

# Freedom's History in the Making: A Reply

Steven L. Winter

## 1 Whose Enlightenment Is It that We Care About?

What might the Enlightenment have meant had Vico been its most influential figure? Would we still call it the Enlightenment? Would democracy look different had Spinoza achieved the attention and renown that his genius deserved? These are fascinating, but fanciful questions. The main line of Enlightenment thought that is *our* legacy runs not through these figures, but through Descartes, Newton, Berkeley, Hume, Montesquieu, Locke, Rousseau, and Kant.<sup>1</sup> Perhaps, as James Schmidt suggests, we should eschew discussion of an hypostasized 'Enlightenment project' and speak of instrumental reason and individualism as exemplified by Bacon, Hobbes, and Descartes.<sup>2</sup> I leave the question of proper name calling to others. My concern is not with the 'correct' definition of the Enlightenment project, but with the acute crises of our day and the light that might be shed by a better understanding of our histories and ourselves.

These questions, moreover, presuppose an untenable idealism. 'No one,' Charles Taylor wryly observes, 'really thinks that disengagement entered the culture from the pen of Descartes, or individualism from that of Locke.'<sup>3</sup> Few would maintain that abstract ideas dictate or determine social practices in some logical, causal, or mechanical fashion. The primary relationship between ideas and practices runs the other way: ideas *articulate* practices.<sup>4</sup> An idea becomes compelling when it makes sense of the emergent practices and forms of life of any particular historical period. The conventional account of the Enlightenment neglects the social and historical developments that provided the ground for its more familiar intellectual transformations: it was a period of scientific discovery, explosive agricultural growth, economic expansion, increasing urbanization, rising population, improving communications, and striking political change including the emergence of what Jürgen Habermas famously identifies as a genuine public sphere.<sup>5</sup> This period also saw the dramatic birth in the 1760s of a recognizably modern con-

- 1 Steven L. Winter, 'Reimagining Democracy for Social Individuals,' *Zygon: Journal of Religion and Science* 46 (2011): 224, 225 (also noting Spinoza).
- 2 James Schmidt, 'What Enlightenment Project?,' *Political Theory* 28 (2000): 734, 738-39, 751-52.
- 3 Charles Taylor, *Sources of the Self: The Making of the Modern Identity* (Cambridge: Harvard University Press, 1989), 306. Subsequent references are given in the text.
- 4 Taylor (204). The relation between ideas and practices is dialectical—in Taylor's (306) term, 'circular.' Descartes and Locke 'are just as much articulating something which is already in train as they are helping to define its future direction and form.'
- 5 Winter, 'Reimagining Democracy,' 225. See Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* (Cambridge: MIT Press, 1989).

sumer culture.<sup>6</sup> In this context, the ideas of mastery of the physical and social world through reason and the concomitant sovereignty of the individual became in Taylor's (92-93, 307) terms 'available' because they thematized, rationalized, and provided philosophical warrant for what people experienced in their day-to-day lives.

The same is true in retrospect. If Kant and Descartes seem to us more central to the Enlightenment than Spinoza or Vico, it is because we live in a social world in which individual autonomy and the separation of mind and body resonate with our everyday experiences of technology, market practices, Western medicine, sexual relations, and the structures of desire. If Bacon and Hobbes seem central figures of modernity, it is because our contemporary scientific, technological, legal, and political practices are all organized on the understanding that the world can be mastered through reason.<sup>7</sup> The scientism and reductivism of contemporary society seem self-evident to us because, as Lyotard famously observes, science confirms its truth through its performative success.<sup>8</sup>

The question for us is whether we can any longer afford the hubris of Enlightenment reason in the face of the economic and political failures of our time. What we need is an understanding and mode of being that could plausibly transcend the deeply etched oppositions that characterize modernity.

## 2 Our Dualisms, Ourselves

There's an old joke about two kinds of people: those who see dichotomies everywhere and those who don't. The irony is in the imperialism of this primitive structure of thought. From Gestalt psychology, we know that we see things holistically – hence the power of the field reversal or 'gestalt switch.' From Hegel, we learn the importance of paradoxical and dialectical relations as well as of the *Aufhebung*. Cognitive science showcases the repertoire of imaginative, adaptive conceptual mechanisms that compose ordinary human rationality: image schemas, conceptual metaphor, metonymy, basic-level categorization, idealized cognitive models, radial categories, prototype effects, and conceptual blending.<sup>9</sup>

My critique of freedom-as-transcendence is part of a sustained argument against the subject/object dualism and all forms of binary reasoning – including the law of contradiction, 'P or not-P' – that I have pursued (perhaps vainly) my entire aca-

6 Steven L. Winter, 'What Makes Modernity Late?,' *International Journal of Law in Context* 1 (2005): 61.

7 Mark Johnson identifies this as a form of 'fundamentalism.' See Steven L. Winter, 'Law, Culture, and Humility,' in *Law And Humanities: An Introduction*, ed. Austin Sarat, Mathew D. Anderson, & Catherine O. Frank (Cambridge: Cambridge University Press, 2010), 98.

