose's own theoretical endeavor. Finally, Rose's meditations on the crucial topics of love and faith will be briefly examined in light of this jurisprudential idiom. While love and faith are topics often thought of as antithetical to law, I sketch how Rose's accounts of these virtues takes them rather as inflections of law.

A note of caution: Rose's readings of philosophers are, to put it generously, idiosyncratic. In the discussion that follows, it is Rose's philosophy which is of interest, not the philosophies of those she reads. As such, I will make no attempt to note each 'misreading.' Rose's understandings of the philosophers she reads, and the terminology which she uses, will be adopted whole-heartedly. This may be irksome to, for example, the Kant or Hegel specialist who witnesses his cherished subjects seemingly disfigured, but it is necessary if we want to be able to understand Rose's own contribution – and to consider what her own unfinished project might hold in store.

The only Hegelian

Rose reads Hegel in opposition to what she takes to be the widely held misunderstanding of his work. The crux of this misunderstanding – committed most famously by Georg Lukács – involves separating Hegel's

'radical method' from his 'conservative system.' Corollary to this error: the conservative system is thought to announce the 'totalizing' culmination of history and of reason.

In contrast, Rose insists on maintaining the connection between Hegel's method and his system. She does this by focusing on the Hegelian notion of 'speculative identity,' a notion central to her reading of Hegel and to her own theoretical project more broadly. For Hegel, speculative reasoning (reasoning by means of speculative identity) is the highest form of reasoning (Rose 1993, p.61). It is superior to the 'dialectical' reasoning – reasoning which constantly negates itself – privileged by Adorno, Derrida, and others. Indeed, Rose begins her book on Hegel by describing her work as 'an attempt to retrieve Hegelian speculative experience [experience as understood through speculative reasoning] for social theory' (Rose 1981, p.1).

What is Rose's account of speculative identity? A speculative identity of the form A is B simultaneously and equally affirms and rejects the identity that it states. It says, at the same moment, 'A is B' and 'A is not B.' Rather than making the relation in question vacuous, a speculative identity 'must be understood as a result to be achieved' (Rose 1981, p.49). This process begins with a subject and a predicate as understood only as empty names, pointing to nothing. Gradually meaning is produced through 'a series of contradictory experiences' (Rose 1981, p.49). Through these experiences, the social and historical background shapes the identity, pushing and pulling the relation between the two concepts in question. This process of producing meaning through contradiction and tension is what Rose calls the difficult work of the middle.

Rose applies this understanding of speculative identity to Hegel's famous declaration in the preface of the *Philosophy of Right*: 'What is rational is actual and what is actual is rational.' According to Rose, the conventional misreading of this statement as a standard identity rather than as a speculative identity takes Hegel to be identifying natural law (the law of reason and rationality, whether it comes from God or from man) with positive law (the law of the actual world). Such a reading would justify the existing order, the *status quo*. However, read as a speculative identity, the statement 'summarizes Hegel's critique of natural law' (Rose 1981, p.81). This is because both identity and non-identity are affirmed: on the one hand, identity is affirmed because it is the prevailing illusion that what is rational is actual; on the other hand, it is denied because it is an *illusion* and there remains a strong tension between the rational and the actual (a tension exemplified, for example, when two (actual) laws conflict with each other). But the denial is not

decisive: people thinking it is so makes it so in a certain sense – and there is no available alternative.

This simultaneous affirmation and denial necessitates *work*. It necessitates the examination of the social and historical conditions which give rise to the speculative identity – which is Hegel's project in the *Philosophy of Right* and elsewhere. This work of speculative identity involves taking 'actual' and 'rational' as empty names. As the work progresses, their content is filled in as the tensions between the two become evident. In Hegel's narrative, these tensions become particularly evident with the transition from Greece to Rome because of the accompanying introduction of abstract ('rational' but seemingly less 'actual') legal concepts such as 'person' (who has private property, etc.). Law comes into tension with the organic whole of social institutions with which it was once (imagined to be) united. As the course of history advances and social conditions change, the contestation between 'actual' and 'rational' continues and their meanings are filled out – through the narrative of that contest.

Rose finds support for this understanding of speculative identity in Hegel's aesthetics. For Hegel, following the Greeks, "Tragedy occurs not because one power is natural and uncontrollable but because the powers are active and differentiated" (Rose 1981, p.134). This summarizes Hegel's view of the tragedy of Antigone. Her story is not a conflict between an individual and the state; rather, it is a conflict between the law of the family and the law of the society. It is part of the narrative called forth by the speculative identity of the rational and the actual.

As Rose uses this understanding of tragedy to show, Hegel's philosophy is not about reconciliation into the harmony of an Absolute which abolishes difference. Rather, it is about tragic conflict between ever-persisting and never-resolved contradictions. The central figure of his philosophy is not one 'natural and uncontrollable' entity. Rather, it is a multiplicity of competing and evolving tensions. The *Phenomenology of Spirit* is not a success story about the achievement of absolute knowledge, but rather a 'gamble' (Rose 1981, p.159).² The 'totality' which does indeed characterize Hegel's system 'is a path which must be continually traversed... which cannot be grasped in one moment or in one statement for it must be experienced.' It is 'transitory but not reduced and relative' (Rose 1981, p.182; 1993, p.237).

Although Rose reads Hegel as emphasizing a continuing narrative of conflict rather than a harmonious totality, she does not deny the crucial role that the Absolute plays in Hegel's thought – and in her own. Hegel's willingness to think the Absolute is the crucial difference between Hegel

and Kant, according to Rose. To think the Absolute does not mean to think about God. Quite the opposite, it means grappling with the Absolute rather than either shrinking from it or trying to conquer it. For Kant, the Absolute ('infinite,' 'unconditioned,' etc.) is unknowable, is separated from the world by an unbridgeable abyss: the gap between the phenomenal and the noumenal realms. Hegel succeeds where Kant failed because, according to Rose, we cannot know ourselves (Kantian subjects are the 'transcendental unity of apperception') and we cannot act ('as moral agents capable of freedom') unless we can think the Absolute. Moreover, it is the possibility of thinking the Absolute which gives Hegel's philosophy its relevance to the social. It is only by thinking the unity of the actual and the rational, metaphysics and ethics, and not leaving an inaccessible realm of things-in-themselves, that allows us to speak about the actual existing world in which we live and to understand the historical reasons for the illusions to which we are always already subject.

On Rose's account, the distinction that Kant makes between the knowable realm of experience and the unknowable, noumenal realm (of things-in-themselves and of the moral law) diseases the whole subsequent history of philosophy and social thought – with the sole exception of Hegel (and herself). The crucial Kantian distinction, the distinction which forms the basis for the separation of noumenal from phenomenal worlds, is that between the question of fact (*quaestio quid facti*) and the question of right, of law (*quaestio quid iuris*). The former question has to do with the acquisition of a concept through experience. The latter question concerns 'objective validity,' that is, the 'legal title' (Rose's phrase) of a concept authorized through an *a priori* relationship with objects. In other words, when we look out into the world and see things (question of fact), how do we know that they are really there and not an illusion (question of right)?

For Kant, the question of fact was answered by means of his transcendental logic: starting with experience and finding evidence within experience so that experience can justify itself. But Kant's readers quickly shifted from answering the question of right with a transcendental logic to answering it with a 'general logic.' This amounted to a shift from a circular inquiry, starting with experience and then deducing from it the conditions of possibility of experience which would then be applied back to experience, to a linear inquiry, starting with a purely abstract proposition which then determines what can and should exist. In a general logic, the conditions of possibility of experience are not a result of deduction from experience. The result of this shift to a general instead

of a transcendental logic was 'the debasement of spatio-temporal reality' and 'excluded any enquiry into empirical reality' (Rose 1981, p.9).

The history of philosophy and social thought since Kant (with the exception of Hegel and Rose) is the history of the reworking of 'general logics' (Rose sometimes calls such positions neo-Kantian, though the referent is intended to be more conceptual than historical). Although the general logics are reworked, the same structural division between questions of right, answered by the general logic, and questions of fact remains. Rose argues that this is true of the sociological classics of Durkheim and Weber. For Durkheim, the general logic was derived from society understood as a *sui generis* reality. For Weber, the general logic started with cultural values. In both cases, there is nothing to justify these general logics – their validity is 'a matter of faith' (Rose 1981, p.18). Yet the general logic retains the decisive position in these systems because it answers the question of right, which is to say that it bestows a right on objects of experience. Objects of experience are illegitimate if they do not conform to the general logic. The general logic determines their conditions of possibility. The answer to the question of right separates what is really in the world from what is illusion. But the picture of the world that these 'neo-Kantian' projects produce is pre-determined by the assumed and unjustified general logic with which they begin: they see what they want to see.

It is only Hegel, when read in light of Rose's understanding of speculative identity, who evades this dilemma. On the traditional reading of Hegel, the neo-Kantian problematic is simply reproduced. The 'radical method' addresses the question of right while the 'conservative system' addresses the question of fact. But on Rose's reading, Hegel answers the question of right through the speculative identity of the rational and the actual. The rational answers the question of right and the actual answers the question of fact, but each is constantly in tension with the other. An answer to the question of right can always be overturned by experience (the actual: social and historical conditions) while an answer to the question of fact can lose its legitimacy and thus its actuality through reason.

Ontological thought, such as that of Heidegger, attempts to evade the Kantian questions by taking yet another step back. Heidegger argues that the Kantian questions of fact and right themselves have the precondition of *Dasein* (or 'life' or 'history' in the cases of Dilthey and Gadamer, respectively). But the result is simply to repeat the Kantian question of right in regress: the preconditions of the preconditions are still preconditions. It is ultimately *Dasein* (or 'life' or 'history') which

is given the authority to bestow right on experience. Rose argues that ontological preconditions come from a general logic, one that does not take experience as its starting point. The result is that ontological philosophers are just as dogmatic, just as much grounded in 'faith' (of the undesirable sort), as the neo-Kantian philosophers beyond whom they attempt to move. The ontological move has the effect, like that of all avatars neo-Kantianism, of 'suppressing the social and historical preconditions of its own possibility' (Rose 1981, p.32).

Rose levels another charge against ontology, this time specifically aimed at Heidegger. Heidegger gives central importance to *das Ereignis*, the 'Event of Being.' This Event determines how a thing can appear, but instead of a true court of judgment in which to adjudicate such matters, Heidegger invokes and evokes *das Ding*, the ancient Germanic tribal court. But 'In this court there is no exclusive judge or exclusive witness – no subject and object . . . both judges and people judge and are judged' (Rose 1984, p.67). This court, occurring in a privileged space and time – a sacred circle – with the presence of the fourfold (earth, sky, mortals, divinities) and the *daimons*, is a celebration of 'magical nihilism,' a divine locale beyond actual law. Rose identifies such an 'Event' with a noumenal realm and with a general logic with which the question of right is dogmatically answered.

Heidegger's Nietzsche, in contrast to Heidegger himself, is not presented as anti-metaphysical on Rose's reading. Rather, this Nietzsche simply condemns old metaphysics and implores the creation of new metaphysics, of Revelation. The result of the post-structuralist combination of Nietzsche and Heidegger is 'the "ontologizing" of Violence as Revelation' (Rose 1993, p.65). Sweeping away old metaphysics is the violent move while the introduction of new law is Revelation: the law tables that Zarathustra brings with him are invoked by Deleuze, Derrida, and Foucault. Put even more directly, referring to every living being Nietzsche writes, 'To its own law it must become judge, avenger and sacrifice' – a challenge taken up by the post-structuralists, according to Rose (Rose 1984, p.87).³ But this is exactly the form of a general logic: to be able to write one's own law, to be able to determine the preconditions of experience from some source other than experience itself, a source which is thus necessarily arbitrary and falsely justified.

Although various post-structuralist philosophers present different forms of Revelation, each is ultimately 'neo-Kantian,' according to Rose. For Derrida, ontology is transformed into a focus on 'originary contamination.' Following Heidegger, Derrida locates metaphysics in language. He then proceeds on a project of decontamination, attempting to

legitimate playfulness with language, releasing its '*différence*.' Derrida has moved beyond the notion of authenticity underlying Heidegger's ontology, but the structure remains the same. This is because, on Rose's reading, Derrida faces a two-horned dilemma: either *différance* is unknowable and abstract, in which case it reproduces Kant's noumenal realm; or *différance* is knowable, but the only sort of knowledge that Derrida accepts involves the 'presence' which he discredits. Rose attributes to Derrida the former position and thus seats him at the table of the neo-Kantians (Rose 1984, p.140).

Deleuze's revelation takes a different form. He reshapes Bergson's concept of the *durée*, intensive time. But Bergson's *durée* is, according to Rose, simply a temporalized version of Kant's noumenal realm, and it remains ultimately unknowable. Rose demonstrates how for Deleuze this intensive time transforms into *spatium intensif* (for Derrida it transforms into the *grapheme*). In *Difference and Repetition*, Deleuze opposes a quantifiable, exchangeable order of equivalence with a qualitative order of resemblances, of non-exchangeable singularity. Elsewhere, Deleuze associates the realm governed by the eternal recurrence as a realm beyond the law. In both cases, Rose identifies yet another avatar of the neo-Kantian split between the phenomenal and noumenal, between an answer to the question of fact and an answer to the question of law.

An immodest jurisprudence

Rose adopts a jurisprudential idiom to critique post-structuralist philosophy. This idiom has its basis in Kant's distinction between questions of fact and questions of right (*iuris*: of law). Because, on Rose's reading, the history of philosophy since Kant is a history of attempts to answer this latter question, this history can be read as a history of jurisprudence. The predominant strand in the history of philosophy, from Kant through the post-structuralists, is one that answers this question with a natural law jurisprudence – regardless of its particular claims. According to one understanding, natural law refers to the law of God, ascertainable through reasoning or revelation. If a principle of divine law is ascertained, human laws must be amended so as to be brought into greater conformity with it.

Rose's critical project can be summarized as a critique of natural law jurisprudence. If this is the case, it might suggest that Rose endorses the supposed alternative: a positive law jurisprudence. Rose is explicitly critical of some forms of positive law jurisprudence. Nevertheless, the sophisticated version of positive law jurisprudence developed with

the tools of analytic philosophy over the past half-century provides an instructive point of entry to try to understand the architectonics of Rose's thought. It provides both a vision and a theoretical arsenal for overcoming the crippling neo-Kantian deformity afflicting philosophy and social theory.

Theories of positive law have a long and varied history. Such theories enjoyed a vogue in the nineteenth century as they became a central part of the utilitarian political and philosophical program. After the appeal of utilitarianism faded, theories of positive law also lost their preeminence to natural law theories. But H. L. A. Hart (1994) revived the positive law position through his rigorous philosophical analysis which stripped positive law of its unnecessary utilitarian trappings and put it on firmer philosophical footing. Positive law jurisprudence has enjoyed a revival over the past few decades in large part due to Hart's work. In this section, in order to provide a framework in which to situate Rose's thought, I will turn first to Hart's discussion of social norms and then to Hart's discussion of the relationship between law and morality.

One of the unappealing aspects of positive law theories as developed in the nineteenth century was their grounding in the direct command of the sovereign – and the implicit threat backing up that command. The sovereign is imagined to, in effect, hold a gun to the heads of citizens and says: 'follow this law.' Hart presents powerful criticisms of this position. There is a whole ensemble of civil and administrative law which does not make sense to associate with obedience to the direct command – backed up by a threat – of the sovereign. While it might make sense to say that you do not kill because of the sovereign's threat embodied in the law, it is nonsensical to say that this motivates the requirement that there be three witnesses to a will. Secondly, while we may *be obliged* to give up our money when threatened by an armed robber, we do not *have an obligation*. Law, Hart notes, is about *obligations*, not about *being obliged*. Thirdly, a man with a gun to our heads is not subject to the commands he gives whereas the sovereign in many modern states is not only the giver of law but also subject to the law. Hart considers variations on the sovereign command approach, such as various means of diluting the directness of commands, but the results are conclusively negative: the command approach does not work.

After rejecting the nineteenth-century formulation of the basis of positive law in the first four chapters of Hart's classic, *The Concept of Law*, there follows a section entitled 'A Fresh Start.' This new approach begins by developing a notion of social practice that will serve as

the foundation for Hart's positive law theory. Hart identifies a spectrum of social practices: on the one extreme, habitual behaviors which simply happen to converge; on the other extreme, behaviors required by explicit, formally codified rules. In between are numerous gradients of the codification of custom. To elaborate on one of Hart's examples, in many locales it is an unwritten custom to take your hat off as you enter a church. At the lowest level of codification, this just happens to be so and there is no enforcement. In the middle, it is a recognized custom: if you do not take off your hat, you are reprimanded (dirty looks, harsh words...). On the other extreme, it is written in the town charter that all citizens of the town must remove their hats upon entering a church or else face a penalty dictated by the town council.

Midway through this spectrum, a normative vocabulary begins to be applied. It would be odd to say that, because most people go to the movies once a week, you *ought* to go to the movies weekly or you *have an obligation* to go to the movies weekly. At the opposite extreme of the spectrum, it is clearly acceptable to say that you *ought not* to murder and you *have an obligation* to pay your taxes. In the middle, some but not all of a normative vocabulary sounds acceptable: you really *ought to* take your hat off as you go into church, although we might be resistant to say that you *have an obligation* to do so. An 'obligation' comes about, according to Hart, when the social pressure for conformity passes a certain threshold.

Hart labels practices that are at least as far along the spectrum as to warrant the use of some normative vocabulary 'rules' – 'the key to the science of jurisprudence' (Hart 1994, p.81, borrowing the phrase from John Austin). Such 'primary' rules, as Hart calls them, come about (e.g., in 'primitive' societies) through a natural process of increasing social pressure for conformity of certain behaviors. The enforcement of these rules takes place by 'general diffused hostile or critical reaction which may [or may not] stop short of physical sanction' (Hart 1994, p.86).

Rules are independent of any individual. A hardened thief in a primitive society may not *feel* obliged to follow the rule that one does not steal, but the thief still *has an obligation* not to steal. Hart's objection to psychologizing rules suggests that they have a certain 'objective' existence.⁴

According to Hart, a society with only primary rules must be small and tight-knit. If there are only primary rules – convergences of behavior raised in status by pressure for social conformity – several problems arise as a society grows. First, there is no procedure for settling disputes

over whether a behavior actually does conform to the rule. Second, the only possibility for changes in rules is the slow process of 'natural' social evolution which makes it difficult to meet the rapidly changing needs of a large society. Third, there is an inherent inefficiency in a society with only primary rules. Much time must be spent in disputes about the potential violation of rules and in catching and punishing those who are deemed to have broken rules.

The solution to these problems – and this is the cornerstone of Hart's analysis of law – is that *secondary* rules are introduced, rules about rules. These are necessarily of three types, to address the three deficiencies of primary rules just identified. There must be rules of recognition to identify primary rules (e.g., publication of authoritative laws); there must be rules to change primary rules (e.g., a parliament with fixed procedures to modify the authoritative laws); and there must be rules of adjudication (e.g., the establishment of courts). The concept of law, according to Hart, is the notion of formalized primary and secondary rules; the analysis of law, the analysis of those rules.

The versions of positive law theory which Rose considered and criticized followed the sovereign command view and took law to be the direct imposition of the sovereign (hence 'posited') – 'legitimizing domination as authority' (Rose 1996, p.4). She was dismissive of such views because they were simply the polar opposite of the natural law view: to use Rose's Hegelian terminology, instead of privileging the rational at the expense of the actual they privileged the actual at the expense of the rational.

But what about Hart's reformulation of the positive law tradition in terms of social norms and secondary rules? Might this not provide a mechanism by which to get at those illusive 'social forms' which Rose implores the philosopher and theorist to consider?

At first this seems doubtful. The distinguishing mark of positive law – Hart's version as well as that discussed by his nineteenth-century predecessors – is the separation of law from morals, what the law *is* from what the law *ought* to be. Does this not reinforce the diremption that Rose identified between the question of fact and the question of right? If morals are identified with right and (social) facts about law with fact, the positive law theorist certainly affirms a split between the two. But it is not dualisms to which Rose is opposed. Rather, her opposition is to 'frozen' dualisms; her focus is on the difficult middle which emerges in the contestation between two apparent opposites. By closely reading what Hart has to say on the relationship between law and morals, it will

become evident that his position is much closer to Rose's than it initially appears.

Hart (1983) offers a vigorous defense of the separation of law and morals: specifically, a defense of the claim that there is no *necessary* connection between law and morals. He confronts a number of objections raised against separation. Let us consider his defenses against two of the most potent.

The first objection notes that facts about law underdetermine a judge's decision. It would be unseemly if not impossible for judges to act like automatons, simply matching facts with laws and issuing decisions. In response, Hart introduces a distinction between the core and the penumbra of law. In cases of the core, the formalist (automaton) view is largely correct: the facts of the case and the meaning of the law are quite clear, and the decision of the court is easily predictable. But in cases of the penumbra, judges are in the position of *making*, not simply *finding* law. In making law, it seems plausible to argue that a judge must rely on some at least quasi-moral reason (sentencing a man to a longer term 'for the good of society').

Hart urges caution in our analysis of the normative vocabulary here employed. Just because the word 'ought' is used, the statement need not be moral. "The word "ought" merely reflects the presence of some standard of criticism; one of these standards is a moral standard, but not all standards are moral... the baffled poisoner may say, "I ought to have given her a second dose"' (Hart 1983, p.69). Similarly, an intelligent, non-mechanical judgment of the court, a judgment which employs *phronesis*, practical wisdom, might be what the court 'ought' to do, but not necessarily in the moral sense. Even in the seemingly clear-cut case of sentencing a criminal (a longer prison term 'for the good of society'), the moral reason evaporates if the crime is criticism of the regime and the setting is a tyranny. Thus, the connection between law and morals is not necessary.

The second objection Hart addresses is expressed in the 'post-Holocaust' jurisprudence of Gustav Radbruch. In light of the Nazi use of law as a cover for its morally reprehensible actions, it would be dangerous to separate following law from consideration of its moral implications, according to Radbruch. Hart notes that, while Austin and Bentham held very strong moral convictions regarding issues of the day, they still insisted that courts of justice enforce the laws they deemed immoral. Austin and Bentham urged that in some cases there is a moral obligation for citizens (not courts) to resist unjust laws. Vindication does

not arrive in earthly courts, on their view. It arrives only in the eyes of God, broadly understood.

Hart diagnoses two more problems with Radburch's view: (a) it disguises a moral dilemma as a legal one; and (b) it encourages the view that all of our moral principles can be unified and none will ever need to be compromised. Indeed, Hart's conclusion sounds as if it could have been written by Rose: Radburch's natural law position serves 'only to conceal the facts, that here if anywhere we live among uncertainties between which we have to choose, and that the existing law imposes only limits on our choices and not the choice itself' (Hart 1983, p.87).

What is it in Hart's view that creates the resonance with Rose's emphasis on the difficulty of navigating the 'middle'? Hart argues that there are two distinct realms, law and morals, but through historical and social processes (the utilitarians' liberal politics; Germans' experience with the Nazi regime) they become intertwined while retaining their autonomy. He characterizes this relationship as a struggle involving choices and uncertainties. Further, he criticizes the attempt, which he attributes to the natural lawyer, to disguise the difficult choices that need to be made. Should I follow the law and act immorally or should I disobey the law and act morally? The natural lawyer's easy answer (the law is unjust so it is not real law) elides the dilemma but does not make it go away. All of this could just have easily been said by Rose.

So far it seems as though Hart's view of the separation of law and morals is consistent with Rose's understanding of Hegelian speculative identity. But it still appears as though Hart's concept of law fails to meet Rose's formulation of the Kantian question of right. On Hart's view, the realms of fact and of right retain too much autonomy. It is only in exceptional cases that a point of contact arises between the two realms. In those cases it is ultimately a binary choice which must be made: follow the law or follow moral convictions. Neither realm is directly altered by its struggle with the other.

Has the attempt to retrieve positive law as a resource for Rose's constructive project failed? If we accept Hart's project as a conventional jurisprudence, confined to the (metonymic) courtroom, then yes. But the attempt succeeds if we turn Hart's project into an *immodest* jurisprudence. Such a jurisprudence does not confine itself to the courtroom, to the subject matter traditionally associated with a philosophy of law. And why should we confine Hart's account to the courtroom? Its development, rooted in social practice and norms, is perfectly generalizable. Others, often with Wittgensteinian inspiration, have offered similar accounts of social practice as general accounts of living in

the world (e.g., Lovibond 1983). Yet the specificity of law, in its jurisprudential sense, does add something to an understanding of Rose's work – not only a tradition of disciplinary scholarship (jurisprudence) but also a very practical world of courts and lawyers and judges to serve as data for analysis.

How does the immodest version of positive law jurisprudence succeed in addressing the question of right when the modest version fails? In the immodest version, the question of right is no longer given over to the realm of morals because there is no realm of morals, there is only the realm of (broadly understood) law. A realm of morals can exist if the social practices which happen in the courtroom are rigidly separated from the social practices in the rest of the world. If we are interested in the whole spectrum of practices, not just those at the uppermost echelon of formalization (i.e., those primary rules identified by a secondary rule of recognition for law in the strict sense), the space for a realm of morals evaporates. It is social norms all the way down, so to speak.

Yet the question of right does not dissolve with the expansion of the realm of law. Rather, the manner in which the question is addressed is transformed. To claim that a law is legitimate is to claim that it has a right. But is this not tautologous: a law is a law? This was Rose's original objection to positive law jurisprudence. But this is exactly the tautology that Hart has developed his theoretical apparatus to analyze and which subsequent generations of analytic jurisprudes have spent endless volumes debating. Following Hart: if we go into a foreign culture and see a convergence of behavior, is it a norm (a law in the broad sense of an immodest jurisprudence)? If the vast majority of people go to the cinema every Saturday, is it a norm, a law? Although formalized secondary rules are useful for an immodest jurisprudence, the whole spectrum of social practices and normative language is at issue. In short, the question of right becomes: how do we identify and individuate norms, laws?

The payoff from the jurisprudential idiom comes quickly. Although the task of identifying and individuating social practices seems daunting, the task of identifying laws – even with a common law system where there are no statute books – seems much less so. Anyone who wishes to know the law must evaluate the social and historical situation – that is, judgments of similar cases and the contemporary social and political environment in which they would be evaluated by the courts as precedent.

Whereas the natural lawyer's game is rigged such that she will always end up justifying herself, seeing what she wants to see, the positive

lawyer's game – on the immodest view – is rigged in exactly the opposite way. There is a direct relationship between experience and justification: nothing will be justified, given a right to be, if it is not somehow experienced. No law exists if there is no precedent to back it up. But not everything that is experienced will be justified. Not every case that has been decided forms a new law. Extracting law from precedent is the difficult work of the judge – and the difficult work of the middle (individuating laws is much more complex than identifying them).

The litigation and judgment that this law – these laws – involve is where the difficulty of the middle lies. Law does not have a 'quieting' effect (as Rosenzweig suggests) (Rose 1993, p.129). The courtroom is a noisy place, and lawyers are rambunctious people. Hart recognized the conflicting pulls of moral obligation and legal obligation. In the case of an immodest jurisprudence, all of these conflicts come into play all of the time because the courtroom is not set off from the tensions of the rest of the world. It is never exactly clear which law is to be applied: lawyers must advocate for the law which advances their client's interest, and point to the strand of precedent which constitutes it.

Let us examine some moments in Rose's text where she seems to endorse such a view of immodest jurisprudence. Rose (1993) argues that the problem with the Jewish understanding of Halacha (law) is that it is confined to the Jewish community. Asked to address the question of whether there is universal ethics beyond Halacha, Rose responds by arguing for an *immodest* Halacha – what she calls 'Halacha beyond Halacha.' Indeed, this debate between Halacha and secular ethics directly mirrors the debate within jurisprudence concerning law and morals. In the Jewish framing of the question, Judaism is concerned with Halacha while the Gentile world is concerned with 'ethics' – inside the courtroom, outside the courtroom. The debate is framed (by the organizers of the conference at which Rose spoke on the topic) as one of natural versus positive law: does a universal ethic trump Halacha or are the two realms independent from each other? And Rose makes the immodest move: she calls for 'Halacha beyond Halacha,' law which exceeds the boundaries of the courtroom and which covers the world.⁵

In the Jewish tradition, Halacha is understood as an outgrowth of and complement to practices of the community. Rose refers to 'our ineluctable grounding in the emotional and political culture' (Rose 1996, p.54). She associates herself with the Kierkegaardian position that repetition of 'what has been' lays the groundwork for the 'sheer infinite possibility' of the future (Rose 1992, p.24). Both these cases resonate with the general parameters of jurisprudence: what is

possible now is conditioned on what has happened before.⁶ When jurisprudence is made immodest, precedent is no longer restricted to cases decided by the court but extends to ‘emotional and political culture,’ all of ‘what has been.’ As Rose puts it, ‘law is always already given’ (Rose 1992, p.87).

In contrast to the postmodern icon of the labyrinth as well as to Derrida’s infinite play with language, the dialectic for Rose involves a sort of chaotic evolution. Each new experience incorporates what has been learned from previous experiences in a new gamble, the results of which will then feedback to the next experience. What is possible is always changing as new experiences are had, each of which alters the realm of the possible. She assigns herself the slogan: ‘to know, to misknow, and yet to grow’ (Rose 1992, p.310; 1993, p.240). We only *think* we know what the law is. If the courts rule differently, the law is different, we will have been wrong. Each lawyer arguing a case before a court makes such a gamble – gambling that her presentation of precedent will be accepted as law. Even the judge is unsure of herself: she will issue a ruling, but will it be overturned? Is it really law?

Rose makes an explicit identity, albeit a speculative identity, that supports the view of her work as an immodest jurisprudence: law is metaphysics (Rose 1984, p.7). But also: law is ‘the middle’ (Rose 1996, p.75). How can this be? The contingencies of grammar are quite felicitous at this juncture. We can speak of both ‘law’ (as an abstract noun) and ‘laws’ (plural of the count noun). The latter are individuated things: ‘the law just passed by the legislature,’ ‘the law against murder,’ and so on. Let us propose an explanation: law is metaphysics in the former sense and ‘the middle’ in the latter.

As the Absolute, *Geist*, or as the state of mutual recognition, law is never directly experienced. This is not to place law in a noumenal realm; it is just to remind us that when we go to a court of law deliberation concerns *laws*, not ‘law.’ Was it first or second degree murder? In our fallen world we grapple with laws, we never get to experience the pure ethical community of *Sittlichkeit*. Laws include such concepts as the ‘legal person’ and the ‘thing.’ These are the points from which we must begin to negotiate, though of course each instance of this negotiation participates in the Absolute, in law.⁷ In jurisprudence, there are expectations of how the court will rule. But not even the most experienced professor of jurisprudence can say with absolute certainty what the law *is*: how the court actually *will* rule. This is how Rose can call ‘law’ not only the Absolute but also ‘the workings of the world’ with all of its uncertainty (Rose 1999, p.19).

In light of this presentation of Rose's work as an immodest jurisprudence, it is easier to understand some of the other aspects of her thought. Rose occasionally describes her critical project as a struggle against those who refuse law, or who legislate arbitrarily (e.g., the sovereign command view of positive law). For example, metaphysical thinking, for Heidegger, resides in language, or at least the Western languages. He wishes that he could speak ancient Hebrew, but in doing so Rose accuses him of desiring 'Yahweh without *Torah*,' the presence of the divine but not the accountability to law (Rose 1984, p.80).

According to Rose, Walter Benjamin presents an extreme of the post-modern refusal of law. On her reading, Benjamin takes nearly the inverse position of the liberal rationalist. He claims that all human law is irredeemably fallen. Instead of offering a stable source of authority in reason, law covers the world in violence. The only possible escape is through the suspension of all laws and the eruption of history in the form of the return of the Messiah (with divine violence, sovereign command...) (Rose 1996, p.69). Rose, and Hart, want to avoid a position that seems to force a choice like this.

Hart suggested that his jurisprudence could be read as a 'descriptive sociology' of law, and this is exactly what Rose suggests is necessary. Modernity and postmodernity avoid examining the actual existing law, examining social practices and norms. Zarathustra brings with him new law tables – which tell us nothing about actual existing law. Rose attempts to inaugurate the revolutionary shift in philosophy that Hart inaugurated for jurisprudence: analyzing what is there and setting aside what we want to be there. Rose implores us to stop legislating and instead work on recognizing the law.

Transcendence

How does law deal with faith and love?⁸ Reading Rose as theorist of an immodest jurisprudence, are we still able to make sense of her writings on these two topics which are central to her thought but seem antithetical to the sterile environment of a courtroom? In both cases, we will see how Rose offers accounts of these topics that appeal to nothing beyond social norms, beyond law in the sense of the immodest jurisprudence I have attributed to her.

On the question of the relationship between law and love, Rose herself is explicit. Rose is harshly critical of any romantic rhetoric which takes love to be exceptional, to be other-worldly. Law is always in love, and love in law – just as there is no love without power, no power without

love. Love is constituted by a combination of exposure and reserve, appearance and disappearance, recognition and misrecognition. Loss of love creates particularly acute suffering, but other losses cause suffering as well. Rose describes spending the night with a lover much like she describes the dialectic, as a 'shared journey, unsure yet close, honesty embracing dishonesty' (Rose, 1995, p.70). All of which is to say: love is like life, like the struggle of the difficult middle. Although there is something special about love, it is important to first recognize this continuity which Rose establishes between living in love and living in general.

What is particular about a love relationship, what makes it different than everyday life? In love, Rose says that your relationship with your lover is one of total vulnerability; you put yourself at his mercy. The space of love is a space in which the risks of the middle are magnified. There is not a qualitative difference between love and life, the difference is quantitative. Negotiating the difficult terrain of the middle always results in surprises, sometimes pleasant, sometimes devastating. So, too, with love – except the surprises involved are all the more pleasant, all the more devastating.

Rose divides love between eros and agape. A sexual encounter is about eros, about desire; a night spent in each other's arms is about agape, about care. 'Eros fulfilled always becomes agapic' (Rose 2008). And agapic love is ethical. It is ethical because of the dialectic of mutual recognition which it entails: in each other's arms the two must move together, 'unsure yet close,' navigating an uncharted path by constantly correcting the errors that become apparent.⁹ Which is to say, once again, that love is doing the difficult work of the middle, that love is life intensified.

Eros, Rose says, is insatiable desire, desire without a saturating object. But did she not say that 'Eros fulfilled always becomes agapic'? The paradox resolves itself: lovers ignore the difficulties of love, the inevitability of its *finis*, entranced by their passion. But difficulty – and impossibility – is never far off. Yet the difficulties of love lost are mourned so that one might love again, so that desire can continue forever unfulfilled, moving from object to object. Like life, love moves on.

Friendship holds a crucial place for Rose. Its level of intensity places it between love and life. If life encompasses friendship and love, then friendship encompasses love. Both eros and agape can 'be seen under the sign of friendship' (Rose 2008). When, in her memoir, Rose describes the end of her long-term love relationships, she writes that it was the end of 'the throes of erotic and ethical love' but 'not friendship' (Rose 1995, p.141). Rose's descriptions of friendship sound remarkably

like her descriptions of love. Friendship is a process of ‘mutual trust,’ ‘dynamic,’ involving constant renegotiation, ‘the ever-shifting possibility of misunderstanding, of unanticipated difficulty’ (Rose 1993, pp.3–4). Friendship – like love and life – is a process of navigating through social norms, through law.

In Rose’s later works, the topic of faith increasingly comes to the fore. This has led one commentator to suggest a break between her early (secular) and later (religious) works (Gorman 2005). But when we closely read Rose’s discussion of faith in *The Broken Middle*, it becomes clear that there is a strong continuity with her earlier work. Faith is never outside of law.

Rose addresses questions of faith in the context of her discussion of Kierkegaard. She reads with Kierkegaard the story of Abraham’s sacrifice of Isaac, sometimes concurring, sometimes dissenting. Abraham’s act is one of ‘witness,’ according to Rose. It is not a sacrifice: Abraham does not sacrifice Isaac, he simply shows his willingness to do so. ‘Witness,’ she suggests, means ‘always already knowing yet being willing to stake oneself again’ (Rose 1992, p.148). To witness is not to act. Rather, witnessing is ‘a movement of faith.’ To witness is to exercise ethical agency, it is to refuse to be an ‘arbitrary perpetrator or an arbitrary victim’ engaged in ‘arbitrary violence’ (Rose 1992, p.148). The repeated term ‘arbitrary’ here evokes the imposition of ‘formal-rational’ law of modernity – and the general logics discussed earlier.

So far, this discussion of faith may sound very suspicious to the secular or simply skeptical reader. It sounds as if Rose has located a New Jerusalem, a gated community founded on faith and set apart from the ‘arbitrary violence’ of the world. Before reaching this conclusion, we must remember that Rose, following Kierkegaard, locates ‘faith’ within a very particular structure – the ‘suspension of the ethical.’

In such a suspension (Abraham’s witness and the master–slave dialectic in Hegel’s *Phenomenology* are Rose’s examples), the world is fixed in time, but just for an imperceptible moment. The suspension of the ethical is a narrative device, a way of telling a story. The effect that the use of this device has is pedagogical. Hegel and Kierkegaard ‘are able to bring... an education (*Bildung*) into representation as *struggle – agon* – in which “violence” is inseparable from staking oneself, from experience as such’ (Rose 1992, p.151). This education occurs in the moment of faith, a moment which exists out of time, not in time.¹⁰ By suspending time, we become acutely aware of the violence which exists all of the time. With time fixed for a moment, in the stories told by Kierkegaard and Hegel, we are immunized from violence and so can

appreciate the violence pervasive in the world. 'Faith' for Rose is thus a regulative ideal in the Kantian sense, a heuristic. It is a rhetorical device – or, better, a contemplative practice – which re-grounds the faithful in the law, in life lived navigating social norms. Suspending the ethical allows 'its historical and legal precondition [to be] recognized' (Rose 1992, p.152).

Moreover, Rose suggests that the ethical import of witnessing is the 'anxiety of witnessing,' which is to say: the risk and difficulty of navigating the law. What Abraham does – within the brackets of the suspension of the ethical understood as a narrative device – is to show the most intense form of 'staking oneself,' of taking the risk of the middle, in short: of living. Through constructing and extending this chain of speculative identities (witness is anxiety is risk is difficulty is violence...), the unseemly 'supernatural' element of witness – namely, faith – is thoroughly naturalized, located in the bracketed space of the suspension of the ethical.

But have we not now reduced away what was interesting about faith, the hint of the Absolute which interests Rose? Rose would respond that the suspension of the ethical is the only moment when violence can be isolated. At all other times, violence is coextensive with life (with risk, difficulty, law...). When the ethical is suspended and 'the agony of witness [is] at stake...' the isolating of violence 'transforms "anxiety" and "equivocation" from psychological terms into political ones' (Rose 1992, p.152). The suspension of the ethical allows for witnessing of 'ethical and political actuality' in a way which is not possible in the midst of everyday life, of time. Faith, the contemplation of the suspension, allows for a new perspective on life and law. It allows us to see the law from above, to act as an anthropologist in our own land, discerning the paths social practices carve out. And, crucially, faith in the form of the suspension of the ethical motivates us to political action. It makes political withdrawal untenable because it impresses on us how we are always already implicated in violence – making the water in which we swim visible and making us realize the necessity of swimming.

For Rose, love and faith are not beyond law. Love involves an intensification of the contestation which constitutes ethical-legal life while faith, as witnessing, provides a device by which to gain new perspective on law. Love and faith are often analyzed in terms of transcendence. Translated into the idiom of an immodest jurisprudence, transcendence marks a location outside of the law. Transcendence marks an introduction of machinery for thought that is unjustified by experience, which is not directly accountable to social practice.

This is a general principle to which Rose adheres and which must form the basis for an immodest jurisprudence: there can be no realm outside the law, no transcendence. Transcendence would provide an island of certainty in the choppy waters of lived experience; it would offer immunity from the necessary contagion of law. 'Certainty does not empower, it subjugates' (Rose 1993, p.4). Understanding Rose's project as an immodest jurisprudence builds this principle into its foundation: law is always contested.

A generation after the heyday of post-structuralism, French philosophy has shown a renewed interest in immanence and singularity while disclaiming the supposed 'anti-philosophy' of the previous generation (Hallward 2000, 2003). Recent debates along the axis marked by Gilles Deleuze and Alain Badiou have taken front stage, accompanied by the traditional gesture of killing the father. This is expressed most polemically by Badiou (1999): for him postmodernism and post-structuralism are nothing but sophistry.

Slavoj Žižek has suggested that this turn towards immanence mirrors the shift from Kant to Hegel: 'From tension between phenomena and Thing to an inconsistency/gap between phenomena themselves... the limit is transposed from exterior to interior: there is Reality because and insofar as the Notion is inconsistent, doesn't coincide with itself' (Žižek 2004).¹¹ Žižek's metaphor of the shift from Kant to Hegel is striking because it points to exactly the shift which Rose was urging – in the 1970s and 1980s. Rose, like Žižek, saw a need to move away from the exterior vision of philosophy (phenomenal versus noumenal realms) to a vision of philosophy in which contestation is internalized ('between phenomena themselves'). But if Žižek is right, this shift has now been made, and thinking immanence is the flavor of the day, does Rose's claim for her project's uniqueness still hold?

It is my contention that Rose's project is still unique. The generation of philosophers working in the Continental tradition after post-structuralism continues to provide inadequate answers to the Kantian question of right. The jurisprudential idiom remains a potent tool to identify the inadequacies of such thought. It offers a means of critiquing both theories of transcendence and theories of immanence, leaving no stone unturned in its spirited engagement with the world of law.

2

On Dualism

For an immodest jurisprudence, there is nothing beyond social norms, nothing beyond law. Gillian Rose was sharply critical of theorists – whether they were sociologists, philosophers, or theologians – who appealed to something beyond social norms, a position she associated with avatars of neo-Kantianism. Rose was critical of natural law theorists for just this reason (Rose 1984). Natural law theorists, on her view, first answer the question of right (for example, with an appeal to ‘morality’ or ‘reason’ or ‘God’s will’) before addressing the question of fact, the question of what is and what is not a law. Only laws that are authorized by an answer to the question of right are really laws. The task of jurisprudence, for the natural law theorist, involves determining which laws conform to the prior authority and which do not. If a law is determined not to conform to the prior authority, the natural law theorist holds that it is not really a law, and it should be changed (Finnis 1980; Murphy 2006).

In this chapter, I extend Rose’s critical project by examining the work of two recent theorists whose work is vulnerable to the critique of neo-Kantianism and natural law theory that Rose offers. Although Judith Butler is primarily concerned with gender and sexuality while Jean-Yves Lacoste is a philosophical theologian, each seems to posit two realms: one, an ordinary realm of social practices; another, an extraordinary realm to which the first realm should conform. Butler and Lacoste, like natural law theorists and neo-Kantians, limit interchange between answers to the question of fact and answers to the question of right. The question of right is answered on its own, independent of the world. And, if we catch a glimpse of the extraordinary realm (of which Butler and Lacoste position themselves as privileged prophets), we ought to change our social practices. This change is brought about

by subversive practices, for Butler, and by liturgical practices, for Lacoste. Butler and Lacoste are vulnerable to this critique; the task of this chapter is to explore this vulnerability and to gesture toward inoculations. We should also remember that, although Butler and Lacoste differ from Rose in crucial but subtle ways, they are each strikingly close to Rose in many ways.

Before beginning our examination of Butler's work, let us begin by turning to the work of Michel Foucault. The problematic structure that we will find subtly embedded in Butler's work is more explicit in the early work of Foucault. Although Foucault performs close examinations of social practices and norms in a variety of contexts – from prisons to hospitals, from ancient Greece to nineteenth-century Europe – he suggests that it is possible to appeal to a region outside social norms, outside law, a region not accountable to the world, as I will shortly show. In Foucault's work, and in Butler's, it is never clear whether these appeals to a region outside the law are meant rhetorically, as a legal tactic, an appeal for equity from within the realm of law, or whether they are meant substantively.

Questions of normativity arise for Foucault even though he explicitly disavows them. *Madness and Civilization* (1965), Foucault's first major work, examines the change in the understanding and treatment of the mentally ill from the end of the Middle Ages to the nineteenth century. As a 'History of Insanity in the Age of Reason,' Foucault's book portrays mental illness as understood by those who were considered eminently 'reasonable' by scientists and government officials. He offers a history of unreason made reasonable. The implicit assumption is that there is a state of pure unreason, pure madness, which has been contaminated by its encounter with reason and is no longer directly accessible (see Derrida 1978). Pure unreason, a state which could only exist *before* an encounter with reason, would be a state in which there was neither madness nor reason. This is because 'reason' distinguishes between what is reasonable and unreasonable, what is correct and incorrect, what is right and wrong; reason introduces law. In a state of pure unreason, there would be no norm which could be violated; there would be no way to break the law.

The problem that Foucault grapples with is that, from the perspective of reason, of law, madness is pathological. By pathological, I mean a systematic deviation from the normal (see Canguilhem 1989). In each case where a norm dictates that x is supposed to be done, in a pathological situation y is done. Pathological behavior is not simply incorrect; it is incorrect in a systematic, understandable, delineable,

manner. The problem for Foucault is that it seems as though madness is deviation from norms in a systematic way. From 'our' perspective, from the perspective of reason, although at a superficial level we speak of madness as chaotic and random, in fact we strictly delimit the possibilities for madness – in the contemporary United States, in the iterations of the Diagnostic and Statistical Manual published by the American Psychiatric Association; historically, through physical separation from 'normal' communities. Understood as pathological, madness is embedded in social norms, in law. The behavior of the mad is predictable, it can be classified. As mad, she should do *this* and not *that*, she can violate the law even in her madness, there is a law to her madness.

So how can Foucault investigate madness if it is always already tainted by reason, embedded in law? 'We must try to return, in history, to that zero point in the course of madness at which madness is an undifferentiated experience, a not yet divided experience of division itself' (1965, p.ix). 'Not yet divided' here points to a time before the original institution of law, the original division which brings with it the rule of reason. Appealing to this time invokes 'the caesura that establishes the distance between reason and non-reason' and also initiates 'reason's subjugation of non-reason' (1965, p.ix). It is 'then only' that we are able to locate 'the realm in which the man of madness and the man of reason, moving apart, are not yet disjunct' (1965, p.ix). This is an anarchic realm, a region beyond the law. Only by searching for such a region might it be possible to escape from psychiatry's 'monologue of reason about madness' (1965, p.x). Foucault imagines his project not only to be about tracing the history of the language of psychiatry, the language of reason about unreason, but also to be about tracing the changing configuration of the silence in which madness has been forced to reside. Reason's 'monologue' has silenced madness. If we could look beyond reason – where reason here is closely tied to social norms, to law – we could hear madness speak. Foucault does not underestimate the difficulty that this presents to the student of madness. Suspending reason is not a simple task. To restore the voice of madness, Foucault suggests that we must focus on the traces that madness leaves in the world of reason. Despite reason's best efforts, madness is never fully erased.

Foucault describes the realm before the law as 'doubtless an uncomfortable region' because '[t]o explore it we must renounce the convenience of terminal truths and never let ourselves be guided by what we may know of madness' (1965, p.ix). To explore madness truly, Foucault is suggesting, we cannot explore madness as pathology, as a systematic deviance from law. What we know of madness we know

through reason, and reason has understood madness as pathology. In order to venture to this lawless land where madness resides, we must renounce the law we know with its 'terminal truths' and venture into the unknown without presuppositions. Foucault has established two realms, one worldly and governed by law, another anarchic and located nowhere in the world. The task of the theorist, it seems, is to explore the anarchic region, accessing an authority that transcends the world. It is only by appealing to this anarchic region that we can tell whether what seems to be the case in the world (about madness) really is the case.

A similar maneuver introduces *The Birth of the Clinic* (1973). Here Foucault is interested in a transformation in the discourse of medicine that took place with the Enlightenment's introduction of the 'clinical gaze' (the details of his historical account need not concern us here). Foucault writes, 'In order to determine the moment at which the mutation in discourse took place, we must look beyond its thematic content or its logical modalities to the region where "things" and "words" have not yet been separated, and where – at the most fundamental level of language – seeing and saying are still one' (1973, p.xii). Here Foucault offers a striking image of a region beyond the law. Like the maneuver he makes in *Madness and Civilization*, Foucault suggests that we must abandon reason, the 'logical modalities' of discourse. What we find when we do this is a region without 'things' and without 'words,' a region without individuation – a region without law. We now catch another glimpse of the anarchic region at which Foucault hinted in his earlier work, although 'glimpse' must be the wrong word because in this region 'seeing and saying' have not yet been differentiated.

However, there is a significant difference between the sort of inquiry that is being conducted in *The Birth of the Clinic* and in *Madness and Civilization*. In the latter, the purpose of appealing to an anarchic region is to maneuver into a position 'before' the distinction between madness and reason, but in the former, the appeal is motivated by shifts in discourse. 'Discourse,' for Foucault, is well ordered and predictable. It is the realm of reason, of law. Reason is not absolute, outside of history; reason is internal to a discourse. And discourses change. One regime of reason is vanquished and another instituted. The investigation of these regime changes is the focus of Foucault's work in *The Birth of the Clinic* and in many of his subsequent writings. In order to investigate why a change of discourse takes place, we must stand back from any particular discourse. This can be understood as a more general version of the problem that Foucault confronted in *Madness and Civilization*. There, the goal was to uncover madness untainted by reason; here, the

goal is to reconcile two (or more) seemingly incompatible versions of reason. From the perspective of reason, from the perspective of any particular discourse, such a change would seem impossible, or would be circumscribed within the terms of that discourse – in the same way that madness seems incomprehensible or is circumscribed within the terms of reason. Any discourse says: these are the things that can be done (and said, and understood). For a discourse to change, there must be more that can be done than is authorized from within that discourse. A new discourse is not authorized in the language of the old: a new discourse involves a new set of possibilities, a new set of things that can be done (said, understood). Foucault is claiming that, to investigate such a change, we cannot examine what is authorized by the old discourse – its ‘things’ and ‘words’ – but rather we must venture to a space outside any discourse, outside any law. This Archimedean point is not a hyper-rational ‘view from nowhere’; it is completely a-rational, outside of reason, of law.

While in *Madness and Civilization* and *The Birth of the Clinic* Foucault employs a metaphor of temporality to locate the region not subject to law (a region ‘before’ the law), in *The Order of Things* (1970) the language that he uses suggests a metaphor of depth. To elaborate with more suggestive imagery: an anarchic region, molten and fluid, lurks beneath a solid layer of discourse. Discourse is rational, orderly, lawful; beneath this crust, to use the imagery of plate tectonics, is the anarchic mantle.¹ At certain moments, at moments of regime change, anarchic material escapes from the depths and bubbles up into the orderly world, causing a radical shift in discourse, radical changes in law.

