# 1AC

## Framing

#### Subjectivity is the basis of ethics because asking what we ought to do begs the question of what constitutes the subject in the first place

#### Thinking is only a feature of me and doesn’t determine the subject. Subjectivity is fluid— The subject is always fractured through time, each fracture being constantly filled and reopened, meaning stable subjecthood fails.

Deleuze, Gilles. Difference and Repitition. Translated by Paul Patton. 1968. SHS KS

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 deter­ mination). 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 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 it. If the greatest tmttattve 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 ontraction). · 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 means that we’re temporally bound and connected by affect – Our encounters with the world change the way we form relations with everything else.

The Power to be Affected Michael Hardt Published online: 12 December 2014 # Springer Science+Business Media New York 2014 Int J Polit Cult Soc (2015) 28:215–222 DOI 10.1007/s10767-014-9191-x SHS KS

By focusing on the causes of the affects, however, Spinoza points toward a practical project. All affects can be either active (that is, caused internally) or passive (caused externally). Indeed one advantage of using “affect” instead of the more colloquial “emotion” or “feeling” to translate Spinoza’s Latin term “affectus” is that it highlights the causes and effects of actions by and upon us. Once the causes are revealed, the project becomes to shift from passive to active affections, from external to internal causes. The reason to prefer active over passive does not reside in the experience of the affect, which does not change depending on cause or source. A passive affection, Deleuze explains, “does not express its cause, that is to say, the nature or essence of the external body: rather, it indicates the present constitution of our own body, and so the way in which our power to be affected is filled at that moment” (1992, pp. 219–220, translation modified). Just like passive affections, active affections too indicate the present constitution of our body. The crucial difference is really a temporal one and regards duration and repetition. We need the ability to select, as Nietzsche would say, in order to extend and repeat those encounters and affects that are beneficial and prevent those that are detrimental. The repetition of passive affections is completely out of our control. Some random encounters, of course, do bring us joy, but that passes quickly if we cannot make them last or repeat them. And most random encounters, unfortunately, result in sadness. If we leave this to hazard, we will stay stuck with no way forward. “As long as you don’t know what is the power to be affected of a body, as long as you understand it like that, in chance encounters, you will not have a wise life, you will not have wisdom” (1978 “L’affect et l’idée”). The great advantage of the active over the passive affection is that it is no longer dependent on the vagaries of external forces. Since the body causes itself to be affected, chance is removed and it is able to control the duration and repetition of encounters. The issue, then, is not only understanding and expanding your power to be affected but also augmenting proportion of that power that is filled with active rather than passive affections. This notion of active affection could appear obscure or, worse, moralistic if not linked to Spinoza’s definition of bodies (and, ultimately, subjects). From his perspective, there is no basic or default unitary body. “A body,” Spinoza explains, “is constituted by the relation among its parts” (1985 Ethics, IV P39 dem), and the number and constitution of those parts is changeable. We need to shift perspective so as no longer to consider a body as an entity (or even a cluster of entities) but instead as a relation. When a new relation is added, a larger body is composed, and when a relation is broken, the body diminishes or decomposes. All this simply means that the border between the inside and outside of bodies, and hence between internal and external causes, is fluid and subject to our efforts. In order for a passive affection to become an active one, then, it is not necessary for the body that previously experienced the effect of an external body somehow to cut off that relationship and learn to become itself the cause. The body instead can, under certain conditions, envelop the cause—this is the term Deleuze uses—by creating a relation with it or, really, by expanding the relation that constitutes the body. You only gain the knowledge of when these conditions exist through encounters with others: every encounter reveals the extent to which the relations that constitute your body agree with or are “composable” with those of another. And a joyful encounter always indicates that there is something in common to discover. “We must, then,” Deleuze explains, “by the aid of joyful passions, form the idea of what is common to some external body and our own” (1992, p. 283). Once we recognize those common