8 Jean-François Lyotard, *The Postmodern Condition: A Report on Knowledge*, trans. Geoff Bennington & Brian Massumi (Minneapolis: University of Minnesota Press, 1984), 46.

9 Steven L. Winter, *A Clearing in the Forest: Law, Life, & Mind* (Chicago: University of Chicago Press, 2001). On conceptual blending, see Gilles Fauconnier & Mark Turner, *The Way We Think: Conceptual Blending and the Mind's Hidden Complexities* (New York: Basic Books, 2002).

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demic career.<sup>10</sup> Subject/object, fact/value, mind/body, internal/external, reason/passion, public/private, necessity/contingency, freedom/constraint – these exhausted, discredited dichotomies are, Merleau-Ponty says, ‘tenable only this side of a certain point of misery and danger.’<sup>11</sup> Metaphorical reasoning makes it possible to advance beyond the dysfunctional black and white conceptualisms of standard legal analysis.<sup>12</sup> Understanding the embodied, situated, and historically contingent nature of human reason makes it possible to move past the standard dualisms of Western thought.<sup>13</sup> Just as Being and Nothingness are sublated in Becoming, the objective and the subjective are supplanted by the historical and the necessary and the contingent are *aufgehoben* in the situated.<sup>14</sup>

Although I agree with Mouffe’s agonistic pluralism, I do not join Professor Tinnevelt’s<sup>15</sup> (Section 3.1) embrace of Schmitt’s claim that the we/they or friend/enemy distinction is foundational to politics. Politics is first and foremost a problem between *friends*: if I want Chinese food for dinner and my partner wants Italian, it will not do to make an enemy of her. The same is true for my colleague, neighbor, and fellow citizen: in a democracy, the fundamental problem of politics is not the clash with one’s enemies, but rather how best to manage conflicts between compatriots. This is why the virtues and skills of interpersonal relations are also the *sine qua non* of democratic politics – tolerance, empathy, pragmatism, cooperation, negotiation, compromise, and the capacity to seek common ground. As Tinnevelt (*ibid.*) suggests, democracy requires agonism without antagonism.

One might respond that, even on this account, politics depends on the self/other(s) distinction. But this would miss the point. Politics arises because we *need* others but nevertheless find it difficult to coordinate. Politics is a necessary condition of the intersubjective relation between socially situated selves who need each other to succeed – this is Arendt’s insight about action and the social basis of power – and, inevitably, are not of a single mind. Thus, for Merleau-Ponty

10 See especially ch. 11 of Winter, *Clearing in the Forest*.

11 Maurice Merleau-Ponty, *Signs*, trans. Robert McCleary (Evanston, IL: Northwestern University Press, 1964), 226. Subsequent references are given in the text.

12 See, e.g., Steven L. Winter, ‘What Is the “Color” of Law?’, in Cambridge Handbook of Metaphor and Thought, ed. Raymond W. Gibbs, Jr. (Cambridge: Cambridge University Press, 2008), 363; Steven L. Winter, ‘The Metaphor of Standing and the Problem of Self-Governance,’ *Stanford Law Review* 40 (1989): 1471.

13 See Maurice Merleau-Ponty, *The Phenomenology of Perception*, trans. Colin Smith (London: Routledge & Kegan Paul Press, 1962), xi (‘The world is not an object such that I have in my possession the law of its making; it is the natural setting of, and field for, all my thoughts and all my explicit perceptions.’).

14 Merleau-Ponty, *Signs* (109) observes: ‘Since we are all hemmed in by history, it is up to us to understand that whatever truth we may have is to be gotten not in spite of but through our historical inherence.’ See also my ‘Human Values in a Postmodern World,’ *Yale Journal of Law & Humanities* 6 (1994): 233-48.

15 References to the responses by Professors Beekman, Tinnevelt, Vega and Van der Zweerde in this volume are by name and the Section numbers given in the text. Mouffe’s use of the friend/enemy distinction actually comes from Carl Schmitt’s *The Concept of the Political* (see Van der Zweerde, p. 249, note 18).

(214-23), Machiavelli is the preeminent modern political thinker because he confronts 'the relationship of man to man and the constitution of a common situation and a common history between men as a problem.'