Each discourse is structured in its own way; it follows its own logic. Documenting these variations is half of the task of *The Order of Things*. Foucault argues that, while in the Middle Ages and Renaissance the logic that ordered discourse was analogical, in the Classical period discourse was organized around the model of a table, and in the post-Classical period discourse was organized around the sovereign subject of ‘man.’ In each case, discourse consists of a fixed set of acceptable practices – where practices extend to habits of thought. The other half of the task of *The Order of Things* is to explore shifts between regimes, moments when molten material penetrates the crust.

Foucault associates access to this anarchic region, the molten underside of discourse, with the aesthetic. In *The Order of Things*, for each historical transition from one discourse to another, Foucault points to a work of art which, he suggests, pushes the limits of a discourse (specifically, pushes the ordering principle of a discourse) to an extreme. Each

artwork that Foucault discusses displays the absurdity of a discourse when pushed to its limits while at the same time ushering in a new discourse with a new ordering principle. Between the Renaissance and the Classical period was *Don Quixote*, a novel that took the allegorical ordering principle of the Renaissance to such an extreme that it became obviously absurd – indeed, mad. In the eyes of the novel’s protagonist, everything is an allegory, and the reader sees how preposterous that is. The writings of the Marquis de Sade function in the same way for the transition from the Classical to the modern period: Sade is so systematic in his descriptions of bodies and debaucherous activities that the limits of the organizing principle of the table, characteristic of the Classical period, are exposed.

Foucault vividly describes the transition from the Classical to the modern period in terms that evokes the eruption of an anarchic realm:

The obscure but stubborn spirit of a people who talk, the violence and the endless efforts of life, the hidden energy of needs, were all to escape from the mode of being of representation. And representation itself was to be paralleled, limited, circumscribed, mocked perhaps, but in any case regulated from the outside, by the enormous thrust of a freedom, a desire, or a will, posited as the metaphysical converse of consciousness. Something like a will or a force was to arise in the modern experience – constituting it perhaps, but in any case indicating that the Classical age was now over.

(1970, p.208)

Here the force which overturns discourse is more than just the aesthetic. It is a ‘hidden energy’ which has an ‘enormous thrust’; it is a ‘desire’ and a ‘will.’ Elsewhere, Foucault describes the accompanying ‘multiple profusions’ of language at this transition point between discourses. This thrust which overturned the Classical regime could, and inevitably would, result in a new regime, a new discourse, a new law. But that does not undercut the anarchic force which overthrew the Classical regime.

In other writings, Foucault describes how contemporary literature provides a means of escape from the discourse of modernity. He writes that, in such literature, ‘language escapes the mode of being of discourse’ and forms ‘a network in which each point is distinct, distant from even its closest neighbors’ (1998, pp.148–9). There is no law that can govern the language of writers like Blanchot, whose work Foucault discusses at length. With strong Heideggerian resonances, Foucault describes the anarchic region, which he calls here the ‘outside’, as the location

of the 'being of language,' a place of 'dispersion' but also one in which language 'unveils its own being' with a 'sudden clarity' (1998, p.149). In this region, there is something chaotic and anarchic going on – but Foucault's language also suggests that it is somehow authentic and true, it brings 'clarity.' Yet Foucault assures us that this realm is never directly accessible, it always remains under erasure: 'one cannot gain access to that opening because the outside never yields its essence' (1998, p.154).

Judith Butler's work has a complex relationship to the work of Michel Foucault. On the one hand, Butler explicitly distances herself from any possibility of a time 'before' or 'outside' the law (Butler 1989). She writes, 'Foucault invokes a trope of prediscursive libidinal multiplicity that effectively presupposes a sexuality "before the law"' – an illegitimate and politically problematic move, she argues (1999, p.97). Yet, where aesthetic techniques disrupted discourse for Foucault, for Butler subversive practices such as drag are disruptive. Is there a categorical normative force wielded by subversive practices? If Butler's work is in continuity with Foucault's on this point, then her work would be vulnerable to the critique that Rose levels against neo-Kantianism and natural law theory.

The language of law and of social norms is found in abundance in Butler's work. On her view, theory must start by looking at social and historical conditions – 'there is no "I" that can fully stand apart from the social conditions of its emergence' (2005, p.7). These 'social conditions' are the context of social norms, of law, in which an individual lives. The mechanism Butler uses to discuss individual agency in the context of social norms is the concept of 'performativity.' She describes performativity as a 'reiterative and citational practice' (1993, p.2). In performing an action, an individual is repeating actions which have been done before (reiterating and citing them – note the legal resonances). What one does is what has been done. But past practice does not simply determine what one does; it also determines what one *should* do: it gives force to norms. If it were not for past practice, a norm would only have force 'for those who would affirm it on the basis of religious faith' (1993, p.14). Here, Butler is closely aligned with Rose: the question of right must not be answered by an appeal to something like 'religious faith,' something outside of the world. The question of right must be answered by an appeal to the answer to the question of fact, through precedent. Precedent gives a practice its legitimacy. (Of course, an answer to the question of fact must also appeal to answers to the question of right: there is no way of talking about a practice apart from precedent.)

The authorizing force of past practices is not a simple matter, on Butler's view. In citing a precedent, it is not a fact about one specific precedent which gives authority to the citation. Rather, on Butler's account, the source of authority is an 'infinite regress': citing a citation of a citation, and so on. Authority comes from the practice of citation rather than from the specific practice cited. Concerning the special case of speech, Butler writes that non-mechanical repetition is 'not a discrete series of speech acts, but a ritual chain of resignifications whose origin and end remain unfixed and unfixable' (1997a, p.14). Any moment in such a ritual chain is more than just a moment, it is a 'nexus of temporal horizons' (1997a, p.14). It looks backward as a citation of precedent and it looks forward as it becomes citable itself in the future. Each moment adjusts the horizon of possibility for the future.

This understanding of practice and authority is central to Butler's political critiques. In opposition to certain French feminists, Butler rejects the possibility of 'sexuality that flourishes prior to the imposition of a law, after its overthrow, or during its reign as a constant challenge to its authority' (1999, p.29). Instead, Butler aligns herself with suggestions made by the later Foucault, understanding sexuality to be always infused with power and inextricable from regulatory apparatus. On her view, instead of existing prior or subsequent to law, sexuality is constituted by law, by the social and historical conditions in which it exists (conditions which constitute social norms, law). In short, sexuality cannot be extricated from law.

Moreover, Butler charges that supposing there to be a time or place beyond law has problematic political consequences: 'the postulation of a normative sexuality that is "before", "outside", or "beyond" power is a cultural impossibility and a politically impracticable dream, one that postpones the concrete and contemporary task of rethinking subversive possibilities for sexuality and identity within the terms of power [i.e., law] itself' (1999, p.30). The 'dream' of the French feminists prevents them from addressing the actually existing challenges facing women today. Political work does not involve escaping from law but trying to figure out how to subvert it from within.

Sounding remarkably like Rose, Butler argues that appeals to a time 'before' or 'after' the law are often part of 'the self-justification of a repressive or subordinating law' (1999, p.36). There is no way to debate about a time outside the law, so claims made on the basis of appeal to such a time are immunized from critique. They fall into the trap of a general logic: they assert an authority, an answer to the question of right, which is not influenced by answers to the question of fact.

Butler demonstrates how appeals to a time before the law as authoritative have often been used in the repression of women – for example, in anthropological narratives which appeal to the supposed use of women as objects to be exchanged in a gift economy in pre-historical times (1999).

If, for Butler, it is law all the way down, what is on top of law are objects and concepts, things and words in Foucault's terminology. Butler's famous example is 'the body.' It seems like bodies are self-evident facts (recall G. E. Moore's hand and its role in his 'proof of an external world'), but bodies are really the products of reiteration and citation, according to Butler. This is not to say that bodies do not exist. Rather, it is simply to reformulate the Heideggerian insight that the present-at-hand arises out of the ready-to-hand, that existence supervenes on social practices (Brandom 2002). Objects like bodies and concepts like genders are not 'expressed' by 'actions, gestures, or speech, but . . . the performance of gender produces retroactively the illusion that there is an inner gender core' (1997b, p. 144). This transformation from practices into substance is '*a process of materialization that stabilizes over time to produce the effect of boundary, fixity, and surface we call matter*' and '*a sedimented effect of a reiterative or ritual process*' (1993, pp.9, 10; emphasis in the original). In other words, because of practices, it is as if there is a thing. The structure Butler presents here parallels the plate tectonics that we encountered in Foucault, with a crucial difference. In both cases, there is a 'sedimented' or solid layer on top. For Foucault, as we saw, what is below is an anarchic region which he sometimes associates with 'being.' For Butler, below are performances, reiterations of social norms going all the way down, or so it seems.

The focus of Butler's early work was on one aspect of the 'sedimented' surface: '[G]ender is produced as a ritualized repetition of conventions' (1997b, p.144). From the moment a baby is referred to as 'she' in the hospital, the baby becomes subject to gender norms ('subject to' in a double sense that is exploited by Butler: both held accountable to those norms and constituted as a subject by those norms). This gendered reference is repeated over and over during the course of a lifetime by others and by the subject herself – as she is treated like a woman and as she treats herself like a woman, as she puts on makeup and as she is given the lighter bundle to carry. But the situation is more complicated still. 'Woman,' according to Butler, is produced by three welded sets of norms: norms of sex, gender, and desire. 'Woman' has a female anatomy, feminine practices (wears lipstick, gets moody), and desires men. Rephrased with normative force, a woman *should* have female anatomy, *should*

follow feminine practices, *should* desire men. The concept 'woman' is often invoked as the basis for feminism, as a universal, ahistorical, atemporal rallying point. Political campaigns have called for 'women's rights,' for example. Butler charges that using 'woman' in this way elides the crucial point that 'woman' does not simply exist as a pre-given, self-evident concept; 'woman' is created out of social practices. Moreover, gendered characteristics are not 'so many secondary and accidental characteristics of a gender ontology' (1999, p.24), but are themselves constitutive of gender norms (recall the feedback loop between answers to the question of right and answers to the question of fact). Women do not wear skirts because they *are* women; wearing skirts is part of what constitutes the concept 'woman.'

It is important to note that, for Butler, the region beneath the 'sedimented' surface, although consisting in repeated practices, is never possible to exhaustively codify. This is because social practice involves 'repetition that is never merely mechanical' (1997b, p.16). In other words, social norms underdetermine practice – and this makes subjectivity possible. The study of subjectivity is the study of how those norms which constitute a subject are appropriated by that subject: how they are repeated and how they are changed. '[A] subject only remains a subject through a reiteration or rearticulation of itself as a subject' (1997b, p.99). We are thus 'neither fully determined nor radically free,' and we are continually grappling with the always already present norms in which we find ourselves embedded (2005, p.19). Practice is 'improvisational' within the constraints of given social and historical circumstances, circumstances which determine norms (2004, p.1).

Not only do norms underdetermine practice, they also never perfectly fit the world. Situations arise in the world to which norms do not speak: there are cases which have no precedent. However, to call this a mismatch between norms and 'the world' misleadingly implies that there is a 'world' independent of our performances. Because Butler holds that there is nothing beyond social norms, she internalizes the apparent tension between norms and the world. She writes of 'alterity within the norm' (1997a, p.91). Recall how the norms governing 'woman' welds sex, gender, and desire. But how do these norms speak to a lesbian? These norms exclude (or, rather, rebuke) lesbians because lesbian desire does not conform to the norms that constitutes 'woman.' According to these norms, one who has female anatomy and feminine practices should desire men; if one does not, one acts wrongly. The result of this disconnect between norms and reality is that, in this case, a lesbian is denied recognition as a 'woman.' Those who do not conform to the

norms of 'woman' are understood as 'developmental failures or logical impossibilities' (1999, p.17).

The disconnect between norms and the world (the alterity within the norm) and the non-mechanical nature of norm-governed performances do not only lead to negative consequences. They also open up the possibility for norms to be challenged, the possibility for subversion. An encounter with an exclusion – with a case in which norms do not match social practice, for example, with a homosexual or a man in drag – functions to make one aware of the limits of the current norms and the possibility for other norms to exist. After having such an encounter, it 'compels me to adopt a critical relation to those norms' (2005, p.25). It becomes possible to access what is below the 'surface,' to realize that 'woman' is not a natural, atemporal, ahistorical category. Moreover, the 'critical relation' that such an encounter establishes underscores the non-mechanical nature of performance. It provides a reminder that the force of social norms is not absolute. As a result, it increases the likelihood that more subversive, non-normative practices will be performed in the future.

This possibility of subversion leads Butler to write of the 'the promising ambivalence of the norm' (1997a, p.91). Each time a norm is followed in practice, something new happens, something not absolutely predictable based on past occurrences: 'The force of the performative is thus not inherited from prior usage, but issues forth precisely from its break with any and all prior usage. That break, that force of rupture, is the force of the performative, beyond all question of truth or meaning' (1997a, p.148). Subversion of existing norms is possible because 'law can be turned against itself' by producing new law, new performances, which are themselves invested with authority and can be cited in the future. This new law can run counter to old law, can (again imperfectly) represent those left unrepresented or excluded by the old law.

So subversive practices are new and self-authorizing performances. But there are two more crucial aspects of subversive practices. First, they do not necessarily work. To work, they must 'catch.' They must not be taken as nonsense, as simply poorly performed norms. Rather they must be understood as something that can and will be repeated, be cited. In such cases, the new performance 'can succeed in producing the effect of authority' (1997a, p.158). Some of the vocabulary of the existing norm may be used, yet it is reorganized in such a way that it is genuinely novel. Second, unprecedented practices may do more to 'reidealize' a norm than to 'denaturalize' it (1993, p.125).

In other words, an attempt at subversion may have the opposite effect of what was intended. A woman dressing like a hyper-masculine man may strengthen rather than weaken conventional norms of masculinity.

What is the motivation for using subversive practices? If I am not recognized, if I am excluded by norms as some individuals inevitably will be, I will desire recognition, according to Butler. It is this rather Hegelian desire for recognition which fuels subversive practices.² This desire runs suspiciously close to the Foucaultian force (or, perhaps better, entropy) of that molten underlayer, beneath a discursive regime, that erupts into and disrupts the ordinary. In both cases, the present regime, consisting of current social norms, is an imperfect fit: there are those it does not represent correctly, there are inherent paradoxes that are reached. Recall how Foucault, in *The Order of Things*, used aesthetic productions to demonstrate the tensions which come to the surface when a discursive regime is pushed to its limits. Might Butler's suggestion that the desire for recognition, caused by the inherent tensions in and incompleteness of social norms ('the alterity in the norm'), fuels subversive practice introduce an unwanted association with Foucault's problematic schema? In both cases, when a paradox is reached, there is desire for something more, something that can be accomplished only by disruption. However, as we have seen, Butler has tried to distance herself from the imagery of a space beyond the law. But what is the source of the desire of which she writes? Is it accountable to some norm? How could it be accountable to a norm if it is a desire that arises from the incompleteness of norms, how could it have a source within the law if its *raison d'être* is to undermine law?

Earlier we noted how Foucault and Butler both use images that involve two layers, a surface that is 'sedimented' and rigid on top of a more fluid underlayer. We noted how the content of that underlayer differed: for Foucault, it involves a rather mysterious realm of 'being'; for Butler, it involves performances according to social norms. Now we can note another similarity. The relationship between the two layers is the same for both Foucault and Butler. Every so often, the limits of the 'sedimented' surface are exposed, and this fuels a desire to access the depths. For Foucault, this seems to be a historical inevitability: every discursive regime will eventually be pushed to its limits. Butler's version of this process is less committed to a historical metanarrative but does seem to involve a parallel inevitability. Social norms always will deny recognition to some people – indeed, in some way recognition is denied to all people. Thus, there will always be a desire to go beneath the surface, to access the depths.

But the content of these depths still seems quite different in Butler's work as opposed to in Foucault's work. At times, this difference between their views shrinks. Butler identifies certain spaces prone to generating subversive practices. Although Butler does not write of these spaces as anarchic in the way that Foucault does, they do have a special status which makes their relation to law ambiguous. Among examples of such spaces where the 'ideals of gender and race are mimed, reworked, and resignified' are drag balls (1993, p.125). The film *Paris is Burning*, lauded by Butler, explores the New York City subculture of which these balls were a part. In the film, the balls are portrayed as locations where all differences (gender, sexuality, and race) become fluid, where an individual can shift in a moment between white and black and brown, male and female, gay and straight. Although fictional rather than documentary, John Waters' early films similarly present a world where fluid identity categories can flourish, a world that is apart from – in opposition to – the ordinary world (the title of Butler's *Gender Trouble* derives from one of these Waters films). And Waters appropriates religious rhetoric for the world he creates. 'I am Divine,' says his heroine, and that is her name. In both *Paris is Burning* and the early John Waters films, the viewer is shown a fluid, anarchic underground world which is exotic and alluring, arousing the viewer's desire to escape the ordinary.

Butler writes about the possibility of transforming society, 'To intervene in the name of transformation means precisely to disrupt what has become settled knowledge and knowable reality' (2004, p.27). There is a stable layer (gender categories, 'the body,' etc.) which can be transformed by an intervention from without, by a subversive practice. But Butler is very clear that she wants subversion to be understood as an immanent process: 'If subversion is possible, it will be a subversion from within the terms of the law, through the possibilities that emerge when the law turns against itself and spawns unexpected permutations of itself' (1999, p.93). Two readings of Butler's account of subversive practice are possible. On a more pragmatic reading, drag balls and the underground worlds of the films she praises underscore the impermanence of gender norms and loosen the grip that they hold over us, showing us that gender is not a natural, universal, timeless concept. However, a stronger reading of subversive practices is possible, one that, against her wishes, associates Butler more closely with Foucault's mysterious region beyond the law. On this stronger reading, the drag balls of *Paris is Burning* and John Waters' narratives exemplify an anarchic realm which ought, categorically, to disrupt our ordinary world.

Although Butler explicitly distances herself from Foucault and the anarchic realm which he imagines, she does endorse a different way of thinking beyond existing social norms, fantasy: 'To posit possibilities beyond the norm or, indeed, a different future for the norm itself, is part of the work of fantasy' (2004, p.28). She argues that, politically, 'feminist theory relies on the capacity to postulate through fantasy a future that is not yet... fantasy is not equated with what is not real, but rather with what is not yet real, what is possible or futural, or what belongs to a different version of the real' (1990, p.105). Recalling Butler's earlier aversion to theories – and politics – that posit a time 'after the law,' this passage may seem inexplicable. Is not Butler using fantasy to perform precisely the maneuver she criticized in French feminist writers, imagining a time 'beyond the norm'? Perhaps this tension can be reconciled if we take Butler to be suggesting that there is a difference between believing in an anarchic future and pragmatically using the fantasy of an unknown future to motivate political action in the present. Perhaps she means that a fantasy can motivate us like a dream can motivate us – even though we do not believe that it is true.

This suggests a means by which the problematic portions of Foucault's schema can be jettisoned while its political potency can be retained. If the region beyond law exists only in fantasy – a possibility never explicitly foreclosed by Foucault – it could still affect the way we act, yet we would not be committed to the problematic belief in its 'real' existence. On this account, subversive practices would not be authorized by a space outside the law but rather by the fantasy of such a space. Fantasies are products of social imagining; they are another product of the fecundity of social norms.

Butler exposes herself to critique from the perspective of an immodest jurisprudence when it seems as if she gives subversive practices categorical rather than strategic normative force. To say that subversive practices have strategic normative force is to say that they work *in order to* do something else, which is to say, in order to advance some other norm. On the strategic reading, Butler's 'what is needed' (e.g., 'what is needed is... the critical release of alternative imaginary schemas for constituting sites of erotogenic pleasure' (1993, p.91)) is always implicitly prefaced by an, 'in order to X.' When Butler writes about 'what is needed,' it is easy for the strategic, pragmatic use of subversion to be elided; it is easy for it to sound as though Butler has tapped into a source of normativity outside the law that always tells us, categorically, what we should do.

Butler clearly has pragmatic instincts, and the strategic reading of her position does not seem implausible – although the issue remains far

from clear. For instance, Butler acknowledges that subversive practices can only make up one aspect of life. She writes that 'a livable life does require various degrees of stability,' and further that 'a life for which no categories of recognition exist is not a livable life' (2004, p.8). Although this suggests she acknowledges that it is never possible to undermine all norms at once, it does not disclaim the possibility of an underlying, extra-legal desire (indeed, the 'degrees of stability' language is again reminiscent of Foucault's plate tectonics). At other times, Butler more explicitly seems to support the pragmatic reading: 'The critique of gender norms must be situated within the context of lives as they are lived and must be guided by the question of what maximizes the possibilities for a livable life, what minimizes the possibility of unbearable life or, indeed, social or literal death' (2004, p.8). Here she is suggesting that subversive practices ('critique') must be understood as part of a larger picture, where it is concern for a 'livable life' which is primary. A 'livable life,' according to Butler, is one always already constituted by social norms. So Butler is appealing to the background of social norms as a basis from which to ground the critique of specific norms – in line with an immodest jurisprudence.

In the work of Foucault and Butler, we noted the subtle insulation of answers to the question of right from answers to the question of fact. In the second half of this chapter, we will turn to theorists who posit what would seem like a much sharper separation, yet it will turn out to be just as subtle. Martin Buber and Jean-Yves Lacoste each identify two 'logics' which, they claim, govern the world. One logic has to do with ordinary experience; the other has something to do with extraordinary experience. However, these two 'logics' do not straightforwardly correspond to answers to the question of right and answers to the question of fact. Each logic offers a different answer to the question of right, while the answer to the question of fact remains the same. There is no interplay between the two logics, between the two answers to the question of right. There can only be a Gestalt switch between the two. As we will see, answering the question of right in two different ways while answering the question of fact in the same way may seem to evade the blatant appeal to transcendence that Rose associates with neo-Kantianism, but it creates an inherently unstable position – one that, again, relies on a mysterious, extra-legal concept of desire. I will suggest, however, that Lacoste's work can be appropriated pragmatically as a theoretical resource without taking on board his problematic commitment to transcendence.

Buber and Lacoste present theoretical projects with remarkable parallels despite their backgrounds in very different historical, intellectual, and religious traditions. Lacoste is a contemporary philosophical theologian (and Catholic priest) whose work blends Heideggerian phenomenology and the *nouvelle theologie* of Henri de Lubac and Hans Urs von Balthasar. Martin Buber, a Jewish philosopher and humanist with a particular interest in mysticism, worked in the first half of the twentieth century. Although there are occasional resonances between Buber's thought and Heidegger's, there was little direct influence.³ Although Lacoste's project is more theoretically sophisticated and engages with post-Heideggerian phenomenology, Buber's work more clearly exposes how an appeal to transcendence underpins positions that he and Lacoste share.

The two logics of the world that Buber identifies are the logic of the I-It relation and the logic of the I-Thou relation. Although some have been tempted to understand the distinction between these two types of relations as the distinction between the (Kantian) noumenal and phenomenal realms, and correlatively between answers to the question of right and answers to the question of fact, this distorts Buber's position (Katz 1985; Perlman 1990; Kaplan 2002). What Buber distinguishes are two modes of experiencing the world. In other words, Buber identifies two ways in which one can relate to the world, where the world itself remains the same regardless of how it is experienced. The answer to the question of fact remains constant. Buber writes,

The world is twofold for man in accordance with his twofold attitude. / The attitude of man is twofold in accordance with the two basic words he can speak / ... Thus the I of man is also twofold / For the I of the basic word I-Thou is different from that in the basic word I-It.

(1970, p.53)⁴

Unpacking these cryptic, aphoristic lines: Buber is suggesting that there is a three-stage process that unfolds the logics of the world. First, a person speaks in two ways, according to 'two basic words' (I-It and I-Thou). The 'basic words' are ways of representing the world. Each produces a distinct representation of the world 'for man.' This makes the world 'twofold' – not in itself but 'for man.' In other words, the two different modes of representing the world result in two different modes of experiencing the world. Finally, these two different modes of experiencing the world result in 'the I of man' also being 'twofold.' Because of the two distinct modes of representing and experiencing the world, the subject

is also split along this same divide. Again, it seems easiest to understand Buber as saying that there are two logics – logics which each govern representation, experience, and subjectivity. Under each logic, I speak differently, the world seems different, and I am different.

There is no remainder after the subject and world are divided into the two logics: ‘There is no I as such but only the I of the basic word I-Thou and the I of the basic word I-It’ (1970, p.54). Because there is no ‘I’ as such, only the I of the one logic and the I of the other logic, it would seem as though there is no world as such, only a world of the one logic or the other – just as there is no speaking as such, only speaking according to the one logic and speaking according to the other logic. But Buber also writes, ‘Basic words [It and Thou] do not state something that might exist outside them; by being spoken they establish a mode of existence’ (1970, p.53). Here Buber seems to be equivocating as to whether he wants to say that the answer to the question of fact remains constant under the two logics. Although he begins by saying that nothing ‘might exist outside’ the ‘basic words,’ he then says that the ‘basic words’ establish a *mode* of existence – suggesting that existence (the answer to the question of fact) remains constant while how it is represented and experienced is what changes. This latter possibility is supported by what Buber says elsewhere, as we will see forthwith.

What is the difference between the logic of an It-relation and the logic of a Thou-relation? An It-relation is always partial, always one relation among many that an individual has at any given time and place. An It-relation takes place in the quantifiable world, the world that can be mapped onto a spatiotemporal grid. Each ‘It’ with which I have a relation is bordered on all sides by other ‘Its,’ according to Buber. When we think about the world, our default mode of representation is in terms of It-relations: this here, that there, that over there; this now, that then, that other thing tomorrow. Buber argues that it is not only things in the world but also things in the mind, for instance thoughts and memories, which are subject to the logic of the It-relation: ‘Inner things like external things, things among things!’ (1970, p.56). It-relations follow a standard grammar: subject verbs thing. ‘I perceive something. I feel something. I imagine something. I want something. I sense something. I think something... All this and its like is the basis of the realm of It’ (1970, p.54). Note how Buber easily slips between modes of representation (‘I perceive something’) and modes of experiencing (‘I feel something’) – and the implicit but clear implication is that this particular mode of representing and experiencing is constituting the I’s which punctuate the passage.

A Thou-relation, in contrast, is always total, encompassing an individual's 'whole being.' Relating to a Thou is not relating to a thing. In a Thou-relation, the one to whom I relate, the Thou, 'fills the firmament.' It is '[n]ot as if there were nothing but he; but everything else lives in his light' (1970, p.59). Unlike an It-relation, where the thing to which I relate is bounded on all sides by other things, 'Thou has no borders.' In other words, a Thou cannot simply be placed on a spatiotemporal grid because the Thou would warp the grid, would exert something like a gravitation pull, making all else appear only as it was distorted by the Thou. Such relations, according to Buber, can occur with parts of nature, with other humans, or with human creations (art works, etc.). In representing and experiencing them as a Thou, our own subjectivity is altered. Yet note how, despite the warping that the Thou-relation causes, the 'stuff' of the world remains the same – it is *not* 'as if there were nothing but he.'

Buber's account of the Thou-relation is not mystical folly; it is a *logic*. While in an It-relation, a thing is simply 'a loose bundle of named qualities,' in a Thou-relation, a thing is always greater than any sum of its parts, than any possible description of the Thou in terms of its particular qualities: it 'fills the firmament' (1970, p.59). It's are additive and remain distinct: $It_1 + It_2 + It_3$ is a collection of three It's which is itself an It but retains the integrity of the three It's which compose it. The Smith family is Father + Mother + Daughter, Fido is brown + friendly + hungry: loose collections of named qualities. In contrast, a Thou-relation is similar to a work of art. Just as a melody is

not composed of tones, nor a verse of words, nor a statue of lines – one must pull and tear to turn a unity into a multiplicity... I can abstract from [Thou] the color of his hair or the color of his speech or the color of his graciousness; I have to do this again and again; but immediately he is no longer Thou.

(1970, p.59)

The Smith family, considered according to the logic of the Thou-relation, is more than just three individuals; something essential yet unnamable is added in its collection into one unit. Similarly, something of Fido, understood as a Thou, is lost when he is reduced to the sum of his descriptions; any collection of those descriptions misses who Fido is as a Thou.

It-relations and Thou-relations are closely intertwined. While experiencing the world according to the logic of a Thou-relation, one is

blinded to the particular qualities of the individual to which one is relating, yet these qualities are still essential. Only because Fido has brown fur, a good temperament, and so on do I relate to him, and not some other dog, as a Thou. Yet, while relating to him as a Thou, I cannot see those individual qualities, at least not in an undistorted way. This, Buber writes, is like love. In love, I see only the singularity of my lover, and I am blinded to the particulars that constitute her – yet they are all essential to my love for her.⁵

The Thou-relation is ephemeral. One can quickly switch – what might be described as a Gestalt switch – between experience according to the logic of It-relations and experience according to the logic of Thou-relations. Love sours, and what is left is a fat, ugly, disgusting once-beloved. It is impossible to pinpoint when this transformation takes place; the switch is not conceivable within the terms of either the logic of the It-relation or of the Thou-relation. Moreover, it is difficult even to put such a switch into words, for it is not ‘one’ who switches. The switch from Thou-relation to It-relation, according to Buber, is not only a switch in mode of representing and experiencing the world but also a switch in subjectivity itself: the ‘one’ who represents and experiences is no longer the same after a switch.

Understood as mediated by a Gestalt switch (my terminology), Buber would seem to be putting the two logics on equal footing. However, Buber makes an additional theoretical move. He writes of how experience in a Thou-relation is never subject to the authority of the world. In other words, what answers the question of right in the logic of a Thou-relation is not determined by the answer to the question of fact. What gives legitimacy to experience is something outside the world, something transcendent. The Thou-relation skews the world according to its own manner, a manner posited by Buber but not justified through appeal to facts about the world. In contrast, an It-relation is subject to the authority of the world; the answer to the question of right is affected by the answer to the question of fact. Although Buber’s characterization of the It- and Thou-relations as separated by a Gestalt switch at first seems to be a promising approach to evade the problem Rose identified with avatars of neo-Kantianism, by locating the authority of the Thou-relation outside the world Buber reintroduces transcendence into his theoretical project. Indeed, this is inevitable: if there are two distinct answers to the question of right, they cannot both be determined by the same answer to the question of fact – or, at the very least, to show that this would be possible would require substantial philosophical labor, a task which Buber does not attempt.

What might have been read as a rhetorical flourish in the context of Buber's discussion of the authority of the Thou-relation becomes a much more substantial commitment to transcendence when coupled with his historical account of the Thou-relation. Buber associates the Thou-relation with a time before the law, with a world before it was broken into a spatiotemporal grid of 'things.'

Consider the language of 'primitive' peoples... The nuclei of this language... generally designate the wholeness of a relation. We say 'far away'; the Zulu has a sentence-word instead that means: 'where one cries, "mother I am lost".' And the Fuegian surpasses our analytical wisdom with a sentence-word of seven syllables that literally means: 'they look at each other, each waiting for the other to offer to do that which both desire but neither wishes to do.'

(1970, pp.69-70)

The contrast between our phrase 'far away' and the Zulu sentence-word is that 'far away' quantifies, it is just a small step away from 'ten miles.' 'Far away' could be applied in a variety of situations to any *thing*, from a friend's house to a satellite in outer space. The Zulu sentence-word, in contrast, connects one situation with another, sewing together a web of interconnected experiences not individuated into the status of things which could be placed onto a spatiotemporal grid. In the Zulu world, everything blends together; there is no individuation, no law. This is an anarchic (albeit apparently quite harmonious) realm, not unlike that described by Foucault.⁶

Buber suggests that in the modern world we are able to access our primitive, anarchic roots by appealing to the Thou-relation. By describing the encounter of a 'primitive' person with a 'Thou,' Buber offers a glimpse at the possibilities that the Thou-relation holds for people living in the modern world:

What he [the 'primitive'] retains is not the visual notion of the migratory disk of light nor that of a demonic being that somehow belongs to it, but at first only an image of the moon's action that surges through his body as a motor stimulus; and that personal image of an active moon crystallizes only very gradually.

(1970, p.71)

When the 'primitive' man first sees the moon, he relates to it in the same manner that is expressed in the language of the Zulu and the Fuegian: as

part of an interconnected fabric of which the moon, the 'primitive' himself, and everything in between are a part. This is why the moon's action 'surges through his body.' The 'surge' represents the reintegration of the moon-gazer into the primordial whole. But the experience of viewing the moon, of feeling that surge, 'crystallizes' gradually over time; the moon becomes a 'disk of light' or a 'demonic being.' In other words, it becomes a thing, it is translated into the ancestor of a modern scientific vocabulary. However, the initial experience, the initial 'surge,' can be reclaimed in the modern world through a Thou-relation when a Thou is allowed to surge through our bodies, to reunite us with the pre-conceptual world. As Buber puts it, this Thou is infinite, pointing toward the 'eternal Thou' who is forever outside the world, forever identified with an antinomian realm: 'God.' Now, Buber reveals the source of authority for the Thou-relation, the way that the question of right for that mode of representing and experiencing the world is answered: it is through God.

Despite the very different historical moment and tradition in which Jean-Yves Lacoste is situated, his philosophical position has strong resonances with that of Buber. But while Buber left ambiguity about how the It- and Thou-relations map onto the answer to the question of fact, Lacoste is explicit, describing 'two orders of experience, not two regions of being' (2004, p.44). Like Buber, Lacoste uses language suggestive of a Gestalt switch between the two orders of experience which he differentiates. We might think of Wittgenstein's drawing of a duck-rabbit.⁷ Although the lines that make up the drawing remain constant, they appear to a viewer as either a duck or a rabbit. When you see the drawing as a duck, you do not see the rabbit; when you see it as a rabbit, you do not see it as a duck. It takes a Gestalt switch to go from seeing the rabbit to seeing the duck and back – even if you know that both are present.⁸

However, Lacoste's Heidegger-inflected position can be read to take the raw materials, as it were, that make up the duck-rabbit drawing – the world – not to be physical things but to be social practices. One social practice can be experienced in two entirely different ways depending on which of the two modes of experience is in play. The two modes of experience that Lacoste posits are ordinary experience and what he calls 'liturgical' experience. To understand Lacoste's usage, we must first empty 'liturgical' of all conventional associations, and begin by taking liturgical experience to be no more than an alternative mode of experience to the ordinary, as the rabbit is an alternative to the duck in Wittgenstein's drawing.

Before venturing too deeply into Lacoste's philosophical project, let us first consider the resonances between his work and the project of an immodest jurisprudence. Written in a thick Heideggerian accent, Lacoste's *Experience and the Absolute* begins with a discussion of being-in-the-world. Our relationship with the world starts with our location in a place. By 'place' Lacoste means 'being-there,' which is to say, being constituted by *this* particular set of norms. As a subject, I am not constituted by social norms *in toto*; I am constituted by *these* social norms, *these* things that one should do which are the things that *I* do. For Lacoste, the world is by definition an 'insuperable horizon' (2004, p.26). It is the horizon of possibility, the sum of what is authorized by all social norms. The norms of the world completely determine what is authorized for us to do; if there were some thing that was not in the world, we could not do it or know it, so it would not be some thing, it would be nothing. This horizon of possibility is, to use Lacoste's analogy, not like the walls of an aquarium in which a fish is enclosed. It is impossible for us to hit up against the limits of the possible because everything we do is possible or else it would not be done. This is what Lacoste describes as 'a logic of immanence': there is no outside, it is social norms all the way down (2004, p.10).

Lacoste proceeds to conduct a phenomenological analysis of place, showing how, in a place, in our place, we feel both comfortable and anxious, both at home and foreign (again, Lacoste is explicating and elaborating the thought of Heidegger). We are attached to our place because it is ours, and yet we understand that it is not our own, that it did not come about because of our choosing. We belong to the world, but it does not belong to us – and we are reminded of this fact through existential anxiety. Yet we also feel existential comfort: we feel joy and serenity in our place in the world. This phenomenological analysis lays the groundwork for Lacoste's introduction of the liturgical mode of experience. His appeal to a mode of experience beyond the ordinary is motivated, in part, by the ever-present existential anxiety which we feel when experiencing the world. If our ordinary experience of the world was only characterized by comfort, there would be no motivation for a Gestalt switch from duck to rabbit, from ordinary mode of experience to liturgical mode of experience.

Truth, in the world, is 'right opinion' (Lacoste 2006). But Lacoste does not think this captures the fullest sense of truth. As Lacoste explains, right opinion is paradigmatically found in aesthetics, where the correct evaluation of works of art is based on social norms. However, Lacoste argues that right opinion is also the judge of ethical and all other worldly

truths: the authority in the world is social norms, just as for Gillian Rose. We can develop our taste to judge rightly by bringing our practices into conformity with social norms, to call this painting beautiful and that concerto inferior, to call this action impertinent and to call that man sincere, but all such judgments remain at the level of worldly truth, of right opinion. So, too, with such seemingly indisputable 'truths' as 'the cat is on the mat': it is right opinion, an utterance that conforms with social norms of language use (2006, p.97). It is norms all the way down; there is no deep reservoir of fundamental truths to which one can appeal. In other words, the answer to the question of fact affects the answer to the question of right – and vice versa. However, Lacoste argues that truth exists in a stronger sense than just 'right opinion,' and this sort of truth cannot be found in the ordinary mode of experiencing the world. It can only be found through a different mode of experience, through liturgy.

There is a particularly French phenomenological maneuver that consists in moving beyond Heidegger by looking for some domain that comes 'before' Being. For Emmanuel Levinas (1969), the ethical comes before Being; for Michel Henry (1993), auto-affection; for Claude Romano (1998), the event; for Jean-Luc Marion (1991), the gift, or, in his most recent work (2007), love. Lacoste, too, attempts to exceed the Heideggerian problematic, but he does so by means of a horizontal rather than a vertical maneuver. Lacoste does not locate a domain 'below' or 'beneath' that of Being. Starting from Heidegger's analysis of being-in-the-world in *Being and Time*, Lacoste focuses on human experience of the world, pushing beyond the Heideggerian problematic by examining a second, alternative mode of experiencing the world – a horizontal rather than a vertical shift.

As we saw, Lacoste motivates his push beyond the Heideggerian problematic through a phenomenological analysis of existential comfort and anxiety. Existential anxiety, caused by the impossibility of ever feeling at home in the world, makes humans susceptible to a Gestalt switch to the liturgical mode of experience. Once the Gestalt switch is made, the world 'ceases to envelop us' although 'it is not something we might leave behind us' (2004, p.44). There are the same raw materials, the same 'beings,' but we experience them in a different way. In liturgical experience, we 'bracket the petitions of history and the laws that world and earth impose on us' (2004, p.37). Although there is still social practice (the raw material, the ink of the duck-rabbit drawing), it is no longer governed by social norms, for social norms are bracketed, they lose their authority. The world 'ceases to be a horizon' (2004, p.24). Recall that

the world is a horizon because the world is the totality of social norms. When the authority of 'laws,' of norms, is suspended, what traditionally determines right opinion no longer holds sway – the question of worldly truth becomes irrelevant. What we do no longer needs to be based on what is expected of us by others. The 'petitions of history' – custom, which gives force to social norms – lose force in liturgical experience.

Lacoste offers another description of liturgical experience: it 'thwarts all the laws of topology' (2004, p.24). Topology – specifically, what Lacoste calls 'inherence' – is concerned with what binds us to *these* social norms, to our place in the world. It concerns our feeling of attachment to doing things *this* way and no other way, our feeling of attachment to our 'place.' When the force of social norms is suspended, so too is our sense of attachment to a particular place. During liturgical practice, 'Man could "be in a place" without his being-in-the-world providing the coordinates of this place' (2004, pp.24–5). In other words, in liturgical experience, one still acts, one still performs social practices, so one still is 'in a place,' yet one has no particular attachment to this place, to these practices. What one is doing could just as well be anything else; this place could just as well be any other. In liturgical experience, one stands apart from all social norms, from the law in its totality. Indeed, Lacoste writes, 'the world ceases to be a horizon and appears as it is not, as a being that one can contemplate as a totality' (2004, p.24). When one is located in a particular place in the world, subject to particular social norms, one sees other norms from that perspective. When one is no longer tied to a particular place, it is possible to see the totality of social norms. Yet thwarting the laws of topology is not the same as becoming detached from them. Even in liturgical experience, 'we are constantly compelled to think in terms of place' (2004, p.22). Although social norms hold no authority in liturgical experience, social practice constantly suggests social norms.

While ordinary experience involves being-in-the-world, liturgical experience is experience in relation to the 'Absolute,' according to Lacoste. Although Lacoste has something quite specific in mind when he writes of the Absolute (he is, after all, a Catholic priest), his argument is carefully constructed to be independent of any particular content that this Absolute might have. The Absolute is simply the name for the authority that is in force when the world is bracketed; who or what wields that authority is a question Lacoste leaves unaddressed (the question is, from Lacoste's philosophical rather than theological vantage point, irrelevant).

What Lacoste does say about the Absolute is that it cannot be identified with the sacred. For Lacoste, the 'sacred' is quite different than 'God': the sacred is a feature of this world thought to mark transcendence. A temple can be sacred, but the Absolute is infinite; the Absolute is qualitatively different than anything in the world. Lacoste argues that, while the Greeks sought a feeling of the sacred in the temple, in modernity theorists of religion such as Friedrich Schleiermacher and William James have attempted to locate this marker in personal religious feeling (Lacoste 2006). Such a religious feeling, often described as ecstatic, is, like the Greek temple, a worldly fact that is thought to mark transcendence. Lacoste carefully differentiates liturgical experience from any such worldly facts: he writes that liturgical experience 'most certainly promises us no ecstasy' (2004, p.26).

There is a certain tension in Lacoste's presentation of liturgy, a tension which repeats, transformed, the tension noted above in Buber's response to the question of right and the question of fact. On the one hand, when the Gestalt switch to liturgy has been made, the answer to the question of right changes. Authority no longer comes from social norms; it comes from the Absolute. However, there remains a 'point of contact' between ordinary experience and liturgical experience. This point of contact is like the lines of the duck-rabbit: they are neither duck nor rabbit in themselves but simple facts, or, in the case of the world, 'facticity.' Yet, on the other hand, when the world is bracketed, the force of social norms is lifted. Master and slave pray together, Lacoste writes, for they no longer are supposed to do otherwise. In liturgical experience, we escape the authority of social norms, we escape the authority of history. When the force of social norms is taken away, it is hard to understand what the point of contact between ordinary experience and liturgical experience could be. For Heidegger – and Lacoste nowhere dissents from this point of Heideggerian doctrine – facticity is made possible by social practice. The present-at-hand is determined by the ready-to-hand. So it is unclear how this point of contact can remain once the normative force is taken away from social practices, by extension undermining facticity.

Perhaps this tension can be resolved by focusing on social practices as the point of contact between ordinary experience and liturgical experience. Ordinary experience and liturgical experience, according to this refinement of Lacoste's view, could be understood as two modes of performing a given practice. When we perform a practice liturgically, we do so with a certain detachment, a certain aloofness. We are doing what one does, but not because there is any force (any norms) compelling us

to do so. We are simply doing what one does because it is the default thing to do. We understand that there would be no reprimand if we acted differently. In contrast, when we perform a practice ordinarily, at some level we are conscious that we are acting as we ought to act; if we acted differently, we understand that we would be reprimanded.

This account of liturgical experience as a mode of performing social practices is in accord with Lacoste's insistence that liturgy is unique to humans. Modalities of practice are unique to humans: there are social practices of animals, but they are performed in monotone. A dog cannot fetch a ball with existential anxiety or detachment. Animals are at home in the world (they possess and defend territory, they protect their young... they have a 'place') and cannot bracket the world (in other words, for animals, social practices and social norms are one and the same thing).⁹

The difference between the two modes of practice identified by Lacoste, ordinary and liturgical, is that each is subject to a different authority, each offers a different answer to the question of right. The world 'understood as the transcendental horizon of existence... is the law he [the liturgical practitioner] attempts to thwart in the name of a more fundamental or more originary authority' (2004, p.28). For Lacoste, there are two laws, the law of the world, subject to the authority of the world, and the alternative regime which is exposed when the law of the world is 'thwarted.' Here, Lacoste is clear about which of the two authorities takes precedent: the authority governing liturgical practice is 'more fundamental' and 'more originary.' Lacoste writes that during liturgical practice no government has a hold on us, our jobs have no hold on us, yet this is not a holiday or a foreign excursion. Liturgy is not leisure. For leisure is worldly: it is subject to social norms that compose the world, norms complementary to those governing work (the norms of a foreign land, complementary to the norms of our home).

Lacoste is particularly fond of this jurisprudential idiom. Elsewhere, he writes, 'Liturgy has of course a right of citizenship in the world' (2004, p.24). How can liturgical practice have a 'right of citizenship' without being subject to the 'authority' of the world? Would this not result in liturgical practice having the right of citizenship without the responsibilities of citizenship? This seems to be precisely what Lacoste intends. Liturgical practice is a social practice in the world – it answers the question of fact. However, in liturgical practice, social norms have been bracketed, their authority has been suspended. The question of right is no longer answered through reference to the answer of the

question of fact. It is no longer possible to tell whether a practice is done as it should be done when it is a liturgical practice.

As we have seen, for Lacoste, ethics and morality are matters of right opinion in the world. Lacoste argues that morality is always incomplete when it is understood as right opinion. There is a source of normative force that is not reducible to social norms: 'We cannot deduce the entirety of moral experience from our opening onto the world' (2004, p.75). Liturgy complements and completes worldly morality. Together, liturgy and ethics are 'two poles of a unique structure.' What this means remains rather obscure. Perhaps Lacoste is suggesting that, by performing the liturgical maneuver of bracketing social norms, of stepping back to see the forest instead of the trees, we are able to discern exactly what we ought to do in a way which would not be possible when we exist only in our particular place, seeing just the tall trees that grow around us. If this were the case, it would point to a way in which Lacoste's account of liturgical practice would be compatible with an immodest jurisprudence. Liturgical practice, understood in this way, would be a strategic practice which would allow the practitioner to gain a better perspective on social norms. By working on detaching oneself from place, from *these* norms which pull on me, liturgical practice would allow for a reexamination of what those norms really are. It would reinvigorate the flow from the question of fact to the question of right (and vice versa) by approaching the question of fact anew, from a perspective not limited to *these* practices authorizing *these* norms.

However, Lacoste's writings suggest a resistance to such a maneuver. He writes that, while ordinary practice is 'provisional,' liturgical practice is 'definitive.' Ordinary practice is provisional because the world is contingent, norms change. What is right opinion today – about art or ethics or anything else – is different than right opinion yesterday and different than right opinion tomorrow. But liturgical practice is definitive because it is not dependent on changeable norms: in liturgical practice, all norms are bracketed, whatever they may be. This is why Lacoste writes of liturgical practice as complementary to ethics, as the other pole of their 'unique structure.' Liturgical practice, although definitive, is necessary to supplement ethics because of the provisionality of social norms. However, liturgical practice cannot take the place of ethics because liturgical practice does not privilege any specific worldly practices – it is, after all, the bracketing of all social norms.

What exactly can be said about liturgical practice? Lacoste (2006) suggests that 'saying' is not the right way to think about liturgy. While we may have propositional knowledge of the world, the only sort of

knowledge that we can have about liturgical practice is knowledge by acquaintance (here Lacoste is drawing explicitly on Bertrand Russell's distinction between knowledge by acquaintance and knowledge by description). Further, liturgical practice is not subject to the authority of experiential (cognitive or affective) verification. If it were, then the answer to the question of right, for liturgical practice, would be affected by the answer to the question of fact. This is why Lacoste rejects 'religious experience' as understood by James and Schleiermacher. In their accounts, it is a worldly feeling that gives one the certitude of knowing that one is participating in a genuinely religious experience. In doing so, James and Schleiermacher are relying on answers to the question of fact (special feelings) to answer the question of right (what makes a religious experience genuine). Nor is liturgy something which one can know with certitude through cognition, through mental reasoning, according to Lacoste. The norms of cognition are social norms, and they, too, are bracketed along with the world in liturgical practice.

Despite the restrictions he puts on what can be said about liturgy, Lacoste does want to provide an account – or, rather, examples – of what liturgical practice can look like. He chooses a number of particular practices which, he suggests, can be used as leverage to push us from the ordinary mode of experiencing the world to the liturgical mode of experiencing the world. In other words, he points to examples of practices which can help turn all of our practice into liturgical practice. These examples are not always performed in the liturgical mode, they just have a greater tendency than most practices to be performed in the liturgical mode.

One of Lacoste's favorite examples of these practices is the all-night vigil. At night, the thing to do – the practice authorized by social norms – is to sleep. Existential anxiety can manifest itself by keeping us all night in vigil. Keeping vigil is a conscious rejection of sleep, yet it is also a rejection of the world, according to Lacoste. It is a rejection of the world because at night all of our regular activities, our daytime duties, are complete. The norms of the world have no pull on us. An animal may stay up all night if it is hungry, in pain, or fearful, but this is not keeping vigil. The animal is awake because of the demands of the world, not because of existential anxiety – an anxiety which fuels a desire for something beyond the world. As Lacoste writes, 'The vigil does not reveal myself as I have to be, but as I would wish myself to be' (2004, p.79). 'Myself as I have to be' is how I am as a subject to (and a subject constituted by) social norms. With the alternative Lacoste offers, desire and fantasy blur – as they did for Butler. Lacoste writes of the anxiety

and desire that fuel liturgical experience, and here he suggests that such desire is connected with the fantastical image that one has of oneself: what 'I would wish myself to be.'

Another example to which Lacoste points of practices particularly susceptible to the liturgical mode of experience are the practices associated with the recluse. He writes, 'By equating the horizon of the world with that of his cell, the recluse thus divests himself of his concern with the logic of place' (2004, p.27). In other words, the social norms that speak to the recluse are set aside because the world has no authority over the practices that he performs in his cell. The practices that take place in his cell cannot be corrected – he cannot be subject to praise or blame – by anyone in the world. Social norms are suspended by the walls of his cell. Even though 'the laws of facticity necessarily obtain,' which is to say that the recluse is performing practices that *would* be accountable to others, 'it must be admitted that the recluse wants at bottom to be nowhere – that, symbolically, his place is a nonplace' (2004, p.27). The recluse attempts to bracket the world and act as if the standards of the world – *these* social norms to which she or he is subject – no longer matter; he has tried to act in accordance with what Lacoste terms 'the demands of the Absolute.'

