

RHETORIC AND THE POLITICS OF NECESSITY

by

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**A dissertation submitted to the Graduate Faculty in Political Science in partial
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Abstract

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This dissertation casts the concept of necessity as a rhetorical form that is commonly used to shape what appears politically possible. I argue that engaging necessity as rhetoric helps not only to conceptualize key political concepts, such as freedom, but to mediate some perennial problems in politics. To make this argument, I undertake two basic tasks. First, I catalog a series of different kinds of necessity arguments that appear across the history of Western political thought. To show necessity's centrality to canonical political theory, I examine the work of Aristotle, Machiavelli, Hobbes, Marx and Arendt. I then apply this analysis to three examples, each of which illuminates a different kind of political problem: Thucydides's *History of the Peloponnesian War* illustrates the role necessity plays in producing the appearance of inevitable war; John Marshall's opinion in *McCulloch v. Maryland* shows necessity as a problem in legal interpretation; finally, contests over the meaning of medical necessity in American health care debates illustrate problems inherent in the relationship between medicine and politics.

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Pludwin has been an indispensable source of both intellectual encouragement and personal support. As I put the finishing touches on the manuscript, his critical eye, enthusiasm and humor kept me excited about the project and focused on why scholarly work is worth doing. I can't wait to see what Jen and Steve accomplish over the coming years, and I look forward to accomplishing much with them.

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Perusing the bounded red monsters of room 5200.07, it seems customary to conclude acknowledgements with something on the order of “these people have been extremely helpful, but all errors and shortcomings are my own.” Everybody I have named here has been essential to this project, and I thank them. Yet, as someone deeply invested in the idea of community, I also implicate them. I will not disavow their culpability. In fact, you might even say it’s their fault.

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Chapter One: Introduction

“Necessity is a powerful weapon, my dear, said the woman, and now that’s enough of philosophy and witchcraft, let’s hold hands and get on with life.”

– Jose Saramago, *Blindness*

1.1: Necessity as Rhetoric

It might seem, on the surface of things, that the question of necessity was settled in 1748. It was in that year that David Hume announced in his *Enquiry Concerning Human Understanding* that necessity was a product of the mind, not of the world. According to Hume, we cannot know necessity empirically, which means that we cannot comment on its reality in the world. Instead, Hume recasts necessity, and the propositions about causality on which it was premised, as a story we tell ourselves, not a report on some worldly necessary “connexion.”¹

Shortly thereafter, Immanuel Kant awoke from his “dogmatic slumber” and was called to speculative philosophy, which he used to obviate Humeian skepticism and show that necessary connexions were very much possible, if only in the understanding. According to Kant, Hume veered off course by seeking knowledge of “the origin of the concept,” and not “its indispensability in use.”² Housed in the understanding, necessity is also, for Kant, bound up with the two Kantian transcendental of time and space. Kant, in other words, brought necessity as a concept into the realm of philosophical discourse, and gave it temporal and spatial reality.

¹ Ian Hacking, *The Taming of Chance* (Cambridge: Cambridge University Press, 1990), 13-15.

² Immanuel Kant, *Prolegomena to Any Future Metaphysics*, trans. James W. Ellington, 2nd ed. (Indianapolis: Hackett, 1977), 4.

Hume and Kant's interests were not new, of course, as necessity has been a central interest – and object of faith – for centuries. Greek mythology had it that *Anankē*, the goddess of necessity, compulsion and fate, was formed out of nothing at the beginning of time, her arms embracing the whole of the universe. This *ex nihilo* imagery is crucial because it pitches necessity not as a response to existing forces, but as spontaneous and primal.³ Yet, at the same time, *Anankē* was born entwined with *kronos*, the god of time. The Orphic cosmogonies portray the relationship like this:

Originally there was Hydros (Water)...and Mud, from which Ge (Earth) solidified: he posits these two as first principles, water and earth...The one before the two...The third principle after the two was engendered by these—Ge and Hydros, that is—and was a Serpent with extra heads growing upon it of a bull and a lion, and a god's countenance in the middle; it had wings upon its shoulders, and its name was Khronos (Unaging Time) and also Herakles. United with it was *Anankē* (Inevitability, Compulsion), being of the same nature, or Adrastea, incorporeal, her arms extended throughout the universe and touching its extremities.⁴

The duo is thus said to have ordered the universe by establishing necessity, which exists with and, in a sense, through time, governing and constituting both the heavens and the earth. This temporally-bound picture of necessity mirrors the metaphysics of the Kantian account quite closely. Insofar as it appears in language, necessity suggests force, compulsion or inevitability. Insofar as language is temporally bound, necessity always-already interacts with different modes of time and space.

This is not a dissertation about Kant or Hume any more than it is about Hydros and Ge. Yet, the picture I draw of the politics of necessity is enriched by these images and configurations, even as the contexts and vernaculars change. Against this backdrop, I

³ A. Gotthelf, "Teleology and Spontaneous Generation: A Discussion," *Nature, Knowledge and Virtue: Apeiron* 22, no. 4 (1989).

⁴ Orphica, Fragments, quoted in Orfeu Bertolami, "The Mystical Formula and the Mystery of Khronos," *ARXIV* (2008), http://arxiv.org/PS_cache/arxiv/pdf/0801/0801.3994v1.pdf.

examine necessity arguments by focusing on their dynamic relation with a range of political phenomena and theoretical perspectives. I approach necessity not as a fixed concept, but a form of rhetoric, an argument that interacts with political knowledge in a multitude of and differently interesting ways. Among the questions I ask are the following: how does something become necessary, and what kind of politics do arguments from necessity encourage, install or sustain? What affords necessity its political valence?

I argue that necessity often militates against key aspects of political life, such as freedom, but also function as tools that political actors – including theorists – can deploy to make sense of and do politics. Necessity arguments are not boogiemens that carry with them divine force, in need of being banished from the public sphere, but are forms of rhetoric that delimit and shape political values in a multitude of ways, sometimes for anti-political purposes, other times to do politics and expand the political. Necessity presents a persistent question to the theory and practice of political freedom, but it is also called upon to make sense of freedom, to mark its conceptual boundaries. Those who pit necessity against freedom thus oversimplify and miss important opportunities for political analysis. Necessity arguments pose the problem of the closed, the determined, and the already fixed, while simultaneously marking the open, unconditioned and undetermined. I also show, however, and somewhat surprisingly, that necessity arguments can serve as tools for opening political spaces. In both cases, engaging necessity as rhetoric helps theorists to see it as the rich and malleable political tool it is.

Necessity arguments are so common in the way the world is depicted in politics that they often slip by surreptitiously, without notice and without triggering political

critique. A key focus of this dissertation is to both call attention to necessity's omnipresence as well as explain why it is not usually thought of as a form of rhetoric. As metaphors of logic, necessity arguments suggest stability, definiteness and permanence. As I show throughout this project, necessity claims are bound up in political languages of all sorts, shaping and grounding political arguments by limiting the scope of apparent possibility. They may function as anchors for political values held in common between political actors, or can be used by political actors to differentiate, persuade, cajole, accuse, arouse, and challenge.⁵ Some theorists conceptualize necessity as the "constitutive outside" of freedom.⁶ Others, such as Hannah Arendt, make the absence of necessity the precondition of freedom, and argue that keeping concerns driven by necessity from the polis is crucial to protecting the very nature of political life.⁷ Some understand necessity, with its relation to rules, as the foundation and conceptual architecture of freedom – freedom's "condition of possibility."⁸ Others apply the notion of "essential contestation" to necessity, arguing that contests over its meaning are part of the meaning and practice of politics itself.⁹ Still others seek to escape the appearance of

⁵ I am pointing to Aristotle's definition of rhetoric, as an art concerned with persuading. From the perspective of its political effects, Kant was wrong to say that "Persuasion is mere illusion." Immanuel Kant, *Critique of Pure Reason*, trans. Werner S. Pluhar (Indianapolis: Hackett, 1996), 748.

⁶ Scott Lash notes that in *The Critique of Pure Reason*, Kant "wanted to draw the limits of the island of necessity of cognitive reason, to make space for the 'sea of freedom' outside that island." Scott Lash, *Another Modernity, a Different Rationality* (Oxford: Blackwell Publishers, 1999), 4.

⁷ See the distinction between labor and action in Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1958).

⁸ Chomsky takes this approach in his view of grammar and the "freedom" inherent in natural language. Noam Chomsky, *Rules and Representations* (New York: Columbia University Press, 1980). See also Wittgenstein's arguments about rules and the so-called "private language" arguments, and Kripke's analysis, in Saul A. Kripke, *Wittgenstein on Rules and Private Language: An Elementary Exposition* (Cambridge: Harvard University Press, 1982). For both, rules make expression possible.

⁹ See William E. Connolly, *The Terms of Political Discourse* (Princeton: Princeton University Press, 1974), 10-44.

forms of necessity in political life, perhaps in some would-be post-metaphysical¹⁰ or even anti-necessitarian politics.¹¹ All of these perspectives, in my view, filter out necessity's unique political valence and its dynamicism. By reading it anew, I hope in part to make necessity more interesting than it often appears.

Part of the confusion over necessity stems from the historic split in the Western tradition between philosophy and rhetoric in the seventeenth and eighteenth centuries, where philosophy was elevated to a position of dominance and associated with reason, and rhetoric was largely brushed aside, associated with politics and deception, but certainly not knowledge.¹² This elevation accords with the dominance of modern science's emphasis on reason and logic, rather than the persuasive force of arguments and the non-rational components of Aristotle's tripartite categories of rhetoric: pathos and ethos. Though I am recasting necessity as a form of rhetoric, and therefore do not accept this reason-rhetoric distinction, that distinction still deserves scholarly attention insofar as it constitutes the metaphysics of Western political thought and marks a key site of conceptual desire. Since necessity purports to derive purely from the logos, which is the promise of reason, it is not called into question within the privileged categories of the modern era.

The tools of rhetoric are well-suited for a critical engagement with the concept of necessity, and I argue that they should be taken more seriously by political theorists. This involves calling upon the likely suspects of the rhetorical tradition – Aristotle, Cicero,

¹⁰ E.g., Seyla Benhabib. See Elizabeth R. Hepburn, "The Situated but Directionless Self: The Postmetaphysical World of Benhabib's Discourse Ethics," *Journal of Applied Philosophy* 14, no. 1 (2002).

¹¹ Roberto Mangabeira Unger, *False Necessity: Anti-Necessitarian Social Theory in the Service of Radical Democracy* (London: Verso, 2004).

¹² On this history, see Victoria Ann Kahn, *Rhetoric, Prudence, and Skepticism in the Renaissance* (Ithaca: Cornell University Press, 1985) and Quentin Skinner, *Reason and Rhetoric in the Philosophy of Hobbes* (Cambridge: Cambridge University Press, 1996).

Friedrich Nietzsche, Ernesto Grassi, Kenneth Burke, Stephen Toulmin, Chaim Perelman, Deirdre McCloskey, for example – and using the tools they have developed to do this work.¹³ But I also want to recast political theory by emphasizing the centrality of rhetoric both in theory and the act of theorizing. By approaching necessity rhetorically, I argue that the theorist can better see the ground upon which assumptions and commitments sit. The result is a strengthening of political theory's political and ethical, but also intellectual force.

This is all by way of remembering that necessity is located in language, be it the language of logic itself – and logic, of course, is not a privileged, divine language, but a language among languages – or through metaphors and mimeses of this language applied to politics. In this view, necessity the metaphor and necessity the mime cannot be separated from necessity the actual, originary language and necessity the god. I proceed from the position, inaugurated by Nietzsche, and picked up by De Man and Derrida, that metaphor is the condition of language's possibility, not a deviation from some other more distant or fictive norm.¹⁴ This reformulation of metaphor does not only destabilize those theories that would have language be more solid and grounded, but provides conceptual tools for moving past the entrenched forms that stabilize or canonize the canon. The

¹³ See Aristotle's *Rhetoric*, in Aristotle, *Complete Works of Aristotle: The Revised Oxford Translation*, ed. J. Barnes, 2 vols. (Princeton: Princeton University Press, 1983); Marcus Tullius Cicero, *Cicero on the Ideal Orator (De Oratore)*, trans. James M. May and Jakob Wisse (New York: Oxford University Press, 2001); Friedrich Nietzsche, *Philosophy and Truth: Selections from Nietzsche's Notebooks of the Early 1870s*, trans. Daniel Breazeale (New Jersey: Humanities Press, 1979); Ernesto Grassi, *Rhetoric as Philosophy: The Humanist Tradition* (College Park: Penn State University Press, 1980); Stephen Toulmin, *The Uses of Argument* (Cambridge: Cambridge University Press, 1958). Kenneth Burke, *A Rhetoric of Motives* (Berkeley: University of California Press, 1969); Chaim Perelman and Lucie Olbrechts-Tyteca, *The New Rhetoric: A Treatise on Argumentation* (Notre Dame: University of Notre Dame Press, 1969); and Deirdre N. McCloskey, *The Rhetoric of Economics*, 2nd ed. (Madison: University of Wisconsin Press, 1998).

¹⁴ See Paul Ricoeur, "Metaphor and the Main Problem of Hermeneutics," *New Literary History* 6, no. 4 (Autumn 1974) and Paul De Man, "The Epistemology of Metaphor," *Critical Inquiry* 5, no. 1 (1978).

attempt to stop metaphorical movement is akin to the privileging of a meaning structure, an attempt to install a necessity argument to fill what Kant called “the empty room” that is the “wish of metaphysics.”¹⁵

Before proceeding, however, a terminological clarification is in order. By pointing to the language of “metaphysics,” I seek to align myself with that “post-Sartrean generation of Parisian Heideggerians”¹⁶ that have been accused by neo-conservatives of taking over American universities. I make use of what Frederick Dolan calls the “post-Nietzschean and post-Heideggerian reflection,” wherein contemporary political theorists speak, act and judge “without grounds,”¹⁷ or least where such grounds are “contingent.”¹⁸ I do so because such an approach allows for an analysis of necessity that avoids the pitfalls of reification, fetishism or essentialism, and affords an critical vantage point for reading political knowledge, without cordoning off certain arguments to undisclosed locations where they become inaccessible for critique.

I turn to rhetoric precisely because, as Perelman puts it, “rhetoric covers the vast field of nonformalized thought.”¹⁹ Reading rhetorically helps theorists to see the constitution of forms from the previously unformed and how the contingent is made necessary and the unstable stable. The formal arrangements – whether deductive logic, states of nature, or neo-realist international relations theory – that sustain the appearance of necessity in political life are themselves products of arguments. Rhetorical analysis

¹⁵ Kant, *Critique of Pure Reason*, 25.

¹⁶ Allan Bloom, *The Closing of the American Mind: How Higher Education Has Failed Democracy and Impoverished the Souls of Today's Students* (New York: Simon and Schuster, 1987), 379.

¹⁷ Frederick Michael Dolan, *Allegories of America: Narratives, Metaphysics, Politics, Contestations* (Ithaca: Cornell University Press, 1994), 3.

¹⁸ Judith Butler, “Contingent Foundations,” in *Feminists Theorize the Political*, ed. Judith Butler and Joan Wallach Scott (New York: Routledge, 1992).

¹⁹ “The Realm of Rhetoric,” in Patricia Bizzell and Bruce Herzberg, *The Rhetorical Tradition: Readings from Classical Times to the Present*, 2nd ed. (Boston: Bedford/St. Martin's, 2001), 1383.

affords theorists a methodology attuned to the language with which “the value of these values” that are often “taken...as given, as factual, as beyond all question,”²⁰ or the claim that necessity is either an “objective situation” or that “the only circumstances that are necessary and objective are those that are declared to be so,”²¹ can be interrogated as practices of writing the political. Rhetorical analysis can *show* that values are themselves discursive, but can also provide tools for reworking those discourses so that they can become both an object of political analysis and site of political activity.

In the twentieth century, the victory of philosophy over rhetoric materialized in the tradition of Anglo-American analytic philosophy,²² marked, among others, by the work of Bertrand Russell, G. E. Moore and Ludwig Wittgenstein. Investigations of necessity reached an important point in 1970 with Saul A. Kripke’s *Naming and Necessity*, which challenged and broadened, from an analytic philosophical perspective, the meaning and depth of necessity, and reinvigorated philosophical discussions of the concept.²³ Kripke’s book was revolutionary, yet it did little more than introduce a new metaphysics for thinking about necessity, without considering the possibility that meaning – even of “logical” notions such as necessity – could be a production of social power rather than a feature of language “itself.” Instead of engaging in an analysis of power as constitutive of meaning, and interrogating the meaning of the tautology at work in searching for a logical form within an already formalized structure, and with no engagement of account of the world that gives rise to that structure, Kripke dives head

²⁰ Friedrich Nietzsche, *On the Genealogy of Morals and Ecco Homo*, trans. Walter Kaufmann (New York: Vintage Books, 1989), 21.

²¹ Giorgio Agamben, *State of Exception* (Chicago: University of Chicago Press, 2005), 29-30.

²² In the *Tractatus Logico-Philosophicus*, Wittgenstein argues that language can be broken down to relations of first-order logic (hence its tendency to appear necessary). Though Wittgenstein later broke with this tradition, it continued with such luminaries as J. L. Austin, Gilbert Ryle and Saul Kripke.

²³ *Naming and Necessity* (Cambridge: Harvard University Press, 1980).

long into “other worlds” analysis where he announces that names “designate rigidly” across possible worlds. Kripke and the analytic tradition he is a part of exemplifies Nietzsche’s warning that “only that which has no history is definable.”²⁴

This mode of analysis began to pervade political science departments, as well. Theoretical constructs such as the Rawlsian “veil of ignorance”²⁵ or the Habermasian “ideal speech situation”²⁶ are emblematic of this move (I shall point to more examples along the way). The main problem with such constructs is that they introduce theoretical reductions into political analysis that steer the theorist away from the rough ground of politics and toward ideals, even when used as mere “heuristics” or “thought experiments.” Nancy Fraser’s defense of Habermasian discourse theory is one such example of this tendency to note (as Kant did) the “heuristic value” of constructions that she finds ultimately flawed.²⁷ Yet, these conceptualizations also pose political problems insofar as they seep into and alter political discourse, where the boundaries between knowledge and thought experiments are not so clear. This suggests that concepts such as necessity, when used as a tools for analysis, can end up reconfiguring the very way in which the theorist thinks about politics which, in turn, can have determinate political consequences, some of which may have the effect of making the political appear deductive. Political analysis requires, on the one hand, noticing the role that these

²⁴ Nietzsche, *On the Genealogy of Morals*, 80.

²⁵ John Rawls. *A Theory of Justice* (Cambridge: Harvard University Press, 1971). Later, Rawls recognizes some problems concerned with the idealistic nature of *A Theory of Justice*: “Political philosophy is related to politics because it must be concerned, as moral philosophy need not be, with practical possibilities.” “The Idea of an Overlapping Consensus,” *Oxford Journal of Legal Studies* 7 (1987): 24.

²⁶ Jürgen Habermas, *The Theory of Communicative Action: Reason and the Rationalization of Society*, trans. Thomas McCarthy, 2 vols. (Boston: Beacon Press, 1984).

²⁷ See Rosemary Hennessy, “Review: Justice Interruptus: Critical Reflections on The “Postsocialist” Condition by Nancy Fraser,” *Hypatia* 14, no. 1 (Winter 1999). See also Kant, *Critique of Pure Reason*, 684.

antipolitical-because-metaphysically-necessary rationalities play and, on the other, engaging them. A key difference between philosophy and theory is the question of the value of engaging in thought experiments that not only have little political effect, but may actually divert actors away from engagements with power, and into ideals.²⁸

An example from a contemporary scholarly debate illustrates this point. Recently, much attention has been given to the extra-constitutional claims made in the name of emergency powers, provoked by the Bush administration's declaration that captives in the War on Terror were "enemy combatants," subject to indefinite detention without any legal recourse or right to counsel. These investigations have been carried out primarily by left Schmittians such as Giorgio Agamben and other critics of the emergency powers doctrine in the War on Terror²⁹ as well as defenders of the doctrine.³⁰ Agamben's main concern is to argue that contemporary states of exception constitute "not a special kind of law," but rather a "suspension of the juridical order itself" that "defines law's threshold."³¹ Agamben engages the legal theory at work in "states of exception," a condition of "bare life" and lawlessness that, though it may have once been the exception, has in the 20th century become the norm. This highlights the tension between legality and

²⁸ Marking these bounds was an important contribution of Kant's first *Critique*: "Hence, the primary and most important concern of philosophy is to deprive metaphysics, once and for all, of its detrimental influence, by obstructing the source of its errors." The Kantian critique of metaphysics, in short, functions as a police force, whose "main task... is only to put a stop to the violence" that metaphysics does to philosophical clarity. Kant, *Critique of Pure Reason*, 32, 27.

²⁹ Bruce Ackerman, "Emergency Constitution after Hamdan," *Constellations* 13, no. 4 (2006); Orren Gross, "Chaos and Rules: Should Responses to Violent Crises Always Be Constitutional?," *Yale Law Journal* 112 (2003); Leonard C. Feldman, "Judging Necessity: Democracy and Extra-Legalism," *Political Theory* 36, no. 4 (August 2008); Nomi Lazar, "Must Exceptionalism Prove the Rule? An Angle on Emergency Government in the History of Political Thought," *Politics and Society* 34, no. 2 (2004); Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (London: Verso, 2003).

³⁰ Eric A. Posner and Adrian Vermeule, *Terror in the Balance: Security, Liberty, and the Courts* (New York: Oxford University Press, 2007); Alan M. Dershowitz, "Should We Fight Terror with Torture?," *The Independent* (July 3, 2006), <http://www.independent.co.uk/news/world/americas/alan-dershowitz-should-we-fight-terror-with-torture-406412.html>.

³¹ Agamben, *State of Exception*, 4.

the violence implicit in the protection of constitutional orders themselves and positions them as held in structural contradiction to the basic precepts of the separation of powers, human rights, and democratic commitments more generally.

Agamben opens *State of Exception* by noting that exceptionality is justified and “founded” on “the state of necessity.”³² According to Agamben, “Aporias,” not resolution, are the product of “every attempt to define necessity,” and we get nowhere with the question when “writers” – by which he seems to refer to theorists of the state of exception – “continue more or less unconsciously to think of [necessity] as an objective situation.” Finally, Agamben argues that

The attempt to resolve the state of exception into the state of necessity...runs up against as many and even more serious aporias of the phenomenon that it should have explained. Not only does necessity ultimately come down to a decision, but that on which it decides is, in truth, something undecidable in fact and law.³³

Like the state of exception, making sense of necessity is difficult work. But, unlike Agamben’s understanding of the exception, I think neither it nor a politics of necessity is a priori “undecidable.” But if necessity’s meaning can be nothing else than a product of decisionism that underpins emergency powers claims, then doesn’t analysis of the theory begin – and possibility end – with a politics of necessity insofar as necessity is determinate of what happens in subsequent claims? No doubt because of his engagement with what he sees as the visible political problem – extralegality – Agamben moves to the sphere of law before dealing the rhetorical problems inherent in the necessity arguments that initiate exceptions. The result is a project built on shaky ground precisely because it lacks a coherent strategy for dealing not only with the rhetoric of necessity, but rhetoric

³² Ibid., 1.

³³ Ibid., 29-30.

more generally. Agamben, like Kripke, gets caught in the metaphysics of his structures and necessity, the concept exceptionality is founded on, drops out of the analysis almost completely. This is because Agamben works within terms already available rather than interrogating how those terms were introduced and established. In other words, he begins by taking legal structures for granted.

Though necessity is constitutive of his project, Agamben starts beyond it. This appears to be the case because, as Agamben notes, necessity is undecidable from within law itself. Yet, since he does not engage in a politics of necessity, he leaves his project open to the same errors and aporias I have marked as an effect of analytic philosophy's hesitation vis-à-vis rhetoric. How should we interpret these emergency powers debates then? To be sure, necessity is not a "law," nor does it "know no law." Necessity is declared and decided; it's arrival is announced, often in a prophetic tone. Even as these declarations and decisions might serve as markers of a state militating against the people, against rights, and against "Others" such as non-nationals and "enemy combatants" and marginalized and vulnerable populations generally, they still contain an argument, however unsatisfying or fallacious that argument may be. If they don't, and if the deciders and declarers refuse to justify their positions and actions, or if their justifications are deemed unacceptable, then a point has been reached at which the arbitrariness of state power is exposed and a new political question must be opened about what is to be done. The rhetorical reading can – perhaps even alone – do this exposing. Because necessity arguments beg the question, "necessary for what," assertions of necessity are not only open to political responses but, as a matter of political commitment, they demand them.

Agamben's assumption that necessity is irresolvable within the law suggests metaphysical despair rather than political engagement.

Such despair typically occurs when one attempts to resolve "legal" questions without engaging the politics implicit in legal discourse, of working within a legal metaphysics that assumes an internal constitution and structural unity. Agamben seeks to understand "the inscription of the state of exception within a juridical context,"³⁴ despite his view that states of exception stand outside of those contexts. Necessity, as the originary moment in the narrative of the state of exception, precedes juridicality. Still, one might wonder what the point of proceeding to juridical analysis would be when this moment is not only unresolvable juridically, but points to politics.

A rhetorically-informed critique of necessity is productive of a politics of necessity precisely because it takes the adage "necessity knows no law" and demands that a law be articulated and made available for political critique, or finds the law as it is already articulated, even if not stated. Such a politics demands that it is not sufficient to rest with Antigone's appeal to "higher laws" or Thomas Jefferson's claim that "The laws of necessity, of self-preservation, of saving our country when in danger, are of higher obligation," or that subjecting them to the "scrupulous adherence to written law, would be to lose the law itself....absurdly sacrificing the end to the means."³⁵ I do not think that necessity needs to stand outside of legal systems unarticulated, a moment of anti-democratic violence in the establishment of legal orders.³⁶ In engaging necessity as

³⁴ Ibid., 32.

³⁵ Thomas Jefferson and Jean M. Yarbrough, *The Essential Jefferson*, The American Heritage Series (Indianapolis: Hackett, 2006), 208.

³⁶ See, e.g., B. Honig, "Declarations of Independence: Arendt and Derrida on the Problem of Founding a Republic," *The American Political Science Review* 85, no. 1 (1991).

rhetoric, and reading the supposedly unreadable, the necessity claims that frame politics can – and should – be spelled out. It is not acceptable to leave the highest law unlettered.

1.2: Necessity and Desire

Nietzsche argues that when considering necessary truths, “the fault lies not in [our institutions] but in us.”³⁷ This means that necessity arguments are produced in a process of internal and external negotiation, between individual psyches seeking solid ground in a world of mud. Deleuze and Guattari argue for an interrogation of the production of desire. They also warn, by way of a methodological precaution, against the power that theoretical frameworks wield. For example, noting that “Freud doesn’t like schizophrenics” because “He doesn’t like their resistance to being oedipalized,” which leads him to “treat them more or less as animals,”³⁸ they to summarize the effects of assuming Oedipus. The psychoanalyst who proceeds like this says:

Say that it’s Oedipus, or you’ll get a slap in the face. The psychoanalyst no longer says to the patient: “Tell me a little bit about your desiring-machines, won’t you?” Instead he screams: “Answer daddy-and-mommy when I speak to you!”...So the entire process of desiring-production is trampled underfoot and reduced to parental images, laid out step by step in accordance with supposed pre-Oedipal stages, totalized in Oedipus, and the logic of partial objects is thereby reduced to nothing. Oedipus thus becomes at this point the crucial premise in the logic of psychoanalysis.³⁹

Perhaps we can rework and borrow: say that it’s necessary, or we’ll all get a slap in the face. These theoretical paradigms have the opposite effect as their intention: they can lead one to stop thinking and seeing, rather than thinking or seeing more clearly. Their effect

³⁷ Friedrich Nietzsche, *Twilight of the Idols and the Anti-Christ*, trans. R. J. Hollingdale (London: Penguin Books, 2003), 104.

³⁸ Gilles Deleuze and Félix Guattari, *Anti-Oedipus: Capitalism and Schizophrenia* (London: Continuum, 2004), 25.

³⁹ *Ibid.*, 49.

can be to enforce necessary outcomes by controlling the lens through which knowledge is produced. Social science's enthusiasm for Ockham and its penchant for parsimony makes such reductions even more tempting. The same can be said for those readings that come to serve as replacements for the texts they read, when we (for example) stop reading Thucydides, in all of his complexity, and allow Morgenthau or Gilpin's reading that Thucydides is the father of classical realism to be taken as Word.⁴⁰ Interpretative lenses can serve as helpful reducers of political knowledge, but can also invite sloppy thinking. All of this aides and abets the coagulation of a series of increasingly – if only apparently – necessary narratives. One palliative measure is to take the practice of theorizing from the passive to the active, from an unconscious to increasingly, or at least actively self-conscious activity. In noticing the reductions, and the attractiveness and problems of the explanatory powers that they make possible, the theorist can forestall interpretative lenses, and the necessity arguments that flow from them, and keep them from overtaking the range of possible political judgments.⁴¹ Using rhetoric to do this work, I argue that political judgments require that lenses remain lenses, and that readings remain readings, even as the theorist may acknowledge that some are better than others, and some preferable to others. Lenses are always at risk of supplanting eyes, of becoming the conduits that force the theorist towards interpretative outcomes. In the same way, axioms and propositions that we may use to think about the world must never lose their status in theory as axioms and propositions; they must remain tentative to keep the theorist on firm

⁴⁰ See Laurie M. Johnson Bagby, "The Use and Abuse of Thucydides in International Relations," *International Organization* 48, no. 1 (Winter 1994); Peter J. Ahrens Dorf, "Thucydides' Realistic Critique of Realism," *Polity* 30 (1997); and Richard Ned Lebow, "Thucydides the Constructivist," *American Political Science Review* 95 (2001).

⁴¹ There are limits to the usefulness of the "lens" metaphor. On what do we put the lens? Nothing, as there is always a lens. However, some lenses are viewed as lenses, others not. When a lens is not seen as such, it becomes the world "in itself," an epistemological norm not seen as a mode of discourse.

epistemological ground. In political theory, the problem of necessity begins with bad reading, conceptual idolatry and a forgetfulness about the goals of theory itself, and ends with a belief that a perspectiveless “eye that is completely unthinkable”⁴² can help us see a world governed by rationalities and trajectories beyond the reach of either politics or political theory. A democratic politics requires that there exist an interpretative space between arguments and our understanding of them, a point that underscores the extent to which how we theorize language matters politically.

I argue that the development of such a politics requires that we problematize a series of conceptual objects of desire: charismatic and well-meaning political leaders, skillful lawyers, fair judges, highly-trained doctors, omniscient professors, and other important forces of social and epistemic legitimacy. This entails understanding the perspective from which these forces construct knowledge and asking questions about the rhetorical practices and promises that sustain them and give them the power to produce the appearance of necessity. The project requires thinking seriously about legitimacy and who can issue necessity claims at what times and under what conditions, as well as the discursive arrangements that tempt political actors to take certain arguments more seriously than others. In short, this project recasts political knowledge so that it can be considered as a system of arguments that are accessible for critical engagement.

Modern science’s promise, itself a product of the philosophy-rhetoric split, is a rational, cool-headed engagement with the world, working methodically to restrain

⁴² Nietzsche, *On the Genealogy of Morals*, 119.

pathos, parsing away cloudiness to render logical inquiry of the world possible.⁴³ It is a promise that a reason free from considerations necessarily of domination, but certainly power more generally, is possible. Yet, as an intervention into this ethos, Nietzsche seems correct in arguing that our “*inner struggle*” is with “poor thinking” where this poverty is thought to be an “immense pathos of truth” that leads us to “toward logic.”⁴⁴ For Nietzsche, the belief in a logos free of pathos installs and sustains an “*optimistic metaphysics of logic*, which gradually contaminates everything and covers it with lies. When logic is thought to be the sole ruler it leads to lies; for it *is* not the sole ruler.”⁴⁵ Note the play on words here: the “optimistic metaphysics” of science puts a fictive form of pure logic in a position of authority. The scientific method, moreover, is the tool through which this logic appears to be secured, even if only in some projected future. Here necessity is a psychological and not simply a linguistic question. We cannot therefore approach it as positivists, but must consider the politics associated with necessity’s absence, and the workings of this absence in maintaining a politics of presence. Nietzsche’s critique suggests a tendency to theorize language outside of human experience, as though language were not always already packaged in psychology. Necessity, as it appears both in language, generally, and in political argument, in particular, functions as a promise or wish; yet, as this promise is issued in terms of an impossible and asymptotic logical form, it guarantees disappointment. The political task

⁴³ Grassi explains the “rationalistic attitude toward rhetoric” this way: “Theoretical thinking, as a rational process, excludes every rhetorical element because pathetic influences – the influences of feeling – disturb the clarity of rational thought.” Grassi, *Rhetoric as Philosophy: The Humanist Tradition*, 18.

⁴⁴ Nietzsche, *Philosophy and Truth*, 28. One is reminded, in considering this aphorism, of Derrida’s well-known argument that the idea of communication, of transmitting content between interlocutors, is itself possessed of the “metaphysics of presence.” “Signature Event Context,” in Jacques Derrida, *Limited Inc* (Evanston: Northwestern University Press, 1988), 1-3.

⁴⁵ Nietzsche, *Philosophy and Truth*, 28.

is to consider what practices and responses follow from this disappointment, such as the deployment of violence in attempting to bring about or force the impossible,⁴⁶ or what Freud called displacement, when one re-invests in new objects as part of a process of mourning. What happens when the heretofore necessary is revealed to be contingent? When Nietzsche says that logic “*is* not the sole ruler,” his point seems to hinge on the nature of this “*is*” – its origin, its etiology and what it means to political actors. Being “ruled” by something is of course quite different than that something “being” a ruler. The former suggests an arrangement of productive forces – requiring a critique of power – while the latter points to an image of authority. At issue in this distinction is the projection of a world of symbols unencumbered by power, of whether things are or are made necessary.

Longing to return to antiquated configurations – the sovereign voice, the objective judge, the scientific doctor or agents in a pure Kantian ethics is, as Haraway puts it, akin to longing for a “disciplinary preoedipal and modernist poetic moment when cells seemed to be cells and organisms, organisms.”⁴⁷ Yet I want to call attention to the fact that each of these figures also makes a certain argument from necessity possible; in problematizing each, we open a door to making the arguments that underpin them a part of a politics. The key point here lies in realizing that necessity arguments cannot be resolved via some kind

⁴⁶ And violence is particularly likely here because the condition of melancholy is wrought by an impossibility produced by the language of necessity itself. Language can only repeat its structural impossibilities. Violence – both physical and structural – becomes a likely response to the frustrations brought on by the limitations and cessation of speech and deliberation. See Jean-Paul Sartre’s introduction to Frantz Fanon, *The Wretched of the Earth*, trans. Richard Philcox (New York: Grove Press, 2004).

⁴⁷ Donna Haraway, “Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective,” *Feminist Studies* 14, no. 3 (1988): 576. Here Haraway uses Oedipus in precisely the way that Deleuze and Guattari critique. The point is not to warn against envisioning a pre-Oedipal moment (that is easy enough); the point is to warn against envisioning moments outside of some kind or any kind of social order. The point, that is, is to think politically.

of pure or purified logos. I do not, and could not, suggest a better, more correct or more appropriate meaning of necessity in these chapters. Instead I hope to move the various forms of necessity that I identify to the center of political life. I take as a point of departure the Nietzschean problematic that “Man requires belief in truth,” and that “Truth makes its appearance as a social necessity....”⁴⁸ I also add the following: not only is this true, but of these truths, necessity appears to be one of, if not the most persistent and problematic, no doubt because it operates within the fabric of deliberations and narratives. An irony of irony, this “social necessity” may be a necessity for necessity itself. Modernity did not simply negate the logic underwriting the supernatural necessities and necessary identities of earlier times (such as *Anankē*, with whom this chapter opened); rather, it transformed them into new, secular necessities, and introduced a new cast of causal explanations and predictive forces. Even as contemporary political thinkers are skeptical of prophets and oracles, they are at risk of establishing new foundations in omniscient Markets, scientific and social-scientific methodologies, a belief in forces such as Progress and beyond – what Burke calls “god terms.”⁴⁹ From this rhetorical perspective, there is no privileged position from which we may say that classical or modern arguments from necessity are better or worse. This approach allows us to both refuse the temptation of seeing contemporary political theory as more developed or more sophisticated than that of the Greeks, but also to make it possible engage the forms that

⁴⁸ Nietzsche, *Philosophy and Truth*, 34.

⁴⁹ Burke, *A Rhetoric of Motives*, 108. Bernard Williams calls attention to a similar shift in foundations. However, by not locating the new concepts in a critique of language, he does not afford us tools for better understanding these concepts politically. His book thus serves as a disruption, but does not point us in a new direction that rhetoric can. Williams, by his own admission, is concerned primarily with counseling against judging the Greeks through modern lenses, not taking on necessity arguments as part of a contemporary political project. (This isn’t a criticism; it’s just not his project.) *Shame and Necessity* (Berkeley: University of California Press, 1993).

constitute the metaphysics of necessity of the present political moment. Refusing the seduction of seeing present forms as exceptional is necessary for protecting the political. To do this, however, we need to read again, and differently. Outlining such a mode of reading is a central concern of this project.

When we do not approach politics rhetorically, we also miss the patterns and tendencies that recur throughout political argument, across time. It may be that the “continuity” that Sheldon Wolin notes in *Politics and Vision* is, at least in part, a rhetorical continuity, which suggests that theorists should read for those recurring forms and practices to understand their own lineages and programmes.⁵⁰ This point seems particularly important because contemporary politics and political argument is still encumbered by a persistent belief that language constitutes a window into some essence or reality, rather than “forms of life” constituted through and housed in language.⁵¹ This results, I suggest, when critique is pitched at the “second order” level of concepts, which obscures the more basic constitutive building blocks that lead us to these concepts. Rhetorical analysis can help us see the latter and notice the feedback loop at work. Those who seek to argue that necessity exists in the world and not in language are, paradoxically, applying a veneer to the political world and attempting to see through language by using language. In so do, however, they miss what’s important about the vocation of the theory, which is its poetic capacity to recast the political. To evoke a

⁵⁰ Sheldon S. Wolin, *Politics and Vision: Continuity and Innovation in Western Political Thought*, Expanded ed. (Princeton: Princeton University Press, 2004).

⁵¹ In his earlier work, the *Tractatus Logico-Philosophicus*, Wittgenstein argued precisely the opposite point, namely that language helps us to see what does exist beyond language. His later work, which offers a critique of language explicitly pitched against such metaphysics, maintains that language is the beginning and end of metaphysical analysis. Unfortunately, however, this was far from a decisive break in cognitive linguistics. Consider, for example, the title of Harvard cognitive scientist Steven Pinker’s recent (2007) book, *The Stuff of Thought: Language as a Window into Human Nature*.

Wittgensteinian metaphor, the rhetorical practices of the theorist function like a “toolbox,” and words, concepts and argument types function as tools with which the theorist engages in the practice of world-building. Some make that world seem more solid than others, suggesting permanence, while others show that – and how – it can be reworked. The political question about necessity is then, in part, what kind of tool is it? What kind of work does it do in the order of political discourse?

Necessity’s theoretical power stems from its use of metaphors of logic and other metaphysics to make contingent human relations seem fixed, the possible impossible and the very much evitable inevitable. Getting beneath the “musts” and “have to’s” – and anything that “looks as if it *had* to exist” simply because it “is part of the language”⁵² – requires a critical stance toward the world, but also between people and the language through which their world takes on shape and meaning. The relationship between politics and the language of logic is worth pursuing because they implicate and constitute one another.

1.3: Structure of the Argument

The dissertation proceeds from abstract argument through the canon to an examination of three concrete political contexts. In Chapter II, “On the Relationship between Necessity and Teleology,” I present an argument about teleology, and suggest a revision and expansion of how we understand teleological reasoning. Here, I argue that teleological reasoning serves as the structural precondition for necessity arguments. To see this we must consider the concepts of ends more generally as they function in

⁵² Ludwig Wittgenstein, *Philosophical Investigations: The German Text, with a Revised English Translation*, trans. G. E. M. Anscombe, 3rd ed. (Malden: Blackwell, 2003), Sec. 50.

political argument, as preconditions for necessity arguments. Chapter III centers on a reading of Aristotle, Machiavelli, and Hobbes and, in Chapter IV, I turn to Marx, and Arendt. Both chapters advance a critique of necessity arguments and the teleological structures that underwrite them to call attention to how, within these structures, they wield very different political effects. I attend in particular to the ways in which these theorists use necessity arguments variously to close, and sometimes open, political spaces. In reading necessity rhetorically, I argue that these thinkers' theoretical contributions and political commitments stem, at least in part, from the ordering and arranging of these argumentative forms. I have chosen these theorists because they are formidable and interesting, but also because they illustrate necessity's centrality to political theory more generally. Taken together, they offer a wide range of examples of necessity's centrality in political thought, as well as its flexibility. In all cases, the use and critique of necessity arguments is central to their politics, and an analysis of these arguments is important for using their work for addressing contemporary questions.

Next, I turn to three domains of rhetoric that appear at first to describe the world objectively, appealing to reason, science, observation, and other strategies of description. Through a reading of Thucydides's *History of the Peloponnesian War*, Chapter V evaluates the use of necessity in arguments for war mobilization. Here I ask not what constitutes legitimate necessity (whatever that might be), but rather seek to understand the relationship between a people that has come to believe in the necessity of war and the role that orators can play in shaping that necessity. Specifically, I contend that polities often gladly accept a model wherein necessity appears to issue from a sovereign voice when political circumstances line up in their favor, but are forced to contend with the

theoretical fallacy – or at least contingency – of this view toward language when circumstances change. I read Pericles’s speeches, as reported by Thucydides, to notice how he uses an objective claim about necessity as a tool for persuasion in the lead up to Athens’s entrance into the war. Moreover, in Pericles’s speeches, we see the power, but also the limits, of necessity rhetoric. A focus of this chapter is thus the intersection of necessity and time. I ask how necessity arguments change with political circumstances, but also how Pericles uses them, at times to stop time, at others to keep the possibility of change open. Pericles shows his rhetorical savvy by serving as both an opener and closer of political rationalities. Both reveal political dynamics about the political use of necessity to construct possibility.

Chapter VI examines the rhetorical practices at work in Chief Justice John Marshall’s opinion in *McCulloch v. Maryland*, which concerns the meaning of the “necessary and proper” clause of the U.S. Constitution. This chapter moves away from the relationship between leaders and citizens to consider how objectivity – in this case a legal objectivity modeled on a science of politics – is produced rhetorically. Only rhetorical analysis can help us to see Nietzsche’s claim that there is such a thing as “objectivity, but as a positive property.”⁵³ In other words, for Nietzsche objectivity is best understood as a rhetorical production. Considering that logical necessity is found in the most obviously positivistic of all sciences, logic, I ask the following: what rhetorical strategies produce the objectivity that then hosts necessity arguments as they function in decidedly non-necessary matters of politics? I do not do as some do, and callously “reject” objectivity, but argue that we must learn to read the objects that house our

⁵³ Friedrich Nietzsche, *On the Advantage and Disadvantage of History for Life*, trans. Peter Preuss (Indianapolis: Hackett, 1980), 36.

political commitments to see what sustains them. Here, I make sense of the rhetorical strategies that Marshall uses to establish necessity, especially his avoidance of precedent and analogical reasoning. Marshall's descriptive arguments about necessity, I suggest, are supported by ahistorical arguments about meaning itself. Here, I approach objectivity as a rhetoric of axioms capable of establishing subsidiary rhetorics of logical necessity about political and legal questions. I suggest that when we consider objectivity in this way, the supposed line between "descriptive" and "prescriptive" argument breaks down. Part of the contribution of this chapter is to offer a systematic way to expose the presence of prescription in purportedly descriptive rhetorics by way of a critique of necessity.

Chapter VII examines the politics of medical necessity. Medical necessity is the controlling concept used by insurance providers to determine whether certain medical procedures will be covered, with patients, state and federal government, and doctors all angling for control over its construction. Medical necessity stands at the center of debates over health and reproductive practices, including abortion, mastectomy, C-section, and circumcision, with opponents and proponents quarreling over the presence and absence of medical necessity. I consider the question of medical necessity by asking the following: what institutional arrangements determine the meaning of necessary medical care? Who (or, in the descriptive tradition, what) gets to determine what is necessary or not? Is this determination a matter of legitimacy in positions of power to write the terms of discourse, or is it the matter of legitimate institutional arrangements, stemming from a faith in medicine or science? How does the intimate connection between necessity and the political economy of medicine – capitalism, in short – change this calculation? The presence of clear actors in the contest over medical necessity highlight not only the

complexity of arguments about health and what should be considered rightly “medical,” but also the discursive nature of necessity more generally.

The Conclusion concerns the direction that a politics of necessity should take in response to a world that is increasingly understood in terms of risk and probability rather than reason and prediction. Here, I argue that once we have cleared the ground and properly understood how necessity arguments function as rhetoric, we can engage the psychological forces at work in maintaining and negotiating that rhetoric and manufacturing its persuasive force. Here, we see the paradox of rhetoric, namely that the political force of language is never located in language itself, but in the space between political actors and rhetoric. Persuasive force turns out not to be a product of the rhetoric “itself,” but a symptom of a problem for democratic societies in terms of how political actors relate to language. Positivism, and its rooting in a metaphysics of presence, operate in the subjects of social power that have learned and trained to produce them. The Good News is that once we have recognized that they are not in the world “itself,” but a product of power, we may begin to work on them.

These are big questions with extensive literatures. If this dissertation introduces a new way of approaching them, and opens new doors for considering other questions via a critique of the rhetorical operations of necessity, it will have done its job.

Chapter Two: The Relationship Between Necessity and Teleology

“So the struggle is not at an end.” – Sigmund Freud, The Question of a *Weltanschauung*

2.1: Introduction

Michael Foucault’s archaeologies and genealogies sought to disrupt the apparent necessity of social values, disciplinary codes, and moral injunctions, and expose the underlying principles of power that sustain them.¹ Foucault was also a critic of teleological thinking, in the vein of Nietzsche, who sought to overcome the lingering influence of Hegel in his age.² Deleuze and Guattari pitched their work as an anti-teleological attack on the “over-coding” of psychoanalysis, linguistics and other products of modernity, and celebrated the possibility that “lack of direction and negation of volume” may be deployed as “constructive forces,” and much else besides.³ Although these examples suggest that the attempt to evade teleology is central to the Nietzschean ethos, claims to anti-teleological argument were a central thread in twentieth century political thought, even among many working in the wakes of the great teleologists such as Aristotelians, Hegelians and Marxists.⁴ Thinkers as different as Dewey, Rawls, and

¹ See his critique of teleological histories in Michel Foucault, *The Archaeology of Knowledge*, trans. A. M. Sheridan Smith (New York: Pantheon Books, 1972), 11-13.

² See Nietzsche’s reflections on *The Birth of Tragedy* in *Ecce Homo*, in Nietzsche, *On the Genealogy of Morals*, 270.

³ For over-coding as a critique of psychoanalysis, see Deleuze and Guattari, *Anti-Oedipus*. For over-coding as a problem of modern linguistics and languages see *A Thousand Plateaus: Capitalism and Schizophrenia* (Minneapolis: University of Minnesota Press, 1987), 62, 75-110, 494.

⁴ Bernstein offers a non-teleological, non-scientific reading of Marx in Eduard Bernstein, *The Preconditions of Socialism*, trans. H. Tudor (Cambridge: Cambridge University Press, 1993). Charles Taylor’s work on Hegel attempts to bring Hegel outside of his own teleological structures to see what can be saved. Charles Taylor, *Hegel* (Cambridge: Cambridge University Press, 1975).