relations, we can compose a new, greater body, which contains the cause of our joy. The cause, then, does not really change. It simply becomes internal—annexed, as it were, by the affected body. The real change is the border between inside and outside and hence the composition of the body. Once the cause is internal and the affection is active, then you are no longer subject to chance: the affect can be prolonged and repeated as long as it brings you joy.8 The practical project to transform passive into active affections thus ultimately involves a strategy of bonds and relations to maintain or transform the constitution of the body. The advice, if Spinoza were your therapist, could be as simple as this: first, discover your body’s power to be affected and the affects that compose it, and, then, if an encounter with someone or something results in joy, form a relationship with it, make it part of you, and transform the passive affection into an active one so that you can repeat the encounter or make it last until the joy no longer results. You have to recognize that you are not a fixed entity but a bundle of relations and your task is to compose new joyful relations and decompose sad ones. Increasing the proportion of active affections does not primarily mean becoming the cause, at least not in a direct way. The bad therapist is the one who simply berates you to take control of your life as if it were an act of sovereign will. Instead you must discover joyful encounters and then make the passive affection into an active one by forming a consistent relation with the cause, thereby enveloping the cause with a new relation that constitutes us as a new body. Spinoza’s and Deleuze’s technical vocabularies might make this process sound obscure when it is really a very practical project. Consider, for example, your power to think together with others. In many intellectual discussions and encounters, you find yourself more confused and less able to think. Occasionally, though, you encounter a person or a group with whom you are able to think more clearly and more powerfully than you could before. Suddenly, you understand things that previously seemed completely incomprehensible. This is a joy as pure as Spinoza can imagine. Well, the practical thing to do is not to leave such joyful encounters to chance and the fluctuations of external causes. Compose a stable relation with the source of intellectual joy; make the encounters repeat and last. Maybe form a discussion group or write a book together. This will change you, of course, since you are defined by relations, but it will change you for the better. It is never as simple as that, of course. Some of those people and things that bring you joy will simultaneously cause you sadness in other ways. Choosing whether to make or break bonds, compose or decompose relationships is always complicated. This tangled terrain of complex, contradictory affects is where so much of Berlant’s work resides. Consider, for example, her eminently Spinozian formulation, which could easily be added to his catalogue of the affects: “A relation of cruel optimism exists when something you desire is actually an obstacle to your flourishing.” (2011, p. 1). Her recognition that we are so often filled by such self-thwarting desires is not, of course, cause for despair. That is the field in which we need to work, the core of the ethical and political project. Conceiving our ethical and political tasks, as do Berlant and Spinoza, in terms of not our power to act as sovereign subjects but instead our power to be affected shifts the orientation of our political landscape and opens new political possibilities. It makes clear, most obviously, that political projects are not only (and not even primarily) a matter of reason and interests but instead an engagement with our power to be affected in all its messiness and, sometimes, its ugliness. This does not mean, however, that we need to abandon the classical goals of human flourishing, the good life, or joy. The mandate Spinoza gives you is first to increase your power to be affected and then, within that power to be affected, seek a greater proportion of active rather than passive affections. And, finally, in order to maximize active affects, focus on your bonds and relations: discover those people and things that bring you joy and form with them lasting relationships to compose a new body and correspondingly decompose the bonds that hold you to what brings sadness. This where Spinoza and Berlant meet: in a political project for nonsovereign subjects.

#### Affect is divided into two groups – Active and reactive. Active affect embraces the constitution of difference and fluidity, while reactive affect embraces transcendence and stability.

#### Embracing active affect as opposed to reactive is key to breaking free from the pervasive state mindset and instead creating spaces for resistance and radical change so that we can reform the state [K & R 13]

Karatzogianni, Athina and Robinson, Andy. “Schizorevolutions vs. Microfascisms: A Deleuzo-Nietzchean Perspective on State, Security, and Active/Reactive Networks.” University of Leicester, . 2013. SHS KS