To assume that the friend/enemy and inside/outside distinctions are foundational to politics is conceptually wrong and politically disastrous: Conceptually, in/out is not an opposition in consciousness (P or not-P), but a Gestalt relation constituted by a *container* schema in perceptual experience that grounds the construction of boundedness in lived space. (When our eldest was a toddler and wanted to go outside, he would run to the front door, point emphatically, and shout 'In!') Politically, the destructiveness of the friend/enemy in actual history is undeniable; thus, Arendt argues that modern anti-Semitism is a distinct phenomenon that emerged from the nationalisms of the nineteenth century.<sup>16</sup> The idea of politics as depending on exclusion makes even less sense in today's highly globalized world: As Beeckman (Section 1) points out, the transnational nature of financial and economic problems – not to mention the mobility of populations and the global effects of environmental damage – increasingly places solutions beyond the capacity of the individual nation-state.

The 'fundamental' moment of politics can be conceived in many ways. With Honneth and Taylor, one could locate it in the struggle for recognition. Arendt observes that what distinguished free from slave labor was not the achievement of economic freedom, but the fact that the laborer was 'admitted to the political realm and fully emancipated as a citizen.'<sup>17</sup> Or, one could follow the Czech philosopher Jan Patočka,<sup>18</sup> who argues that politics and history begin with the emergence of philosophy. For prehistorical humans, Patočka (141) explains, religion and the natural world present life as 'self-evident and given.'<sup>19</sup> Only with Socratic questioning does 'the radical question of meaning based on the shaking of the naïve, directly accepted meaning of life' arise (143). That gives rise to history and politics because 'it cuts deeper into human life, into the realm of human possibilities' to discover freedom 'explicitly as something that is to be *carried out*, as a possibility we can *accomplish*, never just accept' (142). Politics becomes

16 Hannah Arendt, *The Origins of Totalitarianism* (San Diego, CA: Harvest Books, 1968), 3-120.

17 Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 2d ed. 1958), 217-18. I explore this further in 'Reclaiming Equality' (ms.) available at <[http://works.bepress.com/steven\\_winter/1/](http://works.bepress.com/steven_winter/1/)>.

18 Patočka was a student of Husserl and Heidegger and friend and mentor to Václav Havel. Edward F. Findlay, 'Classical Ethics and Postmodern Critique: Political Philosophy in Václav Havel and Jan Patočka,' *The Review of Politics* 61 (1999): 415-16. No less a philosopher than Paul Ricoeur described Patočka as 'a teacher of the stature of Merleau-Ponty.' Paul Ricoeur, 'Preface to the French Edition of Jan Patočka's Heretical Essays' in Jan Patočka, *Heretical Essays in the Philosophy of History*, trans. Erazim Kohác (Chicago: Open Court, 1996), vii-viii. Subsequent references are given in the text.

19 This is true notwithstanding the 'social dangers posed by neighbors and their violence (as primarily in ancient Israel).' Ibid. Success or failure rested entirely on divine intervention as in Exodus 17:11.

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‘possible only with the conception of *bestowing meaning on life out of freedom and for it*, and that, as Hegel said, cannot be brought about by a solitary one ... being “conscious of freedom.” Humans can be that only in a *community of equals*. For that reason the beginning of history in a strict sense is the *polis*.’ (148)

These alternative conceptions of what ‘founds’ politics reveal the poverty of the friend/enemy distinction. As Patočka (149) says: ‘There is not only struggle but also solidarity, not only society but also community, and community has other bonds besides a common enemy.’

Liberalism’s distinctive take on politics is attractive, but contradictory. Its attraction is its clear-eyed view of the diversity and intractability of human nature (call this the Hobbesian insight), which liberalism seeks to cabin and domesticate – in order to make life a little longer, a little less nasty, a little less brutish – by prescribing zones within which autonomous or purely self-interested action is allowed and policing those boundaries by claims of right based on norms of tolerance, procedural justice, and respect for persons. What is problematic about liberalism is the point (call it the Kantian moment) at which it relies on these rational demands of right to subdue the claims of what I euphemistically called the diversity and intractability of human nature. It assumes (or insists) that at the moment of conflict people will (or should) be rational and reasonable rather than diverse and intractable. Of course, if people were rational and reasonable, we would not have needed liberalism in the first place. Liberalism’s Hobbesian and Kantian moments conflict, yielding a kind of split personality.<sup>20</sup>

Beeckman (Section 3) brands ‘untenable’ my claim that the Enlightenment subject denies its own historical contingency. She points to Rousseau’s emphasis on education as evidence that the ‘values and philosophies’ of the subject are a consequence of complex processes of civilization. But this is not right; Rousseau, after all, famously opens *The Social Contract* ‘Man was born free, and he is everywhere in chains.’<sup>21</sup> Liberalism is *founded* on the denial of the contingency of the subject. Tinnevelt (Section 2.1) quotes Hobbes’s statement that we should consider humans ‘as if but even now spring out of the earth, and suddenly, like mushrooms, come to full maturity, without all kind of engagement to each other.’ The liberal project abounds in counterfactuals – the state of nature, the original posi-