Fanon offer sustained critiques of teleology.⁵ Feminist scholars, eager to challenge the gendered structures through which political knowledge has been transmitted – especially teleological conceptions of nature – have made the criticism of teleology a central feature of their work.⁶

I argue that necessity arguments are, at base, products of teleological reasoning, that are at work even in the writings of theorists who see themselves as critics of teleological thinking. In particular, I argue that the rhetorical reading of teleological reasoning illuminates its relationship with necessity. A critical examination of teleology is therefore important to understanding the discursive underpinnings and narrative forms that support necessity claims. I recast teleology in a way that I think offers political theorists new tools for reconsidering their own (and others') writing practices concerned with establishing and stabilizing beginnings and ends. Recasting teleology in this way makes new sense of the necessity arguments it supports and sometimes promotes. This chapter seeks to establish a theoretical foundation for the substantive readings I undertake in subsequent chapters.

I proceed in five basic steps. First, I review several different types of teleological arguments, including nature arguments. Second, I review forms of historical teleology that posit temporal movements toward ends. Third, I recast both forms of teleology in

⁵ On the anti-teleological aims of education, see John Dewey, "My Pedagogic Creed," *The School Journal* 54 (1897). The American tradition of pragmatism – from James to Dewey to Rorty – is premised on anti-teleological experiment. The same anti-teleological impulse characterizes the Rawlsian project of a deontological approach to justice. Rawls, *A Theory of Justice*, 490-1. Fanon posits the struggle against colonialism as a dialectic, not a teleology. If anything, the end of colonialism is a purging and psychological struggle, not the attainment of an end. Frantz Fanon, *Black Skin, White Masks* (New York: Grove Press, 1982).

⁶ See Val Plumwood, *Feminism and the Mastery of Nature* (London: Routledge, 1993). For a representative engagement with these themes, see Robyn Wiegman, "Feminism's Apocalyptic Futures," *New Literary History* 31, no. 4 (2000). Butler takes on teleological ontology at length in Judith Butler, *Bodies That Matter: On the Discursive Limits Of "Sex"* (New York: Routledge, 1993).

terms of their shared rhetorical structures. Finally, I review recent literature that sheds light on the relationship between necessity and teleology in theoretical practice.

2.2: Teleology as Structure

Taken in parts, teleology is a form of reasoning concerned with the establishment of a *telos*, usually rendered as end, goal or purpose. I call it a form of *reasoning* because these ends are established through and in a field of discursive relations, or a *logos*. A theory of ends is therefore necessary, but not sufficient for a theory of teleological reasoning. We must also engage the theorization of the logos, which theorists have been doing for millennia. I call it a *form* because it installs a particular rationality which is replicated and stamped on an array of political arguments. These ends serve as the structural condition of possibility for necessity arguments because they afford speech the appearance of crisp boundaries and limits. Teleology, in short, provides the ends upon which necessity arguments are established.⁷

As I do not use teleology in its more conventional sense here, some clarification is in order. I identify two basic forms of teleology. The first form, the more common, is that teleology marks a kind of movement toward ends that mark and identify an object's nature. This may occur over time, historically, or by the assertion of an ahistorical claim, for example about nature. Teleology is often bound up with ontology. Yet, as Bernard Yack shows, teleology does not require that every being reach its end absolutely, but only

⁷ Both establishment and stability stem from “estable,” which the Oxford English Dictionary associates with “ESTABLISH in various senses. To make stable; to settle, fix permanently; to secure, confirm; to decree; to make steady, support, calm (the mind).” In other words, to establish something is, in a sense, to stabilize. The OED includes examples such as the stabilization of language, against “the pernicious effects of the fluctuations of exchange.” For a discussion of the far-branching “sta” phoneme, see Kenneth Burke, *A Grammar of Motives* (Berkeley: University of California Press, 1969), 21-38.

that it tends toward them.⁸ Historical teleologies may issue from a motivational claim about actions carried out in the pursuit of ends, and where history progresses in pursuit of these ends, and the teleology unfolds over time. In the Aristotelian tradition, these ends are said to be good: “Every art and every inquiry, and similarly every action and choice, is thought to aim at some good; and for this reason the good has rightly been declared to be that at which all things aim.”⁹ A key version of this kind of teleology is also found in Hegel, where history is understood as the mediation (*Vermittlung*) of subjective and objective relations until they are resolved in the attainment of freedom. Here, freedom is marked by a dialectical reconciliation (*aufheben*) of differences, marked by the subsumption of all particulars under an all-encompassing universal.¹⁰

Beyond Hegel, other forms of this kind of historical teleology, in their movement and ends, consist in inevitabilities, such as the apocalyptic narratives, eschatologies or messianisms of Christianity that culminate in the fantastical visions of Revelation.¹¹ Some teleologies posit the triumph of an ideological system such as liberalism, as in Fukuyama, or the attainment of a change in material conditions such as those that mark the onset of communism, as in Marx.¹² We can also include in this category Bloom’s pronouncement that “Deconstructionism...is the last, predictable, stage in the suppression of reason and the denial of the possibility of truth in the name of philosophy.”¹³ In each case, these

⁸ The Problems of a Political Animal: Community, Justice, and Conflict in Aristotelian Political Thought (Berkeley: University of California Press, 1993), 88-108.

⁹ Aristotle, *Complete Works*, 1094a1-3.

¹⁰ See the Preface to *The Philosophy of History*, trans. J. Sibree (New York: Dover, 1956).

¹¹ George Shulman parses these traditions in Chapter I of George Shulman, “American Political Culture, Prophetic Narration, and Toni Morrison’s *Beloved*,” *Political Theory* 24, no. 2 (May 1996). For a review of different religious conceptions of time, and teleological temporal narratives, see “Prophecy, Apocalyptic, and the Historical Hour,” in Martin Buber, *Pointing the Way* (New York: Harper, 1957).

¹² Francis Fukuyama, *The End of History and the Last Man* (New York: Free Press, 1992).

¹³ Bloom, *The Closing of the American Mind*, 379.

claims are said to operate over time, where the unifying thread is the establishment or ascription of ends marking the final stage of historical movement, and not a mere expression of hope, or a simple lamentation, as well as an accounting of how this end is attained.¹⁴ This kind of teleology is the product of a narrative structure that claims predictive powers, in part because they deploy causal relations in ways that make outcomes conceptually determinate. While some teleological narratives are certainly contingent, most insist that such ends not may, but will, be attained.

As Freud captures in his notion of wish fulfillment, the distinction between faith and prediction, storytelling and desire, does not hold. Dreams are experienced as fulfilled, even as they most likely will not be in waking life. Instead, from Freud's perspective, predictions are understood as expressions of hope – descriptions of present conditions rather than prophetic knowledge about the past.¹⁵ The experience of dreaming is therefore experienced as necessary and not contingent: the dream is said to have been fulfilled. If Freud is right, then we must be as concerned with the storytelling of ends as we are with the political and psychological disposition of teleologists when they travel under the sign of prediction, whether rooted in science or a simple hunch.¹⁶ And, as Kant wisely notes, “The attainment of every aim is coupled with a feeling of pleasure.”¹⁷ This is true even

¹⁴ Notice the relation between “stabilization” and “establishment” – to establish is to attempt to stabilize a claim – and “ascription” and the “writing” of ends

¹⁵ Sigmund Freud, *The Interpretation of Dreams*, trans. Joyce Crick (Oxford: Oxford University Press, 1999), 181. We can read Freud's psyche similarly.

¹⁶ Ernst Mayr notes that “Final causes...are far more plausible and pleasing to a layperson than the haphazard and opportunistic process of natural selection.” Ernst Mayr, “The Idea of Teleology,” *Journal of the History of Ideas* 53, no. 1 (Jan-Mar 1992): 119. Mayr also notes that there are many different shades of teleological arguments. Though I have pointed to some of these shades here, I have not accounted for the subtleties Mayr notes, coming at teleology from the perspective of biology. Mayr, however, in his attempt to combat reductionism, fails to make sense of the major differences at work in the teleological traditions.

¹⁷ Immanuel Kant, *The Critique of Judgement*, trans. James Creed Meredith (Oxford: Clarendon Press, 1952), 27.

when writing historically, since the writing of the future (as well as the past) occurs in the present. Predictions concern not the future, but the present in which they are made, a point that admittedly reduces history to narrative since teleological reasoning is an act of vision of a particular form, and not divinity. We can read it and understand it as a piece of conceptual architecture that frames but does not necessarily create the world (though it sometimes may). While there have been extensive debates about the proper mode of analysis for political questions because of their purportedly different degrees of rigor and explanatory power – as in the Marxist dismissal of psychoanalysis, or the Popperian rejection of theory that doesn't conform to testable scientific method – each of these traditions has its own teleological underpinnings. The way these teleologies are written, in fact, distinguishes them from other traditions. In other words, it is too easy, and not very useful, to simply reject the idea of teleology. Teleology must be engaged more deeply to reveal the political commitments that ground perspectives of political life. A politics of necessity must not simply fancy itself post-teleological and more than it should think that it somehow stands outside of rhetoric.

An equally important component of the conventional view of teleology establishes patriarchal social relations marked by hierarchies, interactions and dependencies. Consider the following passage from Aristotle:

In like manner we may infer that, after the birth of animals, plants exist for their sake, and that the other animals exist for the sake of man, the tame for use and food, the wild, if not all at least the greater part of them, for food, and for the provision of clothing and various instruments. Now if nature makes nothing incomplete, and nothing in vain, the inference must be that she has made all animals for the sake of man.¹⁸

¹⁸ Aristotle, *Complete Works*, 1256b15-22.

Aristotle posits movement among parts, but these movements realize their ends structurally and in the present, not over time in the process of historical movement. This teleology is structural and not dialectical. Aristotle tells us that the natural end of man is to live in a polis, to be political, while the slave attains his ontologically inscribed end when performing the duties of a slave, which is subsumed in the broader teleology of the free man.¹⁹ The social organization of slaves, the family, and women's place in that family is organized in a teleological framework that insists that the supreme purpose of political life is the attainment of (the free man's) happiness (*eudemonia*).²⁰ The gendering of Aristotle's polis and family is not a contingent feature of his politics. Ontological predispositions of parts are rationalized in terms of social relations and productive processes that are, for Aristotle, structurally – not politically – imbued.

Though all teleological argument concerns the installation of a logic of ends, we can distinguish two different manifestations of specifically historical teleologies. Even as ends may be said to be fixed, teleological narratives still must account for how those objects – including beings and histories – reach those ends. In Aristotelian nature, the movement toward ends is propelled by ontological argument, where the engine of movement is located in objects themselves, and a natural disposition to attain their ends. This is the Aristotelian notion of *entelecheia*, where the means toward ends are located within, as part of an essence (*ousia*). In this structure, attaining an end is in akin to an object attaining a position that is inscribed within it, where such an object moves itself by the mere fact of being itself, since to so move is determinate – necessary though not

¹⁹ “The master is not called because he has science, but because he is of a certain character, and the same remark applies to the slave and the freeman.” Ibid., 1255b20-22. This underscores the tautological basis of this Aristotelian appeal to “character.” The appeal to tautology is a tempting way out of teleology.

²⁰ See, especially the discussion in the *Nicomachean Ethics*, Ibid., 1095a18-102a17.

necessarily sufficient – of its essence. I call this an internal teleological mechanism, since movement is said to come from within. This kind of narrative explains how the inner workings of a teleological structure moves that teleology along. Examples of this kind of mechanism include souls that animate bodies, but also the internal objects referred to in processes such as Hegel’s mediations of subjects and objects and Marx’s dialectical materialism.²¹

2.3: Teleology as Movement

To complicate matters slightly, the movement of this form is subject to a further, and twofold claim, the first necessary, the second contingent. First, objects may be defined ontologically by their ends, which makes that end necessary to their being. These objects are defined by their ends.²² Second, objects may be subject to arguments from necessity if the mechanisms that propel them toward goals do so necessarily, as through evolutionary adaptation or historical inevitability. There are important differences within these teleologies, of course. For example, determinate evolutionary teleology – the idea that a species will evolve in a predictable, pre-codeable way, with genetic traits passed down genetically (the Lamarckian view) functions in a qualitatively different manner from the random selection of Darwin, which leans on adaptive strategies, and is therefore

²¹ Burke, *A Rhetoric of Motives*, 281.

²² This is the position, which I think still holds, of Kant who identifies teleology as a regulative principle of the understanding in approaching nature. See Part II, “The Critique of Teleological Judgment,” Kant, *The Critique of Judgement*. The reservation of this insight to the understanding, as a “terrain of exploration,” unites Kant’s approach toward teleology and Stephen White’s defense of “weak ontology” in contemporary political theory. Stephen K. White, *Sustaining Affirmation: The Strengths of Weak Ontology in Political Theory* (Princeton: Princeton University Press, 2000). A sustained inquiry like White’s has yet to be written on teleology.

less determinate, less linear, though nonetheless teleological.²³ On this latter point, there is a difference between establishing an end as a most-likely unobtainable ideal – as a marker or horizon – and claiming that it will necessarily be obtained in fact. The same may be said for the teleological arguments advanced by Hegelians, Marxists and Fukuyamians: even if one posits an end of history, important questions remain about the politics involved in the movements toward those ends. To what extent does political activity matter?

On the other hand, some teleological narratives are said to be propelled by externalities, such as gods, whose firm hand guides humans toward an end, be that end eternal peace in a Kingdom of God or pointless wanton destruction. Let's call this an external teleological mechanism since the causal mechanism of its movement is external to the object itself. This form need not be religious, as scientific argument may possess a spirituality of its own, mimicking the basic metaphysical assumptions of religious argument. One such example is found in classical economics, where the market is referred to as an agent and engine of change. This form of external necessity is different from the "external necessity" caused by "the compulsion to work" to which Freud alluded,²⁴ or the market that Marx criticizes the bourgeois economists for conjuring in their economic narratives since, in Marx's view, material labor power is the real engine

²³ Isaac Kramnick and Theodore J. Lowi argue that "how American political thought developed owes more to Darwin than to Marx. Some ideas find a hospitable environment and become schools of thought, ideologies, or philosophies... Many ideas are called, but few are chosen." Isaac Kramnick and Theodore J. Lowi, *American Political Thought: A Norton Anthology*, 1st ed. (New York: W. W. Norton, 2009), xxv-xxvi. Contrast this with a passage from Barack Obama's inaugural address, where the U.S. is faced with a "nagging fear that America's decline is inevitable, and that the next generation must lower its sights" (<http://www.whitehouse.gov/blog/inaugural-address>). The differences between determinate teleologies and Darwinian evolution are vast, and that in their differences lay important political differences.

²⁴ Sigmund Freud, *Civilization and Its Discontents*, trans. James Strachey (New York: W. W. Norton, 1961), 55.

of capital. In the place of entelechy, we have the *deus ex machina*, where concepts (such as the market, or the subject itself²⁵) function to explain the world in ways that, as narrative forms, are essentially contestable and contingent.

On its face, this distinction between internal and external mechanisms may seem important. It is central to Rawls's argument against utilitarianism, for example. For Rawls, justice requires that individuals place rational limitations on themselves, not only without knowledge of their specific situation, but without standards of the "good" imposed from outside.²⁶ Rawls, as is the case with liberals of many different stripes, also insists that determinations of individual ends be open to revision; societies grow and change, and justice therefore resists absolute determinations that in turn bind future generations. In considering this aspect of Rawls, however, I agree with Will Kymlicka, who suggests that Rawls argues against a straw man version of utilitarianism when, in fact, some forms of utilitarianism do not privilege "the good" over "the right," but in fact attempt to mediate standards for determining the good in ways that leave rights unwounded. In his attempt to reconcile these two schools of thought, however, Kymlicka inadvertently shows that both sides are equally mired in idealisms that undercut the political value of their inquiries. "The right" and the "good" are, in fact, equally teleological, even if they are qualitatively variant. This further refutes Kymlicka's odd assertion that teleology is that which "defines the right as the maximization of the good"²⁷

²⁵ My touchstone is Nietzsche's claim that "'the doer' is merely a fiction added to the deed—the deed is everything." Nietzsche, *On the Genealogy of Morals*, 45.

²⁶ Rawls, *A Theory of Justice*, 490-1.

²⁷ Will Kymlicka, "Rawls on Teleology and Deontology," *Philosophy and Public Affairs* 17, no. 3 (Summer 1988): 175.

and “gives priority to the good over the right.”²⁸ When we turn teleology into an argument about “the good,” and not ends more generally, we lose sight of the many values that circulate in the vast marketplace of teleological argument.

Recasting teleology as I have from the perspective of rhetorical analysis suggests that the political effects of the two positions – teleology and deontology – are virtually the same: the internal forces of deontological argument make it godlike, determinate, possessed of an agency and purpose that afford it narrative closure. My reading suggests that there is no reason to privilege one argument over the other as the sacred-secular distinction is subsumed by one master structure in a shared metaphysics of language. They pose the same political question. Both internal and external mechanisms are – after all – “mechanistic.”²⁹

Many theorists, aware of the taboo that has been ascribed to teleology in contemporary thought, attempt to circumvent, or work around, teleological structures. Arendt, for example, reconceptualizes action non-teleologically to make it its own end. Yack argues that Aristotle’s politics lacks any self-moving teleological mechanism. According to Yack, it is not the case “that Aristotle treats the polis as a natural substance with its own internal principle of motion.” Instead that Aristotle’s “polis takes its natural character...from human attributes and ends, not from some inherent potentiality for a complete and perfected form of its own.”³⁰ In other words, though collectivities may act in concert, and display similar tendencies, they do not do so because they are governed

²⁸ Ibid.: 176.

²⁹ Kant, *The Critique of Judgement*, Sec. 70. Mechanism, for Kant, is reserved for non-humans. Humans resist mechanistic characterization, and thus must be treated as ends in themselves. My recasting of teleology, however, suggests that Kant’s distinction between mechanism and teleology doesn’t hold up.

³⁰ Yack, *Problems of a Political Animal*, 89-90.

by a master logic of collective action or nature. Instead, Yack suggests that collective action is a product of individuals pursuing ends together. At stake in Yack's revision is the politicization of Aristotle's conception of political life and an emphasis on individual capacity. Yet, in making this distinction, Yack ends up ascribing a teleological rationality to individuals rather than collectivities. The result is that his distinction does not escape, but displaces, teleology, avoiding not teleology itself, but collective teleology. Yack's move is instructive as a reminder that it is the structure of the argument that is at issue here, not the value of particular arguments. The political effects of all teleological agents – individual, collective and metaphysical – deserve equal attention.

2.4: Defining and Determining: Teleology and Meaning

The conventional forms of teleology I just reviewed are often contrasted with concepts of nature that are governed not by logics of change and movement, but structural features determined by and necessary to themselves. Social relationships and historical developments are incidental to such essences and their natures are inborn. The Aristotelian division between matter and form illustrates this well. In the *Physics*, Aristotle criticizes “the ancients,” for whom “natural science would seem to be concerned [only] with the matter,” and who “only very slightly...touched upon form and essence.”³¹ Democritus, whom Aristotle bemoans as a materialist who “reduces to necessity all the operations of nature,” is representative of this position.³² The problem, according to Aristotle, is that “matter is a relative thing – for different forms there is different

³¹ Aristotle, *Complete Works*, 119a19-21.

³² Ibid., 789a8-b15.

matter,”³³ which is to say that even as we recognize the crucial need for an analysis of matter, and of taking matter seriously, we must engage matter only insofar as it is formalized. Matter is always found as it is manifested in forms; one cannot imagine encountering unformed matter, and so we can do nothing else but analyze them together.

One can understand natural forms only by studying their *teloi* because, for Aristotle, “nature belongs to the class of causes which act for the sake of something.”³⁴ In contrast, Democritus’s atoms, which Aristotle criticizes, do not participate in a logic of ends, but exist for themselves. Their functions, if they do serve ends, do so only incidentally and are not part of a systemic program or comprehensive rationality. In Kantian terms, they are “mechanistic,” not teleological. In more recent manifestations, these Democritian arguments appear in realist thought, where the natural as well as the political world is governed by laws embedded in structures that are said to derive their tendencies from their nature. In international relations theory, for example, classical realists lean on entelechy, subscribing to theories of nature that determine political possibility; neorealists, on the other hand, argue that the behaviors of individual units are constrained, and even determined, by systems. The difference between the two positions is negligible from the perspective of teleological reason and its ability to make the international theater appear determined.

The problem with viewing descriptive theory as a response to or departure from teleology is that description, too, is an activity concerned with fixing ends. Far from descriptive, description is in fact always ascriptive. In other words, the supposedly non-teleological position of description, of empirical inquiry, is made possible by the

³³ Ibid., 194b8-9.

³⁴ Aristotle, *Complete Works*, 198b10-11.

instantiation of a *logos* of *teloi*, or teleology that may then, in turn, come to be viewed as the proper or correct, and even conventional, meaning, rather than a contingent outcome of language games. Teleological reasoning is often at work in the ways theorists approach the question of meaning itself. For example, when Plato argues in *The Republic* that we might ultimately come to know the true meaning of justice, he is approaching knowledge as a system that, however incomplete our present position might be, possesses definite epistemological ends that we can and should work towards realizing. This is the promise of dialectical thinking, at least in the Platonic view. The meaning of justice, in this view, is not discovered or uncovered by interlocutors (as Plato suggests it is), but constituted by them through the course of dialectical exchange, which is understood as a process through which the boundaries of meaning are written. Of course, this does not in and of itself mean that the interlocutors believe that they have written the “correct” definition. Yet, when one believes, as the Platonic view suggests, that meaning exists a priori, then Platonism becomes a tendency lacking a means for leveraging critical resistance against reified meaning. In noticing that description and definition share a similar structural feature with the more common understanding of teleology, we can begin to notice the central and politically problematic role that description and definition play in theorizing, and assume a political disposition toward both activities.

In advancing a critique of the practices of defining and describing, it may be the case that my emphasis on the theorist-as-writer ascribes too much power to the text’s capacity to (as J. L. Austin might put it) “do things with words,” and to make necessity manifest in particular. Consider, by way of illustration, another passage from Aristotle. When he argues that “...the belief that the good is not good is a false belief about what

holds in itself, while the belief that it is bad is a false belief about what holds accidentally....”³⁵ he is applying a particular understanding to the word “is” which, if true, operates as a form of necessity. In this view, “is” operates vertically, as a semantic anchor that carries with it existential certainty. Yet, when “is” is approached rhetorically, it can no longer be passed by simply, explained away through technical terminologies as a “copula” or an “existential” report on being. Instead, it appears as an attempt to close a space of possibility and tighten the bolts on the interpretative play of a sentence (though deconstructionists such as Derrida and De Man show that these attempts amount only to frustration). Similarly, Aristotle’s assertion that “Everything that will be, therefore, happens necessarily,”³⁶ plays upon the logic suggested by “will,” which while it can be read as a contingent proposition about the future, also initiates a logic of necessity via a rhetoric of inevitability. Here, prophetic narratives function as necessity arguments on condition – *if* they turn out to be true. But this “if” is arbitrated in the future since it issues as a necessity argument, since, again, even propositions about the future are written in the present. For this reason, Ian Shapiro notes that “Historical teleologists are usually (perhaps even necessarily) analytical teleologists, but the converse does not hold.”³⁷

It is important to note that there is nothing about these propositions that is necessary in and of itself. In arguing that a form of teleology is sometimes applied to semantic monads, or semantemes, I do not intend to suggest that necessity explains everything. Instead, reading strategies derived from or shaped by analytic philosophy tend to treat them as such. In truth, we can read “is” and “will” in a number of different

³⁵ Ibid., 37.

³⁶ Ibid., 29.

³⁷ *Political Criticism* (Berkeley: University of California Press, 1990), 227, fn. 29. I disagree with Shapiro’s claim, however, that historical teleology “assumes considerably more” than analytic teleology.

ways that yield different political results. Only when we approach them rhetorically, however, can we consider the political strategies at work in attempts to treat such propositions as expressions of logical facts, rather than rhetorical forms attempting to attain political ends.

As the fixing of meaning is not teleological in the traditional sense of a narrative of movement toward ends, it follows that the *telo*i of description are semantic, by which I mean that they operate as logics that fix the signification of words, and not syntactical movements or relations, as in the relation between predicates and nouns. In this view “justice” (to return to the Platonic example) is understood to mean something by way of definition. It is not said to be immanent or futural, by way of promise or prediction. When Nietzsche argues that “only that which has no history is definable,”³⁸ he encapsulates the double movement and effect of teleological approaches toward meaning. Only by attempting to stop the movement and play of knowledge – whether historical or structural – can one secure an end, marked by the Latin “finis” embedded in the notion of definition. We can now see the irony in Hobbes’s claim that “*there is no such Finis ultimus* (utmost aim) nor *Summum Bonum* (greatest good) as is spoken of in the books of the old moral philosophers”³⁹ – since he trades one set of ends for another, by way of defining.

Definition occurs through a rhetoric of definition by attempting to mark ends in language where there are no ends in the world. Instead of simply “defining,” or establishing ends that are, for example, endemic to signifier-signified relations, the act of

³⁸ Nietzsche, *On the Genealogy of Morals*, 80.

³⁹ Thomas Hobbes, *Leviathan: With Selected Variants from the Latin Edition of 1668*, ed. E. M. Curley (Indianapolis: Hackett, 1994), 57.

defining is comprised of an attempt to actualize Kant's claim that "only mathematics has definitions."⁴⁰ Political determinations suggest ends: one maps the boundaries of terms when one makes determinations and ascribes definite ends – by attempting to terminate movement – to meaning. Meaning itself is premised on a metaphysic of ends that can either be read as instances of metaphysical necessity or rhetorical structures. The promise of determining the key concepts of political discourse carries with it a promise of ends. The ends of political argument are embedded in the relationship the theorist takes toward the language he or she uses.

2.5: Teleology as Rhetoric

Nietzsche's observation should be revised: the historical is definable precisely because it is written, and takes on the appearance of solidity and finality. Or: historical claims are arguments that are indistinguishable, as they are inscribed in language, from non-historical claims. Both are particular forms of meaning, semantic teleologies that function (to attempt) to stabilize historical or ahistorical claims. The necessity of meaning depends, of course, on how we conceptualize language, as stable, as constantly on the move (like metaphors), or as always potentially disruptable. One must decide how one wants to approach historical or ahistorical claims. One must decide whether to take claims as instances of transcendent metaphysicality, or as truth *claims*, or arguments embedded in, constituted by and through rhetorics. This is the case even with historicism, where an epoch claims to have attained a firmer grip on "real" meanings and knowledge, or where knowledge is embedded in historical periods that constitute isolated discursive

⁴⁰ Kant, *Critique of Pure Reason*, 681.

moments, such as Kuhn's paradigms, which may appear, in themselves, as isolated and monadic (but which we know, as Aristotle knew of Democritus, were constituted through a metaphysics of their own).⁴¹ The historical is definable precisely because histories are inscribed in *language* where ends can be drawn – or appear to be drawn. But this appearance can only materialize if one conceptualizes the word in a way that embraces such stability.⁴² Teleology is made possible, but also problematized by this fact.

In terms of stability and the possibility of stable meaning, I have referenced the approach toward language taken by structuralist theory, where words *mean* and where meanings refer to objects. This is the world where objects of language can be necessary, and not simply be made necessary in narrative. This is the approach of Saussure who, though recognizing the contingency of sign-signifier relations, still operated in a world of meaning that made necessary connections, and the larger structures that could be built out of them, possible.⁴³ However incorrectly theorized from a post-structuralist vantage point, this remains the conventional view of language, a view rooted in an apparent necessity that lends itself to a host of political uses and abuses (e.g., “Marriage is a union between a man and a woman,” where the definition is the product of a stranger rhetorical claim, that that’s just what it is” or “Because that’s what it’s always meant.”)

When we consider the contributions of Jacques Derrida, and his notion of *différance*, however, we can understand why panic might overtake the metaphysicians of

⁴¹ Thomas S. Kuhn, *The Structure of Scientific Revolutions* (Chicago: University of Chicago Press, 1996). I do not suggest that Kuhn sees them this way, but only that breaks in historical movements may appear to be ex nihilo in ways that disavow the significance of previous paradigms.

⁴² Perhaps as The Word. It is worth recalling that the Gospel of John opens with “In the beginning was the *logos*, and the *logos* was with God, and the *logos* was God.” A return to the Greek reminds us not only that there are important and interesting translation issues here, but also that a theory of *logos* (signifier/signified or *différance*, for example) matters mightily. If *logos* is theorized in fundamentally unstable terms, then the world it engages with or represent becomes one of contest and movement.

⁴³ See *The General Course in Linguistics*, trans. W. Baskin (Glasgow: Fontana/Collins, 1977).

meaning, including political and other social scientists, who are staked in the possibility of theorizing a stable language, governed by firm ends that give it shape.⁴⁴ Pointing back to difference's origins in the Latin verb "*differre*,"⁴⁵ *Différance* suggests a perpetual (because structural) deferral of meaning, but also insists that difference – reference to that which something is not, to the "other" – cannot be separated or otherwise parsed from what a word "means." *Différance* suggests that language (or what Derrida simply calls "writing") is comprised of chains of signifiers rather than the mappings of signifier-signified relations. The attempt to define or determine is short-circuited by *différance*, which suggests that language resists definition as each attempt to establish a signifier as the center or grounding (the "logocentrism") of meaning only serves to inaugurate new chains through processes of deferral and difference in a movement that triggers endless movement (or "play"). The conclusion of these movements must be that definition is structurally impossible.⁴⁶ Indeed, for Derrida, there is no *finis ultimus* in the structure of language and the "word 'signifier' finds itself put in question," as "*unlimited play* signifies that there is neither presence nor absence which *would hold* and precede the play."⁴⁷ Derrida's work is therefore crucial to a political critique of necessity because *différance*, as a rupture in the classical theories of meaning, disrupts the kinds of boundaries that teleologists, and rhetoricians of necessity (as teleologists) require. This suggests that there is a structural impossibility at the heart of master narratives, which are

⁴⁴ "Différance," in Jacques Derrida, *Margins of Philosophy* (Chicago: University of Chicago Press, 1982), 1-28.

⁴⁵ *Ibid.*, 7.

⁴⁶ Kant, *Critique of Pure Reason*, 681. Kant advises against beginning with definitions in philosophical investigations, but suggests that "...in philosophy the definition...must conclude rather than begin the work..." Derrida's view of language points to the impossibility of definition.

⁴⁷ Michel Haar, "The Play of Nietzsche in Derrida," in David Wood, *Derrida: A Critical Reader* (Oxford: Blackwell, 1992), 66.

vulnerable and prone to break down. Here, in these ruptures, attempts to subject the political to logical forms are destabilized through critique.

Without being able to identify the center of signifying chains and their continual metaphorical movements and semantic slides the “problem” of *différance* is that it seems to ensure that the world, at least as it appears in language, remains open and contingent precisely where necessity arguments need them to be closed. Crucially, for Derrida, this is no mere failure of the logos, but its structural condition. Derrida moves semantic impossibility and the failure of meaning to the foreground of language theory, suggesting that these failures are actually the norm, or at least a perpetual specter haunting the norm, and we shouldn’t expect otherwise.⁴⁸ Derrida’s contribution to the critique of teleology as a foundation of necessity is, in part, a strategy for reading the temptation to pursue ends and fix boundaries, as an impossible attempt to do with language precisely what cannot be done. The Derridean approach of deconstruction, but also the De Manian approach of “reading rhetorically,” suggests that one must read necessity arguments as the deployment of an argumentative form to attempt to contain uncontainable, ever-shifting, perpetually postponed signifier chains. An analysis of the interactions between teleological rhetorics and the necessity arguments they support requires the surveillance tactics one might deploy in a shell game, where necessity arguments not flagged by explicit lexical markers might be established elsewhere, in definitions and determinations. Once one game has been exposed and critiqued, and the tactics of hiding have been mastered, political and antipolitical actors alike may innovate new forms of necessity to produce their effects elsewhere and by other means. A critique of necessity

⁴⁸ See “Signature Event Context,” in Derrida, *Limited Inc.*

must match the flexibility and capacity to travel and morph that makes possible an endless number of grammatical configurations and semantically-oriented necessity arguments.

2.6: Writing Ends

We can now understand why Derrida equates deconstruction with justice.⁴⁹ Most conceptions of justice (and I would extend this to politics more generally) require an openness that *différance* suggests is always accessible in the always-indeterminable structure of knowledge. Because *différance* offers a post-structural evaluation of meaning, it avoids the pitfalls of uncritical metaphysics. Since these structures cannot be closed structurally, they can be closed only in appearance, by authoritarian and ascriptive means. But such an appeal to justice does not just require the appeal to critique that deconstruction offers; it also requires an embrace of the complexity of lived experience against which simplistic social science modeling often militates so emphatically. The concept of intersectionality, for example, as articulated by Kimberle Crenshaw and Patricia Hill Collins,⁵⁰ suggests that a key problem that necessity arguments pose for political life is a reduction of multidimensions to unidimensions, and polylogics to monologics. Studying intersections in such a way as to not reduce them to parsimonious bits of knowledge in the pursuit of predictive powers both accounts for a more accurate, if messier, picture of political life, and serves as a methodological precaution against

⁴⁹ See Jacques Derrida, "Force of Law: 'the Mystical Foundation of Authority'," in *Deconstruction and the Possibility of Justice*, ed. Drucilla Cornell, Michel Rosenfeld, and David Carlson (New York: Routledge, 1992), 3-67.

⁵⁰ Kimberle Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color," *Stanford Law Review* 43, no. 6 (1991), and Patricia Hill Collins and Margaret Andersen, eds., *Race, Class and Gender: An Anthology* (Belmont: Wadsworth, 1992).

leaning on necessity arguments and the necessary identity positions that are appealing precisely because they make the work of the social scientist possible and easier. One can damage the world in reducing it to necessity to study it, as parsimony often thrives on an epistemological violence that, in turn, shapes and limits political action.

Another way to cast this discussion is to underscore the impossibility of the project I've just criticized, and the predictable frustrations those who posit it as the object of their scholarly desire can expect. The rhetorical structures that are used to close – to determine and define – political possibility, are always ever open in fact, as a specter of disruption and the inherently disruptable nature of language. Possibility, as Derrida might put it, is always a structural risk, even if impossibility is the practical consequence of anti-democratic configurations of power. This political reality, and the necessity it suggests, does not change the existential fact that contingency and play are always possible, if only against power. This, of course, is not to downplay the specter of control and domination, or to be glib about totalitarianism. Rather, it is to call attention to a structural feature that can provide a road map for counteracting these forces. In my view, books such as George Orwell's *1984* caricature and exaggerate the totalizing capacity of the totalitarian threat with a flawed conceptualization of language that is advanced at the expense of political strategy.

By not getting caught up in what words mean, and making meaning itself a political question, we can start to see why teleological reasoning, and the necessity arguments it enables, can be such powerful political tools. Even if the politically necessary is impossible, it may still function as an object of desire, which political rhetorics, and theoretical foundations, constantly recite and reproduce. The result is that

appearances of necessity may be enough to tempt individual political subjects to make leaps of faith and afford those appearances material political power. Ends don't exist in themselves, but must be set. As Derrida argues, *différance*

is not a present being, however excellent, unique, principal, or transcendent. It governs nothing, reigns over nothing, and nowhere exercises any authority. It is not announced by any capital letter. Not only is there no kingdom of *différance*, but *différance* instigates the subversion of every kingdom. Which makes it obviously threatening and infallibly dreaded by everything within us that desires a kingdom, the past or future presence of a kingdom.⁵¹

This “kingdom” metaphor is useful, especially as Derrida associates it with desire. It is crucial, however, that Derrida does not locate this kingdom in language itself, but in a certain relationship developed with (even if against) it. This desire, moreover, is not for any particular epistemological world, but worlds of presence more generally. Compare this focus on desire with a remark Hegel makes in *The Philosophy of History*: “Thus it happens, that in virtue of elements of Universality, which have the principle of Spirit as their basis, the empire of Thought is established actually and concretely.”⁵² This juxtaposition of Derrida and Hegel, the former concerned with the problematizing of language and the latter with objectifying the Actual, the Concrete and the Real, underscores the fact that whether or not certain spaces appear open, and the degree to which we can see them or not, depends on how they are theorized. Hegel’s “empire” suggests an epistemic system of rule and order, whereas *différance* poses a fundamental challenge to thinking about knowledge in this way. Derrida understands that intellectual kingdoms are erected through the interplay of political forces in relation to language. *Différance* does this, moreover, precisely where Hegel understands language and thought

⁵¹ Derrida, *Margins of Philosophy*, 21-22.

⁵² Hegel, *The Philosophy of History*, 109.

to be determinate effects of history. In insisting upon *différance*, Derrida appropriates Hegel, evacuating his worldview from the necessary forces that hamper his project.

In light of these comments, what does Derrida mean when he suggests that

Like every history, the history of a culture...presupposes an identifiable heading, a telos toward which the movement, the memory, the promise, and the identity, even if it be as difference to itself, dreams of gathering itself, dreams of gathering itself *taking the initiative, being out ahead, in anticipation?*⁵³

Is Derrida advancing a structural argument about the writing of cultural histories of an inherently teleological structure at work in that writing, hence maybe all writing?

Romand Coles argues that, for Derrida, the “telos remains, like a shadow we chase, ahead of us, beyond our grasp.”⁵⁴ Yet Coles’s reading is also instructive for its vacillation between essential structures of knowledge and psychological questions concerning how we live in relation to *apparent* structures of knowledge. Pointing to the passage just quoted, Coles suggests that Derrida posits a “teleological structure of culture,” which would suggest a homogeneity – even if illusory because reduced – in the structure of culture writ large. Certainly, many do think about culture in teleological terms, but to then theorize the idea of culture itself as teleological is to betray Derrida’s most basic commitment to recognizing the particularity and possibility of epistemic forms (such as a non-teleological “structure of culture”) and their constant movement and structural incompleteness. I argue that we must distinguish the empirical observation that cultural power is often, even usually, structured and transmitted teleologically, from the structure of cultural knowledge “itself.” To make such a distinction is to distinguish political

⁵³ Jacques Derrida, "The Other Heading: Memories, Responses, and Responsibilities," *PMLA* 108, no. 1 (Jan 1993): 92, in Romand Coles, *Beyond Gated Politics: Reflections for the Possibility of Democracy* (Minneapolis: University of Minnesota Press, 2005), 155.

⁵⁴ Coles, *Beyond Gated Politics*, 155.

cultures from ontological claims, but also to emphasize the extent to which teleological tendencies are often more a product of a reading strategy than a fact about argument or knowledge. Coles rightly notes Derrida's contribution to democratic theory by emphasizing provisionality, contingency and attending "not to the teleologies of others but also to...possibilities that are unanticipated by any of our divergent teleologies."⁵⁵ Coles cautions that "this call to anticipate the unanticipatable must never become a comfortable deconstructionist mantra lulling us to abandon the work of determinate democratic theory and practice in favor of messianic gestures toward 'the new' and 'possibility.'"⁵⁶ But, at the risk of branding myself as one of these mantrists: what does it mean to deny the possibility of nonteleological forms of culture and identity? Does Derrida advocate this impossibility?

I don't think so. I agree with Coles's observation that "Our power of judgment will not be enhanced if we abandon teleological projects..." and that "cultivating lively tensions between teleological and ateleological responsibilities" is crucial to ethical and political engagements. But isn't "cultivating lively tensions" something of a punt on a more important question? If one were to truly put these tendencies in tension, then we might point toward something like an agonistic politics, not directed by *teloi*, but driven by ongoing exchange and negotiation. Such a politics would not merely move toward an end – as in pragmatics – but would double back and undo as well. But Coles argues that "Ateleological anticipations and responsibilities must repeatedly be called to account in light of our more teleological sensibilities."⁵⁷ In so arguing Coles moves teleology to the

⁵⁵ Ibid.

⁵⁶ Ibid., 156-7.

⁵⁷ Ibid., 157.

center of political judgment when the crucial point is not about teleology at all. The point, instead, concerns the nature of political action and whether or not it must be directed along determinate trajectories in the pursuit of an end.

Instead, the primary concern should be directed at a critique of necessity construed more broadly than those necessity arguments embedded in teleologies—to see how teleologies become necessary and then, in turn, wield the necessity arguments they contain within. Part of the motivation in taking this approach is that when we limit criticism to those necessity arguments driven by teleological orders, we have failed to see them as constituted. We need to think, in other words, about how those necessity arguments were attached to teleologies in the first place and then how they became politically capacious. To perform such a critique, we have to notice the more subtle interrelations between necessity, teleology and the other arguments with which they intersect.

Consider, for example, the relationship between necessity, teleology and nature arguments in Thomastic thinking. The Thomastic argument about the naturalness or unnaturalness of certain sexual practices is premised on a teleology pegged to reproduction. Aquinas argues that “right reason” and “natural order” (where nature is theorized teleologically) governs sexuality, which means that it is rationalized in accordance with reproduction. This, in turn, suggests that all sexual acts not intended for reproduction are unnatural – including, though not limited to, gay sex, heterosexual with birth control and, presumably heterosexual between partners who cannot conceive, as well

as masturbation and bestiality.⁵⁸ We need not engage the specifics of this claim to understand how this teleology interacts with necessity in political terms. The more important question is why nature arguments should come to carry with them political force – the force of necessity – and why a politics that embraces that which is considered unnatural should be a problem at all. Why, in other words, does nature suggest political necessity? Even if one were to accede to the Thomastic position, and concede that natural sex acts are intended for reproduction, that still does not explain why this should require a political response, why we should legislate against, or discipline the unnatural. The relationship between nature arguments and what must be done politically is not necessary, but is made necessary in political cultures that make the protection of its particular rendering of nature, and the prohibition of the unnatural that those nature arguments produce, politically relevant.

This is all by way of suggesting that though teleology provides the foundation for necessity arguments, it is important to keep in mind that teleology does not, in and of itself, have political value any more than a necessity claim does. That value is the production of socially constituted norms that establish connections between particular ontologies and political power, and license the use of that power to maintain the necessity of nature. Noticing that teleology does not carry with it necessary political force opens new political spaces; even in the face of teleological claims one may still, with no sense of bad faith, ask: so what if something is unnatural? It is this question that will likely receive the most violent and ungrounded response in the form of a necessity claim: because one must, or that's just the way things are. By calling attention to teleology,

⁵⁸ Thomas Aquinas, *St. Thomas Aquinas on Politics and Ethics: A New Translation, Backgrounds, Interpretations*, trans. Paul E. Sigmund (New York: W. W. Norton, 1988), 79-80.

expanding our view of it and noticing its different manifestations, we can begin to notice its relationship with necessity as it appears in political argument.

The stronger political position is to acknowledge that we may use multiple and various forms of rational engagement with the world, perhaps as regulative ideas, or modes and methods of inquiry, so long as we remain sensitive to our “others” and vigilant against the most nefarious identity positions that forestall ethical political engagement: xenophobia, nationalism, racism, sexism and homophobia. In taking this approach, we can better chart the necessity arguments that underpin collective political projects, disentangling ontology, epistemology, teleology from necessity to better understand how political power and knowledge is constituted. Coles seems to suggest that all political work is to some degree teleological or, stronger still, that teleological reasoning secures political judgment. In this sense, Coles does a better job describing the state of contemporary politics rather than advancing a proposition about politics as such. In the vein of classical structuralism, Coles seems to assume that there is a contradiction between theory and politics, or that political activity must do inherent violence to epistemological commitments. In taking this position, he accedes to the Kantian position whereby teleology is a useful way to structure and organize the understanding. Yet, Coles’s position is not neutral, or purely regulatory; when applied to political thought, the Kantian position secures normative positions without advancing a means of criticizing them, since the work of criticism is not usually a centerpiece of public action.

One must wary of regulatory thinking insofar as it rests one’s politics on a false ontology. One important example of such an attempt was the idea of “strategic essentialism,” first offered by Gayatri Chakravorty Spivak, and re-deployed by many

others, most famously in the feminist psychoanalytic work of Luce Irigaray. According to Spivak, writing in 1985, strategic essentialism is “a strategic use of positivist essentialism in a scrupulously visible political interest,”⁵⁹ a strategy, not a theory. Strategic essentialism was offered as a practical means toward political ends, a temporary identity born of necessity. Rosi Braidotti’s claim, in 1994, that “the feminist today cannot afford *not* to be essentialist” seems representative of the persistence of Spivak’s original feeling, of an anxiety about what a non-essentialist feminist identity would be able to accomplish politically.⁶⁰ Later, however, in a much-cited interview, Spivak lamented the widespread misunderstandings of strategic essentialism, but also suggested that the term was wrongly conceived and could inadvertently lead to a politics of essentialism.⁶¹ Richard Rorty called strategic essentialism “pessimistic essentialism”⁶² because of the false face it applies to diverse groups. However, most critiques center on the realization that strategic essentialism is, at base, a form of essentialism. According to Butler, Spivak

at first thought she’d be able to use a term like “Third-World woman” and just have it be strategic rather than metaphysically grounded. It didn’t have to describe her (or anyone else) fully or exhaustively; it could be relieved of its descriptive function. But, of course, it *does* begin to describe, because the author who strategically intends it as “X, Y, or Z” has also to recognize that the semantic life of the term will exceed the intention of the strategist and that as it travels through discourse, it can take on new ontological meanings and become established in ways that one never intended.⁶³

⁵⁹ “Subaltern Studies,” in Gayatri Chakravorty Spivak, *The Spivak Reader: Selected Works of Gayatri Chakravorty Spivak*, ed. Donna Landry and Gerald M. MacLean (New York: Routledge, 1996), 214.

⁶⁰ Rosi Braidotti, *Nomadic Subjects: Embodiment and Sexual Difference in Contemporary Feminist Theory*, Gender and Culture (New York: Columbia University Press, 1994), 177.

⁶¹ Gayatri Chakravorty Spivak, Sara Danus, and Stefan Jonsson, “An Interview with Gayatri Chakravorty Spivak,” *Boundary 2: An International Journal of Literature and Culture* 20, no. 2 (1993).

⁶² Quoted in Spivak, *The Spivak Reader*, 159.

⁶³ Gary Olson, Lynn Worsham, and Judith Butler, “Changing the Subject: Judith Butler’s Politics of Radical Resignification,” *jac* 20, no. 4 (2000): 737.

In other words, the “strategic” intent participates in the construction of actual identities, recites and rehearses them precisely where a defense of contingency is the ultimate political intent.

Similarly, Coles seems to want to retain teleological structures as a way to guide societies toward goals while simultaneously remaining vigilant against and critically responsive to the essentializing of those goals. He advocates a politics wherein actors remain aware of the violence that teleologies may do to the marginalized, the excluded, the “other,” while still engaging them. But there is a crucial difference between the tendency or strategic usefulness of thinking teleologically, as an identitarian marker or regulative ideal, and positing the structure of cultural identity itself in teleological terms. One is a matter of thinking, the other of ontology; the former opens a politics that the latter closes. The same is the case when considering the tendency for particular cultures to universalize themselves. Derrida does, as Coles shows, give many examples of this tendency. But is it necessary?⁶⁴ Is Coles’s position a concession to a problematic tendency of some idea of the human condition, or a symptom of a particular moment?

I particularly take issue with the idea that we must subsume analysis of the political under the sign of teleology because the role that teleological reasoning plays in settling semantic contests often goes unnoticed in political debates. The logics of necessity – of who one must be, of what a people must do – to reach a valued end are too subtle and militate too surreptitiously against the more overt protestations of freedom and democratic possibility. This failure to notice the regulative ideals being deployed (or

⁶⁴ Consider Nietzsche’s examples of the non-resentful man, such as Mirabeau. Nietzsche, *On the Genealogy of Morals*, 39. Even as it points to the possibility of such an existence and identity, it still seems few and far between. Here we see the importance of distinguishing between necessity and difficulty, and difficulty and impossibility.

being deployed against “us”) gives teleology its power and threatens the political. When we move beyond regulative ideals and consider, for example, military force deployed in the pursuit of an unspoken, unrecognized end, the stakes become even higher. Thinkers who reject historical teleology often do so by turning to teleological meaning structures precisely because the conventional view is that descriptive practices constitute an escape from teleological thinking. In the two poles I have mapped theorists tend to tack back and forth, never escaping the problem of teleology, but shifting the burdens of value between historical narratives and semantic fixes, such as definition.

