

affect is the non-cognitive, subconscious, intensities, flows, and desires, that shape the subject as it moves through time

AC – You're Going De-Leuze

We are **dynamic** – overtime, **affective** encounters with our surroundings through **time** shape subjectivity, yet **representational** thought ascribes to them a **limited essence** – our model **resists** the imposition of **sameness** onto a **chaotic** world.

Deleuze – Deleuze, Gilles. Difference and Repetition. Translated by Paul Patton. 1968

Temporally speaking - in other words, from the point of view of the theory of time - nothing is more instructive than the difference between the Kantian and the Cartesian Cogito. It is as though **Descartes's Cogito operated with** two logical values: determination and undetermined existence. **The determination (I think) implies an undetermined existence (I am,** because 'in order to think one must exist') - **and determines it precisely as the existence of a thinking subject:** I think therefore I am, I am a thing which thinks. **The** entire **Kantian critique [is]** amounts to objecting against Descartes that it is impossible for determination to bear directly upon the undetermined. **The determination ('I think')** obviously **implies** something undetermined **('I am'), but nothing so far tells us how it is that this undetermined is determinable by the 'I think':** 'in the consciousness of myself in mere thought I am the being itself although nothing in myself is thereby given for thought.'⁸ **Kant** therefore **adds** a third logical value: **the determinable,** or rather the form in which the undetermined is determinable (by the determination). This third value suffices to make logic a transcendental instance. It amounts to the discovery of Difference - no longer in the form of an empirical difference between two determinations, but **in the form of a transcendental difference** between the Determination as such and what it determines; **no[t] longer in the form of an external difference which separates, but in the form of an internal Difference which establishes an a priori relation** between thought and being. Kant's answer is well known: the form under which undetermined existence is determinable by the 'I think' is that of time ...⁹ The consequences of this are extreme: **my undetermined existence can be determined only within time as the existence of a phenomenon,** of a passive, receptive phenomenal subject appearing within time. As a result, **the spontaneity of which I am conscious in the 'I think' cannot be understood as the attribute of a substantial** and spontaneous **being, but only as the affection of a passive self which experiences its own thought** - its own intelligence, that by virtue of which it can say I - being exercised in it and upon it but not by it. Here begins a long and inexhaustible story: I is an other, or the paradox of inner sense. **The activity of thought applies** to a receptive being, **to a passive subject which represents that activity to itself rather than enacts it,** which experiences its effect rather than initiates it, and which lives it like an Other within itself. **To 'I think' and 'I am' must be added the self - that is, the passive position** (what Kant calls the receptivity of intuition); to the determination and the undetermined must be added the form of the determinable, **namely time.** Nor is 'add' entirely the right word here, since it is rather a matter of establishing the difference and interiorising it within being and thought. It is as though the **I were fractured** from one end to the other: fractured **by** the pure and empty form of **time.** In this form it is the correlate of the passive self which appears in time. **Time signifies a** fault or a **fracture in the I and a passivity in the self,** and the correlation between the passive self and the fractured I constitutes the discovery of the transcendental, the element of the Copernican Revolution. **Descartes could draw his conclusion only by expelling time, by reducing the Cogito to an instant** and entrusting time to the operation of continuous creation carried out by God. More generally, the supposed identity of the I has no other guarantee than the unity of God himself. For this reason, the substitution of the point of view of the 'I' for the point of view of 'God' = than is commonly supposed, so long as the former retains an identity that it owes precisely to it. If the greatest mistake of transcendental philosophy was to introduce the form of time into thought as such, then this pure and empty form in turn signifies indissolubly the death of God, the fractured I and the passive self. It is true that Kant did not pursue this initiative: both God and the I underwent a practical resurrection. Even in the speculative domain, the fracture is quickly filled by a new form of identity - namely, active synthetic identity; whereas the passive self is defined only by receptivity and, as such, endowed with no power of synthesis. On the contrary, we have seen that receptivity, understood as a capacity for experiencing affections, was only a consequence, and that the passive self was more profoundly constituted by a synthesis which is itself passive (contemplation or attraction). - The possibility of receiving sensations or impressions follows from this. It is impossible to maintain the Kantian distribution, which amounts to a supreme effort to save the world of representation: here, synthesis is understood as active and as giving rise to a new form of identity in the I, while passivity is understood as simple receptivity without synthesis. The Kantian initiative can be taken up, and the form of time can support both the death of God and the fractured I, but in the course of a quite different understanding of the passive self. In this sense, it is correct to claim that neither Fichte nor Hegel is the descendant of Kant - rather, it is Holderlin, who discovers the emptiness of pure time and, in this emptiness, simultaneously the continued diversion of the divine, the prolonged fracture of the I and the

constitutive passion of the self.¹⁰ Holderlin saw in this form of time both the essence of tragedy and the adventure of Oedipus, as though these were complementary figures of the same death instinct. Is it possible that Kantian philosophy should thus be the heir of Oedipus?

Our instability necessitates power structures of rhizomatic becoming that embrace difference. Dominant economic models repress creative desires and over-code social life – fields that are not intelligible within straited space are excluded as deviant.

Rowe 13 – Rowe, J. E. (2013). Understanding economic development as a Deleuzian “plateau.” Local Economy, 28(1), 99–113. doi:10.1177/0269094212465580, Agastya

Understanding economic development as a Deleuzian ‘plateau’ Crafting an economic development strategy from a Deleuzian poststructuralist perspective can be likened to a series of plateaus. In geology or physical geography a plateau refers to relatively flat elevated regions with often nearly horizontal underlying layers of rock strata. When discussing ‘plateaus’, Colebrook (2002: 58) stated that: of layers: genetic, chemical, geological and cultural events all produce different strata or plateaus of life ...

The idea of a ... [framework for understanding economic development] suggests that there is a distribution, a drawing of lines, a plane of differences, a number of planes or plateaus which constitute ...[practice], and that this number of plateaus cannot be located within the unity of a subject.

In this article, ‘plateaus’ are metaphorically conceptualized as levels of understanding of basic economic development concepts such as competitive advantage (Rowe, 2009). The elevation of the various ‘plateaus’ becomes increasingly higher and more complex as new goals and key concepts are folded into the mix.¹ The various levels of understanding are conceptualized as rhizomatic structures of paths and connective links (Morss, 2000: 195).² The paths or links could be disturbed, interrupted or lost, but there is always an alternative path to follow that continues the flow by connecting ideas and thoughts. The implications from the upwards sophistication of concepts will be examined through a Deleuzian lens.³ This researcher also interprets such concepts as tools for thinking outside the square. This research seeks to

illustrate the potential value for alternative ways of thinking about and conceptualizing key local economic development fundamentals through the use of the Deleuzian metaphor ‘plateau’ in a New Zealand context. Deleuzian concepts offers a ‘new way of thinking about economic development by providing insights into the complexity and chaos of capitalism while affording alternative ways of thinking about economic development policies or strategies’ (Rowe, 2012: 76). Such a framework is potentially useful because Deleuzian concepts ‘clearly refer to spatial relationships’ (Gough, 2005: 2) between real world economic activities and can be seen as ways of visualising them. The second section of this article will further develop the theoretical framework. New Zealand’s geographic location will be delineated and the effects of globalization on the nation’s economy will be investigated from a practitioner’s perspective. The following sections will begin by conceptualizing the nation’s competitive advantage and regional fundamentals as ‘plateaus’ of knowledge. Other key economic development tools, such as clustering, SME support systems and small business incubators, will also be folded into the mix of fundamental concepts.

Theoretical framework The landscape can be visualized as a series of ‘plateaus’ or plateaux as originally conceptualized by Bateson (1973) in the early 1970s (Deleuze and Guattari, 1987: 21–22, 158; Massumi, 1992: 7). The concept has been subsequently refined by Deleuze and Guattari (1987) in their seminal publication A Thousand Plateaus: Capitalism and Schizophrenia. Deleuze and Guattari developed the concept as a way of describing the distinction between arborescent and rhizomatic thinking. The philosophers called a ‘plateau’ ‘any multiplicity connected to other multiplicities by superficial underground stems in such a way as to form or extend a rhizome’ (Deleuze and Guattari, 1987: 22). Jacobs (2007: 268) described the metaphor ‘rhizome’ as follows: The multifarious activities that constitute [economic development] can be seen ... as links between those ensembles of activity or patchworks ... through what Deleuze and Guattari term the ‘rhizome’, a metaphor that they

use to ‘maps’ the connections between agents, material objects and the local. A ‘plateau’ can also be formulated as a descriptor in order to enhance the understanding of the New Zealand context. The context needs to be understood as an essential component of a conceptual framework for visualizing how different stakeholders (Central Government policy makers, local politicians, the forces of globalization, etc.) at different scales converge across the ebbs and flows of daily practice. According to Brian Massumi (1992: 7): intensity that is not automatically dissipated in a climax leading to a state of rest. The heightening of energies is sustained long enough to leave a kind of afterimage of its dynamism that can be reactivated or injected into other activities, creating a fabric of intensive states between which may number of connecting routes could exist. This is important because an economic development practitioner needs to be able to ‘identify, analyse and intervene in the complex mixture of forces at work in a globalised economy’ (Hillier, 2005: 279).

In order to intervene, practitioners have to deal with the virtual and actual because they both constitute reality. Actuality is unfolded from potentiality and the 'diverse actualisations of the virtual... [can be] understood as solutions' (Boundas, 2005: 297) or events. 'Virtual implies future potential or becoming' 4 (Hillier, 2008: 45) and in this first domain, the virtual, essences are replaced with multiplicities. Deleuze (1988: 55) further elaborated by stating that: We have ... confused Being with beingpresent. Nevertheless, the present is not; rather, it is pure becoming, always outside itself. It is not; but it acts. Its proper element is not being but the active or useful. The past, on the other hand, has ceased to act or be useful. But it has not ceased to be. Useless and inactive, impassive, it IS, in the full sense of the word: it is identical with being in itself. Deleuze developed his conceptualization of virtual by drawing upon the Bergsonian *durée* and *élan vital*. Both Deleuze and Bergson agree that *durée* is an 'immanently differentiated dynamic process of the real whose nature is always to actuali[s]e itself in novel differentiations' (Boundas, 2005: 298). 'From any actual or unfolded term it should be possible (and, for Deleuze, desirable) to intuit the richer potentiality from which it has emerged' (Colebrook, 2005: 10). This is applicable to this research because 'difference is something possible for an already actualised entity' (Colebrook, 2005: 9). This can be related to the striated hierarchical bureaucratic structure that a practitioner has to deal with when seeking funding for a new initiative. For example, key concepts such as smooth and striated space clearly illustrate the connection between Deleuzian philosophy and the practice of local economic development. According to Patton (2000: 111–112) smooth space indicates 'the heterogeneous space of qualitative multiplicity, while striated space is the homogeneous space of quantitative multiplicity'. Smooth space can also be considered 'rhizomatic space... in which local regions are juxtaposed without reference to an overarching' (Patton, 2000: 112) economic development strategy. In the above quotations, Patton was referring to the inherent tension between smooth and striated space. An economic development strategy is usually designed as a striated structure with specific actions plans to address each goal. Paradoxically, a key objective of most economic development strategies is to create the smooth space of an entrepreneurial culture. It should be noted that Deleuze and Guattari (1987: 474) understood that these opposing spaces are intertwined by stating that: 'smooth space is constantly being translated, transversed into striated space; striated space is constantly being reversed, returned to smooth space'. Following this same line of thought, a practitioner can strive towards immanence by implementing new initiatives which challenges the striating forces which seek to deand reterritorialize space and by regulating its chaotic multiplicities through striation (Osborne and Rose, 1999: 738).⁵ As a result, immanence is difficult to achieve because policies and strategic documents create points on which to tie striations. Similarly, 'Deleuzoguattarian knots of arborescence where matted elements of smooth space are woven into the... [fabric] of striated space' (Hillier 2007: 139). These 'becomings of entangled complex assemblages' (Bonta, 2005: 110) invent new lines of flight ⁶ and innovative solutions to approach local problems as 'they escape from old constraints' and 'convert desire into economic opportunities' (Hillier, 2007: 139). Crafting an economic development strategy is a becoming because it promotes new trajectories, ideas and innovative solutions (Massumi, 1992: 101). Consequently, one could strive toward immanence by channelling smooth space into the mix of striations to create a becoming: a becoming-developed. The practice of economic development can also be regarded as a performance of folding (there is no predetermined style of folding, un-or-refolding). Practitioners may choose (if they wish) to participate in a Deleuzian voyage of discovery by 'play[ing] along the folds and... become swept up by the variable consistency of a certain context' (Doel, 2000: 131) which opens up potentialities of becoming (Semetsky, 2011). The issue is not one of relation, but of 'fold-in' or of 'fold according to fold'. Folds are in this sense everywhere without the fold being a universal (Deleuze, 1993: 135). It's a 'differentiation', a 'differential' (Deleuze, 1995: 156) and the 'unit of matter, the smallest element of the labyrinth, is the fold' (Deleuze, 1992: 6). The term 'fold' has also been borrowed from geology. It can be defined as a bend, flexure, or wrinkle in rock produced when the rock was in a plastic state (Leet et al., 1978: 468). It is in this sense that a fold, as the minimal element, is a transformer because one is always amongst countless others who perpetually pull it out of shape (Doel, 2001: 564). This means that understanding can be enhanced by visualizing key concepts such as competitive advantage and the forces of globalization being folded into the complex mix that constitutes the practice of economic development. Visualizing concepts such as competitive advantage and the forces of globalization as 'plateaus' can be enabling and emergent via differential relations of folding. As

Deleuze (1992: 93) concludes: 'I am forever unfolding between two folds and if to perceive means to unfold, than I am forever perceiving within the folds'. Practitioners with new insights are better prepared to navigate through the muddled transdisciplinary field of local economic development.