The impulse to condemn deviance, resistance and insurrection is disturbingly strong in academia, and doubtless strengthened by revulsion against network terror. Yet this networked rebellion of the excluded is the key to hopes for a better world. In the spiral of terror between states and movements, it is important to recognise that the source is the state and the weak point is in the movements. In today’s social war, the Other is not even accorded the honour of being an enemy in a fair fight. As long as social conflicts are seen through a statist frame, social war is doomed to continue, because discursive exclusion produces social war as its underside, and renders resistance both necessary and justified. The cycle of terror starts with the state: its terror at an existential level of losing control and fixity. This terrified state produces state terror and thereby creates the conditions for movement terror. It is naive to look for a way out from this side of the equation. State terror can end only when the state, both accepts the proliferation of networks beyond its control, and adopts a more humble role for itself, or when it collapses or is destroyed. On the other side, we should find hope in the proliferation of resistance among the excluded. We need to see in movements of the excluded the radical potential and not only the reactive distortions. To take Tupac Shakur’s metaphor, we need to see the rose that grows from concrete, not merely the thorns. The problem is, rather, that many of the movements on the network side of the equation are still thinking, seeing and feeling like states. Such movements are potential bearers of the Other of the state-form, of networks as alternatives to states, affinity against hegemony, abundance against scarcity. The question thus becomes how they can learn to valorise what they are -- autonomous affinity-networks -- rather than internalising majoritarian norms. For instance, in terms of the impact of technosocial transformations on agency, the negotiation of ideology, order of dissent in relation to capitalism as a social code, remains hostage to labor processes and to thick identities of local/regional or national interests, which fail to move contemporary movements to an active affinity to a common humanity and a pragmatic solution for an ethical, non exploitative form of production (Karatzogianni and Schandorf, 2012). Here the exception may like in the global justice movements and Occupy, although still here the discourse remains often in reactive mode, due to state crackdowns experienced by the movements. There is a great need to find ways to energise hope against fear. Hope as an active force can be counterposed to the reactive power of fear. People are not in fact powerless, but are made to feel powerless by the pervasiveness of the dominant social fantasy and of separation. This yields a temptation to fall back on the power of ‘the powerful’, those who gain a kind of distorted agency through alienation. But powerlessness and constituted power are both effects of alienation, which can be broken down by creating affinity-network forms of life. An emotional shift can thus be enough to revolutionise subjectivities. Hence, as Vaneigem argues, ‘[t]o work for delight and authentic festivity is barely distinguishable from preparing for a general insurrection’ (Vaneigem 1967: 50-1). It has been argued in utopian studies that fear and hope form part of a coxntinuum, expressing ‘aspects of affective ambivalence’ connected to the indeterminacy of the future (McManus 2005). The type of hope needed is active and immanent, brought into the present as a propulsive force rather than deferred to the future. Deleuze and Guattari use the term ‘absolute deterritorialisation’ for this possibility. In his work on conflict transformation, John Paul Lederach emphasises the need to turn negative energies into creative energies and mobilising hope against fear (Lederach and Maiese, n.d.: 2-3; Lederach, 2005). How is this change in vital energies to be accomplished? Deleuze and Guattari invoke a figure of the shaman as a way to overcome reactive energies (1983: 167-8). They call for a type of revolutionary social movement ‘that follows the lines of escape of desire; breaches the wall and causes flows to move; assembles its machines and its groups-in-fusion in the enclaves or at the periphery’, countering reactive energies (ibid. 277). In looking at how this might operate in practice, let us examine briefly the Colombian feminist anti-militarist group La Ruta Pacifica de las Mujeres. In particular, the aspects of social weaving and collective mourning prominent in their methodology are crucial forms of creative shamanism, which turns fear into hope. Their approach involves ‘the deconstruction of the pervasive symbolism of violence and war and the substitution of a new visual and textual language and creative rituals’ (Cockburn, 2005: 14; Brouwer, 2008: 62). Weaving as a metaphor refers to social recomposition, the reconstruction of affinity; being ‘bound’ through social weaving is believed to control fear. It is taken as a way to counter everyday violence on the frontlines of the ‘war on terror’. Rituals of mourning and weaving are believed by participants to disarm the armed and create invisible connections among participants (Colorado, 2003). La Ruta seek to create new combinations of cognitive and emotional elements strong enough to disrupt dominant monologues (Cockburn, 2005: 14). Weaving reconstructs social connections and life-cycles, and thereby enhances wellbeing (ibid. 15). Participants recount inner strength and physical recovery as effects of such rituals (Brouwer, 2008: 85). Hence, it is in open spaces, safe spaces, and spaces of dialogue that hope can be found to counter the spiral of terror. This opening of space, this creation of autonomous zones, should be viewed as a break with the majoritarian logics of social control. The coming ‘other worlds’ counterposed to the spaces of terror are not an integrated ‘new order’, but rather, a proliferation of smooth spaces in a horizontality without borders. These ‘other worlds’ are being built unconsciously, wherever networks, affinity and hope counterpose themselves to state terror and the desire for fixed identity be it national, ethnic, religious or cultural. It is in the incommensurable antagonism between the autonomous zones of these ‘other worlds’ and the terror state’s demands for controlled spaces to serve capital, that the nexus of the conflicts of the present and near-future lies. And interestingly, there is also a certain active/reactive difference between state responses in the Turkey and Brazil protests of June 2013.