The most dramatic practices which cultivate the liturgical mode of experience, according to Lacoste, are those associated with voluntary poverty. Those who relinquish all worldly status and resources by choice bracket social norms not for a moment but for a lifetime, 'making liturgy coextensive with life by negating the structures of experience that prevent being-in-the-world from sheltering liturgy' (2004, p.176). Voluntary poverty is a rejection of the currency that binds us to a particular place in the world, which commits us to particular practices in order to maintain our position and income. In this extreme 'liturgical reduction,' in Lacoste's significant phrase, all of the ties that bind a human to the world are loosed, they are all seen to be inessential, for life still continues for someone practicing voluntary poverty even though they are not subject to social norms.

However, even in voluntary poverty, when all practices are performed in the liturgical mode, there remains an unbridgeable divide between humans and the Absolute. As Lacoste (2006) puts it, liturgical practice is in relation to the eschaton but always remains pre-eschatological. The question of fact can never be evaded in the world even if the question of right can be answered in a way that makes reference to the Absolute. The strict distinction that Lacoste maintains between liturgy, a relation to the Absolute, and *parousia*, co-presence with the Absolute,

underscores the intermingling of Lacoste's specifically theological commitments with his ostensibly independent philosophical work. While his account of liturgical practice is constructed in such a way as to be independent of any theological commitments (it is simply the manoeuvre of bracketing social norms), to posit that liturgical practice involves a foretaste of something else, the worldly form of something other-worldly, is to invoke transcendence. However, as was the case in our investigation of Butler's work, there remains the possibility that the invocation of transcendence is – or could be – used strategically rather than substantively.

Lacoste understands parousia, co-presence with the Absolute, as a realm without social norms, without law, a realm in which law is not necessary because of divine harmony brought by grace. When Lacoste suggests that liturgy is the worldly form of parousia – this is the key point of his recent *Presence et parousie* – he is repeating, inverted, the structure we found in Buber. Instead of looking backward to a harmonious primitive society which can be rediscovered through a particular mode of experience (the Thou-relation), Lacoste looks forward to a harmonious eschaton which can be anticipated in the present world through liturgical practice.

The structural similarity between the work of Lacoste and that of Buber (and Foucault, and Butler) runs deep. Lacoste, too, appeals to desire as the means to access the extra-worldly. For Lacoste, existential anxiety and desire are closely connected. His phenomenological analysis reveals that we are never comfortable in the world, we always have existential anxiety. We always desire to be at ease, but it is never possible. This desire fuels liturgical practice. Desire prompts the Gestalt switch from the ordinary mode of practice to the liturgical mode of practice. Liturgical practice 'cannot be the object of an obligation; it is something that can only be the object of a desire' (2004, p.79). In other words, Lacoste is asserting that no social norm can motivate us to bracket social norms. The only thing that can motivate us to bracket social norms is 'desire.' This desire is 'inscribed in man' (2004, p.192), but the desire can be assuaged by worldly activities; our longing for liturgy can be forgotten if we are too caught up in the busywork of the world. Here, Lacoste is again appealing to a Heideggerian phenomenological framework: the possibility of forgetting the desire for liturgical experience is structurally parallel with Heidegger's discussion of the possibility of forgetting Being (through idle talk, etc.). Where Heidegger leaves normative questions implicit, Lacoste is quite explicit: 'one ought to live' through liturgical practice; it is 'life lived in truth' (2004, p.174).

But perhaps there is a way to read Lacoste that frees his project from a reliance on an authority outside of social norms, as I have already hinted. What if we understand the liturgical mode of practice, like Butler's subversive practices, as strategic? Lacoste seems to reject this option when he argues that no social norm could authorize liturgical practice. But perhaps his argument is incorrect. Might there not be instances when bracketing some norms – suspending their force – could serve the interest of other norms? For example, the medical activist Paul Farmer set aside World Health Organization guidelines on treating multiple drug resistant tuberculosis in the interest of ameliorating the suffering of those infected with the disease (Kidder 2004). The result was that a new paradigm for tuberculosis treatment emerged, one that would have been impossible to foresee if Farmer had strictly followed WHO guidelines. Farmer's actions were not motivated by a desire to transcend the world; they were motivated by a widely accepted social norm – that we should prevent unnecessary suffering.

3

On Traditionalism

Traditionalists locate the source of normativity in history and community. The answer to the Kantian question of right, for the traditionalist, is determined by the answer to the question of fact: norms have authority because of the social practices of community members, present and past. This has intuitive appeal: when a child asks why she should do *this*, she is told, 'Because that's what people do' or 'Because that's the way it has always been done.' The appeal to community and history functions as a conversation-stopper, an appeal to an authority which cannot be challenged.¹ For traditionalist jurisprudence, the correct ruling of a court is wholly determined by precedent, by past rulings of the courts.²

Rose critiqued theoretical endeavors in which the question of right is not wholly determined by the question of fact because such projects rely on a problematic appeal to transcendence: what is right is determined by something outside of the world, outside of social practice. At first it would seem as though Rose would be very sympathetic to traditionalist theories because they appear to prohibit an appeal to transcendence: the question of right is determined by the question of fact. However, Rose (1992) was explicitly critical of John Milbank's traditionalism, and in this chapter we will suggest that Rose would be critical of traditionalist projects in general. The reason is subtle: while the answer to the question of fact does determine the answer to the question of right for traditionalists, the former answer does not *wholly* determine the latter. Part of the answer to the question of right is presupposed; the effect is that the interchange between fact and right is skewed by the theorist's presupposed position.

Common law jurisprudence, the courtroom manifestation of traditionalism, takes the law to be a set of customs, of practices, rather than

a set of propositions deducible from first principles – neither the first principles of the natural law theorist, such as those involving Reason or God, or the first principles of the positive law theorist, such as those involving the commands of a sovereign. As Blackstone puts it, ‘In our law the goodness of a custom depends upon its having been used time out of mind... This it is that gives it its weight and authority.’ Note how Blackstone’s use of ‘goodness’ is equivocal – indeed, it suggests equivalence – between an existential and a normative sense. It is both the existence of a custom on which the law depends and the normative force that customs wield that dictate what should and should not be done in a court of law (Postema 1986, p.4).

Blackstone goes on to associate the historical continuity of law with its reasonableness. That a law has persisted from time immemorial must show that it is wise: many different people in many different circumstances have found it to be sound. Originally rough and clumsy rules have been molded over the ages into just the right shape to complement the community to which they are applied. The result is that we must follow precedent because we give deference to the wisdom of our predecessors, even if their reasoning might not be obvious to us. Blackstone suggests that the common law grows and changes like an organic entity. As a recent commentator puts it, ‘Old rules die, new rules and practices take their places like new cells replacing old’ (Postema 1986, p.12).

Blackstone’s account of law answers the question of right (what really is a law) with the answer to the question of fact (‘unwritten maxims and customs,’ that is, past practice). However, Blackstone goes further. He argues that a non-trivial description can be applied to all law: it is reasonable. It all fits together; it harmonizes – like an organic body. Although Blackstone tries to attribute this feature of law to facts about the historical process (many people in many circumstances have smoothed the edges), this is not sufficient to justify the reasonableness that Blackstone attributes to law as a whole. He has introduced an answer to the question of right that is not determined by an answer to the question of fact.

The implicit supplement to the answer to the question of right that Blackstone adds becomes clearer when he considers the possibility of new law. Reason holds together the law so firmly that, if some legislator attempts an innovation which negates received law, some unforeseen circumstance will arise to show why the original law was wiser than the legislator’s innovation (one cannot help but think of plagues and floods demonstrating the folly of disobeying divine command). Blackstone’s

understanding of the unity of law goes far beyond edges smoothed by the winds of history:

Our system of remedial law resembles an old Gothic castle, erected in the days of chivalry, but fitted up for a modern inhabitant. The moated ramparts, the embattled towers, and the trophied halls, are magnificent and venerable, but useless, and therefore neglected. The interior apartments, now accommodated to daily use, are cheerful and commodious, though their approaches may be winding and difficult.

(Postema 1986, p.12)

Although the castle changes over the years, it remains unified as a single unit. In other passages Blackstone writes of how reason flows through the entire law, the entire castle, holding it together with a mysterious, unseen force.

Where Blackstone wrote of a Gothic castle as the model for a traditionalist conception of law, John Milbank (1997, p. 276) writes of a Gothic cathedral as the model for a traditionalist conception of social practice as a whole, not limited to the walls of a courtroom. Like Blackstone, he adds an implicit supplement to the answer to the question of right so that it is not wholly determined by the answer to the question of fact. Before turning to Milbank, however, I will examine a pluralist form of traditionalism, a position I argue is unstable. By applying pressure to the limits of pluralist traditionalism, it transforms into the bolder, more problematic form of traditionalism advanced by John Milbank and Catherine Pickstock.

In *Politics of Piety*, the anthropologist Saba Mahmood offers a traditionalist explanatory framework to help understand the practices of Muslim women who embrace a rigorous strand of Islam, participating in devotional groups attached to certain Cairo mosques. Mahmood rejects the standard ('Western feminist') approach that focuses on the emancipation of women from oppression they face based on their gender. This approach, which Mahmood suggests is characteristic of 'secular-liberal thought in general,' views the practices of pious Muslim women as self-imposed restrictions, perhaps as a result of false consciousness due to patriarchy.

On the Western feminist approach, an individual exercises agency by resisting restrictions. Restrictions are understood to be based on one's community or one's history rather than on one's own reasoning or desires. The more tradition is refused in favor of the individual, the more the individual is exercising his or her agency. And,

on the ethical-political corollary to the Western feminist approach, more agency is good, is desirable. It is what constitutes freedom. This approach supposes that freedom can exist independent of community and history; in fact, in opposition to community and history. This is reminiscent of the position of the Dualist examined in the previous chapter, the position that there is some antinomian realm which we can strive to attain if we reject social norms.

A weaker version of the Western feminist approach holds that it is only particularly egregious restrictions imposed by a tradition which should be opposed. On this version, the emphasis is not on striving toward an antinomian realm, but on stepping back from problematic – put strongly, as it frequently is, evil – norms on an *ad hoc*, not a categorical, basis. But where does the moral horror of the Western feminist come from? Its source cannot be in a norm of the community in question because, except in the most extreme circumstances, a community is not outraged at its own practices. Rather, the ‘Western’ provenance of the Western feminist approach exposes itself: it is ‘us’ (Westerners) looking at ‘them’ (in the ‘Third World’) and finding what ‘they’ do abhorrent.

Mahmood offers a traditionalist alternative by developing a theoretical framework that allows her to attribute agency to the women she is studying even though they appear to be voluntarily participating in seemingly restrictive and old-fashioned practices. This framework acknowledges the always-already situatedness of individuals in a tradition, and it understands freedom contextually, not absolutely. Any concept of freedom, Mahmood argues, must be built upon, or around, the norms existing in the situation where that freedom is exercised. As Mahmood writes, drawing on the work of Judith Butler, ‘norms are not simply a social imposition on the subject but constitute the very substance of her intimate, valorized interiority’ (Mahmood 2005, p.23). On Mahmood’s view, a Muslim woman does not exercise agency by refusing to wear a headscarf; she exercises agency by wearing it because wearing it is a way of re-performing social norms, particularly those involving the Islamic virtue of modesty. Mahmood agrees with Butler that in each performance a social norm is repeated non-identically. It is in these differing repetitions that agency can be located, she argues.

Mahmood’s account of agency is based on her understanding of social norms, but she also makes further claims about ethics and politics. This is where she introduces answers to the question of right which are not wholly determined by answers to the question of fact. She employs a tangle of words with a normative valence in presenting the motivation, implications, and substance of her project: ‘ethical,’ ‘moral,’ ‘virtue,’

'values,' 'politics,' 'norms,' and so on. To begin untangling: she borrows the late Foucault's distinction between a 'moral code,' an institutionalized list of do's and don'ts, and 'ethics,' which 'refers to those practices, techniques, and discourses through which a subject transforms herself in order to achieve a particular state of being, happiness, or truth' (Mahmood 2005, p.28). In other words, ethics are a set of social practices which an individual employs to further certain interests, such as the desire to be happy. These practices always involve the appropriation of moral codes, of codified norms: 'The precise embodied form that obedience to a moral code takes is not a contingent but a necessary element of ethical analysis' (Mahmood 2005, p.29). Lists of what one ought to do (moral codes) are interesting not in themselves but in how they are used, how they are selectively followed for particular purposes. But note here the equivocal use of 'ethical' in the phrase 'ethical analysis.' On the one hand, it could mean 'ethical' as opposed to 'moral codes,' in which case it would be concerned with what is normative for the performer who is 'embodied.' On the other hand, if 'ethical' is read as an adjective describing 'analysis' rather than as a genitive, Mahmood would be describing what is normative for the researcher, for the one doing the analysis.

'Politics' enters into the mix because, according to Mahmood, moral codes and ethics are not private matters in opposition to the public matter of politics. In reference to the women she studied, Mahmood writes, 'Their political project...can only be understood through an exploration of their ethical practices' (Mahmood 2005, p.35), and 'their ethical practices are a necessary condition of their political agency inasmuch as these practices have produced unanticipated effects in the prevailing social field' (Mahmood 2005, p.152). An understanding of politics must make reference to 'ethical practices' because 'ethical practices' have effects that go beyond the individual practitioner. Mahmood points to the Egyptian government's concern over and regulation of pietistic strands of Islam in Egypt as an indicator of this political effect. Seemingly individual 'ethical practices' provoked a reaction from the state. What Mahmood seems to be getting at here is that Islamic practices of piety in Egypt create a separate – and, from the perspective of the more 'secular liberal' government, oppositional – tradition. The society, with its distinctive history, that she studies is emerging apart from mainstream Egyptian society and history – and so as a challenge to it. What one should do differs when viewed from the perspective of the two distinctive traditions, limiting the state's monopoly on the manipulation of normative force.

Both the distinction between ethics and moral codes and the connection between ethics and politics that Mahmood uses raise issues which she leaves partially unexamined. First, by suggesting that there is a special sort of social practices, 'ethics,' which involves selectively participating in other practices and strategically following the moral code in order 'to achieve a particular state of being, happiness, or truth,' Mahmood hints at the imagery of a Kantian captain of the ship, an old-fashioned 'subject' rationally choosing *these* practices or *those* depending on which will best get him where he is going (Blackburn 1998). Second, the rhetoric of 'states of being, happiness, or truth' sounds suspiciously like the 'Western' ideal of antinomian freedom: the quest to find a perfect home outside the world of social practices and norms.

To avoid these worries, perhaps we can read Mahmood as invoking a more pragmatic understanding of 'ethical practices.' Instead of aspiring to a special, other-worldly state of happiness or truth, ethical practice is simply a way of describing how we navigate the world. To evoke one of Mahmood's own examples from her fieldwork, a Muslim woman might be particularly modest in order to shame her impious husband and so to gain leverage with her in-laws. The woman is simply furthering her own interests, performing one practice in the interest of furthering other practices; perhaps the 'happiness and truth' terminology romanticizes and obscures this quotidian reality.

Yet Mahmood seems to want to say something more than this deflationary reading of 'ethical practice' allows. She seems to want to say that the ethical ought involved for the Egyptian women she studies is more than just a pragmatic ought, a hypothetical imperative: more than just: 'you ought to X in order to Y.' Where could this stronger normative force come from? It could come about from the perspective of the observer or scholar, from the social norms that hold from the outsider's perspective and are attributed to the subjects under study rather than arising from within the context under study. Indeed, at times it seems as if this is the option that Mahmood chooses by linking ethics and politics. The 'ethical' practices of the Muslim women oppose the liberal state, she suggests. Perhaps the label of 'ethics' is justified because, from 'our' perspective as observers, oppositional politics is something we value and want to promote. Instead of a challenge to our norms, it is affirmed by our norms. On this reading, the 'ought' involved in the Muslim women's practices is stronger than a pragmatic, hypothetical imperative internal to the women's practices because it furthers the interests of a political project to which 'we' are committed: 'the practices of

the mosque participants often pose a challenge to hegemonic norms of secular-liberal sociability as well as aspects of secular-liberal governance' (Mahmood 2005, p.34). Moreover, discussing 'feminist' anti-Taliban campaigning, Mahmood writes, 'The ethical questions that imperial projects of this proportion pose for feminist scholars and activists are also relevant to the more sedate context of the women's mosque movement' (Mahmood 2005, p.197). Here the link is explicit: the quotation shows that 'ethics' in Mahmood's vocabulary not only labels a certain sort of practice (those that, *inter alia*, strategically appropriate moral codes) but also refers to questions that 'feminist scholars and activists' address.

There is an implicit 'we' that fuels Mahmood's use of normative language, a 'we' that includes 'feminist scholars and activists.' But does this not introduce an opening for 'our' own pre-established convictions, convictions rooted in 'our' own tradition, the tradition of feminist scholars and activists with its own distinctive norms and practices? If this is the case, Mahmood would be doing exactly the same thing as the 'Western feminists,' harnessing the vocabulary of 'ethics' to her own interests, to her own practices and norms, and then applying it to the exotic culture critiqued (or commended). At the end of the day, the difference between Mahmood and her opponents would be a difference between the scholars' traditions (Western establishment feminists versus hip, edgy Western feminists), their customary practices and values, not those of Egyptian women.³

This discussion of Mahmood's project points to the important and complicated relationship between 'us' and 'them,' between 'our' tradition and 'their' tradition, an issue explored in great detail by Jeffrey Stout in his *Democracy and Tradition*. Stout inverts Mahmood's focus: instead of turning his attention to the intricacies of a distant tradition and the way individuals position themselves in relation to the norms of that exotic tradition, Stout examines his own tradition, the American democratic tradition, headlined by Dewey, Whitman, Emerson, and Thoreau – but also exemplified by Baldwin, Ellison, and Morrison. Stout's focus is not on applying 'our' norms to the examination of a distant tradition; it is exploring 'our' norms themselves, explicating them so that they can be critically examined.

Stout begins his discussion by noting that, in ordinary usage, a 'tradition' usually refers to a tight-knit, insular community that appears to have 'ethical substance,' an 'ethos,' embodied in its shared practices, stories, and rituals, passed down through the generations. The United States has so many different peoples and is so fragmented culturally,

religiously, ethnically, and otherwise, that it would seem to lack the coherence, the 'ethical substance,' of a tradition. Citizens of the United States simply do not all view the world in the same way – or live in the same worlds, it would seem.

Although there are some norms which are disputed in American democratic culture, norms of one community that conflict with norms of another, there are also many norms which all Americans share. American democracy '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' (Stout 2004, p.3). Although there might be very vocal disagreement on particular matters of public policy or about particular conceptions of justice, Stout argues that the writings of great democratic intellectuals from Walt Whitman to Toni Morrison articulate the shared concerns and attitudes of the American democratic citizenry. Americans might disagree about abortion rights, for example, but they all agree that everyone ought to be able to write a letter to his or her congressman.

What writers like Whitman and Morrison do, according to Stout, is to articulate, to make explicit, norms that are implicit in social practice.⁴ The norms of the American democratic tradition can be read off what exemplars of that tradition say and do – and these norms can be extended outward. For a participant in that tradition, these norms are extended universally and unconditionally, creating commitments and obligations, even though they originate in very specific conditions. There can still be an obligation even if it is not acknowledged by the person who is obliged. To use Stout's example: I may have reasons to believe that torture is unconditionally wrong because I think that it conflicts with the social norms of my community, and this obliges everyone else not to torture. The world of a medieval monk might have had a very different set of norms than my world, and so the monk might not have acknowledged this obligation. However, I can still say that the monk was obliged not to torture – although Stout allows that he may be exculpated through ignorance. Stout argues that one can be culpably ignorant if the reasons are available, if one is aware that an action conflicts with social norms, but one intentionally remains ignorant of them (such as 'a contemporary right-wing dictator').

Culpability can also come about because of norms implied in one's own social practice unbeknownst to oneself. A lifeguard explicitly committed to protecting the swimmers under her watch is also committed to pushing aside people in her way when a swimmer is drowning, although

the latter commitment is generally less explicit than the former. Suppose a lifeguard does not realize her implied commitment and politely asks others to move out of the way en route to assist a drowning swimmer. If the drowning swimmer dies because of the delay, we can still find the lifeguard culpable, even though the commitment that was broken was not explicit. In general, such implied commitments can be established 'through meticulous historical inquiry and immanent criticism' (Stout 2004, p.198). Stout endorses Eugene Rogers' (1999) project of showing how medieval Christians were implicitly committed to tolerating homosexuality for similar reasons.

A commitment to universal moral principles is certainly satisfying, but its basis is tenuous. This is exactly the situation that we encounter with Mahmood: in 'our' tradition we have certain principles, certain norms (opposing imperialism, for example) which we want to apply to people in other traditions (Muslim women *should* wear headscarves because it opposes imperialism). But if the traditionalist holds that social norms go all the way down, then it is correct for Western intellectuals to say torture is universally wrong and it is correct for a medieval monk to torture – both are following the norms of their societies. Stout and Mahmood want to assert that there is a point of contact between the two, that one can speak with normative force to the other. Stout introduces a distinction between justification and truth to explain what is happening here. A claim is justified if it conforms with the local norm, but that does not mean that the claim is truthful. Truth is ascribed to a claim just if, within the community it is made, it is understood to apply universally (truth is deflated to the point that this is its only use).

A dilemma presents itself. On the one hand, within any tradition justification is the strongest imprimatur that can be awarded to practices: they can be said to be in accordance with the relevant social norms. If the vocabulary of truth is used, it must be understood (by outsiders) as a sort of rhetorical flourish, extra oomph. But, on the other hand, Stout emphasizes 'our' role as insiders in a tradition, in the American democratic tradition. From this perspective, it seems as though Stout wants to say that truth is more than a rhetorical flourish. When he, as an American democratic citizen, says that torture is wrong, and that the truth of the matter is that a medieval monk was wrong in using torture (although justified, perhaps), it would seem as though he wants to understand what he is saying to be more than just 'what one says' when one encounters a practice that does not conform with the social norms of one's own tradition. This point is crucial for Stout because, both in

Democracy and Tradition (2004) and in his earlier *Ethics after Babel* (2001), he wants to argue that, despite the many different ethical idioms of the world, we can still have a substantive and meaningful conversation about ethics beyond the boundaries of our community, of our tradition. It seems as though more than extra oomph would be necessary to have such a substantive discussion (see Price 2003).

Stout separates norms involved in ethics – over which there is contestation in democratic cultures – from norms involved in other everyday practices like playing chess or soccer. He writes that ‘ethical norms are much more important in most contexts . . . than the properties and ideals of soccer are’ (Stout 2004, p.274). According to Stout ‘moralities’ (he does not make a distinction between ‘ethics’ and ‘morals’) are concerned with ‘a particular kind of topic,’ one that is necessarily ‘vague’ ‘given the fuzziness of the boundaries around the topics we call moral.’ The ‘moral’ vocabulary of an alien culture would be determined by which of their topics ‘exhibit overall similarity to the topics we habitually call moral’ (Stout 2004, p.228). For Stout, then, there is not a pre-established, a-contextual domain of morality; rather, it exists through a relation of transitivity. But the combination of these two claims, that there is a special class of norms which are ‘ethical’ and that there is no independent domain of ‘ethics,’ leads to further difficulties for Stout’s project.

Consider what would happen if democrat Dave, whose statements about morality are explications of norms grounded in social practices, encounters Kate, whose moral statements are grounded in the word of God as recorded in the Bible (Kate here represents anyone who holds a theory in which the source of normativity is not social practice). Dave and Kate come from very different cultures, say, and Dave does not know what the domain of morals is for Kate. To determine what Kate’s morals are – in other words, to determine which subset of norms in her society are ethical norms – Dave, following Stout’s advice, listens to what she says and identifies the topics that exhibit overall similarity to the topics that Dave habitually calls moral. For instance, Kate says that everyone has an obligation to abstain from work on Sundays. But now Dave has a problem: the realm that he identified as ‘morality’ for Kate has to do with her explications of her practices, not the practices themselves. Closely observing Kate’s practices, Dave may notice that each Sunday she goes to work in the same factory that she works in every other day. When Dave asks Kate to make explicit what she is doing, he would have heard her articulate norms quite different from what she says when asked about the dictates of ‘morality.’ She would explicate

her practice by noting that she has hungry children to feed so she works as much as possible.

Here the distinction Mahmood, following Foucault, makes between moral codes and ethical practices is useful. The topics habitually called moral (for Dave, norms made explicit from social practice; for Kate, the word of God) are similar to what Mahmood calls moral codes – the lists of do's and don'ts in a particular society. But to deliberate about moral codes has limited traction in terms of social practice; it can be like wheels spinning in the air because, as Stout forcefully argues, deliberation works when it is deliberation about norms implicit in social practices. The results of such deliberation can feed back to affect the practices themselves, to actually change how people live. Stout is ultimately interested in ethical practices rather than moral codes; in the tradition in which Stout happens to find himself, ethical practice and moral codes are closely linked – or at least should be, according to the norms implicit in democratic practice.

Even if Dave is trying to have an ethical/moral discussion with Kate based on her ethical practices rather than her (Biblical) moral code, how is he to identify the particular practices Kate performs which are 'ethical' rather than just, say, practices for amusement like checkers or soccer? There must be some way for Dave to identify certain of Kate's practices that correspond to certain of his practices – those of Kate's practices which, when explicated in Dave's language, use Dave's vocabulary of morality. He must find some way to inferentially extend from his practices to hers, or vice versa.

Dave and Kate could have very different practices if they have very different roles – or if they come from very different traditions. Perhaps Dave judges horses while Kate manages disaster relief for the federal government. Stout seems to want to say that their practices can be inferentially extended so as to be put in contact with each other. Dave might conduct himself in a certain way so as to keep the horse owners from having temper tantrums when they lose, and Kate might conduct herself in a certain way so as to efficiently coordinate the efforts of local, state, and federal agencies. These practices perhaps could each be inferentially extended and made explicit in a shared commitment to calmness and steadfastness in interpersonal relations, say.

That such a point of contact exists may seem to be simply a matter of good fortune. But Stout is committed to holding that such a point will always exist because he argues that the realm of morals can be defined transitively. Kate must have certain practices the explications of which are aligned with Dave's morals (the norms implicit in the particular

ethical practices which he performs). The trouble with this is that it suggests between any two sets of norms and practices, there is always a way to translate between them, practice for practice. But this suggests that all practices have something in common that can be exploited to connect them, some common denominator – rather like Blackstone’s common denominator of ‘reasonableness’ that holds law’s castle together.

Instead of worrying about the mysterious connection between two traditions, perhaps one could appeal to something that is shared by individuals regardless of tradition. To be able to translate between the practices of any two individuals in two distinct traditions, one would then appeal to something beyond their traditions. But traditions do not allow for an ‘outside’: an individual is constituted entirely by the practices and norms of the tradition in which she finds herself. A tradition is not something that one wears during a few hours each day. To appeal to something like a shared human condition beyond tradition would be to abandon the premise that it is social norms all the way down and to resort to something ‘outside the law’ – something like the desire for ‘being, happiness, or truth.’

If Stout wishes to avoid this difficulty, he could argue that there is something different about traditions than about other clusters of social practices. He could argue that, although it may not be possible to translate between any two clusters of practices and norms, it is possible to translate between any two traditions because of their special nature. Such a commitment to a special status for traditions does not seem so foreign to Stout’s thought. For instance, he writes of ‘the essential role that traditions play in shaping human thought’ (Stout 2004, p.14). Traditions are not merely arbitrary groupings of peoples and practices; they shape those people and practices. Further, he writes that, by engaging in the practices of a tradition, ‘we participate in a common life, a life that both needs to be made ‘more perfect’ and needs to be defended against those who attack it for being morally vacuous or evil’ (Stout 2004, p.4).

Here Stout seems to be attributing special powers to traditions. They are not merely collections of practices; they bring with them additional normative force. We *ought* to work to perfect a tradition and we *ought* to defend it. This sort of force does not attach to just any role or collection of practices: playing chess does not mean that one should work to perfect the game and defend it against those checkers players who challenge its worth. Perfecting and defending may be norms implicit in a given set of practices – one thinks of guilds of craftsmen who explicate such

norms from their practice – but an argument rather than a gesture would be needed to show that they are necessary features of all traditions.

If Stout is indeed arguing that traditions, because of their status as traditions, are the source of certain norms that are independent of social practice, he opens himself to critique from the perspective of an immodest jurisprudence. The question of right is not wholly determined by the question of fact; there is something else – the commitment to protect and defend traditions – that answers the question of right but is not derived from the question of fact. To avoid this uncomfortable position, Stout could argue that the ‘protect and defend’ imperative is implicit, although not obviously so, in the practices of the American democratic tradition (in which he is a participant) and then extended outwards to all other traditions in the same way that the imperative not to torture could be extended outwards – raising the set of difficulties we encountered a few pages ago.

Indeed, the very core of Stout’s constructive project – a theory about the process of ‘holding one another responsible’ through exchanging reasons about contested ethical norms explicated from practice – is caught between, on the one hand, having a content that seems to extend to all traditions and, on the other hand, deriving from an explication of one particular tradition: it is ‘[c]entral to democratic thought as I understand it’ (Stout 2004, p.6). The difficulty is compounded because the norms that constitute Stout’s theory, norms implicit in democratic practice, include the very idea that norms are implicit in practice as well as the very idea that traditions form distinct entities. This results in an uncomfortable circularity: the theory that traditions are constituted by norms grounded in practices is itself a theory that is the explication of norms grounded in practices.

Let us set aside this discomfort and consider the implications of the pluralism about traditions which Stout and Mahmood share. Each tradition is composed of a community and its history; put another way, social practices and norms. But to talk about ‘each tradition’ is to take an (impossible) bird’s eye view. According to Stout, we are always already situated in a tradition as we look out at other traditions. There is a practice in our tradition of talking about other traditions. Our practices of talking about another tradition are accountable to that other tradition. Certainly there are practices of other traditions about which we cannot say anything because we do not know about them. But there are practices in our tradition for learning more about other traditions – reading books about them, querying native informants, traveling.

From our perspective, embedded in our tradition, we do not have direct access to the norms and practices of other traditions; we have practices in our tradition which are accountable to another tradition. One way of putting this process of accountability is that, analogously, the practice of talking about Humbert Humbert is accountable to the text of *Lolita*, the practice of talking about elementary particles physics is accountable to very little bits of matter, and so on. But, phrased in this way, it seems as though we have lost our commitment to norms and practices ‘all the way down.’ Now there are ‘things’ to which practices are accountable – texts, bits of matter, traditions.

In some cases, this is easily avoided: we can say that the practice of elementary particle physics is accountable to the practice of experimentation and the practice of talking about Humbert Humbert is accountable to the practice of reading *Lolita*. But if Stout is committed to a pluralism about traditions, as he seems to be, it would not be possible to further reduce other traditions to the practices of investigating them. On the other hand, if the reduction is allowed, there is now only one tradition, our tradition, our norms and practices. Our tradition includes practices of talking about and investigating things and peoples. But it is, ultimately, the practices which are available to us which constitute our tradition.

Taking there to be only one tradition, our tradition, does make sense of the seemingly circular element of Stout’s argument: it allows him to start with his tradition, develop a theory, and project outwards. But it would be misleading to suppose that those outward projections were more than rhetoric gestures, gestures (practices) of his own tradition. By presenting an account of particular practices and styles of reasoning, Stout is constituting, not representing, a (his, the) tradition. He is like the author of a law textbook, choosing particular cases and topics to be included, by means of which the author reshapes the law by making particular aspects more salient and others less salient. Indeed, Stout writes that he understands the task of the public philosopher to be ‘to articulate the ethical inheritance of the people for the people while subjecting it to critical scrutiny’ (Stout 2004, p.5). When Stout’s project is framed in this way, it sounds remarkably like how John Milbank understands the task of the Christian theologian: ‘to tell again the Christian mythos, pronounce again the Christian logos, and call again for Christian praxis in a manner that restores their freshness and originality’ (Milbank 1993, p.381). Both Stout and Milbank are articulating – and, in the process, re-constituting – their own tradition, the American democratic tradition or the Christian tradition. However, while Milbank is explicit that his is

the only true tradition, all others are 'heretical,' Stout feigns modesty by seemingly limiting himself to the perspective of his tradition, one among others, while actually making claims that privilege the American democratic tradition, and the norms implicit in it, as the true and only tradition.

Catherine Pickstock and John Milbank make their commitment to traditionalism explicit, and theirs is a commitment to holding that there is only one tradition. Although the form of traditionalism that they advocate is particularly Christian, the arguments that they offer for it, and even much of its content, are independent of uniquely Christian commitments. Milbank and Pickstock frame their arguments in terms of a historical story in which the transition from the European Middle Ages to modernity brought with it the triumph of the secular. Postmodernity, although rejecting the possibility of universal reason that accompanied modernity, has not yet rejected the secular. Modernity, on their view, did not reject tradition, but rather imposed a false tradition, a false set of practices and norms, in the place of the one true tradition. Milbank and Pickstock take their project to be the restoration of the true tradition, true practices and norms which prevailed before being distorted in modernity. This is a restoration in style rather than in specifics: they are not calling for a return to the Middle Ages, but for a return to a particular configuration of tradition that they understand to have existed in the Middle Ages. It is that particular configuration favored by Milbank and Pickstock – or, more specifically, that there is a particular configuration at all – which makes their project vulnerable to critique from the perspective of an immodest jurisprudence.

Milbank offers an argument for his version of traditionalism which we might call an argument from aesthetics. In short, he argues that, because there is no way to rationally justify traditional practices, the only way that a choice can be made between traditions is by relying on the aesthetic appeal of a tradition. According to Milbank, Christianity is the most aesthetically appealing tradition, and the task of the theologian is to make this clear. Once one tradition is chosen, all other traditions necessarily are considered false, their practices – at least the ones which do not conform to the one 'chosen' tradition – necessarily considered wrong.

Milbank first rejects the idea of universal reason. He understands the idea of universal reason to be based on a posited standpoint for speaking truths not grounded in the world but which claims to tell us what the world is really like. In line with Rose, he rejects answers to the question of right which are not determined by answers to the question of

fact. Further, Milbank endorses the postmodern claims that 'there are infinitely many possible versions of truth, inseparable from particular narratives,' and that nothing can be known 'outside a plot' (Milbank 1991, p.225). These plots are the stories through which people's lives are lived, the stories that determine the practices they can perform. Although no particular story is more firmly grounded than any other, universal reason claims to subordinate every story to its own story because it claims that reason is the only way to securely ground truth. The implication that Milbank draws is that Christianity ought not to attempt to measure itself by the (secular) standards of modernity, standards set by reason, because both Christianity and secular reason are equally ungrounded.

That there are infinitely many possible narratives implies that all are equally truthful only when viewed from the (impossible) bird's eye. As a participant in a tradition, as an insider with respect to one possible narrative, all other traditions must necessarily be dismissed as 'heretical.' For Milbank, the bird's eye view is actually just a fiction, a myth of origins, imagining a state of nature in which all of the various traditions are laid out in front of us and we are able to choose whichever one appeals to us the most. The choice is an irrational one, unlike the Rawlsian choosers in their original position, because 'rationality' itself cannot exist outside a tradition ('secular reason' is one of the choices in front of us). Further, our choice is prejudiced from the start because a default option exists: that of the tradition in which we always already find ourselves.

Perhaps an apt analogy to help us make sense of what Milbank seems to be saying is with scientific theory choice considered in a classically Kuhnian light (Kuhn 1970). A scientist goes about her research in a practice of 'normal science' – a practice which has its foundations in nothing other than the practice of science itself – and occasionally comes across other stories to explain the research she is conducting about the nature of the atom, or the origins of disease, or about how to explain earthquakes. The decision to switch from the normal science view of the world to a new paradigm is an entirely non-rational one: there is a Gestalt switch. This is because the new paradigm is simply not conceivable from the perspective of the old paradigm, so there is no way to reason from the old to the new. The switch to the new paradigm may occur because of a sort of existential angst within normal science, a feeling of uncertainty because of the accumulation of questions that the normal science paradigm leaves unanswered. The switch may also occur because of the aesthetic appeal

of the new paradigm, an elegance that counts for just as much if not more than the work that the paradigm does.

Milbank suggests that the project of the theologian is to offer an alternative story to the dominant 'secular liberal' paradigm. This alternative must not ignore the questions of our normal science paradigm, the questions addressed by 'secular liberalism,' but must reframe them in the context of the Christian story, and must also answer questions left unanswered by the old paradigm. Postmodernism has offered a critique of secular liberal modernity which has raised doubts about the latter, which has raised questions to which the tradition of secular liberalism does not have the resources to respond. In fulfilling this task, Milbank's version of the Christian tradition takes account of postmodern critiques of tradition: 'Christianity can become "internally postmodern" ... Like nihilism, Christianity can, should, embrace the differential flux' (1991, p.227). Postmodernism critiques secular liberal modernity for hiding 'differential flux,' and the Christian tradition responds to that critique by incorporating differential flux into the story that Christianity tells. Further, Milbank frames the Christian story so as to maximize its aesthetic appeal: it is a story of harmony and peace in the face of the normal science (secular liberal) story of violence. The differential flux is, in postmodernism nihilism, 'a medium of perpetual conflict, a pagan agon where the most powerful rhetoric will temporarily triumph, only to succumb to an apparently or effectively more powerful discourse in the future' (Milbank 1991, p.227). Milbank is saying that postmodern nihilism offers an alternative to the secular liberal paradigm, but it is not an aesthetically appealing alternative. The Christian tradition has greater aesthetic appeal, as it

pursued from the outset a universalism which tried to subsume rather than merely abolish difference: Christians could remain in their many different cities, languages and cultures, yet still belong to one eternal city ruled by Christ ... it also strives to make of all these differential additions a harmony, 'in the body of Christ'.

(Milbank 1991, pp.227-8)

The uniqueness of Christianity is that it can imagine a world of difference without conflict – it offers a vision of peaceful, harmonious coexistence of difference that Milbank describes as being musical, a 'continuously differential and open series.' In short, the appeal of the Christian tradition is that it offers the most elegant story.

Milbank's argument, premised on its own groundlessness and painting a stark contrast between violence and peace, may seem unsatisfactory if not self-contradictory. Christopher Insole (2004), for instance, suggests that, although the content of Milbank's ontology may be peaceful, the way that it is asserted is just as brute and just as violent as the postmodern nihilistic ontologies of Nietzschean will-to-power that he critiques. Further, Insole associates the appeal of peace with an 'emancipatory' project, one that implicitly justifies Milbank's counter-ontology with 'pragmatic and secular' reasons. In other words, Insole charges that Milbank offers an alternative *mythos* which has its conditions of possibility in the *mythoi* it purports to oppose. The reason that peace is appealing is because of our secular-liberal taste for peace and freedom. Milbank has resources at his disposal to offer a convincing response to Insole's first point, but his second point is suggestive of a larger difficulty with Milbank's project. However, where Insole sees Milbank and secular liberalism both appealing to an ideal of liberation, an immodest jurisprudence would see this same structure and would argue that both options are defective – it is the problematic appeal to transcendence made by both that is the problem.

Milbank justifies his claim to a non-relativistic anti-foundationalism, a claim Insole finds dubious, by arguing that one can still believe in 'final truth' without accepting the existence of truth in the conventional, 'objective' sense. He suggests that this is possible by proceeding via an *ad hoc* yet cumulative method that he associates with the 'wild Anglo-Celtic empiricism' of Bede, Wyclif, Berkeley, Ruskin, and Peirce, among others (Milbank 2005, p.4). What characterizes this 'wild empiricism' is that truth is associated with criteria for success, with what works, and is generated along with practice. A true method and true results are revealed simultaneously. Truth 'declares itself'; 'there are no prior criteria for the truth' either in nature or in the human mind (Milbank 2005, p.4). This process of questing for truth is one of 'wonder' and 'astonishment,' 'something one must love, trust, and have faith in.' Milbank relates this conception of epistemology with tradition by suggesting that 'tradition is itself the only epiphany' (Milbank 2005, p.7). In other words, Milbank defends his stance that there is only one (true) tradition by arguing that truth is inextricable from the practices of a tradition. To slightly rephrase what Milbank is saying, what is true and what is false, what is right and what is wrong – in other words, the answer to the question of right – is determined by (or, Milbank would likely prefer, *with*) the question of fact. Norms arise out of social practice. Note how for Milbank this relationship involves a certain affective quality: he uses

words such as 'love,' 'trust,' 'wonder,' and 'astonishment' to describe how the practitioner feels as she acts rightly.

Milbank would find a similar, and more rigorous, version of his conception of truth articulated in Paul Boghossian's (1996) recent work on analyticity. Boghossian shifts the debate on truth to focus on an epistemological, rather than a metaphysical, notion of analyticity. That triangles have three sides is conventionally labeled an analytic truth: it is true (indeed, tautologous) simply because of the definition of the terms involved. In contrast, 'milk is white' is not a tautology. It conveys more information than simply 'milk' and is true because of facts about our world, so it is synthetic rather than analytic. Boghossian associates these sorts of examples with a semantic conception of analyticity: analytic truths are analytic by virtue of the identity of meanings. This semantic conception he labels 'metaphysical' and dismisses, following Quine's classic critique of the 'dogmas of empiricism.'

However, Boghossian argues that Quine's criticisms apply only to the metaphysical conception of analyticity and that another, epistemological, conception of analyticity survives Quine's critique unscathed. The epistemological conception does not rely on a class of analytically true statements existing somewhere in metaphysical space, but rather builds on the (Wittgensteinian) notion 'flash-grasping.' We learn the meaning of analytic truths at the same time that we learn the content of the sentence in which the analytic truths are embedded: 'We grasp the meaning of, say, "not" "in a flash" – prior to, and independently of, deciding which of the sentences involving "not" are true' (Boghossian 1996, p.375). In light of the existence of non-Euclidean geometries which put in question seemingly trivial logical truths, Boghossian argues that this concept of flash-grasping must be clarified so as to allow that one set of truths is grasped in distinction from another set of truths. Boghossian provides the example of the definition of the length of a meter. To define a meter, one says, 'Stick S is a meter long at time t.' This statement is itself true and sets the standard for truth where no standard existed before the statement was uttered. Certainly, a meter could have been a different length, but after the definitive statement is uttered, that is no longer a live possibility.

Boghossian's account of epistemological analyticity complements Milbank's account of truths that 'declare themselves' with 'no prior criteria.' The truths adopted by the participant in a tradition are only some of many possible founding truths – a tradition could be different, it could have different norms – just as the truths of Euclidean geometry and conventional logic that are implicitly accepted in everyday

language are among many possible sets of axioms for geometry and logic. For Boghossian, analytic truths are implicit in language use and the possibility of a switch to new truths would come about by a change in language. The result is that the Euclidean geometer cannot say that the non-Euclidean geometer is 'wrong' – that would be to try to use language to express something which cannot be put into language. The Euclidean geometer can only say that her language and practice is different because it depends on different axioms implicit in that linguistic practice. Milbank, in contrast, puts emphasis on the tradition in which one finds oneself instead of the language in which one finds oneself. Instead of truth in words, he writes of the truth in social practice. All other traditions, all alternative axioms, are not only nonsensical but are wrong, heretical.

By dismissing alternative traditions in this way, Milbank seems to be saying something stronger than Boghossian. From the perspective of the Euclidean geometer or the classical logician, statements following from alternative axioms are simply nonsensical; to call them wrong or heretical would be to say too much. Perhaps Milbank is suggesting that it is a particular feature of the Christian tradition that practices found to be nonsensical in terms of Christian norms are wrong or heretical (though this is not a necessary feature of any tradition, based on how Milbank seems to understand what a tradition is). This appears to be the option that Milbank takes: he describes all of the practices that compose the Christian tradition as harmonious, each in perfected relationships with each other. If there were practices following an alternative axiom, an alternative tradition, they would be dissonant, out of harmony, and so wrong – not just nonsensical.

But the harmony of all practices described by Milbank also commits him to an understanding of the Christian tradition as bound together by an adhesive. This adhesive makes each practice fit correctly with each other; if a practice were to move out of place because of lack of adhesive it would be dissonant and wrong. Milbank writes of 'the necessity of an ultimate organizing logic' which 'cannot be wished away' (Milbank 1993, p.1). Further, he describes this logic as 'some privileged transcendent factor, even when it comes disguised as the constant element in an immanent process' (Milbank 1993, p.2). It is more than just a transcendent factor – the axioms of Euclidean geometry could be described as 'transcendent.' It is a 'transcendent factor' which is a common denominator in every practice of the Christian tradition, and this common denominator is associated with an 'organizing logic,' above and beyond the practices that compose the tradition. For Milbank, the answer to the

question of right is not wholly determined by the answer to the question of fact, for the answer to the question of right will always involve finding a common denominator in the world, a common denominator presupposed, not justified by any answer to the question of fact.

Milbank further assumes that there are only two possible conceptions of tradition: either an organizing logic exists with the result that the tradition exists 'harmoniously,' or there is no such logic in which case the tradition exists 'violently.' He poses a choice between adhesion and chaos. If chaos is chosen, rules and order must be forcibly imposed on the world by totalizing reason, 'giving irresistible power to those rules in the form of market economies and sovereign politics' (Milbank 1993, p.5). In posing this stark contrast between adhesion and chaos, Milbank ignores the possibility of any sort of middle ground – he ignores 'the middle' of which Gillian Rose so eloquently writes. Rose argues that there is always a reciprocal relationship between practices and norms: the answer to the question of right determines the answer to the question of fact and the answer to the question of fact determines the answer to the question of right. This process Rose describes as 'difficult,' even 'violent,' but also gratifying, and ultimately inevitable. When Rose writes of violence, she is not suggesting anarchy and chaos. Rather, she is suggesting moments of tension are constantly being played out between practices and norms. Tensions do get resolved, but then flare up anew in some other location, only to be resolved again, and on, and on. For Rose, chaos and harmony, violence and love, always go hand in hand.

Catherine Pickstock, a philosophical theologian who studied under Milbank, offers two additional, ingenious arguments for a Christian traditionalism which are independent of the argument from aesthetics advanced by Milbank. Let us call these the argument from dialectic and the argument from the pre-conceptual, and I will address them in turn.

The argument from dialectic is, in short, an extension of Plato's proposal in the *Phaedrus* that the philosopher is he who is concerned with the Good and the True. While Plato's discussion is focused on the concerns of the philosopher, Pickstock (1998) expands the focus to the human being as such. What was in Plato the practice of dialectic for the philosopher becomes the practice of participation in tradition for the human being.

At the start of the Platonic dialogue, Socrates' friend Phaedrus has just heard a renowned rhetorician give a great speech on love. Socrates and Phaedrus go for a walk, and Socrates persuades Phaedrus to share the

speech which he has just heard. Socrates then claims to be able to best the famous rhetorician and gives two speeches of his own on love. The first he later dismisses as disingenuous while the second, beginning with an invocation of the gods and proceeding to use myth in order to tell the story of rightly guided desire leading toward wisdom, he acclaims as truly philosophical – and true.

Pickstock argues that the Transcendent – the Good, the True, and the Beautiful – should be understood in terms of certain practices instead of certain metaphysics. On her view, there is not a collection of Truths that exist ‘out there’ in metaphysical space; rather, the Transcendent is ‘temporalized’: it exists in time. One *participates* in the Transcendent through one’s practice if that practice is properly focused on the Transcendent – as the philosopher’s practice of dialectic is, according to Socrates. The philosopher is ‘initiated perpetually into the divine order,’ that is, the order of the Good, the True, and the Beautiful (Pickstock 1998, p.13). This constant initiation (i.e., participation) happens by means of the philosopher’s practice of seeking the Transcendent through dialectic. The philosopher is pulled by an erotic desire for the Transcendent because Beauty is the worldly form of the Transcendent and the philosopher is attracted to Beauty (specifically, in the *Phaedrus*, the beauty of a young boy). But the desire for the Transcendent has no existing object; nothing in the world can sate it. In fact, the philosopher’s desire for the Good is a ‘contagion.’ It creates a yearning to participate in the process of desire again and again, pulling the philosopher forward in his investigations.

The sophist, according to Pickstock, who here associates herself with Socrates, is caught in a solipsistic world in which everything is subordinated to one’s own interests, the interests advanced by one’s oratory. What is said by the sophist about the external world appropriates the world for no purpose beyond the sophist’s own interests. The sophist sees the world only as a place to be used to advance those interests. The sophist derives his or her ‘ontology from subjective methodological procedure’ so as to obtain ‘instant certitude’ (Pickstock 1998, pp.18–19).

The philosopher, in contrast, is pulled out of and beyond the sophist’s solipsism by means of the Beauty of the natural world. Pickstock characterizes the approach of the philosopher as ‘holistic and harmonious’ while the approach of the sophist she associates with hierarchy and subordination. Rephrased: for the sophist, the social norms that are available to him at the beginning of his speech are the same as the social norms available to him at its end. His speech proceeds through

uncritical appeal to these norms. In contrast, the philosopher's dialectic has the potential to change the philosopher's understanding of norms – as so to change the actual practice of the philosopher – as the dialectic proceeds. The philosopher allows her engagement with the world to affect her, to change what she should do, and what she does. The philosopher allows dialectic – which involves critical engagement with the world – to mediate between the answer to the question of right and the answer to the question of fact, allowing for flow in both directions.

Pickstock's key move in her reading of the *Phaedrus* is to associate the specific practice of searching for the Transcendent that takes place in dialectic (and the desire that accompanies it) with doxology and liturgy, the language and practice of giving praise to the Transcendent. Dialectic, on her view, is a special case of a social practice which performs a relationship with the Transcendent – the general case is liturgical practice (she means something quite different than Lacoste with this term). Further, Pickstock suggests that liturgy, because of its relation to the Transcendent, *should* be the preferred practice for all humans, not just philosophers. What allows Pickstock to make this move from dialectic to liturgy is the importance that she attributes to tradition for the philosopher. This role comes about because, for Pickstock, following Plato, the purpose of dialectic is to recover what is 'already known' but unknown, 'an infinite series of speakers and traces of memory' passing 'from generation to generation, written, through memory, in the world, [a] tradition of recollection' (Pickstock 1998, p.19). Reasoning, for Pickstock as for an immodest jurisprudence, (partly) consists in appeal to precedent, to practices of others in the history of a given tradition.