Thus, the roll of the ballot is to embrace economic creative difference. Our orientation is key to pedagogy – we need to tip the scales towards a minoritarian repositioning to mobilize moments of relationality and challenge dominant epistemologies.

Carlin and Wallin – Carlin, Matthew. Wallin, Jason. "Deleuze & Guattari, Politics and Education." Bloomsbury. 2014. Pg. 119-121

As a social machine through which 'labour power and the socius as a whole is manufactured', schooling figures in the production of social territories that already anticipate a certain kind of people (Guattari, 2009, p. 47). And what kind of people does orthodox schooling seek to produce but a 'molar public', or, rather, a public regulated in the abstract image of segmentary social categories (age, gender, ethnicity, class, rank, achievement) (Deleuze and Guattari, 1987)? Such an aspiration is intimately wed to the territorializing powers of the State, for as Deleuze and Guattari argue (1983), State power first requires a 'representational subject' as both an abstract and unconscious model in relation to which one is taught to desire. As Massumi (2002) writes,

'the subject is made to be in conformity with the systems that produces it, such that the subject reproduces the system' (p. 6). Where **education has historically functioned to regulate institutional life according to such segmentary molar codes, its** modes of production have taken as their teleological **goal** the **production of a 'majoritarian people'**, or, more accurately, a people circuted to their representational self-similarity according to State thought. This is, in part, the threat that Aoki (2005)

identifies in the planned curriculum and its projection of an abstract essentialism upon a diversity of concrete educational assemblages (a school, a class, a curriculum, etc.). Apropos Deleuze, Aoki argues that the standardization of education has effectively reduced difference to a matter of difference in degree. That is, in reference to the stratifying power of the planned curriculum, Aoki avers that difference is always-already linked to an abstract image to which pedagogy ought to aspire and in conformity to which its operations become recognizable as 'education' per se. Against political action then, orthodox educational thought conceptualizes social life alongside the 'categories of the Negative', eschewing difference for conformity, flows for unities, mobile

arrangements for totalizing systems (Foucault, 1983, p. xiii). Twisting Deleuze, might we claim that the people are missing in education? That is, where **education aspires to**

invest desire in the production of a **'majoritarian' or 'molar' public, the prospect of thinking singularities are**

stayed, not only through the paucity of enunciatory **forms and images available for thinking education** in the first place, but further,

through the organization of the school's enunciatory machines into vehicles of representation that

repeat in molarizing forms of self-reflection, 'majoritarian' perspective, and dominant circuits of desiring-investment. Herein, **the impulse of**

standardization obliterates alternative subject formations and the modes of counter-signifying

enunciation that might palpate them. Repelling the singular, the **'majoritarian' and standardizing impulse of**

education takes as its 'fundamental' mode of production the reification of common sense, or, rather, the

territorialization of thought according to that which is given (that which everyone already knows). **Figuring in a mode 'of identification that brings**

diversity in general to bear upon the form of the Same', common sense functions to stabilize patterns of social production by tethering them to

molar orders of meaning and dominant regimes of social signification (Deleuze, 1990, p. 78). As Daignault argues, in so far as it repels the anomalous by reterritorializing it within prior systems of representation, common sense constitutes a significant and lingering problem in contemporary education (Hwu, 2004). Its function, Daignault alludes apropos Serres, is oriented to the

annihilation of difference. Hence, **where the conceptualization of 'public' education is founded in common sense,**

potentials for political action through tactics of proliferation, disjunction, and singularization **are**

radically delimited and captured within prior territorialities of use (Foucault, 1983, p. xiii). The problem of this scenario is clear: **common sense has yet to**

force us to think in a manner capable of subtracting desire from majoritarian thought in lieu of

alternative forms of organization and experimental expression. In so far as it functions as a vehicle of 'molarization', reifying a common

universe of reference for enunciation, the school fails to produce conditions for thinking in a manner that is not already anticipated by such referential 'possibilities'. Hence, **while**

antithetical to the espoused purpose of schooling, the majoritarian impulse of the school has yet to

produce conditions for thinking – at least in the Deleuzian (2000) sense whereupon thought proceeds from a necessary violence to those habits of repetition with

which thought becomes contracted.

The politics of stable subjectivity coopts all attempts at resistance – it stabilizes complex features into unchanging models which dooms all radical praxis to failure.

Rolli – Rolli, Marc. "Immanence and Transcendence" Bulletin de la Societe Amincaine de Philosophie de Langue Francaise Volume 14, Number 2, Fall 2004

We now arrive at the last point. I have emphasized how immanence can be considered as a profane source of experience that makes sense only in the context of temporal subjectification processes. It does not therefore suffice to posit a pure sensuality or a pure thinking of immanence. **Our self and worldly relations are always determined by relations of power.** But **only on** the basis of a scheme of **immanent thinking is it possible to** really begin to **see these determining factors.**²⁸ **Otherwise** an **empirical state of affairs—an empirical normality—is hypostatized as a transcendental norm, in such a way that its genetic background** and conditions **can be** considered mere byproducts **and ignored.** Thus, **as long as** it is considered a foregone conclusion that **a normal human [is]** being has **white** skin, is of the **male** gender, **middle aged**, belongs to a (particular) religion, and so on, then **there is no need to ask about the disciplining,** sociological, political, and economical processes in recent or **past history[s] that have given rise to that person.** From the perspective of immanence, **what can be located within power relations**—in the sense of the conditions of actualization of immanent structures—thus **seems** naturally **legitimate.** Deleuze's philosophy of immanence is therefore both political as well as "absolute." Immanent perceptions, sensations, and concepts are just as much immediately determined by social conditions as are the micrological regions of the political as immanent processes of being. Against established power structures that benefit the rich to the detriment of the many, a kind of thinking emerges that relies on immanence and is thereby qualified to inquire into the implicit strategies that motivate all representative forms of life production and empowerment. **Such [immanent] a thinking does not solely aim at unveiling the orders of life** that are otherwise presumed to be natural, **but is directed towards a model of free associations** and free action. Deleuze's temporal ontology of **immanence** thus **reveal[ing]** itself as excluding dejection **concentrations of power and** thereby **making them comprehensible** as facts with **regard to their causal conditions.** It is therefore **impossible to** tacitly **insert transcendence into the corresponding level of immanence, where its power can be played out.** It is impossible because the **structural characteristic of immanence is a constant transport of difference, so** that the **syntheses of** differential **singularities always refer to a particular actuality** of immanent structures—and according to Deleuze, it is only on this level that densities and consolidations of power relations are situated. By contrast, the postulates of **transcendence,** by relying on natural orders and homologies, **conceal the power—**drenched determination **of** forms of **thinking and action.** Although in his early lectures on Kant, Heidegger drew on the dimension of time to expand critical philosophy—and in this regard he was a source of inspiration for Deleuze—his orientation towards the origin of imagination as a medium between understanding and contemplation testifies to a certain natural accordance which in fact renders superfluous any profound analysis of conditioning power relations. Central to Heidegger's discourse is an act of transcendence which assigns the level of temporal immanence to a self-identical Dasein which overcomes itself. The same problem can be identified in the context of the critique of onto-theology. Here the difficulty has to do with the presumed philosophical "unity" of being and thinking which, according to Heidegger, pre-exists any active or spontaneous activity of thinking and is but the task of thinking to heed.²⁹ In this regard Deleuze can be seen to play off Nietzsche against Heidegger. For while Nietzsche, with the "will to power," presents a concept of immanence that leaves modern nihilism behind because it radically questions the value of value, Heidegger, in his criticism of Nietzsche, relies on the "proper" (eigentliche) value of a dedicated "experience of being" (5 which backs away from the escalating nihilism of the times. Insofar as Heidegger, faced with the decay of modernity, holds on to a thinking of transcendence, his diagnosis of the present thus remains stuck in resentment. For instead of taking fate (Geschick) into our own hands, we are to let fate follow its course and obey the order that comes from the highest ruler: Being itself.

Only affect can bridge the gap between discursive regimes and the material world – it's cruelly optimistic to force chaotic identity into stable structures.

Schafer 13 – Schaefer '13. Schaefer, D. "The Promise of Affect: The Politics of the Event in Ahmed's The Promise of Happiness and Berlant's Cruel Optimism." Theory & Event 16.2 2013. Project MUSE

At a recent talk at the University of Pennsylvania, Lauren Berlant was asked a question about the relationship between her work—she had just finished a lecture on the theme of flat affect in Gregg Araki's 2004 film *Mysterious Skin*—and the political. "Because I work on affect," she responded, "I think everything is realism" (Berlant: 2012). Like the dense introductory segments of each of her chapters—thick but fast-moving genealogical waterslides—I think that unpacking statements like this from Berlant is best repaid by taking them in a low gear. When Berlant maps her method as affect theory, she is suggesting that the works she examines in her capacity as a scholar of literature cannot be divorced from the political-material contexts out of which they emerge, but at the same time must be recognized as incarnations of a particular embodied iteration within this field. **Texts are produced by bodies that are both enmeshed in their political worlds and trying to negotiate those worlds in their own distinct way.** Everything we do is realism: Berlant's **textual objects of study are mediations, attempts to work something out, exhibitions of tensed, embodied, affective realities.**¹ This is the promise of **affect theory, the possibility sliding together analytical tools used to pick apart both highly individuated and highly social contact zones—bodies and histories—as incarnated realities. Affect theory wants to maintain the insights of high theory, the doctrinaire approach that says "historicize everything," while** at the same time **thinking of how bodies inject their own materiality** into spaces. This means using language that enters the orbit of the biological. In the introduction to their 1995 edited volume *Shame and Its Sisters: A Silvan Tomkins Reader* (later reprinted in Sedgwick's *Touching Feeling*)—one of the earliest manifestoes of contemporary affect theory—Eve Kosofsky Sedgwick and Adam Frank acerbically catalog what theory "knows today," first and foremost that 1: The distance of [an] account from a biological basis is assumed to correlate near precisely with its potential for doing justice to difference (individual, historical, and cross-cultural), to contingency, to performative force, and to the possibility of change (Sedgwick: 2003, 93).