20 I use this term in the lay sense. Beeckman (2) questions my use of the psychoanalytic concept ‘narcissism’; she says that ‘in a narcissistic delusion, for instance, a patient suffering from paranoia can think the newsreader on the television is making comments on his personal life, even though in reality the journalist is talking about the state of the economy.’ In clinical psychology, the technical term for the psychotic delusion she describes is ‘ideas of reference.’ Narcissism is a neurotic complex or personality disorder characterized by an exaggerated (often fragile) sense of self; inability to connect or empathize with others; self-obsession; and an unusual need for positive reinforcement from others.

21 Jean-Jacques Rousseau, *The Social Contract*, trans. Maurice Cranston (London: Penguin Books, 1968), 49. Shouldn’t he have said: ‘Man is born ignorant, and must everywhere learn to be free?’ But that would have been inconsistent with Rousseau’s naturalism.

tion behind the veil of ignorance, the ideal speech situation – in which the most salient aspect of the participants is that they have no particularity whatsoever. In each case, the central move is to strip away the situated characteristics of the participants, to disembed them from their diverse constitutive histories and social contexts, and to eliminate everything that makes humans diverse and intractable.<sup>22</sup> No, the denial of the historicity and contingency of the subject comprises the liberal project *as such*. Without it, liberalism's second, Kantian moment would make no sense.

Following Michael Walzer,<sup>23</sup> Professor Vega (Section 1) accuses me of the methodological error of endorsing two contradictory critiques of liberalism: 'either liberalism is attacked for its faulty theory – it doesn't describe the real world well; no one really *is* that isolated, atomized subject – or for a faulty practice – it does describe the world well, but that asocial world is wrong and should be altered.' But Walzer is far too serious a thinker to employ the contradictory-critiques claim *except* as a rhetorical gambit. After rehearsing the argument that the two critiques of liberalism are 'mutually inconsistent' and 'cannot both be true,' Walzer (11) concedes (within five sentences) that 'each of the two critical arguments is partly right.' He (14) goes on to argue, as I have, that as 'situated selves, ... our situation is largely captured by' the liberal vocabulary of 'voluntary association, pluralism, toleration, separation, privacy, free speech, the career open to talents, and so on.' And he concludes (15, 21) – as I do – that: 'Liberalism is a self-subverting doctrine' that will always 'require periodic communitarian correction.'

The contradictory-critiques argument rests on a crude objectivism nestled inside a false dichotomy: either liberalism describes the world or it does not. If it does, then Walzer (9) argues that the only plausible form of social organization for dissociated individuals *is* liberalism. If it does not, then it is hard to see why liberal theory should be so successful in capturing the self-understanding of subjects who are, in fact, socially constituted (10). In other words, the plausibility of the argument rests on a combination of a correspondence view of meaning and the P-or-not-P tautology.

Vega (Section 1) notes that Walzer's distinction between liberal theory and practice is entirely artificial. So, too, is the rest of the argument. The question is not whether liberalism 'fits' reality in an objective, one-to-one correspondence way – that is, whether it is right and efficacious or wrong and counterproductive. For mortal creatures like us – constituted and, therefore, constrained by corporeality, language, history, culture, and perspective – every truth, theory, periodization, and statement is *necessarily* partial, probabilistic, and a simplification of a more

22 Echoing Michelman's concession and elision of the socially constructed subject, Professor Vega (4) observes that: 'What the starting point of socially situated selves does seem to predict for democracy, is a certain mode of social struggle – about those aspects of their social constructions that the selves *choose* to challenge or deconstruct, in the face of diverse forms of social and cultural hegemony.' (emphasis added).

23 Michael Walzer, 'The Communitarian Critique of Liberalism,' *Political Theory* 18 (1990): 6-23. Subsequent references are given in the text.



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complex reality.<sup>24</sup> Rather, the question is the pragmatic one of whether liberalism adequately captures the complexities of human behavior to ground a successful mode of political interaction. That was the import of my goose-dinner-for-vegetarians analogy: when a system that assumes choosing subjects and defines rights along those lines is applied to socially situated creatures who operate along different trajectories, it will inevitably produce pathological distortions.<sup>25</sup> One such pathology is an ingenious system of legitimation that protects entrenched interests in the name of ‘freedom’ and ‘choice.’ Consider the Tea Party example from my principal paper or the much-decried United Supreme Court decision in *Citizens United* that, in the name of freedom of speech, extends to artificial persons – corporations – the right to spend unlimited amounts to influence elections.<sup>26</sup>

The contradictory-critiques claim trades on the law of contradiction to declare that a concept such as liberalism cannot be both wrong and efficacious. But this claim is demonstrably false. Many mistaken systems of thought are quite productive. Ptolemaic astronomy, a geocentric theory which also assumed that the orbiting bodies travelled along perfect circular paths, was able to add enough refinements to predict the movement of heavenly bodies with great exactitude.<sup>27</sup> So, too, people suffering from obsessive-compulsive disorder engage in ritualized behavior to stave off or control dreaded risks. Though the anxiety may be neurotic and the ‘solution’ entirely magical, the obsessive-compulsive complex is powerfully productive, making the individual who he or she is.