#### Thus, the standard and role of the ballot is to embrace a politics of active affect. To clarify, we reject things that reinforce stability or the majoritarian subject.

#### Prefer additionally:

#### [1] The law is dissumlated within our atmospheres, while it is ever creeping, it also provides the potential for its own deconstruction and re-energization of affect

#### [P-M 13] Philippopoulos-Mihalopoulos 13 [Andreas Philippopoulos-Mihalopoulos, Atmospheres of law: Senses, affects, lawscapes, Emotion, Space and Society, Volume 7, 2013, Pages 35-44, ISSN 1755-4586, https://doi.org/10.1016/j.emospa.2012.03.001. <https://www.sciencedirect.com/science/article/pii/S1755458612000266> (Andreas Philippopoulos-Mihalopoulos, LLB, LLM, PhD, is a Professor of Law & Theory at the University of Westminster, and founder and Director of The Westminster Law & Theory Lab.)] SHS KS \*brackets used for grammatical clarity

To conclude, I would like to offer one final word on dissimulation. The fact that the lawscape dissimulates itself as anomic in order to produce an atmosphere of desire, does not mean that law is treacherous. Dissimulation is tension. The law is always here, as we have seen, not just ready to creep up in case something goes wrong, but significantly through this very dissimulation. Or, to put it differently, the dissimulated law shares the same surface as the law. Lyotard writes: “Christ dissimulates the Antichrist in the sense that he conceals his fearsome mission from the latter in his speeches.and the Antichrist too dissimulates Christ in so far as he simulates the latter, as close to him as makes no difference” (1993: 52). Law as sign (Christ?) and law as matter (Antichrist?) are indissociable, both working fromwithin as ways to ensure that the law remains relevant. Dissimulation is, in a way, a necessary evil, but one that has the ability to remain honest to the nature of the law as both invisible and visible. To take the same from the perspective of the material aspect of the law: law’s dematerialisation is “in the same space and time, the cartography of a material voyage” (Lyotard and Francois, 1993: 44), that provides material for its simultaneous dematerialisation. Law, in other words, is both material and immaterial, dissimulating as either of these on a shared surface. Law is needed both in its material disappearance and its immaterial appearance, namely both as striated dissimulating as smooth and as smooth dissimulating as striated. One may even say that the strategy of dissimulation is a legal affect that the law cannot even consider resisting. Dissimulation is key to the way atmospheres are engineered. Affective excess has the double ability of being directed yet remain dissimulated. To have more “city” or more “law” is a feat of atmospheric manipulation that manages to tread between concealed control and rampant consumerist desire. Affective excess keeps bodies together (law and the city, law and human bodies, city and animal bodies and so on), originating within the body (say, the law) yet surpassing it, reaching out for other bodies and thus creating an atmosphere. Everything is drawn in this atmosphere: senses, emotions, meaning. Everything emanates atmosphere and everything is maintained within an atmosphere. In that sense, even atmospheric direction takes place from within the atmosphere. Big Brother television programmes rely precisely on such a common immersion of players, organisers and audience, each in their own form that can be actual or symbolic, but always materially manifested (through cameras, doors that lead ‘outside’, screams from the public outside, the diary room and so on). Yet regulation becomes hidden behind gaudily coloured furniture, and affects emanating from bodies of law, sets, humans, furniture, plants, frenzied voices from outside or divine-like instructions from the tannoy, keep the multiplicity together in a precarious yet totalising whole. This is one of the most fragile yet resilient traits of an atmosphere: that at any point in time and space, there can only be one atmosphere. Any development in the atmosphere, change of affect, conflict or confluence will take place necessarily within the ever-changing atmosphere. In view of this uncertainty, control is even harder. Dissimulation of control is the only way in which the atmosphere does not change on account of the obvious presence of control. Yet the balance between presence and absence is very subtle. Thus, cameras are hidden both through their natural placement and through their ubiquity. Atmospheres, just as the law, need to be able to remind us of their presence while at the same time allowing us to be lulled into safe oblivion.