And 2: Human language is assumed to offer the most productive, if not the only possible, model for understanding representation (Sedgwick: 2003, 93). **Affect theory in this vision is designed to explore[s] the "crucial knowledges" of bodies outside a purely theoretical determination, outside the traditional domains of humanist scholarship—reason, cognition, and language** (Sedgwick: 2003, 114). **Affect**, for Lauren Berlant, **is** thus understandable as "sensual **matter that is elsewhere to sovereign consciousness but** that **has** historical **significance in domains of subjectivity**" (Berlant: 2011, 53). **Affect theory is about how systems of forces circulating within bodies**—forces not necessarily subsumable or describable by language—**interface with histories**. It is about how discourses form ligatures with pulsing flesh-and-blood creatures. Two recent texts, Sara Ahmed's *The Promise of Happiness* (2010) and Berlant's *Cruel Optimism* (2011), can be seen as developing this strand, and in particular, of indicating new ways of feeling out politics through the membrane of affect theory. Both of these authors suggest that the repertoire of the analytics of power (Foucault: 1990) must be supplemented with resources from the affective turn. Recent critiques of affect theory² have focused on a branch of affect theory heavily informed by Gilles Deleuze's reading of Spinoza. In this strand, affect is rendered as a set of ontological properties, as an ensemble of mutable attributes.³ Contemporary Deleuzians such as Brian Massumi⁴ and William Connolly⁵ have been targeted by these critics for their attempts at absorbing scientific research into the Spinozistic discourse of affect. But Spinoza and Deleuze are second-tier characters in Ahmed and Berlant's work—which is perhaps why Ahmed situates herself in a lineage—stretching back to Sedgwick—that she calls "feminist cultural studies of affect"⁶ (Ahmed: 2010, 13). Where the Deleuzian strands focuses on affect as the raw material of becoming, as the play of substances, Ahmed and Berlant locate **affect theory [is]** as a **phenomenological, rather than ontological** enterprise. It is in the phenomenology of the political that Ahmed and Berlant ground their projects. For Ahmed, this comes in the form of a new attention to happiness as an object of analysis. This does not mean a circumscribed exploration of happiness as a thing, but rather programmatically asking the question "what does happiness do?" (Ahmed: 2010, 2). **Happiness is not autonomous, Ahmed argues, but a relationship of evaluation that creates the horizon of the self.** For Ahmed, the "near sphere" of **the self is constituted by a perimeter studded with "happy objects."** **This cluster** of objects **is what gives the field of mobile operations of the self its shape.** In this "drama of contingency," we "come to have our likes, which might even establish what we are like" (Ahmed: 2010, 24). But for Ahmed, happiness as an affective field settling in proximity to bodies is not necessarily transparent in its shape or its function to the self. Happiness often takes the form, she suggests, of a promise, of a deferred possibility. Taking the phenomenological tradition of Edmund Husserl as a springboard for a discussion of time-consciousness, she suggests that happiness as a promise—from the Latin verb *promittere*, "to let go or send forth"—is an anticipation rather than a felt presence (Ahmed: 2010, 38). Rather than simply an affect that circulates between bodies and objects, happiness is also a promise that is passed around. This analysis of the promise of happiness underpins the genealogy Ahmed organizes in the opening chapter of the book: an exploration of the contemporary "happiness turn" in scholarship and the "happiness industry" emerging in parallel in popular media marketplaces. This discourse, she suggests, moves happiness further away from its etymological origin point—in the Middle English *hap* or *fortune*, cognate with "perhaps" and "happenstance"—suggesting chance to a sense of happiness as a scheme, a program that, if followed, leads to ultimate good (Ahmed: 2010, 6). This sense of the promise of happiness is the elimination of contingency by guaranteeing the futurity of happiness: "The promise of happiness takes this form: if you have this or have that, or if you do this or do that, then happiness is what follows" (Ahmed: 2010, 29). Happiness as a guarantee—a promise that circulates through power-knowledge regimes—but one that defers happiness rather than making happiness present, is one of the mechanisms by which happiness is translated into the skin of a political organism, an "affective community"—such as a family or a society. Through the promise of happiness, bodies are brought together by a shared expectation of future comfort. But because this is a promise rather than immediate happiness, an interstice is formed between this promise and individual experiencing bodies—an interstice that can either be full and complete or disconnected. The family, for instance, does not share a happiness, but a happiness deferred, a promise or image of happiness to-come (Ahmed: 2010, 46). It is in this interstice, either blockaded or fluid, that Ahmed articulates the need for a politics of killing joy, of breaking down the promise of happiness as a regime that demands fidelity without recourse. For Ahmed, the discourse of happiness is performative: it produces a politics of promise (or nostalgia) that suffocates alternative promises and alternative explorations. Here Ahmed produces biographies of a range of "affect aliens," bodies that are called on to be silent and accept the happiness that has been promised, while their actual desires and hopes are out of joint with the world around them: feminist killjoys, unhappy queers, melancholic migrants. The promise of happiness, Ahmed suggests, must be interrupted to make room for emancipatory politics. "I am not saying that we have an obligation to be unhappy," she writes, "I am simply suggesting that we need to think about unhappiness as more than a feeling that should be overcome" (Ahmed: 2010, 217). In the closing passage of the book she writes that since "the desire for happiness can cover signs of its negation, a revolutionary politics has to work hard to stay proximate to unhappiness" (Ahmed: 2010, 223). Political change, Ahmed contends, is paralyzed by the imperative to be happy, to stay within the narrow guidelines of happiness's promise. Where Ahmed's background is in a western philosophical lineage that leads up to contemporary questions of affect, the immediate theoretical precursor of Lauren Berlant's *Cruel Optimism* is Kathleen Stewart's *Ordinary Affects* (2007), which develops the notion of the "ordinary" as a felt reality. "Ordinary affects," Stewart writes, "are the varied, surging capacities to affect and to be affected that give everyday life the quality of a continual motion of relations, scenes, contingencies, and emergences" (Stewart: 2007, 1f). Berlant is interested in particular in how the ordinary comes to take the form of a sort of affective impasse, a set of felt relationships that cannot be moved through. *Cruel Optimism* is a focused study of a particular category of impasse, what she calls "cruel optimism." **Cruel optimism**, she explains at the book's outset, refers to a relation that **emerges "when something you desire is actually an obstacle to your flourishing**. It might involve food, or a kind of love; **it might be a fantasy of the good life, or a political project"**

(Berlant: 2011, 1). Berlant explores a range of situations where **these attachments emerge, as a response to trauma or out of the ongoing pressures of the ordinary**, in particular through the parameters of what she calls "genres of precarity," a range of aesthetic practices and styles—"mass media, literature, television, film, and video"—that ... emerge during the 1990s to register a shift in how the older state-liberal-capitalist fantasies shape adjustments to the structural pressures of crisis and loss that are wearing out the power of the good life's traditional fantasy bribe without wearing out the need for a good life (Berlant: 2011, 7). Realism: texts always reflect an affective situation, a force field of desires, a labile contact zone between bodies and intersecting historical frames. Framing literary criticism (broadly construed) as a practice of **tracing the connective tissue between bodies and situations is** what lets Berlant speak to **the political use of affect**. She suggests that affect theory is a "another phase in the history of ideology theory," that it "brings us back to the encounter of what is sensed with what is known and what has impact in a new but also recognizable way" (Berlant: 2011, 53). **Affect**—especially ordinary affect—**is the missing link between discursive regimes and bodies, the arterial linkages through which power is disseminated. "The present" is not an assemblage of texts and knowledges, bloodless discursive inscriptions on the body, but a felt sense out of which political circumstances emerge. "We understand nothing about** **impasses of the political," she writes, "without having an account of the production of the present"** (Berlant: 2011, 4). Cruel optimism as a byproduct of political situations colliding with bodies plays out in ongoing, semistable routines, in ordinariness. This focus on the ordinary frames Berlant's conception of the political as a slow-motion reaction rather than a series of staccato punctuations. This comes out, for instance, in her exhortation to move away from trauma theory as a way of "describing what happens to persons and populations as an effect of catastrophic impacts" (Berlant: 2011, 9). Rather, Berlant suggests that trauma is only one facet of the ordinary, a precursory event that yields new historical trajectories lived out in slow-motion. "Trauma," she writes, ... forces its subjects not into mere stuckness but into crisis mode, where they develop some broad, enduring intuitions about the way we live in a now that's emerging without unfolding, and imagining a historicism from within a discontinuous present and ways of being that were never sovereign (Berlant: 2011, 93). Rather than the instantiating event, Berlant is interested in the fallout of politics, the long-running reverberations. It is in these interwoven aftermaths following in the wake of bodies that Berlant locates the tropic of cruel optimism. Optimism, she is careful to point out, can "feel" any number of different ways, can come clothed in any number of affective orientations. "Because optimism is ambitious," she writes, "at any moment it might not feel like anything, including nothing: dread, anxiety, hunger, curiosity, the whole gamut from the sly neutrality of browsing the aisles to excitement at the prospect of 'the change that's gonna come'" (Berlant: 2011, 2). **Rather than a singularly identifiable feeling, optimism takes the phenomenological form of a "knotty tethering to objects, scenes, and modes of life that generate so much overwhelming yet sustaining negation" (Berlant: 2011, 52). Optimism binds bodies to "fantasies of the good life," to horizons of possibility that may or may not be defeated by the conditions of their own emergence. Cruel optimism is the outcome of this circumstance of tethering confused by itself, of Möbius-strip cycles of ambition and frustration.** The ordinary, precisely because of its complexity, can contain the intransigent contradictions of cruel optimism (Berlant: 2011, 53). It is the space of the rubble, the hovering dust, the shockwaves that follow the event rather than the piercing clarity of the punctum itself. Berlant is interested in the ways that habits form out of situations of impossibility—for instance, in her reading of Gregg Bordowitz's documentary film *Habit* (2001), about the body rituals that structure the daily lives of a gay man living with AIDS and his partner in New York City in the 1990s. Bordowitz's work maps a crisis that reflects Berlant's delineation of the field of the political: with the new availability of anti-retroviral drugs in the 1990s, AIDS ceased to be "a death sentence," and thus "turned fated life back into an ellipsis, a time marked by pill- and test-taking, and other things, the usual" (Berlant: 2011, 58). For Berlant, the event is a rarity, and is only secondarily the zone of the political, which is itself constituted by ongoing patterns of response and desire—slow-motion echoes producing new forms as they cross-cut and interfere with one another (Berlant: 2011, 6). In this sense, Berlant explains, her work meshes with Sedgwick's queer reading of affect as the histories that make us desire in unexpected, perverse ways. "The queer tendency of this method," Berlant writes, "is to put one's attachments back into play and into pleasure, into knowledge, into worlds. It is to admit that they matter" (Berlant: 2011, 123). Berlant sees the terrain of the political emerging out of this tissue of affectively-embroidered histories. Although both Ahmed and Berlant write about the uses of affect as a phenomenological bridge to the political, and the slipperiness of happiness or the good life—the way that pleasure can be wrapped up with a strain of unease—there is a distinction between their respective scopes of inquiry. Where Ahmed's book is about frustration/promise/deferral, Berlant's is about addiction. When I asked my students to come up with examples of **cruel optimism**, they brainstormed the following list: heroin, abusive relationships, candy, horcruxes. Each of these instances **suggests a vital but destructive need, an ambivalent compulsion—an addiction**, where the tectonic plates of the body's affects shift in friction with one another. **Cruel optimism indexes these moments where a body desires and needs an arrangement of the world that is also frustrating or corrosive.** Politics is one of these zones of fractious attraction. Berlant writes, for instance, that intensely political seasons spawn reveries of a different immediacy. People imagine alternative environments where authenticity trumps ideology, truths cannot be concealed, and communication feels intimate, face-to-face" (Berlant: 2011, 223). **Politics produces fantasies, tethers that draw us forward to particular attachments in the form of images, narratives, bodily practices.** But **these fantasies also contain the elements of their own**

frustration or refusal. President George W. Bush, for example, is able to use the affective elements of statecraft (a practice which, Berlant assures us, is decidedly non-partisan) to create a façade that diverts attention from his flailing foreign and economic policies (Berlant: 2011, 226). Berlant's focus in *Cruel Optimism* is on politics as a field of attachments, a skein of affectively pulsing tissues linking bodies together. "Pace Žižek," she writes, ... the energy that generates this sustaining commitment to the work of undoing a world while making one requires fantasy to motor programs of action, to distort the present on behalf of what the present can become. It requires a surrealistic affectsphere to counter the one that already exists, enabling a confrontation with the fact that any action of making a claim on the present involves bruising processes of detachment from anchors in the world, along with optimistic projections of a world that is worth our attachment to it (Berlant: 2011, 263). Berlant looks at how politics pulls on bodies using the ligaments of affect, how politics becomes irresistible, even when it is self-frustrating. Ahmed's focus is very different: she is interested in thinking through politics as the space of unhappiness and deferment. In a section of Chapter 5 entitled "The Freedom to Be Unhappy," Ahmed writes that revolutionary practices may need to follow from the willingness to suspend happiness, to dissolve the imbricated promises of happiness that produce hermetically sealed political systems. Affect aliens are forged in the pressure of unfulfilled or unfulfillable promises of happiness, sealed in a relationship of anticipation pinned to the guarantee of ultimate good. Thus Ahmed writes that "any politics of justice will involve causing unhappiness even if that is not the point of our action. So much happiness is premised on, and promised by, the concealment of suffering, the freedom to look away from what compromises one's happiness" (Ahmed: 2010, 196). The revolutionary politics Ahmed wants to advance is willing to put happiness at risk, to dissolve promises of happiness. Ahmed is clear, though, that this is not to make politics about unhappiness: It is not that unhappiness becomes our telos: rather, if we no longer presume happiness is our telos, unhappiness would register as more than what gets in the way. When we are no longer sure of what gets in the way, then 'the way' itself becomes a question (Ahmed: 2010, 195). Neither happiness nor unhappiness is the telos of revolutionary politics. Rather, Ahmed wants to connect the political back to the "hap" of happiness. Rather than a critique of happiness, I would suggest that the broader channel of her project is best understood as a critique of promise. Thus she ends Chapter 5 with the later work of Jacques Derrida, indicating the need to keep politics open to the event, to the unexpected possibilities to-come. She proposes a vision of happiness that "would be alive to chance, to chance arrivals, to the perhaps of a happening" (Ahmed: 2010, 198). Where for Berlant the event is in the past, the ancestor of our tensed bodily habits today, for Ahmed, the event is ahead, the always-anticipated but radically unknown future. There is also a complementarity to these books, a sense in which both come at the relationship between affect and the political from different sides of the problem, but are nonetheless hurtling towards a common point of impact. Is Ahmed describing scenes where cruel optimism unravels under the internal pressure of a frustrated promise? Is cruel optimism the deferral of happiness implicit in the temporal structure of the promise? These are not fully resolved or resolvable questions, in part because Ahmed and Berlant roll their theoretical lens over such a wide range of circumstances. I would suggest that deepening the conversation between these approaches will hinge in part on exploring the relationship between affect and time—a question that is surfaced by both of these texts but not resolved. Ahmed wants to play inside the deconstructive thematics of the promise that allows us to view affect as a state of deferral. But Ahmed comes closest to Berlant when she writes that "[i]f we hope for happiness, then we might be happy as long as we can retain this hope (a happiness that paradoxically allows us to be happy with unhappiness)" (Ahmed: 2010, 181). Is deferred happiness really divided from happiness? What if fantasies—what Silvan Tomkins calls "images"—are so crucial to the production of affect that to save and savor fantasies in one's near sphere is "worth" their eventual frustration? What if a promise deferred is itself a form of happiness—even if the deferral turns out, in retrospect, to have been endless? What happens while we wait? This is in no way to acquiesce to those situations, sketched by Ahmed in the inner chapters of the book, where promises are made that produce affect aliens—investment in a community of promise that will never materialize as happiness. But it is to suggest that the economic flows of affect are more complex than a simple binary of presence/deferment. There may be a clearer divergence in Berlant and Ahmed's respective emphases on the felt temporality of politics. Ahmed suggests that political transformation happens by orienting us to the perhaps, towards an evental horizon constituted by uncertainty, rather than promise. Berlant seems more skeptical about the possibility of untethering ourselves from an orientation to future happiness. As in her response to Žižek, she emphasizes the intransigence of fantasy, especially as a conduit that can produce political energy. I wonder if Berlant's answer here points to a different way of resolving the problem of temporality hovering over Ahmed's work: what if the dissolution of promise did not leave us at the mercy of a pure politics of hap, of chance, but opened us up to new horizons of hope—neither guaranteed nor radically accidental? This dynamic interfaces with an equally provocative question lodged early on and left unresolved in Berlant's book: "I have indeed wondered," she writes in her Introduction, "whether all optimism is cruel, because the experience of loss of the conditions of its reproduction can be so breathtakingly bad, just as the threat of the loss of x in the scope of one's attachment drives can feel like a threat to living on itself" (Berlant: 2011, 24). In mapping affectively mediated politics, how do we assess the cruelty of hope? What are the singular psychic costs of disappointment that must be risked or countenanced in the production of a politics without promise? These books are profoundly important contributions advancing the still-new and in some ways still-tentative field of affect theory. They open up two distinct but interrelated methodological templates for thinking through issues of globalization, race, gender and sexuality, media, philosophy, and religion: the thematics of frustration and of addiction in the moving affectsphere of the political. What both Ahmed and Berlant demonstrate is that **affect theory offers a crucial set of resources for thinking through the relationship between bodies and discourses.** The enterprise of thinking politics, of mapping the enfolding of bodies by power, cannot move forward without affect.