The most widespread, powerful system of thought that is nevertheless mistaken is the worldview that insists on P or not-P. Vega’s paper provides several illustrations. For brevity’s sake, I discuss only one additional example: her starkly polarized account of the distinction between civil society and the public sphere.

On Vega’s (Section 2) account, civil society ‘stands for things like socialization, togetherness, cooperation, consensus, mutuality, shared language, affirmation of sociality, apology of conventional community’ and the public sphere for ‘contestation, agonism, deconstruction, political action, counter-communities, language play and irony, emulation, powerplay.’ Each pole is presented as internally coherent and structured by the opposition between social order and conflict: civil society is identified with cooperation, the public sphere with contestation; civil soci-

24 Kuhn argues that science progresses not by achieving better descriptions of reality, but rather by shifts in scientific paradigms that better solve the problems at hand. Thomas S. Kuhn, *The Structure of Scientific Revolutions* (Chicago: University of Chicago Press, 2d ed. 1970). Because scientific formalizations inevitably simplify, more than one method or theory may actually work (and, in that sense, be ‘true’) – depending on one’s purposes.

25 See, e.g., Axel Honneth *The Pathologies of Individual Freedom: Hegel’s Social Theory*, trans. Ladislav Löb (Princeton: Princeton University Press, 2010). Vega (5) agrees: ‘liberalism is not merely a philosophical theory, but a discourse with its proper performativity ... [that] has coproduced the real world it theorised, ... and if it installed a certain individualistic symbolic order, the discourses of democracy, including liberalism’s proper representative politics, saddle it with various irritating imaginaries and practices.’

26 *Citizens United v. Federal Elect. Comm.*, 130 S. Ct. 876 (2010).

27 Kuhn, *Scientific Revolutions*, 75.

ety with common language, the public sphere with language play and irony; civil society with cooperation and consensus, the public sphere with politics and powerplay; etc.

These oppositions, however, cannot be maintained: *First*, language necessarily permeates both spheres. On the one hand, the fluidity of language cannot be 'fixed' in civil society so as to pretermite irony and play; on the other, the normative content of language and its regulative effects – encoding and enforcing values<sup>28</sup> and status<sup>29</sup> – always already shapes the public sphere. *Second*, the identification of the public sphere in opposition to the constitutive processes of civil society is contrived; on Benedict Anderson's highly influential account, it was the rise of the public sphere that was instrumental in constructing common national identities.<sup>30</sup>

*Third*, the idealized togetherness of civil society is a fairy tale forged on the anvil of domination. The central lesson of feminist and Foucauldian theory (as well as Queer theory and other poststructuralisms) is that *all* of civil society – family, church, school, fraternal organizations, sexual practices etc. – is shot through with power, resistance, and a micro-politics of the most significant sort. Vega (Section 2) herself notes that civil society in the Arab and third world reproduces both the exclusion of women and the existing political culture. But the same is true of civil society in the West. This is the meaning of the feminist credo 'the personal is political.'

### 3 East Meets West

Van der Zweerde asks whether, in focussing on the end of the Cold War and the September 11<sup>th</sup> attacks, my rhetorical stance – i.e., the 'we' that it constitutes – isn't too parochial. 'New democratic impulses and repertoires,' he observes, 'are not coming from the West and spreading to the Rest, but articulate themselves in "the third World" from which they are quickly adopted elsewhere.'<sup>31</sup> Similarly, Vega (Section 1) questions my identification of the neoliberal wave of democratization with the post-Cold War decade and of the participatory-collectivist wave with the Arab Spring. Weren't the jubilant gatherings at the fall of the Berlin Wall and the Velvet Revolution in the former Czechoslovakia also collectivist and egalitarian?

28 See Winter, *Clearing in the Forest*, esp. ch. 4, 8.

29 Robin Tolamch Lakoff, *Language and Women's Place* (New York: Harpercollins, 1975).

30 Benedict Anderson, *Imagined Communities: Reflections on the Origins and Spread of Nationalism* (London: Verso 2010).

31 Van der Zweerde (6) also asks whether the recent mass protests constitute a 'wave' or 'a series of democratic impulses taking place against the backdrop of pretended, but malfunctioning' democracies. As best I can see, nothing turns on these differing characterizations. Just as light is both a particle and a wave, the recent mass movements can be impulses and a wave.