How is it that Pickstock attempts to move from the particular practice of reasoning through appeal to precedent which she associates with Socratic dialectic to 'liturgy'? According to Pickstock, because dialectic is a process that leads from Beauty toward Truth by means of history and tradition, the stories that compose a tradition's collective memory and the actions that compose its collective practices are Truth-imbued and thus worthy of the labels doxology and liturgy, respectively. In ordinary usage, doxology and liturgy are understood simply as ways of praising the divine. But when the divine (the Transcendent) is defined in the 'temporalized' way that Pickstock suggests, when the Transcendent is 'performed', its praise becomes identified with participation in the practices of tradition. The 'supreme ethic' is one of doxology, it is 'ordered by song and dance,' 'harmonious with [one's] whole mode of living' (Pickstock 1998, p.40). Pickstock has moved from identifying

dialectic as a truth-seeking process to attributing normative force to all traditional practices.

But the shift from particular practices which change social norms (dialectic) to all social norms (liturgy) is problematic. While dialectical Truth-seeking is a process that *functions* to mediate between the practices available to me and all of the practices of my tradition, liturgy is a practice without a function; it does not *do* anything besides reinforce what has already been done. Indeed, liturgy seems to be the opposite of dialectic: instead of repeating differently and so opening new possibilities, liturgy repeats in the same way, or as nearly the same as is possible. Songs of praise drone on indefinitely; it is not clear how they would function to alter social norms. Pickstock might respond by noting that liturgy de-centers the individual, reminding the individual that there are many practices that make up a tradition, of the vast amount of historical precedent of which she is not aware but which gives force to contemporary social norms. Pickstock writes that, when performing a liturgical practice, the individual is harmoniously integrated into a tradition. Liturgical practices are performed in the middle voice, relying on tradition yet expressed by an individual, linking the individual with tradition (the particular practices that Pickstock has in mind here include marriage and funeral rituals and the practices associated with craft guilds – all in the Middle Ages). But if this were the case, Pickstock would be introducing a specifically theological move, for she presents no motivation for the ‘ethical’ nature of this harmonization of individual and tradition. She is asserting that it is something that *should* be done, but this is not determined by any answer to the question of fact, by any social norms. Certainly, the de-centering that Pickstock associates with liturgy could be understood as a strategic practice with the force of a hypothetical imperative, one that is motivated by other norms (such as norms of humility), but it is clear that Pickstock is committed to a stronger claim.

It is true that, phenomenologically, performing practices that conform with the norms of my community binds me more closely to my community, makes me more comfortable with it, more at home in it, just as taking my dog for a walk every morning brings me closer to my dog. But this is not a reason to assign extra normative force – let alone the majestic label of Transcendence – to such practices. Every practice in which I participate binds me tighter to the norms it follows: when I play chess, I become more comfortable with the game; when I go sailing, I become used to the patterns of waves on the ocean; when I go to work,

I become more comfortable with my colleagues. Pickstock wants to say that some practices – liturgical practices – reinforce my connectedness and comfort with all norms, not just the norms of a particular domain (chess, oceans, work).

Pickstock here is offering a variation on Jean-Yves Lacoste's theoretical move, discussed in the previous chapter. Lacoste noted that we are always already attached to certain practices in the world, what he called our place. Liturgy, for Lacoste, pushes us to step back and view the world, the practices that compose it, as a whole. But Pickstock's traditionalism offers a motivation for liturgy that is not available to Lacoste. For Pickstock, following Milbank, it seems as though there is a single logic that governs all the world, that binds all true practices together. By strengthening that adhesive, it would be possible to strengthen our connection with all of the world at once, not just those norms that compose our place in the world. Liturgical practice, for Pickstock, strengthens that adhesive by connecting us with tradition as a whole. But, as we noted above, an adhesive introduces an other-worldly element into the world; it introduces an answer to the question of right which is not determined by answers to the question of fact.

Pickstock's second argument for traditionalism arises out of an investigation of the pre-conceptual conditions of human existence. There are, according to Pickstock, particular conditions of possibility for human existence (*human* existence, not existence as such) which thereby have a Transcendent status, roughly analogous to the status Habermas assigns to communication. Because these conditions make possible human existence, if they are denied no truth is possible – just as for Habermas, if the means of communication are cut off in a society, communicative reason cannot function and the world will be devoid of truth.

Pickstock writes that 'our deliberate behaviour and reflective thought is grounded in a pre-conceptual *life-world*' which she defines as 'the realm of the pre-given mixture of natural and cultural elements into which an individual must pre-reflectively enter if he is to be capable of linguistic articulation and deliberate thought and action at all' (Pickstock 2000, p.160). Pickstock here seems to be describing another way of talking about tradition. Tradition is composed of practices governed by social norms which make possible language and action, and even thought. Tradition is composed of precedents that are cited and reiterated differently. This point becomes clearer when she describes the pre-given life-world as 'characterised at least partially in terms of certain repeated rhythms and patterns which make reasoning possible and so are themselves without rational universal foundation' (Pickstock

2000, p.160). Like Milbank describing his non-foundational conception of truth, Pickstock is describing tradition as based on repeated social practices rather than on reason. However, she goes on to make a crucial assertion which differentiates her development of traditionalism here from that of Milbank: '[T]hese original patterns privilege certain formations, certain shapes, sounds or whatever, over others' (Pickstock 2000, p.160). Here Pickstock could be read in two ways. On the one hand, she could be suggesting that, because of the natural sedimentation of tradition, certain formations inevitably take shape, just as a river does not run straight but inevitably twists and turns. On the other hand, she could be saying that there are *particular* patterns which *every* tradition will evidence – at least if it is true to itself, as it were. It is this second option that Pickstock chooses, and it allows her to argue that secular liberal modernity has deformed the pre-conceptual life-world – and only liturgy can restore it.

In the pre-conceptual rhythms and patterns, according to Pickstock, 'lies the origin of some sort of unquestioned value or transcendence on which all else depends ... [It] lies metaphysically within the immanent world. And it is impossible for human culture to avoid this starting point' (Pickstock 2000, p.160). But here Pickstock seems to be conflating and equating two quite distinct notions. On the one hand, there is something immanent 'on which all else depends,' that is, tradition, social practices. On the other hand there is 'some sort of unquestioned value.' The first of these notions is agreeable to anyone inclined to a norms-all-the-way-down approach and is in line with the project of an immodest jurisprudence. The second notion is something much more mysterious: 'unquestioned value.' She seems to be suggesting more than just that tradition has normative force. Her argument seems to be that, because social practices are dependent on tradition, this means that tradition is commendable – not just that we will inevitably act with reference to tradition.

Liturgical actions, according to Pickstock, are those that are in a particular relation to the rhythms and patterns of the pre-conceptual life-world (the concept of liturgy here is developed independently of her earlier account discussed above). This particular relation involves ritualistic repetition of practices and stories in such a way as to replicate the rhythms and patterns of the pre-conceptual life-world. Pickstock characterizes liturgy as a special type of ritual, a 'signifying system possible only in terms of its organization around some privileged transcendent signifier, even if this remains mysterious in character, and open to interpretation' (Pickstock 2000, p.159). Although it is tempting to

immediately dismiss this formulation as introducing an appeal to something beyond social practices through the language of the ‘transcendent,’ perhaps a more charitable reading would understand liturgical practices as symbols of the tradition as a whole, where the tradition as a whole is ultimately mysterious. It is never possible to know the totality of social practices that make up a tradition, but liturgical practices can put us in relation to that totality. However, to talk about something that touches tradition as a whole, something that affects each and every practice, yet again introduces the idea of an adhesive binding every practice together – or at least touching every practice in a particular way.

In addition to the three arguments that they advance in favor of their Christian version of traditionalism, Milbank and Pickstock are both highly critical of ‘modernity,’ linking it with secularism and capitalism. Pickstock’s critique of modernity focuses on modernity’s refusal of liturgy and so of Truth. Instead, modernity offers, indeed imposes, a counter-liturgy. Setting aside the uncomfortable language of liturgical Truth, let us focus on Milbank and Pickstock’s main difficulty with modernity: it breaks things up. Not only does it break things up, but it holds them apart. Before modernity, there was harmony and peace between all practices; in modernity, each practice was still ordered, but the order was forced, ‘violently,’ as Milbank frequently puts it. Consider a few examples of Pickstock’s vivid description of a liturgical culture:

Personal joys are not allowed to become over-inflated because they are placed within the context of collective enjoyment and are seen as but specific manifestations of a continuous collective celebration. Inversely, personal sorrows are shared with others and are viewed in the context of cosmic patterns which include such tragic eventualities . . . By contrast, a modern individual may alternate between seeking refuge from public misery in private delight, or escaping personal sorrow through absorption in the impersonal world of the media . . . And from this situation, inevitably, various pathologies must ensue.

(Pickstock 2000, p.161)

[M]usic can be dangerous, for it extracts a sequence of time from the public time of shared events . . . and transports one into a virtual imaginary time which has no connection with the things that one does . . . liturgical music integrates music back into the order of public time as well as privately significant time because it now relates to publicly recognised points of transition and the processes of personal

commitments such as the movements of repentance and receiving divine grace... [music functions] to pre-tune the individual soul for community.

(Pickstock 2000, p.162)

American cities... are not focused around cathedrals... People tend to eat at any time; shops are open all night long; and every week is a week without a Sunday. To be non-liturgical means to have got rid of the differentiations of time and space, and to live in a perpetual virtual space of identical repetition.

(Pickstock 2000, p.167)

The issue that Pickstock identifies in these passages is that modernity – on her reading – hardens the boundaries around the individual, turning the relationship between individuals and between the individual and the sovereign into ‘contractual,’ rather than ‘gift,’ relations. But Pickstock also asserts that total fluidity, a lack of all differentiation, is part of the very same logic of what she calls modernity, secularism, and capitalism. This logic needs to individuate in order to be able to freely exchange, to substitute one part for another in order to maximize efficiency. Liturgy is positioned to counter this logic because liturgy both refuses absolute individuation and absolute fluidity. It holds together practices in a particular, ‘harmonic’ way, neither controlling them with the absolute power characteristic of modernity nor letting them float freely like the antinomian vision of postmodernity. So perhaps liturgy could be used strategically, if the associations with transcendence that Pickstock gives it are set aside.

However, in each of the pictures of the world that Milbank and Pickstock paint, every practice is governed by an organizing logic. In the various stages of the history of the world, as Milbank and Pickstock tell it, the character of the logic changes from ‘harmony’ to ‘power’ to ‘violence’ – and, if their counter-narrative is successful, back to ‘harmony.’ Yet at no point do they consider the possibility of a world which is truly norms – or laws – all the way down. Gillian Rose suggests that we redirect our attention from the search for governing logics to engagement with the world as it is, in all its messiness. Rather than looking for a short-cut, for a principle that will explain how all the world works, Rose urges us to direct our attention at the specific and concrete norms and practices that compose the world, to investigate them through critical historical and social inquiry.

4

On Quietism

The natural law theorist and the common law theorist both add an extra ingredient to their accounts of law.¹ In contrast, the legal realist refuses to add a necessary ingredient. The legal realist refuses to acknowledge the authority of rules. Developing as a reaction to formalist jurisprudence, which took law to be deducible by reason from certain axioms or ethical principles, and traditionalist jurisprudence, which took law to be a product of historical development, legal realism attempts to understand law realistically, as it is actually decided. What unifies, and fatally poisons, formalist and traditionalist theories is that they attempt to offer explanations for why judges follow rules. All such explanations are bound to fail, according to legal realists, because there are indefinitely many ways to interpret a rule (or a statute or precedent), and positing a rule for interpreting rules only pushes back the indeterminacy into an infinite regress.

According to legal realists, judges do not primarily rely on rules; they focus on the 'facts' of a case. Instead of making a theory, legal realists argue that the study of law should be about prediction. When theoretical or moral language, like 'rights' and 'duties,' is introduced into the study of law, it obscures what a judge is actually doing when she decides a case. Legal realists differ as to what that thing is that the judge is actually deciding, though their explanations often invoke the brute will of the jurist or the heavy hand of the social scientist. The two are related: the jurist may be acting on false consciousness, based on underlying economic or ideological interests which the tools of the social scientist are able to expose.

By saying too little about law, by asserting that law is indeterminate, legal realists leave open the possibility that some other extra-legal theory can be offered to explain law, whether it be political or economic or

volitional. They close the front door and open the back door. This is counterintuitive, because the legal realist sounds so committed to being 'realistic,' to focusing on the facts of the legal process. But they leave open the possibility of explaining the facts with resources that come from outside the courtroom. Moreover, while such theories can explain the regularity of a court's decisions, they are left bereft of resources to explain the normative language that is used to describe judgments – to explain how a judge can get the law 'wrong.'²

This chapter will explore quietism, a trend in contemporary philosophy that likewise shuts the front door while opening the back door to transcendence. Quietists, aligned with the late Wittgenstein, shut the front door by disclaiming the possibility of solving philosophical problems by use of philosophical heavy machinery, such as conceptual clarifications about what a word 'really' means. Further, the quietist holds that there is no need to worry about such problems, that they simply dissolve when understood rightly. But if the quietist has nothing to say about normativity, about what gives certain practices their normative force, then normativity will slip in the back door, and it will come in the form of transcendence. Of course, contemporary quietism presents a very subtle way of making the moves just described. In this chapter, I will discuss the work of Jean-Luc Marion and John McDowell, two philosophers who present highly sophisticated quietist projects. Marion is not usually thought of as a quietist, but I demonstrate that his recent work involves a characteristically quietist maneuver. I suspect that Marion's recent turn to quietism is motivated by his critical engagement with the work of Michel Henry, the towering figure of what might be called the Continental quietist tradition.

Jean-Luc Marion is a contemporary philosopher and theologian. Although he ostensibly attempts to keep his two vocations distinct, I will focus on his recent philosophical work and examine the quietist agenda that animates it; in other words, I will read Marion's philosophical project as essentially theological. My focus will be on Marion's trilogy of texts exploring 'givenness,' and particularly on two philosophical moves he makes in them, both of which are subtle and incisive. First, he argues that the project of phenomenology needs to be transformed from the search for 'first philosophy' into a search for 'last philosophy' – a move I will suggest is quietist. Second, he argues for the existence of a particular type of phenomenon that exceeds conceptual grasp, what he calls the 'saturated phenomenon' and associates with revelation. This point, too, is a conversation stopper, and I will investigate the parallel between these two paths to quietism. Finally, I will argue that Marion

falls into his own trap. He extols the icon over the idol, but quietism turns out to be fully idolatrous.

Philosophy is traditionally understood as a search for foundations or principles to govern inquiry, according to Marion (2002b). Philosophy long understood itself as ‘first philosophy,’ coming before other disciplines, speaking about the conditions of possibility for the natural and human sciences. According to Marion’s whirlwind history, Aristotle took first philosophy to be concerned with *ousia* (substance), Aquinas took it to be concerned with causation, and Descartes and Kant took it to be concerned with knowledge. But with the end of metaphysics, philosophy seems to have lost its position of authority. The philosophical projects of Aristotle, Aquinas, Descartes, and Kant have all collapsed, and the very notion that philosophy ought to attempt to come up with foundations or principles governing inquiry sounds rather quaint. Now, each science, each domain of inquiry, decides on its own principles. This is possible because the sciences are no longer interested in reaching ‘things themselves’; they are just interested in achieving a result that works.

Marion finds this pragmatism unsatisfactory, just as unsatisfactory as the metaphysical tradition that it replaces. To find an alternative, he turns to the phenomenological tradition, particularly the work of Edmund Husserl and Martin Heidegger. The phenomenological tradition understands itself to be doing philosophy beyond metaphysics, but it often – mistakenly according to Marion – frames itself as offering a new first philosophy. Marion’s basic claim is the Husserl and Heidegger are right in understanding the task of philosophy as providing a mechanism to get to ‘the phenomena themselves,’ but they are wrong in thinking that the way to do that is to construct a theoretical apparatus. On Marion’s reading, Husserl and Heidegger each attempt to construct a machine (a ‘reduction’) that will take as its input the complicated world and produce as its output pure phenomena. Marion argues that any such machine is necessarily distorting, never capable of producing the desired output: the phenomena themselves.

What unites Husserl and Heidegger, according to Marion, is their elevation of one phenomenon into a position of mastery as the ‘phenomenon par excellence.’ This phenomenon is involved in the machinery through which all other phenomena are processed. For Husserl, this master phenomenon is the I ‘whose pure consciousness defines an original region that is absolutely distinct from the region of the world and from its objects precisely because it constitutes them’ (Marion 1998, p.163). For Heidegger, the master phenomenon is *Dasein*. Marion

suggests that just as Heidegger simply displaces the transcendental from the 'I' to *Dasein*, more recent phenomenologists have continued the displacement. He argues that Emmanuel Levinas displaced the master phenomenon from *Dasein* to 'the face of the other' and Michel Henry displaced the master phenomenon from *Dasein* to 'the flesh' (Marion 2002b, p.46).

Marion's readings of Husserl and Heidegger are particularly impressive because they rely on immanent critique (Marion's sympathy with Derrida perhaps would lead him to say 'deconstruction') to show that, although both introduced extraneous and distorting apparatus into their phenomenological theories, they also both recognize the importance of givenness. Marion's work is simply to shift the emphasis of their projects from the illicit privileging of one phenomenon to what they have to say about givenness. Husserl writes, 'givenness extends just as far as actual evidence,' and in *Being and Time*, Heidegger writes of his core interest in the 'complete givenness of *Dasein* as a whole' (Marion 2002a, p.28). Most forcefully from the perspective of Marion's project, Heidegger writes in his late, *On Time and Being*: 'We do not say: Being is, time is, but rather: it gives Being and it gives time Instead of saying "it is," we say "it gives"' (Marion 2002a, pp.34–5).

Interested in the phenomenological approach, but rejecting the machineries constructed by Husserl and Heidegger, Marion pulls on this thread of givenness. He suggests that what is unique and powerful about the phenomenological approach 'consists in rendering to the phenomenon an incontestable priority: to let it appear no longer as it must (according to the supposed a priori conditions of experience and its objects), but as it gives itself (from itself and as such)' (Marion 2002b, p.25). Put another way, Husserl and Heidegger both seem to be trying to get at givenness by means of reduction, by means of setting up some processing machinery which sets '*a priori* conditions of experience and its objects.' Givenness is not a new location for the displaced master phenomenon; it has to do with how phenomena appear themselves, undistorted. The purpose of the reduction is to rid ourselves of those features of our language, or mind, or world, which shield us from accessing phenomena themselves, which blur our view, as it were. Marion's diagnosis of the problem with Husserl and Heidegger is that they add content to the reduction which also blurs our view; the solution Marion offers is to tightly bind reduction to givenness: 'as much reduction, as much givenness.'³ This Marion dubs not a 'first principle' but a 'last principle,' the principle that accepts whatever is left when all supposed first principles have been discarded.

A felicitous consequence of Marion's reformulation of the phenomenological project is that it can never be wrong. As he notes, it is only when one is trying to construct a machinery to get objects right that 'incertitude, error, illusion, and so on' trouble us; the 'givenness of the given, . . . reduced to the pure given, becomes absolutely indubitable' (Marion 2002b, p.18). Marion has expertly identified and avoided intrusions of the unjustified, the transcendent, into the philosophical endeavor, but he has introduced a new type of transcendence, what might be called epistemological transcendence. When the 'absolutely indubitable' is reached, the conversation is over; there is nothing more of philosophical interest to be said. The ordinary world, and the world viewed through various attempts at first philosophy, is foggy; it is open to doubt. We must talk about what is right and what is wrong, which techniques for seeing clearly work better and which worse. But once we have accepted Marion's reduction, once we have accepted phenomenology as 'last philosophy,' there is no more reason to doubt – or to speak.

From this general stance, Marion argues that we must rethink our understanding of a phenomenon. With reduction tightly bound to givenness, the world hides nothing. When our only procedure for refining the world is to discard all machinery for refinement, what we see is what there is. What we see 'imposes itself as such, not as the semblance or the representative of an absent or dissimulated in-itself, but as itself' (Marion 2002b, p.19). Put another way, when phenomenology is understood as Marion proposes, phenomena appear without reserve.

Marion is well aware that there is a certain unsettling resemblance between the understanding of phenomenology that he proposes, with its 'absolutely indubitable' base, and the Cartesian project which he dismissed as just one more form of 'first philosophy.'⁴ The distinction that Marion wants to draw is between the Cartesian focus on 'thought' and his own focus on 'world.' Cartesianism is ultimately solipsistic, according to Marion, because thought is unhinged from the world and made accountable only to itself; the phenomena are no longer accountable to themselves alone but to thought. Marion urges that his (uncharacteristic) gestures toward the 'world' here not be read as an appeal to empiricism because he separates 'the lived experience' from 'the sensible given' (Marion 2002b, p.20). In other words, Marion seems to be suggesting that 'last philosophy' operates independently of any individual. The reason that the individual cannot doubt phenomena is not because the individual actively grasps phenomena in thought, but because the individual lets go of the aspiration to grasp phenomena and simply lets them be.

The precise mechanism of perception involved here still seems rather obscure. In contrast with first philosophy, which is interested in *proving* that certain things are the case, Marion's version of phenomenology would seem to be interested in *showing* that they are the case. But Marion rejects this interpretation of his project because this formulation still puts too much emphasis on phenomenology as a method to be followed; it implies that the phenomenological method has too much substance. A better formulation, Marion suggests, is 'letting apparition show itself in its appearance according to its appearing' (Marion 2002a, p.8). Again, the phenomenon is allowed to retain authority over itself, and it is only when an individual acknowledges this autonomy that an individual can properly appreciate the phenomenon.

There is certainly something appealing about the way Marion frames his project. It is a quest for certainty, but of the subtlest variety, for certainty is achieved by abandoning that very quest – a maneuver characteristic of the quietist. This is unsettling when the issue is that of general epistemology; it is much more troubling when Marion begins to talk about specific phenomena. Saying that phenomena in general are 'absolutely indubitable' is one thing, but looking at individual phenomena and taking each to be, by implication, 'absolutely indubitable' is quite another. Of course, Marion can subtly avoid the criticism that his project simply affirms the status quo by the rejoinder that beings are not phenomena. To divide the world into beings is to divide it according to our everyday (folk) categories, and to rely on our folk categories is to rely on precisely the sort of machinery that Marion's phenomenology disqualifies.

Marion turns to aesthetics to explore the implications of his 'last philosophy' proposal. Painting 'escapes objectness and beingness,' escapes the machinery erected by both Husserl and Heidegger, so in the painting 'a purely and strictly given phenomenon appears' (Marion 2002a, p.39). In other words, the appearance of the painting is entirely due to givenness; none of it is due to distortions. When we try to view a painting as an object, we always encounter aporiae. A painting can be moved, its frame can be changed, its physical pigments can be altered one by one, yet it will still remain the same painting. The altered object can bear no resemblance to the initial object, yet the phenomenon is the same.

Marion argues that the Heideggerian perspective emphasizing the painting's being – specifically, its ready-to-hand character, the role it plays in our world rather than what it is, or its character as offering a window onto the truth of Being itself – leads to similar

aporiae.⁵ If the phenomenon were to be understood according to the category of the ready-to-hand, it would suggest that 'the phenomenon is always operated and intrinsically defined by functional operations within a network of finalities,' but such a network of finalities is exactly what a painting eludes (Marion 2002a, p.42). The painting does not solely serve a purpose by providing us with aesthetic enjoyment, or as a commodity in the marketplace, or as the object of ratings and reviews by art critics. Although the painting can be used for these purposes, none of them, nor any sum of them, captures what the painting is, because the painting 'appears in, for, and by itself' (Marion 2002a p.43). To take the other Heideggerian option, to understand the painting as providing a window onto the truth of Being, is to stand with Heidegger in affirming that beauty is simply a mode of disclosing truth. This point is *prima facie* problematic for Marion because it assumes the existence of the mysterious transcendental, 'truth.' Moreover, Marion argues that beauty is not dependent on the 'thinglike' qualities of a painting, on the painting as a being. The painting can be reproduced (copied, put on postcards, put on the Internet), or it can fade and then be restored. If the phenomenon of the painting could be captured under the heading of being, it would be enough to see it once, in any of its manifestations, in order to fully take it in. Yet many people return to art museums over and over again, looking at a given painting from different angles, in different lights, in different moods. The point, according Marion, is that we should shift our emphasis from the painting's being to its 'mode of appearing' – in other words, we should shift to a phenomenology of givenness.

How are we to understand the phenomenon of the painting once the approaches of Husserl and Heidegger have been rejected? In other words, what does Marion's alternative, his 'last philosophy,' have to say about the painting? He suggests that we should focus on the painting as that which 'comes forward into visibility'; specifically, on the 'effect' which constitutes, unifies, and concentrates the phenomenon. Focusing on the effect makes room for 'the shock that the visible provokes,' a shock which is not possible to understand when the painting is taken to be an object of consciousness – or when it is understood under any other version of first philosophy (Marion 2002a, p.49). The ordinary objects (and people, and events, etc.) that we encounter in the world have no effect on us because their conditions of possibility are predetermined by first philosophy, even if it is just the default of folk first philosophy (the notion things are as they seem to us). As Marion puts it, 'nothing has an effect, except the phenomenon reduced to the given' (Marion 2002a, p.52).

It would be tempting to read Marion's emphasis on the 'effect' of the phenomenon as an appeal to a rather crude pragmatism – a position which would similarly eschew all *a priori* conditions on appearance. But Marion's position differs from the pragmatist's in that the latter tries to quantify and qualify effects, classing them into types and exploring their implications. Marion would object that the pragmatist is trying to measure the immeasurable, trying once again to capture the phenomenon with a prejudiced machinery. Whatever terms we use to talk about the effects of the phenomenon are our terms rather than its terms. It would appear that all we can do in the face of a phenomenon is to wallow in its effect. Paradoxically, although the phenomenon just is what it does, it does nothing that is. The implication, it seems, is that an encounter with a genuine phenomenon, reduced to pure givenness according to Marion's last philosophy, shakes us existentially, in all of who we are, but in no specific ways. Understanding phenomena in this way avoids the looming epistemological problem: if we cannot capture phenomena in language or thought, and we cannot capture their effect in language or thought, how do we have access to them?

Concerning the individuation of phenomena, Marion mysteriously writes, 'the phenomenality of givenness lets us detect the "self" of the phenomenon ... Such a "self" consists in the gap that distinguishes and connects the arising (givenness) to its given' (Marion 2002a, p.70). To begin to untangle what Marion is suggesting, let us first explore Marion's image of the fold. As givenness unfolds, it dispenses the given. The phenomenon, as given, is a gift of givenness. So when Marion refers to the 'self' of the phenomenon as the gap between givenness and given, perhaps he is referring to something like the particular configuration of the fold of givenness. As that particular configuration unfolds, it produces a unique precipitate: the phenomenon. Put another way, the world is like a crumpled up wad of paper with letters on it. As the paper is straightened out, the letters gradually become legible. As our attention turns to the letters, our attention recedes from the paper on which we were previously focused.

Marion dubs this network of given and givenness the gift. A gift seems as if it is an object given by one person to another, but Marion points to a variety of examples where one, two, or all three of these elements are missing. He suggests, for example, that these three aspects of the supposedly closed economy of the gift are brought into question in an anonymous bequest (bracketing the giver), a gift given to a large charity where the actual beneficiary is unknown (bracketing the givee), or in friendship (bracketing the gift itself). He concludes that the gift must

be defined in terms of givenness, not givenness in terms of the gift. In these examples of the gift in the ordinary world, the relationship Marion wants to advance between givenness and the phenomenon is reaffirmed. The gift, as a phenomenon, emerges from the fold of givenness. In other words, Marion is suggesting that it makes sense to say that a phenomenon gives itself because it makes sense to say that a gift gives itself – because giver, givee, and gift can all be bracketed, leaving only givenness.

There is something suspiciously sophistic about Marion's use of examples of gift giving in the ordinary world to support his project of phenomenology as last philosophy. Certainly there is a sense that something is happening in gift exchange that cannot be reduced to, but is localized on to, the gift (and the giver and givee). The exchange relationship (abstractly, givenness) shapes what the gift is, but is not determined by what the gift is. But Marion claims too much. He wants givenness to completely specify the gift, to individuate the phenomenon. But in ordinary life givenness underdetermines the gift. There is nothing about an exchange relationship that specifies what kind of gift will be given. The givenness of a bequest can take many forms, as can the givenness animating a charitable donation, and the givenness animating a friendship. One day my friend and I may go to the zoo, the next day I may bring him a lucky penny, and the next day he may wash my car for me. If we accept, with Marion, that the giver, givee, and gift can all be bracketed, leaving us with pure givenness, then how is it that a specific individuated gift emerges from this 'fold'? It seems as if the most we can say is that givenness manifests itself in precipitates, in gifts, but those gifts are imperfect representations of givenness. This conclusion aligns with everyday practice. One person will give another a gift with the words, 'This is a token of my friendship, even though it is impossible to represent that friendship.' A donor will write in a note accompanying a check to a charity, 'This cannot fully express my commitment to the work you are doing, but it is a try.' In other words, we can recognize, with Marion, that the gift leads back to givenness, but we can (and must) differ from Marion in saying that the gift is but an imperfect representation of givenness.

This acknowledgment of imperfection, of fallenness, is precisely what Marion's quietism tries so hard to avoid. By suggesting that the gift and givenness function harmoniously, advancing and withdrawing together in lock-step, he again affirms his commitment to what we have called epistemological transcendence. Once we get a view of the phenomena themselves, uncontaminated by the futile efforts of first philosophy to

master them, we can know how the world really is. But if we read the logic of the gift against Marion's account, as I have proposed, we must acknowledge that we will always get the world wrong. The world graciously offers us phenomena to grapple with, but those phenomena never perfectly represent, or even offer a path toward, how the world really is. To think otherwise is hubris – or, in other words, idolatry (this is a point to which I will return briefly). Marion might object that I am simply relocating the 'unbridgeable gap between world and consciousness' found in Husserl, or the gap between ontic and ontological as found in Heidegger (2002a, p.177). But Marion himself has shown how givenness need not be thought of as introducing the sort of philosophical machinery that he finds so problematic in the work of Husserl and Heidegger (not to mention the many other proponents of first philosophy from Plato to Kant). Givenness may be understood as last philosophy, but philosophy need not be understood as coming to an end. The crucial philosophical labor that Marion rightly identifies is the work of discarding problematic machineries as they pop up here and there, but the notion that the phenomenon is always an underdetermined precipitate of givenness suggests that it will never be possible to discard all such machineries. Instead, the task of philosophy is to try, and fail; to try again, to fail again.

Against Kant, who inscribes every phenomenon within the unity of experience through the yoked pair of concept and intuition, Marion suggests that there are phenomena which are deficient or excessive in concept and intuition. Marion differentiates 'in terms of their degree of givenness' three types of phenomena: poor, common law, and saturated (Marion 2002a, p.222). Poor phenomena have a concept but are lacking in intuition – for example, abstract entities like those used in mathematics and logic. Because of their lack of intuition, they are generally held to be more certain than other phenomena, but Marion contests this. He argues that poor phenomena do have a different degree of givenness than other phenomena, but their existence is just as certain, because the formula 'as much reduction, as much givenness' holds for all phenomena independent of their mode of givenness.

In common law phenomena, concept and intuition are well (though not perfectly) yoked. There may be only partial intuition of a concept, only some of its supposed instances may be experienced. But this does not diminish its status as a phenomenon. The concept of the phenomenon allows for predictability: when all goes well, intuitions confirm our concept. There is something rather dull about the common law phenomenon: 'since intuition always comes after the fact and

plays the role of actual confirmation of the plan's original rationality, and since it should make no difference ("flawless"), it also should not tolerate any innovation, modification, or, in short, any event' (Marion 2002a, p.225). Now Marion's account of common law phenomena rests on the curious normative claim that intuition ought to meet concept. When intuition does not meet concept, there is a 'flaw.' But this seems wholly mistaken. To appeal to the 'common law' model that Marion himself raises, a law, as represented, only serves as a guide. When a case comes before a court that does not fit with the law as found in the law books, the court's understanding of the law is refined. To call this process of refinement – which is continual, for the law is always growing and its shape is ever altering – a 'flaw' is to miss the point entirely. And the same holds for experience of phenomena in the world. It is only when concepts are imagined to be rigid and static, and that they 'ought' to be this way, that the common law model appears constraining, as it does to Marion.

For the saturated phenomenon, intuition always exceeds concept. The saturated phenomenon is unpredictable, it is paradoxical. Because it is the only place in the world where we humans can see givenness in its purest form, the saturated phenomenon has a privileged status. In all other aspects of the world, we are constantly employing reductions, philosophical machineries that skew the world. Marion's understanding of last philosophy, philosophy freed of such machinery, is an unreachable ideal most of the time, but it is realized when we approach the saturated phenomenon. The slogan 'as much reduction, as much givenness' finally bears fruit. The saturated phenomenon is the only sort of phenomenon that 'appears truly as itself, of itself, and on the basis of itself...giving *itself* as a *self*' (Marion 2002a, p.219, emphasis in the original). Individuation only happens fully, purely, in the saturated phenomenon, when there is no reason for individuation at all, where the only authority governing the phenomenon is the phenomenon itself, or, put another way, givenness.

Marion explores this antinomian individuation further in his discussion of the gift, which he sometimes puts in the position of saturated phenomenon. According to Marion, 'The gift alone gives reason and renders reason to itself' (Marion 2005, p.133). The gift needs nothing to authorize it; it is accountable only to itself. Marion dramatically characterizes the consequence: the gift is never wrong, always right. This is precisely the quietist move: nothing can be said in the face of normative questions, no decision about what is right and what is wrong can be made. Everything is right (or everything is wrong, which is to

say the same thing). Nothing (and everything) can be said about the gift. Marion seems to think this a desirable conclusion, which he frames explicitly in terms of evading questions of justice: 'Having no presupposition (not even the justice of equality or the equality of exchange), no prior condition, no requisite, the gift gives (itself) absolutely freely' (Marion 2005, p.133). Marion is harnessing the rhetorical appeal of the 'absolutely free' in the face of the burdensome constraints of justice, equality, and exchange, yet in doing so he demonstrates how quietism collapses into dualism. The quietist longs for a realm without law, and suggests that such a realm is how the world truly is. We just need to stop worrying about philosophical confusions, about conditions and necessities, concepts and intuitions, and we can revel in our rest, in the beautiful silence that remains. The dualist we encountered in Chapter 2, while agreeing that we desire an antinomian world, takes achieving such a world to be a major project, one that requires us to marshal our mightiest philosophical (and sometimes spiritual) efforts.⁶ Note that Marion himself discusses 'revelation' as a special type of saturated phenomenon, a phenomenon with second order saturation.

Over the years, Marion has used the contrast between idol and icon in a variety of rhetorically powerful ways, both in his ostensibly philosophical writings and in his ostensibly theological writings. In *Being Given*, the icon has a privileged position among the types of saturated phenomena Marion discusses. But let us turn to his earlier discussion in the first chapter of *God Without Being*, an explicitly theological text. Here, Marion writes of the idol's capacity to stop the gaze from turning this way and that, to fix it, and to fill it: 'the visible dazzles the gaze' (Marion 1991, p.12). It 'acts as a mirror' rather than a portrait, but because of the dazzling brilliance of the idol, its function as mirror goes unnoticed. The idolater never thinks that she is tricked into seeing only herself. The idol, in stopping and fixing the gaze, 'not only indicate[s] to the gaze how far its most distant aim extends, but even what its aim could not have in view' (Marion 1991, p.13). In idolatry, the divine is limited by the human gaze, yet the human is certain that she sees the divine.

In contrast, 'the icon does not result from a vision but provokes one' (Marion 1991, p.17). The icon allows the invisible to remain invisible; it does not purport to represent everything. Moreover, looking at an icon is not a search for the invisible; the invisible just happens to seep into the visible. Ultimately, the icon shows nothing, according to Marion. Rather, '[i]t teaches the gaze, thus it does not cease to correct it in order that it go back from visible to visible as far as the end of infinity... The gaze can never rest or settle if it looks at an icon; it always must rebound

upon the visible' (Marion 1991, p.18). In other words, to borrow the terminology of *Being Given*, the icon is not so much an object as an effect. And it is not so much an effect with visible consequences as an effect that inflects the viewer existentially; it inflects the viewer's stance toward the world.

Clearly, Marion imagines his philosophical (and theological) endeavors to be constructed on the model of icon rather than idol. First philosophies, on his account, seem idolatrous: they are dazzled by the world as viewed through the human gaze, not realizing that the world they see is the world they have created, irreparably skewed. Last philosophy lets the world be, lets it seep into our gaze now and then, but lets it retain its autonomy – seemingly aligned with the icon. But I suspect there is a tension here, a tension within Marion's own position. While he attempts to align his philosophical project with the model of the icon, the quietist moves he repeatedly makes are conversation stoppers. The quietist wallows in silence, in awe and reverence, rather than reverently engaging with an ungraspable world. This sounds much more like worship of an idol, entrancing the viewer and filling her gaze, than like worship of an icon.

The idolatry of Marion's quietism leaves its adherent impotent to explain and predict in the world, for she is transfixed on the world as it purely is, when philosophical machinery is set aside, and prediction or explanation would taint that purity. John McDowell agrees with Marion's broad quietist agenda, but fills it out through thicker and more diverse philosophical investigations, and he makes critical engagement with the world central to his project. McDowell looks out on a philosophical landscape in which dualisms – for instance, between mind and world, interior and exterior, reason and desire – are hopelessly entrenched. He takes his task not to be that of offering a new way out of the dilemmas posed by these dualisms, but by taking a step back and showing how posing questions in dualistic terms is, in fact, the problem.

McDowell's project operates on several varied fronts, from language to practical reason to ethics to mind. I will begin by discussing some of McDowell's remarks on epistemology, introducing the move he makes to avoid the solipsism into which Marion is led. Then I will discuss McDowell's work on ethics, demonstrating how the solution McDowell develops in fact simply displaces, rather than eliminates, the problems found in Marion's work. Finally, I will examine the powerful synthesis of the many facets of his thought that he presents in *Mind and World*, probing how this complex and nuanced project still leaves worries unanswered.

Like Marion, McDowell is concerned about philosophical machinery that distorts how things are. The intuition that sets the train down the wrong track is that all we humans can do is to perceive that the world is thus and so (to use McDowell's terminology), but that does not mean that the world is actually thus and so. We perceive things to be the case that are not the case. On first glance, it appears that we are entirely dependent on the world doing us a favor. We are dependent on the world letting things really be as it seems to us like it is. Thinking in this way, about the gap between our perception and the way things are, has generated a great deal of philosophical labor – all of which, McDowell argues, is misdirected.

Given this situation, where the perceiver is opposed to the world, McDowell identifies three responses that are possible, each of which, in contrast to McDowell's own response, accepts the terms of the discussion. First is skepticism: given that the world can always play tricks on us, there is no way of knowing that our perceptions ever really get things right. On the opposite extreme is blind faith: accepting our perceptions as an infallible guide to how the world really is. Both skepticism and blind faith are unsatisfactory, McDowell argues. They induce cognitive dissonance, because both clash with our ordinary experience of the world. In our daily lives, we see that many of our perceptions get things right, but occasionally they get things wrong. To take the position of the skeptic or of blind faith is to seek reassurance and certainty in an uncertain world, it would seem. These positions are suggestive of the idolatry Marion writes about: placing all of our faith in ourselves, or having no faith whatsoever.

The third option, which is the subtlest and on which the most philosophical energy has been expended, acknowledges the gap between perception and the way the world is, but tries to bridge it. Beginning with our perceptions, we just need to construct some set of rules that will allow us to check whether perception gets the world right. If our rules are good enough, if our bridge is strong enough, uncertainty will be eliminated. We could be sure that we get the world right. This approach has much intuitive appeal. As we encounter situations that surprise us, situations where our perceptions turn out not to match how things are, we fine-tune our perceptions so that in the future we will be more likely to get the world right. Building such an impressive bridge takes much heavy machinery and engineering.

However, even the sturdiest bridge never fully crosses the divide. There are still some perceptions that do not match the world. It is still necessary to rely on luck, on 'favors' from the world, in order for

perception to get things right: 'However careful one is in basing belief on appearances, if one's method falls short of total freedom from risk of error, the appearance plus the appropriate circumstances for activating the method cannot ensure that things are as one takes them to be' (McDowell 1998a, p.399).

McDowell uses Sellars' imagery of a 'space of reasons' to refer to the location where perceptions are processed, where they are refined so as to most closely approach how the world is. Knowledge is what we have when we get the world right – not just how it seems. We are aspiring to find a way to say that knowledge is a proper standing in the space of reasons, that with proper operation of philosophical machinery knowledge can be certain, but we keep coming up short. There must be another component beyond the processing mechanism, beyond our standing in the space of reasons, that can lead us from perception to the way the world is. McDowell suggests that this extra component is what we call 'truth.' Knowledge is not simply justified belief; it is justified true belief because the machinery of reason is insufficient to assure us that we get to how the world really is. It might seem plausible to just add the extra 'truth' component to the blind faith picture, ignoring the complications that speculation about a processing mechanism, a standing in the space of reasons, brings with it. But McDowell points out that if we say that something has knowledge just when it gets the world right, independent of its use of reason to get there, we would be forced into saying that thermometers have knowledge, for they always get the world right.

In this picture that leads from perception to a processing mechanism to truth, and finally to the way the world is, the first two items seem to be 'interior' and the second two seem to be 'exterior.' Truth, like the world itself, is a component from outside of us, outside of our processing mechanism, our space of reasons. But this divide between interior and exterior is deeply problematic. The notion of a processing mechanism was a way to refine perceptions, based on experience, so as to get closer and closer to how the world is. But how can this processing mechanism improve itself – how can it form new heuristics, say – if it is constantly relying on an external component to get the world right? We can never be sure how close we are actually approaching to how the world really is because there is always a gap of indeterminate size that needs to be filled in by 'truth' to complete the bridge from perception to how the world is, so there is no way for our processing mechanism to correct itself. The student who is automatically given an 'A' on her spelling test never learns to spell.

The only way to resolve the impasse that we have come upon, according to McDowell, is to abandon the picture of the mind, perceiving and processing, on one side and the world, doling out truth in its good moods and falsity in its bad, on the other side. McDowell argues that it is unavoidable that we must rely on the favors of the world. However, he further argues of the perceiving subject, 'once she has achieved such a standing [in the space of reasons], she needs no extra help from the world to count as knowing' (McDowell 1998a, p.406). The space of reasons is not a mechanism half-way bridging the gap between mind and world; the world immanently shapes the space of reasons. We have had the good fortune that the world and our space of reasons are generally aligned, so most of the time simply by operating normally in the space of reasons we can figure out how the world is: we can have knowledge. But the world can be unfavorable to us in the space of reasons itself. In other words, McDowell is suggesting that we do not have an 'interior' that is secure from error – error which is only introduced when our 'interior' is put in contact with an inconsistent 'exterior,' a capricious world. All are on the same plane, and all can be – and will be – wrong.

McDowell seems to have avoided the problem that tripped up Marion. Where Marion considered various forms of machinery for processing experience and dismissed them all because of their distorting effects, leaving him to reverently (and impotently) contemplate with awe the purely given world, McDowell dismisses not only the machinery but the imagery that motivates the machinery, the imagery of a gap between interior mind and exterior world. What McDowell *does not* dismiss is crucial: he accepts that we will always get the world wrong, a point that Marion continually elides. Because McDowell acknowledges this point, he cannot sit back and admire the world as it appears when we take off our funny-colored glasses. He acknowledges and explores the texture of the mind/world, the mechanics of the space of reasons – but, ultimately, McDowell has just displaced Marion's endpoint, his 'last philosophy.'

In his influential paper, 'Virtue and Reason,' McDowell ponders what is meant by the Socratic slogan 'virtue is knowledge.' Although it would seem as if 'knowledge' in this context is dramatically different from 'knowledge' in the context of McDowell's inquiry into the foundations of epistemology, in fact understanding how the sort of knowledge that is closely related with virtue is the same as the sort of knowledge that comes about at the intersection of mind and world illuminates McDowell's position, and its shortcomings. The crucial link is McDowell's contention that saying someone has knowledge 'implies

that he gets things right' (McDowell 1998b, p.51), precisely how he understands knowledge in his work on epistemology discussed above.

McDowell begins his explication of the Socratic slogan by contemplating kindness, which he takes to be a generally accepted virtue. He writes, 'A kind person can be relied on to behave kindly when that is what the situation requires' (McDowell 1998b, p.51). In other words, kindness can be described by a set of circumstances each paired with behaviors (this formulation would perhaps be too heavy-handed for McDowell's tastes). These behaviors we call acting 'kindly.' They need not be in one-to-one correspondence with the circumstances which elicit them: there are many ways for a kind person to act appropriately when faced with, say, a friend who has recently been widowed. Further, note that these kindly actions are not kindly in themselves; they are kindly as responses to the circumstances which elicited them. When a kind person finds herself in any of those circumstances, she acts according to the paired behaviors: she acts kindly.

But McDowell is careful to avoid framing this position in behaviorist terms. A courageous lioness who, in each circumstance that calls for a courageous action, acts appropriately – ferociously defending her cubs, for example – is not courageous. The lioness does not have reason for her action; a human who is courageous has reason for her action. Here again McDowell is suggesting the importance of some processing mechanism; he is suggesting the importance of one's standing in the space of reasons. Just as a thermometer cannot be said to have knowledge even though it always gets the world right, a lioness cannot be said to have courage even though she acts courageously in the appropriate circumstances.

The parallel with the general case of epistemology goes further. Kindness and courageousness involve perception. This crucial point is often overlooked. The kind person must be able to detect when she finds herself in the sort of situation which calls for her kind behavior. To be able to reliably detect a certain sort of circumstances is to have knowledge. So to be kind or courageous requires having the appropriate sort of knowledge; it requires the ability to correctly detect when a certain sort of circumstance arises. In short, they require that one 'gets things right.' (As McDowell points out, for a genuine virtue, this sensitivity must completely determine the reason for action; it cannot need to be supplemented by, say, monetary reward or other incentives.)

It still appears that there is an extra ingredient necessary to have a virtue, beyond having the necessary knowledge – that is, beyond having the necessary capacity to rightly recognize situations where the virtue kicks in. This extra ingredient is the appropriate response: the

kind action or the courageous action. Having a virtue isn't just figuring out when to act virtuously; it also is actually acting virtuously in those situations. More pointedly, it seems as though two individuals could perceive a situation in the same way, but respond differently. If virtue is just correct perception, then both individuals would be virtuous, but this clearly would be a problematic conclusion. McDowell's solution, working with an idea from Aristotle, is to suggest that two people may generally perceive rightly the same circumstances and act differently, but in fact the person who fails to act appropriately perceives in a 'clouded' or 'unfocused' manner.

The counter-intuitive nature of McDowell's suggestion should not be underestimated. We normally think of two components leading us to act: a perception and a will. McDowell collapses the two; indeed, he argues that this bifurcation is the result of thinking about virtue as codifiable, that it could be represented as a set of rules, a 'universal formula' for acting rightly. It is only with this picture in mind that virtuous action takes on different steps: perceiving a situation, checking it against the rule, and then deciding to act according to the rule. But McDowell appeals to the Wittgensteinian point that 'there is nothing but shared forms of life to keep us, as it were, on the rails' (McDowell 1998b, p.61).⁷ There is no firm foundation to assure us that things will go on as before, they just do.

McDowell is careful to note that although having kindness or courageousness involves a certain standing in the space of reasons, this should not be confused with the kind or courageous person being able to describe their own behavior as kind or courageous.⁸ All the virtuous person needs to be able to say, according to McDowell, is that his actions are 'the thing to do,' they are 'right conduct.' This suggests that the division of virtuous action into specific virtues is artificial, and McDowell is willing to acknowledge this point: 'the division into actions that manifest kindness and actions that manifest other virtues can be imposed, not by the agent himself, but by a possibly more articulate, and more theoretically oriented, observer' (McDowell 1998b, p.51). This statement leaves the status of individual virtues ambiguous. Is it that the language of 'theoretically oriented' observers is simply convenient for talking about the virtues, a sort of nominalism about the virtues, or is it that the language of these more sophisticated observers says something substantive about the virtues?

It is the former option that McDowell seems to favor. He argues that it explains the Socratic notion of 'the unity of virtue,' that all virtues are mixed up with each other and are ultimately interdependent.

His argument uses the example of kindness, in which ‘the relevant range of behaviour . . . is marked out by the notion of proper attentiveness to others’ feelings’ (McDowell 1998b, pp.52–3). He seems to mean something like: in circumstances where one is interacting with someone else, one should choose an action that is least likely to cause them emotional suffering, or to minimize their emotional suffering.

But consider circumstances where there is both a kindly response and a fair response, and these two responses differ. Perhaps one job applicant is better qualified than another, but the latter has less self-confidence and will suffer much more greatly if she is rejected. The fair thing to do is to choose the better qualified applicant, but the kind thing to do is to reduce emotional suffering. In favor of the Socratic thesis about the unity of the virtues, McDowell argues that if one were only kind, one would be led to act wrongly – in my example, one would be led to reject the better qualified applicant. Of course, only possessing the virtue of fairness would, in some circumstances, lead to wrong conduct as well. McDowell puzzlingly concludes, first, that on top of the two virtues something else is necessary to tell which circumstances call for kindness and which call for fairness; second, ‘no one virtue can be fully possessed except by a possessor of all of them, that is, a possessor of virtue in general’ (McDowell 1998b, p.53). This is puzzling because the relationship between the two conclusions is unclear, since they are certainly distinct and one does not follow from the other in any obvious way. I am pushing on this puzzle because the second conclusion has the potential to lead McDowell down a problematic quietist path by preventing him from speaking about individual virtues.

One solution to this puzzle is to point to the individuated virtues as an artificial construction of ‘theoretically oriented’ observers, and so the apparent choice between McDowell’s two conclusions only arises from that perspective. From the perspective of the insider, the virtuous person is just acting rightly, just doing the thing to do. So, from the perspective of the outsider the virtuous person needs some extra capacity to choose between the pull of kindness and fairness, but from the perspective of the insider there is no conflict at all, just one action which is obviously the thing to do.

Another option is to propose, as a candidate for the missing link, *phronesis*, the virtue of practical wisdom, which could be understood to triage different circumstances to different virtues.⁹ The set of circumstances to which *phronesis* applies, say, are those circumstances where two or more virtues pull in different directions. The wise actions paired with those circumstances are those actions which are, overall,

right conduct. In the case of the two job applicants, kindness pulls one way, fairness pulls another way, but one who possesses *phronesis* realizes (knows) which action is correct – in this case siding with fairness.

A third option in the face of this puzzle is to reject both the extra ability on top of the virtues and the unity of the virtues by arguing that there are never genuine conflicts between the virtues. In other words, the claim on this view is that there is never any circumstance which elicits a different action when perceived through the lens of fairness and when perceived through the lens of kindness. The argument for this position rests on the idea that the circumstances picked out by virtues are very detailed, very finely grained. The apparent tension between virtues only arises when a scenario is described in general terms; once more details are provided it becomes clear that only one virtue picks out the situation. This third option has intuitive appeal: once we hear about all of the job applicants and their qualifications, the needs of the organization doing the hiring, the specific personalities of the better and lesser qualified applicants, and so on, it becomes clear that this is not a circumstance where kindness is applicable.