Static rules fail since each agent formulates their own interpretation in moments of crisis – we must orient agency towards chaos to break free from indeterminate principles.

Smith – Nathan Jun and Daniel W. Smith. “Deleuze and Ethics.”

As I suggested earlier, traditional ethical philosophy suffers from approach[es]ing ethics the wrong way round. The maneuver seems to be as follows: **The ethicist begins with well-determined situations** that have already occurred **and** then **proceeds to search for a rule** that would allow him or her **to evaluate whether the action is right or wrong**. In ethical philosophy and theorization everything seems to proceed as if the action were already accomplished and then the action gets evaluated. However, this reversal becomes unconscious in the mind of the theorist, such that the rule allowing for the evaluation of the action is treated as preceding the event to be evaluated. Part of **the problem** here **lies in** the ethical theorist implicitly asking the wrong sort of question. And by **asking the wrong sort of question**, the ethical theorist situates himself in **the wrong ethical “phenomenology.”** **Rather than** rushing to **answer** the question of what ethics is, or **how we distinguish right from wrong**, **we** should **rst ask the strange question of when ethical problematics arise**. In this connection, Deleuze was right to denounce the question “what is x?” As Deleuze writes: Rationalism wanted to tie the fate of [problems] to abstract and dead essence; and to the extent that the problem form of [problems were] recognized, it even wanted that form tied to the question of essences – in other words, to the “What is X?”. How many misunderstandings are contained in this will! . . . Once it is a question of determining the problem or the Idea as such, once it is a question of setting the dialectic in motion, the question “What is X?” gives way to other questions, otherwise powerful and efficacious, otherwise imperative: “How much, how and in what cases?” (Deleuze 1994: 188) The question of the “when” of ethical problematics would at least possess the virtue of suspending a number of our assumptions pertaining to what ethics is about, and setting us on the track of a more accurate ethical phenomenology. **The problem with the traditional ethic[s]al philosophies I discussed earlier is that they know everything in advance**. Here **it is simply a question of applying a rule or a scheme to a particular case**. Yet when we look at **actual ethical situations** such as the one depicted at the beginning of this chapter, we notice that they **are** above all **characterized by uncertainty**. Somehow, within the framework of traditional ethical theories it is this moment of uncertainty, of crisis, that utterly disappears and is erased. To be sure, traditional ethical theory attenuates the question of what is to be done, but almost always within the framework of clearly delineated possibilities and alternatives. What is missing is precisely this moment of the uncertain that gives the ethical, whether at the level of an individual life or in relations amongst elements or actors in a collective, its particular flavor. If **the moment of the ethical is characterized by** anything – and note I’ve shifted from a substantialist language to a temporal language – it is characterized by precisely **that moment where an organized and stable situation has become unsettled** and it is no longer clear as to how that stability is to be maintained or whether a new organization entirely should emerge. If this approach to ethics is so egregious it is because it restricts the ethical to the moment of reduction and normalization, to subsumption under a category or rule, failing to recognize the inventiveness and creativity that ethics embodies. Indeed, the invention and creation that lies at the heart of the ethical, constituting its very being. Phenomenologically, **the moment of the ethical is precisely the moment of crisis**. And it is this that recourse to arch/, foundations, or principles so thoroughly obscures, for it is exactly where principles fail that we encounter the problem of the ethical. **The question of the ethical is not the question of how crisis can be ameliorated by recourse to pre-existing principles** for the simple reason that **the ethical is encountered at just that moment where “principles” governing a composition no longer hold. Rather, the question of the ethical is that of how situations must be re-composed in response to this moment of crisis**. And in this respect, **the** fetishistic **obsession of traditional ethical theory with whether or not lying is moral or whether or not it is just to kill another** person completely **trivializes the proper theme of ethics and confuses ethics with questions of customs organizing a flourishing collective**. Did anyone ever really doubt whether we should, by and large, keep our contracts, be honest, or not murder our fellows? It is astonishing that such trite issues could justify the destruction of so many trees. Let us return to the example of the HPV vaccine and try to imagine the situation not as we see it in retrospect or from a dis-involved perspective oating up above, but rather from the perspective of the event as it unfolds. The first thing we notice is that this situation is composed of all sorts of heterogeneous actors: young girls, parents, insurance corporations, pharmaceutical companies, schools, fundamentalist religious groups, governors, gods, religious texts, legislators, but also scientists, doctors, laboratories, viruses, cancers, genital warts, sexual activities, outcomes of research indicating that a statistically significant number of women will contract the HPV virus at some point of their lives, and vaccines. It will be objected that viruses, vaccines, diseases, and laboratories are not actors, but mere objects, functioning as nothing more than

means. Objects, it will be said, display behavior but not action, and therefore fall outside the purview of ethics which is concerned with goal-directed intentional action alone. However, following Bruno Latour, it has become increasingly difficult to discern how nonhuman objects are not themselves genuine actors. Thus, for example, nonhuman objects act in the laboratory all the time, betraying and surprising the intentions of the scientist with their responses, and completely modifying the coordinates of the situation.⁶ To argue that nonhuman actors should be excluded from ethical thought or treated as mere means to an end is to fall prey to a fallacy similar to that which Marx denounced under the title of “commodity fetishism.” Just as commodity fetishism prevents us from seeing the complex networks of labor involving workers, technologies, materials, etc., ethical fetishism prevents us from seeing the complex networks of nonhuman actors that play such a significant role in perturbing collectives, bringing about the moment of the ethical. Moreover, given the manner in which humans always employ other objects and are employed by other objects in their actions, the idea of humans acting alone without the intermediary of other objects at work in their action is itself a fiction (Latour 2005: 43–86). For Latour, an actor is just any entity that modifies “a state of affairs by making a difference” (Latour 2005: 71). In and of itself this would not be enough to call the distinction between action (of humans) and behavior (of objects) into question, were there not an issue of who and what is acting in the case of humans. In this connection Latour gives the marvelous example of television and the remote control to illustrate his point. Would I have become a couch potato, switching endlessly from channel to channel, he asks, **if I did not have a remote?** (Latour 2005: 77). The point here **is not that the remote determines me to become a couch potato, but rather the far more disturbing consequence that we cannot remotely draw the distinction between actors** (humans) and mere behaviors (objects).⁷ **“Our” action is a network composed of human and nonhuman actors, rather than two ontologically heterogeneous domains composed of humans and action on one side, and objects functioning as mere means and possessing only behaviors on the other.** For this reason, I include nonhuman entities among the list of actors in collectives or situations. Ethical theory has suffered tremendously as a result of treating ethics exclusively as the domain of the human divorced from all relations to the nonhuman.⁸ Returning to the discussion of the HPV vaccine, prior to the research linking the HPV virus to cervical cancer, genital warts, and other cancers, and prior to the invention of the HPV vaccine, we had a more or less smoothly running collective. Parents sent their kids to school. These kids grew up and had sex. Some of them got cervical cancer or genital warts, others didn’t. No one had ever heard of HPV. Doctors treated these diseases. Sometimes insurance companies covered the treatments, sometimes they didn’t. Some lived, some died. If the question of the ethical came to befall this collective composed of parents, children, doctors, diseases, and so on, then this was the result of the surprising appearance of new objects or actors within the collective: the appearance of the HPV virus, its correlation to various cancers and sexually transmitted diseases, and the HPV vaccine. One might object that the HPV virus and its link to these diseases had been there all along. This would be true. The point however is that it hadn’t been registered or counted by the collective as a member of the collective. It is with the appearance of these new actors that the prior collective becomes beset with uncertainty, and enters a state of crisis. With the appearance of these new actors within the collective, relations among the existing members of the collective are transformed and the question emerges as to how these new actors are to be integrated. Here, then, the relation between women and their bodies is transformed, the question arises of whether or not the children should take the vaccine, relations between insurance companies and their clients are modified, government is faced with questions of whether or not it should mandate vaccination, fundamentalist religious groups encounter the issue of whether these vaccines conflict with established religious norms, anti-vaccination groups face the question of whether or not there will be dire unintended side-effects to these vaccines, and so on. It is here that the work of ethics begins. And here the question of **the work of ethics concerns not the application of a pre-existing rule to an existing situation, but rather how a collective is to be assembled or composed in light of the appearance of these strange new actors**, these strangers, **or how a new collective is to be formed.** In this regard, **rather than thinking ethics on the model of judgment, it would be more accurate to think the ethical as a sort of construction or building. The question of ethics then becomes: “given this event, how is our collective to be built?”** Alternatively, it is the question of whether the new actor knocking at the door of the collective should be inducted into the collective at all. In this respect, it does not seem that wide of the mark to draw a connection between the Greek *hōqōs* from whence we derive the term “ethics,” and *oikos* which is the root of terms such as “ecology” or “economy.” *hōqōs* originally signified “accustomed place” (i.e., habitat), whereas *oikos* refers to home or dwelling. Whether or not an etymological connection actually exists between these two terms, what is at stake here are questions of collective composition involving humans and nonhumans, such that the ethics is essentially a question of ethical ecology or the composition of collectives in response to events that buffet collectives.

Now affirm – The member nations of the World Trade Organization ought to eliminate intellectual property protections for medicines. I'll clarify specification in CX to avoid frivolous debates.

Medical intellectual property protections proliferate the Empire's parasitic control of subjects by restricting affective communication, making revolution impossible.

Lemmens – Lemmens, P. (n.d.). The conditions of the Common. A Stieglerian critique ON Hardt AND Negri's thesis on Cognitive capitalism as a prefiguration of communism.