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On one hand, I agree with both these criticisms. After all, I insisted earlier that we are all possessed of and by particular perspectives. Moreover, as previously noted, reality is too complex to be captured by our idealizations, however useful they might be for expository purposes. Every periodization is artificial.

These critiques are, nevertheless, short-sighted. Social phenomena such as globalization include many eddies, cross- and counter-currents. Disregard of these complexities can falsify our view in critical ways. But one can, conversely, miss the forest for the trees – that is, the complexities can obscure the dominant character or direction of the flow of events. Since World War II, economic globalization has been governed, on one hand, by such neoliberal institutions as the International Monetary Fund, the World Bank, the General Agreement on Tariffs and Trade, and its successor the World Trade Organization and, on the other, by the economic and social forces of corporatism and consumerism. As Van der Zweerde points out, the transition to democracy in the former Eastern Bloc was to ‘the *already degenerated* form that it has acquired in “the West.” This transition was, in fact, midwived by American ‘experts’ who went to Central and Eastern Europe and South Africa to advise them on their conversion to democracy and market economies – a ‘used-car salesman’ approach to the export of democracy.<sup>32</sup> These experts stressed American-style constitutionalism, complete with judicial review, and clear rules of property and contract as necessary preconditions for the development of free markets and as essential elements of democracy and the rule of law.<sup>33</sup>

The Arab Spring only appears different. The young Tunisian and Egyptian activists contacted their Serbian counterparts who, in turn, were influenced by the American political theorist Gene Sharp. Sharp’s work, translated into Arabic, became the basis for workshops in Cairo attended by the Tunisian and Egyptian students who later were active in their respective revolts and was posted by the Muslim Brotherhood on its website.<sup>34</sup> The success of these uprisings then influenced the Occupy movement in the United States.<sup>35</sup> Thus a global circuit, originating in the West, was completed.

32 See Winter, ‘What Makes Modernity Late?’, 76.

33 On the hypocrisies of this approach, see my ‘When Things Went Terribly, Terribly Wrong,’ in *On Philosophy in American Law*, ed. Francis J. Mootz, III (Cambridge: Cambridge University Press, 2009), 35. There are, however, important local differences in the reception of these efforts in various societies. See, e.g., Gil Eyal, ‘Anti-Politics and the Spirit of Capitalism: Dissidents, Monetarists, and the Czech Transition to Capitalism,’ *Theory and Society* 29 (2000): 49.

34 Sheryl Gay Stolberg, ‘Shy U.S. Intellectual Created Playbook Used in a Revolution,’ *New York Times*, February 17, 2011, A1; David D. Kirkpatrick & David E. Sanger, ‘A Tunisian-Egyptian Link That Shook Arab History,’ *New York Times*, February 14, 2011, A1.

35 Nicholas D. Kristoff, ‘The Bankers and the Revolutionaries,’ *New York Times*, October 2, 2011, 11 (quoting an Occupy organizer: ‘This was absolutely inspired by Tahrir Square, by the Arab Spring movement....’).

The complexities of periodization are also revealing. If I were to pick a different modern point at which to start, it would be 1968.<sup>36</sup> But, it definitely would *not* be Berlin in 1989. (Though Tiananmen Square would certainly qualify.) The celebrations at the fall of the Berlin Wall were not the same as concerted collective action over a period of time at great personal risk as exemplified by these other events. Moreover, the Berlin celebrations were marked by consumerist behavior: many East Germans took the occasion to go shopping for everything 'from groceries and cosmetics to used washing machines and satellite dishes' and, in one case, a hand-painted Japanese fan.<sup>37</sup> Never one to miss an opportunity, Coca-Cola was there passing out six-packs.<sup>38</sup> Much the same can be said for the Velvet Revolution. Although its roots lay in the Prague Spring, the intervening years had witnessed the entrenchment of a passive, consumer culture famously critiqued by the dissident Václav Havel.<sup>39</sup> As president, Havel's later attempts to promote a program of 'civil society' encouraging local democracy and social organization from below fell on stony, unreceptive soil.

Van der Zweerde asks: 'Are not *we* seeing, in *their* disappointment and disinterest – minimal participation, minimal turnout, minimal interest in the *res publica* – the deplorable state of "our own" political reality that we find increasingly difficult to identify with and to consider "ours"?' Surely so, as Havel noted 35 years ago in the *Power of the Powerless*. Havel (145) saw the peculiar nature of the Soviet system as 'built on foundations laid by the historical encounter between dictatorship and the consumer society.' He warned that the post-totalitarian East was but an inflated caricature of the capitalist West – both subject to 'the omnipresent dictatorship of consumption, production, advertising, commerce, consumer culture, and all that flood of information.' The spread of consumerism around the globe – particularly among the emerging middle classes of China and India – threatens the 'universalization' among the Rest of the very 'we' that defines the West.