But if one only possessed the virtue of kindness, and not the virtue of fairness, would the fineness of grain really matter? It is sometimes said of a person that she is ‘too nice for that sort of job.’ But rather than suggesting that such a person would exercise their niceness when it is not called for, this saying seems to imply that the person is simply lacking in the virtue that would be called on in ‘that kind of job’ – for example, fairness. The job would put the person in circumstances where they would not know what the thing to do is; it is not that the job would put them in circumstances where they would think they know the thing to do and it would turn out to be the wrong thing. It is her ignorance that might result in bad decisions, not her virtue run wild.

McDowell does consider the fineness of grain of circumstances, but with a quite different conclusion. He suggests that any situation can be viewed in a variety of different ways, emphasizing different aspects of the situation. If one fact about the situation is made salient, one virtue will kick in; if a different fact is presented as salient, a different virtue will kick in. McDowell suggests that rightly perceiving saliences is possible when one knows ‘how to live.’ By this McDowell seems to mean something broader than knowledge of the virtues but narrower than knowledge in general, but how to pick out knowledge with this scope remains obscure. It seems much less mysterious to acknowledge the issue of differing presentations, but to respond with an appeal to *phronesis*. Rather than a second-order virtue which triages equivocal

circumstances to various virtues, *phronesis*, on the understanding I am proposing, is the virtue of perceiving circumstances rightly. It is the lubricant that makes all of the virtues function. On this understanding, we can retain McDowell's insight that a virtue is perceiving certain circumstances correctly, but we can refine it by suggesting that the person with a given virtue need only be able to rightly perceive those circumstances in what we might call 'laboratory conditions' (the 'laboratory' of course includes the thought experiments which are the staple of moral philosophy). In the uncontrolled, complex real world, each virtue must be supplemented with *phronesis* in order to operate correctly.

Note that I have retained the notion that a circumstance unequivocally is connected with one virtue. It is the complicated context outside of the 'laboratory' that leads McDowell to argue for the unity of the virtues, because in this context circumstances seem so opaque that he thinks they must necessarily be equivocal between multiple virtues. But I am arguing that the complicating context outside of the 'laboratory' masks unequivocal circumstances, and it is possible, with *phronesis*, to sort things out and see unequivocal circumstances for what they are.

This notion of masking may seem to conflict with McDowell's suggestion that foggy perception is what distinguishes those having and those lacking a virtue when they look at the same set of circumstances. But the image of fogginess just needs refining. The world, outside of the laboratory, is foggy. To have the capacity to see through that fog, I have suggested, is *phronesis*. Once the fog is pulled away, the virtuous person rightly perceives circumstances requiring virtuous action. But, for the person lacking a given virtue, the fog can never be pulled away. *Phronesis* lubricates a virtue; on its own it does nothing. So McDowell's image remains correct when framed in this way: the person who has a virtue and *phronesis* acts when confronted with a situation eliciting the virtue; the person who does not have the virtue, when confronted with the same situation, has a clouded perception.

Now it might seem as though the solution to McDowell's puzzle that I have been urging, thinking about virtues as individuated, and as sets of circumstances each paired with sets of right actions, returns to an understanding of virtue as codifiable to which McDowell – with the help of Wittgenstein – objects. But there is no reason that we need abandon McDowell's helpful suggestion (which he later apparently rejects) that the individuated virtues are a sort of fiction imposed by theoretically oriented observers. The virtuous person need not consciously appeal to them, but that does not mean the individuated understanding loses

any of its explanatory power (we scholars are, after all, perennial outsiders). But McDowell is unsympathetic to this thought. The conclusion he draws from Wittgenstein is that we ought to 'give up the idea that philosophical thought, about the sorts of practice in question, should be undertaken at some external standpoint, outside our immersion in our familiar forms of life' (McDowell 1998b, p.63). This move, of course, is the keystone of quietism. For McDowell, as for Marion, it has a necessarily castrating effect, leaving the theorist bereft of resources to explain, predict, and debate. Yes, the theoretically oriented observer always gets things wrong with her attempts to offer accounts of individuated virtues, but this is the way we get traction in our dealings with the world, the way we are able to have substantive conversations about how things are and how things could be. Transcendence starts when engagement with the world stops, and engagement with the world stops when we refuse the fiction that we can accurately speak about the world, when we content ourselves to wallow in our 'immersion,' as if transfixed by an idol.

There are moments where McDowell seems to infuse the state of 'immersion' with desire (in Marion's most recent work (2007), he makes a related claim about the 'erotic'). Recall how McDowell positions himself in opposition to the two-stage understanding of action: he argues that action does not result from perception plus will. Will and desire, called generically 'orectic states,' as refinements of concepts from folk psychology, often become interchangeable. I see a tasty slice of cake, I desire (or will) to eat tasty things, so I eat it; I see a person in distress, I desire (or will) to act kindly, so I comfort her. McDowell diagnoses the introduction of orectic states as a symptom of 'the craving for a kind of rationality independently demonstrable as such' (McDowell 1998b, p.71). If someone desires X, they obviously (from an 'objective' perspective, an outsider's perspective) have reason to X. But a virtuous person is virtuous because of how she sees a situation, and this 'objective' supplement does no work in the explanation of a virtuous action.

However, because of McDowell's holism, he does not abandon the notion of orectic states, he displaces it. From a desire for a specific X, the orectic state becomes a desire to live a certain way. According to the view McDowell attributes to Aristotle, 'the orectic state cited in an explanation of a virtuous action is the agent's entire conception of how to live' (McDowell 1998b, p.67). McDowell argues that it is impossible to fully explain virtuous action without citing this notion of 'how to live.' How each person answers the question of 'how to live' is, of course,

impossible to codify, and only fully understandable from within that person's life.

We began discussing McDowell's general epistemological posture, which seemed a more promising approach than Marion's, and then turned to McDowell's specific account of what it means that virtue is knowledge. This provided an entry point into McDowell's constructive proposal about reformulating traditional concepts of dispositions, perceptions, and desires – and it also showed some of the challenges McDowell's approach encounters from the perspective of an immodest jurisprudence. A question arises about this specific choice of an entry point into McDowell's thought. Is there not something peculiar about *virtue* in the formula *virtue is knowledge*? Does not virtue carry with it a peculiar normative force because of its ethical associations, a normative force that does not accompany other dispositions – and threatens to open a back door for transcendence to enter?

So far, we have not seen McDowell say anything about the virtues that could be offered as a justification for saying that virtues have anything to do with ethics besides the connection of the terms in ordinary language. Virtues may be dispositions to behave rightly, but if virtues are identified with getting things right, with doing 'the thing to do,' then how are virtues different from dispositions more generally, all of which involve doing 'the thing to do' in the appropriate case? Indeed, McDowell is sympathetic to the Aristotelian position that, 'talking of having been properly brought up and talking of considering things aright are two ways of giving expression to the same assessment' (McDowell 1998b, p.101).

McDowell addresses these issues in an engagement with Philippa Foot's 'Morality as a System of Hypothetical Imperatives' (Foot 1978). Foot criticizes the Kantian distinction between categorical imperatives, which operate in the domain of morality, and hypothetical imperatives, which operate in the rest of life. Hypothetical imperatives involve the use of normative vocabulary like 'should' and 'ought' that is dependent on some specific reason, not on reason itself; categorical imperatives involve the commands dictated by reason alone. To act against a categorical imperative is thus irrational; all rational people recognize categorical imperatives. I am going to the opera so I should dress up involves a hypothetical imperative: the normative force comes from a specific reason and it could be trumped by other reasons: my friend could be ill, an unexpected guest may arrive at my house.

Kant argued that moral imperatives are categorical; Foot argued that all imperatives, including the moral, are hypothetical. McDowell argues

against Foot (although not exactly for Kant). He argues that the model of hypothetical imperatives supposes a separation of perception and orectic state – of seeing a slice of cake and desiring to eat it. But, as explained above, McDowell argues that this model does not hold for the virtues. If a virtuous person perceives a situation that calls for virtuous action, the virtuous person will always take the appropriate action. There is no need for an orectic supplement; the orectic is integrated with ‘how to live,’ and thus morality rests on (something like) categorical imperatives. McDowell remains officially neutral on whether there are *any* hypothetical imperatives; his argument is just that moral imperatives are clearly categorical. So McDowell still has not shown what makes the domain of morality unique, other than its label. Indeed, I would argue that McDowell (rightly) does not want to make such a distinction, and his use of labels such as ‘moral’ and ‘ethical’ is simply misleading, even if they reflect something like ordinary usage.

Although McDowell does not seem to attribute any special normative significance to ‘virtue’ because of its conventional ethical association, in investigating this claim we have happened upon something even more troubling. The reason that Kant’s ethical theory is (for some) difficult to stomach is precisely the strength of the categorical imperative – the imperative on which McDowell so heavily leans. That categorical imperatives are necessarily acknowledged by all rational beings, and that they are disobeyed only when one acts irrationally, seems like a stronger claim than McDowell would want to make on his broad conception of the virtues. Do the virtues of kindness and fairness really have that kind of force? Perhaps our worries can be alleviated to some extent if we turn to McDowell’s suggestion that what he is talking about is ‘the thing to do,’ which particular virtues are convenient names for some of. It seems plausible to say that everyone in all circumstances, if they are rational, ought to do the thing to do. But if it is possible to perceive the thing to do only when one is well-reared in a given culture, it seems as though we lose the critical distance that allows for normative critique of our culture’s practices. Is it never possible for the thing that seems to be the thing to do to be wrong, other than in cases of misperception? This would be difficult to imagine when the thing to do is authorized by categorical force. And the critical impotence that this implies is what I have suggested is symptomatic of the quietist position more generally.

These concerns are not overlooked by McDowell. In ‘Two Sorts of Naturalism,’ he addresses these issues, with a particular focus on the question of human agency developed through an incisive exploration of the space of reasons. To flush out these issues, he starts with a

preliminary definition of reason which identifies it with *logos*, 'the power of giving expression to conceptual capacities that are rationally interlinked in ways reflected by what it makes sense to give as a reason for what' (McDowell 1998b, p.169). This understanding of reason necessarily takes its possessor to be an agent, one who chooses between options, imagines different scenarios. A non-human animal simply does what it does by nature; it has no capacity to consider alternatives. If a non-human animal were to acquire reason (McDowell's example is a wolf), the animal would begin to wonder why it should do its seemingly natural activities, why it should actively cooperate in hunting instead of just free-riding off of its fellows.

It would not be possible to convince the wolf to fully participate in the hunt by arguing that it is natural, so that is what a wolf ought to do. This sort of normative language is normative only by courtesy; it does not carry with it substantive normative force (Thompson 1995). Humans normally have four limbs, but sometimes they have three. A human who is lacking an arm would not be reprimanded (I take reprimand and praise to be the heart of a substantive conception of normativity). Although we might say that an octopus missing a tentacle is a 'bad specimen' and that 'an octopus should have another tentacle,' the octopus would not be seriously reprimanded for its lack. McDowell marshals this point in opposition to philosophers who turn to some aspect of human nature to give normative force to ethical or political positions.

So the wolf who acquires the capacity to reason cannot be convinced to fully participate in the hunt by the fact that hunting is natural for wolves. It would seem as though the wolf would take advantage of his capacity to reason and 'transcend his wolfish nature in pursuit of his individual interest, exploiting the less intelligent wolves who continue to let their lives be structured by what wolves need' (McDowell 1998b, p.172). But anticipating this result is a product of a typically modern misunderstanding of reason, McDowell argues. We have come to oppose nature and reason (in other words: mind and world), but in fact if we are to make sense of the world we must suppose that the world has the same structure as the space of reasons.

To escape from this modern problematic, McDowell introduces a distinction between 'first nature' and 'second nature.' First nature is shared with animals; second nature is what we are initiated into through moral education. Through second nature we are able 'to step back from any motivational impulse one finds oneself subject to, and question its rational credentials' (McDowell 1998b, p.188). The authority of first nature is suspended, but this does not mean that self-interest takes over. Second

nature has an authority, albeit a subtler authority than that of first nature. The authority of second nature holds us in the world and prevents us from stepping outside of the world into which we have been educated, prevents the wolf from becoming a free-rider. All revision must be Neurathian, rebuilding a boat without taking it out of water.

These are promising gestures toward avoiding the sort of idolatry which seemed to be creeping into McDowell's thought in his discussion of virtue. The world of first nature is a world where creatures simply do what they are supposed to do, naturally (although McDowell does not mention it, there is certainly upbringing involved in first nature as well: even a bird must be taught to some extent how to rightly be a bird). Based on McDowell's description of virtue, it would be tempting to locate virtue in first nature, just the natural behavior of a well-reared human. But McDowell is decisive in locating virtue in second nature, as the product of a 'moral upbringing' and as subject to rational criticism. Virtue comes about in the space of reasons, and the space of reasons can – and does – get things wrong. It relies on the world to do it favors. Right action followed blindly is not right action, for right action has to do with a stance in the space of reasons. Indeed, McDowell writes of the 'standing obligation to reflect on the credentials of the putatively rational linkages that, at any time, one takes to govern the active business of adjusting one's world-view in response to experience' (McDowell 1996, p.40). This obligation comes about because of our necessity of relying on the world to do us favors, and our uncertainty about whether or not we have really received those favors.

So does McDowell's notion of second nature lead him toward something like an immodest jurisprudence in the sense I ascribe to Gillian Rose? In some ways, it seems as though his *Mind and World* is trying to navigate a space between natural law and positive law positions. The text is structured around the myth of the Given, on the one hand, and coherentism, on the other. The myth of the Given posits the world as a brute fact which we try to ponder from afar; coherentism refuses the thought that we have access to how things really are and instead focuses on making our own thoughts internally consistent (this, of course, is just another way of putting the general epistemological issue discussed above). Pursuing the analogy with law: in the former case, the law exists independent of us and our job is to figure out what it is; in the latter case, the law is what we create by positing an internally rational or coherent system. McDowell demonstrates how a choice between these two options seems to be forced upon us over and over again, whether it be in philosophy of language, epistemology, or ethics. There is always a

choice between 'mind' and 'world.' McDowell urges a rejection of the choice, and explores what a speculative identity of mind and world might mean. Again, this very (and explicitly) Hegelian understanding of his project would seem to align his work with that of Rose.¹⁰ But if the Hegelian endpoint is very similar, the direction of approach is inside out, as it were. Instead of approaching this speculative identity from the direction of social norms (perhaps we could say from the direction of world), McDowell approaches from the direction of concepts and mental faculties (from the direction of mind). Of course, on McDowell's view it is only when the space of reasons is internalized, imagined to be inside the head and cut off from the world, that these two approaches seem distinct.

Indeed, in *Mind and World* McDowell frequently employs a jurisprudential idiom:

A belief or judgement to the effect that things are thus and so – a belief or judgement whose content (as we say) is that things are thus and so – must be a posture or stance that is correctly or incorrectly adopted according to whether or not things are indeed thus and so.

(McDowell 1996, pp.xi–xii)

To understand this passage is to understand *Mind and World*. Instead of the content of a belief being a proposition which may or may not correspond to the world, McDowell eliminates the middle step and argues that the content of a belief just is the relevant bits of the world. Arriving at a belief involves making moves in the space of reasons. Those moves are made correctly if the content of the belief really matches up with the world. In other words, when reason functions correctly, it is aligned with the world, and – to borrow the Hegelian slogan which McDowell would wholeheartedly adopt – whatever is actual is rational and whatever is rational is actual. Belief and judgment are interchangeable in his formulation because holding that things are thus and so is always taking things to be thus and so and not some other way, in other words using one's capacity to discern how things are and how things are not – again, making the appropriate moves in the space of reasons. There is no distinction between the natural and the normative: when we believe or judge correctly, when we make the appropriate moves in the space of reasons, we believe or judge how things really are.

Once we make our moves in the space of reasons, there is nothing else left to do. Pointing at the world does not offer a supplement. Put another way, McDowell smooths the seemingly bumpy path that goes

from the fact of the world, to the world as perceived, to the perception as judged, to the belief formed from the perception, the content of the belief as a proposition, and finally to the proposition accurately or inaccurately corresponding with the world. In perception, we are already using our conceptual apparatus; there is no perception without judgment in terms of concepts (McDowell is insistent that even 'inner experience' is connected with conceptual capacities). Perceiving and judging happen in the same moment – or, in McDowell's Kantian terminology, spontaneity and receptivity go hand in hand. One does not just see, one sees *that* things are thus and so, where thus and so is framed in terms of our conceptual universe. Once the bumpy road from perception to belief has been smoothed, the road from belief to the world naturally smooths itself. Since the world has the texture of concepts, beliefs and judgments in the language of concepts naturally intersect with the world without a gap.

Does McDowell's inside out approach really get to the same endpoint as an immodest jurisprudence? Sketched roughly, this would suggest that mental concepts are social norms turned inside out. The mind is a 'network of capacities for active thought' as, for an immodest jurisprudence, the world is a network of social norms that make action possible – pathways through which action can flow as pathways through which thought can flow. The ability for an individual to apply a concept would parallel the capacity for a judge to apply a law – or for a community member to apply a social norm.

Perhaps McDowell's earlier discussion of virtue can help clarify this parallel. Kindness, recall, was the disposition, in certain circumstances, to act in certain ways. McDowell smoothed out the path from perceiving the right kind of circumstances to processing them to acting virtuously. To be kind is just to rightly identify a circumstance calling for kind action; the action seamlessly follows the right perception. Kindness, here, is at once a concept and a social norm. It is a concept in that it is a specific way of judging circumstances – under the implicit label of the concept of kindness – that seamlessly results in kind action. It is a social norm in that it is what well-acclulturated individuals are supposed to do; it is part of second nature which moral education has raised individuals into. We acquire our network of concepts through this education, as second nature, according to McDowell.

Yet McDowell never seems to be able to reconcile his robust account of conceptual capacities that form the mind-world nexus, approached from the side of the mind, with the public use of social norms for reasoning and representing. He is suspicious of the view, sometimes attributed

to Wittgenstein, that 'there is nothing to the normative structure within which meaning comes into view except, say, acceptances and rejections of bits of behaviour by the community at large' (McDowell 1996, p.93). His suspicion arises because this view renounces the 'autonomy of meaning.' Meaning becomes dependent on the peculiarities of a given community. This seems odd because McDowell has conceived of second nature just as the initiation into the space of reasons made possible by education into a community. But he seems to forget about this point when he suggests that coming into our second nature assures us 'that the autonomy of meaning is not inhuman' (McDowell 1996, p.95). Are not the conceptual capacities that are made possible by second nature shared, at least to some extent, by 'the community at large'? And how might we come into our second nature if not by noting the 'acceptances and rejections of bits of behaviour' by those around us? Here is a final idolatry into which McDowell has fallen. He elides the dynamics of the social, overlooking the most robust resource for ensuring the sort of 'humility' that he commends.

5

Metaphysics of Law

Although in many philosophy and social theory circles there is a sense that investigating social practice is desirable, and is even what scholarly inquiry should be all about, pinning down what social practice might be is surprisingly difficult. Even the grammar is unclear: sometimes there is social practice as an uncountable noun, other times there are social practices, understood as vaguely countable. The language strains when social practices are individuated, when we talk about a set of social practices. Talking about social norms only adds further complications. Social norm terminology ranges from being used as, on the one hand, a virtual synonym for social practice, to, on the other hand, a specific type of normativity dealing with those questions of right and wrong over which a community holds authority. The idiom of social practices and social norms certainly has been fecund, as the previous chapters have shown. Here I suggest that developing a more rigorous understanding of the concepts would be even more fruitful. Advancing such an account lays the groundwork for a robust development of an immodest jurisprudence.

I would like to begin by working with two intuitions about social practice and social norms – not as yet clearly differentiated – developed by John Haugeland (1982) and Robert Brandom (1979).¹ In order to think correctly about social practices, they suggest, we have to set aside our usual philosophical apparatus of concepts and causes and reasons and meanings in order to look at what people (a community, a society) do. This is a sort of philosophical reduction, not unlike the better known moves of Descartes, Husserl, and others. In Haugeland's case, the reduction is effected by an appeal to a state of nature. He imagines a group of creatures who are 'conformists' in that they imitate each other and actively attempt to bring each other's behavior into harmony. The range

of behaviors in such a community quickly narrows as the creatures begin to act alike when faced with similar circumstances. Out of this imagined primordial state emerge norms: 'distinct, enduring clusters of dispositions in behavioral feasibility space, separated in that space by clear gaps where there are no dispositions (save the odd stray)' (Haugeland 1982, p.16). These norms exist independent of any individual creature that makes up the state of nature community. As creatures are born and die, the norms remain the same, or at least relatively constant, because of the force of conformity. And it is this 'force' of conformity which is key, which makes norms normative, which gives them normative force. When there is behavior that does not conform with the community standard, it is reprimanded.

According to the story Haugeland tells, norms differ from conventions in that conventions are arbitrary behavior patterns followed (ultimately) because they are in the interest of the individual who follows the convention. This self-interest may be subtle, but can be explained using game theoretic models, with the basic idea being that if everyone drives on the right hand side of the road in a given country, even though there is no reason to drive on the right instead of the left, it is in everyone's interest to follow the convention independent of whether the authorities penalize those who break the convention (Lewis 1969). Norms, on Haugeland's view, differ from convention because they are not followed out of self-interest, but because of the conformist quality of human nature. Humans just are the sort of creature who want their behavior to be like the behavior of others, and who reprimand their neighbor when that neighbor's behavior differs. No further explanation, such as an appeal to the underlying rationality of the behavior, is necessary or possible.

Note how Haugeland identifies social practices with social norms. Norms just are 'clusters of dispositions,' which sound very much like social practices, because failure to be so disposed results in reprimand. It appears that he does not want to allow for any social practices that are not social norms. But he is generally unclear on the relationship. When he writes that all practices of the 'everyday world,' including language use, are 'fundamentally instituted and determined by conformist norms,' it sounds as though norms are somehow on top of social practices, directing them (Haugeland 1982, p.18). Indeed, ordinary language usage prompts us to think this way: you can 'do' a practice but you cannot 'do' a norm, a norm is something like a guideline with which behavior should comply. On the other hand, asking about the social norm and the social practice in a foreign culture elicits the same information.

Further complicating matters, Haugeland does not look for the justification of social practices in social norms alone, but displaces the justification of social practices from one aspect of (supposed) human nature to another, from human nature as a rational animal to human nature as a social animal. It is not clear why this displacement is necessary, why a justification for social norms is necessary in the first place. In other words, why do we have to suppose that Haugeland's state of nature is in some sense 'real,' other than to assure us that our norms are the way they are for some reason. Perhaps he appeals to the state of nature as more than a myth because of a conflation of two distinct claims under the label of the conformist aspect of human nature: humans imitate each other's behaviors and humans reprimand variations (leaving aside for the moment what is being varied from). Haugeland links these reputed aspects of human nature, which he associates with humans as social animals, by characterizing the second as the 'positive tendency to see that one's neighbors' imitate each other's behaviors. Ann imitates Betty's behavior, and Ann reprimands Charles if he does not imitate Betty as well. This results in the stability and self-replicating nature of norms: everyone is always keeping each other's behavior in check, keeping it in accordance with the norm onto which everyone's behaviors have converged.

But the essential feature of the stability and self-replicating nature of norms, in Haugeland's story, is simply reprimand. When Charles acts in a way that does not follow the norm, Ann gives him a harsh glance, or tells him he is wrong, or bops him on the head (of course, if Charles is sufficiently well acculturated he will reprimand himself). Reprimand for acting against the norm reinforces the norm: no one wants to be bopped on the head. If this is the case, then it is not necessary to link enforcement of a norm with imitation. Betty can drop out of the picture, as Ann, Betty, and Charles are all acting in conformity with the norm rather than in imitation of each other. Haugeland has a distaste for justifying social practice based on self-interest, as convention, because it necessitates the fiction that social practices are beneficial to us; but his own justification of social practice based on the imitative nature of human beings seems just as speculative. His theory has the capacity to bracket this problem of justification and take norms as going all the way down, as it were, but he does not take that path.

The intuition about social practices and norms that we can take from Haugeland is that norms involve reprimand for acting in a way that does not conform to how one is supposed to act (his imagery of disposition clusters with gaps between them is also suggestive, and will inform

the discussion below). Brandom approaches social practices and social norms from a quite different, though complementary, direction. He, too, urges us to leave behind our conventional philosophical machinery and begin anew by looking at what a group of people – a community or society – does. Brandom suggests that we think about norms as ‘implicit in the practice of the community,’ the practice of the community ‘embodies a standard of [what is] correct and incorrect’ (1979, p. 188). It seems as though Brandom is suggesting that we can ‘read off’ norms by looking at the practices of a community – to use his slogan, by making explicit norms that are already implicit in practice. An act is correct ‘just in case the community takes it to be,’ just when the community ‘treats it’ as correct. It is the community’s judgment that determines what the norm is.

Yet the relationship Brandom is suggesting between social practice and norms is rather more complex. He writes, ‘To specify a social practice is just to specify what counts as the community responding to some candidate act or utterance as a correct performance of that practice’ (1979, p.188). But this sounds awfully similar to what he said about norms: by specifying what the community counts as correct or incorrect, one is making a norm explicit. The relationship that Brandom is gesturing toward perhaps rests on an image like the following. The social world, the world of social practice, is inchoate, without form. To look at this muddy mass, or to say anything about it, to represent it in any way, is to ascribe norms to it. If this image is right, social practices and norms turn out to be two sides of the same coin. The social world, unrepresented, is made up of social practices; the social world represented in thought and language is made up of norms.² Admittedly, I am making Brandom rather more clear (or perhaps precise) than he actually is – he writes, for example, about classifying behavior into social practices – but I do not think this clarity is at the expense of the substance of his position.

Haugeland and Brandom have examined what remains a fuzzy blend of social practices and social norms, and we have learned two things about this blend. When a norm is not followed, there is a social sanction, a reprimand; when it is followed, it is taken as correct, which is to say the flow of social practice continues uninterrupted. The fuzzy nature of the distinction between social practices and social norms comes about, I would suggest, because of a focus on well-aculturated individuals for whom, most of the time, it seems as though social practices are in perfect conformity with social norms. The relationship appears seamless, even coextensive. Haugeland describes individuals well-versed in imitation, and Brandom describes community members experienced at

recognizing correct practices and taking them as such. By turning to individuals who are not quite so average with respect to a practice – and without resorting to an imagined state of nature before conformity prevailed – we can better clarify the relationship between norms and practices. But Haugeland’s point about reprimand as a constitutive feature of social norms underscores a necessary friction between the two, obvious but curiously overlooked: reprimand can only happen when practice does not coincide with a norm.

I propose that there are four ways in which the relationship between practice and norm can be configured: competence, incompetence, pathology, and excellence. Note that we are still setting aside the question of how to rigorously understand what a practice is and what a norm is; at this point we are still just working with our intuitions. Further, note that I am purposefully avoiding the phrasing, ‘how a norm is followed’; instead I am emphasizing how the relationship between practice and norm is configured. This is because, with Haugeland and Brandom, I want to examine social practice with as little baggage as possible. To talk about ‘how a norm is followed’ is already to suppose a certain relationship between a subject and a norm, where the norm is understood rather like a rule.

Let us think about the social practice of playing the piano. This is a particularly rich and expansive practice, with many variations ranging from reading sheet music at a Christmas party to accompanying a singer at a recital to improvising jazz. A practice like chess, say, appears much simpler because of the restrictions on moves that can be made, while a practice like speaking Chinese appears much more complex because of the huge number of ‘parts’ that are in play and the huge number of ways that those parts can be configured as acts in the practice. Even though playing the piano is a particularly rich and expansive practice, we have a linguistic intuition that it is somehow unified, because we ask the yes-or-no question, ‘Can you play the piano?’ ‘He can play the piano’ means that he is competent at playing the piano – which, I am suggesting, is to say something about the relationship between his practice and the norm.

Now imagine a remote island at some corner of the earth whose inhabitants have never seen a piano before. Somehow a piano falls off a passing boat and is carried by the sea to the island’s beach. What the islanders will initially do with the piano is anyone’s guess, but it certainly will not be to ‘play’ it. They will probably poke it, and pluck it, and jab it, and pound it, and interact with it in various other ways. The practice of the islanders, who have never seen a piano before, is

incompetent in relation to the norm of piano playing. Although they might cause the piano to make noise, we would never say (in a non-metaphorical sense), 'they can play the piano.' What they do with the piano has no relationship to the norm of piano playing.

There are many more mundane examples of incompetence. A child's first encounters with a piano (and many practices) are incompetent with respect to the norm. Even those who are very well acculturated in general are incompetent at practices that they have not encountered, or that they never spent the energy to master. An Olympic swimmer can be an incompetent tennis player; a poet laureate can be an incompetent sports writer. From the perspective of someone who is competent at a practice (as well as from the perspective of those who are incompetent at the practice but competent at observing the practice, a complication which we can set aside for the moment), it is perfectly obvious when someone is incompetent. Although it is obvious, it is often difficult to express other than by saying, 'they just don't know what they are doing!'³ In the case of incompetence, to say that practice and norm just do not match up is already to say too much, because there is no practice that is directed, so to speak, at alignment with the norm. It does not make sense to say that the villagers have a practice of piano playing which they are not very good at; it only makes sense to say that they are unfamiliar with the practice and have no relation to the norm.

Incompetence is the default position with respect to any norm. Education into a practice begins with incompetence and leads to competence. While various methods could be used in this education – from instructional pamphlets to verbal direction to, in some cases, trial and error – becoming competent in a practice involves coming to differentiate right from wrong with respect to that practice, how things ought to be done and how they ought not to be done. Certainly, there are a wide variety of ways of acting within a practice which are deemed competent: many ways to play the piano, or swim, or be an electrician. In fact, there are so many ways to act competently that a full textbook of competence for any given practice could never be written (more on this below). Even in competence, occasional mistakes are made. But these deviations from the norm are unsystematic, extremely unusual, and quickly lead to correction, by oneself or by others.

Incompetence with respect to a norm is practice that deviates from the norm in totally haphazard ways. Let us call pathology with respect to a norm practice that deviates from a norm in a systematic way. With respect to the practice of riding a bicycle, the incompetent rider will not be able to balance on the bicycle and propel herself forward for more

than a moment. Of the competent rider, we say, 'she can ride a bicycle'; of the incompetent rider, we say, 'she cannot ride a bicycle.' The pathological rider can ride a bicycle (we would say), but always gets some of the practice wrong in the same way. Perhaps she frequently loses her balance when she is making right turns, or she has a hard time bicycling over gravel, or when it is windy. In other words, the pathological stance gets the practice right in general, but gets in wrong in a certain way. Getting it wrong in that way is not due to incompetence, because the errors are in relation to the norm, and it is not competence, because the errors are widespread and systematic. But the errors, the times when the practice does not conform to the norm, are seemingly isolated, only in a certain sort of case. Indeed, we could almost say that there is a norm for the pathology.⁴ In ordinary usage, we frequently find people talking in terms of pathology: a pilot complaining to himself, 'I always land hard on the right wheel,' a baseball player who is otherwise competent at a professional level is said to have a weakness for fastballs, or a student who seems competent with course material and scores well on essay tests does poorly on a multiple choice quiz. Note that pathology is not a question of deficient education. Of a group that received the same amount of education into a practice, a few will always have pathologies. The threshold of additional education for the pathology to abate is extraordinarily high.

Both pathology and competence lead to an appearance that one 'gets' a practice in general, and this is the case for excellence as well. An excellent pianist rightly answers in the affirmative to the question, 'Can you play the piano?' But, when the relationship between practice and norm is that of excellence, practice does not strictly conform to the norm as given, but leads to alteration of the norm.⁵ New ways of piano playing, new techniques of a mechanic, new golf swings come into existence that did not exist before. More precisely, if these new practices had been performed before, they would have been deemed errors and reprimanded. When they are performed as part of excellent practice, it becomes clear that they are in fact correct, rightly part of the norm in question. After the excellent performance makes new ways of performing the practice possible, what it means to be competent at the practice changes.

Excellence is not achieved exclusively through education, and its provenance is always underdetermined. Most individuals in a cohort receiving the same education into a practice become competent; only a tiny number ever become excellent. Education into the practice is a necessary but not sufficient condition for excellence; it is not possible to state sufficient conditions. Of the many intensively dedicated golfers,

only a very few golf in such a way as to alter the practice of golfing. It is only a handful whose swings, or stances, or choice of clubs make it into the golfing magazines, becoming part of the practice of golfing in general, the practice in which all competent golfers participate.

Note that throughout this discussion we have been making use of the intuition that norms can be individuated, and incompetence, competence, pathology, or excellence can characterize stances toward different norms in the same person. Although this seems to be a trivial observation – obviously someone can be a competent golfer, an excellent piano player, an incompetent mechanic, and a pathological friend – underscoring this point helps to fill out the picture of a social world where norms and practices are not the same thing, and do not perfectly dovetail each other. We can add still further intricacy to this image by noting how even a seemingly unified practice like golfing or playing the piano intuitively involves a rich texture. A golfer can be incompetent, competence, excellent, or pathological with respect to the norms of her local golf club, but have a quite different relationship to the norms of golf at a professional level, or to the norms of children's golf. Although the rules of the game are officially the same, the norms differ dramatically. A golfer competent with respect to his local club may be excellent with respect to a children's golf team (an excellent child golfer might play at the local adult club and seem very average, simply competent); that same golfer might seem incompetent in a professional tournament and pathological if she decided to play with the men's league.

Here we are laying out intuitions, sketching an image of the complex world of social practices and norms. The argument so far has simply been that the picture Haugeland and Brandom present, while offering some insights, is woefully incomplete. Allowing the referents of social practices and social norms to slip into each other elides the complex relationship between practices and norms. Moreover, Gillian Rose – as well as Judith Butler and Jean-Yves Lacoste, as discussed in Chapter 2 – noted how norms are most fecund in their failures. In Lacoste's work, we saw how social norms could be bracketed, making new practices possible; in Butler's work we saw how subversive practices, practices that call into question the authority of norms, could be strategically deployed with a similar innovative result. Rose makes this point more broadly when, discussing love, writing, and social life in general, she emphasizes how there is a necessary mismatch between norms and practices, and it is out of this mismatch that new norms and practices emerge. To be able to understand how this happens, and why Haugeland and

Brandom overlook this possibility, we need to have a better handle on what precisely a social norm is.

Let us turn back to competent practice, the sort of practice discussed by Haugeland and Brandom. In such practice, reprimand is rare; norm and practice are aligned most of the time. To begin to formulate a way of thinking about social norms, let us borrow Brandom's suggestion that a social norm (somehow) represents social practice and Haugeland's suggestion that social practices (or norms) are aggregated behavioral dispositions. The idea I want to work with is this: a norm is a representation of practice that pairs circumstances and appropriate responses. Clearly, the challenge in developing this sort of account of norms will be to avoid the many challenges that plague both accounts of dispositions and of representation. Put figuratively, the normal response to these challenges is to either harden the accounts (in the mainstream analytic tradition) or to soften them (in the pragmatist tradition). The result is error or impotence, respectively. I will propose first hardening, by offering an apparently realist account of norms, and then softening, by offering a way of thinking about norms as fictions which preserves explanatory potency.

To begin, a social norm seems to have something to do with a disposition. A disposition relates a set of circumstances (C) to a set of responses (R), $\{C_n \rightarrow \{R_{nm}\}\}$. This has intuitive appeal: when we talk about norms, we say things such as: 'in a circumstance like *this*, you should have done *that*' (this could be offered as a justification for reprimand). In educating someone toward competence at a norm, a handbook will offer guidance in just this form: when you encounter circumstances like *these* (your opponent hits a topspin serve, your car begins to skid, you find yourself lost in the woods), act like *this* (stand well behind the baseline, turn the steering wheel into the direction of the skid, look for a shelter and make a fire). If an individual is competent with respect to a norm, in circumstance n she will perform one of the m actions described by the norm (there may be a more elaborate procedure for deciding which of the m , but that can be left aside here for the sake of simplicity). This sounds like the standard account of dispositions, and Haugeland seems to have this in mind when he says that following a norm is acting in certain ways in certain circumstances. In addition, framing social norms in terms of dispositions is suggestive of ways of locating these issues in a constellation of related issues, for example with respect to rule following (Wittgenstein's question about rule following, supposedly, is whether it is a disposition or a social practice).⁶

If we take the account of a norm proposed as a disposition, it can be read in two ways, linguistically or metaphysically. The linguistic reading, which is prevalent in discussions of dispositions in analytic philosophy, assumes that we get a disposition right when we get our language to describe it right. We get the disposition of charity right when we say that charity means responding to people in need by helping them. We get the disposition of fragility right when we say that fragility means responding to falling by shattering. More technically, the general form of a disposition on the linguistic reading ('analysis') is: N is disposed to M when C if and only if N M's if C.⁷ The good part of this approach is that it makes the truth conditions of a disposition ascription very clear – or at least appears to. It is true that Sara is charitable just if Sara helps someone out if she encounters that person in a time of need. The bad part of this approach is that it leans on a conditional – N M's if C – which is inherently rather mysterious, and which has the unfortunate habit of making the disposition ascription turn out false when ordinary usage says that it ought to be true. There may be circumstances where Sara does not help someone in need even though we call her a charitable person: she may have the flu, or the person in need might benefit more from 'tough love.' Similarly, a glass may be fragile but not break if it is dropped because it is protected in a box or because an angel takes away the disposition to shatter for just a moment whenever the glass falls (angels may seem fanciful, but this is precisely how a fuse works, *mutatis mutandis*).

There is a vast literature proposing counter-examples to the conditional analysis of dispositions, and an equally vast literature proposing fixes. For example, we could try to say that a disposition has to do with an intrinsic property of the object, but then the problem has just shifted to that of full-proofing an account of what it means to be intrinsic against counter-examples, an enterprise that has not been especially successful (Lewis 1997). One of the most sophisticated recent efforts – which, in its sophistication, demonstrates the absurdity of the linguistic approach – has been offered by Michael Fara. Instead of offering a conditional analysis, Fara presents a 'habitual' analysis, where a habitual is a clause of the form 'N M's when C.' On his analysis, Sara is charitable just if she helps someone when she encounters someone in need; a glass is fragile just if it shatters when dropped. By switching from 'if' to 'when,' Fara thinks that he has immunized his analysis from the counterexamples that plague the conditional analysis of dispositions. Based on our ordinary language usage of habituals, Fara concludes that just because Sara is helpful when she encounters someone in need

does not mean that every time she encounters someone in need she is helpful. By thinking very hard about how to choose the precise phrasing, from our repertoire of ordinary language, that matches how a disposition works, Fara thinks that he has provided a full analysis of dispositions, he has said what a disposition is.

The habitual account of dispositions represents the culmination of the linguistic approach because it succeeds in purging the last remnants of 'metaphysics' that lurk behind (were implied by) the conditional. It rests on the assumption that getting language right means getting the world right, so our task as philosophers should be to get language right. This assumption is not absurd, but it is also not self-evident. It seems as though a much more sensible endeavor would be to start by looking at the world and then, possibly, find ourselves pleasantly surprised if what we have to say about the world matches with our ordinary usage of language. Adjudicating the debate between these approaches is, of course, beyond the scope of the present discussion. For the purpose of our investigation of social norms, it is the second approach that is necessary because our inquiry starts by focusing on the social world, the world of social practice, letting our conclusions flow from there rather than bringing our conventional philosophical apparatus, including even ordinary language itself, to bear on the social world.

So an alternative approach to dispositions is necessary. The approach I suggest is metaphysical instead of linguistic – in the imagery I earlier suggested, hard instead of soft. Instead of getting a disposition right by finding the right word or phrases to describe the circumstances and response elicited, according to the metaphysical approach we get a disposition right by finding the states of affairs to which the disposition speaks. In other words, the linguistic approach is concerned with words; the metaphysical approach is concerned with the world ('concerned with' here has to do with the source of justification, how the question of right is answered). In the case of the charitable Sara, the metaphysical approach would say that ascribing the disposition of charity to her is saying that whenever she finds herself in *those* states of affairs, she will respond in *these* ways, where *those* and *these* correspond to actual states of affairs, not their representations.⁸ The set of *these* will vary for each one of *those*, because different sorts of situations call for different sorts of responses, even if all such responses are charitable. Among *those* states of affairs are running into a destitute friend, discovering that a coworker has just lost his grandmother, and passing a beggar on the street – each of which could elicit a range of responses from a (competently) charitable person. Again, these three phrases are not

those; they are descriptions of *those*. What the disposition is speaking to, on the metaphysical view, is the states of affairs themselves, the world rather than the words. Making this distinction seems to suggest heavy-handed representationalism, but whether this is necessarily the case will be discussed shortly.

Corresponding to the distinction between the linguistic and the metaphysical account of dispositions are two ways of deciding whether or not a disposition ascription is correct. In the case of the linguistic approach, someone is not charitable just if she does not help the needy when she encounters them. This formulation is most unhelpful in deciding a borderline case. Imagine Thomas, who some people think is charitable and other people think is not charitable. By understanding charity as the disposition to help people when they are needy, an understanding that both parties presumably already have, their discussion has not advanced at all. The battle lines remain unchanged. In contrast, in the case of the metaphysical approach, explicating the disposition in terms of states of affairs allows the dispute between Thomas' friends and foes to gain traction. His foes can point to specific circumstances where a charitable person ought to act one way but Thomas acted in a different way. His friends can respond by claiming that those specific circumstances are not circumstances relevant to charity, or that Thomas' response to the circumstances was, in fact, an appropriate response for a charitable person. This is just a general observation about the implications of the two strategies for providing an account of dispositions, not an argument in favor of the metaphysical strategy.

As useful as the metaphysical account of dispositions seems, it also seems deeply flawed. To suggest that ascribing a disposition involves saying something about a huge number of states of affairs seems to suggest too much. It is understandable, though hotly debated, that one word could refer to one state of affairs. More obscure is how one word could refer to many, perhaps infinitely many, states of affairs – most of which we have never encountered. Just in the case of charity, there are all sorts of needy people (family and friends, homeless people, colleagues, neighbors, etc.). If we sit down to make a list of all of them, there is no question that the list would be incomplete. There exist additional states of affairs which, if brought to our attention, we would certainly understand to be circumstances to which charity speaks.

Moreover, some of the circumstances and responses which would currently make our list could change based on further reflection, individual

or social. Today it might seem as though encountering the homeless person outside of the subway station is a circumstance eliciting a cash donation from a person with a charitable disposition, but on further reflection we might decide that a cash donation is not a charitable response because the money may be used for drugs, alcohol, or junk food. The charitable response to seeing the beggar would be to purchase healthy food for him or to make a financial contribution to an organization providing services to homeless people. Clearly our understanding of the dispositions of bravery, kindness, courage, not to mention femininity, has undergone dramatic alterations.

Note that these two features of dispositions, that the states of affairs involved exceed those that can be enumerated and that the states of affairs that seem to be involved may not actually be involved, apply not only to dispositions of humans but also to dispositions of objects. When we say that a glass is fragile if, when it falls, it shatters, we do not imagine a glass falling on Mars. But we would certainly say that a glass' property of being fragile does explain why the glass that fell off the table in the Martian space station shatters. That states of affairs can be misidentified is exemplified in the various ways that a disposition can be masked. A fragile glass can be packed in protective packaging so that, in circumstances in which it falls, it does not break. Originally we thought of the disposition as speaking to all circumstances in which a glass falls, but now we see that the disposition does not speak to some of these circumstances.

As we have seen, the metaphysical account of dispositions relies on getting at states of affairs in a slightly mysterious way. But the mystery here is not unprecedented. Something similar happens in the case of a proper name (Kripke 1980). On the conventional view, sometimes associated with Frege and Russell, a name is synonymous with a description. Gödel is the man who discovered the incompleteness theorem, Aristotle was the teacher of Alexander the Great, and Clinton is the man who was elected President of the United States in 1992. This theory has intuitive appeal, because in most cases where we use a name we can substitute the description without changing the truth value of the sentence. To say 'Gödel had a fine sense of humor' and to say 'The man who discovered the incompleteness theorem had a fine sense of humor' is to say the same thing: such sentences would always seem to have the same truth value. But, in fact, this is not always so. 'Gödel might not have discovered the incompleteness theorem' is true but 'The man who discovered the incompleteness theorem might not have discovered the incompleteness theorem' is false. Had Gödel not discovered the

incompleteness theorem (evidence might come to light that he stole it from an unknown amateur logician), the truth value of 'Gödel had a fine sense of humor' and 'The man who discovered the incompleteness theorem had a fine sense of humor' will differ.

More sophisticated versions of the descriptive theory of names, such as the 'cluster theory' where it is a weighted set of descriptions that is the meaning of a name, advanced by Wittgenstein (1953) and Searle (1958), also fail. If we introduce a slight counterfactual circumstance into the early life of a famous person – say, Hitler had been blind, or born a decade later – the vast majority of the descriptions we associate with the individual no longer hold, and the cluster theory no longer picks out the correct individual. New information could be discovered about a long dead person without changing who that person is. New historical evidence could come to light to demonstrate that Aristotle was not, in fact, the teacher of Alexander the Great, or that Aristotle had discovered a proof for Fermat's last theorem, greatly skewing the profile of the weighted descriptions of Aristotle. Yet we would agree that Aristotle would still be Aristotle.

The alternative to the descriptive theory of names that has been proposed by Kripke and others involves thinking about names as rigid designators. In all possible worlds, a rigid designator refers to the same object. The possible worlds idiom need not spook us. The idea is just that, while things might have been dramatically different, names still pick out the same people. Gödel might have stolen the incompleteness theorem from an unrecognized genius who lived next door to him, Hitler may have gone into manufacturing shoes instead of wars, and Clinton may have lost the election in 1996, but Gödel is still Gödel, Hitler is still Hitler, and Clinton is still Clinton. Of course, it could have been the case that someone never came into existence at all, was never born, in which case the name, as a rigid designator, does not refer.⁹

The linguistic approach to dispositions has something in common with the descriptive theory of names. One phrase describes the circumstances in which the disposition is operative, and another phrase describes the response elicited. Just as a person has many properties, and the descriptive theory of names suggests that naming one or a cluster of those properties names the person, the linguistic approach to dispositions suggests that there are many states of affairs in which the disposition is operative, and the disposition is named by describing them. When we say that a fragile object shatters if (or when) it falls, we are defining the disposition as a relation of two descriptions: a description of the circumstances (falling) and response (shattering). But as we

have seen above, the states of affairs picked out by a disposition, on the metaphysical approach, can change from what we once thought they were, and the disposition can speak to states of affairs which we were not aware of before. The argument that struck down the descriptive theory of names seems to work here as well, suggesting that an alternative, using something like rigid designators, would offer a better account of dispositions. Might there be such a thing as a 'rigid disposition'?

Haugeland's suggestion, recall, was that social norms are 'clusters of dispositions' which are 'separated... by clear gaps where there are no dispositions.' By dispositions, he has in mind 'circumstances' and 'acts.' Why Haugeland refers to 'clusters of dispositions' instead of just 'dispositions' is somewhat obscure, but I suspect it has to do with the intuition that fuels the cluster description theory of names. Haugeland is trying to refer to a set of states of affairs that are 'circumstances,' each of which refer to a set of 'acts' (his terminology here admits more agency, or is more specifically human, than the discussion of a general account of dispositions above). Because Haugeland's herd of creatures 'does not presuppose thought, reasoning, language, or any other "higher" faculty,' there is not a word to describe the circumstances and a word to describe the acts which they elicit (1982, p.16). Groping for language, Haugeland settles on 'clusters of dispositions' because it seems to get at the many, varied circumstances which each elicit many, varied acts.

Before embarking too far on such a project, let us step back to the issue of social norms that led us to this exploration of dispositions. Does the suggestion that norms can be understood as dispositions hold water? The details are still to be worked out, and so there are still many objections that have gone unaddressed, but let us just think about our intuitive understanding of social practices. Charity certainly seems like a social practice, though fragility (in the physical sense) certainly does not. So not all dispositions are social norms, but, I suggest, all social norms are rigid dispositions. It might initially appear to be a stretch to call certain ordinary social practices dispositions. The practice of golfing, for example, seems much more complicated than a disposition (perhaps a golf swing alone is a disposition). By understanding dispositions as rigid, it is easier to understand how they could speak to a social practice. The circumstances spoken to by a rigid disposition cannot be enumerated; they cannot be listed on a piece of paper or in a handbook. New circumstances arise which call for novel responses. And responses that once seemed appropriate can later be deemed inappropriate, can elicit reprimand. However, we are still relying on language ('golf') to provide a *prima facie* reason that seemingly disparate practices should be grouped;

it is just that such a grouping is possible to theorize that we have shown.

Haugeland's 'cluster of dispositions' terminology still holds strong intuitive appeal. Doesn't a practice like golf involve many different dispositions – concerning swing, aim, focus, putting, and so on? A competent golfer is competent because she has all of these dispositions: she swings appropriately, she aims appropriately, she putts appropriately, and so on. But there does seem to be something about golf as a whole that is unified. If particular aspects of the practice were different, if it were played with a smaller ball, fewer clubs, larger greens, golf would still be golf (but what does this mean – that we would use the word 'golf'?). All of the circumstances and responses that together compose golf cannot be described, and new ones could arise. New golf courses are continually being constructed, posing new problems for the golfer, new circumstances eliciting a response that is still in some sense governed by the norms of golf.

These two intuitions, that a practice is somehow unified and that a practice is composed of multiple distinct dispositions, need not conflict. We can imagine that norms, as rigid dispositions, nest, one inside the other.¹⁰ This can be understood on the model of another kind of rigid designator, natural kind terms, which clearly nest. Water, as H₂O, is a rigid designator, the same in all possible worlds, but so are hydrogen and oxygen (Kripke 1980). A rigid disposition can likewise be composed of other rigid dispositions, although that a given rigid disposition is a component of another is contingent, not necessary.

Social norms, on Haugeland's account, are individuated by the 'clear gaps' between them, in imagined possibility space, devoid of dispositions. This view is in tension with Brandom's image of social norms as a convenient but arbitrary representation of social practice, a representation which is imposed by outsiders to get a handle on the society in question. Moreover, Brandom suggests, 'The members of the community need not explicitly split up their activities in the ways we do, though they must do so implicitly, in the sense of responding as we have postulated' (1979, p.188). That community members 'implicitly' split up their activities does not mean that the activities are actually split up. It just means that the language that we outsiders use to talk about the practices of the community is not falsified by the actual practices of the community.