#### [2] Current systems of education only serve to produce majoritarian bodies that are unable to think outside the system and who become increasingly recognizable, killing the potential for any resistance.

Wallins, Jason. “Deleuze and Guattari, Politics and Education.” Bloomsbur Publishing, 2014, Pgs. 119-121 SHS KS

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 circuited 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.

## Offense

#### Thus, I affirm— Resolved: The member nations of the World Trade Organization ought to reduce intellectual property protections for medicines. I’ll defend the resolution as a general principle and PICS don’t negate because general principles tolerate exceptions. I’ll spec whatever you want me to in cx as long as it doesn’t force me to abandon my maximum.

### Contention 1: The Lawscape

#### Property protections are a manifestation of the creeping shadow in our comfortable lawscape. Every object has a distinct and undeniable patent, trademark or copyright symbol, each serving as a daunting reminder of the ever-present state and commodifying our affect

[P-M 13] Philippopoulos-Mihalopoulos 13 [Andreas Philippopoulos-Mihalopoulos, Atmospheres of law: Senses, affects, lawscapes, Emotion, Space and Society, Volume 7, 2013, Pages 35-44, ISSN 1755-4586, https://doi.org/10.1016/j.emospa.2012.03.001. <https://www.sciencedirect.com/science/article/pii/S1755458612000266> (Andreas Philippopoulos-Mihalopoulos, LLB, LLM, PhD, is a Professor of Law & Theory at the University of Westminster, and founder and Director of The Westminster Law & Theory Lab.)] SHS KS \*brackets used for grammatical clarity