#### 4 The Sounds of Democracy Happening

I have saved the 'biggest' questions for last: (1) If liberalism, the market, or consumer society blankets the social field, how can we ever escape from it? Isn't some form of transcendence necessary for reflection and change? (2) Do I embrace a post-Enlightenment universalism? Can we distinguish between freedom and

36 Although 1980 (Solidarity), 1937 (the Flint sit-down strike), 1886 (the Harnmarket massacre), 1871 (the Paris commune), 1848 and 1789 (need I say?) also spring to mind.

37 Ferdinand Protzman, 'Clamor in the East: Jubilation in Berlin; A Day for Celebration and a Bit of Shopping,' *New York Times*, November 11, 1989, A6.

38 Mark Pendergrast, 'A Brief History of Coca-Colonization,' *New York Times*, August, 15, 1993, sec. 3, p. 13.

39 Václav Havel, 'Dear Dr. Husak' (1975) and 'The Power of the Powerless' (1978), reprinted in *Open Letters: Selected Writings 1965-1990*, ed. Paul Wilson (New York: Vintage Books, 1992). Subsequent page numbers are given in the text.

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unfreedom without some Archimedean moral vantage point? (3) What are the structures of the civic republican form of self-governance that I advocate?

By this point, it should be obvious that I think these the wrong questions. Van der Zweerde rightly criticizes intellectual elites who, though fed up with their governments, 'seem incapable of thinking of anything better than improved versions of liberal democracy.' But, there is no mystery here; they are working with the wrong tools and categories. To approach these questions successfully, we need an alternative frame in which to think about them.

(1) The reflection 'problem' is, like the contradictory-critiques claim, an artifact of the all-or-nothing logic of P or not-P. Thus, Vega (Section 1) asks: 'If democracy as such has been captured by the market from the word go, how could it ever provide an escape from that market?' Capture is presumed to be total and, therefore, escape must be impossible. More than twenty years ago, Stanley Fish made the identical argument against freedom, reflection, and self-conscious transformation.<sup>40</sup> The short answer is that the field of liberalism, the market, or consumer society is not a reified 'place' from which we need escape.<sup>41</sup> It is the sum of interactions that, as Van der Zweerde notes, we engage in when we buy an SUV, read the paper, vote, watch a televised political debate, etc. Liberalism is not a brute fact, but a *practice*. In our reenactments lies the power to create something different and new. In phenomenological terms, freedom is exercised not *in* a situation but *through* it.

The reflection 'problem' rests on the related assumption that reason is linear and representational: if, when we look around us, we see only individual liberal subjects in market and other voluntary relations how could we even conceive anything else? Human rationality, however, is more imaginative and socially constituted than that. The very notion that liberalism 'occupies a space' is metaphorical – though a conception so cognitively entrenched that we mistake it for a simple description. Reflection is the capacity to 'stand back' (metaphorically speaking) from our everyday interactions and institutionalized behaviors to relax 'the intentional threads which attach us to the world and thus brings them to our notice.'<sup>42</sup> The voluntary interactions of autonomous individuals that our cultural narratives foreground for us are only the salient part of a complex landscape of socially situated interactions. The background remains to be seen.

Meaning is relative to the frames by which we categorize our experience.<sup>43</sup> The entrenchment of those frames makes new meaning hard to see. When I look at myself in the mirror in the morning, I see a much younger, slimmer me. But, when I accidentally catch a glimpse of myself in a shop window, I am caught up short by how much older and thicker I have become. Reflection works similarly by

40 Stanley Fish, *Doing What Comes Naturally: Change, Rhetoric, and the Practice of Theory in Literary and Legal Studies* (Durham: Duke University Press, 1989), 323-26, 455-67.

41 For the longer argument, see Winter, *Clearing in the Forest*, 351-57.

42 Merleau-Ponty, *The Phenomenology of Perception*, xiii.

43 See esp. ch. 4 of Winter, *Clearing in the Forest*.

decontextualizing our habitual perceptions and recontextualizing them in new frames. This is how the best of theory succeeds. Sometimes – as in the work of Václav Havel, Catherine MacKinnon, or Michel Foucault – it just requires one extraordinary person to run to the door and shout 'In!' Reflection requires not transcendence, but imagination.

(2) The particularism-versus-universalism 'problem' is equally artificial. Imagination in its most ordinary sense – metaphor – already transcends that distinction. When I say 'a stitch in time saves nine,' 'look before you leap,' or 'blind blames the ditch,' you recognize immediately that I am not talking about sewing, jumping, or the character flaws of the handicapped. Humans extrapolate from the particular to the general immediately and automatically; indeed, we could neither reason nor categorize without doing so.