Brandom goes further in describing the inchoate state of social practices – and the apparently arbitrary imposition by theorists of social norms on top of them. He contrasts a 'causal explanation' of a behavior,

what the outsider or theorist would posit to explain the strange activity of the community she looks at, with a 'translation' approach to a strange community's practice. The translation approach works from the idea that it is fair to assume a strange society will 'conform to the same sorts of norms of appropriateness and justification of its performances as govern ours,' so we can treat the practices of this strange society as 'a dialect of our own practical idiom' (Brandom 1979, p.191). The translation model, unlike the causal explanation model, acknowledges that social practices are dependent on other social practices – all the way down. Each social practice depends on community members taking that practice to be correct, but taking a practice to be correct is itself a social practice, and so on. While a community needs to be able to do this for social practices to happen, a community does not need to be able to break up their practices into causal explanations. Brandom never explicitly forecloses the possibility that social practices might be naturally individuated in the way that Haugeland supposes, but he does not leave us any resources to talk about that individuation. Language, for Brandom, is a social practice, and to speak about individuated practices of a community is already to take the outsider's stance.

From Haugeland, let us take the idea that norms are closely related to dispositions and are individuated, discarding his cluster theory in favor of an account of rigid dispositions. From Brandom, let us take the idea that social practices are individuated by the response of community members. A practice is that practice just if community members take it to be that. These two ideas, I would suggest, are complementary.¹¹ While Brandom says that to take a practice as correct is just to perform another practice, it seems as though there is an intermediary stage that Brandom elides. This point is clearly made by Gideon Rosen: 'reflection... will immediately suggest that even in the simplest cases, the community's all-inclusive practical assessment is never automatically correct, if by this one means the assessment that is actually made' (Rosen 1997, p.170). In other words, the smooth flow from social practice to social practice which Brandom suggests form the 'web' of society is interrupted by the possibility that community members will mistakenly take a practice as correct that is actually incorrect, or that they will take a practice as incorrect that is actually correct. Rosen proposes that the only escape from this difficulty is to posit 'a distinction between natural and unnatural behavioral kinds' – a distinction which would interrupt the smooth web of society that Brandom imagines (Rosen 1997, p.169). This distinction is exactly what is offered by taking norms to be rigid dispositions.

To put the issue another way, instead of the performance of one social practice leading seamlessly into the performance of another, and round and round the social web, performing a social practice involves assessment with respect to a norm. What form this assessment takes can be left in a black box for now, but we should note how assessment with respect to a norm differs from what Brandom allows, a social practice of assessment. In the former case, we can imagine that the black box is filled with a machine that chooses a particular software program to check response against circumstance, outputting whether they match, and so whether the practice should be taken as correct. A crucial step, and the step that Brandom elides, is the choice of which software program – which individuated norm – to run in the imagined machine. Brandom elides this choice because of his aversion to thinking about norms as naturally individuated; he wants individuation to be a feature of the social world added by observers, even if it is we who are observing our own society. The difficulty with his position, as Rosen points out, and Brandom himself occasionally notices, is that it allows for ‘society’ to be used more broadly than we would like. The ‘society’ of deer could be said to accept a certain population level and sanction, through famine, further reproduction. But in human societies there is an additional feature: sanction or reprimand does not just follow ‘naturally,’ but follows based on perceiving (in the broadest sense) a situation and checking (in the broadest sense) it against norms. As Brandom himself puts it, a member of a society who is to be reprimanded is ‘perceived as transgressing [a given] norm’ (Brandom 1994, p.34; Rosen 1997, p.169n9).

If imagining the black box of assessment as a machine running a software program that checks circumstances with responses is just a heuristic, what might the workings contained in the black box actually look like? I do not think it is necessary to entirely lift the veil, as it were, but what we can say is that there is a choice between norms at work, where norms are understood in the sense of dispositions taken to be rigid. The linguistic approach to dispositions would take the norm to involve assessing the world in terms of mental concepts that match linguistic concepts. The crude metaphysical approach involves assessing the world in terms of states of affairs, but as we saw, it is wholly mysterious how an individual could be able to check for so many states of affairs (to return to the computer analogy: the hardware clearly does not have the capacity to run the software). It is the refined metaphysical approach, the approach that takes dispositions to involve a rigid specification of circumstances and responses, that helps us to begin to understand the workings of the black box.

To understand this black box of assessment more fully, though still only through metaphor, perhaps we can think of a courtroom in an adversarial legal system. Two advocates present evidence and argue about what law should be applied. A judge ultimately decides what the facts are, and she applies the law to the facts, or at least tries to. Note that the facts themselves are never present in the courtroom. The facts enter through the representations that lawyers make of them. Further, note how, even if the facts are undisputed, the lawyers can and will still argue about how 'the law' should be applied to these particular circumstances – in other words, they will argue about what response is called for by the law. They may also argue about which law is relevant for the court to apply to the circumstances in question. Finally, note how the court itself can reach a wrong decision; its verdict can be overturned on appeal. Even the highest court can reach a wrong decision, acknowledging its error by overturning its own past decision. The word 'wrong' itself, in this context, simply refers to the most recent ruling of the (highest) court.

Recall how we have suggested that a norm relates circumstances with sets of appropriate responses, and how individuals are constantly evaluating and explaining the world in terms of norms. The image of an adversarial courtroom suggests that we think about an individual's black box of assessment – in other words, her practical reason – along the same lines as a judge. First, the facts, the circumstances in question, must be determined. There could be conflicting evidence that must be sorted through and weighted before a conclusion about the circumstances can be reached. These circumstances that figure into judgment are not states of affairs but representations of states of affairs. Second, the law must be determined and applied. The practical reasoner, like the judge, must decide which norm speaks to the circumstances in question, and what responses the norm allows. Finally, the reasoner can be wrong, can make errors that are overturned on appeal. It may seem as though things are one way, but it may turn out that things are quite different.

The image of law is helpful not only in thinking about reasoning, but also in thinking about norms themselves. A law speaks to many different sorts of circumstances; so many that they cannot be codified. Textbooks only approximate this scope, offering a few paradigmatic cases and pithy (clusters of) descriptions as heuristics. A law is continually changing as new cases are decided. With each new case, the law appears slightly different, yet the law is still the law.¹²

Thinking about judging social practice in this way still seems quite mysterious. It seems plausible to take names and natural kinds as rigid

designators pointing to something out there in the world (or, in all possible worlds). But thinking that there is a realm of social norms floating around in metaphysical space seems like a lot to swallow. But what I am claiming is not that social norms understood in this way really exist, but just that *we act as if they do*. We make judgments as if there were rigid norms relating circumstances and sets of responses. My proposal is that we think about norms in the same way that we think about fiction. When we say something like, 'Sherlock Holmes lives on Baker Street,' or when we make use of such information in reasoning, it is accompanied by the implicit preface, 'in the fictional stories by Sir Arthur Conan Doyle' – otherwise our statements would be false, because no one by the name of Holmes actually does live on Baker Street in London.¹³ Similarly, whenever we make use of norms, they bring with them the implicit preface, 'in this particular social world.' This, of course, is what makes a social norm social: it exists not absolutely, but for a society. It is tempting either to elevate a norm to the position of asocial authority (a hard position) or to demote it to identity with social practice (a soft position). Understanding social norms in a third way, as fictions, we can have our cake and eat it too.

Put more concretely, while the norm of golf is a rigid disposition linking *those* circumstances with *these* reactions, and golf is golf in every possible world, even if what specifically fills in *those* and *these* varies over possible worlds, all of this must be prefaced by 'in this particular social world.' This appears paradoxical, because it sounds like we are saying that conclusions for all worlds are true for only this world. But this is not paradoxical at all, because what it is really saying is that we act as if golf is (in all possible worlds) a certain way. In societies geographically or historically separate from our own, they will have different rigid dispositions, even if some are golf-like, and the rigidity of those dispositions will, for them, apply to all possible worlds (cf. Hacking 2002).

Taking norms as fictions is reminiscent of Brandom's proposal that norms should be understood as an outsider's technique of getting at social practice by breaking it up in order to understand a strange society. But there are fictions, and then there are fictions. Brandom's proposal is that outsiders create a model to understand and explain what they see insiders doing (Brandom does admit, and is invested in, the possibility of looking at ourselves in a social mirror, but in this case it is still from the outsider's perspective that the 'fiction' is created). In contrast, my proposal does not rely on an insider versus outsider distinction. In making judgments about, and so acting in, the world,

individuals act as if there are social norms. They look at the world and act as if they are characters in a story, so to speak.¹⁴ This story consists of norms of a form that is publicly describable, albeit imperfectly. Anyone can note the correspondence between circumstances and responses, even if those circumstances and responses are described in dramatically different vocabularies.

So far, I have been using the adversarial courtroom as a metaphor to help think through how social norms operate. But I want to want to make a stronger claim, as I did in Chapter 1. I want to suggest that we remove the walls of the courtroom and understand our world as a world of law; law is what social norms really are. This seems absurd; let us think about why it seems so. The courtroom is a place of representation: a judge never sees states of affairs in the world, never sees how the world is actually presented. She decides between representations. This parallels the account of social norms that we have been developing. A norm matches some states of affairs with others, circumstances with responses. But there is something unsatisfactory about this presentation which so far we have overlooked. In practical reasoning with norms, it is not the world presented pure and simple, naked states of affairs, that we encounter. It is states of affairs as represented.¹⁵

This is perhaps the distinction that Brandom is trying to get at when he discusses how an outsider's perspective differs from an insider's. In my terminology, although both outsider and insider can talk about the same norm, they will talk about it in quite different ways because they have differing norms of representation which function as gatekeepers to the norm in question. Although both are trying to get at a way of describing the same circumstances and sets of responses, the resources they have to do so vary dramatically.

While it seems untroubling that a judge does not access states of affairs but only their representations, if this is the case for norms, it is more disconcerting. Outside of the courtroom it seems as though we are confronted with naked states of affairs all of the time, so the insulation provided by the courtroom's walls can be reassuring. But to suggest that norms operate in a realm apart from naked states of affairs would seem to suggest a split between realms of fact and value, between the answer to the question of right and the answer to the question of fact. We would be back to Brandom's picture of norms lying on top of the world, where norms only approximate the raw, mushy world of social practice. But I have been arguing that norms fit the grooves of the world, or rather approximate them. To advance this claim, I am going to look at what

we suppose to exist outside of norms, and then to suggest that this is best understood in terms of norms.

The most obvious things that are supposed to exist outside of norms, understood as rigid dispositions, are objects and properties. These are ostensibly presented when we represent the circumstances and responses relevant to a norm. The norm of golfing has to do with a small, strangely-textured ball that has particular aerodynamics, a shiny club with weight strategically distributed between the head and handle, and so on. Properties are commonly divided into primary qualities and secondary qualities, where the former are in an object and the latter are in us but projected onto an object. Secondary qualities, such as colors or aesthetic judgments or amusingness, are usually understood as dispositions.¹⁶ Something is red just if, in ideal conditions, we are disposed to call it red. Thus, to relate secondary qualities to norms – to claim that picking out a secondary quality just is picking out a norm, and judging a secondary quality just is judging according to a norm – we would need to show that secondary qualities are not just dispositions but rigid dispositions, and that they are (social) fictions. I will not present a detailed argument here, just a few suggestions to make these claims plausible.

Secondary qualities, understood as dispositions, seem rigid because no description or set of descriptions determines the circumstances to which they speak. A list of circumstances spoken to by redness or by funniness is never exhaustive because the states of affairs exceed our words, and because new states of affairs that we would find red or funny (to which we would respond with the word or thought 'red' or 'funny') could be presented to us, yet we freely use pointers to these dispositions in our practical reasoning ('because the carpet is red, I should wear green shoes,' etc.). Indeed, this point is hinted at by the tautologous way that someone might try to define red things: 'they are just red!' Moreover, it should be uncontroversial that secondary qualities, although 'real for us,' can only be spoken of as 'really existing' if we understand them to be implicitly prefaced by, 'in our present society.' We can certainly imagine societies where humor, or even colors, are understood dramatically differently than in ours – if they exist at all.

Before returning to primary qualities, let us turn briefly to objects, again just trying to make plausible the position that objects can be understood in terms of norms. There is a quite sensible bit of conventional wisdom that what a thing does determines what a thing is. More precisely in this case, what we call an object is a rigid norm picking out all that the 'object' is able to do. We talk, think, and act as if there is

an object, but in representing and reasoning we are really using a norm, a rigid disposition (norms themselves, I have argued, are fictions; the fictions nest one in the other).¹⁷ Brandom (2002) attributes this view to Heidegger: the hammering of a hammer comes before the objecthood of a hammer. It is not a hammer that hammers, but hammering, in a broad sense, that we sometimes abbreviate as a hammer.

All that is left to address are primary qualities, qualities like temperature, shape, and fragility that seem to be properties of an object rather than properties ascribed to an object by observers. I have no interest in diving into the expansive literature on such properties; my aim is only to gesture toward a path that would allow them to be understood as norms. Some property words clearly refer to dispositions, for instance, fragility, while others take some work to be understood as dispositions. Temperature can be understood as the disposition of molecules to move at a certain speed; being triangular can be understood as the disposition that, if the corners of something are counted, the answer turns out to be three (Mellor 1974). Although somewhat counterintuitive, it is plausible to think that all properties are dispositions, it is just our language that hypostatizes certain properties.

Now it might seem as though, yet again, we have slipped into Brandom's position. It might seem as though, by saying that there are only social norms, my position is no different from Brandom's position that there are only social practices, because both positions understand society as a closed 'web' with no outside. The states of affairs spoken to by a norm, understood as a rigid disposition, can only be represented by other norms. However, the reliance on norms rather than practices creates a crucial distinction between my account and Brandom's. Social practices can never be wrong except by virtue of another practice which corrects the first, creating the solipsism of the social that Rosen incisively exposed. Social norms, as I have described them, build in a system of accountability, a system by which they can be checked and revised. This is one of the most striking features of law in the courtroom sense: if someone makes a claim about what the law is – the law concerning copyright infringement, say – it is very easy, in theory, to check. We just look at the decisions of the (highest) court and see if they match up with what the law is claimed to be. A social norm says that in certain circumstances, there will be certain responses. If those circumstances come about and are not followed by those responses, the norm must be revised. Like a system of appellate courts, but with a rather more byzantine structure, the social world contains many ways of checking norms. In addition to 'looking,' one can ask a neighbor, check an authoritative

reference book, or ask an expert – all forming what we might call a network of accountability.

It is tempting to look for an endpoint to this network of accountability. This is the appeal of transcendence: to find a thing, or practice, or book against which norms can be checked, an authority that would bestow on them normative force. It is also tempting to take social practices as the endpoint to the network of accountability – this is precisely the move Brandom makes. But this move is illegitimate, for I have argued that there is nothing outside the courtroom, nothing other than norms. The network of accountability does end somewhere – to suppose that it does not would be to suppose that accountability ends in the practices of a community, all holding each other in check, a collapse back into Brandom's position. The endpoint of accountability is what happens next. Less aphoristically: a norm is illegitimate just if a predicted response does not follow a correctly identified circumstance. Or, more aphoristically: law is what is done, a law is what one does.

We follow the law, we do what is done. We are swept along by the inertia of the ordinary. How, then, is critical reflection on the ordinary possible? How can there be a 'metaphysics' or a 'phenomenology' of law if we are doing the thing to do, saying the thing to say? Certainly not through rhetoric, for the skill of the rhetorician is to be excellent at saying the thing to say. But when we speak of laws, we are doing more than saying what is said; we are speaking of what there is. We explain and predict: in those circumstances, these things happen – even when the demonstratives remain implicit, embedded in a word which abbreviates a law. Critical reflection on the ordinary strips language of rhetoric, as much as that is possible. It is concerned solely with law. From the natural sciences to the social sciences to history and literature, the (good) scholar does not say what one says; she says that in these cases, those things follow. Phenomenology brackets the content of specific laws and examines the way that laws, generically, interact with each other (sketching what this might look like is the project of the next chapter). Metaphysics addresses the question of what a law is. Although this chapter has not been short, it has said little: there is only law, but it is as if there are laws. All else is rhetoric, enchantment.

6

Phenomenology of Law

Comfort

Law is what is done. More precisely, law is what it is possible to do. A law is what one does: in these circumstances, these are the things to do. All of what it is possible for me to do is who I am. I am constituted by law, by laws. But those laws vary in their centrality to who I am. That I have two legs is more central to who I am than that I can play chess; that I can play chess is more central to who I am than that I know the meaning of 'thalassemia.' I would still be who I am if I was legless or never learned how to play chess or never learned the meaning of 'thalassemia.' The unity of who I am is not affected by laws; it is guaranteed by law. Laws are how I try to represent law, but their attempts inevitably fall short.

Let us say that those laws more central to who I am are nearer to me, those less central to who I am are more distant. There is, of course, no 'me' at the center which the nearest laws asymptotically approach. All that I am are the laws that constitute me. Those laws most distant from me have the least effect on the other laws that constitute me; those laws nearest to me have the greatest effect. When I join a health club, my routine changes slightly to accommodate trips to the gym; my social status in the eyes of my friends changes slightly when they hear that I have just 'worked out' and when they see my newly toned muscles; but the alterations of all of the laws that constitute me is relatively small. My job, my family, my home, my vacation, my knowledge are all relatively unaffected. In contrast, when I am blinded in an automobile accident, much more of who I am is affected. In the network of laws, more distant laws affect other laws in the same distant province; more central laws affect both central and distant laws. My eyesight is very near to me; it affects other laws central to me as well as distant from me, not only how

I perform my job, but how I do my laundry, how I eat ice cream, how I brush my teeth.

It would seem as though the laws nearest to me are those which I encounter the most frequently or at least those to which I am most used to. But this is not always the case. My extended family gathers once each year, but that gathering is much nearer to me than my daily cursory exchange with the security guard as I enter my office building. I am very used to eating Thai food, but it is much more distant from who I am than is talking about my childhood memories, memories I am not used to discussing. When I am asked an unusual question, a question about my favorite childhood activities, I must pause, think hard, while I very naturally pick up chopsticks to eat my pad thai.

The metrics of nearness and distance, frequency, and the degree to which I am used to a law have to do with the specific nature of a given law. But they seem to be pointing toward a deeper feature of laws, a phenomenological feature. Phenomenological analysis of laws brackets the contents of laws instead of investigating how they relate to each other. The phenomenological feature that we have been circling around is comfort, the adhesion of a given law to all of the laws that constitute me. The more comfortable I am with a law, the more smoothly it fits into the network of laws that constitutes me.

Each time a law with which I am comfortable is instantiated, all of the other laws with which I am comfortable come to the fore. Here is the source of the inertia of the ordinary: doing what I am comfortable with makes it easier for me to do more that I am comfortable with, and the process repeats. When I am comfortable, I feel at ease. I feel at ease when I am immersed in the ordinary, doing what I am used to doing, doing the things that I do. I am at ease because when I am comfortable: I know what to expect. I need not worry about being surprised. I encounter circumstances that I know how to react to. I do not feel as if I need to give my perceptions or actions a second thought – or even a first thought. In contrast, when I am walking the streets of a strange town, playing a sport for the first time, or beginning to learn a foreign language, I am not comfortable. I feel ill at ease and vulnerable. I have to proceed slowly, carefully checking circumstances and matching them with appropriate responses. But I am certain that there is a pattern to this strange thing I encounter and sooner or latter I will discern it, I will incorporate its law into mine.

The more I am comfortable with laws, the less individuated they seem to me. The first time I go sailing, I carefully act according to a list of the steps to take: check the rudder, tie up the sail, watch for buoys, take

note of the current. As I sail again and again, as sailing becomes normal, predictable for me, the practice no longer seems like just so many steps. It no longer seems like a composite. So it is for everything I am comfortable with: it all blends into one substance, the substance of the normal. The individual laws with which I am most comfortable, the laws which seem to me the most banal, are just as invisible to me as the individual breaths I take. I can focus on them and ponder over them now and then, but soon enough I will forget them again as they withdraw back into the substance of the normal that propels me forward, to continue doing as I do, effortlessly.

I am comfortable not only with the most ordinary practices of my daily life, but with the larger laws in which I am embedded: laws of nations, laws of religions, laws of families, laws of professions. I am at ease with and attached to these laws just as I am at ease with and attached to my toothbrush and my favorite biking trail. I need not fret about being wrong; what I do is always right. I am similarly comfortable with the laws I set myself: how I represent myself, how I understand my history and my future. When my image of myself changes or I discover my past was different than I supposed or when I am forced to change my plans for next year, I am ill at ease.

A law functions as a symbol of comfort for me when its effect – of bringing forward all the rest of what is comfortable for me – is disproportionate. A favorite blanket or stuffed animal has this effect on a child, putting the child at ease in times of anxiety, returning the child to that which is normal for her. Finding a post-it note from my friend wishing me well or a taste of the pecan pie made just as my grandmother prepared it or a glance at a photograph of my childhood home can have this effect on me. They are otherwise minor happenings which envelope me in comfort, plunge me back into the substance of the normal. Just like the child's blanket, they take away my anxiety, making me at ease, returning me to a state of normality, ready to do what I usually do.

I am comfortable with those laws that are most entwined with who I am, and I take others to be likewise comfortable with the laws entwined with who they are. These others are not only other people but, by courtesy, groups and organizations. There are laws that a basketball team is most comfortable with, certain plays, certain configurations of team members on the court, certain signals from the coach. The team is ill at ease when they try out a new play, when a forward is substituted in for a guard, or when they are playing on a new court. A corporation is ill at ease when entering a new market, when faced with a new competitor, when transitioning to new management.

Impossibility

There are many laws that I am used to but that are not part of what is comfortable for me. However, they are still predictable; they do not hold surprises for me. I may be used to such laws because in the past I was comfortable with them but now they have faded. They mark what is possible for me to do but which is no longer done. If I happen to find myself in appropriate circumstances, I will have no problem doing them again; those circumstances just arise infrequently now. Such is the poem I had to memorize in the fourth grade, which I practiced over and over for weeks but which I have never repeated since. When I happen to hear the first line on the radio, the second comes to my lips without a pause, even though it is no longer central to who I am.

There are also laws which I am used to but which happen to be of little importance to who I am as constituted by law. They may occur infrequently: the crossword puzzle that I do whenever I happen to find a paper on the seat I am going to sit in on the train, a puzzle which I am used to but which is of little importance. Other laws may occur with great frequency but just are not interwoven with who I am. I may use my bottle opener a few times a week, but if my wife switches it for a new one this is of little significance to me.

In these cases it just happens to be that the laws which I am used to are not part of what I am most comfortable with. Their penumbral location is natural. But there are laws which are forcibly held at a distance from what I am comfortable with, from the core of what is normal for me. In cases of repression, something prevents a law from speaking to the circumstances that it naturally should. Such is the case when I drive through a town where I was recently accosted, and it seems only vaguely familiar but I can't quite put my finger on the cause of the familiarity. I should naturally remember it if it were not for a force holding the law at a distance from me, preventing it from coming to presence. Even more dramatic is the repressed body, when the law with which I am naturally most comfortable, the law which is most my own, most me, is held at a distance. I am told, or I tell myself, that I am not to bring to presence my body, that I am to look away from its nakedness, to treat it as a repellent, repugnant object to be managed and disguised.

The sense of naturalness operative here has its provenance in the intuition that laws perfectly fit the grooves of the world. But this intuition is mistaken. The world is characterized not only by comfort but also by impossibility, mismatch of law and practice. Freud's family drama offers a paradigmatic case of impossibility. When a child's life begins,

his comfort with his mother is untroubled. Nearness and attachment are not strong enough to express this initial relationship – all-encompassing *in utero*, then superordinate in its centrality to the child as a locus of food, warmth, shelter, in short, of comfort. As the child grows and explores the world, the centrality of the mother remains. That is, until the moment when the child realizes that there is a practice for the mother together with the father that is forbidden for mother and child. There are, of course, many such laws: the mother and father go shopping while the child stays with his aunt, the mother and father eat larger portions at meal time. But these differences, from the perspective of the child, are natural: big people eat big meals, the sources of food must venture out to find food. The incest taboo seems unnatural to the child because it seemed as though it was the child's body that was nearest to the body of the mother. Why should some of this nearness be forbidden, prohibited for the child but allowed for the father?

The incest taboo is a paradigmatic instance of impossibility: two practices, seemingly similar in every relevant way except that one is authorized by law and the other is not. As the child grows, he encounters impossibility in all corners of the world. One sibling receives a larger slice of cake than another who is seemingly equal in the relevant respects; one person receives a job instead of another who is seemingly equally qualified; a woman chooses one man over another who is seemingly equally desirable. Impossibility is encountered every day, its very ubiquity making us numb to the violence of its cuts. But the poignancy of impossibility is greatest when the law cutting the seemingly natural arrangement of laws is the sharpest, the most explicit, and the most distinct. The ideology of racial equality in Latin America masks systematic racial bias while the *de jure* segregation that was in place in the United States and South Africa (and that still persists in Israel) makes impossibility in those contexts all the more stark.

Impossibility becomes evident through representation, as laws are thought. Laws understood hypothetically, purely in thought, spread themselves out naturally. But the more laws are thought, the more carefully laws are thought, the more inconsistencies arise. I come upon cases where multiple laws speak to the same circumstance and authorize differing responses. In the case of driving, I think to myself: why should I not speed? My car is able to go faster than the speed limit, many of the other cars on the road are going faster than the speed limit, and I am sure that I do not drive any less safely going a few notches over the speed limit. The only reason, I think to myself, is because of the speed limit, a law which, it seems, makes a (relatively mild, but still

seemingly unnatural) cut in my practice of driving. In thought, as I represent the relevant laws to myself – about the capacity of the car, the safety, the letter of the statute – I find many laws that speak to the same circumstance but authorize different responses. Even though I have a mechanism for sorting through these apparent conflicts, my capacity for practical reason, I still realize that something is amiss.

Comfort begets impossibility. When the fluidity of comfort stills, when I fixate on those things with which I am comfortable as *mine*, the natural unfolding of law is cut by my attachment, my sense of possession. By saying this is *my land*, this is *my house*, this is *my job*, I privilege some laws of *this* and erase many others. I am attached to laws and they are mine, I cling to them, I cling all the more strongly the more attached I am to them. I am reluctant to loan my favorite pen, to change my morning routine, to relocate to the office across the hall. When my office relocates, when I lose my job, when my coworker takes credit for my project, I still have my home and family and daily walk with my dog in the park which are mine and seemingly cannot be taken away, it squelches my anxiety. However, what I claim as mine is not uniquely mine and not naturally mine. Although I call it *my land*, those who work the land for me, who spent generations living on the land before I was born, who live near the land, who look at the land from afar, all participate in making it what it is. The ‘no trespassing’ sign I hang on my gate announcing that the land is mine cuts the seemingly natural flow of the law. It marks impossibility.

Sudden loss is the most acute form of impossibility. When a law is lost, what was once possible is possible no more. The possibilities are fresh and are intertwined with other laws. There was not a slow and natural process through which they faded away, from centrality to penumbra and then into extinction. The cut was immediate, unanticipated, forced, its pain proportionate to the depths of the roots it pulls, the extent to which other laws are entangled with it. When I break my favorite mug I am sad, but the sadness pales in comparison to how I am distraught at the loss of my dog. After my dog dies, the dog that I used to walk every morning when I woke up, after taking a shower and having my breakfast, in the morning I still begin to walk toward the closet to get her leash. The sadness that I feel when I am reminded of the futility of my action touches the depths of impossibility. In the wake of the loss, it effects all of my actions, even those seemingly unconnected with the lost object. My disposition is changed, even when at work, even when on the rugby field, even when doing my laundry. I am less focused, I am more likely to make an error.

In most cases, the loss subsides in time. There will always be a memory of the loss, even after I have stopped moving toward the closet after breakfast, after I have stopped telling friends that I must return home early to check on my dog. When I see a dog in the dog park roll on its back like my dog used to do, the loss, that impossibility, comes to the surface again, a numb aching pain into which all of my memories of my dog are rolled up, undifferentiated. It quickly subsides, as I walk past the dog park, on to the farmer's market, or perhaps it lingers for a few more minutes, while I look at mangoes and bananas and pears, not thoughts but an inflection of how I act.

Abuse

When I do not follow the law, I am reprimanded. I might be told that I am 'wrong,' that I 'ought not' to do what I am doing, that there is a better way to do it. If I park near a fire hydrant, I receive a ticket; if I fail to report to jury duty, I receive a fine. These are the mechanisms by which I am held accountable to the law, and they are the means by which I am able to bring myself into greater compliance with the law.

In some corners of the world it seems as though there is law – a thing to do – but what it is that I am to do is always opaque. In such an abusive space, the mechanism of accountability is still in place but the chain of accountability is truncated. I am still reprimanded, told that I am wrong or given a ticket, but it is unclear what I did, or did not do, to deserve the reprimand. Consequently, it is impossible to right my behavior, to bring it into conformity with the law. The chain of accountability extends no further than the bounds of the abusive space. I have violated the law only because the abuser tells me that I am in violation of the law, not because of a lack of correspondence between the law for me and the law as such. When I act, I will inevitably be punished. Nevertheless, in such a space there is no possibility of abstention, no possibility of opting out of the opaque law. My silence, not just my actions, may lead to reprimand.

It might seem as though it is misleading to claim that there is any law in an abusive situation, even an opaque law – is the law not a fiction of the abuser, part of his manipulation? If the rules are broken, there is punishment; if the rules are followed, there is punishment; so how can there be genuine law at all? A space in which there is no law is an exceptional space, a gap in the law: there is simply not a thing to do. Which is to say: whatever one does, there is no possibility of reprimand. So an abusive space is clearly different from an exceptional space in which

there is no law, but is there really law in an abusive space? When we say that there is a law, what we really mean is that it is *as if* there is a law. People and things act in such a way that the law has explanatory force, both for us and for them. In the abusive space, we are tempted to say that the law is merely a fiction of the abuser, but all law is a fiction. The abuser – and the victim – acts as if there is a law. The abuser punishes as if the law had been violated, the victim feels guilty, remorseful, frustrated, as if she had violated the law. But the law is not justifying those reprimands; they are hollow. Instead of opaque, abusive law is better understood as phantasmic.

When I am called on in class to recite the Latin declensions that I have not studied, I must stand up and speak, to say something even though I have no idea whether it will be right or wrong. It is a surprise to me after each case whether or not I am reprimanded, the law is unknown to me. This law is unknown but not unknowable, not phantasmic. If I listen astutely to the reprimands, I can slowly begin to get a sense of the law which I did not know, slowly become used to it, and the reprimands come less frequently. This is never possible in abuse. Because the law is phantasmic, no pattern is discernable.

The reprimands made in an abusive space, where abuse is understood phenomenologically, should not be confused with punishment or with torture. Punishment is rightly understood as a particularly strong form of reprimand for breaking the law. Punishment is predictable, knowable; abuse is unpredictable because the law it claims to correct is unknowable and ever changing. Torture involves physical and psychological forces so severe that all of the victim's law loses relevance except that most directly concerned with the infliction of pain: the torturer, the instruments of torture, the bruised and aching limbs and organs, the walls and restraints preventing escape. Torture involves 'unmaking the world,' a contraction of the normal; abuse involves a cancerous growth, a phantasmal supplement to the law that diseases rather than discards much of the normal (Scarry 1985; Cavanaugh 1998).

The starkest contrast between abuse and torture is that, in the case of the latter but not the former, a script can be followed. Before going into the prisoner's cell the torturer can read in his manual what he is to do. The unmaking and remaking of an individual's world, of his laws, through the severity of physical and psychological pain can be standardized because the specificity of the victim's laws does not matter at all. They are equally unmade by waterboarding and electric shocks, equally unmade if the victim is a Chinese peasant or a Middle Eastern financier. In the case of abuse, in contrast, the actions of the abuser are parasitic

on the law of the victim. The victim acts this way and so is punished, if she had acted this way yesterday or the day before, she would not have been punished. The abuser constantly adjusts how he acts in relation to the victim's responses; if he did not, the phantasmal law would become stabilized and real, the victim would be able to evade punishment. The torture victim cannot evade punishment, but this is because of the heft rather than the dexterity of the torturer.

Nor can punishment, be it of a different form, be applied all of the time, each day, by the abuser. In that case the victim would become used to being arbitrarily reprimanded: she would no longer aspire to follow the law and the punishment would no longer function as a corrective to the phantasmal law. When the phantasmal law stands alone, apart from the normal substance of an interaction, it stands naked, instantly recognizable as a phantasm. The phantasmal law is a cancerous supplement to the law that exists between two individuals. Abuse does not happen in a closed space; it is just the diseased substance of law. As a result, abuse can easily spread, metastasizing from one law to another, from one relationship to the next.

The phantasmal law that exists in an abusive space is a law not only for the abuser but also for the abused. It is this shared phantasm that binds them together, that congeals the space of abuse which they share intimately. It is a space suited for only two: the phantasmal law is only a law for them. Because it is phantasmal, it is visible to no one else, and thus binds them all the more tightly to that law. Both abuser and abused grow comfortable with each other, a comfort catalyzed by the phantasmal law. When taken away from each other, even in a battered women's shelter, the abused mourns the loss of the abuser and desires his return.

Under normal circumstances when the law is violated, there is a reprimand: I am told, 'that's not the way things are done,' onlookers stare at me curiously, my knuckles are rapped. These are mechanisms by which the homeostasis of the law is maintained. This is the very mechanism through which accountability, the foundation of law, operates. When there is a violation of the law, there is punishment for the violation, so there is less likely to be a violation in the future. In some instances this homeostatic process is more elaborate: when I violate the law I may apologize in the hopes of avoiding punishment. I may tell the receptionist that I am terribly sorry that I am late in the hopes that my appointment will not be cancelled; I may tell the police officer that I will never speed again in the hopes of avoiding a ticket. Apology and forgiveness serve the same function as punishment; with their contents

bracketed they are identical. The law is violated, something is said, that which is said prevents further violations of the law.

The abuse victim, she who suffers from the cancer of abuse, is resistant to participating in the practice of apology and forgiveness because it involves acknowledging a violation of the law. To be caught in violation of the law is the greatest fear of the abused, a fear grown to irrational, grotesque proportions by the phantasmal nature of the law in an abusive space. In that space, she must try her hardest to follow the law despite her awareness that she will inevitably fail. The abuser never forgives: if he catches sight of a violation of the phantasmal law, he punishes despite pleas for clemency. Outside of the abusive space, the victim, used to the abusive dynamic, is used to the futility of her pleas for forgiveness.

A consequence of this is that the victim's law becomes detached from the law as such; the bonds of accountability that bind them together are severed as the practices of reprimand and apology no longer function. When the victim realizes that she is acting in violation of the law, her fright causes her to reframe the law for herself in such a way that there appears to have been no violation. But doing so involves fibbing, it involves creating a law for her which diverges from the law as such. She tells the police officer that she is only speeding so as not to be tardy for her aunt's wedding; she tells the receptionist that she would have made the appointment on time if her son had not just chipped a tooth.

In an abusive space, however I respond to a context, I may be punished for giving the wrong response, for violating the phantasmal law. As I become used to the space, I become used to the futility of the differentiations that I make. That is, the distinctions I make between responding this way in this context and responding that way in that context turn out to be wasted effort if I may be punished for any response, in any circumstance. Consequently, like the metastasis of the phantasmal law, my capacity to differentiate between states of affairs in the world at large diminishes. When the abuse victim's coarser-grained differentiations are coupled with the detachment of her law from the law as such, the result is that the victim becomes like an actor with but a few set roles which she can play. She flips between these roles depending on the context, each of which is thoroughly developed, coherent, rational, yet none of which is finely tailored to the actual situation in which the victim finds herself. Interactions are classed into types: with this sort of person she acts this way, with that sort of person she acts that way. Put another way, she prevents herself from being vulnerable to the world by preemptively and arbitrarily organizing her world, cutting herself off from the world and resulting in solipsism.

Exception

Opposed to that which is normal is that which is exceptional. The laws that constitute the normal hold no sway over the exceptional. A space not subject to that which is normal can either be relatively exceptional – having its own law, but a law which is unusual, apart from the norm – or be purely exceptional, having no law whatsoever. Exceptions are inevitable because of the disconnect between social norms and social practice. Situations always arise where our patchwork attempts to get the world right with norms are so obviously amiss that their suspension seems a necessity.

In the space of the pure exception there is no thing which is the thing to do. The pure exception is bounded spatially but its temporal bound is asymmetric: there is a harsh cut at the initial moment, the closing moment is underdetermined. The initial cut is a suspension of the law, an abrogation with no cause internal to the law abrogated. The network of accountability is entirely severed in the instant that initiates the exception. If the exception was brought about by the old regime, it would be accountable to the old regime, and the purity of the exception would be compromised.

The purity of the pure exception results from its unaccountability. Yet the unaccountability of the exception is distinct from the unaccountability that defines transcendence. The exception would only be transcendent if it were a total exception, if every law were suspended at the same moment. But to make the specific claim that, at a particular moment, there are no laws at all, in other words that not only is every possible model in error but no model is better than another, does not slip into transcendence. It acknowledges that the world is made of normative grooves; it just represents a pause from the attempt to match those grooves in our world. The exception does not really suspend the law; it suspends our pretensions to know the law.

Vulnerability is a prime characteristic of the pure exception. The law offers protection in the form of comfort: even if something unwanted or unpleasant happens to me, there is a standard way for me to react. When I fall down the stairs and break my leg, I will be taken to the hospital, I will see doctors and interns and nurses, I will have to talk to my insurance company, I will have to miss a week of work. All of this is unexpected from my present vantage point, but it all happens within the realm of law. When I fall, there is a thing to do. In contrast, at the moment of a previously unheard of disaster – a massive ecological catastrophe, an economic depression deeper than anyone has known

before with no prospect of employment in sight – there is no law in which I can take comfort and to which I can appeal.

Hence the exceptional status of a particularly poignant moment from the *Vagina Monologues*. We are first introduced to ‘Bob’ by being told, ‘Bob was the most ordinary man I ever met’ (Enslar 1998, p.19). He doesn’t drive fast or drink too much, he isn’t especially funny or especially articulate. In short, he is perfectly normal, perfectly lawful. Until that moment when ‘the miracle occurred’ – ‘Turned out that Bob loved vaginas’ (Enslar 1998, p.19). Before having sex, he wanted to turn the lights on, take off the narrator’s clothes, spread her legs, and just look. At first the narrator tried to understand him as pathological, as a ‘weirdo.’ This was a case where there was a lack of law to speak to the state of affairs at hand, Bob needed ‘to look.’ Although not positively forbidden, what Bob did was not something one does, and thus there was no law, no response available for the narrator. It was a state of exception and a state of vulnerability.

In contrast with the pure exception, independent of law, the relative exception is always inscribed within law. It functions to hold together that law as a distinct part of it, even though within the space of exception normal law has no sway. The exception functions to reassure the normal of its foundations, it functions as a stabilizing Other. Without the exception the normal has no reassurance that other laws do not exist. The presence of the exception realizes this fear but at the same time makes it manageable: the exception, in its role as Other, is conceivable, predictable, and limited.

The relative exception lacks the vulnerability of the pure exception. In the space of relative exception, I am not abandoned by the law. It is possible, and necessary, to grow comfortable in the space, for the space to develop its own norms independent of the regime of the normal. American ‘counter-culture’ in the 1960s was intimately a part of, mutually constitutive of, the norm against which it rebelled. Reagan used Berkeley and Berkeley used Reagan. Berkeley was distinct, a definite barrier protected its exceptionality: you would never catch Reagan listening to the Rolling Stones or wearing a tie-died t-shirt, and you would never catch a Berkeley radical at a Sinatra concert or considering a career in the Marines. Berkeley was not a space without law: there were definite norms concerning how to speak, how to dress, which books to read, which federal agencies to complain about, and so on. This normality within the exception and its boundedness kept it contained, prevented it from having the potential either to be quashed by the normal or to explode and overturn the normal. At the same time this stability had

to be acknowledged by the normal. It became a part of the law of the normal that there was this exception, this Other, to which our sons and daughters and nation could be lost if we did not behave properly, if we did not follow our own law.

In the case of a relative exception, what law there may be in the exceptional space always remains opaque from the perspective of the normal. The network of accountability between the law for me and the law in a space of exception in which I do not participate is partially severed. There is a break between the reach of the normal and the exceptional law, a gap maintained by the bounds of the exception. From the perspective of one side of the gap, the other side is opaque: it is clear that they do something, but what they do is not intelligible in terms of the regime of the normal. When Reagan saw a 19-year-old Berkeley student reading the *Little Red Book*, the relationship between the law for Reagan and the law for the student was ultimately opaque.

The structural similarity between the pure and the relative exceptions belies their deep difference: the pure exception is highly potent; the relative exception is not. The relative exception is not merely impotent; it actively diminishes the potency always present in the law. It stills the law's dynamic tension by providing a proximate waste dump for 'others.' One of the possible results of a pure exception is that the exceptional space stabilizes, acquires its own norms, yet retains its strong separation from the normal. In other words, it transforms into a relative exception.

Psychoanalysis works by leveraging the pure exception. By psychoanalysis I do not mean the adulterated form so pervasive in the Anglophone world in which the analyst is transformed into a coach, giving pep talks, working through 'issues' together with the analysand, providing 'guidance.' The analyst as coach does not depart from the normal; he rejects the potency of the exception. In genuine unadulterated psychoanalysis, the analytic space begins as a pure exception: when the analysand walks into the office of the analyst for the first time, all that is normal for her is suspended. Or at least that is the task of the talented analyst, to make the space such that the normal is suspended. The space is marked by symbols of its boundaries: the threshold between the waiting room and the office itself, the isolation in the office in which only the analyst and analysand are present, the refusal of many analysts to answer their phones.

In the exceptional space of analysis, the analysand knows that she is not supposed to give pat answers. A pat answer is trivial, it is doing what is done, doing what is comfortable. In short, it is following the

law. But in the exceptional space of analysis the law is suspended. The analyst creates contexts skewed just enough from the normal so as to upset the analysand's standard responses.¹ When the analyst asks the same question again and again, a normal context becomes unusual, forcing the analysand to leave behind pat answers, to no longer simply do what is done. Another tool the analyst can use to shake off the normal is his silence: when the analyst refuses to speak, not only is the analysand reminded that she is not participating in a normal, everyday conversation, but also a situation is created in which the analysand *must* respond – even if she too refuses to break the silence, she must *do* something, she must *think* something. Again, she must respond to a novel circumstance, one she is not used to, one she has not encountered before.

An analysand naturally has a tendency to become used to the space of analysis, used to an alternative regime that stands apart from the normal. There is a natural tendency for the distinction between the space of analysis and normal life in the world to collapse. The analyst's techniques attempt to stave off this possibility, but the distinction can collapse in three ways, treated in the next three sections. The outside world can penetrate the space of analysis if the analysand begins treating analysis like she treats her everyday life, as part of the regime of the normal. A new, hybrid regime can emerge out of the interpenetration between the space of exception and the analysand's normal life. Or something can happen in analysis that radically reconfigures – revolutionizes – the analysand's ordinary life, dissolving the space of exception in the new regime. The task of analyst is not to stave off these three possibilities, but to strategically manage them in the best interests of the analysand.

Penetration

An exception can disappear when a preexisting law is imposed where there was no law. The exception is quashed, its potency extinguished, through penetration.² For example, during the internecine period after a regime is toppled, the old law no longer holds sway. If the collapse of the old regime is followed by the entry of the tanks of a superpower, a preexisting law is imposed on the exception, and the exception is quashed. After the statue of Saddam Hussein was toppled, the American military governor took his seat in the palace, imposing a new law. New reprimands took the place of the old: those who broke the law of the Americans filled Abu Ghraib just as those who broke Saddam Hussein's

law had previously. Of course, the law the Americans impose is not the same law as for Americans; it is the law of Americans insofar as it imposes the thing to do for Iraqis from the perspective of America, what Americans think Iraqis ought to do.

Penetration happens in a moment; it is not structural domination. The hegemony of one class over another is a feature of the law; it has nothing to do with penetration. But when a child finds herself in a novel situation, a situation for which there genuinely is no law, it is the parent's law which is imposed, which tells the child what it is that is to be done. The relationship between the child and the parent is one of authority, not domination. In a relationship of authority there are recurring moments in which there is not a thing to do, and in each moment a law is imposed from the same source. My first day on the job in a cafe, I do not know how to make a macchiato. When a customer orders one, the manager tells me what to do. On the first day this happens over and over, on the second day less, on the third day less still, and eventually hardly ever. But I still know that if there is a moment where I am not sure what to do – a belligerent customer demanding a refund, a broken ice machine – the manager will impose the law.

This is how a novice, or child, is raised into a law. When circumstances arise which have not previously been encountered, the authority fills the exception. One is properly raised into the law when the authority filling the exceptions is properly integrated into the world's network of accountability, when the cafe manager and owner are on the same page. When this does not happen, the authority becomes authoritarian, filling the exception with her will. Authoritarianism may come about seemingly accidentally, for instance if immigrant parents are out of touch with the norms of their new home, imposing on their child a law which does not raise the child into the law of the land. The parents' authoritarian stance compounds, because for each apparent conflict between laws – each time circumstances arise to which two laws speak differently – an exception arises, and the more the exception is filled by an idiosyncratic law, the more exceptions arise in the future. Of course, in their home country, the parents would not have been authoritarian, because the law of the parents is aligned with the law of the home country.

When subject to continual penetration, the child becomes accustomed to authoritarianism. She becomes used to being penetrated, used to having an idiosyncratic authority imposed when exceptions arise. A masochistic dynamic ensues: the masochist does not want just anything to be done to her; she wants a law to be imposed on her.³

The masochist says, 'tell me what to do' or, demanding reprimand, says, 'hit me.' With these words the masochist invites a law to be imposed on her, she suspends her own law with the assurance – a comforting assurance – that a law will be imposed by someone else. But precisely by this invitation the masochist inscribes the space of exception to be penetrated inside her own law. The exception is not pure but relative, it is subordinate to the overall laws for the masochist. The masochist authorizes the exception and the penetration; she carves out a space in which she cedes control to a law outside herself. She is continually reproducing the original authoritarian penetration, but in circumstances which she can control. There is no special significance to the sexual connotations of masochism. The realm of the sexual happens to be conveniently bounded and set apart from that which is normal for the man. The pathway could have just as easily expressed itself through the man's daily gymnastics training.

This dynamic of penetration and masochism is poignantly illustrated in Elfriede Jelinek's *The Piano Teacher* (1988). The novel's protagonist, who still lives with her authoritarian mother, writes a lengthy letter to one of her students describing in excruciating detail of how she wants him to hit her and restrain her and humiliate her. In this letter she produces an exactly explicit law which she wishes to be imposed on her. The teacher is herself authorizing the suspension of her own law, but with the understanding that this suspension is very strictly bounded by her. Although what she authorizes seems lawless – to be tied and beaten, forced to beg for mercy – Jelinek makes it crystal clear that these actions are (literally) tightly scripted to an extreme. The fragility of this dynamic is underscored when the student refuses to follow the script, when he acts toward her in unauthorized ways, hitting her when it is not time. The teacher panics, screams, taken aback by the horror of the pure exception, unbounded and lawless.

Similarly, when the Central American or Middle Eastern dictatorship is invaded by a neoliberal superpower, once the dictator's statue topples, a law is imposed on the resulting momentary space of exception. Once the nation's sovereignty is reestablished, once it holds free elections, convenes a new parliament, establishes a judicial system that puts the previous dictator's henchmen on trial, a residual of authoritarian penetration remains. Thus, the new president invites the International Monetary Fund and World Bank to impose 'austerity measures' on her country. She asks to be told what to do: to be told to privatize public sector companies, to tighten the money supply, to increase the retirement age. The sovereign president is now inviting the imposition of a law

onto her nation, a law seemingly inscribed within the new nation's own laws. If the imposition is too drastic, if it causes the exception to become unbounded, there will be protests in the street, populists will be elected, and the representatives of the international financial institutions will be expelled.

Both the authoritarian (the penetrator) and the masochist (the penetrated) are disturbed at the prospect that they might violate the law, though they are disturbed in a different way than the abuse victim. The authoritarian and the masochist are disturbed because the law for them is not neutral, embedded in the world through a network of accountability. Rather, the law is created by them; it is an extension of their very selves. To violate that law would be as if some part of them were taken away, as if their possessions were confiscated, or as if they were punched in the stomach. The law of the authoritarian is violated when those upon whom he has imposed his law flaunt their disobedience. The authoritarian cannot simply issue reprimands as correctives. He feels violated and needs vengeance. For every Israeli killed, ten Palestinians must die. In contrast, the masochist has imposed an exterior law onto herself, though she ultimately remains in control of this imposition. As is the case for the authoritarian, more is at stake for the masochist in issuing correctives than simply bringing an offending practice more in line with the law. The law that is violated is her own, part of her, even though it appears to be imposed from the outside. The masochist takes disproportionate vengeance for violations of the law on herself, making herself vomit her dinner when she misses self-imposed diet goals or violently suppressing popular protests against privatization.

Interpenetration

In a pure exception, the authority of all law is suspended, but that law is not entirely forgotten. The exception can be filled by a new law that is not a law imposed from outside or before the exception but which is a *sui generis* hybrid. In such a case, the exception disappears, but it is not quashed: it flowers as a new law, one that did not exist before or outside the exception. At the family holiday party it is not the law of any one family member which is imposed on the meeting of many laws, but it is a new law that emerges in that space, a law peculiar to that space, a law of which none of us had dreamt before we gathered. At the World Social Forum, when representatives of non-governmental organizations and social movements from throughout the world gather, what emerges is not the imposition of the law of the representatives of one country on

another. Rather, a novel law emerges out of the encounter in a space in which the normal laws for each individual are suspended.

What happens in these cases is neither collaboration nor negotiation, for these are not possible in a state of exception. In collaboration the parties bring their interests, their customs, their laws, to the table to see how they can complement each other. The parties never suspend their own laws; they hold fast to those laws, hoping to advance their own interests through their encounter with others. The same is true in negotiation, but in this case the meeting parties are willing to rearrange their own laws at the request of others so as to further advance their own overall interests. The prime motive remains to hold fast to the law of each negotiating party, that law being advanced strategically through the emphases and de-emphases, gambits and maneuvers, that emerge in negotiation.