Thinking these two forms of teleology together illuminates the problem of ends that pervades political argument, as well as to see more clearly the architectures of thought, embedded in rhetorical structures, that enable and support necessity claims at the center of different theoretical approaches to politics. We are now in a more secure-theoretical position to undertake an analysis of necessity in concrete political contexts

Chapter Three: Necessity in the Canon, Part I: Aristotle, Machiavelli and Hobbes

3.1: Introduction

In the next two chapters I reconsider some well-known canonical thinkers to show how a rhetorical approach to necessity can illuminate their political commitments and positions. Here, I come into closer contact with the tensions that necessity creates for arguments about the political. In this chapter I examine necessity arguments in the writings of Aristotle, Machiavelli and Hobbes and, in the next, Marx and Arendt. My goal in re-reading these five is to show how necessity interacts with and is largely constitutive of key texts of the Western canon. In each case, I show how the configurations of necessity that each thinker establishes cannot be disassociated from their political argument. An examination of how each configures necessity contributes to the development of a more radical politics of necessity since it provides the theorist with a means of engaging necessity on the primary level of its inscription in political texts. The critical vantage point of a rhetorical reading of these texts helps the theorist to see the strategies through which the authors advance propositions about the political *in relation to* as well as *through* necessity.

Each of these five theorists reveals something crucial, but also something different, about the politics of necessity. For Aristotle, freedom requires the subjection of others in a patriarchal order that necessitates slavery. Arendt rejects political projects driven by necessity while Aristotle understands that basic necessities must be in place before we can expect to see a polis of virtuous, free citizens. Machiavelli uses necessity

productively as part of the prince's capacity to maintain power and order in a highly unpredictable world of politics. Hobbes, on the other hand, argues that necessity is consistent with freedom and seeks a model of political order that mimics geometry. Marx offers a series of necessary movements under the guise of the inevitable collapse of capitalism, but also posits a series of coercive forces that not only subjects laborers, but makes them into revolutionary actors. In other words, each of these thinkers reveals a different use of necessity argument, but also shows that how one uses necessity arguments is largely constitutive of one's political commitments. While many aspects of a theorist's work reveal commitment, necessity is unique because it marks total closure and not a politically contextual or historically contingent position.

3.2: Aristotle: Necessity as a Foundation for Politics

Aristotelian reasoning has had a profound impact on Western political thought for over two-thousand years, shaping dimensions of contemporary politics, nature and ethics.¹ He might have been “not the pinnacle of Antiquity but its exception,”² but this exception does seem to have become an important rule that issued from that period, or at least the part of that period that filtered most forcefully through the medievals to the moderns.³

A strategic organization of freedom and necessity is constitutive of Aristotle's politics, and noticing how Aristotle organizes this relationship is a key goal of this

¹ Kant goes so far as to say that “since Aristotle [logic] has not needed to retrace a single step, unless perhaps removing some of its dispensable subtleties....” Kant, *Critique of Pure Reason*, 15.

² Michel Foucault, *The Hermeneutics of the Subject: Lectures at the Collège De France, 1981-1982*, ed. François Ewald and Alessandro Fontana, trans. Graham Burchell (New York: Palgrave Macmillan, 2004), 17.

³ On this influence, see Richard E. Rubenstein, *Aristotle's Children: How Christians, Muslims, and Jews Rediscovered Ancient Wisdom and Illuminated the Dark Ages* (Orlando: Harcourt, 2003).

section. Aristotle was also, of course, a logician of great import. The result is that metaphors of logic, and negotiations between logical and political knowledge, proliferate throughout his political texts. This is unsurprising considering my recasting of teleology in terms of a language of logic in the previous chapter, but what is more interesting is that Aristotle does this despite his methodological advice, in *The Nicomachean Ethics*, that the theorist must distinguish politics from mathematics, a life of action from geometry, and expect from both only “as much clearness as the subject matter admits of.”⁴ Even though he treats politics and logic separately, with different standards of precision, this does not mean that Aristotle does not import logical structures into his understanding of political life. Nor does this mean that he is immune from deploying the language of logic – such as necessity – in his political arguments. These logics, in fact, are in large part constitutive of what it means to be “Aristotelian.”⁵

Aristotle wrote extensively about necessity as a logical form, most notably in his *Posterior Analytics*, *Metaphysics*, *Rhetoric* and both of his works on *Ethics*. For example, he insists that in syllogisms, “The premises must be the cause of the conclusion, better known than it, and prior to it.”⁶ Here, “ $A \rightarrow B$ ” is built atop of a contingent foundation requiring that $A=A$ and $B=B$ to become logically necessary (Aristotle calls these “infallible signs”). It is easy to forget that the entry point into the syllogism is an “if” statement. Syllogisms also require that “Necessary conclusions must be drawn from

⁴ Aristotle, *Complete Works*, 1094b12-3.

⁵ I follow Heidegger in his assertion that Aristotelian metaphysics have been near-hegemonic in Western political thought. See “Letter on Humanism,” in Martin Heidegger, *The Basic Writings from Being and Time to the Task of Thinking*, ed. David Farrell Krell (San Francisco: Harper, 1993), 217-65. Bertrand Russell, writing in 1945, makes a similar claim: “Ever since the beginning of the seventeenth century, almost every serious intellectual advance has had to begin with an attack on some Aristotelian doctrine; in logic, this is still true at the present day.” Bertrand Russell, *A History of Western Philosophy* (New York: Simon and Schuster, 1945), 159-60.

⁶ Aristotle, *Complete Works*, 72a29.

necessary premises,”⁷ which suggests that the syntax of necessity requires a semantics of necessity – a total freezing, both horizontally and vertically, of the language through which political claims are articulated, where A can indeed be assumed (in the sense of Mary) to always equal A. Horizontally, syllogistic reasoning is also deductive reasoning.⁸ Yet, outside of authoritarian structures, which mimic logical (and not enthymemic) forms, “freedom” and other “essentially contestable concepts” of political life are not fixed in ways suitable for deductive reasoning. The result is that politics remains an imprecise science, if a science at all.⁹

For Aristotle, the enthymeme, and not the syllogism, is proper both to rhetoric and politics. Enthymemes are comprised of a conjunction within their foundational terms, e.g., where “All men are mortal and Socrates is a man” serves as premise X.¹⁰ The enthymeme is characterized by a different relationship between language and logic: the contingent nature of enthymemes makes a priori stability impossible. Since the structure of language and politics concerns human activities rather than ideals, they are not logical, but probabilistic; the enthymeme serves as a metaphor for both language and political life.¹¹ In both, A can never be presumed to equal to A since the objects of their analysis are probable, not certain.

Whereas deductive relations require symbolic logic, politics, and the enthymemic structures underpinning political activity, possess possibilities that are never determined a

⁷ Ibid., 1357a28.

⁸ In other words, for “All democracies are free” to be meaningful, “democracy” and “free” must be fixed, as we deduce propositions about politics from them.

⁹ For necessity as an essentially contest concept, see Connolly, *The Terms of Political Discourse*. Essential contestation acknowledges that concepts are never fixed a priori, but are stabilized through communicative action and constrained by regimes of power/knowledge.

¹⁰ See *Rhetoric*, Book I.

¹¹ Aristotle, *Complete Works*, 1357a35-57b1.

priori, but are subject to negotiation and contest. In treating both rhetoric and politics in this way, Aristotle moves the demarcation of possibility, with necessity as its constitutive outside, to the center of both political and rhetorical analysis:

Most of the things about which we make decisions, and into which therefore we inquire, present us with alternative possibility. For it is about actions that we deliberate and inquire, and all our actions have a contingent character; hardly any of them are determined by necessity.¹²

Symbolic logic installs closed systems where rhetoric establishes possibility, and this latter point makes rhetoric central to political life, open-ended and pliable.

Yet, as though he were diagnosing a problem and offering strategic advice about the manipulation of rhetoric in the same breath, Aristotle goes on to argue that foreclosing possibility is an essential task of the rhetorician, even while it may militate against certain political commitments, such as those associated with democracy. Aristotle's claim that "Rhetoricians must have at their command propositions about the possible and the impossible,"¹³ suggests that some of these propositions might take the form of logical syllogisms and other closed systems. Rhetoricians, that is, must reduce the scope of the possible. The art of persuasion requires that contingency be tamed, and that rhetoric is the primary tool for accomplishing that end.¹⁴ But how is possibility constructed rhetorically, and what political forces and questions does this construction intersect and engage with?

An important part of Aristotle's writings on necessity center, in *The Nicomachean Ethics*, on how to distinguish voluntary from involuntary actions, and how to know when

¹² Ibid., 1357a24.

¹³ Ibid.

¹⁴ By emphasizing the importance of "propositions about the possible," Aristotle does not necessarily mean that the rhetorician is a manipulator and manufacturer of possibility, but that possibility is always at issue in rhetoric.

choice exist or not. This text illuminates the semantic richness of the Greek *anankē*, which is translated variously as necessity, compulsion, and force. The text also raises an important question about necessity: under what conditions can one say that one has been compelled to do something? What is the ethical status of those actions performed under compulsion? Aristotle's argument is muddled in places, but is clear in its insistence that "actions are [compulsory] when the cause is in the external circumstances and the agent contributes nothing."¹⁵ If one is compelled externally to do something, says Aristotle, it is involuntary. This conceptual threshold requires that one attend to surrounding conditions and dispositions. He argues, for example, that a key marker of necessity is that one is never eager to do what is necessary. He exempts from responsibility those who act out of ignorance, but maintains that if one does not regret having been forced to do something unethical, then compulsion does not exclude that person from judgment, for "it is only what produces pain and regret that is *involuntary*."¹⁶ Joy, for Aristotle, always implies choice. For Aristotle, these propositions are mere assertions, attempts to give shape to the concept of necessity.

Aristotle's work on logic and rhetoric marks a divide in the development of Western epistemology. As we move into what are generally considered his "political" writings (though I hope that these comments call that separation into question), we arrive at a political deployment of this distinction, where politics is associated with the structural features of rhetoric – and freedom – and the household, as a domain driven by necessity, is associated with logic. In the *Politics*, Aristotle places necessity and freedom in serial relation, with the household (*oikos*) instituted as the building block upon which

¹⁵ Aristotle, *Complete Works*, 1110b1-3.

¹⁶ *Ibid.*, 1110b16-7. Emphasis original.

freedom stands. “For,” Aristotle tells us, “no man can live well, or indeed live at all, unless he is provided with necessities.”¹⁷ Aristotle conceives the *oikos* as the site where life is reproduced, where activities such as eating, cleaning, sleeping, and reproduction are carried out, but also where, day to day, one cannot transcend or move past these household imperatives. A new day marks a return to predictable laboring. Yet, however much the *oikos* may serve as the material condition of possibility for political freedom, that freedom is analytically prior to necessity for Aristotle. Political life, as the privileged space where men realize their natural ends, serves as the argumentative framework and justification for Aristotle’s spaces of unfreedom. The household, its women, slaves and tools, thus *receive* unfreedom in order to make politics possible. In other words, Aristotelian necessity is to a large degree a product of the poetic structures that underwrite Aristotle’s political commitments. The necessity of Aristotle’s household is thus a logical as well as political necessity – or, the politics is made possible by the instantiation of a series of logical forms. Either way, this logic can be grasped by noticing, for example, that Aristotle’s notion of a political space is defined in part, if not primarily, by the absence of necessity. This absence, moreover, is productive of the delineation of the ontologically necessary from the politically free.¹⁸ Slavery, a foundation of the necessities that are constitutive of politics, is therefore, as Bernard Williams notes, “not an aberration in his work at all.”¹⁹ As a purportedly unpolitical

¹⁷ Ibid., 1253b25. The Barnes rendering captures the dimension of “necessities” being “provided” – but by whom? – for politics to be possible that other translations do not.

¹⁸ In his discussion of the Aristotelian view of slavery, Williams point to another absence: violence. “Yet at the same time the slave was set apart from the free, in particular by the violence that surrounded his life.” Williams, *Shame and Necessity*, 107-8. This points us to the importance of the metaphor of “violence,” introduced by Kant but naturalized by Derrida, whereby something said to “do violence” to something else refers to a rigid forcing – of the contingent into the necessary, for example.

¹⁹ Ibid., 111.

(because naturally determined) space, the domain of necessity is governed by predetermined principles.²⁰ Sometimes, Aristotle simply declares such principles, as when he argues that “That one should command and another obey is both necessary and expedient” and that “it is natural and expedient for the body to be ruled by the soul.”²¹

With the sphere of necessity cared for by slaves and women, men are free to do politics, which “exists for the sake of noble actions, and not of living together.”²² The latter provides stability, not possibility. The freedom inherent in politics, however, is dependent upon a necessity argument, which serves as a foundation for action.²³ For Aristotle, necessity feeds freedom; freedom and necessity are dependent upon one another and necessity, in a sense, underpins freedom. Yet, given Aristotle’s claim that man is both “*zoon politikon*” (an animal whose nature is to live in a polis) and “*zoon logon ekhon*” (an animal with the capacity for the logos) and that his ultimate telos is located in the good life that is made possible by the polis, Aristotelian politics requires freedom *from* necessity as well as freedom *out of* necessity.²⁴ Here, rhetoric and politics are analytically inseparable and the differences established through Aristotle’s poetic formations are constitutive of Aristotelian politics. In terms introduced by Derrida, freedom and necessity are “parasitic” on one another, part of a codependent complex of

²⁰ Williams notes a paradox in Aristotle’s argument about slavery: “it would be natural and necessary that someone should be a slave, but for each person, it would not be natural that he or she should be one.” Ibid., 114. It is on this point that Aristotle’s argument falls apart most dramatically.

²¹ Aristotle, *Complete Works*, 1254a23-24; 54b7-8. Aristotle’s assumptions about the meaning of “rule” allow him to combine necessity, nature and expediency arguments.

²² Ibid., 1281a3-4.

²³ A point that anticipates Marx’s notion of freedom, which also requires material subsistence as freedom’s condition of possibility. Aristotle and Marx both understood that material sustenance was a precondition for a serious conceptualization of freedom.

²⁴ Castoriadis claims that psychoanalysis shows that “the human being is not a *zoon logon ekhon* [an animal of ‘reason’] but essentially an imagining being, one endowed with radical, unmotivated, defunctionalized imagination.” “Psychoanalysis and Philosophy,” in *The Castoriadis Reader*, ed. David Ames Curtis (Oxford: Blackwell Publishers, 1997), 351.

meaning. Aristotle's configuration of the household in relation to the sphere of politics is constituted not only by a claim about two essential modes of existence conceptualized serially, but is a manifestation and production of a teleological movement that puts all modes of life materially prior to politics in the service of politics. But, it seems reasonable to ask, are these pre-political or "natural" essences constructed systemically to meet the needs of politics, or do they exist in-and-of themselves, as Aristotle suggests? Aristotle illustrates the power of teleological argument in the support of necessity since teleology answers, however controversially, the question: necessary for what? If nobody were found to fill the categories that Aristotle argues are suited for women and slaves, a gap in his system, an unfillable category would undermine the broader argumentative framework. With this in mind, I want to suggest that we think about these moves as placings or makings – and not discoveries or findings.²⁵ Being so placed, there they are found, which underscores the extent to which Aristotle's teleology requires a strong, non-contingent ontology, which in turn feeds the broader teleological argument. Here, in fact, teleology functions as a kind of ontological claim. The result is the formation of necessary categories whose nature is located in ends.²⁶

Aristotle's characterization of the household is a product of a systemic, teleological rationality. The neat packaging and bright conceptual lines are the result of a rhetoric that naturalizes essences, such as those ascribed to women, and which in turn

²⁵ In using active verbs such as making and placing, I want to emphasize the productive relationship the theorist has with concepts. If we look harder at words, we often start to notice that they too are active, even as they may be commonly thought passive. Finding is an important word in this respect; founders "found" nations yet scholars "find" facts.

²⁶ To be clear, Aristotle is not a teleologist of time. He offers no theory of historical development or, at least, no theory of necessary historical development. Yack is quite right in suggesting that Aristotle is often read back through Marx, and through communitarians in general. Though I deal with Marx at length below, it is worth noting a distinction that Yack points to here: Aristotle does not treat "the polis as a natural substance with its own internal principle of motion." Yack, *Problems of a Political Animal*, 89.

support his broader logical claims. For Aristotle, these essences are of course said to be not products of political argument, but nature. Yet, though Aristotle maintains both that “premises must be the cause of the conclusion, better known than it, and prior to it” and that “[n]ecessary conclusions must be drawn from necessary premises,”²⁷ his premises also service larger arguments. Sorting out the origins, or what Stephen Toulmin calls “warrants”²⁸ for Aristotle’s essences and arguments about nature is one of the key tasks facing the theorist: did a biological “category mistake” result in an argument for slavery, or were women the victim of a structural violence stemming from a misogynistic epistemology? Following Wittgenstein, have we hit bedrock and are our spades turned?²⁹

I am not suggesting that this question can be or need be resolved within the terms of Aristotle’s argument. Yet, casting these configurations as products of argument makes them appear contestable by mapping out the terrain of the contest. The directionality of these arguments is crucial. Nowhere in *The Politics* does Aristotle suggest that necessity might be a production of political life rather than a foundation upon which it is built. Instead, necessity is treated a- or unpolitically, as are arguments about the design of nature generally. These claims gain their legitimacy only so long as ontology is approached not as a form of argument – which reveals it – but as a fact. The strength of the theory, in other words, stems from its ability to be seen as factual and not discursive. In contrast, the rhetorical reading of Aristotle brings the discursivity of Aristotle’s ontological claims to the foreground to see how his political argument is constructed.

²⁷ Aristotle, *Complete Works*, 72a29; 1357a28.

²⁸ Toulmin, *The Uses of Argument*, 89-99.

²⁹ Wittgenstein, *Philosophical Investigations*, Sec. 217.

Aristotle maintains that necessity and freedom are exclusive of one another.³⁰ Yet, just as they must be cordoned off from one another, they are also structurally linked and co-dependent, which underscores the specific sense in which freedom and necessity may be thought incompatible. For Aristotle, necessity and freedom need to occupy separate conceptual spaces, where they may appear as exclusive and monadic. My reading, however, suggests that they are co-dependent in that they need to occupy these spaces exclusively and reliably for the other to persist. This exclusiveness is structural, constitutive of the whole. Aristotle's free polis is parasitic on the unfree household, yet the parasite is constructed serially within a larger teleological movement to ensure that host and parasite are not confused, to make clear that the necessary serves as a foundation of the free.³¹ Understanding this key moment in Aristotle's thought serves as a useful testing ground, but also underscores how common the move may be in political thought.

Aristotelian logic – which, I have suggested, is part and parcel of his politics – is premised on the existence of and ability to determine causality.³² For this reason, the structure of Aristotle's politics becomes clear only if one understands his two foundational texts, the *Physics* and the *Metaphysics*.³³ Yet my rhetorical re-reading of

³⁰ Lee Ward, "Nobility and Necessity: The Problem of Courage in Aristotle's 'Nicomachean Ethics'," *The American Political Science Review* 95, no. 1 (Mar. 2001).

³¹ Aristotle might complain that I have reversed the order of operations, and maintain either that the household is parasitic on the polis or that the parasite imagery is wrong since this whole system of operations is ontologically determined. Yet reading the teleological structures in reverse is one of the most useful benefits of reading rhetorically. While the sequencing of the argument may be important to Aristotle, I am advocating a method that purposely reads upstream to consider that the pieces of an argument may have been put together differently than authors may claim.

³² R. J. Hankinson, *Cause and Explanation in Ancient Greek Thought* (Oxford: Clarendon Press, 1998); Monte Ransome Johnson, *Aristotle on Teleology* (Oxford: Oxford University Press, 2005).

³³ Friedman, R., "Matter and Necessity in *Physics* B 9, 200 a 15-30," *Ancient Philosophy* 1 (1983), pp. 8-12; A. Gotthelf and J. G. Lennox (eds.), *Philosophical Issues in Aristotle Biology* (New York: Cambridge University Press, 1987). Numerous feminist commentators have noted the importance of understanding Aristotle's ideas about biology vis-à-vis possibilities of freedom. See Arlene W. Saxonhouse, *Women in the History of Political Thought: Ancient Greece to Machiavelli*, Women and

Aristotelian causality suggests that causality is contingent, the outcome, not of the location, but the settling of cause on one of several possibilities.³⁴ This settling is productive of Aristotelian ontology because that ontology is rooted in the establishment of causes; this, of course, suggests nothing less than that the narration of causality is akin to the narration of the basis of ontology. Seen from this perspective, Aristotle does not locate (which would suggest a passive relation to the metaphysics of argument), but produces the cause. The fixing of necessity in its characterization of women and slaves is dependent upon and given conceptual life by this theory of nature which Aristotle wants to – indeed, from a structural perspective, needs to – position as necessary, for without it there is no reason to accept his configurations. Causality is bound to the grammar of his argument, located and institutionalized in the subject position (what Nietzsche calls a “fictionalization” that produces, because it requires, a “doer”). The creation of this cause serves as the grammatical identifier of cause and here, in considering causality, we see how important it is to Aristotle’s argument that causality be seen not as rhetorical, but essential or logical or, at least, knowable in and of itself. We see how important the denial of rhetoric is for positioning these moments – a theme to which we shall return later in considering additional features of necessity arguments. Aristotelian necessity is not necessary in its own right, but the establishment of a narrative premised on the possibility of its placement outside of rhetoric. This distinction, as I argue in Chapter VI, is implicit in the very distinction between logic and rhetoric itself. It is this possibility

Politics (New York: Praeger, 1985); Wendy Brown, *Manhood and Politics: A Feminist Reading in Political Theory* (Totowa: Rowman & Littlefield, 1988); Susan Moller Okin, *Women in Western Political Thought (with New Afterword)* (Princeton: Princeton University Press, 1992).

³⁴ Castoriadis calls the appeal to “cause” to describe psychic life a “monstrous abuse of language” because cause “can never be established except after the fact...” Representation, for Castoriadis, is always retrospective, which “prevents it from having any predictive capacities.” See “Psychoanalysis and Philosophy,” in Castoriadis, “Psychoanalysis and Philosophy,” 355.

that I both want to call into question and mark as a constitutive feature of necessity arguments. This placing, however, is a poetic concern, and not an act of scientific discovery.

Though he opened new avenues for thinking about human knowledge and political life, Aristotle's most powerful contribution, taken broadly, is his establishment of a metaphysics that shaped Western physics, politics, logic, biology and beyond. This is true even as Aristotle went to great lengths to distinguish different standards for inquiry in prudential and scientific thought. Aristotle and Aristotelians are, of course, not unique in making such metaphysical distinctions. As I argue in the subsequent readings of Machiavelli, Marx, Hobbes and Arendt, all political arguments are possessed of metaphysical commitments; it is not their escape from metaphysics that distinguishes them, but their uniqueness in working within the metaphysics they establish or adopt. Moreover, it is not their existence that gives necessity its anti-political capacity, for that capacity militates against the political only when necessity arguments appear unproblematically and remain unquestioned.

Heidegger locates the maturity of a science in its willingness to call its most basic categories into question.³⁵ Yet, as Kuhn argues, provoking crises in vocabularies and constitutive argument structures is no mere task of reason, but a more irrational process wherein scientists are reticent to let go of those narratives that have sustained them.³⁶ Aristotle does not appear capable of such a crisis in his basic terms and his necessity

³⁵ "Modern Science, Metaphysics, Mathematics," in Heidegger, *The Basic Writings*, 267-306.

³⁶ Kuhn, *The Structure of Scientific Revolutions*. This reading of Kuhn owes much to Wolin, *Politics and Vision*, 569-70.

arguments serve as the very fabric of the Aristotelian ethos.³⁷ Aristotelian categories, and their constitutive configurations of necessity, tell us much about the methods by which Aristotle makes sense of the political. Aristotle is particularly useful for understanding necessity because he foregrounds the architecture of necessity that supports his project. Writing, of course, is always to greater and lesser degrees an act of concealment, even as democratic commitments require that structures be exposed, not veiled. Politics vigilant about protecting the political must concern themselves with the capacity that such arguments have to foreclose possibility and constrain the terms of debate.

To that end, I argue that necessity arguments, bound by, but also constitutive of the logos, can serve as useful markers of argument. Even as notions of “society” and other key categories may be premised upon hegemonic – or at least widely held – arguments about nature and other foundations, I emphasize the need to keep the argumentative dimension that sustains such concepts front and center. In short, I want to keep that dimension unnecessary and open to critique. As I have suggested that seeing the logically unnecessary grounds of the necessity arguments that sustain Aristotle’s politics opens spaces for a number of responses. Noticing how Aristotle seals his program with necessity argument marks a crucial step toward approaching the Aristotelian project from a perspective and at a depth that a critical politics requires.

³⁷ “The undefinability of Being does not dispense with the question of its meaning but compels that question” and, therefore, “...to recover the question of Being means first of all to develop adequately the formulation of the question.” Heidegger, *The Basic Writings*, 44. This question of being was, for Heidegger, located in language itself, which Heidegger understood to be bound up with rhetoric. For Aristotle, according Heidegger, “Rhetoric is nothing other than the interpretation of concrete Dasein, the hermeneutic of Dasein itself.” Cited in Allen Scult, “Aristotle’s Rhetoric as Ontology: A Heideggerian Reading,” *Philosophy & Rhetoric* 32, no. 2 (1999): 146.

3.3: Machiavelli: *Si guarda al fine* or, Making Necessity Productive

Machiavelli opens the modern era by forcing a rupture in previous formulations of the objectives of politics, a rupture that Sheldon Wolin characterizes as a move from the “soulcraft” of the Platonic tradition to “statecraft.”³⁸ This Machiavelli does by rejecting both the rhetoric and metaphysics of religion and morals, focusing instead on the organization and control of political matter by thinking seriously about political order itself after centuries of blurred boundaries in the Christian tradition. Unlike the so-called Christian fathers and doctors, concerned with the political world only insofar as it serves as a sojourn to the afterlife, Machiavelli concerns himself with the formulation of a pragmatic view of politics fixed upon the organization of bodies for their own ends. With Machiavelli, power becomes an end in itself. Machiavelli accomplishes this by offering a new paradigm for understanding the intersections of political psychology and the constitution of political orders, including the intersection between fear, respect and their mobilization in the service of the management of bodies. Princes, for example, must recognize the power that can be summoned by respect, an achievement yielded by the proper mixture of violence and skillful rhetoric, words as well as deeds. Focusing in particular on *The Prince*, I turn to Machiavelli to see what a Machiavellian metaphysics of necessity might look like.

Some theorists have argued that Machiavelli’s works constitute a sustained struggle with the problem of making a radically contingent world of political matter

³⁸ Wolin, *Politics and Vision*, 180.

necessary, so that it may be governed reliably.³⁹ In his awareness that political matter is unpredictable, not easily assimilated into stable narratives, Machiavelli is largely in agreement with Aristotle. Within the domain of politics, Machiavelli asserts: “I can give no fixed rule and will say nothing of them.”⁴⁰ Machiavelli also agrees with Aristotle that it is unwise to disrupt tradition in the pursuit of ideals, as when Machiavelli argues in his discussion of hereditary principalities that the prince’s success “is simply a matter of not upsetting ancient customs, and of accommodating oneself to meet new circumstances.”⁴¹ In this case, the prince must read his subjects correctly, using their commitments and affiliations productively. Though changes in circumstances are inevitable, “ancient customs” and other forms of social power both constrain the prince and provide fodder for his effective rule. For Machiavelli, however, “it is the new state that makes trouble” precisely because, absent tradition, the prince must create some other means of reading the people correctly to develop a means by which he can secure his position. It is for this reason that the establishment of new principalities often require an inaugural violence that restructures the body politic. This restructuring affords the prince the ability to understand so that he can manage the people: it is “a natural and ordinary necessity...that a new prince must always harm those over whom he assumes authority”⁴² to prepare and make them malleable. This tension between malleability and necessity constitutes a fundamental challenge for the prince, who needs to make an inherently unpredictable body politic predictable so that his rule may be secured to the greatest degree possible.

³⁹ See, e.g., Ibid., 175-213; Brown, *Manhood and Politics*, 71-119; Hanna Fenichel Pitkin, *Fortune Is a Woman: Gender and Politics in the Thought of Niccolò Machiavelli* (Chicago: University of Chicago Press, 1999), Chap. 1.

⁴⁰ Niccolò Machiavelli, *The Prince: A Revised Translation, Backgrounds, Interpretations, Marginalia*, trans. Robert M. Adams (New York: W. W. Norton, 1992), 29.

⁴¹ Ibid., 4.

⁴² Ibid., 5.

The dream of a necessary political order is dependent upon the prince's management of these conditions.

This means that there are no formal conditions of rule and that no principles of order can be assumed to precede the prince's rule. Political order is a craft concerned primarily with the establishment and maintenance of artifice. Yet artifice is insufficient as it only provides a set of materials for rule, not rule itself. Law is insufficient for securing political power, which is extra-legal.⁴³ As Pitkin argues, during Machiavelli's time

[t]he community and its laws, its *nomos*, were now understood as human artifacts, the products of choice, subject to further action. Individuals increasingly felt required to create order for themselves and take charge of their communities. In short, authority was becoming internalized...Man is the unique species that was made by God to make itself.⁴⁴

Pitkin sees Machiavelli's moment as characterized by a movement of political matter into human hands. At the same time, political matter is redefined as that which constitutes the site of struggle for organizing the world. It is crucial to notice how Machiavelli delineates the material from the rhetorical, and how he reworks the rhetorical to focus on its political effects. The result is a uniquely Machiavellian toolbox for producing necessary outcomes, or at least outcomes as close to the necessary as possible.

Machiavelli's rhetoric is determinate in this regard. Despite his attempt to avoid the metaphysical commitments of the medieval era, his characterization of political forces serves only to usher in a new, if nominally secular metaphysics that enables him to use necessity arguments to ground his political thought. His theory of historical movement (the inevitability of war and eventual decline) is related to his description of nature (men

⁴³ Foucault has termed this view "governmentality." See "Governmentality," in Michel Foucault, *Power*, ed. James D. Faubion (New York: New Press, 2000), 201-22.

⁴⁴ Pitkin, *Fortune Is a Woman*, 11-12.

are dissemblers and deceivers, a “sad lot” who “keep no faith with you...” and are “dominated by their immediate needs”⁴⁵). Taken together, these two characterizations constitute a picture of the world within which the prince must operate and to which he must respond.⁴⁶

Machiavelli identifies state maintenance and preservation as the prince’s central concern and the end of the prince’s efforts. This proposition is supported by a psychological proposition that “men are so simple of mind,” are “impressed by the superficial appearance of things” and judge “by the outcome of an enterprise” (*si guarda al fine*).⁴⁷ The latter claim, of course, is constitutive of a teleological structure that we have not yet encountered, where self-interest and expediency are said to all but erase – in memory – the means used to attain ends, as though political subjects are blinded in their pursuit of ends. Through these terms, Machiavelli is able to construct a political terrain that both characterizes the challenge and scope of politics, and suggests how the prince must behave in response to those challenges. As Machiavelli shows, how one poses the question of politics largely determines the possible dispositions that may be assumed toward it.

Many scholars have noted the centrality of Machiavelli’s concepts of *Fortuna*, *Necessità*, *l’occasione*, and *virtù* to his arguments, yet, few have attempted to cast them as a complex of political life as I do here. Felix Gilbert, for example, misses the point of Machiavelli’s conceptual innovation when he argues that Machiavelli “intended neither

⁴⁵ Machiavelli, *The Prince*, 48.

⁴⁶ Although my discussion is limited to *The Prince*, *The Discourses on Livy* are rooted in a similar metaphysics. The key difference between these two texts lies in the different political themes that motivate them, especially the politics of principalities as opposed to that which republics require.

⁴⁷ “*Mantenere lo stato*” is usually translated “maintain the state,” but Adams renders it “preserve.” Machiavelli, *The Prince*, 49.

to outline a philosophical system nor to introduce new philosophical terms.”⁴⁸ The difference rests in Machiavelli’s goals, which are more attuned to political theory than philosophy. His key concepts, then, were necessary to give himself a stage on which he could advance arguments about political order. I argue that these terms make Machiavelli’s politics possible precisely because they give it a language within which necessity – what the Prince must do – becomes intelligible. Among other things, this language is comprised of the anthropomorphisms necessary to treat the world like a naturalistic system against and within which the prince must act. In other words, his picture of the nature of politics is constitutive of his political theory and animated by the invention and appropriation of a political vocabulary.

First, Machiavelli’s political ontology is anthropomorphized in Fortuna, the irrational, unpredictable force that “determines one half of our actions.”⁴⁹ Fortuna, as Pitkin and others have observed, illustrates the essentially contingent nature of politics. Virtù, on the other hand, is a set of behaviors located not in natural dispositions, but in the intuitions and training of skillful princes. Princes possessed of the virtuous disposition, careful to heed Machiavelli’s advice, will be better prepared to counteract and keep Fortuna down and the contingency of politics at bay.⁵⁰ The vocabulary that Machiavelli uses to characterize politics, as Pocock, Pitkin, Voegelin and others have noted, was not a Machiavellian innovation, but an appropriation of the common vernacular of Machiavelli’s time, however much Machiavelli may have retooled its

⁴⁸ “Fortune, Necessity, Virtù,” in *Ibid.*, 151.

⁴⁹ *Ibid.*, 67.

⁵⁰ One of Pitkin’s key insights is that Machiavelli’s anxiety about the contingency is indicative of the challenge to masculinity that a politics concerned with control poses. The Prince (and in Pitkin’s view, Machiavelli himself) appears anxious about the possibility that his realm is constructed. The result is an asymptotic struggle to make the world predictable so that it may be controlled more easily and reliably. This struggle licenses violence in ways that those reconciled to contingency does not.

meaning.⁵¹ This vocabulary constituted something of a vernacular in Machiavelli's Florence, a metaphysics for explaining the world, interpreting events, and delimiting the challenges of politics. Yet, it is Machiavelli's ontological stamping of the world with Fortuna, and his personification and animation of her nature that makes his perspective possible, as when he equates her with "one of those torrential streams which, when they overflow, flood the plains, rip up the trees and tear down the buildings, wash the land away here and deposit it there...."⁵² Fortuna does much of the heavy lifting Machiavelli requires from his rhetorical structures, which produce the material effects he seeks.

If Fortuna represents a descriptive claim about the natural world in which politics operates, then it also constitutes the foundation within which political actors act. Pocock puts Fortuna and *virtù* in dialectical relation: "The more the individual relies upon his *virtù*, the less he need rely upon his *fortuna*, and – since *fortuna* is by definition unreliable – the safer he is."⁵³ It is the "by definition" that I am concerned with here, since these terms make clear that Machiavelli's sense of the political is a poetic and not a merely descriptive production. Pocock portrays Fortuna as locked in a contest with *virtù*, where Fortuna constitutes the condition of possibility for heroic deeds, the battleground on which politics is carried out and the challenge without which there would be no heroism. Yet, in characterizing Fortuna this way, Pocock misses the fact that the relationship is uneven: the prince needs Fortuna to establish his virtuosity while Fortuna needs the prince not at all. Heroism, paradoxically, depends upon Fortuna to distinguish

⁵¹ See J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton: Princeton University Press, 2003), 31-48 and "Autonomy—Personal and Political" in Pitkin, *Fortune Is a Woman*, 3-22; Eric Voegelin, *History of Political Ideas: Renaissance and Reformation* (Columbia: University of Missouri Press, 1997), 80.

⁵² Machiavelli, *The Prince*, 67.

⁵³ Pocock, *Machiavellian Moment*, 167.

itself from mere action, and is only possible in a world that has been characterized as dangerous, unpredictable, feminine, in need of a masculine stamp. According to Machiavelli, this is especially true on the level of appearances: “What makes the prince contemptible is being considered changeable, trifling, effeminate, cowardly, or indecisive....”⁵⁴ The prince of virtù must not only meet the challenge of Fortuna to succeed, but requires such a challenge to be anything at all since it is against them that he is made. Yet, though the fate of the prince is bound to Machiavelli’s description of the political world, it is not determined by it. The determination of what he must do is dependent upon the status of these two key terms. Pocock’s argument thus needs amending: in political terms, virtù and Fortuna are mutually constituted and interdependent, not two pre-existing concepts in dialectical relation. The effect is a picture of politics that foreground the contingent status of even those concepts that serve as the ontological basis of political challenges.

This brings us to the third concept: *Necessità*. Turning again to Gilbert,

In Machiavelli’s view, *Necessità* is not just a hostile force which makes man’s actions purely automatic. *Necessità* may coerce man to take an action which reason demands; *Necessità* may create opportunities. In whatever situation man finds himself the final outcome depends on his response to the conditions which *Necessità* has produced.⁵⁵

Necessity serves Machiavelli as both a characterization of the world and a rhetorical tool for strategic exploitation by princes and military leaders. The production of necessity, bound up as it is with the production of certain rationalities, is simultaneously productive of a psychological condition that serves Machiavelli’s purposes, even if this necessity is produced internally. Machiavelli grasps the discursive nature of necessity when he

⁵⁴ Machiavelli, *The Prince*, 50.

⁵⁵ Felix Gilbert, “Fortune, Necessity, Virtù,” in *Ibid.*, 151.

maintains that “A skillful general should endeavor by all means in his power to place his soldiers in the position of being obliged to fight, and as far as possible relieve the enemy of such necessity.”⁵⁶ Machiavelli illustrates the usefulness of necessity in an example of Claudius Pontius, the military leader of the Samnites in their battles against Rome.

Claudius,

pointed out to the them in a remarkable speech that the Romans were resolved upon war under any circumstances, and that, although they themselves desired peace, yet they were thus forced to accept the war, adding these words: “War is just for those who are forced to it by necessity, and Heaven favors those who have no hope in their arms.” It was upon this necessity that he based his hope of victory with his soldiers.⁵⁷

Rational choice international relations scholars, following Schelling, call this “bridge burning,” referring to a strategy wherein the bridges that a battalion has just crossed are destroyed (or believed to have been destroyed) so that soldiers have (or believe they have) no choice but to fight. The goal, of course, is to remove the possibility of return or retreat.⁵⁸ Necessity, in Machiavelli’s view, does not function only as a constraint, but as a productive force and ennobler of courageous deeds. The production of necessity, in this view, is bound to the shaping of material possibility but, following Machiavelli, we could use the analogy to think through the myriad ways in which both princes and republican leaderships are implicated in the rhetorical motivation and demotivation of human actions. Machiavelli’s definition of the challenge of politics helps us to understand the relationship between rhetoric and the material world, as well as their mutual constitution.

⁵⁶ Niccolò Machiavelli, *The Prince and the Discourses* (New York: Modern Library, 1950), 450.

⁵⁷ *Ibid.*, 453.

⁵⁸ Thomas C. Schelling, *The Strategy of Conflict* (Cambridge: Harvard University Press, 1960). Another well-known example of bridge burning is Catiline’s exhortation to his soldiers, certain of their impending defeat, to turn and fight. According to Catiline, “necessity makes even cowards brave.” William Safire, *Lend Me Your Ears: Great Speeches in History* (New York: W. W. Norton, 2004), 92.

Leaders attempt to shape perceptions of that world – of what is dangerous, what is possible, what is looming, what is constraining. The limits of discourse’s efficaciousness mark the structural rupture between the world and language. Necessity is as much concerned with the preconditions of an argument of need as an argument of what is and what must be. It shapes both descriptive and normative claims.

But what, exactly, does necessity mean for Machiavelli? Gilbert argues that it is tied to particular rationalities; humans, he argues, tend to view reason as constricting, but in the process of developing a theory of action this constriction becomes productive because it reduces the scope of consideration and focuses the actor on a smaller set of possibilities (and, as with Aristotle, the reduction of possibility is tied to the ability to act decisively). This is why Machiavelli sometimes uses the conjunction “reasonable and necessary” in discussing what historical actors did – or did not – do.⁵⁹ Necessità makes acting easier since it maps out and justifies a particular course of action, no matter how non-necessary that course may be in fact. The key question is one of perception: does the action appear necessary? That necessity may help one to act, and may embolden the prince to decisiveness, suggests not only the possibility, but the usefulness of rhetorics of necessity, whether they issue from ontological argument (that leads one to naturalize actions they are used to seeing) or from one’s mind, through psychological narratives that yield the appearance of necessity. The latter possibility points toward a psychoanalytic reading of necessity that recasts the narrator as the author as well as censor of stories. The experience of dreaming, where censors may be lifted, reveals the necessary to be bound

⁵⁹ See Machiavelli, *The Prince*, 11.

up in a complex system of internal repression and defensive tactics.⁶⁰ This suggests that necessity is an adjunct or a product of reason and that to understand necessity's intersection with politics, how it comes to define and delimit the political, we need to consider the production of rationalities. The opportunities that Gilbert points to are nothing more than a certain force that comes from a faith in necessity, a force that motivates one to act. Machiavelli helps us see that rhetorics of necessity condition the perceptual field of possibility and delimit the scope of political narratives that the Prince may access so that he may have the focus to choose.⁶¹

This suggests that the Prince is subject to a complex of conceptual configurations. Although Machiavelli goes to great lengths to emphasize the need for the Prince to remain free from simple, one-dimensional modes of deliberation (such as strict moral codes), necessity functions as both the recognition of a path that must be followed and the preconditions for heroic political deeds – rising to and not backing down from the challenge that necessity offers. This truth, is useful, and therefore suspect as truth. Yet, if necessity's offerings are rhetorical in nature, as I am suggesting they are, then the prince of virtù both produces and responds to necessity; he produces the rhetorics that enable his manly deeds and that configure and prefigure the grounds on which those deeds are conceivable. And because virtù requires that the prince be free of illusion, he knows that he does this; necessity becomes a powerful tool that determines the degree to which a

⁶⁰ See Burke, *A Rhetoric of Motives*, 37-38.

⁶¹ This emphasis on choice is misleading since, at its strongest, necessity reduces possibilities to single choices. There are a number of important studies of the inner workings of leaders that suggest necessity arguments may function internally as coping strategies against indecision. For example, Kennedy's actions during the Cuban Missile affair has been critiqued under this lens by Timothy J. McKeown, "Plans and Routines, Bureaucratic Bargaining, and the Cuban Missile Crisis," *The Journal of Politics* 63, no. 4 (Nov. 2001) and James D. Fearon, "Domestic Political Audiences and the Escalation of International Disputes," *The American Political Science Review* 88, no. 3 (Sept. 1994).

prince may be said to possess *virtù* which, in turn, determines his political success. Since Fortuna is marked by unpredictability, the prince must remain flexible, never bound to one paradigm or strategy. But he also must not be afraid to call the world what it is and to recognize that a particular moment is governed by a logic of absolute necessity.

Machiavelli seems clear in his belief that these are not deceptive moments, but moments that are truly necessary, moments that the virtuous Prince of will recognize. His understanding of political matter requires both that there are no necessary rules or advice that can be dispensed to the prince, and that the prince must recognize and respond to arguments from necessity that he himself has identified – like starting a fight to win a fight to prove that one can win a fight. Or, to recall Machiavelli’s reminder, quoted above, that he “can give no fixed rule and will say nothing of them,” we might turn to Wittgenstein, who noticed the social function of rules and the internal contradiction in the idea of the “private rule”: “It would almost be more correct to say, not that an intuition was needed at every stage, but that a new decision was needed at every stage.”⁶² Kant defined the faculty of judgment by the absence of fixed rules, or “mechanical operation.”⁶³ Derrida likens this moment of decision to Kierkegaard’s “leap of faith,” with “emphasis on the madness of the decision, namely that each decision is like a leap of faith made in relation to the singularity of a context.”⁶⁴

⁶² Wittgenstein, *Philosophical Investigations*, Sec. 244-71; Kripke, *Wittgenstein on Rules and Private Language*.

⁶³ Leora Y. Bilsky, “When Actor and Spectator Meet in the Courtroom,” in Ronald Beiner and Jennifer Nedelsky, *Judgment, Imagination, and Politics: Themes from Kant and Arendt* (Lanham: Rowman & Littlefield, 2001), 262.

⁶⁴ Simon Critchley, “Frankfurt Impromptu,” in Jacques Derrida, Jürgen Habermas, and Lasse Thomassen, *The Derrida-Habermas Reader* (Chicago: University of Chicago Press, 2006), 106. Critchley rightly notes the ethical imperative in Derrida’s view of judgments, that the “relation [between ethics and politics] is necessary, it must exist, it is necessary to deduce a politics and a law from ethics.”

Machiavelli's picture of the heroic and virtuous prince requires that he not be subject to outside rules. Thus, in interpreting the political, and determining the necessary, the Prince is literally, and by Machiavelli's design, on his own not only in acting, but determining. The person of the prince is the site – and, according to the terms of his politics, the only site – from which such arguments can issue, since the prince is the privileged interpreter of political facts, and his interpretative skills are – with the willingness to act – the key factor in his ability to rule. The prince, after all, must keep even his advisors at arm's length. His view toward necessity also leads him to insist that no necessary actions can be taken from historical examples, even as he assumes that historical decline is a fact. He advises against predictions made by deducing from history, which also suggests, as Aristotle had, the limits of deduction in thinking about politics. Instead, necessity is built into Machiavelli's prescriptions on the level of the general principles associated with the prince's virtuosity – not his actions. These include flexibility – “if times and circumstances change, he will come to ruin unless he changes his method of proceeding”⁶⁵ – and the maintenance of appearances that flexibility requires.

The key point is that the prince must remain unnecessary in his actions since the contingency of political matter must be met with a contingent disposition. Necessity, insofar as it exists in the prince, is constructed on the level of his capacities – to innovate, to rely on his inward qualities of intuition and skill, to preempt Fortuna, and respond to her aggressively. The person of the prince alone is the site from which necessity determinations are issued, and this positions him as the sole determinant of political

⁶⁵ Machiavelli, *The Prince*, 68.

outcomes. As goes the prince, so goes the principality. Yet, the tension inherent in the relationship between necessity and contingency also constitutes the central problematic in Machiavelli's project. Because the prince cannot appeal to external forces to determine political outcomes, the spaces between the prince and the world constitutes the ground upon which the contest of necessity and contingency is played out. The space between them is not merely disjunctive, but productive.

The tools that Machiavelli prescribes for the prince to approach power on the level of its material effects operate on this level as well (belief, not truth, *doxa* not *episteme*). For example, fraud, which is a discursive strategy, proves both more reliable and unlimited than fear since it is immediate and certain to produce material outcomes. Love is less reliable politically because it is less certain in its material effects. As Machiavelli tells us, in attempting to make political matter more calculable and certain, "fraud alone surely can be enough" since it meets the demands insisted upon by the political "necessity of deception."⁶⁶ But while some tools may prove useful at times, others are deemed always reliable because they interact with more basic, visceral elements of political life. Machiavelli understands that fraud is more dependable than force precisely because it seizes upon actors on the level of discourse, which is far more stable than the material flux of politics. This line of reasoning shows how important Machiavelli's conception of human nature is to his understanding of political power.

The prince must grab hold of the world of appearances since, while he may not be able to determine political matter with certainty, Machiavelli believes that a skillful prince can manufacture appearances with a high degree of certainty. Those appearances,

⁶⁶ ———, *The Prince and the Discourses*, 319.

in turn, shape the material possibilities of the political order.⁶⁷ To make appearances matter to such a degree, and to make their effects reliable, Machiavelli must develop a sense of the psychological dispositions governing political subjects. Yet, there is a paradox here in that it is Machiavelli himself who constructs the political world as he does, and then declares that “he who errs least and will be most favored by fortune,” which one can do if one “suits his proceedings to the times...and always follows the impulses of nature.”⁶⁸ In other words, Machiavelli is both the author of nature and the political tools for confronting it. This double move – of definition and prescription of political action – marks the expansiveness and power of political theory.