The question of universalist morality may seem of a different order, but 'Love thy neighbor as thyself' indicates otherwise. In the modern world, as my colleague Alessandro Ferrara points out, the 'orienting force' of the 'impartiality without principles that grounds the normative force of our judgments concerning what justice requires' comes from the ideal of equal respect.<sup>44</sup> The ancient Greek democrats, in contrast, were content with an 'equality' of remarkably restricted scope that we could not countenance today.<sup>45</sup> It does not matter whether our more generalized conception of equality is a specific historical product. This is the moral demand that history has produced and which has produced us. Even if it is rooted in a certain (largely Western) history, it remains a moral orientation of extraordinary force as Occupy and the Arab Spring attest.

It is this historical orientation – and not some post-Enlightenment universalist stance – that grounds our ability to distinguish between freedom and unfreedom. Tinnevelt (Section 2.1) asks whether I share Benhabib's post-Habermasian quest for a discursive legitimation 'acceptable to all' among diverse cultural subjects.<sup>46</sup> But this 'universalism' is, for Benhabib, a concrete political project of actual historical construction – not something that is universally right by dint of its rational persuasiveness such that all rational agents 'must' accept it. Under current conditions of radical pluralism, I am skeptical that such a utopian outcome is achievable. In the meantime, I am content to measure freedom by the degree to which we exercise influence over our fate under conditions of mutual recognition and respect.

(3) In *Power of the Powerless*, Havel (211) spoke of a 'post-democratic' system that – he hoped – would emerge from civic engagement. Thirty years later, Havel

44 Alessandro Ferrara, *Justice and Judgment* (London: Sage Publications, 1999), 202.

45 '[T]he *isonomia* (equality of law) on which they prided themselves was the club-privilege of those who had the good judgement to pick their ancestors from free Athenian stock of the required purity of blood.' Gregory Vlastos, 'Justice and Equality,' in *Theories of Rights*, ed. Jeremy Waldron (New York: Oxford University Press, 1984), 42.

46 Quoting Seyla Benhabib, *Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics* (Cambridge: Polity Press, 1992), 153.

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explained that one cannot improve democracy with mere ‘formal’ or ‘institutional’ changes; what is required is the injection of ‘human content.’

‘[I]f everything is not to turn out badly for us, we will need ... a kind of general awakening, an emphasis on seeking an alternative to the established and already shopworn and very technocratic political parties ... and the construction of transparent human communities.’<sup>47</sup>

Beeckman (Section 3) argues that, for a movement to succeed, someone like a Gandhi or Mandela must ‘seize the political initiative’ and say what the program is and who the ‘we’ is who demand that change. Perhaps this was true for nationalist liberation movements as in India and South Africa; although Havel’s experience in the Czech Republic and the at-best partial success in reconstituting a fair, just, and democratic South Africa suggest the limits of this charismatic model. But, in today’s globalizing neoliberal order, the notion that what we need is a concrete political program seems profoundly misguided. Against the backdrop of communism, Havel (161) thought that the very idea that a political theory could dictate progress for humanity was a cruel irony that only risked ‘new forms of enslavement.’ The allure of a ‘program,’ Havel (162) noted, presupposes the hubris of instrumental rationality: ‘A better economic and political model is not something that can be designed and introduced like a new car.’ Against the backdrop of the neoliberal market system and its failures, for us to insist on first devising a better program would be like doubling-down on a really bad bet.

Contemporary popular movements may seem naïve in their refusal to put forward a concrete program. But in a world where liberal political, market, and consumer practices dominate the social field, a change in government or policy would, as Havel (180) says, ‘be utterly inadequate, for it would never come near to the root of the problem.’ I do not know what a more human economic and political system might look like or how we might get there. I do know, with Havel (191), that: ‘The key to a humane, dignified, rich, and happy life does not lie either in the Constitution or in the Criminal Code.’

We *do* need to think of something better than improved versions of liberal democracy. More than a common symbolic space, what we need are new social spaces in which fresh forms of life can emerge and new infrastructures that promote participation and self-governance. The great republican theorists – Machiavelli, Harrington, Jefferson – understood this, which is why they were concerned with novel social practices such as the militia, the freehold, and the public school. This is what makes the *performative* dimension of Occupy and Tahrir Square so crucially important. The instant polling of the German Pirate Party to determine its position on any given issue at any given moment may seem fantastic, even ridiculously unworkable. Maybe it is. But, I would not write it off so soon.

By all means, let us have the conversation. But, let us also listen attentively.

47 Václav Havel, *To the Castle and Back* (New York: Vintage Books, 2008), 327.