The_Conditions_of_the_Common_A_Stieglerian_Critique_on_Hardt_and_Negri_s_Thesis_on_Cognitive_Capitalism_as_a_Prefiguration_of_Communism

Capital is compelled to remain increasingly external to the process of production and its functional role is constantly diminishing. Whereas material, industrial labour functioned heteronomously as an organ contained within the body of capital, Immaterial labour is becoming increasingly free and autonomous and capital ever more dependent and parasitic, forced to block the movements of knowledge, communication and cooperation (e.g. through intellectual property rights) in order to survive (Hardt & Negri, 2009: 142). Whereas the multitude 'is the real productive force of our social world', therefore, 'Empire is a mere apparatus of capture that lives off the vitality of the multitude' – as Marx would say, a vampire regime of accumulated dead labor that survives only by sucking off the blood of the living'; it is nothing but 'an empty machine, a spectacular machine, a parasitical machine' (Hardt & Negri, 2000: 62). Capital thereby loses its historically progressive force and can continue to exist only through direct expropriation of externally produced value – that is, through expropriation of the common (Negri, 2008d: 64–7). Immaterial production is structurally 'incompatible' with the logic of capital and therefore cognitive capitalism will ultimately destroy itself through its inherent contradictions. Capitalism's traditional mechanisms of exploitation and control, both the intensive and extensive, increasingly contradict and fetter the productivity of biopolitical labour and frustrate the creation of value. Biopolitical labour in all its forms – cognitive, intellectual, affective, etc. – cannot be contained by the forms of discipline and command that were developed during the era of Fordism. Therefore, the integration of labour within the ruling structures of capital becomes increasingly difficult (Hardt & Negri, 2009: 264, 291). Capital's strategies of privatisation and control destroy the common that is at the base of biopolitical production, so biopolitical productivity is hampered every time the common is destroyed. A good example is the impediment of innovation Perspectives on Commoning 1st proof.indd 178 04/05/2017 16:16 The conditions of the common 179 in agriculture and biotechnology and the blocking of creativity in cultural production due to excessive intellectual property regimes in the form of patents and copyrights (see Drahos & Braithwaite, 2002; Lessig, 2004; Aigrain, 2005; Jefferson, 2006; Boyle, 2008; Hope, 2008; Kloppenburg, 2010). The disciplinary strategies of precarisation of work and flexibilisation of the labour market are also counterproductive, depriving cognitive and affective workers of precisely the time and freedom on which the creativity and productivity of cognitive and affective labour depends (Hardt & Negri, 2009: 145–7). All attempts of capital to intervene in the production process and to appropriate the common frustrate that which it tries to capture: the productivity of the common. And the more the capitalist economy becomes a knowledge economy, the more it embarks on the path of value creation through knowledge production, the more that knowledge escapes its control and the more it produces and nourishes that which ultimately undermines its own existence: the common. Of course, as Hardt and Negri admit, ever since Marx uncovered the logic of capital, the critique of political economy has pointed to the contradiction within capitalism of the social nature of production and the private nature of accumulation. However, in the context of today's cognitive capitalism, this contradiction is becoming ever more extreme and consequently ever more destructive for the capitalist endeavour, reaching a point of rupture: 'This is how capital creates its own gravediggers: pursuing its own interests and trying to preserve its own survival, it must foster the increasing power and autonomy of the productive multitude', Hardt and Negri (2009: 311) contend. 'And when that

accumulation of power crosses a certain threshold, the Perspectives on Commoning 1st proof.indd 179 04/05/2017 16:16 180 PERSPECTIVES ON COMMONING multitude will emerge with the ability to rule common wealth.' Indeed, capital today is 'facing increasingly autonomous, antagonistic, and unmanageable forms of social labor-power' which embody an inherent potential for autonomy and have the capacity to 'destroy capital and create something entirely new' (Hardt & Negri, 2009: 136, 288, 311).

Intellectual property regimes biologically regulate affective expression and force the subject into binary, mechanical, categories which staticize creative desires.

Lefebvre – Lefebvre, A. (2009). In The image of law: Deleuze, BERGSON, SPINOZA. essay, Stanford University Press. Body extension and the law: Medical devices, intellectual property, prosthetics and marginalisation (again)

A central claim of the information-commons movement has been precisely to emphasize the regulatory nature of exclusive rights regimes, resisting and undermining the move to unthinking application of the "intellectual property" label. In other words, the state has a model of how software development goes (or encyclopedia writing, or video entertainment, in the case of copyright and paracopyright), and it is intervening in what seems to be a perfectly functional innovation system, imposing new rules that are upsetting a whole set of freely chosen business practices already in place. Needless to say, this is not the only way to view what is happening, but it is a sufficiently plausible characterization that many libertarians and laissez-faire liberals in fact understand what is happening in these terms. The rhetorical foundation of the "open-source software" movement was precisely to frame the practice in these terms of free choice, innovation, and business benefits. Because individual human beings are a complex bundle of urges, emotions, and motivations who often act irrationally (that is, regardless of self-interest) from an economist's perspective, corporations are the ideal economic agents, pursuing nothing but maximum gain for themselves based on the economic theory of laissez-faire capitalism.²⁶ They are therefore driven to undermine abundance and create artificial scarcity as an unintended, but logical consequence of their internal programming, creating a modern class of rentiers who accumulate wealth by charging fees for access to the resources they control. This regulatory regime, at its extremes, can lead to the non-user having the power (and the responsibility) to make decisions about functionality without any regard to the aspirations of the user in this respect or indeed regarding more aesthetic matters. This will have an impact on identity - one which is so far unexplored in the existing discussion of bodily autonomy.⁸⁷ And it is perhaps as a result of this marginalisation (with respect to design, function, performance, and many other relevant details) that more informal maker movements have arisen such as those discussed above. The EU Regulation can apply to any prosthesis, howsoever developed. Devices which are manufactured and used within health institutions, however, are considered as being 'put into service',⁸⁸ and are therefore exempt from many requirements of the EU Regulation, although they must still comply with general safety and performance requirements. There is a possibility, therefore, of IP law having a restrictive impact on choices made by and (largely) for prosthesis users. This increases when it is considered that developers of prosthetic limbs are indeed engaging with IP rights. There are patents, for example US3908201A from 1972 for a prosthetic device made of a particular plastic material and cases involving patents for silicone foam for covering prostheses for implanting in the body;¹⁰⁸ and there are registered designs, for example UK D462767 from 2001 for a slideable and rotatable coupler for a prosthetic leg. Copyright and unregistered designs cannot be evidenced in the same way (given their more informal nature of creation), however there are examples of infringement actions being raised. Notably, a court rejected an argument¹⁰⁹ that because of the so-called "must fit" provision in UK unregistered design law,¹¹⁰ there was no protection for the shape of a breast prosthesis. The court found that although the shape of the bra might influence the shape of the breast prosthesis, a bra shape did not determine the detail or circumstances of it – indeed, the prosthesis would fit several bras. The analysis of the legal and regulatory framework, and the results of the research interviews and Focus Groups, reveal that the power in determining which prosthetic limb can be issued and of what kind (e.g. a leg for rockclimbing), does not always involve the user; and that even if the desire is identified and supported, frequently insufficient budget has been allocated to fulfil it. A research interview also indicated that private fundraising (one way of addressing this outside the NHS) can be perceived by prosthetic users as leading to a prosthesis which belongs

more to the donors – and is **less aligned with the user's identity and integrity**. Further, if notwithstanding this, a particular prosthesis is able to be allocated which supports identity and integrity (e.g. running, climbing, decoration) in some circumstances an IP owner can restrict or prevent this. And **the identity/identities and integrity of the prosthetic user are not required to be relevant for those with authority and control in respect of these prosthetic related decisions; rather, there are obligations and restrictions under NHS funding rules and the EU Regulation, and rights held by others under IP legislation.** Like the physical states to which they are applied, **prosthetic limbs can challenge our perception of what it means to be human, to be a person. They can challenge our symbolic order, or the binary categories and differentiations that we use to structure society (such as nature/construct, human/non-human, self/other, friend/stranger).**¹¹⁸ Indeed, they may offer new categories and measures, and new possibilities and capabilities. Yet **their allocation and usage are characterised by social, legal and ethical debates around risk, boundaries, and power. The result is often a collage, or indeed a cacophony, rather than a consensus of values, visions, and decision-making models associated with specific interventions or technologies.** ¹¹⁹ And all of this is **positioned against a legal landscape which fails to engage** (at least sufficiently) **with** the person, and the concepts of **identity** and integrity.

Restrictions of fluidity idealize life to warrant a cleansing of difference which is the root cause of material violence and collapses to fascism.

Evans 10 – Brad Evans, Lecturer in the School of Politics and International Studies at the University of Leeds and Programme Director for International Relations, “Foucault’s Legacy: Security, War, and Violence in the 21st Century,” Security Dialogue vol.41, no. 4, August 2010, pg. 422-424

Imposing liberalism has often **come at a price**. That price has tended to be **a continuous recourse to war.** While the militarism associated with liberal internationalization has already received scholarly attention (Howard, 2008), Foucault was concerned more with the continuation of war once peace has been declared.⁴ Denouncing the illusion that ‘we are living in a world in which order and peace have been restored’ (Foucault, 2003: 53), he set out to disrupt the neat distinctions between times of war/military exceptionalism and times of peace/civic normality. War accordingly now appears to condition the type of peace that follows. None have been more ambitious in mapping out this war–peace continuum than Michael Dillon & Julian Reid (2009). Their ‘liberal war’ thesis provides a provocative insight into the lethality of making live. **Liberalism** today, they argue, **is underwritten by the unreserved righteousness of its mission.** Hence, while there may still be populations that exist beyond the liberal pale, it is now taken that they should be included. With ‘Liberal **peace**’ therefore **predicated on the** pacification/**elimination of** all forms of **political difference** in order that liberalism might meet its own moral and political objectives, **The more peace is commanded, the more war is declared** in order **To achieve it:** ‘In proclaiming peace . . . **liberals are** nonetheless **committed** also **to making war.**’ This is the ‘martial face of liberal power’ that, contrary to the familiar narrative, is ‘directly fuelled by the universal and pacific ambitions for which liberalism is to be admired’ (Dillon & Reid, 2009: 2). **Liberalism thus stands accused here of universalizing war in its pursuit of peace: However much liberalism abjures war, indeed finds the instrumental use of war, especially, a scandal, war has always been as instrumental to liberal as to geopolitical thinkers. In that very attempt to instrumentalize, indeed universalize, war in the pursuit of its own global project of emancipation, the practice of liberal rule itself becomes profoundly shaped by war.** However much it may proclaim liberal peace and freedom, its own allied commitment to war subverts the very peace and freedoms it proclaims (Dillon & Reid, 2009: 7). While Dillon & Reid’s thesis only makes veiled reference to the onto-theological dimension, they are fully aware that its rule depends upon a certain religiosity in the sense that war has now been turned into a veritable human crusade with only two possible outcomes: ‘endless war or the transformation of other societies and cultures into liberal societies and cultures’ (Dillon & Reid, 2009: 5). Endless war is underwritten here by a new set of problems. Unlike Clausewitzian confrontations, which at least provided the strategic comforts of clear demarcations (them/us, war/peace, citizen/soldier, and so on), **These wars no longer benefit from the possibility of** scoring outright **victory**, retreating, **or** achieving a lasting negotiated **peace** by means of political compromise. Indeed,

deprived of the prospect of defining enmity in advance, war itself becomes just as complex, dynamic, adaptive and radically interconnected as the world of which it is part. That is why 'any such war to end war becomes a war without end. . . . The project of removing war from the life of the species becomes a lethal and, in principle, continuous and unending process' (Dillon & Reid, 2009: 32). Duffield, building on from these concerns, takes this unending scenario a stage further to suggest that since wars for humanity are inextricably bound to the global life-chance divide, it is now possible to write of a 'Global Civil War' into which all life is openly recruited: Each crisis of global circulation . . . marks out a terrain of global civil war, or rather a tableau of wars, which is fought on and between the modalities of life itself. . . . What is at stake in this war is the West's ability to contain and manage international poverty while maintaining the ability of mass society to live and consume beyond its means (Duffield, 2008: 162). Setting out civil war in these terms inevitably marks an important departure. Not only does it illustrate how Liberalism gains its mastery by posing fundamental questions of life and death – that is, who is to live and who can be killed – disrupting the narrative that ordinarily takes sovereignty to be the point of theoretical departure, civil war now appears to be driven by a globally ambitious biopolitical imperative (see below). Liberals have continuously made reference to humanity in order to justify their use of military force (Ignatieff, 2003). War, if there is to be one, must be for the unification of the species. This humanitarian caveat is by no means out of favour. More recently it underwrites the strategic rethink in contemporary zones of occupation, which has become biopolitical ('hearts and minds') in everything but name (Kilcullen, 2009; Smith, 2006). While criticisms of these strategies have tended to focus on the naive dangers associated with liberal idealism (see Gray, 2008), insufficient attention has been paid to the contested nature of all the tactics deployed in the will to govern illiberal populations. Foucault returns here with renewed vigour. He understood that forms of war have always been aligned with forms of life. Liberal wars are no exception. Fought in the name of endangered humanity, humanity itself finds its most meaningful expression through the battles waged in its name: At this point we can invert Clausewitz's proposition and say that politics is the continuation of war by other means. . . . While it is true that political power puts an end to war and establishes or attempts to establish the reign of peace in civil society, it certainly does not do so in order to suspend the effects of power or to neutralize the disequilibrium revealed in the last battle of war (Foucault, 2003: 15). What in other words occurs beneath the semblance of peace is far from politically settled: political struggles, these clashes over and with power, these modifications of relations of force – the shifting balances, the reversals – in a political system, all these things must be interpreted as a continuation of war. And they are interpreted as so many episodes, fragmentations, and displacements of the war itself. We are always writing the history of the same war, even when we are writing the history of peace and its institutions (Foucault, 2003: 15). David Miliband (2009), without perhaps knowing the full political and philosophical implications, appears to subscribe to the value of this approach, albeit for an altogether more committed deployment: NATO was born in the shadow of the Cold War, but we have all had to change our thinking as our troops confront insurgents rather than military machines like our own. The mental models of 20th century mass warfare are not fit for 21st century counterinsurgency. That is why my argument today has been about the centrality of politics. People like quoting Clausewitz that warfare is the continuation of politics by other means. . . . We need politics to become the continuation of warfare by other means. Miliband's 'Foucauldian moment' should not escape us. Inverting Clausewitz on a planetary scale – hence promoting the collapse of all meaningful distinctions that once held together the fixed terms of Newtonian space (i.e. inside/outside, friend/enemy, citizen/soldier, war/peace, and so forth), he firmly locates the conflict among the world of peoples. With global war therefore appearing to be an internal state of affairs, vanquishing enemies can no longer be sanctioned for the mere defence of things. A new moment has arrived, in which the destiny of humanity as a whole is being wagered on the success of humanity's own political strategies. No coincidence, then, that authors like David Kilcullen – a key architect in the formulation of counterinsurgency strategies in Iraq and Afghanistan, argue for a global insurgency paradigm without too much controversy. Viewed from the perspective of power, global insurgency is after all nothing more than the advent of a global civil war fought for the biopolitical spoils of life. Giving primacy to counter-insurgency, it foregrounds the problem of populations so that questions of security governance (i.e. population regulation) become central to the war effort (RAND, 2008). Placing the managed recovery of maladjusted life into the heart of military strategies, it insists upon a joined-up response in which sovereign/militaristic forms of ordering are matched by biopolitical/developmental forms of progress (Bell & Evans, forthcoming). Demanding in other words a planetary outlook, it collapses the local into the global so that life's radical interconnectivity implies that absolutely nothing can be left to chance. While liberals have therefore