Rhetoric is key here precisely because it constitutes the means by which material effects are organized in Machiavelli’s texts. In the hands of a skillful prince, material effects can be made as close to necessary as the contingent world of politics can get. But it is crucial that Machiavelli understands the political to be not merely undetermined, but in principle undeterminable. This distinction suggests that Machiavelli’s understanding of the political as contingent and ever-shifting is structurally resonant with Derrida’s understanding of language itself, which is “never absolutely determinable.”⁶⁹ As regards the theory of necessity, this relationship shows the extent to which how the theory of language itself bears on the range of possible ways in which one can conceptualize politics; if language were “absolutely determinable,” projects concerned with the

⁶⁷ The point is illustrated by the Heraclitian theory of “flux,” reported by Plato: “Heraclitus, I believe, says that all things go and nothing stays, and comparing existents to the flow of a river, he says you could not step twice into the same river.” *Cratylus*, in Plato, *Complete Works*, ed. John M. Cooper and D. S. Hutchinson (Indianapolis: Hackett, 1997), 402a. It is significant that Plato should evoke this fragment in his dialogue on names, as it is in illustrating the tension between the world and names – which appears solid – that the river metaphor is most meaningful.

⁶⁸ Machiavelli, *The Prince and the Discourses*, 441.

⁶⁹ Derrida, *Limited Inc*, 3.

indeterminacy of law and other interpretative problems – from Plato to Hobbes to Habermas – would be unnecessary.

The Prince closes with Machiavelli's famous exhortation: "But I do feel this: that it is better to be rash than timid, for Fortune is a woman, and the man who wants to hold her down must beat and bully her."⁷⁰ If analogizing politics to necessary ("must") violence against feminized subjects is the logical outcome of Machiavelli's politics, then this is so because of the violence invited by his conceptual groundings. That this violence cannot change the essence of Machiavelli's ontology, which precedes it, and that we cannot condition, or change, but only manage and control Fortuna, underscores the perpetual struggle between contingency and control in which princes, as well as republics are engaged. The necessity of his actions, and the limitations of what those actions can accomplish within his conceptual system, are consigned to perpetual struggle and adaptation. As Pitkin notes, "What commences as a rousing call to action develops into a meditation on man's helplessness in the fact of fortune's power."⁷¹ Machiavellian politics centers on an always futile attempt to make the contingent into the necessary. Machiavelli is painfully aware that people – princes and republicans alike – are both prone to conceptual reification, of relying on old tactics that worked in the past, rather than "changing with the times."⁷² Machiavelli's political theory is thus comprised of a theory contradictions – the impossibility of achieving desired ends completely, but also the necessity of acting to achieve those ends. Charting the topography of necessity arguments

⁷⁰ Machiavelli, *The Prince*, 69.

⁷¹ Pitkin, *Fortune Is a Woman*, 152.

⁷² See Discourse IX in Book III, "Whoever desires constant success must change his conduct with the times." Machiavelli, *The Prince and the Discourses*, 441-3. Pitkin calls attention to a similar struggle on the level of Machiavelli's own rationalizations, as when Machiavelli writes that "Nonetheless, in order not to annul our free will, I judge it true that Fortune may be mistress of one half of our actions but that even she leaves the other half, or almost, under our control" (quoted in Pitkin, *Fortune Is a Woman*, 149.)

in *The Prince* illuminates these contradictions and suggests that the lack of necessity in political life can be productive for political actors seeking to open new possibilities for political action. Necessity, in the Machiavellian view, thus becomes constitutive of political values as well as a site of struggle. Both are crucial to Machiavelli's end of seeking stability in an unstable world.

3.4: Hobbes: Necessity, Descriptive Theory and the Modern Ethos

It might seem a bit odd to include Thomas Hobbes in a critique focused on a group of thinkers that I have identified with teleology. He tells us, after all, that “*there is no such Finis ultimus* (utmost aim) nor *Summum Bonum* (greatest good) as is spoken of in the books of the old moral philosophers.”⁷³ It is well known that Hobbes was no fan of Aristotelian thinking.⁷⁴ When Hobbes evokes Aristotle directly, it is usually in order to call attention to what Hobbes thinks is sloppy, utopian, and overly scholastic political thinking, immersed not in life, but in books, and lacking rational foundations from which a science of politics can be built. For Hobbes, Aristotle sits at the helm of a tradition of thinkers unwilling to come to terms with the famous natural condition – “solitary, poor, nasty, brutish and short” – that underwrites Hobbes's political views, and thus misses the central problematic facing political thinkers concerned with order.⁷⁵

Hobbes fancies himself not a teleologist, but an ender of a different sort: of teleology itself. As such, he is representative of a strong tendency that would mark the period of modern thought imbued with the scientific ethos. In building a political theory

⁷³ Hobbes, *Leviathan*, 57.

⁷⁴ See, e.g., Leo Strauss, *Natural Right and History* (Chicago: University of Chicago, 1950).

⁷⁵ Hobbes, *Leviathan*, 76.

on geometric principles and formal propositions, suitable for establishing and maintaining order, Hobbes participates, in an unassuming way, in “the canon of the modern apocalypse” that Derrida marked as a tradition of theorists preoccupied with ending, closing doors that previous thinkers had opened.⁷⁶

Hobbes replaces Aristotelian entelechy with a systematic, realist – and purportedly descriptive – account of the world.⁷⁷ Still, despite his rejection of Aristotle and “the philosophy-schools, through all the universities of Christendom”⁷⁸ in his wake, Hobbes was appreciative of Aristotle’s *Art of Rhetoric*, a work in which Hobbes thought Aristotle “had surpassed himself” and which, according to his biographer Aubrey, Hobbes thought was a “rare” moment for Aristotle.⁷⁹ The Hobbes-Aristotle relationship is more complex than a reading of his most famous political work, *Leviathan*, reveals, since Hobbes’s disposition toward Aristotle changes as the role rhetoric plays in Hobbes’s argument changes, depending upon his audience,⁸⁰ and varying humanist and scientific commitments.⁸¹ This development only deepens the relationship between rhetoric and the politics of necessity in Hobbes’s writings.

Though it has not been immune to changing fashions, Aristotle’s tripartite typology of rhetoric – *ethos* (moral character), *pathos* (feeling), *logos* (rational

⁷⁶ Jacques Derrida, *Specters of Marx: The State of the Debt, the Work of Mourning, and the New International* (New York: Routledge, 1994), 16.

⁷⁷ According to Heidegger, from Aristotle to the modern period, “the concept of nature in general changes. Nature is no longer the inner principle out of which the motion of the body follows; rather, nature is the mode of the variety of the changing relative positions of bodies, the manner in which they are present in space and time, which themselves are domains of possible positional orders and determinations of order and have no special traits anywhere.” Heidegger, *The Basic Writings*, 288.

⁷⁸ Hobbes, *Leviathan*, 7.

⁷⁹ Skinner, *Reason and Rhetoric*, 38.

⁸⁰ David Johnston, *The Rhetoric of Leviathan: Thomas Hobbes and the Politics of Cultural Transformation* (Princeton: Princeton University Press, 1986).

⁸¹ Skinner, *Reason and Rhetoric*, Part II.

deliberation) – continues to serve as a foundation for contemporary studies of rhetoric.⁸²

Though Aristotle's ideal polis was one in which argument would be the centerpiece of political debate, he knew that leadership, credibility, and feeling, were socially necessary tools of persuasion. The pure logos that necessary relations require is conceivable to Hobbes, but (like Machiavelli) not suited for political reality.

Hobbes was also the first to translate Aristotle's *Rhetoric* "literally" into English, a text that served as the standard edition for decades.⁸³ His proclamation of literalness notwithstanding, Hobbes altered Aristotle's text significantly to accord with his own views of rhetoric and, in particular, the purported rejection of rhetoric on which the Hobbesian "civil science" was premised. "Whatever may be necessary in legal or political argument," Quentin Skinner argues, for Hobbes "there is no need in reporting scientific findings to establish one's ethos in this way, since the force of the argument should be such as to persuade anyone capable of following it."⁸⁴ Though political argument in the Aristotelian view requires attention to the relationship between rhetorician and reader/listener, Hobbes's fusion of scientific methods and political argument leads him to believe that effective political argumentation could – and indeed should – pay no mind to ethos. Scientific reasoning, understood as a pure logos, could be as persuasive as rhetoric, where persuasion stemmed from proofs and not (rhetorical) arguments.⁸⁵ Not only is ethos unnecessary, but Hobbes thought that rhetoric obscured

⁸² See Burke, *A Rhetoric of Motives*.

⁸³ Aristotle, *Aristotle's Treatise on Rhetoric*, trans. Thomas Hobbes (Oxford: D. A. Talboys, 1833).

⁸⁴ Skinner argues that despite several threads of continuity, Hobbes's relationship with rhetoric shifts from humanism to science, then back to humanism.

⁸⁵ For a discussion of the centrality of rhetoric across Hobbes's work, see Miriam M. Reik, *The Golden Lands of Thomas Hobbes* (Detroit: Wayne State University Press, 1977) and Kahn, *Rhetoric, Prudence, and Skepticism in the Renaissance*. For a critique of Hobbes's manipulations of Aristotelian

important scientific work. In treating Aristotle's text to accord with this general belief in the power of scientific reasoning, Hobbes retooled Aristotle's approach, removing key sections of his discussion of ethos from the translation.⁸⁶ According to Aristotle, rhetoric is "the ability of observing in any given case the available means of [*pisteis*]" which Hobbes translates as "proof."⁸⁷ In considering the difficulty of translating *pisteis*, W. Rhys Roberts argues that "Hobbes's sense of logic and his command of English lead to nothing more distinctive than "proofs" (even "arguments" would be better than this) in his *Briefe of the Art of Rhetorique*."⁸⁸ I think Roberts is incorrect in making this claim; for Hobbes, "arguments" would decidedly not have been "better" because that word does not encapsulate the scientific ethos he sought. In translating *pisteis* as "proof," Hobbes was able to benefit from the appearance of closure that "proof" suggests but "argument" does not. Hobbes illustrates the power of switching of vernaculars to alter the appearance of political knowledge. In absorbing the metaphors of scientific vernaculars, Hobbes licenses himself a language in which necessity arguments that appear to issue from a pure logos may be made.

However, and ironically, in his attempt to put political authority on stable ground, Hobbes deploys classical rhetorical practices based on commonly accepted definitions (or *topoi*) rather than self-evident axioms.⁸⁹ These *topoi* provide a set of categories for

rhetoric, see Mark E. Wildermuth, "Hobbes, Aristotle, and the Materialist Rhetor," *Rhetoric and Society Quarterly* 27, no. 1 (Winter 1997) and Tom Sorell, "Hobbes's Unaristotelian Political Rhetoric," *Philosophy and Rhetoric* 23, no. 2 (1990).

⁸⁶ Skinner, *Reason and Rhetoric*, 258.

⁸⁷ Aristotle, *Complete Works*, 1355b27-8.

⁸⁸ W. Rhys Roberts, "Notes on Aristotle's Rhetoric," *American Journal of Philology* 45 (1924): 353.

⁸⁹ Skinner notes that Hobbes that even as he distanced himself from Aristotle's *topoi*, Hobbes used them, from *The Elements* to *Leviathan*. Skinner, *Reason and Rhetoric*, 304-6. There is irony in the fact that the foundation of Hobbes's argument lay in the humanist tradition – in rhetoric, not geometry or science.

approaching political life. But, whereas Aristotle identified them as general categories, Hobbes presents them as logical, as though they comprise some structural order of the social psyche. According to Wildermuth, “By reconfiguring the Aristotelian apparatus of the commonplaces, Hobbes can continue to subordinate passion to reason and find convenient means of exploiting pathos without impairing logic.”⁹⁰ Good argument, Hobbes suggests, can stand on its own.⁹¹ Pathos should (and can) be reduced to logical categories, suppressed and defined through reason; the careful and systematic exposition of political rationalities is all that is needed to demonstrate the means by which order can be brought to chaos, necessary laws generated from and about a world of contingency.

Hobbes mastered a rhetorical legerdemain that some contemporary political theorists call “descriptive” – as opposed to “prescriptive” or “normative” – theory. This distinction suggests that the normative-descriptive divide is premised upon a certain relationship theorists have toward argument, toward the appearance or non-appearance of ethos in those arguments, and whether the author simply describes or prescribes something for the world. Descriptive theory is characterized by rhetorical practices that

Agreement and tradition, not logic, was the basis of his subsequent arguments. Cf. Kant, *Critique of Pure Reason*, 682.: “Now, since philosophy is merely the rational cognition according to concepts, there will be no principle to be found in it that deserves the name of an axiom.” In other words, Hobbes’s axioms are rooted in concepts, which according to Kant underpins the possibility that they are grounded in reason, which is the condition of possibility for axioms.

⁹⁰ Wildermuth, “Hobbes, Aristotle, and the Materialist Rhetor,” 75.

⁹¹ Skinner argues that by the 1640s Hobbes had given up on this position. Yet, there is confusion here. *Leviathan* (1651) barely deviates from the scientific method Hobbes deployed in *De Cive*. What may have changed is Hobbes’s faith in the public’s ability to follow his argument. Though Hobbes may have come to agree with Aristotle that ethos and pathos were necessary for communication, this is not because Hobbes had come to understand logic differently, but because he had begun to lose faith in his readers who “are either not accustomed to, or else not capable of, or else not interested in arguing properly.” Quoted in Skinner, *Reason and Rhetoric*, 347. This marks a difference with Aristotle, who thought the very subject matter of political debate was bound with rhetoric, even though he might have liked to see a polis capable of engaging purely with the logos. I side with Johnston, who argues that “The argument of *Leviathan* is united by a single political aim that underlies the entire work. The components of this argument are tied together as the constituted elements of a single political act.” Johnston, *The Rhetoric of Leviathan*, xix.

claim to speak only, or at least primarily, in terms of logos. Cornelius Castoriadis points to Heraclitus as an example of a thinker who makes such a claim, but notes that “It is never the logos that you are listening to but always someone....”⁹² This denial of authorship is a key feature of descriptive theory, while normative theory is characterized by an acknowledged value ascription and authoring. The latter’s legitimacy is derived, at least in part, from its ability to establish ethos. The unique function of the latter is also its ability to disavow historical movement to produce the appearance of rhetorical stability. This, in turn, presents truth claims as unauthored and “real.”

Hobbes’s license with Aristotle’s *Rhetoric* is representative of a more general trend in the modern tradition—a tradition that afforded it rhetorical tools to produce necessity arguments. Patricia Williams characterizes this as the way in which legal rhetoric manufactures “transcendent, acontextual, universal legal truths...[a]nd the existence of objective, “unmediated” voices by which those transcendent, universal truths find their expression”⁹³ Relying on arguments about nature and other types of rhetorical “Gods in machines” rather than charismatic or even legal authority, Hobbes illustrates not only how ethos can be subsumed by and displaced into rhetorics designed to mask the role of the rhetorician in the production of rhetorics.⁹⁴ He also underscores the extent to which necessity, in its far reaching manifestations and permutations, is supported and strengthened by these rhetorical foundations.

⁹² Cornelius Castoriadis, *The Imaginary Institution of Society* (Cambridge: Polity Press, 1987), 4.

⁹³ Patricia J. Williams, *The Alchemy of Race and Rights* (Cambridge: Harvard University Press, 1991), 8-9.

⁹⁴ Tracy Strong suggests that overcoming the problem of the authoring of political order is Hobbes’s central problem in *Leviathan*. He locates the beginning of Hobbes’s way out of the problem in Book XVI of *Leviathan*, where Hobbes establishes author/actor relations to legitimate the transfer of power: “The sovereign – the Leviathan – is then a (written) text of which each individual is the author, but it is a text for which the author is no longer available.” Tracy B. Strong, “How to Write Scripture: Words, Authority, and Politics in Thomas Hobbes,” *Critical Inquiry* 20, no. 1 (1993): 157.

In 1645, Hobbes and John Bramhall sparred over the question of necessity and liberty in a series of letters.⁹⁵ Bramhall, a royalist and staunch defender of the Anglican Church who was later to become an Archbishop, argued passionately for the existence of free will, in large part because of the theological problems with declaring the absolute predetermination of life, the questions of sin, and the role that choice plays in making judgment possible. Hobbes's responses to Bramhall illuminate important dimensions of necessity. Most importantly, Hobbes makes clear that the debate is quite literally unresolvable empirically, and is only resolvable logically, grammatically, within an analysis of systematic claims about the world. In so arguing, Hobbes takes seriously the metaphor of logic through which necessity debates take place. Hobbes plays with the inability of knowing the future, and focuses on the language: that which will be, will be necessarily, he argues in a play on the semantics of time. Here "will" is understood as "necessarily will." This "will," moreover, like all wills, is declared in speech. If there is anything we do know about the future, it is that things "will" happen, and this is all Hobbes needs to make his claim. Hobbes engages in a persuasive act that is, at base, a tautology because it stems from little more than his own definitions.

For his part, Bramhall does not engage with logical problems of liberty, but argues from predisposition and a fear of consequences. He finds it both upsetting – "In vain we labour, in vain we study...if things come to pass...by unalterable necessity"⁹⁶ – and inconsistent with scripture – "if there be no liberty, there shall be no day of doom, no

⁹⁵ Thomas Hobbes and John Bramhall, *Hobbes and Bramhall: On Liberty and Necessity*, ed. V. C. Chappell (Cambridge: Cambridge University Press, 1999).

⁹⁶ *Ibid.*, 4-5.

last judgment, no rewards nor punishments after death.”⁹⁷ Why would God bother to command if the actions he commands are already necessitated? Was his command to Adam a joke?

Hobbes defines necessity as “that which is impossible to be otherwise, or that which cannot possibly otherwise come to pass.”⁹⁸ There are several features of this definition worth noting. First, both parts assert impossibility, the idea that what is could not have been or, looking forward, could not be otherwise. This is not, on the surface, much different than Aristotle’s assertion that “Everything that will be, therefore, happens necessarily,”⁹⁹ which seems to be no more or less than a language game about the future: we may not know what will be, but the expression “will be,” insofar as it is true. Hobbes, however, makes it clear that the question of necessity is always bound to the question of possibility. Second, while the first part of Hobbes’s definition puts forth an ontological claim (“that which is impossible to be otherwise”) that depends upon the analysis of a truth condition, the second suggests the construction of a movement, not only that things do “come to pass,” but that in so doing they do so according to some necessary logic.

This definition, however, is not politically interesting in and of itself. Things become interesting when we consider Hobbes’s claim that “Necessity is compatible with liberty” (the so-called “compatibilist” position) or, as he argued against Bramhall, “choosing and necessity are joined together.”¹⁰⁰ Hobbes makes necessity compatible with freedom—but how? First, he takes issue with Bramhall’s assertion that if he “be free to

⁹⁷ Ibid., 4.

⁹⁸ Ibid., 79.

⁹⁹ Aristotle, *Complete Works*, 18b15.

¹⁰⁰ Hobbes and Bramhall, *On Liberty and Necessity*, 17.

write this discourse, [he has] obtained the cause.”¹⁰¹ Liberty, for Hobbes, is bound up with the problem of indeterminate cause since cause, for Hobbes, must be proven before an action is taken for one to rightly call it cause, and such a proof is temporally impossible.¹⁰² Hobbes uses a poverty of evidence productively to demand that Bramhall argue the unarguable in the service of unnecessary liberty. No example of choice is sufficient to move his argument and every statement involving “choice” shows only that a decision was made, not that the decider was free from compulsion. “Consequently,” Hobbes says, “choosing and necessity are joined together.”¹⁰³

Beginning with an articulation of a related project in the opening pages of *Leviathan*, Hobbes makes clear that he is attempting something of an act of theoretical daring. Yet, it is a linguistic daring, a performance carried out in language. In his letter to Lord Goldolphin he writes:

I know not how the world will receive [Leviathan], nor how it may reflect on those that shall seem to favour it. For in a way beset with those that contend, on one side for too great liberty, and on the other side for too much authority, 'tis hard to pass between the points of both unwounded.¹⁰⁴

This is the problem that Hobbes claims to have solved in *Leviathan*. I am concerned here primarily not with whether or not this argument is persuasive, but with his method and argumentative strategy. First, he engages “liberty” and “authority” in carefully crafted

¹⁰¹ Ibid., 15.

¹⁰² Scholars disagree on this question. Johnston argues that this position is too strong, and that at most Hobbes advised caution in ascribing causes. Johnston rejects the idea that Hobbes thought cause to be unknowable. My position merges with Johnston’s at one of his conjectures: “It is arguable...that Hobbes considered the invention of fictions essential to any genuinely causal understanding of historical events, since he regarded thoughts and motives as decisive elements of causation in human affairs.” Johnston, *The Rhetoric of Leviathan*, 9. This captures Hobbes’s sensitivity to the metaphysics of language.

¹⁰³ Hobbes and Bramhall, *On Liberty and Necessity*, 17.

¹⁰⁴ Hobbes, *Leviathan*, 1.

senses defined precisely to make liberty and authority consistent.¹⁰⁵ Here, as with Aristotle and Machiavelli, the activity of defining (with its nod to finality) proves key precisely because it prefigures the political field. Through careful defining, Hobbes leaves little to argue about within the economy of his text; the objects of his analysis conform to as well as constitute the whole, and this *prescription*, this writing before, makes his argument legible. As Victoria Silver has noted, “the twin props upon which Hobbes erects his theory, efficacious definitions and self-evident ideas, are themselves purely verbal constructs....”¹⁰⁶ According to Hobbes,

LIBERTY, or freedom, signifieth properly the absence of opposition (by opposition, I mean external impediments of motion); and may be applied no less to irrational and inanimate creatures than to rational. For whatsoever is so tied, or environed, as it cannot move but within a certain space, which space is determined by the opposition of some external body, we say it hath not liberty to go further.¹⁰⁷

By making an “absence” present, this much-discussed definition allows Hobbes to use liberty to signify what is left after a potentially endless list of limitations have been established, regardless of whether these limitations are natural/physical (such as gravity) or political.¹⁰⁸ It follows that both liberty and necessity are always-ever present since they are defined in relation to one another and presuppose one another. In other words, Hobbes defines himself into the compatibilist position.

Hobbes’s use of the “passions” is also instructive. The key metaphysic underpinning Hobbes’s argument with Bramhall is what Hobbes calls “passions.” To

¹⁰⁵ For liberty, see *Ibid.*, 136, and for authority, *Leviathan*, 101-5.

¹⁰⁶ Victoria Silver, “The Fiction of Self-Evidence in Hobbes’s *Leviathan*,” *ELH* 55, no. 2 (1988): 355-56.

¹⁰⁷ Hobbes, *Leviathan*, 136.

¹⁰⁸ Burke identifies the negative as integral to both language and theology. Absences and lacks, according to Burke, fill important grammatical functions. See “On Words and The Word,” in Kenneth Burke, *The Rhetoric of Religion: Studies in Logology* (Berkeley: University of California Press, 1961).

construct the passions, Hobbes calls attention to the etymological nexus of action-passion and active-passive, a configuration that finds a direct corollary in grammar: passive language wields and implants a logic of necessity (that which just happens, but which no agent does), which instantiates a negation of agency. Actions, for Hobbes, are those things we do by choice, whereas passions are those forces acting upon us, stimulating and shaping us, and to which we must react. They are, moreover, highly regular “forces in the world, which are the same in all men.”¹⁰⁹ To attain his compatibilist position, Hobbes argues that passions are primary – actions are in fact responses to stimuli from passions, and therefore are the outcome of choices, but are not free. Hobbes links actions with reactions, allowing us to both act and react at the same time. It is no wonder why so many struggle to argue against Hobbes once accepting this position, as the theory of passions is the inaugural moment at which necessity is introduced into the argument; that Hobbes constructs a rhetoric wherein such necessity is made compatible with freedom is only a way of packaging his arguments about order and power within a context of freedom.

As with Machiavelli, Hobbes’s description of and use of a particular formulation of reason is essential to the rhetorical structure of *Leviathan*, and for this reason *Leviathan* serves as a useful laboratory for observing the suppression of rhetoric inherent in the common view of reason.¹¹⁰ Such a reading suggests that there is no such thing as Reason; instead, there are rationalities framed by value choices (e.g., security, freedom, the market, the *Summum Bonum* or, in the U.S., perhaps, the “American Dream”), each

¹⁰⁹ Hobbes, *Leviathan*, 4.

¹¹⁰ See Johnston, *The Rhetoric of Leviathan* and Skinner, *Reason and Rhetoric*. Tracy Strong argues that “There is a definite sense that human agreement is a necessary and central part of the establishment of truth. In this sense we would say that [Hobbes] is a conventionalist, but he is also saying that human beings agree on *correct* definitions. In this sense he accepts the independent notion of truth and is an essentialist.” Strong, “How to Write Scripture.”

animated with arguments and metaphysical assumptions toward realizing that rationality's end. These values, moreover, mark the *teloi* that Hobbes and other anti-teleological thinkers attempt to suppress. With Hobbes, the teleological structure of the act of defining itself becomes apparent.

Along with his notion of power, which allows for the possibility of a legal, non-material transfer of power via the system of author-actor relations on which Hobbes builds *Leviathan*,¹¹¹ Hobbes's conceptual foundations are custom-fit for establishing his compatibilist position and performing the act of theoretical "passing" that he promised Godolphin. Hobbes argues that one can transfer one's right to use one's own power and, moreover, that preserving this transfer is rational under almost all conditions.¹¹² Such a transfer, moreover, is not merely a lesser evil, a necessity, aimed at survival, but a deliberate choice that rational people will always make.¹¹³ As with Machiavelli, necessity is crucial to Hobbes's understanding of reason. The rational is the necessary and the necessary is the rational. This same basic argument applies elsewhere in *Leviathan*. For example, to argue that actions are determined and free, he fortifies his position with arguments about reason: reason dictates that actors will behave in such a way that makes man both rational and predictable. Reason therefore circumscribes what free rational

¹¹¹ See Hobbes, *Leviathan*, Ch. XVI.

¹¹² Hobbes sees no problem insisting upon the untransferability of the "right of nature" to self-preservation while arguing that power deployed in pursuit of discharging the laws of nature is valid and possible. I take Hobbes's assertion that the Right of Nature cannot be transferred or surrendered to be a claim not about legitimacy, but metaphysical possibility. The difference between the Right and Laws of Nature is an argument about transferability itself, and not only the wisdom or legitimacy of transferring. This illustrates that materialism and idealism are themselves discursive, the key difference being between that which is transferable and that which is not being the metaphysics ascribed to different objects.

¹¹³ This transfer of power is made possible by the author/actor relationship that George Shulman notes is part of a broader "theater metaphor" in Hobbes. George Shulman, "Metaphor and Modernization in the Political Thought of Thomas Hobbes," *Political Theory* 17, no. 3 (Aug. 1989). Hanna Pitkin argues that this metaphor is behind the constitution of the metaphysic of representation itself. Hanna Fenichel Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1967).

people will do. As the whole question of freedom and necessity is for Hobbes bound up with responses to the passions, the assumptions he installs about reason make actions predictable. Hobbes makes clear what we saw, however differently, in Aristotle and Machiavelli: the question of freedom and necessity cannot be resolved without recourse to a third category that stabilizes and gives content for decision-making. Take away these connections, and Hobbes's texts lose their grounding.

These configurations of reason, authority and legitimacy are carried out through political argument and, as a number of critics have noted, a central function of Leviathan seems to be their cumulative articulation in political life, setting the pieces – laws, rights, author-actor relations, a theory of the passions – in motion together.¹¹⁴ Metaphysics, in this case of metaphysics of necessity, are only as compelling as the discursive life supporting and continually rehearsing them. Hobbes's political argument requires a perpetually renewed foundation of reason to keep the covenant in place.¹¹⁵ In this sense, his political theory can be recast as a performative activity, where arguments remain ever dependent upon their constitutive metaphysics. Political argument is in this view a kind of doing – the instantiation of a conceptual universe, with logics, values and goals. Hobbes's contribution, taken as a whole, is the product of a series of compelling and productive rhetorical propositions that combine to give the text as a whole the persuasive and political force of necessity.

¹¹⁴ Terence Ball, "Hobbes' Linguistic Turn," *Polity* 17, no. 4 (1985); Wolin, *Politics and Vision*.

¹¹⁵ Foucault seems right that Leviathan's power is not legal, but issues from constant legitimization. See "Two Lectures," in Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*, ed. Colin Gordon (Brighton: Harvester Press, 1980), 97-8.

Chapter Four: Necessity in the Canon, Part II: Marx and Arendt

4.1: Introduction

In the preceding chapters I argued that a critical understanding of the role necessity plays in shaping political argument requires that we recast the metaphysical in rhetorical terms and read the metaphysics of political argument rhetorically. This recasting underscores the basic point that necessity is not found, but is made, that it is a poetic production, not a discovery. To approach necessity in terms of its making is to notice that necessity arguments are, in principle, contestable, and that such contests can be provoked only by engaging necessity rhetoric as rhetoric. Yet, to note this is insufficient, as the more important political work to be done with, in and on necessity arguments needs to attending to how different necessity arguments are made and how they interact with political claims.

In this section I deepen this argument through readings of Marx and Arendt. Taking Marx and Arendt together is fruitful for a number of reasons. On the one hand, Marxian propositions about social and economic change are often said to derive from necessity. On the other, Arendtian notions of the political depend upon the protection of spheres of action decidedly *not* limited to necessity or where, in starker terms, necessity poses an existential threat to the political. Despite these different positions, however, I argue and show that Marx and Arendt utilize unique necessity arguments to make their cases for the proper objects of analysis and understanding of politics. In showing that both an avowed necessitarian and an avowed anti-necessitarian utilizing necessity

arguments to make their case, I hope to underscore both the malleability of necessity arguments and the different ends for which they may be deployed.

4.2: Marx: Necessity, Inevitability, and Rhetorics of Reality

In *A Rhetoric of Motives*, Kenneth Burke reminds us that Marxism is, at base, “a study of capitalistic rhetoric.”¹ This important comment is only half true, however, the other half being that from the study of Marxism arises a new rhetoric: one learns the vocabularies and arguments that allow them to think like a Marxist and participate in the tradition of Marxist discourse. In this sense, Marxism is comprised of a particular formulation of the limits of reality as distinguished from ideology, and material, actual facts from appearances. As Burke notes, Marxists reserve the term ‘rhetoric’ “solely to the persuasiveness of capitalist, fascist, and other non-Marxist terminologies (or ‘ideologies’).”² Being a Marxist means, in part, to have escaped the world of rhetoric. Yet, paradoxically, it is within Marxist rhetorics that we find the necessity arguments that ground Marxist thought.

Marx, of course, is also one of the great teleologists of Western political thought. The architecture of his most general proposition, premised on a theory of materialist dialectics, led to a prediction of the eventual collapse of capitalism propelled by capital’s irresolvable contradictions. But this, too, is only half the picture. Marx was also a humanist and modernist who, beyond his predictions, longed for a future that transcended what he saw to be the increasingly dire conditions under which laborers lived under

¹ Burke, *A Rhetoric of Motives*, 24.

² *Ibid.*, 101.

capitalism.³ He sought the transformation in human consciousness that he envisioned beyond those conditions. Marx's identification of man with his productive capacity, citing Benjamin Franklin's "tool-making animal,"⁴ is as much of a picture of Marxist human nature as there is.⁵ For our purposes, however, it is enough to note that Marx sees changes in material conditions, and the effects these changes have on laborers, as determinate of at least the possibility of moving beyond self-interest and commodity fetishism. Productive forces and the groundings of human survival are historically located.

At the root of Marx and Engels's critique of capital is their contention that, to achieve this "beyond," capitalist society must transcend its current productive arrangements, premised on alienated, exploitative labor, where as laborers put more into their work, they retain less of themselves, "the more the worker by his labor *appropriates* the external world, sensuous nature, the more he deprives himself the *means of life*...."⁶ Alienated labor, Marx and Engels tell us, is the material and existential condition of private property, the necessary product of the pursuit of surplus value, which is the lifeblood of capitalist accumulation and progress. (Yet, Marx also likens capital to "dead labor, that, vampire-like, only lives by sucking living labor, and lives the more, the more labour it sucks"⁷; in the end, it sucks away its own substance – another contradiction.) The accumulation of capital is linked to a necessary degradation of the condition of an

³ See Shlomo Avineri, *The Social and Political Thought of Karl Marx* (London: Cambridge University Press, 1968) and Marshall Berman, *Adventures in Marxism* (London: Verso, 1999).

⁴ Karl Marx, *Capital: A Critique of Political Economy*, trans. Ben Fowkes (New York: Penguin Books, 1990), 286.

⁵ Marx draws upon Feuerbach's notion of *Gattungswesen* ("species-being") in part to escape the ahistorical depiction of human possibility that stems from the "fictitious primordial" states of nature of the political economists. Richard Tucker, ed. *The Marx-Engels Reader* (New York: W. W. Norton, 1972), 71.

⁶ *Ibid.*, 72.

⁷ *Ibid.*, 362-63.

ever expanding class of laborers. Alienation both makes the accumulation of capital possible by exploiting laborers, and leads to the bursting of capital at its seams under the weight of class consciousness, its grand production. Much of Marx and Engels's writings are comprised of a working out, in past, present and future, of the dialectical movements of capitalism. They work out, that is, the necessary movements toward capitalism's "inevitable" collapse.⁸

Throughout these formulations, Marx and Engels rely upon fundamentally descriptive rhetorical strategies through which they purport to simply report on the world, not invent it. In their account, capital's imminent demise is rooted in the laws, and contradictions inherent in those laws, of capital itself. Marx's rhetoric insists: don't blame Marx, for capitalism's demise is not the result of his *ideas* – which would not be considered "real" in the Marxist schema. It seems a mere coincidence that the laws of capital produce a result consistent with Marx's humanist commitment. But, to get to that humanism requires a very specific critique of capitalism, where capitalism becomes productive of something new.

My argument is simple: Marx and Engels use descriptive rhetorics to construct necessity arguments. These descriptions, however, are embedded in a broader teleological structure, even as teleology may make one skeptical about the "purely" descriptive nature of Marxist description. A definition of reality underpins their arguments, and is accompanied by a series of methodological claims about how one can distinguish reality from appearance. This distinction, in turn, helps separate capitalism as an historically specific phenomena from the possibility of some futural non-alienated

⁸ Ibid., 483.

existence. These distinctions, in other words, make what appears necessary and unsurpassable at the present moment appear contingent in possible futures. Necessity arguments, as I have noted in the previous chapter, are attractive because of the stability they promise, and this attractiveness should caution us to problems inherent in accepting Marx and Engels's accounts of history wholesale. The ability to see beyond, but also to identify with what we see, is at the heart of Marxist rhetoric. It takes us there by working on our sense of the possible.⁹

A key to grasping Marx and Engels's rhetoric is tracing their use of the word "determinate" (*bestimmt*), which he and Marx use to orientate us toward and understand ourselves in their world of materials and ideas. If anything is necessary in Marxism, it is because Marxist methodology establishes the system of causes that determine the facts of history.¹⁰ In *The German Ideology*, we are told that "The nature of individuals thus depends on the material conditions determining their production" and that "The form of this intercourse is again determined by production."¹¹ Marx and Engels use the concept of determination to clarify the relationship of ideas that have been previously misconfigured, such as when they rebuke the Hegelians by declaring that "Life is not determined by consciousness, but consciousness by life."¹²

Also at issue here is their revision of the conceptual determinism stemming from idealism. Marx and Engels argue that "The Old Hegelians had comprehended everything as soon as it was reduced to an Hegelian logical category," a reduction stemming from

⁹ This focus on vision is influenced by Wolin's reading in Wolin, *Politics and Vision*, 406-53.

¹⁰ Polybius understands the central task of the historian to be the determination of causes. Polybius thought that human actions (*aitiai*) were far more important in explaining human events. For example, gods do not cause wars, but the human belief in gods may. See *Histories*, III 6.1-7, 9-14.

¹¹ Tucker, ed. *The Marx-Engels Reader*, 150.

¹² *Ibid.*, 155.

Hegelian premises which, as premises, guarantee that those concepts that Hegelian analysis produces will fit nicely into the system that gave rise to (assumed) them in the first place. According to Marx and Engels, Hegelian analysis produces conceptual objects that are necessary to that system, and much of their critique of those “hi-falutin and haughty hucksters of ideas”¹³ reduces to a claim that Hegelian analysis is, insofar as it engages only ideas, simply tautological.¹⁴

Attention to Marx and Engels’s language shows that in their rejection of Hegelian reductionism, Marx and Engels perform a reduction of their own, and that only this reduction distinguishes their methods from those of the Hegelians. This time, however, they introduce new conceptual tools that they think, and that they claim, do not instantiate a new tautological structure. A rhetoric of reality, of material analysis, allows Marxists to think they escaped the cycle—and, in their terms, they have. Yet, it is the privileging of new concepts that allows Marx and Engels to make their escape. Charting the order of conceptual operations in Marxist thought makes it possible to see the new sense of reality that Marx and Engels introduce. They argue that,

The premises from which we begin are not arbitrary ones, not dogmas, but real premises from which abstraction can only be made in the imagination. They are the real individuals, their activity and the material conditions under which they live, both those which they find already existing and those produced by their activity. These premises can thus be verified in a purely empirical way.¹⁵

Have they escaped the circle of linguisticism with which they charge the Hegelians simply by deploying an army of qualifiers, such as “real,” “material,” “already existing,”

¹³ Ibid., 167.

¹⁴ This is a different charge than that which Popper levels at Marx. Karl Popper, *The Open Society and Its Enemies* (London: G. Routledge & Sons, 1949). A key difference between Popper’s position and mine is that I do not think that tautological theory is necessarily bad. In fact, most theory is tautological in the sense that it rises out of internal textual economies supported by unique vocabularies and arguments.

¹⁵ Tucker, ed. *The Marx-Engels Reader*, 149.

“verifiable” and “pure”? Add to these their persistent use of “actual,” but also their continual use of the outside, such as labeling Hegelian premises “arbitrary,” to establish the structure that privileges Marxist metaphysics.

Equally formative as arguments of determination for Marx and Engels’s rhetoric is their allusion to the “definition” of activities, expressions and modes of life. The very notion of being “definite” is made possible by the distinction between a realm of ideas and a materiality that is said to be real. It conjures the same notion of finality that determining does; as noted in Chapter I, determination is rooted in termination just as definition is rooted in finality.¹⁶ Both position these arguments so that they may ground necessity arguments, since both instantiate closed logics. Consider, for example, the following, and read for the repetition of definiteness and the injunction to knowledge in the form of a necessity argument that definition makes possible: “This mode of production must not be considered simply as being the reproduction of the physical existence of the individuals” – and here we can hear the authors insisting: “we simply must not!” – yet, he and Engels continue, “Rather it is a definite form of activity of these individuals, a definite form of expressing their life, a definite mode of life on their part.”¹⁷ This rehearsal of the definition of the system, and the repetition of that definiteness, culminates with the assertion of individuals’ position relative to these determinations: “The nature of individuals thus depends on the material conditions determining their production.”¹⁸ Later, the reminders of definiteness return to sweep away any remaining doubt: “The fact is, therefore, that definite individuals who are productively active in a

¹⁶ Burke, *A Rhetoric of Motives*, 14.

¹⁷ Tucker, ed. *The Marx-Engels Reader*, 150.

¹⁸ *Ibid.*, 50.

definite way enter in to these definite social and political relations.” And how can we know this definition but through another definition—or perhaps the original definition itself? Here, *a deus ex Necessità* is deployed to fix the position and caulk discursive holes: “Empirical observation must in each separate instance bring out empirically, and without any mystification and speculation, the connection of the social and political structure with production.” These marks of purification, against mystification, against speculation, are issued in the service of a larger project of seeing “individuals, not as they may appear...but as they really are.”¹⁹ The promise of Marxism is that it “presents a ‘history’ independently of the existence of any political or religious nonsense which would especially hold men together.”²⁰ Yet, this suggests that Marxism does not escape the problem of self-referentiality and structural circularity with which Marx charged the Hegelians. Instead, it does not recognize itself as circular precisely because it excepts certain terms from its realm of ideas, it assumes (in the sense of Mary) those ideas in a move through which materiality is constructed and made exceptional, raised to a privileged position on high. Arendt puts the case like this:

By introducing the spirit and its self-realization in movement, Hegel believed he had demonstrated an ontological identity of matter and idea...In other words, Marx was no more a “dialectical materialist” than Hegel was a “dialectical idealist”; the very concept of dialectical *movement*, as Hegel conceived it as a universal law, and as Marx accepted it, makes the terms “idealism” and “materialism” as philosophical systems meaningless.²¹

These distinctions are neither meaningless nor trivial. They are only meaningful, however, on the level of their particular meaning, in particular historical and political

¹⁹ Ibid.

²⁰ Ibid., 157.

²¹ Hannah Arendt, *Between Past and Future: Eight Exercises in Political Thought* (New York: Penguin Books, 1978).

circumstances, and not in absolute terms. They are meaningful to those whose political positions are staked in the semiotic differences; the move from Hegel to Marx is comprised of a shift from one rhetorical universe to another, albeit one more in line with both a set of hopes (in class struggle and the overthrow of capitalism) and desires (that materialism escape discourse so that it can make determinations) than those of previous systems. No theory – and certainly not the liberal theory that, against teleological traditions, claims value neutrality – escapes the problem of value. As Ronald Beiner notes, “there are ruling practices in modern societies, and in liberal societies no less.”²²

We also should not underestimate the role of wish-fulfillment in making Marxism’s principles and predictions necessary (made necessary, that is, in its reception), and in aiding and abetting this rhetoric in its exceptionalism. Deception is not necessary to enjoy the fruits of Marxist thinking. Nonetheless, though Marxist rhetoric may be attractive, and though many may identify with it, the privileging of materiality is the privileging of a rhetoric of materiality. Nor does this reformulation alter the more important split between particularity, contingency and difference, on the one hand, and the universality that is said to underpin Marxist materialism, on the other. Marxist materialism is privileged precisely because it claims a universality that makes discourses of necessity possible. This rhetoric allows Marxists to consider and think about the world in a way that they think is better than other ways, but that does not escape the operations of ideology, or the universalization of particulars that often marks ideological moves. Why else, but its own exceptionalism, would calling Marxism an “ideology” constitute fighting words? If Marx and Engels are ideologists as well, then they too are “only

²² Ronald Beiner, *What's the Matter with Liberalism?* (Berkeley: University of California Press, 1992), 59.

fighting against phrases,”²³ and this means that the material world is not more “real,” but a production of political commitments, the framework through which the world is engaged. I go one step further and advise that we reject this “only,” which smacks of the “just” of the well-worn mantra, from Plato to Tim Russert, that “it’s just rhetoric.” The distinctions that bind Marxists, and help them see the world together, are important and this “just” should not be thought of as a diminutive, but an epistemic fact: rhetoric – with its phrases – is the stuff of action. That’s *just* what it *is*.

To reiterate, however, this rhetorical focus is not intended to suggest that politics, recast rhetorically, does not engage the world materially, but rather that our theorization of it is not determinate in and of itself, is not material in itself, and therefore is not materially necessary or necessary to matter. To distinguish realms of ideas from the material world may be extremely useful politically, but it does not enclose, or stamp, or finalize, the material world that always seems to militate against it. And these limits of rhetoric are a good thing. Theorizing subversions of language is, quite literally, impossible since they occur in spaces between language and the world they seek to capture, wedging new spaces between. Though it may seem a small distinction, it is important to see that (and how) theory inscribes, or ascribes, rather than describes matter, as there is no material already there, written to be decoded. Approaching materiality discursively, as Foucault and those influenced by him do, calls attention to the fact of discursivity when confronting power on all levels; when discourse’s end seems at hand, and power seems unmediated, this method demands a reconsideration why of how this could be, of why a particular determination was made where it was made, why this or that

²³ Tucker, ed. *The Marx-Engels Reader*, 149.

was deemed necessary.²⁴ Marx's ends function as indices of Marxist commitment and desire. It is for this reason that declarations of scientific Marxism's demise (such as Bernstein) do little to alter to basic attractiveness of thinking like a Marxist, and present Marxism itself as a specter.

This further suggests that the promises of Marxism's movements cannot be taken for granted. The bright lines of necessary historical movements turn out to be not so bright and not so necessary. They turn out to have been drawn, through a relationship between Marxists and a body of thought that defines their politics (again, with an emphasis on the finality of defining) into a relationship that is continually written and rewritten, where writing is an inherent part of its politics. This does not change the fact that the Marxist promise is of a necessary movement in this material world – however discursively located – as well as the necessity, from a humanist perspective, of doing so. Instead of methodological or metaphysical privilege, one is faced with the possibility that that what makes Marxism possible and seductive is its ability to establish (in a vocabulary introduced by Burke) “constitutive” rhetorics, rhetorics that Marxists share and through which they understand and think the world. These rhetorics are also political bindings that, in making Marxism “substantial” house true disruptive and productive political potential, precisely because they define both the necessary laws of capital, and the unsustainable structures that those necessities – in their contradictions – harbor. This analysis suggests a new view of what political theory can offer. If theoretical positions expose commitments and desires, then theory informs and illuminates our understanding not of the world in itself, but ourselves.

²⁴ See Foucault, “Two Lectures,” in Foucault, *Power/Knowledge*.

Identifying the rhetorical basis of Marxist reality is not sufficient, however, as it is also important to understand how that world is animated. In particular, we have yet to see how the necessity arguments of Marxist reality – of what we must look at to understand the world – are merged with claims about movement, change and, ultimately, inevitability. Marxist reality, with its claims about objects of proper analysis, is static since its rhetoric of the “definite,” “actual,” and “real” does not provoke or produce outcomes or ends. To posit the necessary, inevitable collapse of capitalism, Marx and Engels provide an historical narration history comprised of dialectical movements. These movements include a story of how a materialist dialectic leads the false consciousness of individualism to yield class-consciousness; how slavery is supplanted by feudalism, then supplanted by capitalism, then by socialism and finally by communism; how, through these movements, immaterial and material categories are separated over time, their fundamental differences exposed through dialectical movements. They also posit a reduction from ideas to material conditions: the categories by which the social world is understood become fewer and fewer, increasingly rationalized, eventually revealing the material conditions that produced those ideas. At this moment, the once diverse field of possible class positions is reduced to a binary, the actors who play out capitalism’s grand end: the bourgeoisie and proletariat. From these reductions issue Marx and Engels’s most controversial prediction, the bourgeoisie’s “fall and the victory of the proletariat are equally inevitable.”²⁵

Teleology, of course, suggests only that we identify natural objects by their ends. Dialectics, in both Hegelian and Marxist historical narratives, account for the movements

²⁵ Tucker, ed. *The Marx-Engels Reader*, 483.

toward those ends. These teleologies are not only ontological identifiers – claims about how we can know the nature of an object – but historical claims about how we get there. Where Hegel saw history as comprised of the struggle over ideas, in the realm of reason, the Marxist story – what we have been, are, and where we have been and are headed, but also who “we” are – is premised upon the movement and clash of material forces, of modes of production. Some of the richest moments in *The German Ideology* are descriptions of the identifiable features of different modes of production, and the movements between them. In each case, materialist analysis requires that societies adapt to these new modes.

Though Marxists may take it for granted, the assumptions and narrative structures embedded in Marxist dialectics are worth meditating on, for they are the key conceptual tools of Marxism. Disprivileging and wresting dialectics from the world of assumption is a strength of the rhetorical approach to Marxism. György Lukács notes that, for Engels, Marxist concepts were “formed in dialectics as opposed to ‘metaphysics’.” According to Lukács, Engels “stresses the fact that in dialectics the definite contours of concepts (and the objects they represent) are dissolved. Dialectics, he argues, is a continuous process of transition from one definition into the other.”²⁶ While this is the classic Hegelian-Marxist attempt to put meanings in motion, to unreify by historicizing them, it is also a central means by which the political world, and the knowledge surrounding that world, become political accessible precisely because the necessary (meanings) come to be seen as contingent. Yet, are not the “definite contours” of the meaning of the dialectical process themselves overdetermined, overcoded, thus overpromised? Is not, in Engels’s

²⁶ *History and Class Consciousness*, trans. Rodney Livingstone (Cambridge: MIT Press, 1971), 3.

formulation, necessity installed on a different theoretical level to expose the contingency of others, serving as the firm line against which the contingent can be seen as contingent? It seems that necessity arguments are required for marking the contingent. Rhetorical analysis suggests that this move from metaphysics to dialectics is perhaps best understood as a shift. Marxists don't escape the problems of metaphysics, but invent a new metaphysics that they find more acceptable (which is really all that supposedly post-metaphysical thinkers should be expected to achieve). The act of reading Marxist necessity rhetorically is not a gesture toward an anti-necessitarian theory but a call to think about the architecture of argument. Marxism's necessitarian impulses, like that of so many theoretical traditions, is not something to be simply erased, but part of what makes Marxism useful and persuasive as a way to cast the political.