Let me therefore allow a little bit of law, and specifically intellectual property law, to emerge. Think of your initial welcome to the lawscape: the music, the smell, the taste, the textures. Think of how cosy you felt. Think of your affects — you wanted to have a Coke, you had a Coke; you wanted to stay in the room, you stayed in the room. Think of the atmosphere, comfortable, safe, energising. No law, just smooth space, reassuringly urban, tasteful yet with a hint of home-baking. At the same time, you realise that there is a bit of law around to protect you: you close the door behind you, this is your private space, the law protects that. You were offered the Coke, you did not steal it; you legitimately bought your iPad (ok, from Hong Kong but who knows this). The atmosphere is assembled by a safe, small measure of law, there to protect you and to make you feel immune in your enclosed sphere. But look again. Or rather, smell, listen, touch again. The red and yellow colour combination is a registered trademark of KODAK (Vaver, 2005). The smell of roses comes from the rubber used for the floor of the room — the Sumitomo Rubbers’s successful application for trademark.1 The first notes of Für Elise by Beethoven have been registered as a trademark by a Dutch company. The iPad touch screen is part of patented technology for which Apple has been in dispute with Samsung over the past few years (see also Parisi, 2008 on touch technologies).2 Finally, the Coke, well!, the Coke is obviously one of the best examples of a fully protected product in terms of taste, appearance, logo, bottle — the whole lot. And the bonus of sorts in the room: if you were to approach the darts, you would see that they emanate a distinct smell of dark beer. Even this combination is successfully registered by Unicorn Products, 3 a company who obviously thought that its target audience would be able to identify with it, and wanted to secure that no one else would use it. These are just some examples. As Vaver (2005: 897) points out, “over time there has been constant pressure from industry – note, not consumers – to widen the subject matter of protection to include as trademark virtually any perceptible feature in the sensory world that can be used to attract custom.” There are myriads of other laws that categorise, determine and restrict urban space, such as planning law (Valverde, 2011), property law (Blomley, 2004), environmental law (PhilippopoulosMihalopoulos, 2007) and health and safety regulations (and the mythology that feeds back, Almond, 2009). I chose to introduce the issue of atmospheres on the basis of intellectual property law because of [is] the fact that sensory control is direct and unmediated to the body, yet it manages to diffuse and dissimulate itself. This it does in two ways: first, by targeting the environment rather than the body (Sloterdijk, 2009), and precisely through this diffusing manoeuvre managing to have the greatest impact on the body; and second, by dissimulating itself as desire, that is as personal preference that ‘demands’ Kodak, Coke, Apple, or beer-scented darts. In some cases, the proffered hyperreality is superimposed on a more basic desire for, say, natural smells or tastes. This sensory desire, as Emily Grabham has convincingly demonstrated (in her case, touch), “embeds itself into the normative fabric of the law, creating and maintaining expectations around what is proper, decent and safe” (Grabham, 2009: 350). This means that the legal sensorium becomes “detached from specific moments and mobilised within legal processes” (2009: 350), indeed becomes fetishised by the law only to be snuggly reattached, I would argue, to the materiality of the situation in hand, claiming echoes of universality. But this is the paradox: the more universal the law, the more diffused it is. The more diffused it is, the more anomic a space appears. The room is just a room. The legal affect is found in this excess of law, in law’s ubiquitous presence that tends to hide under rose-smelling rubber surfaces. The atmosphere of the lawscape is perfectly engineered to appear as a city that is guided by preference, choice, opportunity, freedom. Scratch the surface and you feel the law pushing all these preferences into corridors of affective movement, atmospherics of legal passion that are material through and through yet appear reassuringly distant and abstract.

### Contention 2: Ownership

#### Patents within the world of medicine and biotechnology take ownership of “the body.” Bits and pieces of peoples are being restricted by the law and personalized medicine works to create a hierarchy of bodies, both stifling our natural flow of affect and continuing the commodification of people.

Wolodzko 18 [Agnieszka Anna, Bodies within affect. : on practicing contaminating matters through bioart, 2018, <https://scholarlypublications.universiteitleiden.nl/handle/1887/66889>] SHS KS