been at pains to offer a more humane recovery to the overt failures of military excess in current theatres of operation, warfare has not in any way been removed from the species. Instead, humanized in the name of local sensitivities, doing what is necessary out of global species necessity now implies that war effectively takes place by every means. Our understanding of civil war is invariably recast. Sovereignty has been the traditional starting point for any discussion of civil war. While this is a well-established Eurocentric narrative, colonized peoples have never fully accepted the inevitability of the transfixed utopian prolificacy upon which sovereign power increasingly became dependent. Neither have they been completely passive when confronted by colonialism's own brand of warfare by other means. Foucault was well aware of this history. While Foucauldian scholars can therefore rightly argue that alternative histories of the subjugated alone permit us to challenge the monopolization of political terms – not least 'civil war' – for Foucault in particular there was something altogether more important at stake: there is no obligation whatsoever to ensure that reality matches some canonical theory. Despite what some scholars may insist, politically speaking there is nothing that is necessarily proper to the sovereign method. It holds no distinct privilege. Our task is to use theory to help make sense of reality, not vice versa. While there is not the space here to engage fully with the implications of our global civil war paradigm, it should be pointed out that since its biopolitical imperative removes the inevitability of epiphenomenal tensions, nothing and nobody is necessarily dangerous simply because location dictates. With enmity instead depending upon the complex, adaptive, dynamic account of life itself, what becomes dangerous emerges from within the liberal imaginary of threat. Violence accordingly can only be sanctioned against those newly appointed enemies of humanity – a phrase that, immeasurably greater than any juridical category, necessarily affords enmity an internal quality inherent to the species complete, for the sake of planetary survival. Vital in other words to all human existence, Doing what is necessary out of global species necessity requires a new moral assay of life that, pitting the universal against the particular, willingly commits violence against any ontological commitment to political difference, even though universality itself is a shallow disguise for the practice of destroying political adversaries through the contingency of particular encounters. Necessary Violence Having established that the principal task set for biopolitical practitioners is to sort and adjudicate between the species, modern societies reveal a distinct biopolitical aporia (an irresolvable political dilemma) in the sense that making life live – selecting out those ways of life that are fittest by design – inevitably writes into that very script those lives that are retarded, backward, degenerate, wasteful and ultimately dangerous to the social order (Bauman, 1991).

Racism thus appears here to be a thoroughly modern phenomenon (Deleuze & Guattari, 2002). This takes us to the heart of our concern with biopolitical rationalities. When 'life itself' becomes the principal referent for political struggles, power necessarily concerns itself with those biological threats to human existence (Palladino, 2008). That is to say, since life becomes the author of its own (un)making, the biopolitical assay of life necessarily portrays a commitment to the supremacy of certain species types: 'a race that is portrayed as the one true race, the race that holds power and is entitled to define the norm, and against those who deviate from that norm, against those who pose a threat to the biological heritage' (Foucault, 2003: 61). Evidently, what is at stake here is no mere sovereign affair. Epiphenomenal tensions aside, racial problems occupy a 'permanent presence' within the political order (Foucault, 2003: 62). Biopolitically speaking, then, since it is precisely through the internalization of threat – the constitution of The threat that is now from the dangerous 'Others' that exist within – that societies reproduce at the level of life the ontological commitment to secure the subject, since everybody is now possibly dangerous and nobody can be exempt, for political modernity to function one always has to be capable of killing in order to go on living: Wars are no longer waged in the name of a sovereign who must be defended; they are waged on behalf of the existence of everyone; entire populations are mobilized for the purpose of wholesale slaughter in the name of life necessity; massacres have become vital. . . . The principle underlying the tactics of battle – that one has to become capable of killing in order to go on living – has become the principle that defines the strategy of states (Foucault, 1990: 137). When Foucault refers to 'Killing', he is not simply referring to the vicious act of taking another life: 'When I say "killing", I obviously do not mean simply murder as such, but also every form of indirect murder: the fact of exposing someone to death, increasing the risk of death for some people, or, quite simply, political death, expulsion, rejection and so on' (Foucault, 2003: 256). Racism makes this process of elimination possible, for it is only through the discourse and practice of racial (dis)qualification that one is capable of introducing 'a break in the domain of life that is under power's control: the break between what must live and what must die' (Foucault, 2003: 255). While killing does not need to be physically murderous, that is not to suggest that we should lose sight of the very real forms of political violence that do take place in the name of species improvement. As Deleuze (1999: 76) duly noted, when notions of security are invoked in order to preserve the destiny of a species, when the defence of society gives sanction to very real acts of violence that are justified in terms of species necessity, that is when the capacity to legitimate murderous political actions in all our names and for all our sakes becomes altogether more rational,

calculated, utilitarian, hence altogether more frightening: When a diagram of power abandons the model of sovereignty in favour of a disciplinary model, when it becomes the 'bio-power' or 'bio-politics' of populations, controlling and administering life, it is indeed life that emerges as the new object of power. At that point law increasingly renounces that symbol of sovereign privilege, the right to put someone to death, but allows itself to produce all the more hecatombs and genocides: not by returning to the old law of killing, but on the contrary in the name of race, precious space, conditions of life and the survival of a population that believes itself to be better than its enemy, which it now treats not as the juridical enemy of the old sovereign but as a toxic or infectious agent, a sort of 'biological danger'. Auschwitz arguably represents the most grotesque, shameful and hence meaningful example of necessary killing – the violence that is sanctioned in the name of species necessity (see Agamben, 1995, 2005). Indeed, for Agamben, since one of The most 'essential characteristics' of modern biopolitics is to constantly 'redefine the threshold in life that distinguishes and separates what is inside from what is outside', it is within those sites that 'eliminate radically the people that are excluded' that the biopolitical racial imperative is exposed in its most brutal form (Agamben, 1995: 171). The camp can therefore be seen to be the defining paradigm of the modern inasmuch as it is a 'space in which power confronts nothing other than pure biological life without any mediation' (Agamben, 1995: 179). While lacking Agamben's intellectual sophistry, such a Schmittian-inspired approach to violence – that is, sovereignty as the ability to declare a state of juridical exception – has certainly gained wide-spread academic currency in recent times. The field of international relations, for instance, has been awash with works that have tried to theorize the 'exceptional times' in which we live (see, in particular, Devetak, 2007; Kaldor, 2007). While some of the tactics deployed in the 'Global War on Terror' have undoubtedly lent credibility to these approaches, in terms of understanding violence they are limited. Violence is only rendered problematic here when it is associated with some act of unmitigated geopolitical excess (e.g. the invasion of Iraq, Guantánamo Bay, use of torture, and so forth). This is unfortunate. Precluding any critical evaluation of the contemporary forms of violence that take place within the remit of humanitarian discourses and practices, there is a categorical failure to address how necessary violence continues to be an essential feature of the liberal encounter. Hence, with post-interventionary forms of violence no longer appearing to be any cause for concern, the nature of the racial imperative that underwrites the violence of contemporary liberal occupations is removed from the analytical arena.

Reject focus on utility and death – it creates a survival-at-all-costs mindset in the form of racism, xenophobia, and sexism that makes debate unsafe.

Winnubst – Shannon Winnubst, professor of Women's and gender studies at Ohio State University, *Queering Freedom*, pg. 183

For Bataille, the servility to utility is displayed particularly in the temporality of such a world—the temporality of anticipation. Returning again to the role of the tool, he writes, In efficacious activity man becomes the equivalent of a tool, which produces; he is like the thing the tool is, being itself a product. The implication of these facts is quite clear: the tool's meaning is given by the future, in what the tool will produce, in the future utilization of the product: like the tool, he who serves—who works—has the value of that which will be later, not of that which is. (1988–91, 2:218) The reduction of our lives to the order of utility forces us to project ourselves endlessly into the future. Bataille writes of this as our anguished state, caused by this anticipation "that must be called anticipation of oneself. For he must apprehend himself in the future, through the anticipated results of his action" (1988–91, 2:218). This is why advanced capitalism and phallicized whiteness must ground themselves in a denial of death: death precludes the arrival of this future. It cuts us off from ourselves, severing us from the future self that is always our real and true self. Resisting the existential turn, however, Bataille refuses to read this denial of death as an ontological condition of humanity. For Bataille, this is a historical and

economic denial, one in which only a culture **grounded in the anticipation of the future must participate**. He frames it primarily as **a problem of the intellect**. In the reduction of the world to the order of utility, we have **reduced our lives and experiences to the order of instrumental reason**. This order necessarily operates in a sequential temporality, facing forward toward the time when the results will be achieved, the questions solved, the theorems proved—and also when political domination will be ended and ethical anguish quieted. As Bataille credits Hegel for seeing, “knowledge is never given to us except by unfolding in time” (1988–91, 2:202). It never appears to us except, finally, “as the result of a calculated effort, an operation useful to some end” (1988–91, 2:202)—and its utility, as we have seen, only drives it forward toward some future utility, endlessly. **There are always new and future objects of thought to conquer and domesticate**. Within this order of reason, **death presents the cessation of the very practice of knowledge itself. Severing us from the future objects of thought and from our future selves, “death prevents man from attaining himself”** (1988–91, 2:218). As Bataille explains, “the fear of death appears linked from the start to the projection of oneself into a future time, which [is] an effect of the positing of oneself as a thing” (1988–91, 2:218). **The fear of death derives from the subordination to the order of utility and its dominant form of the intellect, instrumental reason**. While death is unarguably a part of the human condition, for Bataille **the fear of death is a historically habituated response, one that grounds cultures of advanced capitalism and phallicized whiteness**. In those frames of late modernity, **death introduces an ontological scarcity into the very human condition: it represents finitude, the ultimate limit. We must distance ourselves from such threats, and we do so most often by projecting them onto sexualized, racialized, and classed bodies**. But for Bataille, **servility to the order of knowledge is as unnecessary as servility to the order of utility. To die humanly, he argues, is to accept “the subordination of the thing”** (1988–91, 2:219), which places us in the schema that separates our present self from the future, desired, anticipated self: “to die humanly is to have of the future being, of the one who matters most in our eyes, the senseless idea that he is not” (1988–91, 2:219). But **if we are not trapped in the endless anticipation of our future self as the index of meaning in our lives**, we may not be anguished by this cessation: **“If we live sovereignly, the representation of death is impossible, for the present is not subject to the demands of the future”** (1988–91, 2:219). **To live sovereignly is not to escape death, which is ontologically impossible. But it is to refuse the fear, and subsequent attempts at disavowal, of death as the ontological condition that defines humanity**. Rather than trying to transgress this ultimate limit and prohibition, **the sovereign [person] man “cannot die fleeing. He [it] cannot let the threat of death deliver him over to the horror of a desperate yet impossible flight”** (1988–91, 2:219). Living in a temporal mode in which **“anticipation would dissolve into NOTHING”** (1988–91, 2: 208), **the sovereign man [person] “lives and dies like an animal”** (1988–91, 2:219). **He lives and dies without the anxiety invoked by the forever unknown and forever encroaching anticipation of the future. As Bataille encourages us elsewhere, “Think of the voracity of animals, as against the composure of a cook”** (1988–91, 2:83).

Utilitarianism fails – multiple warrants.

Cleveland [Cleveland, Paul A. “The Failure of Utilitarian Ethics in Political Economy.” Independent Institute. <https://www.independent.org/publications/article.asp?id=1602>. Published 1 September 2002]

The Problem of Making Interpersonal Comparisons Among the many difficulties encountered in Bentham’s approach, the first is that **it is impossible to make interpersonal comparisons**. It is a well-known fact that different **people have different tastes**. In addition, there are differences in personalities and talents that different people possess **and these differences give rise to differences in their goals and ambitions**. All these variations in turn give rise to a fundamental fact of human existence. Namely, that **it is impossible for us to know or measure the extent of either pleasure or pain for any specific person** in any particular situation. Such measures are beyond the capacity of our ability to know. **While human beings can most certainly empathize with someone who is experiencing extreme hardship or enjoying great success, such efforts are only accomplished by projecting one’s own inward feelings to someone else’s** circumstance. One person simply cannot

accurately know the depth of another person's pain nor the height of his joy. While Bentham at least recognized this problem, it did not discourage him from his ultimate pursuit. Instead, he continued to promote his new ethical philosophy and argued that it was the only way that we could go. Therefore, he pressed for a way to measure happiness. While he was never able to arrive at such a measure, he remained confident that one would soon be developed and even used the term utils as the units in which it would be measured. Economists have long since given up on the search for a cardinal measure of utility. Strangely enough however, welfare economists continue to act as if we can actually accomplish the impossible task by attempting to measure deadweight losses within the context of modern price theory. It is the rise in the prominence of welfare analysis that has given **utilitarianism** a standing in modern policy debates. However, such efforts **cannot escape the reality that such measures cannot be made.** With no adequate way to measure utility in order to make the necessary interpersonal comparisons, all such policy arguments are reduced to contests where each side claims that the rewards to be received by them would greatly outweigh whatever pain might be incurred by those who are forced to bear the costs.