How do Marx and Engels take the reader from a master premise that "The history of all hitherto existing society is the history of class struggles"²⁷ all the way to the point at which "...we shall have an association, in which the free development of each is the condition for the free development of all"²⁸ The move that allows dialectical movements to function as the foundation of the Marxist ethos, as well as its predictive power, and which positions "revolution [as] the driving force of history,"²⁹ stems from the fact that "we" do not move the dialectic (like "we" may try to circumscribe meaning). Rather, the dialectic is entelechic and moves itself. Marxist analysis centers on binary forces, struggling, colliding, and propelling history ("of class struggles," that is) forward. Here, in Marx and Engels's prose, the passive voice is not bad writing, but essential and

²⁷ Tucker, ed. *The Marx-Engels Reader*, 473.

²⁸ *Ibid.*, 491.

²⁹ *Ibid.*, 164.

stylized writing in which a world and its forces are described. This struggle is premised on conditions of dependence and inequality between those binaries – the proletariat and bourgeoisie require one another to survive, but the proletariat, which is the “really revolutionary class,” has “nothing to lose but its chains.”³⁰ The difference between these two historical missions, and the tension that difference creates, sets the dialectic in motion. In the pursuit of sustainable and unalienated material conditions, the dialectic advances, event clashing with event, toward self- and eventually class consciousness. It is here that freedom becomes materially and world-historically possible.

Inevitability, eschatology, eternal recurrence, stagnation, and those moments in politics when “we” are said to “have no time” or where “the time has passed” (for example for diplomacy, leaving only militarism or inaction) are temporal narratives; the fixing of such narratives is central to the organization of theoretical paradigms.³¹ This is as much the case of the timelessness of Plato’s *eidos* as the impending arrival of damnation in *Revelation*. The necessity of Marxist revolution requires a highly specific conceptualization of time, constituted through the pieces I have examined.

This patterning of time is also dependent upon a rhetoric of change that is particularly pronounced in the *Manifesto*. One of Marx and Engels’s key, if somewhat bold, moves is to mark the moment of 1848, in the middle of the revolutionary fervor that brought forth “the spectre of communism,” as exceptional. But how *does* one establish that a moment, especially when that is their moment, is the *real* moment? How do we know it is different, and how can we know this difference? This is especially true when

³⁰ Ibid., 500.

³¹ Sometimes even suggesting that time has any bearing on political concepts is a radical claim, as in the timelessness of the Platonic *eidos* and those who reject it, but also in the move from Foucault’s architectural to his genealogical methods and arguments over historicist and dehistoricist paradigms.

we consider the rhetoric of sameness, which Marx likens in *The 18th Brumaire of Louis Napoleon* to a farce.³² Against these claims of sameness Marx and Engels issue claims of difference. All previous historical movements were X, but this is different:

All previous historical movements were movements of minorities, or in the interests of minorities. The proletarian movement is the self-conscious, independent movement of the immense majority, in the interests of the immense majority.³³

And reporting on their today, “Society can no longer live under this bourgeoisie” as it and capitalism are “no longer compatible.”³⁴ The “decisive hour” is nigh, the once possible immanent, the contingent necessary.

The *Manifesto* is filled with such distinctions, in each case tacking back and forth between primitive moments in the dialectic and advanced stages of revolution, distinguishing the present moment from the rest, especially the French Revolution, which they characterize as *the* Bourgeois revolution. Their continual use of contrasts, conceptual poles, from earlier moments to present conditions, in each case spun through historical narrative, serve as the backbone for illustrating their theory of history. These contrasts suggest movement culminating with the 1848 epoch – “our epoch” – set made exceptional, the “truly” revolutionary epoch. Marx’s theoretical power, one common to all “epic theorists,” stems from his attempt to tell us what “is going on before our own eyes,” using innovative rhetorical strategies help us see what it is they want us to see. “Moments,” in other words, are products of argument:

³² Tucker, ed. *The Marx-Engels Reader*, 594.

³³ *Ibid.*, 482. Thucydides argues that each epoch thinks its moment to be the most important, but also claims, with no apparent irony, that his is in fact one of the most important. Thucydides, *History of the Peloponnesian War*, trans. Rex Warner (Harmondsworth: Penguin Books, 1972).

³⁴ Tucker, ed. *The Marx-Engels Reader*, 483.

In the earlier epochs of history, we find almost everywhere a complicated arrangement of society into various orders, a manifold gradation of social rank....[but] the epoch of the bourgeoisie... has simplified class antagonisms.

The weapons with which the bourgeoisie felled feudalism to the ground are now turned against the bourgeoisie itself.

Marxist necessity is dependent upon the dichotomy between freedom and necessity, where capitalism, at hands of the bourgeoisie, “constantly [revolutionizes] the instruments of production, and thereby the relations of production, and with them the whole relations of society.” Here,

All fixed, fast frozen relations, with their train of ancient and venerable prejudices and opinions, are swept away, all new-formed ones become antiquated before they can ossify. All that is solid melts into air, all that is holy is profaned, and man is at last compelled to face with sober senses his real condition of life and his relations with his kind.³⁵

Marx’s distinction between capitalism and post-capitalism can also be framed explicitly in terms of the necessity-freedom dichotomy, where a life beyond capitalism comes to represent the escape of necessity and the possibility of freedom. But, it turns out, capitalism is not necessary, and is as contingent and historically specific as the inevitable collapse that Marx and Engels posit. The “solid” that capitalism melts away through its productive forces finds an analogue in communism, which seems to continually elude the death that is the source of Marxist desire.

In recasting Marxist dialectics rhetorically, however, I do not mean to contribute to the tradition of revision that took place in the early twentieth century. I do not, with Bernstein, want to claim that “The great things Marx and Engels achieved were achieved

³⁵ Ibid., 476. Habermas points to these passages in “Toward a Rational Society,” in Roger S. Gottlieb, *An Anthology of Western Marxism: From Lukács and Gramsci to Socialist-Feminism* (New York: Oxford University Press, 1989), 269.

not because of Hegelian dialectic but in spite of it.”³⁶ Here, it is worth distinguishing between belief in the existence of a dialectic, and thinking dialectically, the former constituting a kind of metaphysical faith, the latter a methodology that can be done critically. As Marcuse points out (in a critique of Bernstein), it is not fortuitous, in lieu of dialectics, to “[bow] to the authority of the facts” to support “a faith in ‘necessary natural evolution’ to socialism.” Marcuse is correct that Bernstein merely installs a new metaphysics that is, ironically, not much different than a “revival of common sense as the organon of knowledge.” Bernstein’s is a metaphysics of a “secure and stable given state of affairs that, according to revisionism, slowly evolves towards a rational society.”³⁷

Marx and Engels utilize necessity arguments to sketch out the operations of history as well as the development of consciousness. They define communists as those who recognize “the insufficiency of mere political revolutions, and had proclaimed the necessity of total social change.” In chains of (ultimately failed) determinations, the productive arrangements of each epoch dictates what their historical actors must do:

The necessity for association against the organised robber-nobility, the need for communal covered markets in an age when the industrialist was at the same time a merchant, the growing competition of the escaped serfs swarming into the rising towns, the feudal structure of the whole country: these combined to bring about the *guilds*.³⁸

Of course, consciousness itself, the engine as well as product of revolutionary fervor, is not a matter of ideas, of learning or thinking about or desiring revolution, but is forced upon laborers by historical and logical necessity emanating from the laws of capital; it is

³⁶ Bernstein, *The Preconditions of Socialism*, 46.

³⁷ Herbert Marcuse, *Reason and Revolution: Hegel and the Rise of Social Theory* (London: Oxford University Press, 1941), 399. Habermas suggests that there is a question as to whether such a society becomes governed by “means-ends relations, associated with communicative action,” which is surely the end of political possibility, or whether politics can be recovered in, or opened by, that shift. Gottlieb, *An Anthology of Western Marxism: From Lukács and Gramsci to Socialist-Feminism*, 254.

³⁸ Tucker, ed. *The Marx-Engels Reader*, 153.

linked to the realization of the existence of society itself: “man’s consciousness of the necessity of associating with the individuals around him is the beginning of the consciousness that he is living in society at all.” Marx and Engels analogize this development to language, which satisfies a social need: “language, like consciousness, only arises from the need, the necessity, of intercourse with other men.”³⁹

Marx and Engels’s account of history, and the movements necessary for the introduction of new modes of production, requires the constant revolutionizing of the very notion of need. It is not need as such that we are concerned with here, but the way in which society is said to be governed by laws and logics internal to themselves. Consider this passage which illustrates how Marx generates one need from another via a chain of necessity arguments in response to conflicts:

The competition of serfs constantly escaping into the town, the constant war of the country against the towns and thus the necessity of an organised municipal military force, the bond of common ownership in a particular kind of labour, the necessity of common buildings for the sale of their wares at a time when craftsmen were also traders, and the consequent exclusion of the unauthorised from these buildings, the conflict among the interests of the various crafts, the necessity of protecting their laboriously acquired skill, and the feudal organisation of the whole of the country: these were the causes of the union of the workers of each craft in guilds....The need for day-labourers in the towns created the rabble.⁴⁰

Each conflict produces a necessary response that, in turn, revolutionizes the world, and necessity turns out to be both productive and revolutionary. Each moment in the process, moreover, sharpens the focus of capitalism’s telos by introducing the means to its end, its “gravediggers.” In the final sections of *The German Ideology*, we are told that “The

³⁹ Ibid., 158.

⁴⁰ Ibid., 176-7.

Necessity, Preconditions and Consequences of the Abolition of Private Property” is followed by “The Necessity of the Communist Revolution.”

Understanding Marxist necessity requires what many miss, namely that Marx does not exempt the owners of the means of production from the grand narrative of capitalism’s demise. The bourgeoisie, too, is compelled “on pain of extinction” to revolutionize much as, eventually, “it sees itself compelled to appeal to the proletariat, to ask for help, and thus, to drag it into the political arena.”⁴¹ The bourgeoisie must become increasingly efficient by exploiting workers at greater speeds and increasingly efficient spaces. The bourgeois must and will become members of the proletariat themselves.

Marxism’s “musts,” and the reality that underpins them, qualify Marxism for Derrida’s “canon of the modern apocalypse,” characterized by attempts to end.⁴² Yet, the rhetorical gestures of Marxism do not provide concrete ends because they are fixed by other rhetorical gestures, such as when we are told that the “premises [of materialism] can thus be verified in a purely empirical way.”⁴³ Or, if they do assume a fixed position, they are fixed by terminologies, which is precisely opposite to their promise. Being told this does little but mark an end with a word (verify) that is itself contestable. These chains of meaning, these deferrals, go on and on. Instead of ending capitalism, Marxist structures, as *différance*, open a purportedly determinate system and provide a means of constituting new political spaces. Marx’s prophecy of the end of capitalism opens the door to post-capitalist (communistic) epochs, positioning necessity as a force that is no

⁴¹ Ibid.

⁴² Derrida, *Specters of Marx*, 16.

⁴³ Tucker, ed. *The Marx-Engels Reader*, 149.

means for simple closure, but productive of political possibility—possibility constituted by closure.

Such a reading not only exposes an epistemological paradox and underscores the specters that keep Marxism, as a system of ideas and methods, alive, contested, and therefore political. At the same time, *différance* provides a key tool for making sense of the non-necessity of Marxist logics, illuminating the perpetual postponement of those terms that Marx attempts to place beyond language, but also disarming Marxism, with its laws, like Hegel with his, from the possibility of dismissal in the face of evidence. Marxism, like Hobbes's necessity – like all narratives, in fact – are not simple objects subject to empirical verification. Marxist and other rhetorics are grounded not in “the world,” but in themselves. In fact, the more that Marx and Engels claim that they provide empirical, definite, actual, real or verifiable knowledge, the less believable it seems, since the rhetorical reminder, the constant reiteration, only reveals the tentativeness, or at least their awareness of the extent to which Marx and Engels engage in world-building, not acts of divinity to uncover substratum. Their tools are language, not essences. The rhetorical casting of Marxist necessity frees the theorist from the burden of empirical verification. Marxism, in turn, becomes Exhibit A of Wolin's suggestion that sometimes it is the world that is “wrong,” and the theory that is “right.”⁴⁴

Marx and Engels's markings of ends, then, are no mere slips of apocalyptic tongues, but constitute the very fabric of Marxist rhetoric. Though the “heaven” from which the Hegelians began was the realm of ideas, the “earth” from which the Marxists begin is, according to the Marxists, not. As a reminder of this distinction, Marx and

⁴⁴ Sheldon S. Wolin, “Political Theory as a Vocation,” *American Political Science Review* 63, no. 4 (December 1969).

Engels note that the Hegelians “have never...had an earthly basis for history and consequently never a historian”⁴⁵—until Marx, of course.

As I have suggested, serious questions about the “iron laws of capital” linger everywhere, and many of the necessary movements of capitalism turn out to be not so necessary at all. It is for this reason that the state must manage capitalism’s ups and downs and must, during work slow-downs and strikes, use violence to get workers back to work, and use price controls and protective tariffs to stave off, however temporarily, the rise in class consciousness that Marx believed would issue from material deprivation. The bourgeoisie must keep the contradictions of capitalism from wreaking havoc on the capitalist order and, in a sense, attempt to stop the dialectic. In other words: they must keep contradictions from contradicting, which introduces yet another contradiction in that they are central to the logic of necessity that governs capital. It takes time for the dialectic, in its global march, to expose those paradoxes that, while veiled, allow capital to appear healthy. The dialectic in hand, Marxism promises to expose capitalism’s false necessity. Its central contention is that capitalism attempts – however pointlessly in the end – to make the contingent appear necessary.

Contemporary orthodox Marxists make a similar move when they defend Marxist laws against supposed counter evidence.⁴⁶ They do not acknowledge, as Brown does, that Marxism’s “promise” of a world beyond “is very nearly extinguished. That the most powerful undemocratic force in human history is here to stay,” which amounts to “a predicament that haunts out theoretical and political practices concerned with freedom,

⁴⁵ Tucker, ed. *The Marx-Engels Reader*, 156.

⁴⁶ David Harvey is an example of a thinker who retains Marxist principles while building in new concepts to support the greater whole of Marx’s arguments. David Harvey, *The Condition of Postmodernity: An Enquiry into the Origins of Cultural Change* (Oxford: Blackwell, 1989), 171.

equality, justice, and more.”⁴⁷ Yet Brown’s call is not for resignation, but renewing political theory’s engagement with capitalism, the failure to do so which “risk[s] ontologizing” the capitalist “powers organizing life in our time” and “reifying its effects.”⁴⁸ Her deployment of the specter metaphor suggests that a new specter must haunt out the old, which is luke-warm and stale. Or, to appropriate a question Michael Walzer has posed: what do we do when the dialectic doesn’t seem to work as well as it used to?⁴⁹ The result is a theoretical melancholy over the failure of the predications of those great enders, Marx and Engels, to come true.

Like Aristotle, Hegel and Machiavelli, Marx and Engels are open teleologists, and their forthrightness in expressing their ends is often what gets them in trouble. There is no rhetoric of denial in their teleology. Open teleology is no doubt jarring to those contemporary thinkers who fancy themselves descriptive and outside of the metaphysics of teleological reasoning. Yet, as my reading in Chapter II suggests, Marx is no more or less mystical or metaphysical than purportedly post-teleological thinkers, since the teleological tendencies of contemporary thought are, more often than not, not absent, but suppressed. This suppression, moreover, is often performed through strategies such as definition. To dismiss Marx as a metaphysician is to merely to assume (in the sense of raising up) one’s own position. Doing so also misses a key point about the relationship between the particular economies of necessity in Marx’s thought and the metaphysics of

⁴⁷ “The Future of Political Theory,” in Wendy Brown, *Edgework: Critical Essays on Knowledge and Politics* (Princeton: Princeton University Press, 2005), 69.

⁴⁸ Ibid.

⁴⁹ “The Vanishing American Left,” September 19, 2006, unpublished remarks made at The CUNY Graduate Center.

the Western tradition. That tradition is not defined by the absence or presence of necessity, but how necessity is used to constitute a unique vision of political life.

4.3: Arendt: Necessity as an Anti-Politics

For Hannah Arendt, maintaining the boundary between freedom and necessity is crucial to protecting the integrity of the polis. Arendt's writings constitute a series of interventions into what she saw as a crisis in the political, which she delivered in the form of a lamentation beginning with *The Origins of Totalitarianism* in 1950.⁵⁰ Among other things, *Origins* documents the rise of anti-semitism, which marked a decline of the political and the corollary rise of mob rule. In Arendt's view, this blurring made society vulnerable to great horrors, incapable of seeing that the targeting of European Jews – the “Jewish question” – was in fact a political question. Arendt's concern with the mechanization of politics, and the collapse of political life into two modes of anti-political activity – competition (economic activity) and expansion (imperialism) – is a central theme of *Origins*. According to Arendt,

Imperialism was born when the ruling class in capitalist production came up against national limitations to its economic expansion. The bourgeoisie turned to politics out of economic necessity; for if it did not want to give up the capitalist system whose inherent law is constant economic growth, it had to impose this law upon its home governments and to proclaim expansion to be an ultimate political goal of foreign policy.⁵¹

The necessitarian terms Arendt uses when diagnosing the Twentieth Century is revealing: “impose,” “inherent law,” the bourgeoisie “had to” turn to politics—these words share a

⁵⁰ Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt, 1973).

⁵¹ *Ibid.*, 126.

conceptual thread of compulsion under the sway of irresistible forces. Just as capitalists must chase profits across the world, imperialists must expand.

To the question of why this must be so, the answer is generally: the system dictates it. Capitalism and imperialism operate within larger frameworks that, according to Arendt, require the destruction of political life: "...competition is no more a principle of politics than expansion, and needs political power just as badly for control and restraint."⁵² In fact, those European governments that engaged in expansionistic and imperialistic practices in the pre-World War II period "knew very well that their countries were secretly disintegrating, that the body politic was being destroyed from within, and that they lived on borrowed time." Similarly, "When capitalism had pervaded the entire economic structure and all social strata had come into the orbit of its production and consumption system, capitalists clearly had to decide either to see the whole system collapse or to find new markets...."⁵³ A state, class or people driven by necessity are for Arendt signs of rending in the fabric of a polity. Imperialism and economic expansion are both linked to broader narratives of survival: capitalists must seek new markets and imperialists must project state power.

Framed by self-preservation, compulsion is at the root of Arendt's analysis of totalitarianism. Totalitarianism is not a condition limited to Hitler's Germany or Stalin's Soviet Union, but is a set of social structures concerned with installing closed, anti-political ends – to which all polities can fall prey if not protective of their ability to act. Politics must be delinked from a fear of decline or death.⁵⁴ At stake for Arendt in this

⁵² Ibid.

⁵³ Ibid., 147-8.

⁵⁴ See Arendt's discussion of *Leviathan*. Ibid., 139-47.

distinction is the political's relationship to necessity, where fear is associated with necessity, manifest in the form of closure, and politics is associated with possibility and freedom. Totalitarianism is characterized by the imposition of institutional and bureaucratic rationalities of a people, and mobilizing that people for the maintenance of the state that those rationalities serve.

One of the difficulties with what one critic recently called the "Arendt industry"⁵⁵ of recent years is that many Arendt scholars have developed the bad habit of skipping over the deeply political and historically grounded *Origins*, beginning instead with *The Human Condition*. The problem with this move is that *Origins* pinpoints Arendt's political concerns and the stakes of her problematic in a way that *The Human Condition*, as a philosophical investigation of modernity, does not. *The Human Condition* is a continuation and theoretical deepening of *Origins*, and not argument ex nihilo,⁵⁶ and Arendt's writings on necessity, even if not explicitly framed as such in *The Human Condition*, are reactions to the anti-political conditions that lead to the rise of totalitarianism, with the Holocaust as its apex. *The Human Condition* is, as Mary Dietz has put it, a "response to trauma."⁵⁷

Against this backdrop, Arendt equates the encroachment of necessity with the closing of political space. Among necessity's markers are those activities tied to metabolic processes and concerned with the "mere" maintenance of life, and economical survival. "Action," the ideal which Arendt locates in the Greek *polis*, "corresponds to the

⁵⁵ Corey Robin, "Dragon-Slayers," *London Review of Books*, January 2007.

⁵⁶ Pitkin notes that this has started to change of late, particularly with Elisabeth Young-Bruehl's biography of Arendt. Hanna Fenichel Pitkin, *The Attack of the Blob: Hannah Arendt's Concept of the Social* (Chicago: University of Chicago Press, 1998).

⁵⁷ Mary G. Dietz, *Turning Operations: Feminism, Arendt, and Politics* (New York: Routledge, 2002), 187.

human condition of plurality...” and “would be an unnecessary luxury, a capricious interference with general laws of behavior, if men were endlessly reproducible repetitions of the same model, whose nature or essence was the same for all and as predictable as the nature or essence of any other thing.”⁵⁸ According to Pitkin,

Action is the cornerstone of Arendt’s politics because it is free from repetition and constitutes a space where something new can happen. It presupposes a terrain of social existence, but goes beyond questions of that existence and is free from the logics that govern that space. Politics, moreover, is the only specifically human condition: “it is only action [as opposed to labor and work] that cannot even be imagined outside the society of men.”⁵⁹

The attainment of this ideal requires nothing less than an aggressive routing of necessity from the political. Zerilli argues that, “for Arendt, the very idea of a historical process, which alone gives meaning to whatever it happens to carry along, carries the risk of becoming a denial of freedom and an escape from the task and burden of political judgment.”⁶⁰ The problem for Arendt is not only that politics will become governed by necessity, but that politics will be evacuated of the capacity to produce anything new. Like Machiavelli, Arendt’s depiction of the world sets the stage on which politics must perform. She understood that “Our political life...also takes place in the midst of processes which we call historical and which tend to become as automatic as natural or cosmic processes, although they were started by man.”⁶¹ Yet, unlike Machiavelli, Arendt does not advance a view of political action out of necessity, and does not consider the myriad ways, as Machiavelli did, that necessity could enable the attainment of virtù, testing the meddle of courageous political actors in the face of constraints and to a large

⁵⁸ Arendt, *The Human Condition*, 7-8.

⁵⁹ *Ibid.*, 22.

⁶⁰ Linda M. G. Zerilli, *Feminism and the Abyss of Freedom* (Chicago: University of Chicago Press, 2005), 126.

⁶¹ Arendt, *Between Past and Future*, 168.

extent making heroic deeds possible. For Arendt, there was a very real danger that those constraints could eclipse the political altogether. Keeping the spheres separate is thus prophylactic for Arendt's concept of the political; her central concern is maintaining the conditions and "spaces of appearance" that make politics possible. The odds, however, are bad: "The historical sciences know only too well such cases of petrified and hopelessly declining civilizations where doom seems foreordained, like a biological necessity...the periods of being free have always been relatively short in the history of mankind."⁶²

In my discussion of Marx I called attention to the problem of conceptual "ends," and their (failed) attempt to close political argument and circumscribe concepts. Conversely, a key to grasping Arendt's notion of politics in relation to the problem of necessity lies in what has been called the problem of "beginnings" and "founding."⁶³ In her diagnosis of "the problems facing modern man," she argues that *prattein* (doing) and *archein* (beginning), which the Greeks connected, were severed in the modern era.

The manifold meaning of [*archein*] indicates the following: only those could begin something new who were already rulers (i.e., household heads who ruled over slaves and family) and had thus liberated themselves from the necessities of life for enterprises in distant lands or citizenship in the polis; in either case, they no longer ruled, but were rulers among rulers, moving among their peers, whose help they enlisted as leaders in order to begin something new, to start a new enterprise; for only with the help of others could the [*archein*], the ruler, beginner and leader, really act, [*prattein*], carry through whatever he had started to do.⁶⁴

Arendt's lament that modernity suppresses politics by installing necessary forces stems from her view that it provides increasingly fewer opportunities to make and begin; in this

⁶² Ibid.

⁶³ See Honig, "Declarations of Independence"; Dietz, *Turning Operations*; Zerilli, *Feminism and the Abyss of Freedom*; and Patchen Markell, "Rule of the People: Arendt, Archê, and Democracy," *American Political Science Review* 100, no. 1 (2006).

⁶⁴ "What is Freedom?" in Arendt, *Between Past and Future*, 166.

view modernity reduces politics to the administration of previously established rationalities and rules. Politics, on the other hand, is a kind of *archein* which, as Arendt understands it, is not rule-governed but located in the free activities of men acting in concert. Political stability stems not from legal orders or pre-established rules, but the confidence of a people who write and continually re-write those rules. As a kind of ruling and beginning, the verb *archein* is never ruled or begun, but is a constant source of possibility. Arendt is concerned primarily with the activity of making, but not being made by, the terms of political order that *archein* establishes. For Arendt, these distinctions prevent the activity of ruling from being subsumed by necessity. The absence of necessity, in other words, affords them their political character.

Like beginnings, action has no telos outside of its own activities since its ends are unknown; a beginning cannot be said to be free if it comes into existence to fulfill a pre-established end. “The reason why we are never able to foretell with certainty the outcome and end of any action is simply that action has no end.”⁶⁵ This is because “Political freedom is neither a substance we possess nor an object we cognize; rather, it is exhibited in action and affirmed by the faculty of judgment.”⁶⁶ I think Aristotle and Machiavelli would agree.⁶⁷ Even if they didn’t, Arendt surely thinks that Kant does. This is precisely why she turns, in her later writings, to Kant’s *Critique on Judgment*, where she uses Kant’s aesthetics to illuminate her notion of political judgment. Here, again, she privileges freedom, counterpoised to necessity, as a primary political value. Zerilli notes

⁶⁵ ———, *The Human Condition*, 233.

⁶⁶ Zerilli, *Feminism and the Abyss of Freedom*, 126.

⁶⁷ “Maintaining the state” is of course different from a project of political freedom. The problem is distinguishing what can be changed from what cannot. As Zerilli notes, “At stake is trying to be at home in a world composed of relations and events not of our own choosing, without succumbing to various forms of fatalism or determinism—whose other fact is the idea of freedom as sovereignty.” *Ibid.*, 128.

that, “The aesthetic judgment ‘*this* rose is beautiful,’ is not grounded in the universal nature of roses.” When one does not deduce a particular rose’s beauty from the general claim that all roses are beautiful, one *makes* a judgment: “There is neither cause nor necessity in it. That is why it might be relevant for thinking about politics, a realm in which we are concerned with contingency and freedom.”⁶⁸

Arendt insists, in ways that are both similar to and different from Aristotle, that freedom can exist only where necessity is not; each must have its own “space,” much like the relation of the “private to the public...these two realms could exist only in the form of coexistence.”⁶⁹ What the Greeks

took for granted is that freedom is exclusively located in the political realm, that necessity is primarily a prepolitical phenomenon, characteristic of the private household organization, and that force and violence are justified in this sphere because they are the only means to master necessity—for instance, by ruling over slaves—and to become free.⁷⁰

The lineage is important. Yack rightly notes that an opposition between freedom and necessity is not really a central Aristotelian concern. According to Yack, “Arendt’s dichotomies have a far greater affinity to post-Kantian German philosophy, from which they were drawn, than to Aristotelian political philosophy, let alone Greek political practice.”⁷¹ Yack’s conclusion supports my reading of Aristotle above in noticing that “Aristotelian politics...never severs its roots in nature and natural necessity,” but rather cultivates a political theory out of those roots.⁷² Yack’s corrective is important because it reminds us that the relationship between freedom and necessity is contingent and

⁶⁸ Ibid., 133.

⁶⁹ Arendt, *The Human Condition*, 59.

⁷⁰ Ibid., 31.

⁷¹ *Problems of a Political Animal*, 12. As noted, Aristotle both distinguishes spheres of biological necessity and freedom and sees their practical interconnectedness.

⁷² Ibid., 13.

historically variable.⁷³ It is not merely the case (as Brown asserts) that Arendt's focus on this distinction owes entirely to her affinity for Aristotle, who Brown calls Arendt's "favorite Greek political philosopher."⁷⁴ The story turns out to be more interesting than that, marked not only in a reading of Aristotle, but Arendt's understanding of Athenian history. Arendt marks the succumbing of politics to spheres of necessity with "the disappearance of the ancient city-state" when

the term *vita activa* [constituted by its distinction between labor, work and action] lost its specifically political meaning and denoted all kinds of active engagement with the things of this world. To be sure, it does not follow that work and labor had risen in the hierarchy of human activities and were now equal in dignity with a life devoted to politics. It was, rather, the other way round: action was now also reckoned among the necessities of earthly life, so that contemplation...was left as the only truly free way of life.⁷⁵

Arendtian politics is constituted by and dependent upon these distinctions: freedom from necessity, work from labor from action, and public from private. This boundary maintenance, and the exclusivity of categories, are the condition for protecting politics from everydayness, the unmagical, determined, non-transcendent and unfree aspects of life. Where Aristotle links necessity and freedom in a serial relationship – with necessity serving as the condition of possibility for freedom – Arendt delinks them, removing economic questions from the domain of the properly political. However much economic survival is necessary for politics, it is not itself the object of politics:

...the mastering of the necessities of life in the household was the condition for freedom of the *polis*. Under no circumstances could politics be only a means to

⁷³ This reading owes more to Aquinas than Aristotle: "Freedom is opposed to necessity. But the will is free. Therefore it does not will anything of necessity." Thomas Aquinas et al., *Truth*, 3 vols. (Indianapolis: Hackett, 1994), 51.

⁷⁴ Brown, *Manhood and Politics*, 23. Of course, it is possible that Arendt's understanding of necessity owes, at least in part, from a misreading, or at least confusion, of the two thinkers.

⁷⁵ Arendt, *The Human Condition*, 14. Though much of Arendt's work uses the Athenian polis as an ideal conception of a politics of action, her etymological approach suggests that shifts in the usage of key political concepts reveals much about the constitution of political life.

protect society—a society of the faithful, as in the Middle Ages, or a society relentlessly engaged in a process of acquisition, as in Hobbes, or a society of producers, as in Marx, or a society of jobholders, as in our own society, or a society of laborers, as in socialist and communist countries. In all these cases, it is the freedom (and in some instances so-called freedom) of society which requires and justifies the restraint of political authority. Freedom is located in the realm of the social, and force or violence becomes the monopoly of government.⁷⁶

In considering these distinctions, it's important to note that Arendt's views toward necessity stem from a larger commitment to seeing necessity through body metaphors, which license a corollary vocabulary of metabolic repetitiousness, reproduction, and other organic processes and mandates that can be met, but never transcended. Arendt sets up a logic of contamination wherein a healthy polis protects itself from the encroachment of "social questions." Arendt's notion of politics is subject to framing as unfettered action – a conceptualization so ideal that it is unclear whether politics is reduced to exceptions, those rare moments where the seemingly impossible happens – if only for a moment. What do we make of a conception of politics built out of such exceptions when we notice the extent to which those exceptions are the product of an expansive conception of necessity?

For Arendt, the social is prepolitical and should not determine the content of political activity or concern.⁷⁷ Arendt's rhetorical sleight of hand is in defending her notion of the transcendent political by envisioning a transcendent sphere of necessity. Or, if Arendt's notion of the social is not natural, then it is unclear how she can account for

⁷⁶ Ibid., 30-31. Aquinas argues that the material well-being of a society is a specifically political concern. For example, "In cases of Necessity everything is common property and it is not a sin for someone to take the property of another that has become common property through Necessity." Note the metaphysical shifting here: in times of Necessity, private property is not "declared" public, but becomes public. See, e.g., Aquinas, *St. Thomas Aquinas on Politics and Ethics*, 72.

⁷⁷ This claim owes to Kant and Hegel, who argued the household unit is natural, its rules and traditions constructed socially, not politically. See Carole Pateman, *The Sexual Contract* (Stanford: Stanford University Press, 1988), 173-81.

changes, such as reconfiguring her republican ideal away from its traditional dependence upon patriarchal family structures. The question here seems to be: how do we work on these structures as a society? Not only does Arendt attempt to close off questions of necessity from entering her conception of politics, or see economic questions as determinate of freedom (as it is, for example, in Marxist theory), but she goes deeper, treating the very identity and marking of the necessary as outside of the interpretative realm of politics. This is particularly true for her reflections on those revolutions that made “necessity...the chief category of political and revolutionary thought” rather than freedom.⁷⁸ The French Revolution is Arendt’s prime example of this tendency, though Marxism in general captures the spirit. The Marxist project, for Arendt, is a non-starter, leaving us without the possibility of acting politically: “...we are still left without an answer to the political question posed by the necessity of labor in human life and by the paramount role it plays in the modern world.”⁷⁹ Thus, necessity is not only the “constitutive outside” of politics, but a depoliticized outside. Watching Arendt negotiate necessity and freedom presents us with an interesting question: why is it that the terms of the political are determined politically – through action – while necessity is said to be determined by neither political actors or those living in *oikos*? Arendt’s rhetoric privileges the political that necessity marks. For example, it seems that for Arendt, politics is not and should not be concerned with the eradication of poverty.⁸⁰ This is not to say that poverty is not the result of failures of the political, but merely that the focus of political activity must stay focus on deeper, more primary concerns, a position that have

⁷⁸ Hannah Arendt, *On Revolution* (London: Penguin Books, 1990), 53.

⁷⁹ ———, *The Promise of Politics*, trans. Jerome Kohn (New York: Schocken Books, 2005).

⁸⁰ See Arendt, *On Revolution*.

lead some critics of Arendt to argue that Arendt's notion of the political is often empty, misguided and certainly insensitive to everyday struggles and concerns. Arendt aims her diagnosis at social questions that determine those conditions, but it is never clear how they should or could be addressed. Precisely where Arendt purports to value thinking, it becomes difficult to recognize how we should strategize responses to "the social question." Like Aristotle, Arendt does not suggest that people confined to the domain of necessity may have been placed there by others as a product of politics precisely because her definition of the "political" precludes considering such movements to be political. The social question, it seems, is begged by a failure of politics, marked by a subsumption of human action by necessity, which is the product of a failure of courage, not inevitable forces. Here, again, Arendt's definition of the political is decisive. As was the case for Machiavelli, Hobbes, and Marx, Arendt's problematic is a product of her definitions. Her view of necessity leads her to reject the possibility that the division of labor, and the distinction between public and private that liberalism enforces, may be the effects of politics. Instead, its essential nature functions as the necessary condition of her understanding of politics as a space of freedom, constituting the ideal of the un- and antipolitical. Arendt's analytic distinctions reinforce this notion of the political by calling "social" that which does not conform to her sense of a freedom rooted in political praxis, where freedom is a political and not an individual concept. She also uses this catalog of the social to articulate what she means by politics.

Arendt's commitment to freedom thus arrives in the form of an anti-necessitarian conceptualization of politics. Arendt associates political possibility, and political action, with the concept of "natality" because for her politics is a matter of a polity continually

recreating itself and giving rise to new possibilities, which she characterizes as nothing short of miraculous.⁸¹ Like Arendt's rejection of a politics concerned with the redress of "social" questions, natality concerns the practice of politics, not the pursuit of ideals. Arendt's view of politics this mirrors a Roman republican ideal in which "freedom qua beginning" is "manifest in the act of foundation."⁸² Arendt's anti-necessitarian politics stems from a faith in the capacities of a people to deliberate and act. "If it is true that action and beginning are essentially the same, it follows that a capacity for performing miracles must likewise be within the range of human faculties."⁸³

According to Brown, Arendt thought that "Aristotle betrayed the true nature of politics when he "tentatively assumed that at least the historical origins of the polis must be concerned with the necessities of life and that only the polis content or inherent aim (telos) transcends life in the good life."⁸⁴ Brown argues that "even as Arendt and Aristotle struggle to keep the realms of necessity and politics apart, we have peeled back the lid on the realm of necessity to find most of the important politics of polis life going on there."⁸⁵ Arendt's attempt to delimit the political by evacuating certain parts of life from it, such as the household, and even the body itself, provides an important opening for political critique since it is precisely in that which is claimed to be necessary that the politics of necessity is most visible. Instead of treating necessity as a static fact, Brown suggests that we should look to understand how it operates and what it obscures. The politics beneath necessity's lid turns out to be the political organization of necessity itself.

⁸¹ ———, *The Human Condition*, 119-212.

⁸² ———, *Between Past and Future*, 167.

⁸³ *Ibid.*, 169.

⁸⁴ Brown, *Manhood and Politics*, 25.

⁸⁵ *Ibid.*, 44. Despite her distinction between the social and political, in her critique of Hegel Arendt argues that, "The idea of world history itself is clearly political in origin." Arendt, *On Revolution*, 53.

4.4: Conclusion

These readings of Marx and Arendt have shown that necessity arguments gain their political valence from the contexts within which they are deployed – that is, internally, within the conceptual orders each establishes. The fact that there is no inherent force or political value to necessity arguments as such makes them accessible for different – even diametrically opposed – political purposes. In evaluating how and to what ends Marx and Arendt use necessity, I have tried to show not only commonalities and family resemblances that can illuminate a broader politics of necessity, but also to emphasize necessity’s discursive malleability within theoretical frameworks. Particular necessity arguments produce particular conceptions of politics, yet necessity’s perennial suggestion of closure and fixity makes it an attractive political tool. Yet, it is insufficient to say, simply, that necessity closes spaces. While necessity may be understood by Marx as a force driven by material conditions, and which narrows the scope of what may be achieved politically, Arendt’s understanding of necessity is decisive in delimiting and expanding the scope of the political, if only by emphasizing what politics is not.

Necessity is therefore not only a production, but a conceptual tool that can enable and aid political activity. Necessity is not only part of worlds already made, but can be a key tool for world-building. This suggests that even as one may criticize the use of specific necessity arguments by particular thinkers in particular texts, it is just as important to notice the way in which such critiques are carried out not through merely anti-necessitarian argument, but by changing necessity’s terms and character. In this sense, necessity is not only a potential problem, but the very “stuff” of politics.

Of course, and for obvious reasons, most theorists wish to not call overt attention to their use of necessity arguments since necessity supports and justifies their most basic political commitments. Necessity carries with it the most political force when it appears to stand alone as a fact. In other words, while Marx may wish to emphasize a phenomenon that is presented as necessary, he does not call attention to the discursivity of that phenomenon. He would never use the contemporary scholarly language of “I argue,” for example, since a central tenet of Marxist rhetoric is that rhetoric what Marxism’s enemies do. Marx, who preferred dialectical relations over reified concepts when criticizing capitalism, naturalizes necessity in his theoretical system; its productions are billed as already “there.”

This strategy, of course, is not unique to Marx. The rhetorical practices of the Western canon generally are concerned to make the contingent appear necessary by obscuring the arguments that constitute and sustain them. On the other hand, the rhetorical approach to the necessity arguments that sustain that naturalized foundation aims to denaturalize, which it does by showing that nature, too, is an argument. Given that within both the Marxian and Arendtian orbits, necessity is always at risk of being naturalized, necessity carries with it the possibility – though not the necessity – of contributing to an eclipsing of politics. Yet, the tensions created by forcing Marxian necessitation and Arendtian anti-necessitation together can illuminate new political possibilities that are not encumbered by the need to be rooted firmly in one camp or another.

The stakes change, however, when we leave the world of canonical political theory and consider how necessity arguments can be used in public deliberations. To

consider this difference, I now turn to a reading of Thucydides's *History of the Peloponnesian War* to see what a rhetorical approach to necessity might reveal not about a particular theoretical framework or thinker, but the more persistent, reoccurring questions of surrounding war and national identity.

Chapter Five: Pericles and the Rise and Fall of Necessity in Thucydides's *History*

“Themistocles...had put it to them that they would be unable to avoid paying, because the Athenians had the support of two powerful deities, one called Persuasion and the other Anankē.” – Herodotus, *Histories* 8.111.1

5.1: Introduction

This chapter examines Thucydides's use of necessity arguments in the first two books of *The History of the Peloponnesian War*. First, I argue that to understand Thucydides's explanation of the war's cause and the origins of the Athenian empire, we must approach the realist thought with which Thucydides has been credited for introducing as a series of rhetorical practices. Engaging realism as rhetoric illuminates the strategies of argument by which it shapes perceptions of political possibility. Then, using a critique of realist rhetoric as a foundation, I turn to the passages in Thucydides's history that deal with the Athenian statesman and orator Pericles. Thucydides's account of Pericles's speeches and leadership illuminates necessity arguments in three basic ways. First, Pericles moves in and out of Thucydides's narrative in a relatively short but critical period toward the beginning of the war. This provides an opportunity to consider necessity arguments against the backdrop of rapidly changing political circumstances. Second, Pericles reaches the height of his political power shortly after entering Thucydides's text. Thucydides depicts a formidable leader to whom the Athenians look as they consider entering – some say starting – the war. I approach the first two books of the *History* as a case study of the politics of necessity, where Thucydides shows how changing political fortunes and concrete developments in war determine the usefulness, but also the possibility, of framing political events in terms of necessity. Can a leader

establish necessity himself? If so, how, and what are necessity's political limits when it issues from the rhetorics of an individual leader? Third, Pericles's speeches serve not only as examples of necessity arguments, but provide an opportunity to examine necessity as it intersects with cultural categories such as honor, glory, collective memory and identification with a nation's past, as well as a gendered and raced nationalism. Pericles's necessity arguments seize the cultural content that fills these categories and attempt to turn that content into political power. Thucydides's text thus provides a means by which we can think about the politics of necessity, but also the rhetorical forms that sustain that politics.

5.2: Preliminaries: Causes of War and Origins of Empire

To understand the rhetorical strategy at work in Pericles's necessity arguments, it is important to examine the rhetorical strategies Thucydides deploys in his text more generally. We must remember that the Pericles of the *History* is a Thucydidean literary construction.¹ Before turning to Pericles, and to establish some context for evaluating Thucydides's account of Pericles's speeches, I consider Thucydides's famous explanation of the cause of the war, as well as his argument about the origins of the empire. In so doing, I aim to recast the tradition of realism with which Thucydides is often associated as a series of rhetorical practices. This recasting, in turn, helps us think about the nature of the necessity arguments at the center of Pericles's speeches and acclimates us to Thucydides's broader rhetorical commitments.

¹ See Susan Sara Monoson, *Plato's Democratic Entanglements: Athenian Politics and the Practice of Philosophy* (Princeton: Princeton University Press, 2000), 186; Nicole Loraux, *The Invention of Athens: The Funeral Oration in the Classical City* (New York: Zone Books, 2006); John Zurnbrunnen, "'Courage in the Face of Reality': Nietzsche's Admiration for Thucydides," *Polity* 35, no. 2 (Winter 2002): 252/54.

Thucydides's explanation of the war's cause is the earliest appearance of a necessity argument in the text. In a much analyzed passage, he argues that

...the real reason for the war is, in my opinion, most likely to be disguised by [common arguments about Athens breaking the Thirty Years Truce (*prophases*)]. What made war inevitable (*anankasai*) was the growth of Athenian power and the fear which this caused in Sparta.²

Rex Warner renders *anankasai* as “inevitable.” It could also have been rendered “compelled” or “unavoidable,”³ or other markers of the logic of necessity that suggests the absence of choice and agency. Several points about Thucydides's explanation deserve special note. First, Thucydides establishes a causal argument. While “the growth of Athenian power” brought fear, the war itself is posited as the result of relational forces; neither the Spartans nor the Athenians caused it. It is not only the case, as Clifford Orwin notes, that Thucydides's explanation is circular, that “What justifies the war is its necessity, and only that.”⁴ Instead, necessity acts and provokes as though it were an agent. By not noting that necessity plays this role in Thucydides's text, Orwin misses a broader point about this kind of necessity rhetoric: Thucydides's cause ascribes agency to a complex of concepts – “fear” and a passively constructed “growth” in power. The explanation attributes agency to what Francis Cornford calls “non-natural” agents⁵ and

² Thucydides, *History*, I.23.

³ Liddell and Scott render *Anankē* variously as force, constraint, and necessity.

⁴ Clifford Orwin, *The Humanity of Thucydides* (Princeton: Princeton University Press, 1994), 21.

⁵ Cornford notes that “Thucydides had no word for ‘cause’ in our sense. From the fact, among others, that instead of discussing the causes of the war, he thought he had completely accounted for its origin when he had described the grievances (*aitiai*) of the combatants, it appeared that it was not only the word that was missing, but the concept.” Francis Macdonald Cornford, *Thucydides Mythistoricus* (London: Edward Arnold [Elibron Classics Replica Edition], 1907), 98. A clarification is also in order, however. Cornford's neo-platonist distinction between natural and non-natural agents underscores why late-twentieth century work on the nature of the subject, most notably in Foucault's writings, takes us a step further in problematizing cause in relation to necessity. When proper names themselves are shown to be discursive, replacing “the growth of Athenian power” with “Athens,” or “Pericles,” or “The Market,” does not resolve the question of who did what. We might find Thucydides's explanation more satisfying if he said “Sparta

what is called, in literary theory, *prosopopeia*, or personification. I have already noted that for Homeric Greeks, necessity (*Anankē*) was a god of compulsion and force. In this tradition, necessity was spiritual. Yet, even from a more secular perspective, necessity (the logic) and Necessity (the god) are grammatically indissociable. In Thucydides's explanation, fear operates as an agent but does not register as such. The difference between personified concepts (such as fear) and proper names (such as Pericles) often slips by without notice because the distinction is not grammatical – subjects that are not proper names still fill the subject position. In particular, political systems premised on individual responsibility (located in subject positions) hold individuals (marked by proper names) responsible, and require that a doer of deeds be named. But faith in necessary forces provide such individuals with a means of evading that responsibility, filling the “doer” category with a concept. Thucydides uses *Anankē* as the narrative glue in a story about political concepts; insofar as these objects act, and not namable political actors, these objects and these narratives limit the scope of political judgment and accountability. Fear cannot be held responsible.

What matters here is neither the origin nor the reality of these concepts, but their place in political narratives. G.E.M. de Ste Croix is correct in arguing that, for Thucydides, *Anankasai* operates no differently in provoking war than the *prophases*, pretexts or common beliefs. In other words, power balancing is a phenomenological affair, and realist rhetorics may have the same political consequence as would any

caused the war,” but this satisfaction would not stop the movements that make causality political. This is a critique of grammar, not a call for some *real* causality.

metaphysical truth about the world realism posits.⁶ Recognizing the political value and effects of concepts that function as agents is central to engaging a politics of necessity because, as agents, they are posited as the forces that make necessity function; they are posited, in other words, as the causes of necessity. Consider, for example, the launching of the Sicilian Expedition and Thucydides's claim that "what made this expedition so famous was not only its astonishing daring and the brilliant show that it made, but also its great preponderance of strength over those against whom it set out..."⁷ As it was to its Empire, Athens's "expedition" appears as an actor, a force capable of compelling.

Thucydides's cause of war relies on the same reasoning as the "security dilemma," a theory introduced by John Herz in 1951.⁸ The security dilemma suggests that nations are driven by the pursuit of power for purposes of security, but that this pursuit necessarily brings about others' insecurity. This makes the pursuit of security a zero-sum game and establishes a narrative of a closed system forced to react to itself continually. The practical effect of this theory, as Herz himself notes, is not benign. The "mutual fear of what initially may never have existed may subsequently bring about exactly that which is feared the most."⁹ The problem thickens when we recast the security dilemma (and theories like it) to suggest not that they are right or wrong but, instead, carry with them a rhetorical force that can be called upon to make the case for war. In this view, it matters

⁶ Ste Croix argues that, "The Spartans were not in any literal sense "compelled" to declare war, certainly not without resorting to arbitration first, as Thucydides makes their own kind point out." "Often...[*anankasai* implies] no more than strong pressure and do not by any means exclude a large measure of choice by the person under constraint—and so it is here [in the explanation for the start of the war." The identity of the "real aggressor" is *our* question, not Thucydides's. G. E. M. De Ste. Croix, *The Origins of the Peloponnesian War* (Ithaca: Cornell University Press, 1972), 60-1.