The particular discrepancy between the practice of affect and its control, between discovering the relations of transformation and managing these relations in order to achieve particular formations, is present in the practices of biotechnology. Take, for instance, the patenting of the human genome, which touches the very intimate and existential realm of what it means to have and be a body. Donna Dickenson reports that, according to common law, once a part of your body is separated from you, it is legally treated as waste and as not belonging to anybody [lat. res nullius].22 Dickenson believes that this disposable attitude to body parts that have been detached from the body is due to the traditional distinction between a person and raw matter. Unlike a body part, persons cannot be owned as this would undermine the notion of human dignity.23 However, as Dickenson states, recent biotechnological practices undermine the boundaries between what can be considered as a person and what is just a raw body part, which results making the body a much more fluid and hybrid phenomenon. The scale and implications of the hybridity and relationality of the body as a result of biotechnological practices can be seen, for instance, within the phenomenon of human genome patenting and genetic testing, the most lucrative applications of biotechnological innovations.24 Till 2013, it was common practice to patent the human genome once it had been isolated from the body. Even though genes are not an invention as such, their isolation from a body was considered an innovative practice and thus subject to patenting laws.25 This resulted in an enormous biomarket, where, in the 1980s-1990s, till 2005, over twenty per cent of the human genome was patented in the US.26 A patent is “a legal right granted to inventors by national governments to exclude others from making, using or selling their invention in a given country,”27 and so, in this context, its function presupposes that parts of our own body are legally owned by companies and institutions.28 Most importantly, gene patents are usually applied to all methods of their detection. This means that every test and tool involved in the management of a particular sequence are covered by patent laws. The patent thus reaches a very broad research area, and this may have consequences for future innovation and medical care. Since the main role of patents in the biotechnology that has induced genetic testing was to allow for private investment in research and development, biotechnology has transformed from a common good into a commodification and exploitation of the body. Arguably, things have changed once the US Supreme Court banned the patenting of “natural” genes in the case of the Myriad Genetics Inc., the company that discovered the sequence and location of BRCA1 and BRCA1 – a gene mutation that increases the risk of ovarian and breast cancer: “A naturally occurring DNA segment is a product of nature and not patent eligible merely because it has been isolated, but cDNA is patent eligible because it is not naturally occurring.”29 However, things become more ambiguous when we look not only at the differences, but also at the similarities between DNA and its copy, cDNA (complementary DNA). cDNA is “a type of a man-made DNA composition, which is made in a lab with an enzyme that creates DNA from RNA template.”30 Not naturally occurring, and structurally and functionally different from DNA, cDNA thus complies with the patent law. Nevertheless, some critics argue that, despite its structural and functional difference, which allows for the further research, the copy (cDNA) still holds exactly the same information as the original (DNA).31 Moreover, because cDNA is not distinct from the methods it is extracted with, there is no specification of how much intervention is actually needed in order for the gene to be legally patented, since mere simple separation from the body is no longer a boundary.32 Despite the lack of boundaries and clear definitions of what a body’s natural state is and what its manipulated state is, Myriad, (like other companies involved in human gene patenting), practices what is now called personalized medicine. Bodies are practiced as autonomous and fixed identities, independent from collective relations.33 As Dickenson argues, personalized medicine deliberately positions itself against we medicine, emphasising individual responsibility and care, rather than a collective and relational understanding of the way our bodies are. We witnessed the power of individual choice when the American actress Angelina Jolie announced that she had undergone a double mastectomy due to the presence of the BRCA gene in her body. This was in 2013, just before the Supreme Court decision in the Myriad case and the actress’s experience provoked a public debate about the necessity of testing for the cancer gene. However, the media conveniently failed to mention the patent that applied to the BRCA gene, and just how expensive the test to detect it was (in 2013, the test cost between US$3,000 and US$4,000).34 Moreover, the decision to undergo the mastectomy – which for the average woman does not end with a full breast reconstruction as it did in Jolie’s case – was portrayed as being a woman’s – a mother’s – individual choice. The discussion of the elective surgery largely ignored any discussion of the financial, political or social situation of women, or of the industry involved in performing these tests. Importantly, in order for the testing to be accurate and certain, a large database of the variation of this mutation is needed. You need “we medicine in order to perform a successful me medicine.”35 In other words, to be accurate, any medicine depends on a range of relational practices and multiple bodies from various social, political and biological states. Any distinction, therefore, between “me” and “we” medicine is an artificial one. Medical practice has exposed how “me” medicine has already been “we” medicine. The tangible danger, however, is that these relational practices become veiled by the abstract categories of individuality and autonomy. In other words, while we are