B. An Inadequate Conception of Human Nature Another problem with **utilitarianism** is that it **has a very narrow conception of what it means to be a human being.** Within Bentham's view, human beings are essentially understood to be passive creatures who respond to the environment in a purely mechanical fashion. As such, **there are no "bad" motives, only "bad" calculations.** In these terms, **no person is responsible for his or her own behavior.** In effect, the idea being promoted is that human action is essentially the same as that of a machine in operation. **This notion reduces a human thought to nothing more than a series of bio-chemical reactions.** Yet, if this is true, **then there is no meaning to human thought or human action and all human reason is reduced to the point of being meaningless.**^[6] Beyond this problem, it also seems a little absurd to argue that since all human beings seek pleasure and avoid pain, that we can conclude that such a fact ought then be used as the foundation upon which an ethical theory ought to be constructed. As Opitz points out, **Words like pleasure happiness, or satisfaction are what might be called "container words." They are words needing a content,** like the word "assistant." When someone tells you he is an assistant, you are told nothing about his actual job. All you know is that he is not an executive. To make it specific, the job of being an assistant needs some entity to hook up with. Similarly, happiness or pleasure. **There is no such entity as pleasure or happiness;** these are mental states which may be associated with many different things.^[7] Since this is true, **pleasure cannot be the goal of human action in and of itself. It is simply the by-product** of human action which is actually aimed at the attainment of some specific goal or end. **To be sure, people rarely seek to refine their tastes by considering such qualitative issues until they are well fed, clothed, and housed, but that fact does not mean that such issues are unimportant.** Even that great proponent of utilitarianism, J. S. Mill, came to understand this point. As a result, he too began to recognize that happiness was not something that could be had directly and tried to introduce qualitative factors into his utilitarianism. Regrettably, Mill did not press the implication of this insight to its final conclusion. If he had, he would have abandoned his utilitarianism in favor of some other ethical philosophy. The reason why this is so is that **an effort to include qualitative factors into one's ethical thinking necessarily requires an appeal to some ideal.** That is, Mill must have in mind some concept or idea of what human beings ought to be, rather than what they in fact are, if he is going to include qualitative factors in his analysis. When this is done, one is forced back into the mode of the traditional ethical philosophies that existed prior to the utilitarian project. If one has an ideal of what men should be, then that ideal establishes a standard of moral behavior apart from the pursuit of pleasure itself. As Copleston comments on the matter: **Hence there must be a standard of excellence;** and this is not fully worked out. The relevant point in the present context, however, is not Mill's failure to elaborate a theory of human nature. Rather is it the fact that he grafts on to Benthamism a moral theory which has little or nothing to do with balancing of pleasures and pains according to the hedonistic calculus of Bentham, and that he does not see the necessity of subjecting his original starting-point to a thorough criticism and revision.^[8]

C. The Fallacy of Composition A final problem **with utilitarianism** that ought to be mentioned is that it **is subject to being criticized because of a potential fallacy of composition.** **The common good is not necessarily the sum of the interests of individuals.** In their book, *A History of Economic Theory and Method*, Ekelund and Hebert provide a well-conceived

example to demonstrate this problem. They write: It is presumably in the general interest of American society to have every automobile in the United States equipped with all possible safety devices. However, a majority of individual car buyers may not be willing to pay the cost of such equipment in the form of higher auto prices. In this case, the collective interest does not coincide with the sum of the individual interests. The result is a legislative and economic dilemma. [9] Indeed, individuals prone to political action, and held under the sway of utilitarian ethics, will likely be willing to decide in favor of the supposed collective interest over and against that of the individual. But then, what happens to individual human rights? Are they not sacrificed and set aside as unimportant? In fact, this is precisely what has happened. In democratic countries the destruction of human liberty that has taken place in the past hundred years has occurred primarily for this reason. In addition, such thinking largely served as the justification for the mass murders of millions of innocent people in communist countries where the leaders sought to establish the “workers’ paradise.” To put the matter simply, utilitarianism offers no cohesive way to discern between the various factions competing against one another in political debates and thus fails to provide an adequate guide for ethical human action. The failure of utilitarianism at this point is extremely important for a whole host of policy issues. Among them, the issue of the government’s provision of public goods is worth our consideration.

Contention

The current informational discourse and regime surrounding medicinal IP is territorializing. Reducing IP is a form of deterritorialization through a rhizomatic redistribution of medicinal knowledge production that produces a key line of flight against capitalism and imperialism.

Attenberry 10 Jeffrey Attenberry (Dept. of English and Comparative Literature at the University of California) 2010, “Information/Knowledge in the Global Society of Control: A2K Theory and the Postcolonial Commons”
<https://www.opensocietyfoundations.org/uploads/0af6273a-3775-4365-85d6-afd61b9fea45/age-of-intellectual-property-20101110.pdf>

A2K – Access to knowledge movement

Perfectly aware of the potentially duplicitous character of bourgeois freedom, Gilles Deleuze and Félix Guattari have described the process of capitalism’s development in terms of a “generalized decoding of flows” and a dynamic of “deterritorialization.”⁴⁷ The current informational regime and the discourses attending to it—including that of the A2K movement—fit nicely within Deleuze and Guattari’s paradigm. The informational mode of production represents a new order of decoded flows. The freeing of information promises to restructure the relations of production, replacing vertically integrated structures of production with horizontally networked ones. The terrain of social production is being reterritorialized. The information that is struggling to be free continues, however, to circulate within a very material geography. While the circuits of production have become networked, the nodal points of the network continue to be places such as New York, London, and Tokyo.⁴⁸ The creation of a global information commons may even render the networks of production slightly more flexible, facilitating the integration of places such as São Paulo, Bangalore, Mumbai, and Shanghai. The deterritorialization that results from the networked production of globalized informational capitalism is necessarily accompanied, however, by a corresponding reterritorialization.⁴⁹ While a few postcolonial metropolises may enter the network, billions of impoverished people around the world will remain off the grid. “These neoterritorialities,” Deleuze and Guattari write, “are often artificial, residual, archaic; but they are archaisms having a perfectly current function.”⁵⁰ In the case of the emerging territorialization of the Earth under informational capitalism, the archaisms of the colonialist world order threaten to reassert themselves with a vengeance. The solution to this problem of the continued colonialist distribution of wealth, therefore, will not be found simply in an information commons, although an information commons will surely have an important role to play. When faced with the dynamic of deterritorialization, Deleuze and Guattari ask, could it be that the revolutionary path is to “go further still, that is, in the movement of the market, of decoding and deterritorialization? For perhaps the flows are not yet deterritorialized enough.”⁵¹ The questions for the A2K movement then become what function would the information commons serve in the globalized economy,

and how might we accelerate the process that it promises by finding ways to resist its potentially neocolonial reterritorializations?

While the specific economic behavior of the information commons may differ from any kind of commons we have previously seen, the question remains whether its basic function within a capitalist world system would be fundamentally any different. A rigorous approach to the question must situate the A2K movement's information commons not only within informational capitalism, but also within the emerging society of control. In "Postscript on the Societies of Control," Gilles Deleuze argued that society was transitioning from

a disciplinary society, which had been the object of Michel Foucault's classic works, to a different mode of social organization. According to Deleuze, disciplinary society

organizes society in and through "spaces of enclosure." The paradigmatic spaces of enclosure would include prisons, hospitals, factories,

schools.⁵² Within these spaces of enclosure, the exercise of power is static, discontinuous, and rigid. In contrast, societies of control construct open spaces where power is exercised in a dynamic, continuous, and flexible manner.⁵³ In a further elaboration of his terms, Deleuze schematically links each type of society with a particular kind of machine that exemplifies the respective social relations of production: The disciplinary societies function through "machines involving energy" such as the steam engine or nuclear reactors; societies of control operate with "computers." Furthermore, the technological shift that characterizes the transition to the society of control is itself the function of a "mutation of capitalism."⁵⁴ This mutation is nothing other than the emergence of informational capitalism. The so-called "new enclosures" operate within the logic of disciplinary societies. The open access of the information commons, on the other hand, exhibits an

organizing structure that typifies the society of control.

The regulation of information production under a commons regime functions according to a principle of open access, which reflects changing social relations of production that have themselves become more elastic and variable. As such, a commons-oriented regime, in contrast to the current intellectual property regime, would be more suited to the changing conditions of social production

under informational capitalism. Our current historical moment, then, is one of transition. In the realm of political economy, the transition appears as the passage from industrial to informational capitalism. At the level of the social organization of power, it takes the form of the passage from disciplinary societies to societies of control. The current legal debate between maximalist protection and access to knowledge emerges as a symptom of this transition from discipline to control. "If our law is hesitant, is itself in crisis," Deleuze writes, "it's because we are leaving one in order to enter into the other."⁵⁵ The transitions from industrial to informational capitalism and from discipline to control appear as parallel historical changes, and the discourse of the A2K movement is situated within these passages. Despite the rhetoric of manifest liberation that attends each of these transitions, however, they should not be narrativized as movements of either liberation or oppression. Given its tendency to adopt such a binary rhetoric, the A2K movement needs to come to the broader recognition that "there is no need to ask which is the toughest or most tolerable regime, for it's within each of them that liberating and enslaving forces confront one another."⁵⁶ The theoretical debate within the A2K movement has sometimes been framed as if legal policy makers were faced with a choice between an enslaving regime of enclosure and a liberating regime of the commons. The revolutionary zeal shown by some within the A2K movement must be accompanied by the sober realization that informational capitalism is no less capitalism than industrial capitalism, with all the corresponding hopes and fears. When approached from within this framework, the information commons is not necessarily a force of either liberation or enslavement. Rather, the terrain of information that the information commons territorializes becomes, like land and labor before it, a site of struggle. A2K theory must abandon the comfort of tidy binary oppositions where a theoretical stance against enclosure and in favor of the commons necessarily implies that one is similarly positioned against emerging information imperialism. As the A2K movement continues to unfold its theoretical and political practice, its underlying critical theory must incorporate this fundamental realization. Positionality is not determinable by a single theoretical position; rather, positionality is determined by a network of historical and material relations. If A2K is to become an effectively globalized movement, it will necessarily have to accommodate a number of different voices, each with their own positionality. The positionality of the law professor in the United States is not the same as that of the local grassroots organizer in India, and the positionality of the governmental agent in Uganda is different still. Many have come to perceive in the A2K movement an important element in the ongoing struggle against the legacies of colonialism, and the movement has found itself propelled toward alliances with other movements from the formerly colonized world in large part because of a shared opposition to what has been successfully characterized as a new historical moment of enclosure. Nevertheless, if effective alliances are to be made, the A2K movement must collectively develop a critical theory with the flexibility and sophistication necessary to articulate a theoretical and political practice that can account for the multiple valences that are operative within any single position. A critical interrogation of the limits of the commons doctrine is a good place to start. Given, as we have seen, that an uncritical version of the commons may well end up serving the long-term interests of informational imperialism, the A2K movement's commitment to the commons should not, for example, necessarily imply a dogmatic opposition to any attempt on the part of the developing world to withdraw some informational goods from the commons, whether in the form of

"traditional knowledge" or otherwise. With a rigorous critical theory guiding its theoretical and political practice, the A2K movement may well then become an indispensable component of the ongoing global struggle against imperialism.

The idea that knowledge can be "owned" is inherently staticizing and violent.

Long 95: Roderick T. Long. "The Libertarian Case Against Intellectual Property Rights". *Formulations*, 1995 issue. <http://freenation.org/a/f3111.html>. Recut AX

Ethically, property rights of any kind have to be justified as extensions of the right of individuals to control their own lives. Thus any alleged property rights that conflict with this moral basis — like the "right" to own slaves — are invalidated. In my judgment, intellectual property rights also fail to pass this test.

To enforce copyright laws and the like is to prevent people from making peaceful use of the information they possess. If you have acquired the information legitimately (say, by buying a book), then on what grounds can you be prevented from using it, reproducing it, trading it? Is this not a violation of the freedom of speech and press? It may be objected that the person who originated the information deserves ownership rights over it.

But information is not a concrete thing an individual can control; it is a universal, existing in other people's minds and other people's property, and over these the originator has no legitimate sovereignty. You cannot own information without owning other people.