A hybrid *sui generis* law emerges through interpenetration. This process is a dance of repeated penetration made possible by the suspension of pre-commitments in the exceptional space. It is not negotiation: in each step of the dance, the law of one party is imposed on the law of the other party. This happens without resistance, since both parties have completely renounced the authority of their own laws in the exceptional space. There is no bargaining. One party says *this* is the law, and this becomes the law. But at the next moment, another party says *that* is the law, and that becomes the law. At first the dance is chaotic, each partner wanting to lead at the same time and accidentally stepping on toes. But out of the chaos comes harmony: a dance emerges, a new law is born.

Interpenetration marks the difference between friendship and collegiality. With a colleague, I will collaborate and negotiate, but I will not suspend my own law. I consult with my colleague when I am working on a project in an area where she is an expert or I meet with my colleagues for lunch so that we can help each other alleviate office anxiety. If I alter my routine – what is normal for me – because of my colleague, it is only in order to further my own greater interests.

Friendship is born of the exception. When I am with my friend, what is normal for me is set aside, subordinated to a space filled with the potential of a law for us. I open myself to doing what he wants: I am willing to subordinate what is normal for me to what is normal for him. At the same time, I do not wholly renounce my own law, I just suspend it so that a new law of the friendship, a law the friends share, can emerge. A friendship can develop out of a relationship of collegiality: at first we play chess at the coffee shop every Saturday afternoon. And then, one

day, you suggest we go bowling Monday evening. I have not bowled since I was in grade school, it is not part of what is normal for me. If I accept, if I suspend my law and allow myself to be penetrated and to begin interpenetration with those first awkward steps, a friendship has begun. Perhaps I will suggest next week that we see a movie or go to the racetrack or walk by the river.

The space that we have together remains an exceptional space because it can never be incorporated into that which is normal for me. The space of our friendship will never be assimilated to that normal because it is never under my control; it is accountable to us, not to me. I alone can never fully predict what we will do next in our friendship, and neither can you. Nor could we predict what will happen next in our friendship if we were to dialogue about it, to think together about what is to happen. The space of the friendship is not the individual laws nor their union, but the product of their interpenetration, path-dependent, brilliantly obscure.

Throughout the relationship between Benjamin Braddock and Mrs. Robinson in *The Graduate* there is a tension between friendship and collegiality. This tension in the air condensates in the moment when, lying together in the bed of the hotel room where they meet every night, Benjamin suggests that they break their routine, that they do something different than 'just jump into bed together.' Perhaps they could see a movie or just have a chat, he suggests. Mrs. Robinson is resistant – does he not enjoy sleeping with her, she asks. But Benjamin is insistent. He tries to strike up a conversation; he asks her what she studied in college. She studied art, she tells him, but she does not want to talk about it. What she wants to do is what they always do, to spend the night together making love. She wants their relationship to be one of collegiality, for each of their laws to complement the other in the space of interaction but for that space to remain contained. Benjamin is bored and lonely and frustrated, a frustration that pervades both his life and his sexuality. Mrs. Robinson wants more fulfillment than her husband can provide. By spending their nights together, Benjamin and Mrs. Robinson are each doing what they do, following but not altering their own law with the help of the other. It is easy to understand why Benjamin, when confronted by Mr. Robinson, dismisses the nights he spent with Mrs. Robinson as involving no more significance than 'shaking hands.' Benjamin is speaking completely truthfully: the relationship was purely collegial. A handshake represents touch without vulnerability, an exception codified into the law so that it disrupts what is normal for neither party.

Indeed, in touch we find another example of interpenetration. Touching the skin of another, the interval between penetration and counter-penetration is decreased to virtually nil. As I touch you, you react immediately, and I react in turn. When I touch you, I suspend the law that keeps us apart, that holds us at a distance from each other, that distinguishes the law for me and the law for you. Proximity and touch are heavily regulated by law: in almost all moments there is a thing to do, to stand this far away when speaking, to sit this far away in a restaurant, to grip the handle bar on the subway this far apart. Exceptions are equally well regulated and reinforce the overarching law: shaking hands as one is introduced, hugging a sibling or close friend, holding the hand of a boyfriend, making love to a spouse. There is a structural split between the former and the latter two cases: touch is either platonic or erotic. In either form, it is strictly scripted. If I hold on to the hand I am shaking for too long, even just a moment too long, we become uncomfortable, anxious. I am doing something that is not done, violating the law that regulates touch.

The law of touch is more than itself, it functions as a symbol of individuation, more precisely, of impossibility. Prohibiting touch, except in those exceptional cases (handshakes, kisses), holds things apart, it individuates. It seems as though unlimited touch should be possible, as though we should be able to be in complete harmony with the universe. The regulation of touch reminds us of this seemingly arbitrary impossibility – and fuels our desire to touch, but to touch in a sense that has nothing to do with interpenetration.

Two figures flaunt the law of touch to the extreme: the saint and the assailant. The saint's saintliness comes about through her willingness to touch the untouchable, to lick the puss out of the wound of a leper. Hence the reverence due to the saint, a reverence which fortifies the boundaries of the saint's exceptional space, distancing her from us but at the same time using her otherness to stabilize our law. The assailant's punches and kicks of his victim are to him what the kiss of the leper is to the saint. If he does not violate the boundary between his body and that of his victim with his hands and feet, he does so with his knife or gun, cutting open the boundaries of the body of his victim. But because saint and assailant are animated by the ideal of pure touch, neither's touch involves interpenetration. They are described with the rhetoric of transcendence – the holy, the outlaw – but in fact they are situated within the law and merely long to escape.

This same ideal of pure touch – accompanied by postmodern analogues of the rhetoric of transcendence – is seen in the NGO worker who

aspires to eliminate disease, poverty, and want through responsiveness, direct democracy, and cooperation. The aid worker listens to (and ‘really hears’) the people he aids, asks informed questions, tries to learn the local customs, tries to start a dialogue to kick-start a participatory process. The highlight of the aid worker’s service in the developing country is the relationships she forms, the mutual embraces as she departs at the airport for her European home. With the help of the aid worker, the NGO becomes an ‘anti-politics machine,’ suppressing the transformative potential of interpenetration with the blinding fantasy of pure touch.⁴

Revolution

If the exception is quashed, no new law takes shape: penetration. If a new law emerges out of the space where an exception was, there is interpenetration. But the potency of the exception is only fully realized when a new law emerges from the exceptional space that bears no relationship to any previous law, that consequently does not recognize the bounds of the exceptional space and tramples over all existing law as it unfurls, with no limits imposed from outside itself. In this case of revolution, the exception explodes.

From the perspective of the normal, an attempt at revolution seems as if it is simply an example of incompetence. If the law is not followed as it is to be followed, then it is followed incompetently. Such action is greeted with a reprimand or at best a blank stare: ‘what?’ From the perspective of the exception, there is no law, no accountability, so whatever is done cannot be judged competent or incompetent, normal or pathological.

The novelty of the law that emerges in revolution is in stark contrast to the law that emerges in reform. When a law is reformed, it is reconfigured, regions previously central lose prominence and regions previously peripheral gain prominence. Every part of the reformed law was within the realm of possibility under the old law; it is only the shape of the law that has been altered. When a reformed law is adopted, the change is rational, it is for reasons. The change can be understood from the perspective of the unreformed law. Reform happens continually: every time a judgment is made, the law at issue gains prominence, slightly. This is the reality of the continual flux of law: its texture is always changing. When the reform is deliberate, strategic, I emphasize *this* part of my law and deemphasize those other parts because it is called for by a law more central to me. I begin eating oranges every morning so as not to become

ill. It was always possible for me to eat oranges. It was always part of my law, though it was previously penumbral. It did not happen frequently but I was used to it. In the reformed law, eating oranges becomes more central to my law, now it happens every day and is tied to the story of my health. Similarly, for the advocate of environmental reform legislation it is possible for factories to emit less toxins – some factories already do so. To limit emissions simply reconfigures current practice in an explicit, codified manner.

Because of the novel and foreign nature of the revolutionary law, its consequences in relation to the normal law, that law outside of the space of exception, are entirely unpredictable. In many cases the revolutionary law is infelicitous: it fails to catch and quickly fades into obscurity. The normal law dismisses the revolutionary law as absurd, laughable, untoward. The usurper kidnaps the sovereign and proclaims himself king; the nation smiles at his absurdity, the bureaucrats go about their daily business, and the usurper rots away in jail. The inventor manufactures thousands of widgets, advertises them on television, distributes them to stores – but no one buys them. They look strange, impractical. Buying things like that is not the sort of thing that is done.

But in other cases the revolutionary law, despite its strangeness, does catch. It catches through a Gestalt switch, not through any rational calculation. The revolutionary law is cohesive and autonomous. The revolutionary law's autonomy, lacking in reform, enables it, if it catches, to play itself out to the fullest, restrained only by factors internal to the new law. The revolutionary law offers an alternative story, one that must be swallowed all at once or not at all. To adopt the revolutionary law is to convert, to abandon the old ordering of my world for a new ordering, a new regime.

Just as there is no total exception, there is never a total revolution. For there to be either, there would have to be a total break between two laws; there would be no chain of accountability whatsoever between them, and there would be transcendence. The significance of this chain of accountability, with its opaque link between regimes, is that the components of the revolutionary law are not totally foreign. They may be quite familiar, but it is their arrangement in a cohesive but non-standard form which is novel. Such components may be unearthed from obscurity to take on a prominent role in the revolutionary regime. Nietzsche, in overturning normal philosophy, praises Dionysus over Socrates. The latter figure was one with whom philosophers were comfortable. Dionysus was a rather more obscure figure, known by but of little interest to the professional philosopher. Similarly, a newly elected democratic

government unearths memorabilia of a nearly forgotten democratic regime from decades ago to hold up as symbols, radically refiguring the more recent totalitarian heritage.

A revolutionary is a figure whose comfort is infused with impossibility. She follows the law with angst. This angst is fueled by the existential realization that laws do not, and never will, truly reflect the grooves of the world. What the revolutionary realizes is that for each law, the smoothness of its boundaries serves to mask the existence of those boundaries, the fundamentally arbitrary individuation of laws. Unlike the saint, the revolutionary is not enchanted by the myth of pure touch.

Living with angst makes the revolutionary prone to notice when there is dissonance between laws, to notice spaces of exception. Where others see law, things doing what they do, the revolutionary notices the inconsistencies of the regime. Whether the revolutionary law lies smoldering in a space of relative exception or is truly pure and *ex nihilo*, the revolutionary is especially likely to catch it and latch on to it, to be faithful to it.⁵ In her angst, the revolutionary does not have blind faith in the law which she currently follows. She realizes its imperfection but continues to follow it because she sees no alternative. She will not give her allegiance to just any alternative; only one that offers a more convincing story, a law with more aesthetic appeal.

When I follow a law with angst I still follow the law. I follow it with the dispassion that accompanies realizing that I am doing what one does. When a court case has been tainted by a technicality and the law dictates that a clearly guilty prisoner must go free, the judge follows the law despite his misgivings, with angst. The revolutionary, following the law with angst, does not cut corners. To cut corners is to make an attempt at reform, to feel as if something is amiss, and to refigure the law so as to remedy it. To do so quashes the angst of the revolutionary, the angst that separates him from the reformist.

Think of the inmate who all of the guards and fellow inmates take to be a model prisoner, following all of the regulations in what seems to be good faith (not overdoing it, not slacking off) – going to chapel, helping out in the prison library, always on time to meals. Only his bunkmate knows that for the last dozen years he has been planning his escape, that one day he will be gone and all will be shocked. The revolutionary prisoner keeps waiting for that right day; he knows the risks of acting prematurely. On that day it will be as if there is no law for him. What has been normal during the many years of his imprisonment is suspended as he makes his escape and constructs a new normal for himself outside of the prison gates.

This prisoner, and the revolutionary in general, sustains his angst with liturgical practice. Liturgy is a law which functions as a pointer to an unknown law. Observation of a liturgical practice teaches me nothing about an unknown law; it is not fully intelligible in the current regime. It only tells me that the practitioner is open to the coming of a new law, to revolution. Liturgy sustains the angst of the revolutionary because each time the revolutionary engages in liturgical practice he is reminded of the fallenness of the current law and the possibility of things to be other than the way that they are. But the unknown law to which liturgical practice points is not entirely other than the normal, since revolutions are never total (neither are revolutionaries). Indeed, most revolutions are rather diminutive affairs: fashion fads, health food crazes, newfound aesthetics. Liturgical practice too can be diminutive: the scientist who returns to the same experiment over and over when it seems to be producing no results, the businessman who stays open for business an extra hour even though it is unprofitable.

It is this sort of liturgical practice that H. Richard Niebuhr (1932) had in mind when, shortly after the invasion of Manchuria, he called on Americans to forego a military response in favor of 'the grace of doing nothing.' In the face of unspeakable violence and atrocities committed at the very moment that he wrote, Niebuhr argued that to prevent violence with more violence, especially when that added violence comes from an empire with a history of violence, would do no good. Niebuhr was steadfast in his opposition to reformism, the reformism that is prompted by the emotions that we feel when we see the news reports of murder and rape and plunder and we say: 'something must be done!' To reform our law would be to give ourselves the impression that something can be done, that we ourselves have the messianic role of delivering the world from its fallenness.

Strategy

Often what the law dictates is alterations of other laws. When I am playing chess, the thing to do is to win. The thing to do in any context is to protect my pieces. But at times in order to win I must put my pieces at risk, even sacrifice them, in order to win the game. I know what the law is but I do not blindly follow it; instead, I act strategically, emphasizing some parts and deemphasizing others. Acting strategically is rightly following hypothetical imperatives: if you want to win the game, then you ought to sacrifice the pawn. Bracketing the content of

specific laws, we can identify generic strategies: we can think strategy phenomenologically.

Making the law explicit is one such generic strategy.⁶ To make a law explicit is to offer descriptions, to say which circumstances it speaks to and which responses it deems appropriate. Making a law explicit is representing it, telling a story about it. As its story is told, its disparate elements are unified. We are reminded that to be a Catholic involves humility as well as respect for authority as well as charity as well as the assertion that truth is embodied in Jesus Christ. At each moment this story is told – when you recite aloud the Nicene Creed or when you teach a Sunday school class or when you explain Catholicism to your Muslim neighbor – each of these elements, the laws that compose the law, are pulled together.

Writing a textbook for law is one way of making it explicit. A textbook selectively chooses cases which structure the story of the law. Each time a new textbook is written, what the law is changes because a new story is told. Certain aspects of the law are foregrounded while others are relegated to footnotes. By writing a textbook, by making a law explicit, the law is refigured. This can be used strategically: articulating a law in such a way as to foreground what furthers overarching interests. Moreover, the adhesion that making a law explicit creates makes the law more comfortable, makes it seem natural. A great orator makes it seem easy, obvious, to understand a law in the particular way that she articulates it.

Further, by unifying a law in articulation, its inadequacies become visible. Critics can point to circumstances that the law fails to explain or predict. A strategic choice can then be made to reform the law or to leave it be, following it with angst. If the latter is judged a better option, the apparent unity brought about by articulation is a further advantage, for the Gestalt switch of revolution is made possible when the option from which to switch is clearly delineated.

Yet another strategic advantage of articulating the law is that the materialization of law in a representation, in words, facilitates its dehiscence. There is always dehiscence in law: as law is followed, it changes. It grows in new, unexpected directions, it refigures itself in this way or that, it bifurcates and twists as circumstances change. In the space between the law and its articulated, represented image is an echo chamber of sorts, a space that can produce resonance and dissonance that magnify that potential novelty always inherent in law. When you restate what I have just said and I hear it anew, retold, in your words and in your voice, out of the space between my presentation and your representation, comes a refigured law. When I state my position the next time,

after hearing you, the position is refigured, some aspects brought forward, others left in the background. Even alone – when I write an entry in my journal, a letter to my friend, a memorandum detailing my project for my supervisor – simply in the act of writing I am confronted with my law represented, facilitating dehiscence. And dehiscence is strategically desirable because it increases options; it makes it easier to do what is to be done.

Complementary to the strategy of explicating a law is the strategy of condensing a law into a single point. Rather than telling the whole story of Jesus and the disciples, the succession of apostles and popes, the miracles of the saints, the mysteries of the sacraments, the mere presence of a cathedral unifies this story and makes it accessible, makes it easier to affect my life. Crudely put, after seeing a cathedral I am more likely to attend Sunday mass and I am less likely to have an abortion, so building cathedrals is an effective strategy if my goal is to advance Catholicism.

Explication and condensation are both at work in naming the exception, a particularly significant strategic point. The exception points to the law as a whole, for the exception is what the law is not. To name an exception either domesticates the exception, reinforcing the status quo, or legitimates the new law that emerges out of the exception. Contestation over the exception is evident in the representations of a nation's founding moments. To privilege continuity between old law and new domesticates the potentially exceptional status of a nation's founding; taking the founding moment to be unaccountable to all previous law is to underscore the potency of the law that emerges from the revolutionary space. When the American revolution is understood as purely derivative from French Enlightenment ideals, the authority of the individual who claims to speak from the American tradition is undermined – he must now justify himself in terms of the historical antecedents of the law. Conversely, to identify an exceptional moment where none was recognized before provides leverage to reframe our image of the law – and thus the law itself for us. To claim that America was founded *ex nihilo* and that the founders were acting on their personal economic interests dramatically reshapes how we can speak about the entire American tradition. The exception is in this way equivocal: naming the exception legitimates a law and denying the exception delegitimizes the law, and both techniques are part of a strategic repertoire.

Making a law explicit and condensation both necessarily entail exclusions. A law says: in *those* circumstances, *these* are the things to do.

Which means that it also says: in *those* circumstances, one is not to do anything but *these* things. The story of a law can also be told by telling the story of that which violates the law. To tell the story of the Jews it is also necessary to tell the story of the Gentiles, and so too with Christians and heathens, with citizens and foreigners, with professionals and amateurs. The narration and unification of a law of the other functions strategically by strictly defining the border of the law, contrasting inside and outside, and forcing a choice: with us or against us. This logic of same and other, of course, is only strategic: to hypostasize them is to forget the fundamentally flawed, fallen nature of law.

Deciding when to employ which strategic techniques requires practical reason. Like any practice, it is possible to be competent, excellent, incompetent, or pathological at exercising practical reason. Competence involves representing laws in the conventional way, representing states of affairs in conventional ways, and so deciding between the conventional set of options. Incompetence at practical reason involves incapacity to view states of affairs or to understand laws, with the result that there is an apparently deficient set of available options – for instance, in the reasoning of an infant. A pathological reflector, unlike a child, is sometimes able to represent accurately, but other times has skewed representation leading to fixations and a lack of dexterity navigating the world – always taking the ‘easy’ path, for example.

The individual who reflects on the law in an excellent way, whose practice of practical reasoning is excellent, views the law as a talented lawyer would. She not only represents the image of the law as it is standardly portrayed, but brings to light new elements overlooked by competent reasoners. She not only presents the standard set of available options, but exposes loopholes in the law, overlooked precedents, novel ways of approaching the law. She is able to win cases that seem hopeless by changing the terms of the debate, altering what it is that is the thing to do. An individual may be excellent at certain forms of practical reasoning, competent at others, and pathological at still others – this, of course, is the point of neurosis.

What differentiates competent from excellent use of practical reason is what differentiates Abraham from Odysseus.⁷ Despite his many adventures, his lengthy time away from his home, and the temptations of the strange places he encounters, Odysseus never doubted that he would return home. While his adventures unfolded, Ithaca was always in the back of his mind. All of the exotic experiences he had, the foreign laws that he encountered, he kept at a distance. He held fast to his own

laws, expanding them to meet new circumstances. Odysseus' world is not static, but it is held firm by a heavy anchor.

In contrast, when Abraham hears the voice of God, all the law is suspended. He does not structure or bound this space of exception; he does not inscribe God within his own law. Abraham simply takes the results of his encounter with God as his new law. When the result is that he must gather his family and move with them in the direction the Lord decrees, he asks no questions. Abraham's story is one of vulnerability, allayed only by the comfort derived from his unshakeable trust in his Lord. He is not sure when or where God will speak to him, but he is always listening. This is the essence of excellence at practical reasoning. Acknowledging that the world is amiss, this mode of practical reasoning is always receptive to potential exceptions and their results. Excellence at practical reasoning involves discerning when it is really God speaking and when it is not, when it is a true exception and when it is not – and whether that exception calls for penetration, interpenetration, or revolution.

7

After Transcendence

This chapter is a parable. The characters are Georges Bataille and Michel Houellebecq. The plot revolves around the shift from a philosophy of transcendence to a philosophy of law. And the unifying motif is Eros. I will use this parable to argue that the shift from Bataille to Houellebecq, with respect to erotics, mirrors the shift that Gillian Rose affects in her move toward an immodest jurisprudence. Bataille, like the Dualists, Traditionalists, and Quietists discussed in earlier chapters, relies on an appeal to transcendence fueled by Eros. Houellebecq moves beyond this logic and, by finally re-reading Bataille in light of Houellebecq, I will again suggest that the language of transcendence be understood pragmatically, as a rhetoric, employed within the social world for worldly purposes, never allowing for ascent beyond the social world. Further, I will argue that the fiction of Michel Houellebecq begins to exhibit an understanding of love, as a virtue, similar to that suggested by Rose.

Transcendence, recall, is the claim that there is something beyond social norms: in terms of the immodest jurisprudence I have associated with Rose, something beyond law. There is a book with all the answers, a practice of climbing Mount Holy or reasoning our way to the inner secrets of the world. The fundamental claim of Gillian Rose, which the previous chapters have been elaborating, is that philosophy and social theory have been blinded by the allure of transcendence. This chapter is a parable of vision regained, of the counterintuitive success of Houellebecq – and, perhaps, the cultural moment that he represents – in seeing beyond the appeal of transcendence, the erotic appeal, which is encapsulated in the work of Bataille.

Across the philosophical landscape, the erotic continues to be invoked as that which leads beyond law, whether it be through an erotic desire that leads us to subversive or liturgical practices (Chapter 2), an erotic

desire that binds our tradition(s) (Chapter 3), or an erotic desire which contents us to remain quiet on philosophical questions (Chapter 4). In each of these configurations, an appeal to transcendence is motivated by erotic desire; it is erotic desire which motivates an appeal beyond social norms, beyond law. The instances of this configuration that I discussed in Chapters 2–4 are particularly subtle instances of a much more common, and much more explicit, reliance on desire – although I will not explore this claim in any detail here. The theory and fiction of Bataille is a high watermark of this configuration, positioning erotic desire as a means of escaping the undesirable social norms of capitalism and modernity.

The fiction of Houellebecq marks the extreme which undermines this configuration: the erotic (and religious, and violent, and aesthetic) no longer offers an alternative to capitalism and modernity but is incorporated into this unwieldy metahistorical conglomeration and, further, is implied to have been from the very start constitutive of it – the sublime Other on which capitalism and modernity depend. Yet, like Gillian Rose, Houellebecq still finds space for the virtue of love without resorting to an unequivocal appeal to transcendence.

Before turning to Bataille's texts, I will propose jurisprudential understandings of a few of Bataille's key concepts. The version of transcendence offered by Bataille is much more subtle than climbing Mount Holy. Indeed, the first stage in the development of his concept of 'limit experience' could be read within a purely jurisprudential framework, and this is what I will do here. Presented with a certain set of circumstances, a court normally acts in a particular way, sometimes acts in another way, and rarely acts in yet another way. Translated into a jurisprudential idiom, a limit experience is the court's third option. It is doing something which is possible but rarely done. Although normally littering results in a \$500 fine, sometimes the court requires the defendant to spend 20 hours picking up litter by the side of the highway, and on rare occasions the court will require the defendant to spend a month working at a recycling plant. All of the options are available to the court, but the third is only rarely invoked.

Bataille creates theoretical space for limit experiences by elaborating the distinction between experience and knowledge. Roughly, by this distinction Bataille contrasts what one can *do* and what one can *say*. In a jurisprudential idiom, this can be thought of as a contrast between what the law is and how the law is represented, say in textbooks. Knowledge is experience made explicit, codified so as to be discussable, debatable, and revisable. But, according to Bataille, in that process of codification,

of abstraction, something is lost: textbooks never perfectly represent the law, they only offer approximations; knowledge never perfectly represents experience, it only offers (often incorrect) approximations.

Any textbook must be held accountable to the law itself. If the courts make new rulings which run counter to precedent, textbooks must be revised. To say that all law can be understood through reading textbooks (knowledge) is solipsistic, it shields law from the fluidity of the world (experience). 'Dogmatic presuppositions have provided experience with undue limits: he who already knows cannot go beyond a known horizon. I wanted experience to lead where it would, not to lead it to some end point given in advance' (Bataille 1988, p.3). In a rather Nietzschean vein, Bataille goes on to assert that dogmatic presuppositions (i.e., knowledge of the textbook variety) always have as their goal 'the deprivation of our universe's sources of excitation and the development of a servile human species, fit only for the fabrication, rational consumption, and conservation of products' (Bataille 1985, p.97). The normative tinge to Bataille's distinction between knowledge and experience is here evident. It is not merely that knowledge is always an inadequate representation of experience; the fixation on knowledge creates 'servile' humans 'fit only' for ordinary tasks, deprived of 'sources of excitation' – deprived of the sort of desire that would disrupt the ordinary.

Bataille, in various forms throughout his *oeuvre*, suggests that there is a realm in which everything is exchangeable: the realm of 'rationality' and 'conservation.' Everything in this realm is of the same sort, is homogenous. It remains a closed system, accountable to nothing outside of itself. Bataille associates this realm with the realm of capital, the realm of monetization: value is determined not by use but by exchange. Thus: exchange points to the realm of knowledge; use points to the realm of experience.

It is in the difference between knowledge and experience that the possibility of opposing a closed, rational order – and, ultimately, capitalism – arises. Bataille suggests that this difference is best leveraged by means of limit experiences. Limit experiences are those which defy codification in knowledge, which point to the 'limits' of any regularity. Limit experiences pry open the closed world of exchange: the encounter with a limit experience proves, beyond a doubt, that knowledge – and the realm of exchange – is a sorely inadequate way of understanding the world. To return to the jurisprudential idiom, they are decisions which it is legitimate for a court to make but which are not found in textbooks because of the infrequency with which they are actually made.

The examples of limit experiences to which Bataille most frequently points are laughter, ecstasy, and terror, but also those associated with sex, death, and taboo. Bataille is fully aware that these experiences must remain exceptional, extraordinary, lest they lose their potency. According to Bataille, religious practice – and Christianity in particular – once involved limit experience, but as it was institutionalized and formalized with a ‘scientific rigor’ it was left ‘debased,’ in the realm of systematized knowledge (Bataille 1985, p.96).

Limit experiences are accessible to everyone: they can occur in ordinary life and they can be cultivated. Bataille recalls one day when he was out for a walk: ‘At the crossing of the rue du Four . . . I negated these gray walls which enclosed me, I rushed into a sort of rapture. I laughed divinely: the umbrella, having descended upon my head covered me’ (Bataille 1988, p.34). There is nothing spectacular about this experience; it is the sort of experience that many people encounter now and then, in more or less acute forms. It is not an experience which could be captured in a textbook, in a proposition, which belongs to the realm of knowledge. Moreover, after this small limit experience, there is not any particular bit of the experiencer’s knowledge which is changed; rather, his mode of being, his entire stance toward existence changes – or so Bataille claims. The experiencer is reminded of the contingencies of the world – that is, the limits of what Bataille calls knowledge – and he is reminded of the possibility of a world in which knowledge is radically different.

Bataille, in a manner which certainly resonates with Nietzsche, Heidegger, and Foucault, as discussed in Chapters 3 and 4, attributes a particular importance, even ‘truth,’ to limit experiences – where the significance of the rhetoric of truth here is the normative force it suggests. Any individual might reject limit experiences and simply lead an ordinary, textbook life, ignoring those moments that challenge the sufficiency of the realm of knowledge, of exchange. However, Bataille asserts that ‘mankind as a whole’ aspires to limit experiences for they are ‘his only justification and significance’ (Bataille 1986, p.274): ‘I have placed in [them] all value and authority’ (Bataille 1988, p.7). Bataille is suggesting that a human being *ought* to aspire to limit experiences; a life with limit experiences is superior to a life without them.

The rationale behind Bataille’s argument relies on the difference between knowledge and experience – but ultimately seems to rely on a distaste for solipsism (for being trapped in a fixed realm of knowledge never inflected by experience) which is, in the end, aesthetic. One could keep on doing what one normally does, over and over, if one

ignored a deeper realm – the realm of the broadly aesthetic, whether it be called the Dionysian or Being or the bathhouse. Such a life is, frankly, boring – and, perhaps more importantly, stifling. As Bataille writes, ‘human life always more or less conforms to the image of a soldier obeying commands in his drill’ (Bataille 1985, p.27). Bataille invokes the same neo-Kantian move we have seen in earlier chapters: the ordinary, conventional world of fact is contrasted with a form of transcendence.

Bataille commends the life of the connoisseur of limit experiences, a life characterized by ‘surprise,’ a life performing a contestation to the ‘law of language’ which is necessarily a ‘risk’ (Bataille 1988, p.14). The ‘law of language,’ of course, is that law which limits us to (propositional) knowledge and forgets experience; it is a textbook law which always knows what is going to happen ahead of time. Bataille notes how humans are naturally averse to surprises: in the face of surprises ‘we back away’ (Bataille 1988, p.35). Yet Bataille suggests that there is an ‘inevitable backlash’ from the military regularity imposed when we are confined to the realm of knowledge and kept from the full richness of experience, an existential angst reminiscent of that described by Lacoste. The challenge of practicing a life of surprise is to find a mechanism to pass from knowledge to experience, to ‘silence oneself’: to quiet the ‘law of language’ of the textbook and pass to uncodified experience.

Yet in formulating the other of knowledge, Bataille is careful to distinguish his position from that of Nietzsche and Foucault: the other of knowledge, though unsystematizable, is not goal-driven. It is not ‘a search for enriching states (an experimental, aesthetic attitude)’ (Bataille 1988, p.7). The resistance that Bataille shows to the ‘experimental’ is perhaps best understood by the radical disjunction he emphasizes between knowledge and ‘non-knowledge.’ Limit experiences can have no goal with respect to knowledge, no goal that could be expressed according to the ‘law of language.’ The effect that limit experiences will have on knowledge cannot be known ahead of time – otherwise we will not have left the realm of knowledge. Perhaps limit experiences can be understood as inflecting knowledge, altering the subject’s stance toward knowledge, specifically the certainty with which it is held, its resistance to change.

Bataille’s use of the language of transgression to describe limit experiences is misleading within a jurisprudential framework because it is suggestive of the pathological. To transgress, to break a rule, to violate a social norm, invites thinking the transgressor as one who is pathological. It invites us to establish the figure of the transgressor as the ‘other’

to us – the psychopath, the foreigner, the diseased. But there is another way of understanding transgression. On Bataille's account, one goes about ordinary life grounded in social norms, accustomed to how the (metaphorical) court usually decides. But, on the occasion of the limit experience, one performs an unusual, unexpected practice which has the potential to change the ordinary, a potential which the pathological 'other' never has.

Recall from Chapter 2 how, with Foucault and Canguilhem, we understood the pathological as the complement to the normal. Both are *regimes*, subject to law. But limit experiences, on Bataille's account, do not form a regime. There can never be a codified list of expectations, a list of things which are normally done. The deviance of the limit experience from usual experience is unsystematic. The pathological has a systematic difference ('defect') from the normal. Rulings on certain types of cases by the US Ninth Circuit Court of Appeals systematically overemphasize civil liberties and are consistently overruled on appeal, although these rulings are normal with respect to the Ninth Circuit. But any case coming before the Ninth Circuit will, normally, be decided in a predictable manner (certainly, this example is an overstatement to emphasize the point). What might be called a 'limit decision' can be made by either the Ninth Circuit or the Supreme Court – such a decision is simply unusual, though not unheard of, with respect to the regime in question (perhaps the Court's idiosyncratic reasoning in *Roe vs. Wade* is such an example).

We have seen that Bataille appeals to transcendence in his account of limit experiences, although this appeal does have different features than those we encountered in previous chapters. Also unlike some of the theorists discussed earlier, Bataille straightforwardly uses religious language to label the transcendence he introduces. But there is an ambivalent relationship between limit experience and mystical experience in Bataille's work. On the one hand, Bataille's descriptions of limit experiences are very similar, if not identical, to what would ordinarily be called mystical experience – indeed, he uses the highly suggestive language of 'ecstasy,' 'rapture,' and 'nonknowledge.' But Bataille is adamant that his project is not theology but 'atheology,' he is adamant that limit experiences do not point to some beyond, some *theos*. Rather, limit experiences point to the limits of knowledge, limits which appear in many disparate locations (which cannot even be called locations, strictly speaking). They are unified only by doing the same work: each limit experience exemplifies an instance of experience beyond knowledge, an encounter with that which cannot be systematized, and so inflects, destabilizes, knowledge.

According to Bataille, a community – a sort of anti-communion – arises amongst the many disparate practitioners of limit experience. This is Bataille's unconventional understanding of 'communism.' There are no enumerable characteristics of this community: it is ontically empty, only defined by its ontological (existential) nature. The 'communist' label that Bataille uses is not arbitrary. The realm of knowledge is the realm of exchange, of interchangeability. The community constituted by participation in limit experience is continually challenging the fundamental capitalist premise that people and things are objects to be exchanged. These 'communists' align themselves with experience over knowledge, use-value over exchange-value.

So far, Bataille's work could still be read strategically, as I suggested we read Butler and Lacoste, in order to accommodate his thought to an immodest jurisprudence. Bataille could be read as taking limit experiences, analogous with liturgical and subversive practices on the readings I suggested in Chapter 3, not as truthful (or good or desirable) in themselves, but as useful for an individual in advancing other goals. But Bataille makes a stronger claim which prevents such a reading. He argues that, in limit experiences, humans become indistinguishable from one another. They enter into a world without subjects or objects: negating 'these gray walls which enclosed me.' He vividly describes a man's limit experience:

In bed next to a girl he loves, he forgets that he does not know why he is himself instead of the body he touches... The absent and the inert girl hanging dreamless from my arms is no more foreign to me than the door or window through which I can look or pass.

(Bataille 1985, p.6)

The everyday world is broken apart into objects, things, individuals. But with limit experiences one enters into a realm without any such differentiations. Bataille is describing an ontological change rather than a strategic change.

In contrast to a theology, operating on the metaphor of ascent to the transcendent, Bataille's atheology suggests the metaphor of descent. What is most holy is what is most base: filth, vulgarity, scatology. He describes the (un)holiest practices of atheology:

Sexual activity, whether perverted or not; the behavior of one sex before the other; defecation; urination; death and the cult of cadavers (above all, inasmuch as it involves the stinking of decomposition of bodies); the different taboos; ritual cannibalism; the sacrifice

of animal-gods; homophagia; the laughter of exclusion; sobbing (which in general has death as its object); religious ecstasy . . . heedless expenditure and certain fanciful uses of money, etc.

(Bataille 1985, p.94)

In addition to the repulsion with which they are met, these practices are linked by their presence outside of the process of production and consumption, outside of the realm of exchangeability. Here, again, it is clear that Bataille is not writing of specific strategic practices, but rather a realm of experience which he commends – indeed, sanctifies. The activities that Bataille lists here are no longer limit experiences according to his understanding of limit experience; these are simply sanctified practices.

Of the many limit experiences providing access to this realm of transcendence, the erotic is first and foremost for Bataille. Erotic experiences are the ‘most intense’ and represent the ‘loftiest peak’ (Bataille 1986, p.273). The erotic serves a double function and receives a special privilege in Bataille’s theory. On the one hand, it is one of the many sanctified practices commended by Bataille because it exists outside of the realm of exchangeability and knowledge. On the other hand, Bataille suggests that there is an erotic desire for limit experiences in general – a desire for the depths of atheology which inverts the theological desire for the heights of religious transcendence (However, Bataille is careful to note that, unlike theological desire, atheological desire simultaneously attracts and repulses.) A limit experience is ‘blinding and overwhelming, more desirable than anything else’ (Bataille 1986, p.193). In other words, erotic desire fuels limit experiences, and limit experiences in turn aspire to bring the experiencer to a sanctified realm of non-knowledge which involves, first and foremost, erotic desire.

The privileged place of the erotic for Bataille is confirmed by its role in defining his understanding of the human. He asserts that eroticism distinguishes humans from animals; it is the possibility of the divergence of sexual activity from reproduction. Just as theologians write about the possibility of the experience of the heights of transcendence as that which differentiates humans from animals, the atheologist Bataille writes about the definitional role of the depths of eroticism. Not only does eroticism reveal what is human about humans, but it reveals what is universal about humans. ‘Erotic activity, by dissolving the separate beings that participate in it, reveals their fundamental continuity, like the waves of a stormy sea’ (Bataille 1986, p.22). The sanctified practices associated with eroticism range from simple nakedness (which is ‘a state

of communication revealing a quest for a possible continuance of being beyond the confines of the self' (Bataille 1986, p.17)) to obscenity ('the uneasiness which upsets the physical state associated with self-possession, with the possession of a recognised and stable individuality' (Bataille 1986, pp.17-8)). In each case, eroticism allows access to, and characterizes, a realm outside of the 'law of language,' outside of knowledge, outside of law.

In the parable of Bataille and Houellebecq, Bataille's erotic doublet – a particular sanctified practice and the fuel that leads to limit experiences in general – represents the culmination of philosophies of transcendence, which is to say, philosophy which reaches beyond law. It is here that the erotic takes the leading role, the seal under which other indicators of transcendence are unified. Just as the cross functions as the seal of Christianity, both part of the rituals and practices which constitute Christianity and also the definitive element under which all others are organized, the erotic for Bataille functions as both one means of accessing the realm of transcendence and that which binds them all together: they all involve erotic desire. Henry Staten, in his much underappreciated *Eros in Mourning*, has skillfully argued diachronically what we see synchronically in Bataille: that over the course of the development of Western thought, the erotic has consistently functioned in this privileged role as a seal of transcendence.

The Story of the Eye, an early novella written by Bataille, performs his theories of limit experience and eroticism. Consider the following scene in the aftermath of an orgy:

I was pale, smeared with blood, my clothes askew. Behind me, in unspeakable disorder, ill bodies, brazenly stripped, were sprawled about. During the orgy, shards of glass had left deep bleeding cuts in two of us. A young girl was throwing up, and all of us had exploded in such wild fits of laughter at some point or other that we had wet our clothes, an armchair, or the floor. The resulting stench of blood, sperm, urine, and vomit made me almost recoil in horror

(Bataille 1987, p.15)

Here we find all of the elements that Bataille has linked as sanctified practices: the erotic detached from the reproductive, the violence of the cuts and blood, the scatological, all of it wrapped together in the horror of the smell of the scene. Further, in his theoretical writings Bataille describes limit experiences as 'constellated with laughter' (Bataille 1988, p.34).

This orgy scene represents a location in which the underlying continuity of the things and people that make up the world is made manifest, in which the supposed realm of transcendence is exposed. It displays the de-individuation of bodies and body parts – as he writes of an orgy, ‘The total personality is involved, reeling blindly toward annihilation . . . This fusion could in no way be limited to that attendant on the plethora of genital organs’; rather, it ‘is a religious effusion first and foremost’ (Bataille 1986, p.113). This is a picture of ecstasy: as two characters sexually stimulate each other, ‘their eyes gaped with unrestrained joy’ (Bataille 1987, p.29).

But *The Story of the Eye* does not begin with such excesses. It is a story of descent. In the first line of the novella we are told by the narrator, ‘as far back as I recall I was frightened of anything sexual’ (p.3). This is the necessary condition for a limit experience: there must be a regime of the normal, the rules of which will be transgressed in an unusual manner. This transgression combines attraction and repulsion, desire which includes fear. Later on we are told by the narrator, ‘We did not lack modesty – on the contrary – but something urgently drove us to defy modesty together as immodestly as possible’ (p.6). A mysterious, unnamed desire – which Bataille would undoubtedly call erotic – fuels the narrator’s break with the ordinary. This desire is not theological but atheological, simultaneously attractive and repulsive: as the narrator and Simone, his partner in transgression, accidentally decapitate a bicyclist, they find the experience simultaneously nauseating and beautiful.

When the protagonists of *The Story* commit their transgressions, it is never in the ordinary way. If it were, they would not have limit experiences; they would simply have pathological experiences, experiences just as regimented and systematizable as the normal world of social practice and social norms. Bataille’s characters do not play with leather, whips, and lingerie. Simone asks the narrator to swallow a raw egg from the bottom of her bidet. They fantasize about putting their friend ‘in a bath tub filled with fresh eggs, and she would pee while crushing them’ (p.36). At a bullfight Simone lifts up her dress and lowers herself onto a plate of bull testicles. A British nobleman rolls the eye of a priest the characters had just killed over ‘bellies and breasts’ while Simone has sex with the narrator. The narrator walks around naked (‘I could not even understand why I had the idea of removing my pants’ (p.26) – recall Bataille’s umbrella limit experience) through a psychiatric hospital looking for a friend; he thinks he is being followed so he runs off (‘towards a thorn bush’ (p.26)) in the nude. ‘Nothing was more bizarre

for me in those utterly thrilling moments than my nudity against the wind on the path of that unknown garden, it was as if I had left the earth' (p.26).

Bataille has no qualms about being heavy-handed in the prose of his novel so as to convey the linkage of erotics, violence, and religion. For example, he interlaces his description of the culmination of a bullfight with the description of Simone's sexual play with bull testicles, one phrase on one subject, the next phrase on the other. 'Simone bit into one of the raw balls, to my dismay; then Granero advanced towards the bull, waving his scarlet cloth... [Simone] uncovered her long white thighs up to her moist vulva, into which she slowly and surely fitted the second pale globule – Granero was thrown back by the bull and wedged against the balustrade... one horn plunged into the right eye and through the head' (p.64), and so on.

The novel culminates in Spain, in the 'Church of Don Juan,' supposed to have been founded by the notorious paramour when he repented from his philandering. There Simone confesses while masturbating in a confessional – and discovers that the priest is masturbating as well. The narrator and Simone proceed to kill the priest while sexually abusing him (the priest experiences a 'violent thrill,' Simone experiences a 'tempest of joy'). In the process, Bataille – again rather heavy-handedly – has the English nobleman, accompanying the narrator and Simone, explain that the Eucharistic wafers are 'Christ's sperm in the form of small white biscuits' (p.76) and the wine is urine. Simone, blatantly bringing together sex, death, and sacrifice, strikes the priest with the sacred chalice and then, post mortem, puts his penis back in her mouth.

The Story of the Eye was published in 1928; in 1998 Michel Houellebecq vaulted into celebrity, also by means of literary eroticism, with his novel *The Elementary Particles*. Yet Houellebecq, in that and subsequent books, performs what might be considered a parody of Bataille. All of the same elements are in place – extremes of art, religion, death, and above all sex – but for Houellebecq, in the context of contemporary Europe, these practices are all utterly normal, utterly banal. They have lost the transgressive force that led to Bataille's sanctification; they have become market goods in the global economy. They are no longer either limit experiences or practices outside of the realm of knowledge – and nothing has or can take their place. The infrastructure of transcendence is absent and all that remains is law. For Houellebecq's characters, there are things that one is supposed to do, and that is what one does. But this world which is content with itself is not a world devoid of affect. Houellebecq, like Rose, shows how the virtue of love can be understood

in a world of law, how it can be understood without appeal to transcendence. However, this virtue of love is never unequivocal: it is impure, blending the immanent and transcendent – and it often involves tragic failures. Indeed, it is only in Houellebecq's most recent novel, *The Possibility of an Island*, that this understanding of love is on display without being always inevitably doomed (Lloyd Forthcoming).

The protagonist of Houellebecq's *Platform* (2003), Michel, works as a government bureaucrat funding art projects – projects which would seem to push the limits of art. His job is mundane, repetitive, banal, and his colleagues are equally ordinary. He realizes that an artist is little different than an entrepreneur: 'they carefully reconnoitered emerging markets then tried to get in fast' (p.132). Among the projects that his office supports is a documentary about police brutality that 'a *fun* approach rather than the social critique you'd expect,' modeling itself on American cop shows (emphasis in original). In another exhibit, the audience is shown a video documenting scientific experimentation on cadavers. Medical students planted in the audience 'surprise' the viewers by showing them actual body parts. 'A medical student rushed up to her holding a severed dick in his hand, the testicles still fringed with hair.' An artist comes to Michel's office seeking funding for a new project and shows him casts she has made. 'They're casts of my clitoris . . . While it was erect, I took photos using an endoscope, and put it all on a computer. Using 3-D software I reproduced the volume, modeling everything with "ray tracing", then I sent the coordinates to the factory' (p.216). Instead of having any critical potential, instead of catalytic limit experiences, these extremes of 'art' are both funded by the state and fully subject to market forces.

Michel looks upon the world as a collection of things and people doing what they do and no more – just people following the law. This is equally true of his view of himself: he worries – although worry is perhaps the wrong word; rather he just notices, though with a sting – when he does the wrong thing. He is acutely conscious of social norms. 'I should have offered to take her coat. That's what you usually do, offer to take someone's coat' (p.5). When his father's maid tells him she had to become a maid to support herself through nursing school, Michel narrates, 'I racked my brains to think of an appropriate response: was I supposed to ask how expensive rents were in Cherbourg? I finally opted for an "I see," into which I tried to introduce a certain worldly wisdom' (p.7). Later in the narrative Michel considers having children with Valerie, despite considering them 'ugly little monsters,' because 'I was aware that it was something most couples *do*' (p.230).

This banality which characterizes the world – the world as seen through Michel's eyes – is put into words during his encounter with a rural police inspector. Michel apologizes for being 'a disappointing witness.' "All witnesses are disappointing," he said. I pondered this aphorism for awhile. Before us stretched the endless monotony of fields' (p.11). The police inspector, Michel presumably thinks to himself, must have met people from many different walks of life; he must have a general idea of what most people do. A sort of humanized statistician, the inspector's job is to quickly figure people out, to distinguish a criminal with something to hide from the rest of us. The inspector makes these distinctions based in part on small turns of phrase here and there, but largely on the stereotypes into which the criminal can be placed – the norms governing the normal and the norms governing the pathological. For the police inspector, people either do what they are supposed to do or they are pathological and hence criminal. There is no space for doing the unusual, for limit experience. Those who the officer talks to who are not perpetrators are witnesses. They must be, by definition, disappointing, for they do no more than what they are to do, following social norms.

Valerie, who is to become Michel's girlfriend and business partner, quickly offers an astute diagnosis of his character. 'At least you try to fit in,' she tells him. 'It's obvious you don't find it easy... but at least you make an effort' (p.90). What distinguishes Michel from Robert, the other anti-conventional member of the Thai tour group he participates in (where he meets Valerie), is that Robert, a retired mathematician, does not even try to fit in, his abnormality is just as predictable as the normality of the others: it is pathological. Michel, while uneasy trying to 'fit in,' does try nonetheless: his acute awareness of law excludes him from both the category of the pathological and from being the sort of connoisseur of limit experiences commended by Bataille.

The tour, the setting of a significant portion of *Platform*, provides a microcosm of social interaction. Michel approaches his role as tourist like a sociologist (not an anthropologist: the project of anthropology is impossible on his view, there is no possibility of empathizing with the natives – at least according to his explicit narration). As Michel summarizes the situation, members of the tour group 'were caught up in a social system like insects in a block of amber. There wasn't the slightest possibility of our turning back' (p.119). Robert, the anti-conventional mathematician, wants to turn back, to rebel, but he will inevitably fail.

When Michel looks around, he sees the limits of the law, the limits of what one can do given the circumstances in which one finds oneself.

It is like seeing the textured bottom of a pond drained of water: his acute awareness of social norms cuts through the opaqueness of the 'insider's perspective' of a community member (reminiscent, perhaps, of the Larry David character in *Curb Your Enthusiasm*). Michel sees the world in this way, not just in extraordinary circumstances but in all circumstances. One of his coworkers attempts to comfort him after the death of his father. She 'talked about the grieving process, the mysteries of the father-son relationship. She used socially acceptable terms taken from a limited vocabulary' (p.14). Michel's description of the coworker's 'limited vocabulary,' and the 'mysteries' which it was used to elucidate, highlights his awareness of social norms – and the limits of those norms. Yet he does not offer an alternative; he does not take himself to possess some superior 'vocabulary.' Further, Michel has a particular interest in the rating systems in travel brochures, quantifying and comparing the intensity of the pleasures that the advertised vacation was likely to produce. He explains, 'I wasn't happy, but I valued happiness and continued to aspire to it' (p.11). Here 'happiness' is invoked purely rhetorically, it is the thing which one is supposed to value and to say one values. It is the answer to the question, "To what do you aspire?"

The natural extension of Michel's outlook is that he sees people acting in the way that people of their sort act. Crudely, he takes stereotypes to be true. For example, in his voice as narrator he relates how the Hong Kong Chinese are

recognizable by their filthy manners, which are difficult for westerners to stomach... Unlike Thais, who behave in all circumstances with a finicky, even persnickety propriety, the Chinese eat rapaciously, laughing loudly, their mouths open, spraying bits of food everywhere, spitting on the ground, and blowing their noses between their fingers – behaving quite literally like pigs.

(p.75)

The Japanese who frequented Thai prostitutes 'were weird, they always wanted to hit you or tie you up, or else they just sat there masturbating, staring at your shoes' (p.34). A group of African Americans is 'gigantic,' like a 'basketball team.'

Platform's narrative is framed around tourism: the commodification of pleasure neatly packaged into week-long holidays, described by glossy brochures, rated with stars and half-stars in guidebooks. Sex tourism is the natural extension of tourism, reasons Michel: why not package erotic pleasures just as holiday pleasures are packaged? Just as 'The aim

of tourist companies is to make people happy, for a specified price, for a specified period,' so too does Michel's Thai prostitute 'for an hour or two, try to make me happy' (pp.83, 152).

Early in *Platform* Michel books a Thai tour with a travel agency founded by a 'cool' moped-riding entrepreneur who channeled the energy that he had put into 'liberation' in the 1960s into building his travel agency (Houellebecq self-consciously uses these clichéd phrases, sometimes in English). The pleasures that had been loosed in the 1960s 'revolutions' were packaged and turned into profits in 2000 – and why not extend this to sex, Michel reasons. Between Bataille and Houellebecq are the 1960s: transgression so pervasive (or so pervasively imagined) that it turns numb: sex, drugs, and aesthetic and political rebellion following a seemingly natural course from fantasy to commodity. There is no escape through transgression; the energy of limit experiences is redirected into the acknowledged laws – of the market.