⁷ Thucydides, *History*, VI.31.

⁸ See *Political Realism and Political Idealism: A Study in Theories and Realities* (Chicago: University of Chicago Press, 1951).

⁹ *International Politics in the Atomic Age* (New York: Columbia University Press, 1966), 24.

little whether threats exist or not. Even if one thinks that Herz's dilemma is wrongly theorized, perceptions of offensive or defensive framed through security dilemma rhetoric may be enough to encourage nations to mobilize for wars; *belief* in the security dilemma makes it function in practice as a *casus belli* for the simple reason of its rhetorical effect. The theory also prepares the ground to be able to speak about phenomena such as a "growth of Athenian power" in such a way that it forecloses basic political questions such as: Why did Athens build up its military to such an extent? What constructions or perceptions of necessity governed or provoked the Athenian militarism that supposedly offset the balance of power between Athens and Sparta? How did these changes come to turn the former allies of Athens and Sparta into oppositional forces? These questions are irrational when asked from within the terms of the Thucydidean narrative since that narrative presumes the very predicament to which Athens must respond.

The displaced agency at the center of Thucydides's account points to a more general feature of the classical realism with which Thucydides is often associated: grounded in a theory of ontological presuppositions, this realism repels both ethical and political critique by insisting that human activity cannot alter the structure or dynamics of interpersonal and interstate relations.¹⁰ Instead, political realities are said to issue from systemic dynamics and the nature of objects established prior to and defined outside of politics. Consider, for example the "Melian Dialogue," the go-to text for realists who want to begin the story of classical realism with Thucydides:

¹⁰ E. H. Carr argues that realism subordinates ethics to political imperatives. This is of course not a problem endemic only to international relations. Realists such as Machiavelli or Hobbes utilize and are then forced to work within similarly self-fulfilling theories of nature. Edward Hallett Carr, *The Twenty Years' Crisis, 1919-1939: An Introduction to the Study of International Relations* (London: Macmillan, 1946).

Our opinion of the gods and our knowledge of men lead us to conclude that it is a general and necessary law of nature to rule whatever one can. This is not a law that we made ourselves, nor were we the first to act upon it when it was made. We found it already in existence, and we shall leave it to exist for ever among those who come after us, and we are merely acting in accordance with it.¹¹

The Athenian position in the Melian dialogue conforms to the basic precepts of realism.

The Athenians speak in terms of self-interest and reject arguments that appeal to morality or other cultural norms. Yet in approaching this passage as a statement of realism's basic tenets, the "it" with which the Athenians close seems strange. Like all "its," the Athenians' "it" is produced and sustained by the argument that precedes it. The "general and necessary" laws become "general and necessary" precisely because, in the same breath, "the Athenians" claim not to have authored them. The statement is necessary only if the Athenians "found" and did not make the laws. The establishment of this apparent necessity, in turn, requires that a strategy of denial – in particular that the Athenians made the laws to which they refer – legitimate their rejection of the Melians' argument.¹² This denial functions as the condition of possibility that allows rhetoricians to speak of states as objective units of analysis and coherent, stable actors.

The persuasive force of realist thinking stems, paradoxically, from a denial that allows it to make the world understandable by installing limits of political possibility that it claims it did not install. These limits establish the terms under which the Melians are said to be compelled, by "general and necessary" laws, to accept the conditions of the situation they find themselves in. In this view people, but also city-states such as Athens

¹¹ Thucydides, *History*, V.105.

¹² Thucydides's decision to make the Athenians and Melians speak in singular voices lends the dialogue to an appropriation by realists in which nation-states act singularly, with one voice. The reduction of polyvocality to single voices produce a crisp political narrative that is well suited for clear causal relations and, by extension, necessity.

and Sparta, are delimited by a causally-closed system in and to which they can only react, like billiard balls or dominos. Causes such as those Thucydides offers us are attributed not to individual actors but to characteristics of the system itself, where argument and political culture not only don't much matter, but are conceptually and politically foreclosed. If we hold the Melian Dialogue as representative of Thucydidean thought, as many survey texts in international relations do,¹³ Thucydides appears as an anti-political thinker rather than a theorist who might be making an important contribution to our understanding of political possibility. The necessity arguments that underpin the Melian Dialogue present the theorist with a choice: does realist analysis simply explain, or does it introduce more problems than it resolves? Does it explain the political only by sacrificing politics?

To understand Thucydides's explanation as a production of necessity arguments, it is important to consider the extent to which Thucydidean configurations are bounded and animated by commitments to the language of realism itself.¹⁴ William Connolly has argued that realism and neorealism are premised upon "strategies of textual closure."¹⁵ Specifically, Connolly claims that Waltz "treat[s] our categories as the categories to impose upon whatever comes before them."¹⁶ The outcome is not an international order theorized so that it provides the predictive power that social theorists covet, but a

¹³ See Christine Ingebritsen and Iver B. Neumann, *Small States in International Relations* (Seattle: University of Washington Press, 2006), 17; Jack Donnelly, *Realism and International Relations* (Cambridge: Cambridge University Press, 2000), 167.

¹⁴ Martin Ostwald, *Anankē in Thucydides* (Atlanta: Scholars Press, 1988). See also, Clifford Orwin, "Justifying Empire: The Speech of the Athenians at Sparta and the Problem of Justice in Thucydides," *The Journal of Politics* 48, no. 1 (1986) and "Piety, Justice and the Necessities of War: Thucydides' Delian Debate," *American Political Science Review* 83, no. 1 (1989). For a discussion of this idea in neo-realism, see ch. 2, "Global Political Discourse," in William E. Connolly, *Identity/Difference: Democratic Negotiations of Political Paradox* (Minneapolis: University of Minnesota Press, 1991).

¹⁵ Connolly, *Identity/Difference*, 54.

¹⁶ *Ibid.*, 51.

predictive power derived from a reductionist methodology that undermines the very value of that power. Importantly, Waltz establishes these totalized categories even as he acknowledges the limits of totalizing theoretical frameworks.¹⁷ To notice this is to notice that attempts to explain realism in realism's own terms require a recitation and reiteration of those terms, which promotes not understanding, but a theoretical myopia that debilitates that theory's epistemological, but also political reach. At the same time, a belief in necessity requires a parallel faith in the system that makes necessity arguments possible. The perceived legitimacy of realist thought, but also the rhetorical structures and boundaries that constitute its discursive limits, provide Thucydides's necessity arguments with foundations.

So, is Thucydides a realist? And do Pericles's necessity arguments, which Thucydides uses to teach his readers about international politics, stem from a grounding in classical realism? As Owen notes, "Thucydides devotes far too many pages to the history of Athens and to intercity differences for us to infer that he thinks nonstructural factors unimportant."¹⁸ The different political cultures in Athens and Sparta shape Thucydides's understanding of the dynamics that led to the war. Thucydides depicts the internal deliberations of Athens and Sparta as far more complex than realist analysis would suggest. As we will see when we turn to Pericles, the lack of necessity in the Athenian position turns out to constitute an important part of Pericles's rhetorical strategy and he deploys the rhetoric of realism selectively, when and as it suits his political needs. The Athenian position must be produced through contests over necessity.

¹⁷ See Kenneth Waltz, "Realist Thought and Neorealist Theory," *Journal of International Affairs* 44, no. 1 (1990): 31.

¹⁸ John M. Owen, "The Canon and the Cannon: A Review Essay," *International Security* 23, no. 3 (Winter 1998-1999): 147-78.

Far from simply illustrating the basic tenets of realism, the Melian Dialogue exposes its contingencies. Put simply, the Melians take positions that don't make sense from a realist perspective.¹⁹ Instead, they refuse to default to base interest and survival and appeal to justice rather than simple *realpolitik*.²⁰ The necessity that the realist frame suggests, with its laws and forces, seem to apply only to the Athenians. Rather than dismissing the Melians as idealistic or foolish, it seems more useful to consider the tensions in these two modes of discourse, and distill a politics from rhetorical dissonance. Those who identify Thucydides as a classical realist, with the Melian Dialogue representative of an expression of the inescapable laws of power, have read half the dialogue, while the inability of the realist framework to account for the Melians' behaviors undermines realism's pretense to the necessity of its own laws.²¹ It also underscores the consequences of reading in the pursuit of necessary laws, rather than studying their impossibility and exceptions. Thucydides's supposedly realist text bursts at the seams with challenges to realism's basic precepts. The Melians serve as a voice of conscience, but also critic of realist thinking. In the Athenians' final reply they tell the Melians that "...judging from this decision of yours, you seem to us quite unique in your ability to consider the future as something more certain than what is before your eyes, and to see uncertainties as realities, simply because you would like them to be so."²² From Thucydides's text, of course, we know that it is the Athenians whose vision fails; I

¹⁹ See Hayward R. Alker, "The Dialectical Logic of Thucydides' Melian Dialogue," *American Political Science Review* 88, no. 3 (Sep., 1988) and Bagby, "The Use and Abuse of Thucydides in International Relations."; Neta Crawford, *Argument and Change in World Politics: Ethics, Decolonization, and Humanitarian Intervention* (Cambridge: Cambridge University Press, 2002).

²⁰ Thucydides, *History*, V.89-90.

²¹ Michael W. Doyle, *Ways of War and Peace: Realism, Liberalism, and Socialism* (New York: W. W. Norton, 1997).

²² Thucydides, *History*, V.113.

am suggesting that this failure is in large part due to the misleading effects and unclear thinking that necessity arguments perpetuate.

I am thus suggesting that realism is at base a system of persuasion. Its persuasive goal is to encourage behaviors that, as Herz suggested, may be self-fulfilling, constituting and provoking the very dynamics that theory claims to simply describe. E. H. Carr argues that realism “tends to emphasize the irresistible strength of existing forces and the inevitable character of existing tendencies, and to insist that the highest wisdom lies in accepting and adapting oneself to, these forces and these tendencies.”²³ He does not note that the depiction of these tendencies (of what “exists”) is an accomplishment of realism’s rhetorical power. The realist longs for the stable analytic categories and parsimonious explanations that necessity provides. Freud cast this problem in theological terms, as a surrender of self to external forces: “Impersonal forces and destinies cannot be approached; they remain eternally remote... We are defenceless, perhaps, but we are no longer helplessly paralyzed; we can at least react.”²⁴ Such theoretical positions comfort precisely because they make the contingent necessary and justify reactive political dispositions. Of course, the theorist cannot be excepted from the possibility of seduction, as the necessity arguments that issue from her methodological commitments may validate her inquiry. These moments require epistemological skepticism and political vigilance.

²³ Carr, *The Twenty Years' Crisis, 1919-1939: An Introduction to the Study of International Relations*, 10. Quoted in Gregory A. Raymond, "Necessity in Foreign Policy," *Political Science Quarterly* 113, no. 4 (Winter 1998-1999): 676.

²⁴ From “The Future of an Illusion,” in Sigmund Freud, *The Freud Reader*, ed. Peter Gay (New York: W. W. Norton, 1989), 694.

Thucydides's discussion of the origins of the Athenian empire leans on the same kind of rhetoric as his explanation of the cause of the war.²⁵ In the passage cited above, the Athenian ambassadors tell the Spartans that "We did not gain this empire by force. It came to us at a time when you were unwilling to fight on to the end against the Persians."²⁶ When considered in relation to external forces and inevitable movements, Athenian agency is key only insofar as Athens met the moment of opportunity bravely, as willing recipients and bearers of empire. This type of agency is productive, even as that productivity is made possible by reactions to perceptions. Though an active "accepting" is crucial for associating that empire with Athenian character, it is not portrayed as an act of pure agency: "It was the actual course of events which first compelled us to increase our power to its present extent: fear of Persia was our chief motive, though afterwards we thought, too, of our own honour and our own interest."²⁷ This multiple cause is productive in that it keeps the rhetorical architecture of the empire narrative open for Pericles's use, to remind the Athenians of the importance of agency even in the face of necessity. These propositions help us see more clearly the rationalizations ascribed to Athenian behaviors. Not only was Sparta unwilling to stand up and take what was available, but Athens did

nothing extraordinary, nothing contrary to human nature in accepting an empire when it was offered to [it] and then refusing to give it up...And [Athens was] not the first to act in this way. Far from it. It has always been a rule that the weak should be subject to the strong....²⁸

²⁵ Thucydides, *History*, I.2-20 and I.89-I.117.

²⁶ Ibid., I.75. It is important to note the assumptions in this statement. Finishing the job entails empire building, as though somebody were going "take" the empire, and so it might as well be Athens.

²⁷ Ibid.

²⁸ Ibid., I.76.

Athens's "accepting" the empire is said to be governed but also justified by human nature. But Athens's clarity in recognizing the natural condition is said to be praiseworthy. This double gesture stems from the logic of necessity that arguments about human nature install, both naturalizing and rationalizing Athenian behavior.

Yet, when the decision whether or not to begin the war is debated, the focus shifts to the so-called Megarian decree, a trade sanction barring the small Spartan-allied island of Megara from Athenian ports and the agora. I do not suggest that the Megarian Decree was the cause of the war, or even that it was a major cause. While the Megarian Decree does not factor heavily in Thucydides's explanation for the war, Kagan notes that "The majority of ancient opinion regarded it as the main cause of the war."²⁹ According to Thucydides, Athens used the Decree to punish the Megarians for "cultivating consecrated ground, cultivating land that did not belong to them, and for giving shelter to slaves who had escaped from Athens." For the Spartans' part, "...the chief point and the one that they made most clear was that war could be avoided if Athens would revoke the Megarian decree...."³⁰

Inevitability is first introduced as a question in Thucydides's text during the debate between Corinth and Corcyra at Athens.³¹ This is a remarkable moment where Thucydides narrates a political contest about time itself and whether or not Athens can afford to wait to support Corcyra. This contest considers crucial terms that make necessity arguments possible. Time, as the foundation of inevitable war, is produced through necessity arguments that carry with them the political meanings they accumulate

²⁹ Donald Kagan, *The Outbreak of the Peloponnesian War* (New York: Cornell University Press, 1965), 254.

³⁰ Thucydides, *History*.

³¹ *Ibid.*, I.31-55.

through the rhetorical contests that shape them. Calculations of forces and power balancing suggest that, if the war is inevitable, then Athens should come to Corcyra's aid. Corcyra's main objective is to persuade Athens that war is immanent. Indeed, according to Corcyra, there is not a potential war, but only a

coming war – a war, in fact, which has already almost broken out already. Certainly you will not be showing very much foresight for your own city if, at this time, you are in two minds whether to have on your side a power like Corcyra, whose friendship can be so valuable and whose hostility so dangerous to you.³²

Corinth, on the other hand, tells the Athenians that “though Corcyra is trying to frighten [Athens] into doing wrong by this idea of a coming war, there is no certainty that a war will come.”³³ Corinth links Athens's decision to ally with Corcyra to the production of inevitability; that is, Corinth wants to ascribe agency, to name Athens and narrate the scene so that Athens is, paradoxically, the cause of inevitability. After Corcyra and Corinth debate inevitability, however, Thucydides tells us what settled the inevitability question: “The general belief [in Athens] was that, whatever happened, war with the Peloponnese was bound to come.”³⁴ This belief, despite the essential contingency of the question of inevitability, shows the interrelationship between causes of and cases for war. Athens aligned itself with Corcyra for strategic reasons that all but guaranteed that war would come. This had the double effect of validating and forcing “the general belief,” making the public “belief” prophetic within the context of its self-fulfilling narrative. Thucydides's juxtaposition of the Corinthian and Corcyraean speeches at Athens make clear that political time is a rhetorical phenomenon, and that inevitability operates on the level of belief, and is a product of persuasion.

³² Ibid., I.36.

³³ Ibid., I.42.

³⁴ Ibid., I.44.

5.3: Negotiations of Necessity in Pericles's Speeches

Pericles enters Thucydides's narrative not as an established orator and leader, but as a military general whose views on empire and military strategy are shaped during the period leading up to the formal declaration of war. He enters at a moment when islands throughout the empire are beginning to revolt, and Athens launches a series of offensives to put them down. Thucydides reports that before becoming a key figure in the war deliberations, Pericles had commanded a successful attack on Sicyon, a "failed" attempt to "capture" Oeniadae,³⁵ and "subdued the whole island" of Euboa.³⁶

It was at this time as well that the island of Megara revolted, an event that would be integral to early deliberations about war. Megara had both destroyed the Athenian garrisons sent to put it down and led the Megarians to ally themselves with a number of Spartan affiliates, including Corinth and Sicyon.³⁷ Thucydides reports that there was open debate and disagreement amongst the Athenians over the war's necessity. After listening to the Corinthians and Corcyraeans, and debating the matter internally, the Athenians

...held an assembly in order to debate the matter, and decided to look into the whole question once and for all and then to give Sparta her answer. Many speakers came forward and opinions were expressed on both sides, some maintaining that war was necessary and others saying that the Megarian decree should be revoked and should not be allowed to stand in the way of peace. Among the speakers was Pericles...³⁸

³⁵ Ibid., I.111. This rhetoric of "capture" within the more defensive rhetoric of responding to revolt signals the difficulty of distinguishing offensive from defensive actions. The defense of the empire seems to require such offensives, however much those in positions of political power may feel forced politically to deploy rhetorics of defense. Empire functions as a structural constraint on political life, even as it yields rewards. Its threefold root in "beginning," "ruling," and "empire" suggest two key political ramifications: empires are forms of rule (*archein*), yet they also determine the parameters and constraints of rule. What they may begin is in part dictated by the logic of empire itself.

³⁶ Ibid., I.114.

³⁷ Ibid.

³⁸ Ibid., I.139.

In this, the so-called “war speech,” Pericles argues that he is “against making any concessions to the Peloponnesians” and that there is no choice as to whether or not there will be war; the only question is when it will begin. This claim is advanced through a commitment to the structural conditions of realist power balancing, as well as propositions about time. The end product is a rhetorical strategy that brings claims about future events into the immediate moment by locating predictions of historical contingency in an ahistorical structure. This structure is then advanced through a necessity argument: “We must realize that this war is being forced upon us, and the more readily we accept the challenge the less eager to attack us will our opponents be.”³⁹ In framing the war in this way, Pericles discounts the possibility that Athens might be forcing the war on itself, but also issues a political challenge to his fellow Athenians that amounts to their willingness to face an already existing reality. Are they brave enough to face the challenges he has described?

Pericles then turns the discussion to the Megarian decree,

Let none of you think that we should be going to war for a trifle if we refuse to revoke the Megarian decree. It is a point [the Spartans] make much of, and say that war need not take place if we revoke this decree; but, if we do not go to war, let there be no kind of suspicion in your hearts that the war was over a small matter. For you this trifle is both the assurance and the proof of your determination. If you give in, you will immediately be confronted with some greater demand, since they will think that you only gave way on this point through fear. But if you take a firm stand you will make it clear to them that they have to treat you properly as equals.⁴⁰

Pericles argues that although the Athenian sanction of Megara may seem insignificant from the standpoint of its immediate material effects, it is in fact vitally important to

³⁹ Ibid., I.144.

⁴⁰ Ibid., I.140.

Athens's long-term security interests. Pericles insists that jettisoning the Decree will be read as weakness by the Spartans: "they will think that you only gave way on this point through fear."⁴¹

Considering the centrality of the Decree to Pericles's argument, some context is crucial. The Decree was in fact a largely unsuccessful strategy advocated for by Pericles. In response to accusations that Megarian farmers had "cultivat[ed] consecrated ground" and "land that did not belong to them, and of giving shelter to slaves who had escaped from Athens" Athens "excluded the Megarians from all ports in the Athenian Empire and from the market in Attica itself."⁴² Not only did the Decree collectively punish the Megarians for the purported actions of some of its farmers, but it was bound to intrigue and political speculation in Athens. Plutarch suggests that Pericles advanced the Decree to deflect attention from rumors about Pericles's private life, and that "Pericles...seems to have harboured some private grudge against the Megarians."⁴³ Aristophanes noted the recklessness of the Decree itself; the laws of the Decree "sounded like drinking songs."⁴⁴ Whatever the details, there is widespread agreement that the Decree was unprecedented and severe, as embargoes were a virtual unknown in Greece. Rather than pressure Megara to give in to Athens, it forced them to the Corinth-Sparta alliance, which evoked more anger. Though the Athenian assembly approved Pericles's proposal, it was tied to his name, and served as a pillar of Periclean leadership. Pericles had to stand behind his project since revoking the Decree would not have constituted a mere policy shift, but a

⁴¹ Ibid.

⁴² Ibid., I.139.

⁴³ Plutarch, *The Rise and Fall of Athens: Nine Greek Lives*, trans. Ian Scott-Kilvert (London: Penguin Books, 1960), 196.

⁴⁴ Cited in Kagan, *The Outbreak of the Peloponnesian War*, 255.

concession that his signature strategy had failed. It is for this reason that Pericles stood to strengthen his own position by insisting that sanctions on Megara were vital to Athenian security and a legitimate cause for war.⁴⁵

In arguing that the Decree be re-affirmed, Pericles situates his determination that war is necessary within a sequence of claims about the consequences of compromise. Absent Pericles's framing, of course, the Athenians could have chosen freely to revoke the Decree. Political possibility, after all, is constructed through and not prior to rhetoric. Yet, it is precisely this open-ended possibility that makes Pericles's limitation of the Athenian imagination so crucial and politically efficacious. Pericles establishes a series of necessary consequences in relation to Athenian identity. By pegging the survival of Athenian identity to the decision to mobilize for war, he moves it to the center of political debate and is able to use and refer to it in the course of his speeches. Pericles's ability to use Megara to constitute the appearance of necessity for the Athenians affords him and argumentative foundation and political reference point.

Pericles poses a challenge of ends: "this trifle is both the assurance and the proof of your determination."⁴⁶ A specter of weakness threatens Athenian identity, underscoring the political nature of this supposedly economic argument: "if you take a firm stand you will make it clear that they have to treat you properly as equals." Pericles claims that "There is often no more logic in the course of events than there is in the plans of men"⁴⁷ but also that the outcome of revoking the Decree is certain. It is no doubt because of Pericles's awareness of this contradiction that his predictions are made in such stark

⁴⁵ Ibid., 270.

⁴⁶ Thucydides, *History*, I.140.

⁴⁷ Ibid.

terms, as though the revolt of a small island could pose an existential threat to Athens.

Affirming the Decree provides “the assurance and the proof of your determination.”

Pericles makes this determination the cornerstone of Athenian security.⁴⁸

This moment, however, is early in Thucydides’s narrative. Necessity arguments remain marginal to Pericles’s speeches in Book I as he mobilizes the Athenians around the claim that the empire “came to them” only because they had the courage to take it (and, of course, “in war opportunity waits for no man”⁴⁹). Orwin notes that in the Funeral Oration Pericles presents “the empire as a project freely chosen by the Athenians for the sake of endless glory...,” a claim that further suggests that “the empire owes nothing whether to necessity or to advantage; nothing has compelled the Athenians to wield the empire, and the reasons for their choice are only the loftiest.”⁵⁰ A key goal of the Oration is to restore and articulate Athenian virtues through a rhetorical challenge. Pericles is strengthened by his ability to utilize the spaces of possibility between necessity and action, and particularly those marked by the dictates of realism and the agency it supposedly constrains. Pericles draws upon a conceptual order theorized later by Aristotle: action cannot consist wholly of a courageous response to necessity.⁵¹ Nor can it be located in the purely virtuous activity of “spontaneous,” self-valuing individuals as

⁴⁸ In putting it this way, Pericles betrays an anxiety about the necessity of his claims. Jef Huysmans has called this the “normative dilemma of security writing,” which is premised on the suppression of normativity that calls attention to itself in the act of suppression. This is another example of the centrality of strategies of denial in political argument. Jef Huysmans, “Defining Social Constructivism in Security Studies: The Normative Dilemma of Writing Security,” *Alternatives* 27 (2002).

⁴⁹ Thucydides, *History*, I.140.

⁵⁰ The Athenian ambassadors at Sparta say that “It was the actual course of events which first compelled us to increase our power to its present extent: fear if Persia was our chief motive, though afterwards we thought, too, of our own honor and our own interest.” Ibid., I.75. Though the taking of the empire wasn’t and couldn’t be compelled, Athenian power was.

⁵¹ See Book III of *The Ethics*, in Aristotle, *Complete Works*.

in Nietzsche,⁵² or in “virtue for its own sake”⁵³ or “moral goodness.”⁵⁴ In binding necessity and courage, Pericles does rhetorically what Aristotle does in theory: “The city projects a standard of nobility in order to make political life possible, by pulling human beings out of their necessitous animal nature” even as “the consequence of the extreme pursuit of nobility is an abstraction from the city’s very real needs.”⁵⁵ According to Orwin, “The implication is that while Athens is unfree to abdicate her burden, she might once have been free to decline it.”⁵⁶ While Pericles acknowledges a moment of decision or choice, he also emphasizes the choices the Athenians made to remind them who they are. Courage, he suggests, is the primary distinction between Athens and the rest. This point is further articulated in Pericles’s acknowledgment that the origins of the empire were “perhaps unjust” because Athens chose to undertake empire-building. Choices are often difficult, but they are part and parcel of leading. One of Athens’s best qualities, according to Pericles, is that it creates the patterns that others follow; it “does not copy the institutions of [its] neighbors,” and “is an education to Greece.” At its best, Athens establishes standards and leaves evidence of them in its wake in the form of “everlasting memorials.”⁵⁷ Its choices cannot be governed by extant rationalities or external forces, and its relation to *archein* is primarily as a ruler of empire, not a subject.

Pericles acknowledges that his Oration is not about the dead, who “have shown themselves valiant in action, and it would be enough, I think, for their glories to be

⁵² See Nietzsche, *On the Genealogy of Morals*, 37.

⁵³ Ward, “Nobility and Necessity,” 71, 80.

⁵⁴ See Alasdair C. MacIntyre, *After Virtue: A Study in Moral Theory* (Notre Dame: University of Notre Dame Press, 1981).

⁵⁵ Ward, “Nobility and Necessity,” 80.

⁵⁶ Orwin, *The Humanity of Thucydides*, 29. Cf. Thucydides, *History*, II.40.

⁵⁷ Thucydides, *History*, II.37; II.41.

proclaimed in action....”⁵⁸ The Oration makes worlds and does not merely reflect on them.”⁵⁹ Pericles’s formations serve a crucial rhetorical function of producing an Athenian identity that can be used as an object of reference in his later speeches as well as to make grief productive for the mobilization of war. This skill in form-giving is perhaps one reason that Thucydides’s claims that “What emerged was called democracy but was in fact domination by the pre-eminent man.”⁶⁰ This domination stems in part from his ability to subsume and rework Athenian identity in his speeches, define it and then use that definition for political ends.

Well-regarded leaders were chosen to deliver these orations, and Pericles enjoys strong public support at the moment when he delivers his. Because of this strength, Pericles is able to emphasize and use the purported absence of necessity, for the glory of Athens lies in its ability to make bold choices. Pericles does not yet need the necessity frame since the trust that the Athenians affords him secures his authority. In fact, he

⁵⁸ Ibid., II.35.

⁵⁹ Dana Villa calls this “aesthetic monumentalism.” Dana Richard Villa, *Socratic Citizenship* (Princeton: Princeton University Press, 2001), 6. Nietzsche argues that the oration was “no more than a grand, optimistic illusion” invented by Thucydides, like a “transfigured evening glow whose light the evil day the preceded it could be forgotten,” inserted at the moment of Athens’s “dawn.” Friedrich Nietzsche, *Human, All Too Human: A Book for Free Spirits*, trans. R. J. Hollingdale (Cambridge: Cambridge University Press, 1996), 174. Dietz interprets this as an attempt to keep “nostalgic yearning” at bay. Dietz, *Turning Operations*, 188. John Zumbrennen argues that the Oration was Thucydides’s way of portraying Pericles as “deceiving in an attempt to assert a particular sort of control over reality.” Yet, Zumbrennen correctly notes that “Those words are not simply meant to deceive momentarily, they are meant, in a sense, to change reality.” Zumbrennen, ““Courage in the Face of Reality”: Nietzsche’s Admiration for Thucydides,” 252/54. More recently, Simon Stowe has argued that we might consider two Pericleses: the Pericles of the *History* and the Pericles in the *History*. This reading illuminates Pericles’s speech both as a moment where Athenian identity is cast in new light, but also the role that the Oration plays in shaping Thucydides’s tragic arc. These engagements view the oration as an attempt to fix Athenian identity in ways that serve ideological and literary functions; it provides, that is, an image by which a tragic narrative can be spun. See also Loraux, *The Invention of Athens: The Funeral Oration in the Classical City*.

⁶⁰ Thucydides, II.65, quoted in W. Robert Connor, *Thucydides* (Princeton: Princeton University Press, 1984). Connor’s translation emphasizes Pericles’s active role in form-giving, rather than Athens passively being “in the hands of its first citizen” as Warner translates it. Though Connor’s translation seems more apt, much hangs on the distinction, particularly because Thucydides goes on to differentiate these Periclean strategies from those of the “demagogues” said to succeed him.

benefits from the possibilities that the absence of necessity make possible. This strategy is double: Pericles gives Athens form as well as a sense of self-congratulation about that form, but claims to simply report on the city's greatness, as though he isn't inventing this picture of Athens in speech. Such strategies of denial are key to his ability to constitute while not being seen as the constitutor. Pericles presents himself as a mediator of preexisting forms, a reporter rather than a poet. Athens – and not Pericles – must appear to be the form-giver of the identity Pericles invents, for form-giving is the seduction and promise of the Athenian democratic ideal. In the Oration, Thucydides portrays Pericles as merely helping the Athenians to understand themselves and the situation they face.

Pericles is careful to retain both the pretense and rhetoric of democracy, even as his rhetorical strategy delimits and narrows the scope of possibility facing Athens. His challenge was to draw upon both necessitarian and anti-necessitarian rhetoric without allowing either to dominate or call attention to the paradox of their simultaneous appearance. To do this, Pericles exploits democratic ideals, speaking about Athens's democracy at the same time as he steers “the masses” toward certain outcomes.

Pericles also makes clear that there are limits to this strategy since certain preconditions allow it to work. Given the contingency and unpredictability of politics, these conditions are far from permanent. At this stage, Pericles uses the movement toward necessity, but not yet its arrival. Despite challenges and losses, the war effort is not yet altogether lost, and so Pericles does not yet need to frame the moment in terms of necessity. Instead, his perceived strength as a leader benefits from the perception that he is making choices, just as he compliments the Athenians by referring to their bold choices

and venerable tradition of courage. Later, however, when Pericles delivers the so-called “second invasion” speech,

there had been a change in the spirit of the Athenians. Their land had been twice devastated, and they had to contend with the war and the plague at the same time. Now they began to blame Pericles for having persuaded them to go to war and to hold him responsible for all the misfortunes which had overtaken them; they became eager to make peace with Sparta and actually sent ambassadors there, who failed to achieve anything. They were then in a state of utter hopelessness, and all their angry feelings turned against Pericles.⁶¹

In the midst of this unsettling and hopelessness, Pericles turns sharply toward necessity arguments, outfitted with the agents, consequences and goals that causal arguments require. Pericles argues that his policies were openly affirmed by his fellow Athenians. He reminds them that in a democracy, citizens may not be passive recipients of rhetoric: “...you are attacking me for having spoken in favour of war and yourselves for having voted for it.”⁶² Pericles reminds the Athenians that they deliberated and decided that war was necessary. They, not he, are the true authors of necessity which, in this view, is a product of democratic deliberation. Not only does he remind them of this decision, but he exploits their agency in making it, as though his leadership had no role in persuading – not to mention convincing – them toward that end: “...nor should you be angry with me, you who came to the same conclusion as I did about the necessity for making war.”⁶³ This approach enables Pericles to praise the Athenians for their courage and willingness to confront necessity, but also to use that praise as a mode of persuasion.

In a shift from his earlier strategy, Pericles turns accusative, addressing the Athenians in a way that belies the persistent “we” of his earlier speeches: “your anger

⁶¹ Thucydides, *History*, II.59. This passage illustrates Thucydides’s stalwart support of Pericles. He argues that the Athenians wrongly blamed Pericles for “for having persuaded them to go to war.”

⁶² Ibid., II.60.

⁶³ Ibid., II.64.

against me...your giving way to your misfortunes,”/“I am the same as I was...it is you who have changed.”⁶⁴ Amidst these accusations, Pericles introduces an if/then distinction to clarify and invent Athens’s options:

If one has a free choice and can live undisturbed, it is sheer folly to go to war. But suppose the choice was forced upon one – submission and immediate slavery or danger with the hope of survival: then I prefer the man who stands up to danger rather than the one who runs away from it.⁶⁵

The argument is circular: Pericles “prefer[s] the man” who meets the challenge that Pericles has leveled. The Athenians are presented with a choice, but their manhood, hence identity as citizens, is at stake in that choice. Pericles has, in a sense, linked decisions about the war to an existential challenge of the most basic order. It is a challenge, moreover, limited to two possible positions: destruction, or Pericles’s idealized picture of the citizen from the Funeral Oration, who is characterized by his willingness to mobilize for war. That picture is now threatened, as Pericles asserts that the Athenians are operating within, and their political options subordinated to, a domain of absolute necessity. Pericles moves from a position wherein argument and culture, civic identity and manliness determine Athens’s options, to one where the world is determined externally by the dynamics of the international system itself. To accomplish this, Pericles deploys the rhetoric of realism. But it is important to notice that Pericles calls upon this rhetoric only when his ability to manage the war has begun to fail. The previously internal question of Athens’s ability to live up to the ideals of its identity and culture is replaced by a new acceptance that the war question is determined externally. It is here, in

⁶⁴ Ibid., II.60-1. I read these passages as evidence of an increasing aggressiveness in Pericles’s rhetoric, while Thucydides sees them as evidence that Pericles “was so highly respected that he was able to speak angrily to them and to contradict them.” II.65.

⁶⁵ Ibid.

the move from within to without Athenian politics, to an apolitical, determined world, that we see an anti-politics at work in realist rhetorics. Thus framed, there is no political solution to the Athenian predicament. There is only reaction.

Pericles establishes the courage to confront necessity as a key feature of Athenian civic identity, and uses it to reaffirm that great men are the fountain of Athenian greatness. In firming up the Athenian relationship to this external world, he mobilizes gender norms to pre-empt those who might challenge the presence of necessity. The men who died toward the beginning of the war, and were honored with the Funeral Oration, stand for Athens as “the meaning of manliness.”⁶⁶ Pericles suggests that challenging the boundaries and rules of the inevitable makes one suspect: the man who accepts and confronts the inevitable is courageous, the man who avoids or questions it is cowardly. The necessity of being a man is established as a compulsory feature of Athenian identity. Manliness and courage cannot be “state-induced,” but must be “natural,” originating from the men themselves.⁶⁷ Here, manliness functions as both a structural and rhetorical foundation of risk, as well as an enabler of the heroic deeds that risk makes possible.

These necessity arguments, which manifest ultimately as arguments about inevitability, carry with them far reaching political consequences. They show that identities operate as necessity arguments that seek to impose an appearance of logical consistency on changing circumstances. Pericles uses this framework productively when he maintains that real men do not change their minds as conditions change. Further, he treats Athenian ambivalence not as a problem with the war *itself* (which would suggest

⁶⁶ Ibid., II.42.

⁶⁷ Ibid., II.39. This provides a stark contrast from Thucydides narration of Pericles’s final speech, delivered “with the aim of putting fresh courage into” the Athenians. Ibid., II.59.

the failure of his policies), but with the Athenians *themselves*, moving from an analysis of the world to character judgments: “you took my advice when you were still untouched by misfortune, and repented of your action when things went badly with you; it is because your own resolution is weak that my policy *appears* to you to be mistaken.”⁶⁸ It makes sense that Pericles should take this approach. Resentment, as Nietzsche argues, is a powerful if problematic, but also productive force in identity formation. It can be easily mobilized by a skillful rhetorician. Thucydides reports that the changes in the Athenian political dynamic that motivated Pericles to take this position were palpable.⁶⁹ As the war turned for the worse, the Athenians proved increasingly unwilling to do as Pericles suggested. Part of this refusal constituted an unwillingness to direct blame for their misfortunes toward themselves. Instead, they turned their anger toward Pericles:

there had been a change in the spirit of the Athenians...Now they began to blame Pericles for having persuaded them to go to war and to hold him responsible for all the misfortunes which had overtaken them. They became eager to make peace with Sparta...They were in a state of utter hopelessness, and all their angry feelings turned against Pericles.⁷⁰

As goes Pericles, so go the conditions and claims about the world that supported him. Pericles could not simply ignore these changes or charges; nor could he continue to claim that the war was going better than it was. His only option was to deploy necessity as a rhetorical counterforce to establish an appearance of steadfastness and stability in the hope that this steadfastness would register as an affirmation of his strength rather than stubbornness. Pericles shifts to a tone of “unabashed self praise”⁷¹ with his relation to

⁶⁸ Ibid., II.61. Emphasis added.

⁶⁹ Nietzsche, *On the Genealogy of Morals*, 41.

⁷⁰ Thucydides, *History*, II.59.

⁷¹ Connor, *Thucydides*, 65. Quoted in Zumbrunnen, ““Courage in the Face of Reality”: Nietzsche's Admiration for Thucydides,” 253.

necessity offered as proof of his character and judgment. He announces that he is “a man inferior to no one in judging what is necessary and explaining it,”⁷² but also that he stands firmly against the pressure to bend with circumstances: “As for me, I am the same as I was, and do not alter; it is you who have changed.”⁷³ Here, the legitimacy of Pericles’s necessity arguments hinge on his ability to convince the Athenians that what they were feeling was not in fact the case. This strategy underscores the important role that the rhetoric of necessity can play in securing stable political positions and identities against the contingent world of politics, but also underscores dangers and limitations of the rhetoric of necessity. Pericles attempts to use a transcendent construction of Athenian identity, with all that that identity carries with it, to create an appearance of consistency in the face of apparent change. This transcendent referent reminds the Athenians of the ideal they are betraying.

In contrast to his early speeches, which celebrated Athenian empire and the courage that made its acquisition possible, Pericles’s last speech situates Athens in a position of absolute compulsion. Gone are the days of Pericles’s praise for his fellow Athenians; now, he condemns them for severing debate from action, and fearing action itself. He condemns them for having changed their minds about the war and for blaming him only after Athens fell upon bad fortune; he accuses them of softness and self-betrayal. Through necessity arguments, Pericles tries to establish that what the Athenians think is real is actually short-sighted and misleading. He attempts to do this by applying a necessity argument to a contingent world, claiming his reality as fact. Pericles asserts his powers of projection to convince them that the problem is not with his strategy, which

⁷² Thucydides, *History*, II.60.

⁷³ *Ibid.*, II.61.

promises “ultimate benefits [that] are still far away and not yet clear for all to see,” but with the Athenians’ lack of vision.⁷⁴ The constitution of this lack is said to consist of those suggestions that fall outside of Pericles’s determinations of necessity. The burden of proof falls on those who suggest that another path is possible.

Pericles establishes that Athens’s engagement in the war is necessary through a series of identifiable rhetorical strategies. Though he establishes a framework for the costs of retreat, he does not revise his arguments as circumstances change. Instead, he revises his characterization of the world within which his arguments operate, which lets him keep his rhetoric stable while revising the context within which it operates. This has the double benefit of making Pericles appear steadfast and unflappable in the face of a changing world. By engaging in world creation Pericles affords himself a custom-fit foundation in which his more stable rhetorics can operate. Plutarch tells us that Pericles was well-known for his skill at such reality-shaping: “When Archidamus, the king of Sparta, asked Thucydides [the leader of the aristocratic party, not the historian] whether he or Pericles was the better wrestler, Thucydides replied: ‘Whenever I throw him at wrestling, he beats me by arguing that he was never down, and he can even make the spectators believe it.’”⁷⁵ Thucydides portrays Pericles as adept at world-building, but also at mobilizing patriotic sensibilities capable of confronting the worlds he constructs. Pericles is skillful at “guiding” the Athenians’ “thoughts in a direction away from their immediate suffering” and making them feel “their own private sufferings rather less

⁷⁴ Ibid.

⁷⁵ Reporting the Athenian Melesias’s reply to the Spartan King Archidamus about whether Melesias or Pericles was a better wrestler. Plutarch, *The Rise and Fall of Athens: Nine Greek Lives*, 173.

acutely,” regarding Pericles “the best man they had” despite their anger with him.⁷⁶

Pericles was skillful, in short, at convincing “crowds” that what they felt was not what they felt. His later necessity arguments make use of the Athenians’ desperation.

Thucydides suggests not only that the “mass of people” continually put their faith in Pericles, but that Pericles was adept at managing that faith, and the determination it fueled, through his rhetorical savvy and leadership.

Pericles’s skill in deploying necessity arguments appears to be, at least in part, what Thucydides is referring to when he calls Pericles “the most powerful both in both in action and in debate.”⁷⁷ Pericles celebrates Athens for its refusal to “think that there is an incompatibility between words and deeds.”⁷⁸ His insistence that action and speech never be severed, and his repugnance for those who act without deliberating, or who deliberate without intending to act, might be best understood not as two separate skills, but language’s performative power to construct the world in which political arguments are made. Rhetoric and action mutually constitute political culture. Pericles’s call for action, supported by his assertions of inevitability, suggest that the Athenians must accept his account of reality. Yet, as I have argued, the reality that underpins necessity arguments can be best understood in terms of the rhetorical practices that give it rise. For example, Neta Crawford notes that, “The first step in understanding the role of arguments in maintaining and later dismantling colonialism is to identify the main arguments on the table, though the table itself can change....”⁷⁹ Pericles’s reality is a product of just such an argument. Crawford adds that, “Even at the height of the ancient Athenian empire,

⁷⁶ Thucydides, *History*, II.65.

⁷⁷ Ibid., I.139.

⁷⁸ Ibid., II.41.

⁷⁹ Crawford, *Argument and Change in World Politics*, 138.

colonizers found it necessary to justify colonialism.”⁸⁰ While this is no doubt true, it is also the case that leaders spend a great deal of time attempting to persuade their constituents about what the world out there is. Here again, description turns out to be not merely a basic feature of linguistic life, but a formidable rhetorical tool. It is not only the case that colonialism is justified; it is also the case that the conditions of what colonialism *is* are shaped by arguments that are not always recognized as arguments—“the table” doesn’t simply “change,” as Crawford suggests it does. Sometimes it is changed strategically through argument and for political purposes, many of which depend upon necessity arguments. Rhetoric does not simply respond to a changing world; sometimes, it produces that world. As we see with Pericles, the one-to-one relationship between rhetoric and the world has limits, and sometimes shatters. But such shattering brings about new rhetorical formulations – yesterday’s inevitability may appear, in retrospect, quite avoidable. But once we see the relationship between possibility and the world in which a particular possibility (or impossibility) is said to exist, we cannot bifurcate rhetoric and action, but must think them together.

The later Pericles recognizes that his earlier arguments are no longer sufficient for the new misfortunes plaguing Athens. He tells the Athenians that they “ought to be satisfied with the arguments which [he] often used on other occasions to show that there is no good reason for fears,” but then goes on to tighten the various rhetorical screws he introduced in earlier speeches. He increases the historical weight of the empire by noting that Athens’s forefathers “won an empire by their own toil and sweat, without receiving it

⁸⁰ Ibid., 138-9.

from others [and kept it] safe so that they could hand it down to [future generations],”⁸¹ but adds that “it is right and proper...to support the imperial dignity of Athens.” Not only is the empire a source of enormous pride to Athens, but “you cannot continue to enjoy the privileges [of empire] unless you shoulder the burdens of empire.”⁸² Surrendering the empire entails the betrayal of forefathers, but also the surrender of the material rewards that the empire afforded Athenian society.

Pericles establishes the empire as a material force that Athens has no option but to contend with and fight for. Though it is not the first time that he discusses empire openly, Pericles’s strategy in these later speeches is to reorganize and resituate Athens’s relationship with its empire. Though Athens once ruled the empire, it is now ruled *by* it. Athens and its empire, that is, have switched positions, subject for object, agent for victim. Against and within this structure, the Athenians can only “shoulder the burdens.”⁸³ These burdens suggest that material circumstances have changed, and underscores the need for a corollary rhetoric of change for necessity to take hold: the compulsion to fight the war is no longer presented as a simple matter of heroism or of writing a particular history, but of survival, both in terms of Athenian identity (of having a past) and materially (of avoiding physical destruction).

In articulating the structure of the empire, and using that structure to advance an argument for war, Pericles makes it possible to speak in terms of absolute compulsion. For now, aside from Athenian greatness, and the “simple” “question of freedom or slavery,” there is a

⁸¹ Thucydides, *History*, II.62.

⁸² Ibid., II.63.

⁸³ Ibid.

hatred which they have incurred in administering it. Nor is it any longer possible for you to give up this empire, though there may be some people who in a mood of sudden panic and in a spirit of political apathy actually think that this would be a fine and noble thing to do. Your empire is now like a tyranny: it may have been wrong to take: it is certainly dangerous to let it go. And the kind of people who talk of doing so and persuade others to adopt their point of view would very soon bring a state to ruin....

Such people, moreover, “are quite valueless in a city which controls and empire....” But luckily these apathetic people can be “supported by people who are capable of taking action.”⁸⁴ In reminding the Athenians about the stakes of the war, Pericles turns to a full-on necessity argument, while still issuing character challenges to promote action in the face of necessity. His rhetoric forecloses perceptual spaces that are essential to political possibility, since Athens does not merely have, but has become, an empire. Not only has Athenian identity become embedded within this imperial identity, but it is materially constituted by, with, and as empire; the empire is therefore necessary to the existence of Athens and that existence hinges on the deeds of men of action.⁸⁵

This empire is packaged in the accusational tone noted above, but also serves as a call to arms and responsibility: “*Your* empire is now like a tyranny.”⁸⁶ Pericles’s “your” marks a decline in the “we” of Athenian democratic life, of shared responsibility, and establishes a rhetoric of ownership and acceptance. His evocation of tyranny – a system characterized by the subsuming of political life under ungovernable external forces – marks the establishment of a new distribution and system of power. Pericles’s open acknowledgment and rhetorical deployment of empire provides him with clear markers to

⁸⁴ Ibid.

⁸⁵ As is noted in the literature, the Athenian orator and leader, Cleon, later tells the Athenians that “what you do not realize is that your empire is a tyranny....” Ibid., III.37. This moment in the Periclean narrative can be seen as a foretelling of what the Athenians will eventually have to come to realize in a space that no degree of rhetorical glossing can fill.

⁸⁶ Ibid., II.63. Emphasis added.

establish the boundaries and dynamics of the predicament. With Athens subsumed by tyranny, these boundaries and dynamics are posited beyond the political, out of Athenian hands; they enable Pericles to speak about and refer to the Athenian predicament without implicating himself in its construction. This strategy attempts to erase those injuries for which Pericles himself may be held accountable and resign the Athenians to the conditions of the moment.⁸⁷

In this view, the concept of empire appears an ideal rhetorical structure in which Pericles can secure his position since it constitutes a strong framework for establishing necessity arguments, both domestically and internationally. As we might expect, as Pericles's authority and perceived legitimacy is threatened, he leans increasingly on the necessity arguments made possible by this empire. He does this, moreover, in full awareness that "the enthusiastic state of mind in which people are persuaded to enter into a war is not retained when it comes to action, and that people's minds are altered by the course of events."⁸⁸ The world must appear determined and nonnegotiable. This shift highlights a delicate interplay between constantly changing political circumstances and a language of necessity that appears solid in the face of change. This rhetoric of empire attempts to do precisely what Pericles had attempted to do with Athenian identity. But it

⁸⁷ Many have noted this moment's relationship to another moment, later in the text, when the Athenian orator and leader, Cleon, later tells the Athenians that "what you do not realize is that your empire is a tyranny...." Ibid., III.37. This moment in the Periclean narrative can be seen as a foretelling of what the Athenians will eventually have to come to realize in a space that no degree of rhetorical glossing can fill.