already living within affect, and are already practicing affect’s contaminations and its multiple relations and implications for various spheres of living bodies, we have never really changed our logic with regard to affect. In the case of Myriad, while, in principle, researchers, share their genome database in order to provide an exchange of information for the common good and to promote innovation and accurate medical care, fear of competition led the company to stop contributing to the data already in 2004. It has also stopped publicising new information about variations. As a major performer of tests for the BRCA gene, Myriad has thus significantly restricted research on breast cancer. The company’s self-interest, clothed in a policy of personalized medicine has stopped the flow of data and, therefore, causing less accurate medical care.36 What is worse, after the US Supreme Court decision of 15 April 2013, Myriad filed a number of lawsuits against laboratories that had started to offer the BRCA test more cheaply.37 What we learn from the BRCA case, is that by failing to change the logic of thinking about the bodies and as a result of its perpetuation of the belief in the autonomy of bodies, despite their obvious dependence on bodies’ relationality, the gene patenting industry has created even stronger hierarchies among bodies. The industry’s policies have enacted a strong belief in determinism, ascribed to DNA within the practices of biotechnological, economic and political application. The idea of the autonomous body is stronger than the actual matters of practice and relations that construct the body. Such practice of the body has preserved the nature/culture divide in a bizarrely paradoxical way. The US Supreme Court’s decision perpetuates a belief in the exclusion of nature from any economic-political spheres. As long as something does not occur in “nature”, it can be patented. However, as shown in the case of Myriad, the copy (cDNA) of DNA that is to be patented holds exactly the same information as the original (DNA). The border between what occurs naturally and culturally, what is original and what is a copy, is thus blurred. Without the “original” DNA there would be no cDNA in the first place. Moreover, what is considered as artificial and therefore ready for manipulation and commodification, materially influences and transforms what we consider to be “natural”. The promise of cure and treatment that has justified the privatization and monopolization of research, ultimately influences our own bodies and lives. Patented genes sequences do not regard a particular body, but “the body”. Patents have a universal function, which, in turn, incorporates all our bodies under its law. Once you have a breast cancer, part of you, what you think of as the “natural” you, belongs, in practice, to the corporation. The artificial divide between the “state of nature” and man-made practice does not respond to our bodies, which are an entanglement of living matter and practices. Furthermore, the Myriad case is also a striking example because it shows the consequences of our lack of understanding that biotechnology has a real material impact on our social and political life. Here, the idea of personhood and human dignity cannot do justice to the scale of novelty and unpredictability of the biotechnological world. Biobanks, which are the modern equivalent of surveillance and property, have resulted in: commodified cell lines, such as those in the Henrietta Lacks legal case,38 promises of regenerative medicine via new methods that transform a cell from an adult body into any other type of a cell, and CRISPR genome editing, which makes the idea of designer babies not just futuristic speculation, but a scientific possibly.39 Indeed, these new biotechnological inventions have undermined any doubt about the influence that biotechnology already has in shaping our lives. These phenomena are not just the concern of bioethical committees and economic policies, they directly touch the multiple political, social and cultural realms of our existence. Ingeborg Reichle called the unprecedented power inherent to the use of biotechnology “bottom-up eugenics”, which is not based directly on a socio-cultural idea and narration, but rather the market and profit.40 As Robert Zwijnenberg argues, biotechnology inevitably correlates with such problems as, for instance, human enhancement, posing not only ethical and legal problems, but forcing more philosophically and culturally varied questions and attitudes, i.e. “who and what do we want to be as humans, and who and what do we want to become?”41 Biotechnological innovations that allow us to manipulate our bodies construct economicsocial realities that do not respond to disciplinary divisions. Economic and political demands are strongly entangled with scientific findings, technologies and their agencies, which, in turn, inevitably influence social and cultural, individual and the population’s practices, as well as our lives and bodies. However, as the Myriad case shows, once these multiple entanglements are applied according to the traditional beliefs in autonomy, individuation and personalization, which do not respond to the relational nature of phenomena, we enter into the realm of utopian beliefs in purity and clear-cut boundaries between species and disciplines. For instance, transhumanists’ desire for designer babies and perfect humans,42 fuelled by an unquestioning use of technology, is just one among many examples of using relationality not as an ontological way of being, but as a means for strengthening the fixed ideas about our bodies. We already live and practice affect, that is why, if we do not think and act according to its dynamic nature, we create even sharper dualisms, polarizations and hierarchies. It is therefore time to map these material and relational ways of understanding. It is time to map bodies within affect, in order to meet the challenges of the biotechnological future. The question is, how to do that? How can we relationally practice the relational nature of our bodies? In other words, how do we make matters of affect matter?

## Underview