Michel is frequently occupied with the erotic, but in a very mundane way. Before meeting Valerie, he frequents peep shows and the occasional prostitute without particular significance or sexual pleasure. Yet for Houellebecq, as for Bataille, eroticism has a unique role: it is an experience that takes Michel away from his otherwise mundane world of bureaucrats, banalities, and muted emotions. In performing his parody of Bataille, Houellebecq does not produce a flattened work in which all ordinary and limit experiences blend indistinguishably. Rather, he translates the varied peaks and plateaus of Bataille's analog text into digital. There are still moments of ecstasy, but they are one-off and all of the same character.

Many of these moments occur in the context of Michel's relationship with Valerie. It is only then – specifically, through sex with her – that he experiences what is described as pleasure. This pleasure, which is extreme for Michel, resonates strikingly with Bataille's descriptions of the ecstasy achieved by limit experience, yet for Houellebecq these are not experiences of a limit, of an asymptote. They are either on or off, there is no worldly path leading from the ordinary to the extraordinary, to the transcendent. Here we have the beginnings of an alternative to the pervasive neo-Kantianism that we have encountered.

Consider Houellebecq's description of the first sexual encounter between Michel and Valerie: 'I ejaculated lengthily several times; right at the end, I realized I was screaming. I could have died for such a moment' (p.98). In the description of another sexual experience, 'When I brought Valerie to orgasm, when I felt her body quiver under mine, I sometimes had the impression – fleeting but irresistible – of attaining a new level

of consciousness, where every evil had been abolished . . . I felt like a god on whom depended tranquility and storms' (p.117). And again, Michel describes how, *post coitum*, 'I was flooded with unbelievable serenity, like a wave coursing through each of my veins' (p.100). Michel's scream takes the role that laughter had for Bataille. Both indicate something extraordinary, both seem to indicate an exploration of the nether regions of experience. But the laugh is an everyday occurrence, strange but not abnormal: it happens to everyone. Michel's scream pierces the normal, pierces the law. It is a scream that most people never hear, let alone produce, a scream indicating the uniqueness of the love of Michel and Valerie in contrast to the decadence and cold-heartedness of the world around them. One cannot choose to scream like Michel, the scream simply happens.

The switch from analog to digital, from Bataille to Houellebecq, represents two differing understandings of transcendence. In the former case, there is an ascent (or, rather, descent) to the realm of ecstasy, serenity, and de-individuation. Transcendence is the extreme, the limit, of worldly experience. For Houellebecq (the author, not Michel, the narrator), there is no worldly path to transcendence. Transcendence is a fantasy. Like any genuine fantasy, it must always be kept at a distance: the suicidal analysand always plots her death two weeks away; next week it will still be two weeks away. But a fantasy still does worldly work. A fantasy of transcendence involves a strategic lever – the founding moment, the will of God, the American dream. What flattens transcendence into strategic rhetoric for Houellebecq – rather than an actually achievable or knowable possibility, as it is for Bataille – is the unbridgeable distance between the fantasy of transcendence and the ordinary. In Lacanian parlance, Houellebecq has traversed the fantasy. Moreover, as we will see below, Houellebecq's language of transcendence is coupled with an underlying understanding of the immanence of love – in a manner evocative of the work of Gillian Rose.

In *Platform* we are introduced to a secondary character whose presence is nearly a cameo of Georges Bataille. This character, an artist, created the performance piece with cadavers and medical students. After the opening night – which Valerie fled once she was approached by a medical student holding the severed penis of a cadaver – she and Michel happen to meet the artist at a restaurant and accompany him to an S&M club. The artist complains that the activity is relatively mild that night – there are only whips and chains and weights attached to nipples. When the artist describes a more lively evening at the club and Valerie flinches in disgust, the artist responds, 'It's completely disgusting. When I see a man

agree to have his nails torn out with a pair of pliers, then have someone shit on him, and eat his torturer's shit, I find that disgusting. But it's precisely what is disgusting in the human animal that interests me... we hit on the essential, the most intimate nature of sexuality' (pp.134-5) – words that could certainly have been written by Bataille.

For this artist, as for Bataille, it is the possibility of a descent into filth that is essential to the human condition. But this is not Houellebecq's perspective. Houellebecq has his narrator, Michel, respond silently to the artist's thesis, thinking to himself, 'I didn't agree, though I was aware, as always, that the discussion was pointless' (p.135). The experience of eroticism for Houellebecq, unlike for Bataille, reveals no secrets of the soul; it is just as pointless as everything else. Yet Houellebecq's entire narrative is framed around eroticism: on the one hand, there is the sex tourism which Michel enjoys and promotes; on the other hand, there is his sexually prolific relationship with Valerie. But sex tourism is the opposite of eroticism understood as a limit experience. Like the government-funded extreme art that Michel administers, sex tourism is eroticism homogenized and flattened so as to be indistinguishable from all other worldly activities. Sex tourism is eroticism incorporated into the law.

As for Michel's relationship with Valerie, it certainly does involve a lot of sex, but it is sex of a different sort than that exhibited at the S&M club. Valerie is saddened by those who frequent the club: 'they need to be reeducated, to be loved, to be taught what pleasure is,' she muses (p.136). Valerie and Michel are ultimately nice, ordinary folks. When they consider whether to purchase a gun, Valerie says, 'I wouldn't have the courage to pull the trigger' (p.192). What Valerie and Michel have together is intimacy, it is love in the immanent sense suggested by my reading of Rose. Their love does not ascend, through worldly pleasures, toward (a)theological transcendence. Rather, their love is a hybrid of immanent and transcendent, but transcendent in the digital rather than analog sense, described above. The immanent aspect of their love dominates the narration: love of a worldly variety, love born of the closeness and comfort of two people, cemented by the fantasy of its unlimited power. It is through practicing love of this sort, through practicing the virtue of love, that Michel and Valerie escape – or at least begin to escape – the world pervaded by capitalism. What the sadists and masochists have is no more than the world of exchangeability. Any dominatrix could be exchanged for another, the pseudo-pleasure of the game is brought about by the strict rules of how to play ('Level 2' means that the dominatrix is allowed to draw blood, as the characters in the

novel are told at the club they visit). The world of *Platform*, the world in the year 2000, is a world full of sex but empty of intimacy:

Seducing a woman you don't know, fucking her, has become a source of irritations and problems. When you think of all the tedious conversations you have to put up with to get a chick into bed, only to find out more often than not that she's a second-rate lover who bores you to fuck with her problems, goes on to you about her exes... it's easy to see why men might prefer to save themselves the trouble by paying a small fee.

(p.104)

The virtue of love, as practiced by Michel and Valerie, is what is missing from such a world.

The centerpiece of *Platform* is sex tourism, specifically the sex tourism business which Michel and Valerie establish together. But behind the eroticism which this clearly involves is the final taboo which Michel and Valerie plan to commercially exploit – and so negate. Bataille's theory, with its appeal to transcendence, is grounded in taboos: taboos are an essential component of the realm of fact, for they motivate the search for transcendence that will negate the ordinary world. This final taboo explored in *Platform*, with its accompanying desire, attraction, and repulsion, is miscegenation. It is not the tourists who have sex with each other; the tourists go on tours so as to have sex with foreigners, with people of different races.

Although the 'Aphrodite Tours' which Michel and Valerie establish include trips to many corners of the earth, it is Asia in particular which is the cornerstone of this venture. It might seem a stretch to suggest that European sex tourism to Asia involves miscegenation. However, Houellebecq convincingly shows how Asians have become postmodern Negroes, so to speak. Where the attraction and repulsion whites associated with black sex had to do with the anti-modernity of the black, their irrationality, their emotion, and their lack of restraint, the attraction and repulsion associated with Asian sex has to do with its anti-postmodernity, its traditionalism, its submissiveness, its well-mannered softness.

As characters in *Platform* explicitly and repeatedly assert, Western woman has become hard, cold, professional, self-confident. Western man still desires what he has desired for the ages: a submissive woman to clean up the house, cook him dinner, and do as she is told. As Robert, the

rebellious mathematician, metonymically states, 'You won't find a white woman with a soft, submissive, supple, muscular pussy anymore. That's all gone now' (p.82). Such a statement masks the underlying mechanism of miscegenation that is at work. Robert is expressing a desire for something foreign, for something forbidden. For Western Man to say that he desires a submissive woman is politically incorrect, it is taboo – and so it is what is desired most. It is the desire that remains after all other taboos around sexuality (and religion, and art, and violence . . .) have long been forgotten – and so it is this taboo which Houellebecq's characters take it upon themselves to commercialize and thus negate. Indeed, in the voice of the characters in *Platform*, miscegenation sounds very much like any item on Bataille's lists of transgressions, complete with its ultimate end of de-individuation:

All humanity instinctively tends towards miscegenation, a generalized, undifferentiated state, and it does so first and foremost through the elementary means of sexuality. The only person, however, to have pushed the process to its logical conclusion is Michael Jackson, who is neither black nor white anymore, neither young nor old, and, in a sense, neither man nor woman.

(p.168)

In our parable, the shifting cultural moment from Bataille to Houellebecq represents the shift to a world after escape, a world after artistic/political/sexual revolution is a live possibility. Capitalism is everywhere and there is no outside. Yet the apocalyptic solipsism implicitly predicted by Bataille has not come to pass. Where Bataille thought limit experiences were necessary in order to expose the limits of the law, for Houellebecq the limits of the law are perfectly obvious simply by looking. 'As a child,' Michel tells us, 'I could spend hours counting sprigs of clover in a meadow, though in all the years of searching I never found a four-leaf clover. This had never caused me any disappointment or bitterness' (p.229).

The narrator of *The Story of the Eye*, like Michel in *Platform*, begins alone – indeed, the first line of the novella begins 'I grew up very much alone . . .' By the third line of the novella, the narrator has met Simone, and 'we quickly grew intimate.' Together, through their sexual explorations, the narrator and Simone constitute a new space, a space of intimacy, friendship, and, in the immanent sense, love. The 'we' they constitute together opens new possibilities that did not exist when they each existed separately as individuals. If we read Bataille through

Houellebecq, if we bracket the problematic gestures toward transcendence, we will see how even in Bataille's novella it is within the regime of the law, in intimacy and attachment, that the virtue of love can be exhibited.

For the space of intimacy and friendship that I argue is at the core of *The Story of the Eye*, the secondary character Marcelle serves as the necessary exclusion. She is a girl the same age as the narrator and Simone, yet when many of their agemates join in a giant orgy, Marcelle refuses. She was 'the purest and most poignant of our friends' (p.7). At the sexual advances of the narrator and Simone, she sobs, weeps, abandons herself, and eventually is confined to a mental asylum. Recall how the narrator himself began alone and frightened of the sexual. Marcelle has a special role: she is just like the narrator but she made a different choice – or, perhaps, was too late to have a choice. This resemblance is so striking that at one point Simone tells the narrator, 'You smell like Marcelle' (p.20).

Marcelle fuels the desire of the narrator and Simone: thinking of her excites them, they journey to the asylum to find her, but she is never and can never become one of them. 'All we worried about was Marcelle: her madness, the loneliness of her body, the possibilities of getting to her, helping her to escape, perhaps' (p.20). Simone refuses to have sex with the narrator until Marcelle can be with them: Marcelle is an indispensable element of their sexual relationship. Their interest in Marcelle becomes an obsession: 'Other girls and boys no longer interested us,' it was only Marcelle to whom their thoughts turned. Yet in a strikingly Foucaultian way, Marcelle is *insane* – it is her insanity which assures them of the normality of their own behavior.

Bataille's narrator is conscious of these reversals. As he and Simone travel to the asylum, the narrator tells us, 'I felt at bottom as if I were going home' (p.42). Later, he and Simone 'had abandoned the real world' and 'Our personal hallucination now developed as boundlessly as perhaps the total nightmare of human society' (p.32). With the death of Marcelle, the narrator and Simone become finally detached from the everyday world. 'My only pleasure was in the smutty things Simone was doing' (p.50), the narrator tells us. Simone, too, changed: 'she kept staring into space all the time ... almost everything bored her, or if she was still attached to this world, then purely by way of orgasms' (p.54) (orgasms which, against Bataille, we can read as those piercing moments of transcendence that complement the immanent understanding of the characters' love).

Yet if we read Bataille through Houellebecq and bracket the former's problematic language of transcendence, the other-worldly realm

to which the narrator and Simone have been led, we notice something more happens to Simone in the world beyond orgasms. She 'always came to nestle in my arms . . . she remained there for a long time without moving or speaking, huddled like a little girl, but always somber' (pp.55–6). Simone returns to the intimacy and attachment which she has with the narrator. They are close, tender with each other, independent of their occupation. Their occupation just happens to be sexual excess, but this is simply a game. It could just as easily be water polo or dominos – or, as Benjamin tells Mr. Robinson in *The Graduate*, shaking hands.

Although most of the language of Bataille's *Story* involves descriptions of the erotic adventures of the narrator and Simone, it is the occasional phrases that speak of silences that are the most telling about the relationship between the narrator and Simone. 'Almost wordlessly we headed towards the beach' (p.19), 'We understood one another' (p.12), and, after one erotic episode, 'we stayed in that extraordinary position, tranquil and motionless' (p.7). Even very early in their relationship, the narrator tells us, 'A love life started between the girl and myself, and it was so intimate and so driven that we could hardly let a week go by without meeting. And yet we virtually never talked about it' (p.5). Again, in these few words the effusive language of eroticism and violence which covers the surface of the text is bracketed by the narrator himself, and we are shown what lies behind it: an intense and passionate bond that develops between the two protagonists.

As Simone and the narrator are bicycling back from visiting Marcelle, they were 'peculiarly satisfied with our mutual presences, akin to one another in the common isolation of lewdness, weariness, and absurdity' (p.31). When Simone is sick, the narrator nurses her back to health. The narrator describes this time as 'One of the most peaceful years of my life' (p.35). 'Weeks pass,' we are told, but we are told nothing of what happens. At one point Simone 'demonstrated her joy by speaking to me at length about various intimate things' (p.38). As to what these 'things' might be, we are left guessing, we are left yet again with silence concerning their intimacy.

On the surface, *Platform* purports to be a love story in the traditional sense: a Western, romantic love triumphs in a world dominated by global capitalism. But such a description does not do justice to the story. There is a peculiarly hollow and simulacral quality to the relationship between the two lover-protagonists, Michel and Valerie. We are told that it is love, that it makes them happy, but it seems like it differs only in name from the banality of Michel's other experiences in the world.

From the moment that they first meet, Michel finds nothing particularly special about Valerie: she was ‘pretty nondescript really.’ ‘She had long black hair, a face, I don’t know, a face that could be described as “unremarkable”: not pretty, not ugly, strictly speaking’ (p.31). At one point, Michel asks Valerie directly:

What do you see in me? I’m not particularly handsome, I’m not funny, I find it difficult to understand why anyone would find me attractive . . . Here I am, some washed-up guy, not very sociable, more or less resigned to his boring life. And you come to me, you’re friendly, you’re affectionate, and you give me so much pleasure. I don’t understand.

(p.99)

More than just expressing self-doubt, Michel is stating that there is no reason for their love. If we bracket the erotics – and its associations with transcendence – we are left with Valerie’s ‘friendly’ and ‘affectionate’ nature. Again, it is an intimacy, a closeness, a comfort and attachment which remains. And this is what constitutes the relationship, their affection, their friendship, the space of intimacy which they create together.

Michel’s first conversation with Valerie is remarkably clichéd: he is the awkward schoolboy not sure what to say, saying the wrong thing – commenting about the heat on a chilly bus. Certainly this is a sign of love, but love as it is a thing to do, a particular social practice which one tries to perform competently, just as Michel tries to think of the right thing to say to his father’s maid. Michel knows that there is an appropriate thing to do in the circumstances and he just has to think through what it is. The paragraph describing this first conversation concludes: ‘Romance, romance.’

Like the salient silences of *The Story of the Eye*, we are occasionally shown the intimacy between Michel and Valerie through their silences. As they sit on a beach during their first visit to Thailand, ‘The afternoon dragged on, the sun moved over the palms. We said nothing of any significance’ (p.90). This is a paradoxical silence, a silence in which time passes, things happen, nothing is of any significance, yet these times that pass are what constitutes the relationship, the substance of the intimacy between them. What matters are not the things that happen, but the shared time that passes. As he thinks back on how he spent months with Valerie, Michel wonders at how it was ‘a time of which,

paradoxically, I have so few memories,' although he is certain that it was a 'happy time' (p.116).

Even as the honeymoon period of their early relationship fades – Valerie works long hours, worries about money, 'She would come back from work so exhausted that she hadn't the energy to make love, barely enough energy to suck me off' – Michel feels closer to her, 'I think I loved her more and more' (p.127). When finally Valerie agrees to semi-retire to Thailand, and Michel is asked what he will occupy himself with there, 'The response closest to the truth was undoubtedly something along the lines of "Nothing"' (p.235).

Like Bataille's narrator and Simone, Michel and Valerie were very ordinary, but empty, before meeting each other. Michel purports to lack attachment to everything before he meets Valerie. When he is preparing to leave his apartment to move into a new apartment with her, he ponders, 'I realized that I didn't feel the least attachment to anything in my apartment... I had managed, it seemed, to live for forty years without forming the most tenuous of attachments to a single object' (p.130). This attitude even extends to Michel's father: Michel is not especially saddened by his murder, he did not feel as if anything of particular value, to which he might have been particularly attached, was lost.

That other location of transcendence for Bataille, religion, is also translated from analog to digital by Houellebecq. Religion exists in only one form and in only one intensity in *Platform*: extremist Islam committed to violence. The novel is framed and punctuated by this violence: Michel's father and his girlfriend are murdered by fanatical Muslims. These murders are full of gore: his father's brain spilled out onto the floor, his face 'scraped along the ground, almost sufficient to force the eye from its socket'; the scene of carnage at the resort in Thailand where turban-clad terrorists attacked, complete with body parts (including eyes!) strewn about.

Michel's encounters with religion are the only moments, besides his sexual encounters, when he loses his cynical cool. When he meets the man who killed his father (in revenge for his father's sexual relationship with a Muslim woman), Michel thinks to himself that if he had a gun he would shoot the 'little shit' and that doing so would be 'morally neutral,' in fact, 'beneficial.' After Muslim terrorists killed Valerie, Michel sustains himself for awhile by his hatred for Muslims. 'Every time I heard that a Palestinian terrorist, or a Palestinian child or a pregnant Palestinian woman had been gunned down in the Gaza Strip, I felt a quiver of enthusiasm at the thought of one less Muslim in the world' (p.250). These bursts of violent thoughts contrast sharply with Michel's normal

disposition. 'Faced with danger, even death, I don't feel anything in particular, no rush of adrenaline... I am not remotely brave – I run away from danger if at all possible – but if push comes to shove, I greet it with the placidity of a cow' (pp.66–7).

But the great emotion aroused by Michel's encounters with Islam, like his love for Valerie, has a hollow and simulacral flavor. When Michel thinks to himself, 'Muslims on the whole aren't worth much' (p.16), it sounds like typical prejudice – until we remind ourselves that Michel does not think anyone is worth much. Muslims may be 'stupid,' but does not Michel think everyone – doing what they are supposed to do – is stupid? He describes his first comments to Valerie as 'stupid', and he observes that at the River Kwai 'a bunch of morons died for the sake of democracy' (p.43).

In *Platform*, the punctuations of the ordinary by violence, as by love, have an ultimately random, uncontrollable nature. This is in strong contrast to Bataille's ideal of cultivating practices that might lead to transcendence. Although Bataille purports to be making theoretical space for the human experience to be open to surprises, he goes on to expend much energy trying to manage these surprises. For Houellebecq, in contrast, the punctuations outside of the ordinary are genuinely surprising because they are truly unpredictable. The ordinary suddenly warps into the extraordinary which, in turn, has the potential to transform the ordinary. Michel's first conversation with Valerie sounds like many other conversations he must have had, yet in fact it is radically different and it radically alters his life. Just as suddenly, near the end of the novel, Valerie, going about her normal routine, is taken away from Michel by the machine guns of Muslim militants.

Houellebecq achieves what Bataille attempts: he displays the contingency of the ordinary, of the regime of the normal. For Houellebecq, unlike Bataille, this is a brute fact of the human condition, not something that can be harnessed. Bataille worries about the solipsism of systematized knowledge secluded from experience, he thinks that it is imperative to disrupt this closed system. But Valerie's world of spreadsheets and business suits and air-conditioned buses is disrupted on its own by Muslim violence – and by meeting Michel. She need not do anything to disrupt it, the potential for rupture is always already within the ordinary itself.

At the end of the day, Michel is alone again. The novel began when he was alone in the world, but the loneliness which he now experiences is of a different sort. It is the loneliness of one who has experienced genuine intimacy, who has become attached to something for the first time

in his life. And it has been taken away. He now knows that the possibility exists, that there is such a thing as deep communion between two individuals, two lives. But it is now impossible. Comfort and impossibility together are infinitely more painful than impossibility alone. When Michel tries to return to the Thai massage parlors which he so enjoyed before meeting Valerie, 'it was as though I was anesthetized' (p.256). All that is left for Michel is to live alone and to slowly die. In *Platform*, Houellebecq might exemplify the virtue of love, but he overlooks what Rose calls its 'twin' – the virtue of faith. Michel lacks the commitment to engage with the world despite the inevitable miseries that this engagement will cause. As Rose vividly describes in her memoir, *Love's Work*, love without faith is unsustainable, for love is an intensification of the world, and the world is tragic. Comfort is always infused with impossibility, and it is only by cultivating faith that the difficult work of living, especially living philosophically, is possible. Houellebecq himself apparently realized this: his next novel after *Platform*, *The Possibility of an Island*, is a meditation on faith.

Does Houellebecq's fiction simply represent a new enchantment? Do his novels tell the tale of today's enchanted ordinary? *The Story of the Eye* creates a new world, inhabited by its narrator and his friends; it is a world of love cut off from the world of law. In contrast, Houellebecq's novels are tales of the difficulty of love in law. A new world does not supersede the old. Love and faith are always equivocal. No one desires to be Bataille's narrator, yet everyone does; everyone desires to be Houellebecq's protagonists, yet no one does. We live enchanted, perpetually re-enchanted; we desire and fear critical reflection on the ordinary. Michel lived in the camouflage of the ordinary, and perhaps that is the necessary stance of philosophy – for disquietude is rare.

Notes

Series editor's preface

1. Hegel, *Elements of the Philosophy of Right*, trans. H.B. Nisbet (Cambridge: Cambridge University Press, 1991), p.22.
2. In this respect the reaction of Derrida to the work of Fukuyama is instructive as the former is in the conflict between them in many respects more Hegelian than the latter though this alignment is made intricately complicated here by the former's invocation of Marx.

1 Gillian Rose, philosopher of law

1. However, Rose does identify philosophers from the tradition with whom she would align herself including Marx, Freud, Rousseau, Pascal, and Plato.
2. Judith Butler's (1987) reading of the *Phenomenology*, while lacking Rose's emphasis on risk, does emphasize process and conflict over reconciliation, as does Malabou (2004).
3. Nietzsche himself, according to Rose, is more equivocal, interested in demonstrating the ongoing tension between law and morality in its various historical modalities. But Heidegger 'ruins' Nietzsche 'by turning the history of the relation between law and morality into the singular Event, *das Ereignis*' (Rose 1984, p.90).
4. Hart addresses this issue rather unpersuasively by introducing a dialectic between 'internal' and 'external' perspectives on rule-following, both of which, he claims, are necessary to correctly understand rules (1994, pp.89–90). Recently Nicos Stavropoulos (1996), drawing on the analytic metaphysics of Kripke, Putnam, and Burge, has supplemented Hart's account of the objectivity of rules. See also Leiter (2001).
5. Derrida (1976) might be said to hold an 'immodest' view of writing in a similar way, permitting it to expand from its conventional domain to cover the world.
6. Common law jurisprudence, to be precise – assuming a legal system where there are not statutes.
7. This is the case, too, with concepts such as 'freedom,' 'justice,' and 'the good.' They are what we have in the fallen world so we must work with them, and Rose is willing to do so.
8. I discuss these issues and their implications in more detail in my recent writing (Lloyd 2008a, 2008b, Forthcoming).
9. But still: how is this *ethical*? Ethics, for Rose, is identified with doing the difficult work of the middle. To be unethical would be to withdraw, to have the false consciousness of certainty of one's position.

10. Time itself has a complicated status for Rose which will not be discussed here. 'Time is devastation. You can't believe in time. Time is going to destroy you. So you have to believe in eternity' (Rose 2008).
11. See also Žižek (1993) Brandom (1979, 1994) and McDowell (1996), too, claim to offer a philosophy which completes (again) the move from Kant to Hegel.

2 On dualism

1. This imagery is suggestive of a particular reading of Heidegger in which the ready-to-hand is beneath the present-at-hand – and, in late Heidegger, Being is beneath it all (Brandom 2002).
2. See, for instance, Butler (2004, p.207). Compare Butler's early work on Hegel (Butler 1987).
3. The best philosophical study of Buber, comparing and contrasting Buber, Heidegger, and others, is Theunissen (1986); also important is Mendes-Flohr (1989).
4. Although I am using the Kaufman translation (Buber 1970), I am taking *Du* as 'Thou' rather than Kaufman's 'You.'
5. Both Buber and, later, Levinas make this point in relation to the Lover's perception of his or her Beloved, although Levinas later retracts this suggestions because he takes love to be too rooted in the world.
6. In the next chapter, we will see how Milbank and Pickstock similarly posit an anarchic but harmonious realm – although they associate it with Christianity rather than with the 'primitive.'
7. See Wittgenstein (1953). When I suggested this image to Lacoste and pointed out that it would help reconcile his more recent Wittgenstein-inflected work with his earlier Heidegger-inflected work, Lacoste thought the idea was interesting and provocative. However, he was resistant to whole-heartedly embrace it because (presumably as a theologian rather than as a philosopher) he *does* want to privilege one mode of experience, the liturgical mode of experience. He indicated that he is much more comfortable talking about the 'subversive' power of the liturgical mode of experience rather than the more neutral language of a Gestalt switch. However, I think Lacoste's philosophical position is illuminated by using the Gestalt switch imagery, with the language of 'subversion' being considered as a theological addendum – and that is what I will do here.
8. This duck-rabbit image is more appropriate to Lacoste than to Buber because Lacoste is very explicit about 'being' remaining the same while 'experience' switches, while Buber's language is sufficiently vague to allow for the inflection affected by the Thou-relation to skew 'being' itself.
9. This point is made forcefully by John McDowell in 'Two Sorts of Naturalism' in (1998b). I discuss it further in Chapter 5, below.

3 On traditionalism

1. The phrase, although certainly not the sentiment, comes from Rorty (1999).
2. On a broader view, associated with the interpretivism of Ronald Dworkin, facts about a community and its history also determine the correct ruling

of a court, not directly, but through the discernment of values embodied in that community and its history.

3. Perhaps it puts less strain on the term 'tradition' to say that these are two complementary parts of the same tradition.
4. Stout is making use of terminology, and theory, developed by Robert Brandom (1994).

4 On quietism

1. My account of the legal realist is a composite of a number of views, but primarily 'American Legal Realists' of the early twentieth century. See especially Holmes (1897) and Llewellyn (1930). Critical legal studies scholars, working in the latter half of the twentieth century, make related points (Unger 1986). Ronald Dworkin criticizes the 'model of rules,' and his recent writings resonate with aspects of the realist position, although he is explicitly critical of it (1977, 1996). For a recent, rigorous philosophical discussion of these issues, see Leiter (2007).
2. See Hart's discussion of 'rule-scepticism' in *The Concept of Law*, Chapter 7, where he writes, for example: 'Laws function in [individuals'] lives not merely as habits or the basis for predicting the decisions of courts or the actions of other officials, but as accepted legal standards of behaviour' (1994, p.137). For an opinionated discussion of the issues raised by Hart, see Leiter (2007).
3. The French is 'autant de reduction, autant de donation.' It has also been translated as 'so much reduction, so much givenness.' Marion occasionally discusses different degrees of reduction and givenness, for example, 'Givenness therefore admits degrees, not only for individuals but for essences as well, not only for vague, remote, or poor visions, but for coming forward in person' (writing of Husserl, which he seems to endorse) (Marion 2002a, p.29; 1998, p.203), but I find such language impenetrably obscure.
4. As a Descartes scholar himself, Marion's relationship to Descartes is, of course, very complicated. For an introduction to his reading of Descartes, see Marion (1999).
5. These two options roughly corresponding, of course, to the early and late thought of Heidegger, with the obvious cautions.
6. Indeed, I would argue that in Marion's work before *Being Given* he fit much more closely into the 'dualist' category. It appears that Michel Henry's critique of *Reduction and Givenness* (Henry 1991) prompted Marion to reconsider his position – and align himself much more closely with Henry's work.
7. In addition to Wittgenstein (1953), see McDowell's other writing on Wittgenstein (1998b); Cavell (1976) (to which McDowell refers), and Kripke (1982). McDowell is much more sympathetic to Cavell's reading of Wittgenstein than to Kripke's.
8. On this point, McDowell's view in *Mind and World* seems to differ from his view in 'Virtue and Reason' (included in McDowell 1998b), written well before the book. In the article, McDowell identifies being sufficiently articulate to self-describe having virtues with possessing concepts of the particular

virtues. The discussion in *Mind and World* Lecture III of demonstratives creating concepts that cannot be articulated in language would seem to sever the close link between language and concepts.

9. McDowell limits his discussion to easy cases, circumstances where there is clearly a right thing to do (McDowell 1998b, p.53n5). See my discussion below.
10. McDowell has much more to say about the parallels between his project and Kant's work, but he does recognize its resonance with Hegel's work as well. He introduces *Mind and World* 'as a prolegomenon to a reading of [Hegel's] *Phenomenology*' (McDowell 1996, p.ix).

5 Metaphysics of law

1. Haugeland and Brandom loosely attribute their proposals to Heidegger and Kant/Hegel, respectively. Brandom's better known work (1994) develops his proposals in a rather different direction. Instead of translating the idiom of that labyrinthine and garrulous text, I will set it aside here.
2. This distinction corresponds very neatly with Badiou's (2005) distinction between the 'presented' and the 'represented.'
3. Animals, at least the more sophisticated ones, move from incompetence to competence as they mature. It seems less clear whether animals can have pathological or excellent stances toward norms.
4. As we will see shortly, this ultimately does not make sense because practices can be disaggregated, and what seems like pathology may in fact be competence at some parts and incompetence at others.
5. Compare Ellickson's (2001) discussion of 'norm entrepreneurs' and other norm innovators.
6. This is Saul Kripke's (1982) description of Wittgenstein's paradox. For an alternative (and more convincing) account of Wittgenstein's position, see John McDowell (1998b).
7. For a good overview of the contemporary literature, see Fara (2001).
8. This position is in tension with McDowell's account of demonstratives in *Mind and World* (1996). He argues, against Evans and others, that demonstratives mark concepts.
9. Kripke (1980) suggests that there are what he calls 'strongly rigid' designators, those which necessarily exist.
10. Although Brandom (1979) uses 'nesting' terminology, he has in mind something quite different.
11. Indeed, Brandom himself seems to have a general sense that this is the case, and I suspect that this contributes to his especial logorrhea on the topic of singular terms in his more recent work (1994).
12. Nicos Stavropoulos (1996) suggests Kripke's theory of rigid designation is a useful way of thinking about law. See also the first chapter of Holmes (1923), where Holmes discusses how the content of a law can change while something ineffable about it stays the same.
13. For the classic treatment of fictions, see Lewis (1978). For an application to problems of metaphysics, see Rosen (1990) and Kalderon (2005).

14. The obvious resonance with theories of narrative is certainly suggestive, but I will leave them unexplored here.
15. This is perhaps another way of putting Kant's point that 'thoughts without concepts are empty and concepts without intuitions are blind.'
16. Which qualities are secondary is, of course, a matter of dispute. Particularly contentious is whether value is a secondary quality. See Lewis (1989) and Johnston (1989).
17. Fictionalism about objects is not an unheard of proposal. For fuller development, see Dorr and Rosen (2002), and van Inwagen's (1990) proposal that the only non-fictional objects are human beings. I also have found Jonathan Schaffer's (2003) argument against the frequently presupposed 'fundamental level' out of which regular-sized material objects are composed to be very convincing and important on this point.

6 Phenomenology of law

1. Some such techniques are discussed by Fink (1997).
2. The penetration terminology vaguely alludes to Foucault's discussion of ancient Greek sexuality, where penetration and interpenetration were part of raising up young men into the law. See the interview with Foucault at the end of Dreyfus and Rabinow (1983).
3. See especially Deleuze (1989) and Lloyd (2007).
4. For a discussion of NGOs as the 'anti-politics machine,' see Ferguson (1990).
5. Alain Badiou's (2001) description of this process is particularly striking.
6. There are clear resonances between my discussion and Brandom's (1994). For the differences between my position and his, see the previous chapter.
7. This distinction is famously made by Erich Auerbach (2003), and it is developed by Levinas (1986) in a way that has influenced my discussion here.

Bibliography

- Auerbach, E. (2003) *Mimesis: The Representation of Reality in Western Literature*, trans. W. R. Trask (Princeton, NJ: Princeton University Press).
- Badiou, A. (1999) *Manifesto for Philosophy*, trans. N. Madarasz (Albany, NY: State University of New York Press).
- Badiou, A. (2001) *Ethics: An Essay on the Understanding of Evil*, trans. P. Hallward (London and New York: Verso).
- Badiou, A. (2005) *Being and Event*, trans. O. Feltham (London and New York: Continuum).
- Bataille, G. (1985) *Visions of Excess: Selected Writings, 1927–1939*, trans. A. Stoekl (Minneapolis: University of Minnesota Press).
- Bataille, G. (1986) *Erotism: Death and Sensuality*, trans. M. Dalwood (San Francisco: City Lights Books).
- Bataille, G. (1987) *Story of the Eye*, trans. J. Neugroschel (San Francisco: City Lights Books).
- Bataille, G. (1988) *Inner Experience*, trans. L. A. Boldt (Albany, NY: State University of New York Press).
- Blackburn, S. (1998) *Ruling Passions: A Theory of Practical Reasoning* (Oxford: Clarendon Press).
- Boghossian, P. (1996) 'Analyticity Reconsidered', *Nous* 30.3, 360–91.
- Brandom, R. (1979) 'Freedom and Constraint by Norms', *American Philosophical Quarterly* 16.3, 187–96.
- Brandom, R. (1994) *Making It Explicit: Reasoning, Representing, and Discursive Commitment* (Cambridge, MA: Harvard University Press).
- Brandom, R. (2002) *Tales of the Mighty Dead: Historical Essays in the Metaphysics of Intentionality* (Cambridge, MA: Harvard University Press).
- Buber, M. (1970) *I and Thou*, trans. W. Kaufmann (New York: Scribner).
- Butler, J. (1987) *Subjects of Desire: Hegelian Reflections in Twentieth-Century France* (New York: Columbia University Press).
- Butler, J. (1989) 'Foucault and the Paradox of Bodily Inscriptions', *Journal of Philosophy* 86.11, 601–7.
- Butler, J. (1990) 'Force of Fantasy: Feminism, Mapplethorpe, and Discursive Excess', *differences: A Journal of Feminist Cultural Studies* 2.2, 105–25.
- Butler, J. (1993) *Bodies That Matter: On the Discursive Limits of 'Sex'* (New York: Routledge).
- Butler, J. (1997a) *Excitable Speech: A Politics of the Performative* (New York: Routledge).
- Butler, J. (1997b) *The Psychic Life of Power: Theories in Subjection* (Stanford, CA: Stanford University Press).
- Butler, J. (1999) *Gender Trouble: Feminism and the Subversion of Identity*, Tenth Anniversary Edition (New York: Routledge).
- Butler, J. (2004) *Undoing Gender* (New York: Routledge).
- Butler, J. (2005) *Giving an Account of Oneself* (New York: Fordham University Press).

- Canguilhem, G. (1989) *The Normal and the Pathological*, trans. C. R. Fawcett (New York: Zone Books).
- Cavanaugh, W. T. (1998) *Torture and Eucharist: Theology, Politics, and the Body of Christ* (Oxford: Blackwell Publishers).
- Cavell, S. (1976) *Must We Mean What We Say?* (Cambridge and New York: Cambridge University Press).
- Deleuze, G. (1989) *Masochism* (New York: Zone Books).
- Derrida, J. (1976) *Of Grammatology*, trans. G. C. Spivak (Baltimore, MD: Johns Hopkins University Press).
- Derrida, J. (1978) 'Cogito and the History of Madness' in *Writing and Difference*, trans. A. Bass (Chicago: University of Chicago Press).
- Dorr, C. and G. Rosen (2002) 'Composition as a Fiction' in *The Blackwell Guide to Metaphysics*, ed. R. Gale (Oxford: Blackwell), pp. 151–74.
- Dreyfus, H. L. and P. Rabinow (1983) *Michel Foucault: Beyond Structuralism and Hermeneutics* (Chicago: University of Chicago Press).
- Dworkin, R. (1977) *Taking Rights Seriously* (London: Duckworth).
- Dworkin, R. (1997) 'Objectivity and Truth: You'd Better Believe It', *Philosophy and Public Affairs* 25, 87–139.
- Ellickson, R. C. (2001) 'The Market for Social Norms', *American Law and Economics Review* 3.1, 1–49.
- Enslser, E. (1998) *The Vagina Monologues* (New York: Villard).
- d'Entrèves, A. P. (1970) *Natural Law: An Introduction to Legal Philosophy*, Revised Edition (London: Hutchinson University Library).
- Fara, M. (2001) *Dispositions and Their Ascriptions*, Ph.D. Dissertation, Princeton University.
- Fara, M. (2005) 'Dispositions and Habituals', *Nous* 39.1, 43–82.
- Ferguson, J. (1990) *The Anti-Politics Machine: 'Development', Depoliticization, and Bureaucratic Power in Lesotho* (Cambridge and New York: Cambridge University Press).
- Fink, B. (1997) *A Clinical Introduction to Lacanian Psychoanalysis: Theory and Technique* (Cambridge, MA: Harvard University Press).
- Finnis, J. (1980) *Natural Law and Natural Rights* (Oxford: Clarendon Press).
- Foot, P. (1978) *Virtues and Vices and Other Essays in Moral Philosophy* (Berkeley: University of California Press).
- Foucault, M. (1965) *Madness and Civilization: A History of Insanity in the Age of Reason*, trans. R. Howard (New York: Pantheon Books).
- Foucault, M. (1970) *The Order of Things: An Archaeology of the Human Sciences* (New York: Vintage Books).
- Foucault, M. (1973) *The Birth of the Clinic: An Archaeology of Medical Perception*, trans. A. M. Sheridan Smith (New York: Pantheon Books).
- Foucault, M. (1998) *Aesthetics, Method, and Epistemology* (New York: New Press).
- Gorman, T. (2005) 'Nihilism and Faith: Rose, Bernstein and the Future of Critical Theory', *Radical Philosophy* 134, 18–30.
- Hacking, I. (2002) *Historical Ontology* (Cambridge, MA: Harvard University Press).
- Hallward, P. (2000) 'The Singular and the Specific: Recent French Philosophy', *Radical Philosophy* 99, 6–18.
- Hallward, P. (2003) 'The One or the Other: French Philosophy Today', *Angelaki* 8.2, 1–32.

- Hart, H. L. A. (1983) 'Positivism and the Separation of Law and Morals' in *Essays in Jurisprudence and Philosophy* (Oxford: Clarendon Press).
- Hart, H. L. A. (1994) *The Concept of Law*, Second Edition (Oxford: Oxford University Press).
- Haugeland, J. (1982) 'Heidegger on Being a Person,' *Nous* 16.1, 15–26.
- Henry, M. (1991) 'Quatre principes de la phénoménologie', *Revue de métaphysique et de morale* 96.1, 3–26.
- Henry, M. (1993) *The Genealogy of Psychoanalysis*, trans. D. Brick (Stanford, CA: Stanford University Press).
- Holmes, O. W. (1897) 'The Path of the Law', *Harvard Law Review* 10, 457–78.
- Holmes, O. W. (1923) *The Common Law* (Boston: Little, Brown).
- Houellebecq, M. (2000) *The Elementary Particles*, trans. F. Wynne (New York: Knopf).
- Houellebecq, M. (2001) *Plateforme: Roman* (Paris: Flammarion).
- Houellebecq, M. (2003) *Platform: A Novel*, trans. F. Wynne (New York: Knopf).
- Houellebecq, M. (2006) *The Possibility of an Island*, trans. G. Bowd (New York: Knopf).
- Insole, C. (2004) *The Politics of Human Frailty: A Theological Defense of Political Liberalism* (Notre Dame, IN: University of Notre Dame Press).
- van Inwagen, P. (1990) *Material Beings* (Ithaca, NY: Cornell University Press).
- Jay, M. (1997) 'Force Fields: The Conversion of the Rose', *Salmagundi* 113, 41–52.
- Jelinek, E. (1988) *The Piano Teacher: A Novel*, trans. J. Neugroschel (New York: Weidenfeld & Nicolson).
- Johnston, M. (1989) 'Dispositional Theories of Value', *Proceedings of the Aristotelian Society Supplement* 63, 139–74.
- Kalderon, M., ed. (2005) *Fictionalism in Metaphysics* (Oxford: Oxford University Press).
- Kaplan, G. (2002) *Hallowing Days: The Secular and the Sacred for Martin Buber and Franz Rosenzweig*, Ph.D. Dissertation, Stanford University.
- Katz, S. T. (1985) 'Buber's Epistemology' in *Post-Holocaust Dialogues: Critical Studies in Modern Jewish Thought* (New York: NYU Press).
- Kidder, T. (2004) *Mountains Beyond Mountains: The Quest of Dr. Paul Farmer, A Man Who Would Cure the World* (New York: Random House).
- Kripke, S. (1980) *Naming and Necessity* (Cambridge, MA: Harvard University Press).
- Kripke, S. (1982) *Wittgenstein on Rules and Private Language* (Cambridge, MA: Harvard University Press).
- Kuhn, T. (1970) *The Structure of Scientific Revolutions* (Chicago: University of Chicago Press).
- Lacoste, J.-Y. (2004) *Experience and the Absolute: Disputed Questions on the Humanity of Man*, trans. M. Raftery-Skehan (New York: Fordham University Press).
- Lacoste, J.-Y. (2006) *Présence et parousie* (Geneva: Ad Solem).
- Leiter, B., ed. (2001) *Objectivity in Law and Morals* (Cambridge: Cambridge University Press).
- Leiter, B. (2007) *Naturalizing Jurisprudence: Essays on American Legal Realism and Naturalism in Legal Philosophy* (Oxford: Oxford University Press).
- Levinas, E. (1969) *Totality and Infinity: An Essay on Exteriority*, trans. A. Lingis (Pittsburgh: Duquesne University Press).

- Levinas, E. (1986) 'The Trace of the Other' in *Deconstruction in Context: Literature and Philosophy*, ed. M. Taylor (Chicago: University of Chicago Press), pp. 345–59.
- Lewis, D. (1969) *Convention: A Philosophical Study* (Cambridge, MA: Harvard University Press).
- Lewis, D. (1978) 'Truth in Fiction', *American Philosophical Quarterly* 15, 37–46.
- Lewis, D. (1989) 'Dispositional Theories of Value', *Proceedings of the Aristotelian Society Supplement* 63, 113–37.
- Lewis, D. (1997) 'Finkish Dispositions', *The Philosophical Quarterly* 47, 143–58.
- Llewellyn, K. (1930) *The Bramble Bush: On Our Law and Its Study* (New York: Oceana Publications).
- Lloyd, V. (2007) 'On Saying Yes', *The Symptom* 8 [<http://lacan.com/thesymptom>]
- Lloyd, V. (2008a) 'On Gillian Rose and Love', *Telos* 143, 47–62.
- Lloyd, V. (2008b) 'The Secular Faith of Gillian Rose', *Journal of Religious Ethics* 36.4 (forthcoming), 685–707.
- Lloyd, V. (Forthcoming) 'Michel Houellebecq and the Theological Virtues', *Literature and Theology*.
- Lovibond, S. (1983) *Realism and Imagination in Ethics* (Oxford: Basil Blackwell).
- Mahmood, S. (2005) *The Politics of Piety: The Islamic Revival and the Feminist Subject* (Princeton, NJ: Princeton University Press).
- Malabou, C. (2004) *The Future of Hegel: Plasticity, Temporality, and Dialectic*, trans. L. During (London: Routledge).
- Marion, J.-L. (1991) *God Without Being: Hors-Texte*, trans. T. A. Carlson (Chicago: University of Chicago Press).
- Marion, J.-L. (1998) *Reduction and Givenness: Investigations of Husserl, Heidegger, and Phenomenology*, trans. TA Carlson (Evanston, IL: Northwestern University Press).
- Marion, J.-L. (1999) *Cartesian Questions: Method and Metaphysics* (Chicago: University of Chicago Press).
- Marion, J.-L. (2002a) *Being Given: Toward a Phenomenology of Givenness*, trans. J. L. Kosky (Stanford, CA: Stanford University Press).
- Marion, J.-L. (2002b) *In Excess: Studies of Saturated Phenomena*, trans. R. Horner and V. Berraud (New York: Fordham University Press).
- Marion, J.-L. (2005) 'The Reason of the Gift' in *Givenness and God: Questions of Jean-Luc Marion*, eds. M. Leask and E. Cassidy (New York: Fordham University Press).
- Marion, J.-L. (2007) *The Erotic Phenomenon*, trans. S. E. Lewis (Chicago: University of Chicago Press).
- McDowell, J. (1996) *Mind and World* (Cambridge, MA: Harvard University Press).
- McDowell, J. (1998a) *Meaning, Knowledge, and Reality* (Cambridge, MA: Harvard University Press).
- McDowell, J. (1998b) *Mind, Value, and Reality* (Cambridge, MA: Harvard University Press).
- Mellor, D. H. (1974) 'In Defense of Dispositions', *The Philosophical Review* 83, 157–81.
- Mendes-Flohr, P. (1989) *From Mysticism to Dialogue: Martin Buber's Transformation of German Social Thought* (Detroit: Wayne State University Press).

- Milbank, J. (1991) '“Postmodern Critical Augustinianism”: A Short Summa in Forty-two Responses to Unasked Questions', *Modern Theology* 7.3, 225–37.
- Milbank, J. (1993) *Theology and Social Theory: Beyond Secular Reason* (Oxford: Blackwell).
- Milbank, J. (1997) *The Word Made Strange: Theology, Language, Culture* (Oxford: Blackwell).
- Milbank, J. (2005) 'The Invocation of Clio: A Response', *Journal of Religious Ethics* 33.1, 3–44.
- Murphy, M. C. (2006) *Natural Law in Jurisprudence and Politics* (Cambridge: Cambridge University Press).
- Niebuhr, H. R. (1932) 'The Grace of Doing Nothing', *Christian Century* (March 23) 49, 378–80.
- Perlman, L. (1990) 'Buber's Anti-Kantianism', *Association for Jewish Studies Review* 15.1, 95–108.
- Pickstock, C. (1998) *After Writing: On the Liturgical Consummation of Philosophy* (Oxford: Blackwell).
- Pickstock, C. (2000) 'Liturgy, Art, and Politics', *Modern Theology* 16.2, 159–80.
- Postema, G. (1986) *Bentham and the Common Law Tradition* (Oxford: Clarendon Press).
- Price, H. (2003) 'Truth as Convenient Friction', *Journal of Philosophy* 100, 167–90.
- Rogers, E. (1999) *Sexuality and the Christian Body: Their Way into the Triune God* (Oxford: Blackwell).
- Romano, C. (1998) *L'événement et le monde* (Paris: Presses Universitaires de France).
- Rorty, R. (1999) *Philosophy and Social Hope* (New York: Penguin).
- Rose, G. (1978) *The Melancholy Science: An Introduction to the Thought of Theodor W. Adorno* (New York: Columbia University Press).
- Rose, G. (1981) *Hegel contra Sociology* (London: Athlone).
- Rose, G. (1984) *Dialectic of Nihilism: Post-Structuralism and Law* (Oxford and New York: Basil Blackwell).
- Rose, G. (1992) *The Broken Middle: Out of Our Ancient Society* (Oxford: Blackwell).
- Rose, G. (1993) *Judaism and Modernity: Philosophical Essays* (Oxford: Blackwell).
- Rose, G. (1995) *Love's Work: A Reckoning with Life* (New York: Schocken Books).
- Rose, G. (1996) *Mourning Becomes the Law: Philosophy and Representation* (Cambridge: Cambridge University Press).
- Rose, G. (1999) *Paradiso* (London: Menard Press).
- Rose, G. (2008) 'Interview with Gillian Rose' in *Theory, Culture and Society* (forthcoming).
- Rosen, G. (1990) 'Modal Fictionalism', *Mind* 99, 327–54.
- Rosen, G. (1997) 'Who Makes the Rules Around Here?', *Philosophy and Phenomenological Research* 57.1, 163–72.
- Scarry, E. (1985) *The Body in Pain: The Making and Unmaking of the World* (New York: Oxford University Press).
- Schaffer, J. (2003) 'Is There a Fundamental Level?' *Nous* 37.3, 498–517.
- Searle, J. (1958) 'Proper Names', *Mind* 67, 166–73.
- Stout, J. (2001) *Ethics after Babel: The Languages of Morals and Their Discontents* (Princeton, NJ: Princeton University Press).
- Stout, J. (2004) *Democracy and Tradition* (Princeton, NJ: Princeton University Press).

- Stavropoulos, N. (1996) *Objectivity in Law* (Oxford: Clarendon Press).
- Theunissen, M. (1986) *The Other: Studies in the Social Ontology of Husserl, Heidegger, Sartre, and Buber*, trans. C. Macann (Cambridge, MA: MIT Press).
- Thompson, M. (1995) 'The Representation of Life' in *Virtues and Reasons: Philippa Foot and Moral Theory*, ed. R. Hursthouse, *et al.* (Oxford: Oxford University Press), pp. 247–97.
- Unger, R. (1986) *The Critical Legal Studies Movement* (Cambridge, MA: Harvard University Press).
- Williams, R. (1995) 'Between Politics and Metaphysics: Reflections in the Wake of Gillian Rose', *Modern Theology* 11.1, 3–22.
- Wittgenstein, L. (1953) *Philosophical Investigations*, trans. G. E. M. Anscombe (Oxford: Blackwell).
- Žižek, S. (1993) *Tarrying with the Negative: Kant, Hegel, and the Critique of Ideology* (Durham, NC: Duke University Press).
- Žižek, S. (2004) 'From Purification to Subtraction: Badiou and the Real' in *Think Again: Alain Badiou and the Future of Philosophy*, ed. P. Hallward (London: Continuum), pp. 165–81.

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