⁸⁸ Ibid., I.139. The context in which this quote appears is Pericles asserting that his refusal to give different advice when the stakes seem higher, or when many of his fellow Athenians disagree with him, is a mark of his character. This would seem to suggest that leaders in strong positions do not need to use the framework of necessity. This, of course, is too simple; smart rhetoricians – and especially demagogues – deploy necessity all of the time, even when they are relatively well-positioned politically. Yet when rhetoricians deploy a strategy of significantly reducing the scope of political possibility – usually via necessity – it seems reasonable to argue that this suggests vulnerability. Rhetoricians who enjoy high levels of trust and legitimacy have a stake in owning their arguments in ways that the frame of necessity negates.

does so through arguments about structural compulsion, not challenges of national character and identity. Unlike identity, empire is posited as a material structure, not merely a rhetorical product. This is accomplished, paradoxically, by deploying a rhetoric of reality. Through their constitutive strategies of denial, the realist rhetorics Pericles deploys claim to transcend rhetoric; rhetoric, after all, is in this view a pejorative reserved for those unable or unwilling to accept reality. The possibility of altering the terms of the empire is presented almost as though one were contemplating a change in geography.⁸⁹ The empire is presented (that is, *made* present) as an external and autochthonous form governed not by political possibility and deliberation, but independent laws – laws that the Athenians are now forced to obey.

At Pericles's most vulnerable moment, his negotiation of rhetoric and circumstance exposes both the strength and the problem of deploying necessity to characterize a political moment. As a metaphor of logic that will never quite capture a political reality, its promise is always unfulfilled. Moreover, the stability that necessity suggests may shatter as political contingency breaks through and exposes the contingency of its rhetorical surface structure. Pericles is not able to sustain this rhetorical pitch for very long and is eventually fined and removed from his position in part because the events (especially the plague of 430 B.C.E.) proved too much for his arguments to re-frame. His strategy was entrenchment rather than flexibility and his authority snapped under the weight of his arguments. This suggests that there are limits to a rhetoric held in a cognitively dissonant relationship with the experience of war, and underscores not the

⁸⁹ The non-negotiability, and resistance to reinterpretation of geography is characteristic of much realist thought. See, e.g., John J. Mearsheimer, *The Tragedy of Great Power Politics* (New York: W. W. Norton, 2001). For a critique, see Glenn Herald Snyder, "Mearsheimer's World-Offensive Realism and the Struggle for Security," *International Security* 27, no. 1 (Summer 2002).

flexibility of necessity, but the necessity of flexibility in political argument.⁹⁰ When the promises of words do not correlate with the world, language must bend or the worldview breaks. The clarity and crispness of logic is confronted by a fog, not only of war, but of political circumstance itself. The language of necessity provides clarity, but can also expose the rhetorical nature of politics as the world changes beneath it, rendering that which appears necessary as contingent.

Thucydides's text thus illustrates the relationship between vision and necessity. Pericles presents himself as capable of seeing farther and more clearly his fellow Athenians, of seeing the costs of failing to confront the inevitable. Thucydides tells us that when the war turned badly for Athens, the Athenians "were behaving exactly as [Pericles] had expected they would" in blaming him for their misfortune. After the Athenians turn on Pericles, Pericles tells them: "I expected this outbreak of anger on your part against me, since I understand the reasons for it...."⁹¹ He challenges the Athenians not only to see further, but also shapes what lies ahead in that distance. In so doing, Thucydides's Pericles calls upon a prophetic narrative strengthened by a rhetoric of necessity. Pericles's strategy ultimately fails because the Athenians do not identify with, and so are not coerced by, his challenges. Pericles's prophecy and Thucydides's foreshadowing bears this out when, after Pericles has left the stage, the Athenians do exactly as he advised them not to and attempt to expand their empire and attack Sicily. The tragic arc of Thucydides's text, and his control over Pericles's necessity arguments, resolve with Athens's decline and fall. The *History*'s narrative closure, as with all

⁹⁰ Which, as we saw in Chapter III, is at the heart of Machiavelli's relationship to the problem of necessity and politics: "I can give no fixed rule and will say nothing of them." *The Prince*, 29.

⁹¹ Thucydides, *History*, II.59.

“strategies of textual closure” and the necessity arguments that these “closed” texts enable, are products of Thucydidean authorship, not of the Periclean strategies themselves. Such firm command over necessity arguments is not proper to the domain of politics, but to literature and other forms of invention. Only historical writing has the privilege of advancing necessary necessity arguments – at least until another historian challenges them. On the other hand, as Foucault notes, oftentimes, “[w]e want historians to confirm our belief that the present rests upon profound intentions and immutable necessities.”⁹² Rhetorical analysis provides tools for resisting this desire by not only suggesting that “profound intentions and immutable necessities” are merely apparent, but by advancing roadmaps for disrupting them.

5.4: Conclusion

Pericles “helps” the Athenians see that their current political moment is subject to imperial logics beyond their – and his – control. But accepting this understanding comes at the cost of a significantly narrowed the Athenian political imagination, of the Athenians coming to see themselves not as heroic, but as objects of domination and hopelessness.⁹³ This reading suggests that the rhetorical power of necessity may stem from its ability to close political spaces, if only perceptually and temporarily. The Athenians would have had to have seen themselves in the image Pericles offered for his strategy to have succeeded. Yet, accepting the world as Pericles portrayed it required a

⁹² Nietzsche, *Genealogy and History*, in Michel Foucault and Paul Rabinow, *The Foucault Reader*, 1st ed. (New York: Pantheon Books, 1984), 90.

⁹³ The Periclean strategy suggests that the material empire needs to be accompanied by what Arendt, following Hegel, calls an “empire of thought” – a rhetorical framework to justify the “sea of necessity” within which Pericles wants the Athenians to think they are swimming.

corollary belief that political power had become incapable of affecting change. Pericles's goal, successful at first but ultimately a failure, was to persuade them to see the world, the war and themselves from that perspective.

Aristotle, I noted in Chapter Three, argued that to persuade successfully, rhetoricians must narrow the perceived scope of possibility. This suggests that violence to possibility, such as bridge-burning or world-creation, is a prerequisite for collective action and decision-making, and leadership more generally. In his accounts of Pericles's speeches, Thucydides takes the reader from a war that nobody in particular starts to a war that nonetheless must be fought, but also from an empire that was "taken" and "won" by Athens to one that became a "burden" and source of domination. Moreover, these distinctions are rhetorical productions that seek to delimit the most fundamental Athenian understanding of possibility. This suggests that the key political question is not only what happens within necessity's laws, but how those laws are installed and maintained, produced and reproduced politically, and whether it is possible, in democratic contexts, to critique and challenge necessity claims.

I have emphasized an approach to necessity that is sensitive to the degree to which politics is itself constituted by and experienced in language. This approach looks past the sovereign model of rhetoricians to attend to a broad range of rhetorical forces. Yet, rhetoric also has consequences. To borrow language used by Judith Butler, Pericles was both "done" and "undone" by the limits of his rhetoric, and his role in establishing necessity resulted in his subjection to those very rhetorics. This "doing" is not "just rhetoric." Indeed, to chart Pericles's rhetoric is to chart the material struggles of the Periclean political moment and its downfall. Pericles's ups and downs show us not only

that rhetorical force stems from the kinds of claims that are made about what a state must do in the world, but also a speaker's ability to provide an account of what that world *is*.⁹⁴

A critical analysis of rhetoric and politics helps the theorist to see that political authority and legitimacy are constituted dialectically, where a polity's experience of events depends upon its understanding of the circumstances causing them. This interplay emphasizes the centrality of rhetoric in political life, but also suggests that a daunting task for rhetoricians, who must maintain the appearance of control, claiming responsibility for good times and denying agency during the bad. Pericles's rise, as well as his downfall, were products of this interplay between rhetoric and politics.

⁴¹ Cf. Ostwald, *Anankē in Thucydides*, 66.

Chapter Six: The Rhetoric of Necessity in Marshall's *McCulloch v. Maryland*

“Necessity is not an established fact, but an interpretation.” – Friedrich Nietzsche

6.1: Foundations of Necessity in the *McCulloch* Opinion

Chief Justice John Marshall's opinion in *McCulloch vs. Maryland* (1819) is a textbook case of how to make contingent axioms appear necessary. Among the strategies Marshall deploys to create this appearance is what Gerald Wetlaufer calls “the denial of rhetoric,”¹ which aims to suppress the rhetorical practices that constitute legal arguments. Though the denial of rhetoric aims to deny that legal opinions are rhetorical, there is a deep paradox in the fact that the denial of rhetoric is issued precisely through a rhetoric of denial. This rhetoric is a cornerstone not only of *McCulloch* in particular, or Marshall's opinions generally, but of the ethos of scientific-legal culture of Marshall's time.² Rhetorical analysis is thus key for grasping this culture and understanding its dependence upon a unique set of necessity arguments.

Marshall illuminates necessity in two interrelated ways. His semantic challenge in *McCulloch* is of course to give meaning to the “necessary and proper” clause of the U.S. Constitution and fix the boundaries of federal and state power. Yet, Marshall also uses necessity arguments to establish these meanings. To do so he uses necessity not only as a concept that limits, but to open new political spaces. Far from merely limiting the scope

¹ Gerald B. Wetlaufer, “Rhetoric and Its Denial in Legal Discourse,” *Virginia Law Review* 76, no. 8 (Nov. 1990).

² The development of legal theory was a hallmark of the modern period. As Vico notes, “The Greeks possessed countless books on philosophy, a great many eloquent speeches, but no technical books on law.” Giambattista Vico, *On the Study Methods of Our Time*, trans. Elio Gianturco (Ithaca: Cornell University Press, 1990), 49.

of politics, as most necessity arguments seem to, Marshall's construction of necessity expands it. In both cases, Marshall casts necessity as a form of rhetoric that stands at the center of political life.

G. Edward White argues that the period in which Marshall wrote was characterized by an aggressive move toward the systemization of American law. That period was characterized by a distrust of lawyers, wherein many considered legal challenges to be at odds with the pretenses of virtue that were so coveted by proponents of American republicanism.³ According to White, the challenges of geographic and population expansion and establishing reliable channels of commerce put many of the classical republican values of the earlier republic in tension with the need for an effective legal code and a capacious federal government.

White also notes there was in the early nineteenth century a burgeoning industry of legal commentaries, "not offered as political theory but as "scientific" digests of the law 'as it was.'"⁴ Among the first of these commentaries was St. George Tucker's edition of Blackstone's *Commentaries*, to which Tucker added extensive notes on the relationship between English common law and the American Constitution. According to White, Tucker's strategy was "to return to first principles" and then use scientific reasoning "to "unfold" those principles."⁵ Tucker's commentary maintained that "...legal study should be "scientific," a term that White uses to characterize many such efforts at

³ G. Edward White, *The Marshall Court and Cultural Change, 1815-1835*, Abridged ed. (New York: Oxford University Press, 1991), 110. See also Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (New York: Norton, 1972) and Pocock, *Machiavellian Moment*.

⁴ White, *Marshall Court and Cultural Change*, 110.

⁵ *Ibid.*, 82.

that time.⁶ In this context, White defines “scientific” as the “systemization and organization of relevant data.” At least in terms of effect, Joseph Story’s commentaries mark the height of this move toward systemization,⁷ the latter of which leaned heavily on Marshall opinions.⁸ An associate justice on the Marshall court, Story was “a singularly energetic and visible promoter of the “scientific” approach to legal study” who, beginning with a commentary on Joseph Hoffman’s *A Course of Legal Study* in 1817, wrote a series of anonymous articles and reviews, “each praising an effort to make American law more adaptive, generalized, and “scientific.”⁹ The legal scholarship of what White calls the “the Story network,”

amounted to a claim on the part of one sector of the legal profession to establish the terms not only of legal discourse but of moral philosophy and political economy, issues that Tucker had regarded as unsettled and Hoffman as auxiliary to law, were cast in legal terms.¹⁰

Marshall’s long friendship with Story is key to understanding Marshall’s approach to constitutional questions. Marshall “believed that his and Story’s theories of constitutional interpretation were ‘identical’ ...”¹¹ and much legal scholarship of the day, including Story’s commentaries, relied upon Marshall’s reasoning, and often cited Marshall opinions as established legal principle.¹² White summarizes the fundamental and unifying message of the renewed interest in constitutional theory during this period:

Thus the most significant contribution of the elite commentators to early-nineteenth-century jurisprudence was not their assiduous digests and

⁶ Ibid., 81. See also Howard Schweber, “The Science of Legal Science: The Model Natural Sciences in Nineteenth-Century American Education.” (Law and History Review, 1999), <http://www.historycooperative.org/journals/lhr/17.3/schweber.html>.

⁷ White, Marshall Court and Cultural Change, 91.

⁸ Ibid., 103.

⁹ Ibid., 91.

¹⁰ Ibid., 108.

¹¹ Ibid., 101. The inset quote is from a letter from Marshall to Story on December 25, 1832.

¹² Ibid., 114-16. As White notes, Story sometimes even cited cases he himself authored.

compilations. It was rather their implicit judgment that while law and political ideology in America were closely linked, they should be treated as capable of being separated. Professional commentary was claimed to be distinct from political theory even though it was a version of it. The image of law fostered by the commentators was that of an entity above or apart from politics.¹³

It is of course a platitude to note that the seventeenth to nineteenth centuries are characterized by a scientific ethos. While early modern thinkers such as Bacon and Hobbes worked through the relationship of political order and scientific method in explicit terms, later thinkers such as Locke, Kant and Spinoza take this position for granted as it had by that point become engrained in intellectual culture.¹⁴ *The Federalist Papers*, in advancing a “science of politics,”¹⁵ feature these argument types as well, advancing “a desire to see America as a *logic*, as the necessary, determined, predictable outcome of true premises about human interaction.”¹⁶ These texts are representative of a tradition that enables Marshall to see himself as “an authoritative, apolitical expounder of the relevance of [republican] principles to a rapidly changing cultural environment.”¹⁷ Marshall’s style is emblematic of the mode of judicial interpretation in which, according to Keith Whittington,

the ultimate exposition of constitutional meaning by the Supreme Court is deemed a necessary and sufficient condition for sustaining constitutionalism. All that remains is to determine how the Court should interpret the text. Constitutional

¹³ Ibid., 110-11.

¹⁴ For discussion of this tradition see Quentin Skinner, *The Foundations of Modern Political Thought* (Cambridge: Cambridge University Press, 1978). On Hobbes, see Steven Shapin and Simon Schaffer, *Leviathan and the Air-Pump: Hobbes, Boyle, and the Experimental Life* (Princeton: Princeton University Press, 1985).

¹⁵ Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* (New York: Bantam Books, 1982), 38.

¹⁶ Dolan, *Allegories of America*, 59.

¹⁷ White, *Marshall Court and Cultural Change*, 111. Many of Marshall’s arguments appear to be appropriations of arguments made in *The Federalist*. E.g., No. 44: “Few parts of the Constitution have been assailed with more intemperance than [the necessary and proper clause]; yet on a fair investigation of it, no part can appear more completely invulnerable. Without the *substance* of this power, the whole Constitution would be a dead letter.” Hamilton, Madison, and Jay, *The Federalist Papers*, 228.

maintenance becomes a bloodless and technical enterprise best conducted by the legal intelligentsia.¹⁸

White portrays the Marshall court as steeped in a jurisprudential metaphysics that insists that correct – rather than persuasive or reasonable – answers to legal questions can be found. In this view, the Court’s task is to deal with “the law itself” and concerned only with whether or not the Court had discovered “the right result.”¹⁹ This allowed Marshall, and the Marshall Court generally, to issue univocal opinions without flagging the political complications inherent in the rhetorical reduction.²⁰

Against this backdrop, the unifying feature of these different thinkers is their deployment of argument types that rely upon stylistic practices as well as metaphysical commitments.²¹ So-called “descriptive” theorists take similar approaches, creating and referring to “a text for which the author is no longer available.”²² Yet, it is not only the case that the author is “no longer available”; rather, the authors of these texts actively *deny* authorship. To mark a general distinction, White distinguishes between the “modern” court and the perceptions of courts during Marshall’s time:

Modern Supreme Court Justices are perceived as “making law” in their interpretations of the Constitution, statutes, or common law doctrines; early-nineteenth-century judges were not similarly perceived. The task of finding and declaring a source of law, and applying it to a particular case, was not regarded as lawmaking.²³

¹⁸ Political Foundations of Judicial Supremacy: The Presidency, the Supreme Court, and Constitutional Leadership in U.S. History (Princeton: Princeton University Press, 2007), 26.

¹⁹ White, *Marshall Court and Cultural Change*, 198-9.

²⁰ *Ibid.*, 198.

²¹ William E. Nelson, “The Eighteenth-Century Background of John Marshall’s Constitutional Jurisprudence,” *Michigan Law Review* 76, no. 6 (May 1978).

²² Strong, “How to Write Scripture,” 157. Whereas Strong argues that Hobbes accomplishes author removal, I argue that we can still read for marks of authorship in Hobbes’s erasures.

²³ White, *Marshall Court and Cultural Change*, 118.

This move amounts to a subsuming of ethos into logos, guarded against the intrusion of a pathos that pure, unfettered reason does not need. Others claim that ethos is simply irrelevant or even not there. Pointing to Heraclitus, who made similar claims, Cornelius Castoriadis warns that “It is never the logos that you are listening to but always someone....”²⁴ The logos, in other words, does not itself speak and perceptions that reason alone is sufficient for argument suggests the presence of rhetorical legerdemain. Paul Kahn argues that a similar tendency puts Marshall squarely in a tradition wherein “[t]he Constitution embodies the principles of republican government, which are deducible as a matter of science.”²⁵

My interest is not merely asserting the more obvious point that this pretense to a pure logos was predominant in Marshall’s time. Instead, my goal is to show how these rhetorical practices give theoretical shape to this period. For this reason, as has been the case throughout the project, I am not concerned to suggest what a “real” or “true” meaning of necessity would entail, but rather to show what kind of work necessity does for Marshall’s rhetoric. In focusing on necessity arguments, where metaphors of logic abound, these rhetorical practices appear as scientific rhetorical practices.²⁶ White notes that “Science provided the metaphors through which the nature of American law and the role of the legal judicial professions could be recast...A scientific approach to legal issues made law more comprehensible to the average citizen and less susceptible to being

²⁴ Castoriadis, *The Imaginary Institution of Society*, 4.

²⁵ *Legitimacy and History: Self-Government in American Constitutional Theory* (New Haven: Yale University Press, 1993), 28. Brisbin takes a slightly different view, however, noting that Marshall writes at a period that the United States is undergoing a shift from classical republicanism (a tradition in which Marshall was trained) to liberalism Richard A. Brisbin Jr, "John Marshall and the Nature of Law in the Early Republic," *The Virginia Magazine of History and Biography* 98, no. 1 (1990).

²⁶ Citing Morton White, Dolan argues “that Publius rejects the idea of a knowledge of politics as certain as that which science gives us of natural laws” but “does nonetheless appeal to the *model* of scientific reason in the staging of his political reflections.” Dolan, *Allegories of America*, 42.

“twisted” by cunning lawyers.”²⁷ A rhetorical reading of *McCulloch* affords unique tools for understanding the politics of these metaphors. Eagleton puts it this way:

The language of a legal document or scientific textbook may impress or even intimidate us because we do not see how the language got there in the first place. The text does not allow the reader to see how the facts it contains were selected, what was excluded, why these facts were organized in this particular way, what assumptions governed this process, what forms of work went into the making of the text, and how all of this might have been different. Part of the power of such texts thus lies in their suppression of what might be called their modes of production, how they got to be what they are; in this sense, they have a curious resemblance to the life of the human ego, which thrives by repressing the process of its own making.²⁸

Rhetoric allows us to see this production by demystifying all forms of science, including legal science. It is important, however, to remember that Marshall was a unique chief justice, and that we cannot necessarily generalize about legal rhetoric from his opinions.²⁹ Still, in noticing how he constructs his argument, we can learn something about the rhetorical architecture of necessity arguments as they function in conditions similar to those Marshall created. Beneath that architecture is Marshall’s leadership of the Court, which created conditions in which his rhetoric could flourish and gain maximal force.

Foremost among Marshall’s contributions to the Court is his move toward per curiam opinions, which are “delivered via an opinion issued in the name of the Court rather than specific justices.”³⁰ Previously, the Court issued opinions wherein each justice, concurring or not, would write their own opinions.³¹ These seriatim opinions allowed cases to be determined through the interpretive synthesis of a range of voices,

²⁷ White, *Marshall Court and Cultural Change*, 155.

²⁸ Terry Eagleton, *Literary Theory: An Introduction* (Malden: Blackwell, 2008), 147-8.

²⁹ Nelson argues that *McCulloch* was an exceptional case, and challenges the idea that Marshall was a harbinger of Federalist politics. Nelson, "John Marshall's Constitutional Jurisprudence," 895.

³⁰ "Per Curiam," Legal Information Institute, http://topics.law.cornell.edu/wex/Per_curiam.

³¹ Christopher L. Eisgruber, "John Marshall's Judicial Rhetoric," *The Supreme Court Review* 1996 (1996): 445 and White, *Marshall Court and Cultural Change*, fn. 9; Donald M. Roper, "Judicial Unanimity and the Marshall Court - a Road to Reappraisal," *The American Journal of Legal History* 9, no. 2 (1965).

which made the distillation of core meanings difficult. This mode of writing also served as a practical barrier to the kind of arguments Marshall applies to necessity, as Madison's response attested in a letter to Spencer Roane:

It appears to me as it does to you that the occasion did not call for the general and abstract doctrine interwoven with the decision of the particular case. I have always supposed that the meaning of a law, and for a like reason, of a Constitution, so far as it depends on Judicial interpretation, was to result from a course of particular decisions, and not these from a previous and abstract comment on the subject. The example in this instance tends to reverse the rule and to forego the illustration to be derived from a series of cases actually occurring for adjudication.

I could have wished also that the Judges had delivered their opinions seriatim. The case was of such magnitude, in the scope given to it, as to call, if any case could do so, for the views of the subject separately taken by them. This might either by the harmony of their reasoning have produced a greater conviction in the Public mind; or by its discordance have impaired the force of the precedent now ostensibly supported by a unanimous & perfect concurrence in every argument & dictum in the judgment pronounced.³²

But Madison misses something important about Marshall's strategy: Marshall would not have been satisfied with a "harmony of their reasoning," which would have indicated deliberation, consensus, and process. Necessity, in the sense that Marshall needed it, could not derive its meaning from an agglomeration of views any more than a logician's syllogism could contain negotiations and compromises in its subarguments.³³ Those subarguments, and the shades of grey they suggest linger in the argument, had not only to be pushed aside, but negated. Marshall wanted a unity of voices worthy of the name unity – a true oneness – which required a metaphysical reduction in the space between the deliberations of the court and the written opinion. The move toward per curiam opinions

³² "The Founders' Constitution," The University of Chicago Press, http://press-pubs.uchicago.edu/founders/documents/a1_8_18s15.html. While James Madison agreed with the McCulloch decision, he disagreed with Marshall's reasoning.

³³ Which, as I have noted in Chapter II, was the basis of the enthymeme, or rhetorical syllogism.

made that unity of voice possible, and “Marshall realized that doing away with seriatim opinions would both enhance the power of the Court and allow him to construct a clear and determinate constitutional doctrine.”³⁴ By moving toward per curiam opinions, Marshall reduced the Court’s voice, commanding not only consensus, but making possible a metaphysics of meaning attainable only by reducing the level of complexity issuing *from* the Court.

Marshall was skillful at moving the Court toward issuing unanimous opinions. Of the 1,106 cases the Marshall Court decided over Marshall’s thirty-four years as Chief Justice, Marshall himself penned 547 and dissented a mere nine times.³⁵ But he did more than simply shape the textual basis of the majority voice; he largely rid the court of dissenting opinions altogether.³⁶ As Erwin Chemerinsky notes about Supreme Court opinions, “To the extent to which the indeterminacy is acknowledged or the value choices recognized, it is in the dissenting opinions lamenting the majority’s approach.”³⁷ Marshall’s ability to obtain consensus, to push for unanimity, combined with the reduction of voices in the Court’s writing, allowed the Court to project legal rulings comprised of clear, well-defined boundaries. The writing “practices of the Court,”

³⁴ Eisgruber, "John Marshall's Judicial Rhetoric," 445.

³⁵ White, *Marshall Court and Cultural Change*, 191; Louis H. Pollak, "Remarks on the 200th Anniversary of the Accession of John Marshall as Chief Justice," *Journal of Supreme Court History* (February 5, 2001). (Though Pollak and White’s numbers differ, then general point remains the same.) White offers several cultural explanations for this ability to achieve unanimity, including the fact that the justices boarded together during their service in Washington, sharing meals and socializing, but also that there were more opportunities for the court to effect one another and discuss cases in an ongoing way, even while arguments were being heard. White, *Marshall Court and Cultural Change*, 184.

³⁶ Vernon Parrington describes Marshall as “a judicial sovereign who for thirty-five years molded the plastic constitution to such form as pleased him” (*Two Main Currents in American Thought: The Romantic Revolution in America: 1800-1869* (Harcourt, Brace, World, 1927), 21-22. Cited in Mark A. Graber, "The Passive-Aggressive Virtues: Cohens v. Virginia and the Problematic Establishment of Judicial Power," *Constitutional Commentary* 12 (1995): 88.

³⁷ "The Rhetoric of Constitutional Law," *Michigan Law Review* 100, no. 8 (2002): 2012.

moreover, “gave the appearance of unanimity even when the Justices did not agree.”³⁸ In the case of *McCulloch*, these preconditions of judicial argument establish the appearance of necessity before the opinion even begins to confront the concept of necessity itself. Marshall’s ability to underpin the meaning of necessity with a necessity argument – about what necessity must mean – is the source of its apparent incontestability, but also its utter contestability from the perspective of a critical examination of necessity as rhetoric – when one examines the necessity argument behind the necessity. With these reductions, Marshall gave legitimacy to, if not invented, a metaphysics of Supreme Court jurisprudence that still endures: the force of the Court’s judgments depends, at least in part, upon its persuasiveness since, without executive, legislative support and even popular support, courts may not be able to force the execution of constitutional findings.³⁹ The presence of a united front and the appearance of necessity that unified voices can project, serves to enhance such force. Not only the executive, but the judiciary, rises and falls with its power to persuade.⁴⁰

Marshall suggests that constitutional interpretation could conjure a univocal voice in the Founding Fathers, who “spoke” through the Constitution they ultimately submitted

³⁸ White cites the “delivery of opinions on seniority grounds” (with Marshall most senior) and “other justices ranked by years in service,” as well as the suppression of dissenting views in the Court’s opinions, which were issued in the name of “the opinion of the majority.” White, *Marshall Court and Cultural Change*, 186. One outcome of these procedures was that it meant that it “insulated Justices from accountability” (188). White notes that the authors of opinions were not obliged to even circulate opinions for comment from their colleagues. White concludes, however, that these protocols and processes “were innovations made or refined by Marshall himself,” part and parcel of Marshall’s “dominance” (190).

³⁹ See Tyll Van Geel, *Understanding Supreme Court Opinions*, 6th ed. (New York: Pearson Longman, 2009). On the relationship between the courts and popular opinion, see Robert Dahl, “Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker,” *Journal of Public Law*, no. 6 (1957). On the courts’ limited capacity to affect political change, see Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (Chicago: University of Chicago, 1991).

⁴⁰ Richard Neustadt famously argues that presidential power is largely dependent upon the president’s “power to persuade.” Richard E. Neustadt, *Presidential Power and the Modern Presidents: The Politics of Leadership from Roosevelt to Reagan* (New York: Free Press, 1990), 11. Graber notes that courts rarely decide against public opinion for very long. Graber, “The Passive-Aggressive Virtues.”

for ratification.⁴¹ At the moment of such agreement, all disagreement, debate, deliberation was subsumed under a consensus, represented in the necessary and univocal letter of the final document. According to Ackerman, “the fact that only a single generation of Americans had contributed to the proposal and ratification of the Constitution and its early amendments simplified the interpretative problem.”⁴² Yet, as we know, that “single generation” was itself divided amidst vigorous differences and debates between federalists and antifederalists. The result is that Marshall not only treats the constitution as though it were a resolution of the federalist-antifederalist debates, resulting in a new beginning, but his belief in the possibility of a “legal science” actually depends upon this treatment. (If the constitution is a beginning, then it is a beginning made possible by an interpretative ending. Yet, the constitution was ratified in spite of antifederalist opposition; it did not signify the resolution of differences.) Erasing certain problems and unresolved disagreements in the founding allows Marshall to argue from the position of a new beginning. But his erasures suggest that believing in such beginnings requires forgetting that “the anti-Federalists took issue not only with the national state designed by the Founders but with the latter’s vision of a rational political science as well.”⁴³ Marshall, in his position as the most powerful justice on a court comprised mostly of affiliates, is able to both erase this history and employ the very mode of reasoning that the anti-Federalists disagreed with in mediating question of the Bank’s tax. This view

⁴¹ Evoking Marshall, Jack Rakove notes that in weighing the meaning of the Constitution, it is important to remember that “it is a debate” the Supreme Court is interpreting when attempting to recover “original meanings.” Rakove reminds us that Marshall was a key representative at the ratification convention for Virginia. Jack N. Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* (New York: A. A. Knopf, 1996), 10. For Marshall’s contributions to the convention, see Jean Edward Smith, *John Marshall: Definer of a Nation* (New York: H. Holt & Co., 1996), 5, 87-88, 111-43, 54.

⁴² *We the People* (Cambridge: Belknap Press, 1991), 88.

⁴³ Dolan, *Allegories of America*, 38.

allows the constitution to “speak” definitively. Marshall’s reduction of polyphony to a unity aligns him with a tradition of thinkers concerned with reducing many voices to one, from the move from polytheism to monotheism that leads Aquinas toward kingship, to the “real unity” of Hobbes’s *Leviathan* and its avoidance of conflict, to Schmitt’s anti-parliamentarianism.⁴⁴ Univocality has deep roots in the history of political thought.

6.2: The Case

On the surface, *McCulloch v. Maryland* appears to concern a straightforward question: how to construe Article I, Section 8, Clause 18 of the U.S. Constitution, the so-called “necessary and proper” clause. This clause mandates that “congress shall have the power... To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”⁴⁵ The Bank of Maryland had attempted to tax bank notes not issued in the State of Maryland; that is, it sought to tax those notes issued by the Second Bank of the United States, established in 1816 under President James Madison to stabilize national currency purportedly to prevent financial collapses like those that had occurred in the early years of the republic.⁴⁶

⁴⁴ See, e.g., Carl Schmitt, *The Crisis of Parliamentary Democracy* (Cambridge: MIT Press, 1985); Hobbes, *Leviathan*, 109; and Sigmund Freud, *Moses and Monotheism*, trans. Katherine Jones (London: The Hogarth Press, 1939).

⁴⁵ U.S. Constitution Art. I, Sec. 8, Cl. 18.

⁴⁶ The relationship between the crisis and the bank is addressed in Mark Robert Killenbeck, *McCulloch v. Maryland: Securing a Nation* (Lawrence: University Press of Kansas, 2006) and Richard E. Ellis, *Aggressive Nationalism: McCulloch v. Maryland and the Foundation of Federal Authority in the Young Republic* (Oxford: Oxford University Press, 2007), 86. Whereas Killenbeck takes the relationship for granted, Ellis is skeptical, seeing political opportunism rather than necessary connection between the crisis and the *McCulloch* case. In taking these positions, Killenbeck is more closely aligned with the Federal position and Ellis with Maryland.

McCulloch is seminal not only because it gives shape to “necessary and proper,” but also because this construction was bound up with historically controversial political debates about the nature and extent of federal power. McCulloch was put on the Court’s schedule after years of political wrangling between Federalists and anti-Federalists over the merits, danger, and necessity of establishing a strong central government, and that government’s relationship with proponents of states’ rights. Though President George Washington’s term passed with only minor inflammation of this question, in 1798 the predominantly Federalist Congress confirmed the anti-Federalists’ worst fears with the passage of the Alien and Sedition Acts. Though President John Adams, in accordance with the customs of the day, said little about the Acts publicly, John Marshall anonymously defended them, arguing that they were necessary to provide for the effective enforcement against the crime of sedition, especially during war.⁴⁷ Marshall

⁴⁷ While there has been some debate over whether Marshall wrote the so-called “Minority Report” in defense of the Acts, I am persuaded by Lash and Harrison’s argument that he did. They provide evidence that the author was Marshall and that the Report’s exclusion from Marshall’s papers, even as a disputed text, is an oversight at best, and suspicious at worst. According to Lash and Harrison, the defense of the Acts “defended the constitutionality of the infamous Alien and Sedition Acts and anticipated the broad reading of federal power that Marshall articulated in cases like *McCulloch v. Maryland*.” Kurt T. Lash and Alicia Harrison, “Minority Report: John Marshall and the Defense of the Alien and Sedition Acts,” *Ohio State Law Journal* 68, no. 2 (2007): 2-3., accessed online at the Social Science Research Council at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=888803). According to Lendler, “The reigning Federalists, including the most moderate such as Noah Webster, Supreme Court Justice James Iredell, and Abigail and John Adams, thought the law was well within an agreed-on political and legal consensus about the limits of speech rights and were clearly shocked at the ferocity of attack on the law’s constitutionality.” Mark Lendler, ““Equally Proper at All Times and at All Times Necessary”: Civility, Bad Tendency, and the Sedition Act,” *Journal of the Early Republic* 24, no. 3 (Autumn 2004). This view was not unusual, even by critics of the Acts, whose main argument was that libel was not a federal question. According to James Martin, “...many of those who opposed the federal statute took no exception to, or even supported, similar actions at the state level. For example, as a reason for not passing the bill, Representative Macon noted, with no apparent disapproval, that “persons might be prosecuted for a libel under the State Governments,” and that therefore no national statute was necessary.” James P. Martin, “When Repression Is Democratic and Constitutional: The Federalist Theory of Representation and the Sedition Act of 1798,” *University of Chicago Law Review* 66, no. 1 (Winter 1999): 126 (fn. 15). David Jenkins notes that one outcome of the Alien and Sedition Acts was widespread agreement that seditious libel was already there in the First Amendment, already incorporated in the Constitution by Common Law: “Federalists were able to impart a common-law understanding to the freedom of the press, thus establishing the doctrine of seditious libel in First Amendment jurisprudence.” David Jenkins, “The Sedition Act of 1798 and the Incorporation of

defended Adams.⁴⁸ But those engaged in the debate about the scope of federal power also understood that McCulloch would impact a host of other questions.⁴⁹ The scope and nature of federal power, those watching the case knew, would bear on, if not determine, the federal government's ability to initiate extensive "internal improvements" projects such as roads, canals and railroads. Many believed that a narrow construction of the federal government's "sphere of power" would also affirming state control over slavery.⁵⁰ According to David Brion Davis, "Nothing would ultimately generate more fear and determined resistance in the South than... Marshall's vision of a powerful federal government, immune from state laws or regulations, coupled with a Constitution so open to flexible and liberal interpretation that it might be turned against slavery itself...."⁵¹

Three questions encapsulate the basic questions posed by McCulloch case and frame Marshall's approach toward making sense of "necessary and proper":

- (1) Had congress a constitutional power to incorporate the bank of the United States?

Seditious Libel into First Amendment Jurisprudence," *The American Journal of Legal History* 45, no. 2 (April 2001): 154-5. Adams and his supporters argued that far from being the establishment of illegitimate power in the executive branch, the Alien and Sedition Acts only moved determinations of what was spoken against the government to the Courts, where standards of sedition and libel were enforced. Ironically, for reasons we shall see, Adams's defense of the Acts amounted to the use of legal rhetoric to dissuade political concerns. Robert Goodloe Harper, a Federalist who helped author the Sedition Act, defended it by appropriating language of necessary and proper: "On mature reflection . . . [I am] convinced that a law to punish false scandalous, and malicious libels and to protect liberty by allowing the truth of the matter to be given in evidence on indictments for political publications is equally proper at all times and at all times necessary." Elizabeth Donner, ed., *Annual Report of the American Historical Association for the Year 1913*, 2 vols. (Washington, 1915), 2:108, quoted in Lendler, "'Equally Proper at All Times and at All Times Necessary'," 442.

⁴⁸ Lash and Harrison, "Minority Report," 2-3.

⁴⁹ Nelson, "John Marshall's Constitutional Jurisprudence," 930.

⁵⁰ White, *Marshall Court and Cultural Change*, 542.

⁵¹ Davis also points to Channing's "Unitary Christianity," which projected a religious mentality that would convert the Bible into an engine of reform that would be catastrophic for slaveholders." David Brion Davis, *Challenging the Boundaries of Slavery*, The Nathan I. Huggins Lectures (Cambridge: Harvard University Press, 2003), 59. Aside from slavery, McCulloch was widely thought to have settled one major political question: a constitutional amendment was not needed to allow for federally sanctioned "internal improvements" since that power was implied by Marshall's reading. For a discussion of McCulloch's impact on the slavery and internal improvements questions, see Ellis, *Aggressive Nationalism*.

(2) Granting this power to congress, has the bank, of its own authority, a right to establish its branches in the several states?

(3) Can the bank, and its branches claim to be exempt from the ordinary and equal taxation of property, as assessed in the states in which they are placed?⁵²

With regard to question (1) Marshall argues that the establishment of the bank must be construed as both “necessary and proper” to Congress’s efforts to carry out its Article I powers to regulate commerce and coin money. As was noted on several occasions during discussions before and after the McCulloch decision came down, “necessary and proper” is listed among Congress’s powers. The interpretative question, then, is whether “necessary and proper” is intended to expand or contract Congress’s powers.

With regard to (2), Marshall advances an argument about part-whole relations: as the U.S. is both comprised of and divided into states, is it possible that a Bank could be founded only outside of these divisions, perhaps limited to Washington D.C. itself? Marshall argues that it is not clear where, if not in the states, the federal government would found such branches.

Marshall’s response to question (3) is the most important and interesting of the three. Where as (1) and (2) concerned the establishment, structure, terrain and scope of American constitutionality, (3) addresses motions within those structures, determining which actions are acceptable toward the end of preserving of the constitutional order. Here, Marshall establishes a flowchart of powers both within the branches of the federal government and between the states and the federal government.

Marshall opens the opinion by acknowledging directly the controversy surrounding the case before the Court:

⁵² *McCulloch v. Maryland*, 17 U.S. 330-331 (1819).

The constitution of our country, in its most interesting and vital parts, is to be considered; the conflicting powers of the government of the Union and of its members, as marked in that constitution, are to be discussed; and an opinion given, which may essentially influence the great operations of the government. No tribunal can approach such a question without a deep sense of its importance, and of the awful responsibility involved in its decision. But it must be decided peacefully, or remain a source of hostile legislation, perhaps, of hostility of a still more serious nature; and if it is to be so decided, by this tribunal alone can the decision be made. On the supreme court of the United States has the constitution of our country devolved this important duty.⁵³

The passage also shows the central role that a strategy of denial plays in Marshall's rhetoric. Wetlaufer notes that, "...if law is, at its core, the practice of rhetoric, the *particular* rhetoric that law embraces is the rhetoric of foundations and logical deductions. And that particular rhetoric is one that relies, above all else, upon the denial that it is rhetoric that is being done."⁵⁴ According to Wetlaufer, "law *is* rhetoric but [its] particular rhetoric...operates through the systematic *denial* that it is rhetoric."⁵⁵ Legal rhetoric, in short, "is the anti-rhetoric of foundations, logical deductions, unification, objectivity, and closure."⁵⁶

The denial that politics shapes judicial opinions is not only classic Marshallian strategy, but a strategy of descriptive rhetorics generally. It is signaled again and again in Marshall's opinions by his reminders that the Court "must" decide the question (that is, the Court is not interested in the question, and doesn't "want" to decide it). In *Marbury v. Madison*, for example, Marshall evokes of its "judicial duty"; to call attention to this evocation is not to argue that it is not the Court's duty, but rather to note that the marking

⁵³ 17 U.S. 401 (1819).

⁵⁴ Wetlaufer, "Rhetoric and Its Denial in Legal Discourse." Wetlaufer goes on to detail what he calls "law's deeply ironic resistance to rhetoric" – ironic, because this resistance is a form of rhetoric.

⁵⁵ Ibid.

⁵⁶ Ibid.: 1591.

and reminder of this duty performs an important rhetorical task.⁵⁷ The effect is to give the Court's argument a privileged position in relation to language. Marbury is grounded in the claim that the judicial branch "must, of necessity, expound and interpret" the constitution.⁵⁸ This open acknowledgement of the specter of politics serves to register Marshall's sensitivity to the concerns of those who oppose the Bank, or support the tax, and to assure them that he is aware of the dangers of allowing political argument to sully constitutional construction.

Marshall's open admission of the specter of politics, which denies rather than leaves it unmentioned, thus makes it *useful* to the larger argument. Though this move could be read as a betrayal of anxiety – perhaps of the inherent politics in play – it also functions to set the terms of debate. This denial also creates a distinction between political and legal argument that Marshall uses to legitimize his opinion. Through these denial and conceptual distinctions, Marshall advances what Derrida calls presence, "the exigent, powerful, systematic, and irrepressible desire for [the] signified."⁵⁹ Marshall's distinctions appear as truths whose histories have been erased. This suggests that the text of the Constitution can stand alone in self-evidence, its meanings derived internally (though, again, not in a subjective sense by Marshall himself). At the same time, this grappling for presence rhetorically *erases* Marshall's subjectivity from the opinion by explicitly disavowing his voice's place in constitutional argument. In other words, the text's legitimacy is rooted in an absence, which Marshall's use of passive language aides in establishing: "The constitution of our country...is to be considered; the conflicting

⁵⁷ 5 U.S. 137 (1803).

⁵⁸ Ibid.

⁵⁹ Jacques Derrida, *Of Grammatology*, trans. Gayatri Chakravorty Spivak (Baltimore: Johns Hopkins University Press, 1997), 49.

powers of the government of the Union and of its members...are to be discussed.”

Finally, there will be “an opinion given, which may essentially influence the great operations of the government.”⁶⁰ In these understated lines Marshall distances himself not only from the Constitution as an authored text (which, again, in turn becomes an object of presence), but the interpretative questions at issue. The opinion takes on the appearance of a transcendent fact and not Marshall’s voice. It “will be given.”⁶¹

Marshall closes the opening paragraph of the opinion by asserting the necessity of the court’s involvement in the case, emphasizing the absence of choice the Court had in taking it: “On the supreme court of the United States has the constitution of our country devolved this important duty.”⁶² According to Marshall, the Court did not seek this case, which fell upon the Court. There is a rhetoric of duty here, and Marshall reminds the reader that the Court is driven by it, not ambition. Marshall thus opens *McCulloch* with a necessity argument we have seen before: the Court’s hand is forced.

This distinction between necessity and choice also serves to distinguish political debate from constitutional reasoning, politics from law. Marshall’s response to those who might claim that constitutional questions had been resolved – instead, in a denial of the poetics of the case, of political determinations made – in the original debates over the Bank serves two purposes. First, he reaffirms his constitution/politics distinction by claiming that those debates were of a political nature, and are therefore inadmissible into

⁶⁰ 17 U.S. 325 (1819). Because it is constructed passively, the interpretative question of determination was also evaded in the Ninth Amendment. As Kurt Lash notes, “As do a number of provisions in the Bill of Rights, the Ninth Amendment uses passive language (“shall not be construed”), leaving it unclear *who* “shall not construe” the Constitution in the forbidden manner.” Kurt T. Lash, “A Textual-Historical Theory of the Ninth Amendment,” *Loyola-LA Legal Studies Paper* (2007), <http://ssrn.com/abstract=953008>.

⁶¹ On the mechanics of legal discourse, see Williams, *The Alchemy of Race and Rights*, 3-14.

⁶² 17 U.S. 426 (1819).

court proceedings. Second, Marshall calls attention to attempts to politicize the constitution and suggests that constitutional rhetoric was only now, in 1819, being used by Maryland to win a political argument. In so doing, Marshall uses this distinction between these different types of argument to establish himself as a non-political actor, without making his own subjective position a question. This absent ethos makes Marshall's rhetoric strong precisely because it mimes a form of deductive logic capable of establishing necessary relations, geometric in both form and substance. The assumptions upon which this rhetoric is built make its subarguments as necessary as the angles and planes of a triangle, mutually defined, and suggests that articulating commitments entailed by trajectories of power is an important part of fixing those powers. The establishment of this framework makes systemic and logically necessary arguments possible.⁶³ Once one accepts the basic presupposition of Marshall's argument, one must (Marshall argues) accept corollary commitments to not provide for the "negating" of those commitments. If powers are to be enumerated, then objectively determined commitments follow.

In short, Marshall supports "necessary and proper" with concepts that "may be almost termed an axiom," from which "other propositions are deduced as corollaries, on the truth or error of which, and on their application to this case, the cause has been supposed to depend."⁶⁴ If the establishment and use of these "almost" axioms is his strategy, and the core from which his arguments issue, then a critical disposition toward

⁶³ Especially, as noted above, in Aristotle's methodological distinction between mathematics and politics in Book I of the *Nicomachean Ethics*. Aristotle, *Complete Works*, 1730.

⁶⁴ 17 U.S. 426 (1819).

McCulloch requires a critique of Marshall's assumptions, the definitions and assertions out of which his arguments are built. I now turn to these axioms, which are threefold.

6.3: The Meaning of "Constitution"

Marshall opens with a reminder: "we must never forget that it is a constitution we are expounding." That this should need to be said is interesting in itself, but it fast becomes clear that it is said precisely because Marshall hinges the opinion on the ability to resolve competing notions of the meaning of constitution, and so anchoring this term is Marshall's first task. According to Marshall, constitutions are "great outlines" of powers, and not lists of specificities, with "minor ingredients...deduced from the nature of the objects themselves."⁶⁵

If it is a "constitution we are expounding," and if Marshall gets to say what a constitution is, then the necessity arguments stemming from this constitution will be controlled by that definition. Having previously set aside the politics/law distinction, Marshall uses his definition of constitution to distinguish his constitutional task from political interventions into the legal process, a process that falls within the "sphere of action" reserved for Congress. The high register of abstraction in which Marshall pitches his argument enables him to charge those who would assert a right of states to interpose themselves between the people and federal power with endangering not only the U.S. Constitution, but the spirit of constitutions generally. It is therefore not quite true that "time and again," Marshall's conclusions were "reached independently of the

⁶⁵ 17 U.S. 407 (1819).

Constitution.”⁶⁶ Rather, Marshall re-writes the Constitution through a theory of constitutionality, which he in turn uses to make his case.

Maryland’s argument against the Bank is not, in Marshall’s view, a constitutional argument, so much as a call for the limitation of the federal government’s reach by limiting its means to carry out its enumerated powers. Maryland’s quarrel, Marshall suggests, is not with the determinations of constitutionality, but with particular legislative determinations within that constitution. The effect is at least in part to shift Maryland’s argument from constitutional law to lawmaking, from a legal to a political question, which invalidates and casts doubt on Maryland’s intentions from the start.

On the flipside of Marshall’s engagement with the metaphysics of presence, his definition of “constitution” is supported by claims of what it is not, cannot or could not be. Burke argues that these negatives interact with, so as to define, political possibility, since what they are not nonetheless confines what they are.⁶⁷ For example, Marshall reminds us that a constitution is not a “legal code,” where the specifics of legislative and political life are spelled out. According to Marshall, “To have prescribed the means by which government should, in all future time, execute its powers, would have been to change, entirely, the character of the instrument, and give it the properties of a legal code.”⁶⁸ If constitutions were legal codes, they would too tightly bind legislative action precisely where legislators need flexibility for addressing crises and changes in the national interest. There is a reversal of crisis here, as the binding – and not the expansion

⁶⁶ David P. Currie, *The Constitution in the Supreme Court: The First Hundred Years, 1789-1888* (Chicago: University of Chicago Press, 1985), xi.

⁶⁷ See Burke’s discussion of Spinoza’s claim that all “determination is negation,” and Bergson’s influence on the importance of negation in being in Burke, *A Rhetoric of Motives*, 294-7.