Suppose I write a poem, and you read it and memorize it. By memorizing it, you have in effect created a "software" duplicate of the poem to be stored in your brain. But clearly I can claim no rights over that copy so long as you remain a free and autonomous individual. That copy in your head is yours and no one else's. But now suppose you proceed to transcribe my poem, to make a "hard copy" of the information stored in your brain. The materials you use — pen and ink — are your own property. The information template which you used — that is, the stored memory of the poem — is also your own property. So how can the hard copy you produce from these materials be anything but yours to publish, sell, adapt, or otherwise treat as you please?

An item of intellectual property is a universal. Unless we are to believe in Platonic Forms, universals as such do not exist, except insofar as they are realized in their many particular instances. Accordingly, I do not see how anyone can claim to own, say,

the text of Atlas Shrugged unless that amounts to a claim to own every single physical copy of Atlas Shrugged. But the copy of Atlas Shrugged on my bookshelf does not belong to Ayn Rand or to her estate. It belongs to me. I bought it. I paid for it. (Rand presumably got royalties from the sale, and I'm sure it wasn't sold without her permission!) The moral case against patents is even clearer. A patent is, in effect, a claim of ownership over a law of nature. What if Newton had claimed to own calculus, or the law of gravity? Would we have to pay a fee to his estate every time we used one of the principles he discovered? "... the patent monopoly ... consists in protecting inventors ... against competition for a period long enough to extort from the people a reward enormously in excess of the labor measure of their services, — in other words, in giving certain people a right of property for a term of years in laws and facts of Nature, and the power to exact tribute from others for the use of this natural wealth, which should be open to all." (Benjamin Tucker, *Instead of a Book, By a Man Too Busy to Write One: A Fragmentary Exposition of Philosophical Anarchism* (New York: Tucker, 1893), p. 13.) Defenders of patents claim that patent laws protect ownership only of inventions, not of discoveries. (Likewise, defenders of copyright claim that copyright laws protect only implementations of ideas, not the ideas themselves.) But this distinction is an artificial one. Laws of nature come in varying degrees of generality and specificity; if it is a law of nature that copper conducts electricity, it is no less a law of nature that this much copper, arranged in this configuration, with these other materials arranged so, makes a workable battery. And so on. Suppose you are trapped at the bottom of a ravine. Sabre-tooth tigers are approaching hungrily. Your only hope is to quickly construct a levitation device I've recently invented. You know how it works, because you attended a public lecture I gave on the topic. And it's easy to construct, quite rapidly, out of materials you see lying around in the ravine. But there's a problem. I've patented my levitation device. I own it — not just the individual model I built, but the universal. Thus, you can't construct your means of escape without using my property. And I, mean old skinflint that I am, refuse to give my permission. And so the tigers dine well. This highlights the moral problem with the notion of intellectual property. By claiming a patent on my levitation device, I'm saying that you are not permitted to use your own knowledge to further your ends. By what right? Another problem with patents is that, when it comes to laws of nature, even fairly specific ones, the odds are quite good that two people, working independently but drawing on the same background of research, may come up with the same invention (discovery) independently. Yet patent law will arbitrarily grant exclusive rights to the inventor who reaches the patent office first; the second inventor, despite having developed the idea on his own, will be forbidden to market his invention. Ayn Rand attempts to rebut this objection: "As an objection to the patent laws, some people cite the fact that two inventors may work independently for years on the same invention, but one will beat the other to the patent office by an hour or a day and will acquire an exclusive monopoly, while the loser's work will then be totally wasted. This type of objection is based on the error of equating the potential with the actual. The fact that a man might have been first, does not alter the fact that he wasn't. Since the issue is one of commercial rights, the loser in a case of that kind has to accept the fact that in seeking to trade with others he must face the possibility of a competitor winning the race, which is true of all types of competition." (Ayn Rand, *Capitalism: The Unknown Ideal* (New York: New American Library, 1967), p. 133.) But this reply will not do. Rand is suggesting that the competition to get to the patent office first is like any other kind of commercial competition. For example, suppose you and I are competing for the same job, and you happen to get hired simply because you got to the employer before I did. In that case, the fact that I might have gotten there first does not give me any rightful claim to the job. But that is because I have no right to the job in the first place. And once you get the job, your rightful claim to that job depends solely on the fact that your employer chose to hire you. In the case of patents, however, the story is supposed to be different. The basis of an inventor's claim to a patent on X is supposedly the fact that he has invented X. (Otherwise, why not offer patent rights over X to anyone who stumbles into the patent office, regardless of whether they've ever even heard of X?) Registering one's invention with the patent office is supposed to record one's right, not to create it. Hence it follows that the person who arrives at the patent office second has just as much right as the one who arrives first — and this is surely a *reductio ad absurdum* of the whole notion of patents

Medical intellectual property protections proliferate the Empire's parasitic control of subjects by restricting affective communication, making revolution impossible.

Lemmens – Lemmens, P. (n.d.). The conditions of the Common. A Stieglerian critique ON Hardt AND Negri's thesis on Cognitive capitalism as a prefiguration of communism.

The Conditions of the Common A Stieglerian Critique on Hardt and Negri's Thesis on Cognitive Capitalism as a Prefiguration of Communism

Immaterial labour is becoming increasingly free and autonomous and capital ever more dependent and parasitic, forced to block the movements of knowledge, communication and cooperation (e.g. through intellectual property rights) in order to survive (Hardt & Negri, 2009: 142). Whereas the multitude 'is the real productive force of our social world', therefore, 'Empire is a mere apparatus of capture that lives off the vitality of the multitude – as Marx would say, a vampire regime of accumulated dead labor that survives only by sucking off the blood of the living'; it is nothing but 'an empty machine, a spectacular machine, a parasitical machine' (Hardt & Negri, 2000: 62). **Capital thereby loses its historically progressive force and can continue to exist only through direct expropriation of externally produced value** – that is, through expropriation of the common (Negri, 2008d: 64–7). **Immaterial production is structurally 'incompatible' with the logic of capital and therefore cognitive capitalism will ultimately destroy itself through its inherent contradictions. Capitalism's traditional mechanisms of exploitation and control, both the intensive and extensive, increasingly contradict and fetter the productivity of biopolitical labour and frustrate the creation of value.** Biopolitical labour in all its forms – cognitive, intellectual, affective, etc. – cannot be contained by the forms of discipline and command that were developed during the era of Fordism. Therefore, the **integration of labour within the ruling structures of capital becomes increasingly difficult** (Hardt & Negri, 2009: 264, 291). Capital's **strategies of privatisation and control destroy the common that is at the base of biopolitical production**, so biopolitical productivity is hampered every time the common is destroyed. **A good example is the impediment of innovation** Perspectives on Commoning 1st proof.indd 178 04/05/2017 16:16 The conditions of the common 179 in agriculture and biotechnology and the **blocking of creativity in cultural production due to excessive intellectual property regimes** in the form of patents and copyrights (see Drahos & Braithwaite, 2002; Lessig, 2004; Aigrain, 2005; Jefferson, 2006; Boyle, 2008; Hope, 2008; Kloppenburg, 2010). The **disciplinary strategies of precarisation of work and flexibilisation of the labour market are also counterproductive, depriving cognitive and affective workers of precisely the time and freedom on which the creativity** and productivity of cognitive and affective labour depends (Hardt & Negri, 2009: 145–7). All attempts of capital to intervene in the production process and to appropriate the common frustrate that which it tries to capture: the productivity of the common. And the more the capitalist economy becomes a knowledge economy, **the more it embarks on the path of value creation** through knowledge production, **the more that knowledge escapes its control** and the more it produces and nourishes that which ultimately undermines its own existence: the common. Of course, as Hardt and Negri admit, ever since Marx uncovered the logic of capital, **the critique of political economy has pointed to the contradiction within capitalism of the social nature of production and the private nature of accumulation. However, in the context of today's cognitive capitalism, this contradiction is becoming ever more extreme and consequently ever more destructive for the capitalist endeavour, reaching a point of rupture:** 'This is how capital creates its own gravediggers: pursuing its own interests and trying to preserve its own survival, it must foster the increasing power and autonomy of the productive multitude', Hardt and Negri (2009: 311) contend. 'And when that accumulation of power crosses a certain threshold, the Perspectives on Commoning 1st proof.indd 179 04/05/2017 16:16 180 PERSPECTIVES ON COMMONING multitude will emerge with the ability to rule common wealth.' Indeed, **capital today is 'facing increasingly autonomous, antagonistic, and unmanageable forms of social labor-power' which embody an inherent potential for autonomy and have the capacity to 'destroy capital and create something entirely new'** (Hardt & Negri, 2009: 136, 288, 311).

Intellectual property regimes biologically regulate affective expression and force the subject into binary, mechanical, categories which staticize creative desires.

Harmon 21 – Harmon SHE;Brown A;Popat S;Whatley S;O'Connor R; (n.d.). Body extension and the law: Medical devices, intellectual property, prosthetics and marginalisation (again). Law, innovation and technology. <https://pubmed.ncbi.nlm.nih.gov/30505352>

A central claim of the information-commons movement has been precisely to emphasize the **regulatory nature of exclusive rights regimes, resisting and undermining the move to unthinking application of the “intellectual property” label. In other words, the state has a model of how software development goes (or encyclopedia writing, or video entertainment, in the case of copyright and paracopyright), and it is intervening in what seems to be a perfectly functional innovation system, imposing new rules that are upsetting a whole set of freely chosen business practices** already in place. Needless to say, this is not the only way to view what is happening, but it is a sufficiently plausible characterization that many libertarians and laissez-faire liberals in fact understand what is happening in these terms. **The rhetorical foundation of the “open-source software” movement was precisely to frame the practice in these terms of free choice, innovation, and business benefits. Because individual human beings are a complex bundle of urges, emotions, and motivations who often act irrationally** (that is, regardless of self-interest) from an economist's perspective, corporations are the ideal economic agents, pursuing nothing but maximum gain for themselves based on the economic theory of laissez-faire capitalism.²⁶ They are therefore driven to undermine abundance and create artificial scarcity as an unintended, but logical consequence of their internal programming, creating a modern class of rentiers who accumulate wealth by charging fees for access to the resources they control. This **regulatory regime, at its extremes, can lead to the non-user having the power (and the responsibility) to make decisions about functionality without any regard to the aspirations of the user in this respect or indeed regarding more aesthetic matters. This will have an impact on identity - one which is so far unexplored in the existing discussion of bodily autonomy.**⁸⁷ And it is perhaps as a result of this marginalisation (with respect to design, function, performance, and many other relevant details) that more informal maker movements have arisen such as those discussed above. **The EU Regulation can apply to any prosthesis, howsoever developed.** Devices which are manufactured and used within health institutions, however, are considered as being ‘put into service’,⁸⁸ and are therefore exempt from many requirements of the EU Regulation, although they must still comply with general safety and performance requirements. There is a possibility, therefore, **of IP law having a restrictive impact on choices made by and (largely) for prosthesis users. This increases when it is considered that developers of prosthetic limbs are indeed engaging with IP rights.** There are patents, for example US3908201A from 1972 for a prosthetic device made of a particular plastic material and cases involving patents for silicon foam for covering prostheses for implanting in the body;¹⁰⁸ and there are registered designs, for example UK D462767 from 2001 for a slideable and rotatable coupler for a prosthetic leg. Copyright and unregistered designs cannot be evidenced in the same way (given their more informal nature of creation), **however there are examples of infringement actions being raised.** Notably, a court rejected an argument¹⁰⁹ that because of the so-called “must fit” provision in UK unregistered design law,¹¹⁰ there was no protection for the shape of a breast prosthesis. The court found that although the shape of the bra might influence the shape of the breast prosthesis, a bra shape did not determine the detail or circumstances of it – indeed, the prosthesis would fit several bras. The analysis of the legal and regulatory framework, and the results of the research interviews and Focus Groups, reveal that the **power in determining which prosthetic limb can be issued and of what kind (e.g. a leg for rockclimbing), does not always involve the user; and that even if the desire is identified and supported, frequently insufficient budget has been allocated to fulfil it.** A research interview also indicated that private fundraising (one way of addressing this outside the NHS) can be perceived by prosthetic users as leading to a prosthesis which belongs more to the donors – and is **less aligned with the user's identity and integrity.** Further, if notwithstanding this, a particular prosthesis is able to be allocated which supports identity and integrity

(e.g. running, climbing, decoration) in some circumstances an IP owner can restrict or prevent this. And **the identity/identities and integrity of the prosthetic user are not required to be relevant for those with authority and control in respect of these prosthetic related decisions; rather, there are obligations and restrictions under NHS funding rules and the EU Regulation, and rights held by others under IP legislation.** Like the physical states to which they are applied, **prosthetic limbs can challenge our perception of what it means to be human, to be a person. They can challenge our symbolic order, or the binary categories and differentiations that we use to structure society** (such as nature/construct, human/non-human, self/other, friend/stranger).¹¹⁸ Indeed, they may offer new categories and measures, and new possibilities and capabilities. Yet **their allocation and usage are characterised by social, legal and ethical debates around risk, boundaries, and power. The result is often a collage, or indeed a cacophony, rather than a consensus of values, visions, and decision-making models associated with specific interventions or technologies.** ¹¹⁹ And all of this is **positioned against a legal landscape which fails to engage (at least sufficiently) with the person, and the concepts of identity and integrity.**