⁶⁸ 17 U.S. 415 (1819).

of necessity – constitutes a more serious threat to constitutionality. Marshall treats the constitution as though it were comprised, as Whittington puts it, of “our most fundamental commitments, those things about which we no longer disagree.”⁶⁹ In this view, the framers must have wanted to avoid producing a document with all of the “the prolixity of a legal code” since the practical possibility of imagining the questions that a republic would encounter in the future “could scarcely be embraced by the human mind.”⁷⁰ Instead, this “outline” marks the boundaries of the constitutional order, but leaves the animation of that order to political (and specifically legislative) determinations. “Necessary and proper,” understood as a tool available to political actors (in this case legislators) cannot be *prima facie* defined; the Constitution does not establish any determinate content for it. Nothing is necessary in and of itself within the text.

To put things in a slightly different register, Marshall insists that the Constitution does not say what necessity “means.”⁷¹ Necessity is not transcendent, with definite or determinate ends. What would it mean, for example, to fix necessity’s meaning “in” the constitution when determinations of necessity are made in response to specific historical conditions? Ellis reminds us, for example, that the “fiscal chaos of 1811-1816 had made clear both the utility and necessity of a national bank.”⁷² Yet this chaos was itself the product of speculation and inflation, which underscores the tempestuous relationship that

⁶⁹ Whittington, *Political Foundations*, 1.

⁷⁰ 17 U.S. 407 (1819). Marshall leans heavily on Webster’s argument: “It is not enough to say, that it does not appear that a bank was not in the contemplation of the framers of the constitution. It was not their intention, in these cases, to enumerate particulars.” 17 U.S. 324 (1819). Marshall seems to agree with the Italian jurist, Santi Romano, who claims in defense of emergency powers that “There are norms that cannot or should not be written; there are others that cannot be determined except when circumstances arise for which they must serve.” Cited in Agamben, *State of Exception*, 28.

⁷¹ The idea of meaning is a central Derridean concern, bound up in his suggestion that communication itself must be called into question. See Derrida, *Limited Inc*, 1.

⁷² Ellis, *Aggressive Nationalism*, 86.

exists between causality and necessity arguments. So why should a bank become a constitutional necessity and not, for example, controls on markets other or regulatory schemes? It was precisely this point that Joseph Hopkinson made in his argument for Maryland: “a power, growing out of a necessity which may not be permanent, may also not be permanent.”⁷³ Even if the bank is necessary, it does not follow that one can derive a general principle from this necessity. Marshall’s key move in expounding a constitution, instead of addressing the politics of a moment, is in jumping from a particular case to a general principle. There is violence in this jump, but it is acceptable since Marshall was concerned with persuasion, not logical coherence. It is this jump that affords Marshall’s argument an air of necessity.

Because only Congress can say what is necessary within its sphere of action to achieve its constitutionally mandated ends, Marshall does not construct necessity on the level of its particulars. Instead, he lays out the political dynamics necessary for the nation to endure by placing the determination of what is necessary in the hands of Congress. Because the “necessary and proper” clause is placed among Congress’s powers, Marshall argues that it is intended to expand, and not restrict Congress’s power. In this sense, Marshall uses an argument about necessity to expand – and not, as is the case in so many other instances of necessity – limit the sphere of politics. Instead of closing them, Marshall uses necessity to open new political spaces.

⁷³ Ibid., 81.

6.4: “Sovereignty” as the Power to Determine Meaning

Marshall next turns to the organization of power within the constitution. In addressing question (3) he agrees with Daniel Webster, counsel for the federal bank, that “an unlimited power to tax involves, necessarily, a power to destroy.”⁷⁴ From this fear of destruction, Marshall builds a argument about sovereignty. In Marshall’s view it would make no sense to assert a power to establish an act while at the same time approving of powers states could use to nullify them. Constitutionally provided powers are premised on the ability of those assigned to carry them out. Marshall argues that in empowering the federal government, the framers must have intended that it be provided (or, more accurately, provide itself) with a range of tools it deems necessary to carry out those powers. The tools cannot be analytically distinguished from the powers themselves for a branch to be said to be sovereign in its “sphere of action.”

Included in this line of argument is Marshall’s assertion that “The nation, on those subjects on which it can act, must necessarily bind its component parts,”⁷⁵ which is a variation of the Aristotelian theme that a “whole is prior to its parts,” where a commitment to a whole (e.g., a constitution) entails a subsidiary commitment to the construction and maintenance of the parts.⁷⁶ Marshall’s rhetorical power in *McCulloch* lies in part in his ability to set the boundaries of these relations convincingly and to use them to command his reading of “necessary and proper.”⁷⁷ The assertion of logical

⁷⁴ 17 U.S. 327 (1819).

⁷⁵ 17 U.S. 405 (1819). The point is made at several points in *The Federalist*. E.g., see nos. 30-31. Hamilton, Madison, and Jay, *The Federalist Papers*, 143-51.

⁷⁶ Aristotle says this explicitly, noting (in Sinclair’s rendering) that “the constitution must set the pattern for the laws” Aristotle, *The Politics*, trans. T. A. Sinclair (Baltimore: Penguin Books, 1962), 206. Barnes renders the line “the laws must be adapted to the constitutions.” *Complete Works*, 1282b10.

⁷⁷ Wendy Olmstead notes the importance of this rhetorical move in her chapter on Edward H. Levi: “These [part/whole] arguments may seem simple until we consider that the *Federalist Papers* use

supremacy within the federal government's "sphere of action," Marshall argues, implies that "component parts" conform to logics imposed from above via "necessary and proper." According to Marshall, "...the government of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to result, necessarily, from its nature."⁷⁸

As with all things constitutional, of course, this logic is not unbounded or unconditioned: "[T]he constitution of the United States has not left the right of congress to employ the necessary means, for the execution of the powers conferred on the government, to general reasoning," but for making "all laws which shall be necessary and proper, for carrying into execution the foregoing powers, and all other powers vested by this constitution...."⁷⁹ The "necessary means," in this passage, are part and parcel of "necessary and proper" since they constitute the practical capacity for Congress to do what it deems necessary. It would have been pointless for the framers to have assigned to Congress "those great powers on which the welfare of a nation essentially depends" without also providing the instruments for their "beneficial execution."⁸⁰ In other words, the Court must proceed from the assumption that the tools to carry out powers are essential to the powers themselves; we cannot separate, at least completely, means and ends. Such relations make clear that in Marshall's view, the settling of the meaning of "necessary and proper" is a question of practical – and not (what Kant would call) pure –

relations of whole to part to discover the safest and most beneficial whole of which states may be parts." *Rhetoric: An Historical Introduction* (Malden: Blackwell, 2006), 140. Olmstead also notes that though Levi rejects the idea that legal rhetoric can be strictly deductive, it is important that we identify topics as "strategies of argument." For Levi topics may (and do) change "from case to case and are remade with each case." *An Introduction to Legal Reasoning* (Chicago: University of Chicago Press, 1949), 2.

⁷⁸ 17 U.S. 405 (1819). Similarly, in the first sentence of the opinion, Marshall goes out of his way to acknowledge (at 400) that Maryland is a "sovereign state."

⁷⁹ 17 U.S. 412 (1819).

⁸⁰ *Ibid.*, at 415.

reason. The constitution is concerned not with ideals, but with the survival of the nation. This practical concern is also why necessity is bounded by the limits of sovereignty's "sphere of action."

Two types of power comprise this sphere: both "enumerated" and "other powers vested by this constitution." The latter functions as an "et al" opening that allows "the necessary means" to pertain to the idea of the constitution itself. Situating necessity within an argument about power makes necessity not a fact in-itself about the world, but an index of political struggles and contests. The phrase "other powers vested by this constitution" suggests that interpretative flexibility supplements enumeration. Enumerated powers are useful applications of particulars, but need not be spelled out. The logic of constitutionality itself is strong enough to contain them.

By working in this register, Marshall avoids "Practical arguments about likely results," which "inevitably depend upon controversial empirical claims."⁸¹ This avoidance of the empirical affords Marshall control over the economy of meanings in the McCulloch opinion. Marshall would not sacrifice this control by pointing to the world, but only by building a set of conceptual relations.⁸² These concepts, and not archeological work on the Founders' intent, allow Marshall to contain the question in a space that he created and that, as a result, is contestable only by challenging his axioms. By controlling key concepts, Marshall controls quarrels over particulars. Since the argument is axiomatic and not empirical, Marshall negates the function of evidence and contradiction.

⁸¹ Eisgruber, "John Marshall's Judicial Rhetoric," 447.

⁸² Ackerman notes the problems inherent in the use of analogy in legal writing, which often engage readers to engage in critical activities of compare and contrast that the development of abstractions (such as axioms) do not. See "Liberating Abstraction," *The University of Chicago Law Review* 59, no. 1 (Winter 1992). Ackerman's argument resonates with Aristotle's advice that rhetoricians create fables rather than provide examples, since fables allow the rhetorician to control the terms of argument in ways that analogizing between examples does not. See Aristotle, *Complete Works*, 1393a.

The persuasive force of Marshall's argument stems from its appeal to readers' sensibilities and judgments, and not legal argument.⁸³ To accomplish this, Marshall narrates specific historical dimensions of the American story, especially the experiences that supposedly warranted a new constitution. Eisgruber notes that

Marshall engaged in a rhetorical recreation of the founding perspective. He reminded readers of the needs and crises confronting the founders. His point was not originalist. Marshall did not ask what the framers (or the people) intended, but rather what they *must have intended* in order to launch a successful Constitution. Marshall tried to get readers to ask the same question—a question about what it took to make the Constitution a practical instrument for just governance. He hoped that, once focused upon the right question, they (or enough of them, at any rate) would make the same judgments he had made himself.⁸⁴

In this sense, Marshall's opinion is more reminiscent of the pragmatic and political arguments of *The Federalist* than a judicial determination based on precedent, legal reasoning or ideal outcomes.⁸⁵ Indeed, Marshall echoes Publius, who asserted that

it may be affirmed with perfect confidence that the constitutional operation of the intended government would be precisely the same, if these clauses were entirely obliterated, as if they were repeated in every article. They are only declaratory of a truth which would have resulted by necessary and unavoidable implication from the very act of constituting a federal government, and vesting it with certain specified powers.⁸⁶

Note the irony of Publius's approach. Like Marshall, Publius makes the textual basis of "necessary and proper" unnecessary. Both suggest that "necessary and proper" would be implied in the notion of a constitution even if not explicitly stated in the text.⁸⁷ For

⁸³ Eisgruber, "John Marshall's Judicial Rhetoric," 448.

⁸⁴ Ibid.: 451. Eisgruber also notes that when Marshall does engage in empirical questions, he is at his rhetorically weakest. Wolfe calls this an "intrinsic indicator of constitutional intent" because it is manufactured from internal narratives, not empirical facts. Christopher Wolfe, "John Marshall & Constitutional Law," *Polity* 15, no. 1 (Autumn 1982).

⁸⁵ White distinguishes between the axiomatic arguments of Marshall's understanding of constitution and sovereignty and his arguments concerning the meaning of "necessary and proper," which "were basically practical ones...." White, *Marshall Court and Cultural Change*, 558.

⁸⁶ Hamilton, Madison, and Jay, *The Federalist Papers*, 155-6.

⁸⁷ Wolfe, "John Marshall & Constitutional Law," 9.

example, while Webster had argued that “An unlimited power to tax involves, necessarily, a power to destroy,” Marshall removes the explicit “necessarily,” a rendering that construes necessity as part of “is” statements themselves. In Marshall’s view, “the power to tax involves the power to destroy” is a necessary statement.⁸⁸ If we take Marshall seriously, the absence of enumerated powers would have altered little or nothing in the constitutional order because the logic of constitutionality itself is sufficient. Those (primarily anti-federalists) who insisted that they be included in the Constitution had little faith in the interpretative certainty Marshall displays. In fact, as the 9th Amendment (“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people”) suggests, enumerated rights were seen as potentially problematic, since they could lead some to argue that exclusion, at least explicitly, of other rights meant that those rights were not part constitutionally mandated. Ackerman has also called attention to the incongruity of abstraction and interpretation in what he calls the Bill of Powers and the Bill of Rights.⁸⁹ He shows that justices display a certain hypocrisy in applying abstract thinking to one, but not the other. This reveals not only a cognitive dissonance in their interpretative approaches, but marks their political preferences.

It is important that Marshall passes on opportunities to meditate on the language of possibility. Instead, he uses necessity arguments to strengthen his position. The difference between possibility and necessity is marked by Marshall’s refusal to mediate degrees of taxation, which would of course suggest that there are also degrees of threat:

⁸⁸ William Safire notes the edit in Safire, *Lend Me Your Ears*, 42. Marshall goes even further: “the power to destroy may defeat and render useless the power to create.”

⁸⁹ Ackerman, “Liberating Abstraction.” Marshall uses abstractions to avoid such dissonance.

We are not driven to the perplexing inquiry, so unfit for the judicial department, what degree of taxation is the legitimate use, and what degree may amount to the abuse of the power. The attempt to use it on the means employed by the government of the Union, in pursuance of the constitution, is itself an abuse, because it is the usurpation of a power which the people of a single state cannot give.⁹⁰

The object being threatened with destruction is the notion of sovereignty that Marshall equates with the American project itself.⁹¹ As Posner notes, Marshall's claim that "the power to tax involves the power to destroy" positions "states' rights as a claim to be entitled to "destroy" the national government."⁹² Every specification of powers potentially treads on Marshall's view of sovereignty and an overly specific constitution is deemed no constitution at all. Marshall reduces degree to necessity and makes sovereignty the system of power that keeps the constitution in tact and vital.⁹³

Marshall constructs "necessary and proper" by asserting that sovereign bodies must be able to determine meaning within their spheres.⁹⁴ Or, put differently, the notion of "necessary and proper" is built into Marshall's understanding of sovereignty. This emphasis on the relationship between sovereignty and meaning is key from the perspective of political order both because disagreement over meanings may lead to political disorder and, in the case of law, meaning is the system of ends that power – the

⁹⁰ 17 U.S. 430 (1819).

⁹¹ This recalls Chief Justice Charles Evans Hughes's claim that "We are under a Constitution, but the Constitution is what the Court says it is." <http://www.ashbrook.org/publicat/respub/v7n1/cook.html>; accessed March 28, 2007.

⁹² Richard A. Posner, *Law, Pragmatism, and Democracy* (Cambridge: Harvard University Press, 2003), 83.

⁹³ This is not to say that taxes couldn't be limited, but only that those limits are political. On the statement itself, Graber notes, "modern scholars...reject Marshall's claim that "the power to tax involves the power to destroy." " Justice Frankfurter called the phrase a "seductive cliché" and Holmes declared that "[t]he power to tax is not the power to destroy while this Court sits." In short, contemporary disagreements with Marshall's claim insist that "degree" does matter. Graber, "The Passive-Aggressive Virtues," 85.

⁹⁴ The idea that principles are embedded in the Constitution itself, is basic to Marshall's rhetoric. Whittington juxtaposes his claim that "Judicial supremacy itself rests on political foundations" with the "Marbury myth," which "asserts that judicial supremacy has been with us from the beginning, an unproblematic deduction from the nature of constitutionalism itself." Whittington, *Political Foundations*, 9.

state, e.g. – uses to prove that it operates within the bounds of the law. Marshall’s notion of sovereign power centers on the right and the capacity sovereign bodies have to determine – to outline the parameters and reduce the scope of possibility in which the “term” can be constructed. Necessity becomes a determination issuing from, and not constructed prior to, political debate. Semantic determination, or ending, becomes a marker of sovereignty.

Marshall also argues that it is inherent in “necessary and proper” that “that instrument does not profess to enumerate the means”:

The government which has a right to do an act, and has imposed on it, the duty of performing that act, must, according to the dictates of reason, be allowed to select the means; and those who contend that it may not select any appropriate means, that one particular mode of effecting the object is excepted, take upon themselves the burden of establishing that exception.⁹⁵

According to Marshall, an acceptable check on Congress, such as by way of judicial review, could not consist of a judgment of its determination of necessity since the ability to determine is a feature of sovereignty within its sphere; such a limitation would have to show that the federal government had ventured outside of its sphere of action, which binds that sovereignty.⁹⁶ As with his discussion of “constitution,” Marshall spells out the alternative: if the sovereign cannot “establish the exception,” then who can? The answer, of course, is that to identify another such agent who can decide only shifts or defers, but does not answer the question of the *meaning* of necessity. Marshall’s necessity, then, is

⁹⁵ 17 U.S. 409-410 (1819). In other words, the critic assumes the role of a counter-sovereign.

⁹⁶ Of course, there are some limitations – “parchment barriers” – such as those found in the Bill of Rights. Yet, the framers were explicit about the argumentative framework that controlled those limitations. Consider Hamilton’s argument, in *The Federalist*, no. 31, that “A government ought to contain in itself every power requisite to the full accomplishment of the objects committed to its care, and to the complete execution of the trusts for which it is responsible, free from every other control but a regard to the public good and to the sense of the people.” Hamilton, Madison, and Jay, *The Federalist Papers*, 149.

not necessary in the sense of an absolute restriction of ways and means, nor is it logical necessity in the sense that it is bound to an a priori logic or structure.⁹⁷

Despite the politics inherent in Marshall's rendering of "necessary and proper," I maintain that Marshall's necessity should be read as a form of absolute necessity, and not a mimesis or an analogy. This is because there is no ground from which one can simply identify one necessity argument as truly necessary, unless one reaches this conclusion by leaving uninterrogated the subsidiary necessity arguments that sustain it. The necessity Marshall points to *is* an absolute restriction of ways and means, but is grounded by political calculations and not external calculi. The question of whether or not to accept this reading depends on the extent to which one is willing to forego the metaphysical notion of necessity – of a "real" necessity – that might linger below Marshall's opinion. This reading confronts jurists, as legal metaphysicians, with the specter of politics. Given Marshall's attempt to maintain the metaphysics of legal writing I have described, to maintain the appearance that he is working within the "law," we can understand his hesitation. Considering the political dynamics at work here, his unwillingness to call the outcomes of Congressional legislation necessity, rather than a watered down or sort-of necessity, puts Marshall on shaky grounds. His argument invites skepticism because it tries to invoke perceptions of logical necessity without engaging the assumptions inherent in using necessity arguments to capture and shape politics. Yet, Marshall is unwilling to call Congressional determinations of "necessary and proper" necessary despite the fact that his argument forecloses the possibility of arbitrating the meaning of necessity outside of those determinations. In other words, he is unwilling to commit fully to the position

⁹⁷ In argument Webster had claimed that "A bank is a proper and suitable instrument to assist the operations of the government, in the collection and disbursement of the revenue." 17 U.S. 325 (1819).

that the meaning of necessity can *only* be arbitrated politically despite the fact that no alternatives exist if we are to take his argument seriously.

I want to stress, however, that this unwillingness is not merely a problem of metaphysics—it also marks a point of weakness in the opinion’s persuasiveness. By taking the middle ground and qualifying his notion of necessity, Marshall undermines his position by retaining the same notion of necessity that the State of Maryland asserted. In other words, in not making necessity necessary, Marshall calls attention to the contingency (and the politics) of his rendering. For Marshall, legal necessity is never truly necessary. I am asserting the stronger claim that they are in fact necessary in a sense that is as forceful as logical necessity, within the context and particular epistemological conditions that characterize politics. Where Marshall attempts to chart a middle course, understanding necessity in rhetorical terms forces us to either engage the politics inherent in contests over concepts such as necessity, or recoil into metaphysical hideouts from the political. Reworking legal necessity as necessity, and not a pale representation of it, retains its political valence and, ironically, puts it on firmer ground.

I argued above that the absence of a priori argumentative terrain, carved out through critique, is the condition of possibility for challenging constructions of necessity. This condition casts necessity claims as outcomes of contingent contests over meaning. Marshall argues that the Constitution positions necessity as a declaration issuing from Congress, necessary only because it has been deemed so by a constitutionally authorized body. In this view, there can and need be no wrangling over the difference between terms such as “convenient” or “beneficial” or “appropriate” since these words are similarly indeterminate. The difference between necessities and conveniences and appropriate tools

becomes not one of semantic struggle, but institutions empowered to construct.

Marshall's argument suggests that the Founders need not have included both "necessary" and "proper" in the clause, since the any semantic distinctions between these two words, any attempts to figure the technical difference between them, would be decided by Congress, reducing any differences to semantic determinations made by that branch. There is no fixed distinction.

In Marshall's view, the constitution is a flowchart of powers with individual branches licensed to determine what it needs to protect itself so that it can carry out its duties. This license is not merely a right, but a duty, of the sovereign which by the logic of sovereignty cannot be surrendered or displaced.⁹⁸ Since only Congress can determine what is "necessary and proper," no power may "negative" its construction, just as no power can constitutionally keep it from discharging its powers. The ability to determine is asserted as a prerogative of power, and interventions by those seeking to give meaning to those in "spheres of power" have breached the limits of the constitutional order. Marshall considers these kinds of transgressions to be properly constitutional questions since they do not concern the inner prerogatives of the branches.

If institutions are sovereign within their spheres, then the powers established by the Constitution are sub-arguments that service a larger whole.⁹⁹ In building a framework out of the assumption that maintaining the powers of the various branches is the most basic constitutional concern, Marshall asks what it would mean if Congress had to defer

⁹⁸ Madison embeds his assumptions about constitutional order with the idea that "ambition must be made to counter ambition," but he does not seem to consider the possibility of non-ambitious politicians or factions. Or, if he did, he nonetheless thought that the parameters of the American system needed to be built much like *Leviathan*, that is, to deal with the lowest common denominator of human behavior and make that the norm in constitutional planning. Hamilton, Madison, and Jay, *The Federalist Papers*, 262.

to another authority to determine the tools at its disposal. But such an appeal would only displace the power to determine necessity onto another body precisely at the moment that the constitution was designed to provide stability. This deflection of the political would not neutralize, but would shift to another body the political dynamics that Marshall establishes as inherent in “necessary and proper.” The interpretative problem is thus not assuaged by this strategy, as this would constitute not a more legitimate construction of necessity, but a shift in power. Even worse, such a shift would constitute a deferral and deflection of political responsibility. Rather than settling the question, it opens another.

6.5: The Meaning of “Supremacy”

Marshall bases his notion of supremacy on an axiom “that the constitution and the laws made in pursuance thereof are supreme” and three corollaries: “1st. That a power to create implies a power to preserve: 2d. That a power to destroy, if wielded by a different hand, is hostile to, and incompatible with these powers to create and to preserve: 3d. That where this repugnancy exists, that authority which is supreme must control, not yield to that over which it is supreme.”¹⁰⁰

According to Marshall, “It is of the very essence of supremacy, to remove all obstacles to its action within its own sphere, and so to modify every power vested in subordinate governments, as to exempt its own operations from their own influence.”¹⁰¹

While the states do not serve the federal government (as they do for example in the British system) they are nonetheless subject and subordinate to the configurations of power as described in the Constitution. State sovereignty, which is delineated

¹⁰⁰ 17 U.S. 426 (1819).

¹⁰¹ Ibid., at 427.

conceptually and not territorially or even thematically,¹⁰² is determined by that which Congress deems “necessary and proper.” Even the Ninth Amendment, which reserves powers not delegated to the Federal government to the States, appears somewhat quaint – at least as concerns the theory of language it rests upon – when one considers the interpretative problems inherent in enumerated powers, especially in the hands of a jurist such as Marshall. The language of the Ninth does not change Marshall’s reasoning.

Marshall argues that removing impediments to carrying out powers is so basic to the idea of power that it “need not be stated in terms.”¹⁰³ This is because “It is so involved in the declaration of supremacy, so necessarily implied in it, that the expression of it could not make it more certain.”¹⁰⁴ It is interesting that Marshall chooses to insert “necessarily” here, since his own argument suggests that “necessarily” is implied in the word “implied.” Marshall seems to assume necessity in all predicates – “*x* is *y*” statements – and uses explicit statements of necessity for emphasis or flourish.

Marshall’s dual focus on positive powers and the removal of (even potential) impediments to carrying out those powers sets the groundwork for dealing with the supposed specter of destruction that Maryland’s taxation of the Bank establishes. For example, when Marshall argues that “the power of taxing [the Bank] by the States may be exercised so as to destroy it,”¹⁰⁵ he suggests that when considering the entailments of powers – such as scope and extension – we must assume that any powers will be used to their fullest extent, since it is this extent that measures their potentially injurious capacity.

¹⁰² For example, even purportedly state matters such as marriage laws could become a Federal matter if the Supreme Court is willing to extend clauses such as the “commerce law” to encompass it. See *United States v. Morrison*, 529 U.S. 598 (2000), which overturned parts of the Violence Against Women Act of 1994 on the basis of its overextension the Commerce Clause.

¹⁰³ 17 U.S. 427 (1819).

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

Marshall treats the specter that they “may be” so exercised as though they will necessarily be so exercised, since the existential question of what would happen if they were exercised frames the question. The powers of the branches, on the other hand, are primarily concerned with self-preservation – that no power would seek to destroy itself is a primary assumption – which is why Marshall bothers to note that the problem with the power to destroy is that it is “wielded by a different hand,” a hand that is not predisposed to protect powers other than itself. The logic of checks and balances turns out to be rooted in a necessity argument: Marshall advances a psychological claim that that capacity to destroy manifests itself, or at least must be thought to manifest itself in interpreting the Constitution, in actual destruction. Here again there is a fusion of ontology and necessity: the behaviors ascribed to the branches of government are premised on an argument about the nature of those branches. This is because, like other semantic questions, there is no way to determine within the text itself the scope and extent to which such tools would be used. In other words, one does not need to prove that the Hobbesian view of human nature is correct in building a constitutional order designed to protect against the possibility of extremes. In “expounding” the constitution, Marshall operates under an assumption of such extremes, where principles established *will* be utilized and carried to their fullest extent. Contingencies are made necessary insofar as they serve as heuristics for constitutional principles. Marshall, like Hobbes, Madison and others, configures power to accommodate worst case scenarios.

Whereas the Constitution provides for sovereign “spheres of action,” the supremacy clause becomes a catch-all for resolving interpretative questions between those spheres. The Federal government is afforded an overarching power that can reach

into the (sovereign) states if its own enumerated powers suggest that it must do so. In other words, the “spheres of action” of federal-state sovereignties are not territorially-bound, but governed by the Constitution’s logic of power. Though Maryland is “a sovereign state,” that sovereignty has not been breeched or “negatived” by the Bank, since Marshall’s argument positions the Bank in that sphere.

Whereas Marshall’s notion of sovereignty establishes the question of semantic determination within the “spheres of action” of the branches, his notion of supremacy expands this argument to provide for the semantic determination between two different, if complementary, levels of power. As supreme, the Federal government is afforded the interpretive space to determine which questions it can intervene in and how. Within its sphere, not even the Supreme Court can challenge that government’s determination; the Supreme Court must show that the government has stepped outside of that sphere.

As noted, Marshall uses the existence and survival of the new Union to frame his argument, with its failed precursor, the Articles of Confederation, serving as an example of the stakes. Marshall reads intentionality into changes made from the Articles, as when he argues that, “there is no phrase in the instrument which, like the articles of confederation, excludes incidental or implied powers; and which requires that everything granted shall be expressly and minutely described,” and that “The men who drew and adopted this amendment had experienced the embarrassments resulting from the insertion of this word [“expressly”] in the Articles of Confederation.” Marshall argues that the framers “omitted it to avoid those embarrassments.”¹⁰⁶ Marshall speculates that the

¹⁰⁶ 17 U.S. 406-407 (1819).

framers “omitted to use any restrictive term which might prevent [the clause’s] receiving a fair and just interpretation.”

In fact, the thrust of Marshall’s opinion does not benefit from these arguments about omission since his point is less textual than political. Marshall’s concern is the specter of a return to the articles that carries with it the baggage of a dysfunctional national government, not an historical claim about intent. Such a specter is part and parcel of Marshall’s attempt to provoke readers to read the ability to tax the federal government as a threat to the nation’s existence, an argument rooted in a common sense interpretation of the cost of maintaining the new Union. The consequence of rejecting Marshall’s construction of necessity and interpretation of the idea of enumerated powers is pitched as nothing less than a return to the problematic rationalizations that mired the Articles. Marshall’s opinion brings the possibility of that return into view.

Marshall’s opinions tend to replay constitutional debates as though he were using the court to establish a system of national power that he, as a founder, failed to establish at the nation’s beginning.¹⁰⁷ Ellis depicts Marshall as incapable of moving past the framework of the federalist-antifederalist debates thirty years prior:

The baseline for Marshall’s constitutional thought was the great struggle that had taken place over the ratification of the Constitution in 1787-1788, and despite an occasional empty reassurance that the rights of the states need to be recognized and respected, he view the advocates of states’ rights as essentially opponents of the national government created by the Constitution, who wanted to undo the victory of 1787-1788. From Marshall’s perspective, the proponents of states’ rights were essentially Antifederalists and supporters of the Articles....¹⁰⁸

¹⁰⁷ Martin, arguing for Maryland, went so far as to quote Marshall from 1788 in his presentation to the Court. White, *Marshall Court and Cultural Change*, 239.

¹⁰⁸ Ellis, *Aggressive Nationalism*, 105. As White notes, Marshall also saw this problem as a generational problem, especially in legal training. In a letter to Story, Marshall laments that “Our young men...grow up in the firm belief that liberty depends on construing our constitution into a league instead of a government....” White, *Marshall Court and Cultural Change*, 101.

In this view, Marshall not only envisioned forces that “would” undo the achievements of the new constitution, but enemies who actually “wanted to undo” it. Marshall creates a vision of these forces, and a picture of the threat of the bank against which the Supreme Court must defend the nation. Yet, as Ellis shows, the Maryland bank was far from seeking the Bank’s destruction in taxing it (as, for example, banks in Ohio and Kentucky seemed to intend), but was trying instead to raise revenue from the mostly private transactions in which the bank was engaged. Ellis argues that Maryland was cash-strapped because it was “unusually hard hit by the War of 1812.” Maryland attempted to “meet its various financial obligations” by levying a series of taxes – including on “its state banking institutions, and other private corporations in order to raise money.”¹⁰⁹

A final key point in Maryland’s argument that Marshall ignores in his opinion was that the Second Bank of the United States was hardly a “national” bank, but was comprised instead, by 80%, of private shareholders. Maryland, in short, viewed the bank as national in name only, using the guise of federal power as cover for private interests. Joseph Hopkinson, representing Maryland, argued that when we “strip [the bank] of its name...we find it to be a mere association of individuals, putting their money in common stock, to be loaned for profit, and to divide the gains.”¹¹⁰ Why, in short, should “an institution...purely private...which disclaims any public character, be clothed with the power and rights of the government?”¹¹¹ Hopkinson argues that not only was the federal government trampling a canon of states’ rights, but it was privileging a private corporation over a state’s ability to tax corporations in its territory. In Hopkinson’s view,

¹⁰⁹ Ellis, *Aggressive Nationalism*, 69.

¹¹⁰ Cited in *Ibid.*, 83-4.

¹¹¹ 17 U.S. 341 (1819).

Federal protestations over the necessity of the bank *to the nation's survival* was flawed at best and aggressively specious at worst. The Bank was deploying a rhetoric of national interest to obscure its actual concern with private gain. Maryland's argument with the bank appears to have been less an argument against banks as it was an argument against affording tax immunity to private financiers and bankmen. "How, then...can such an institution claim the immunities of sovereignty...?"¹¹²

Marshall's axioms were too broadly drawn to entertain such protests. His projections of an undoing of the constitutional order afforded Marshall a powerful tool of persuasion. The opinion, on the other hand, purports to simply articulate the terms of the document "the people" ratified. It is important to Marshall that the American people "were at perfect liberty to accept or reject"¹¹³ the constitution, and that they ratified it precisely because of the innovations in national supremacy that provide for the protection of the nation as a whole, and spheres of sovereignty that guarantee the ability of individual branches to carry out their duties. In ratifying, moreover, they deemed these innovations necessary. In *McCulloch* Marshall assumes that the Constitution must be read not ex nihilo, but as a correction of problems – problems marked in particular by the inability for parties to make political determinations and for any level of government capable of resolving interstate questions and determining possible solutions. For Marshall, the ratification constitutes a decisive judgment on those corrections. Marshall rehearses that debilitated old system to command the backstory that gives necessity meaning. Returning to a day when a Congress did not have the power to determine that which is necessary to carry out its enumerated powers is an American version of the

¹¹² Ellis, *Aggressive Nationalism*, 84.

¹¹³ 17 U.S. 404 (1819).

Hobbesian choice of the Union's life and death confronting Americans. In McCulloch, a particular memory of the Articles – and their rejection – is key to the semantic life of Marshall's Constitution.

Marshall's construction of supremacy flows from the commitments that Marshall extracts from logically unnecessary but nonetheless politically attractive premises. His axioms thus constitute less a "legal" argument (in the sense often meant in opposition to rhetoric) than a series of rhetorical moves that interact with and negotiate the textual bases of legal reasoning.

Marshall brings together "constitution," "sovereignty" and "supremacy" to generate a larger, comprehensive argument about necessity, capable of absorbing a range of questions – logical, historical and explicitly political. Yet, these claims are bounded by a toolbox of rhetorical strategies including arguments about common sense and pragmatic reasoning, a resistance to historical argument and a strategic use of abstraction.

6.6: Common Sense and Pragmatism

Marshall makes necessity arguments stem from the authority of the framers by evoking common sense. In essence, he asks whether the founders could have possibly meant to do X" or, like Hobbes who (by way of strategic mistranslation) tells his readers to "read" themselves in making judgments of human nature, Marshall says, *look to your pragmatic intuitions – not to logical necessity – and ask yourself how you use the term.* Marshall "solicits the attentions of a public inclined to be convinced by the sober reflection and cool logic he so masterfully deploys...."¹¹⁴ This strategy serves to force

¹¹⁴ Dolan, *Allegories of America*, 42.

those who might dismiss Marshall's necessity on technical grounds because it fails to meet the standards of deductive logic. Consider for example, the following passage about the rigidity of the meaning of necessity:

If the word 'necessary' was used in that strict and rigorous sense for which the counsel for the state of Maryland contend, it would be an extraordinary departure from the usual course of the human mind, as exhibited in composition, to add a word, the only possible effect of which is, to qualify that strict and rigorous meaning; to present to the mind the idea of some choice of means of legislation, not strained and compressed within the narrow limits for which gentlemen contend.¹¹⁵

The flexibility Marshall garners by referencing vague notions – e.g. “the usual course” – lets his readers do the work of checking general principles against particular cases. Here, Marshall appeals to emotions to generate rational arguments. Even if the Bank marked such a “departure,” Marshall assumes that those assessing the situation will through their pragmatic political sensibilities see the case his way. Earlier in the opinion, as already noted, Marshall argues that

A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would, probably, never be understood by the public. Its nature, therefore, requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects, be deduced from the nature of the objects themselves. That this idea was entertained by the framers of the American constitution is not only to be inferred from the nature of the instrument, but from the language.¹¹⁶

Here Marshall weaves together several different sources of persuasion, appealing to logical argument (“the language”), the metaphysics of constitutionality (its “nature”) and a sense of common sense abstracted from a notion of “the human mind.” The appeal to “the human mind” functions doubly: not only would allowing Maryland to tax the bank

¹¹⁵ 17 U.S. 419 (1819). Italics added.

¹¹⁶ 17 U.S. 407 (1819).

make no sense to this abstract “human mind,” but this assertion would no doubt be confirmed by a projected “public,” which plays the role of that “human mind” manifested in actuality – an abstraction that confirms Marshall’s truth. This “human mind,” is marked as rational and presumably cool-headed, which simultaneously positions those who might disagree as irrational, blinded by ideology to the determinant of the greater constitutional purpose. These individual moves, of course, are controlled not by transcendent reason – as Marshall (and skillful modern rhetoricians in general) have it appear – but a particular mode of rationality delineated by Marshall himself. The argument is rational only within his conceptual framework.

Marshall reflects this rationality off a fictive popular will, grounded in “the people.” Eisgruber points to the pragmatic validation of common sense that Marshall seemed to be counting on: “If Marshall could show that his reading of the Constitution would produce good government, then it would be natural to think both that the Constitution was the work of the popular sovereign and that he had faithfully interpreted it: after all, isn’t good government what the people want?”¹¹⁷ Marshall’s moment was auspicious for this assumption. By the time of the establishment of the Second Bank, many of its former opponents – mostly Republicans and anti-Federalists – had come to the conclusion that the bank was necessary, if only because the 1812 War had brought with it special burdens and challenges in paying for the war and shoring up the fiscal fabric of the U.S.¹¹⁸ Though the Panic of 1817, in which the Bank caused massive inflation by issuing too many notes, had spotlighted the devastating effects that poor monetary policy could have on the nation, the Panic itself was seen as a case of

¹¹⁷ Eisgruber, “John Marshall’s Judicial Rhetoric,” 447.

¹¹⁸ Killenbeck, *M’Culloch v. Maryland*, 54-72.

mismanagement, not evidence of the danger inherent in a central Bank.¹¹⁹ Ideology aside, the war changed the terrain on which necessity arguments were formulated. It reduced the calculus of necessity to a wartime mentality, one of the most comprehensive challenges a nation can encounter and a psychological state in which previous choices may appear imperative.

Marshall appeals to a pragmatic sensibility that serves to obscure the contingent foundations of necessity. His argument shows that much legal argument is in fact pseudo-legal, calling upon legal language – one might say legal metaphor – to ask readers to consider political stakes and problems. At the same time, Marshall suggests that the language of the constitution is controlled by principles that can be articulated only within the framework of the American project itself, a project that is encumbered and shaped by the problems and politics of the moment, since it is to each moment that persuasive forces must respond. Marshall's call to "Let the end be legitimate"¹²⁰ is made in a spirit not very far from Machiavelli's political observation that "*si guarda al fine*" ("one judges by the result").¹²¹ These ends need not be legitimate in themselves. The key point concerns political psychology. Where Machiavelli would probably venture that the people will let the Bank stand so as long as it serves its purpose, constitution be damned, Marshall suggests that reason requires that they accept it in principle.

¹¹⁹ Leon M. Schur, "The Second Bank of the United States and the Inflation after the War of 1812," *The Journal of Political Economy* 68 (1960).

¹²⁰ 17 U.S. 421 (1819).

¹²¹ *The Prince*, trans. George A. Bull (London: Penguin Books, 2003), 58.

6.7: The Use of History

Despite Marshall's pragmatic use of the moment, the *lack* of historical argument is one of his rhetoric's overarching features. Instead of engaging history directly, Marshall evokes specters of history manifested as part of an historical narrative of the nation's experiences under the Articles. These experiences, however, are not narrated historically, but are reduced to structural principles and problems.

In fact, Marshall's formalism depends upon strategies of dehistorization. In McCulloch, he cites no prior cases and does not engage those decisions that Maryland had cited in argument.¹²² In his defense of "analogical reasoning" Cass Sunstein, sheds light on why Marshall would have done this:

A notable aspect of analogical thinking is that people engaged in this type of reasoning are peculiarly alert to the inconsistent or abhorrent result, and they take strong convictions about particular cases to provide reasons for reevaluating their views about other cases or even about apparently guiding general principles

According to Sunstein, "...it is insufficiently theoretical; it does not account for its own low-level principles in sufficient depth or detail." First principles have no history. Marshall and other rhetoricians of the scientific tradition understand implicitly what Nietzsche formulates explicitly, namely that "all concepts in which an entire process is semiotically concentrated elude definition; only that which has no history is definable."¹²³ If we are to understand necessity as something located within texts, and not projected by

¹²² Chemerinsky notes that precedent itself has "rhetorical force" (2018) which justices use to meet their argumentative needs: "Opinions are written to appear consistent with precedent, even when they are not." He shows that even when justices do cite previous cases, they often do so out of context, "mischaracterizing" the constitutional principles that those opinions were premised on. That is to say, precedent itself is thoroughly bound up in rhetorical practices, both in terms of re-constructing the significance and bases of previous cases, and in making connections to the present question. Chemerinsky, "The Rhetoric of Constitutional Law," 2015. This question stems from a broader question about the merits (and dangers) of deploying analogies in legal argument. Cass R. Sunstein, "On Analogical Reasoning," *Harvard Law Review* 106, no. 3 (1993). Marshall's rhetoric attempts to foreclose analogical thinking.

¹²³ Nietzsche, *On the Genealogy of Morals*, 80.

readers onto texts, then those texts must be dehistoricized to take on an internal consistency and appearance of closure. This fictive and structurally impossible text reaches outside of itself, as into some Platonic heaven, to find meaning, and reduces the role of the reader to that of a receiver of an already-inscribed truth. Marshall's wager seems to be: where is that inscription? How is its meaning determined? We can only see something as inherently – non-historically, metaphysically – meaningful so long as we posit such a place, and assume not that meaning is political, but that it is discovered, existing before our deliberations. This assumption grounds the predominant approach that early 19th century jurists – especially Federalist jurists – took toward law.¹²⁴

Marshall utilizes a strategy made by possible by the belief that arguments are “in” texts, not the product of a persuasive effect readers experience while reading. This is another manifestation of the Derridean idea of presence. Marshall caters to the psychological assumption that readers are predisposed to believe in presence.¹²⁵ Like Derrida, the anti-formalist school, represented by scholars of rhetoric such as Stanley Fish, maintains that meanings are “constituted by an interpretive act.”¹²⁶ For anti-formalists, persuasion does not occur “in” the text because “formal features [do not] exist prior to and independently of interpretive strategies,”¹²⁷ as presence suggests they do. The *McCulloch* opinion exemplifies the degree to which writers can evoke ideas and images that move readers to reach certain points of understanding, but also the extent to which those writers need to call upon extant social and literary forms to achieve their effects.

¹²⁴ As noted continually by White, in White, *Marshall Court and Cultural Change*.

¹²⁵ For a selection of such arguments, and criticisms, see Jane P. Tomkins, *Reader-Response Criticism: From Formalism to Post-Structuralism* (Baltimore: Johns Hopkins University Press, 1980).

¹²⁶ Stanley Eugene Fish, *Doing What Comes Naturally: Change, Rhetoric, and the Practice of Theory in Literary and Legal Studies* (Durham: Duke University Press, 1989), 39.

¹²⁷ J. F. Worthen, “On the Matter of the Text,” *University of Toronto Quarterly* 60 (1991): 339.

However anti-formalist Marshall may be in fact, the McCulloch opinion benefits from his use of formalist pretenses, as well as jurists' belief in the metaphysics of presence.¹²⁸ The formalism of McCulloch is best seen as a rhetorical strategy that even anti-formalists such as Marshall can use to persuade, but this kind of reading requires that we go beyond noting that Marshall is a rhetorician, or "master tactician,"¹²⁹ to understanding what kind of rhetoric and tactics he employs.¹³⁰ Though these points of understanding will change over time, as illustrated in the contemporary disagreement with so many of Marshall's precepts and strategies,¹³¹ the point still remains that the strength of McCulloch was Marshall's mastery of the metaphysics of early-nineteenth century political and legal culture, comprised of universal claims and formalist conviction.

It appears, then, that we have located yet another denial at the center of Marshall's handling of history: the denial of anti-formalism. Marshall's evocation of a fictive constitution, packaged in a metaphysics of positivist science, maintains that the text cannot be whatever Maryland or Marshall wants it to be.¹³² The text, especially, is not the product of Supreme Court decisions. The persuasiveness of McCulloch stems from Marshall's ability to treat the text as a text, grounded only in his narrative of the Founder's intentions and abstract principles.

¹²⁸ See Williams, *The Alchemy of Race and Rights*, 8-12.

¹²⁹ Posner, *Law, Pragmatism, and Democracy*, 88.

¹³⁰ It is not quite the case that "the power to tax is the power to destroy" is, as Posner calls it, a "partial truth." Rather, the phrase evokes formal principles that do violence to the more contextualized truths of politics. *Ibid.*, 83. Though Posner acknowledges (86) that formalism can appear as a form of rhetoric, he does not attempt to see how far this appropriation takes jurists who deploy formalist rhetoric to increase their "influence," which Posner argues can never come from actual formalist jurisprudence.

¹³¹ See Currie, *The Constitution in the Supreme Court*; Michael J. Klarman, "How Great Were the 'Great' Marshall Court Decisions?," *Virginia Law Review* 87 (2001); Posner, *Law, Pragmatism, and Democracy*, 90.

¹³² Again, the text is what Marshall wants it to be and makes it, but his rhetoric is concerned precisely with disavowing this position. Posner, *Law, Pragmatism, and Democracy*, 86.

6.8: Strategic Abstraction

White distinguishes two key threads in the *McCulloch* opinion: the establishment of axioms and Marshall's engagement with "necessary and proper." But White's distinction misses the interconnectedness of Marshall's argument about necessity, as Marshall's view of "necessary and proper" requires that the clause be read against and in a field of abstractions. These abstractions provide a context without which necessity could not function. Marshall's conceptual contexts, in other words, do not merely "support" the meaning of "necessary and proper," but are crucial to the clause's meaning.

Eisgruber notes that "When Marshall's arguments required a controversial empirical claim, and invariably they did, he would merely assert it or even imply it without trying to prove it. He would spin out the implications of his premises rigorously and emphatically but leave the premises themselves unjustified and sometimes unstated."¹³³ In this view, "less is more" and "piling on reasons only calls attention to them and makes them suspect." But this misses the broader point, which is that dehistoricizing, ignoring precedent and refusing to engage in the more specific claims that Maryland had put forth in argument¹³⁴ makes *McCulloch* a sharp opinion, lacking the

¹³³ Eisgruber, "John Marshall's Judicial Rhetoric," 448.

¹³⁴ See Robert K. Faulkner, *The Jurisprudence of John Marshall* (Westport: Greenwood Press, 1980), 220. Ellis notes that the "very different argument" put forth by Hopkinson emphasized "historical context and circumstances." Ellis, *Aggressive Nationalism*, 81. Where Marshall does engage in exegetics, his engagement serves only to call attention to the contestability of his framework. Eisgruber notes that "because Marshall wished to defend his conclusions against future critics, Marshall avoided precedent," deploying a rhetorical strategy comprised of a "distinct theoretical focus." Eisgruber, "John Marshall's Judicial Rhetoric," 440. Eisgruber cites Posner, who argues that Marshall's ability to work in abstractions stemmed from the fact that he had "the advantage of interpreting the Constitution while it was still fresh. Although he required (and fortunately possessed) great political wisdom, he did not face as severe an interpretive problem as his successors did. Nor did he have the modern judge's burden of negotiating a minefield of authoritative precedents." Richard A. Posner, *Law and Literature: A Misunderstood Relation* (Cambridge: Harvard University Press, 1988).

messiness that history and other complexities (such as the differences between Maryland's tax and, say, those of Ohio, Kentucky or Tennessee¹³⁵) would introduce. When Marshall deploys these assertions to address specific questions, he does so at a high level of abstraction, avoiding arguments about specific constitutional clauses or the meanings of words. He sets out broad principles that can then be used to settle textual contradictions or questions: "Marshall's characterization of the constitutional project was remarkably abstract. He stressed its importance and its difficulty rather than its content."¹³⁶

Far from posing a problem for Marshall, this level of abstraction makes his arguments from necessity possible. He takes great care to avoid exegetics of his broader assertions, which he treats as self-evident truths outside of the sphere of argument. Cardozo had noted that Marshall "moulded [the Constitution] while it was still plastic and malleable..." which allowed him to work primarily in abstractions to great effect.¹³⁷ This suggests that Marshall was not only a great interpreter of the constitution, but an author of its most basic terms, a position that allows him to leave basic premises and assumptions undefended, such as the proposition that the federal government was "supreme in its sphere of action." White notes that this "proposition was merely asserted to be self evident."¹³⁸ This strategy forces upon those who would argue against his

¹³⁵ Ellis, *Aggressive Nationalism*, 68.

¹³⁶ Eisgruber, "John Marshall's Judicial Rhetoric," 448.

¹³⁷ Benjamin N. Cardozo, *The Nature of the Judicial Process* (New Haven: Yale University Press, 1921), 169-70. This suggests that Marshall was more easily able to ignore precedent because so many issues had not yet been dealt with by the early Court. Yet, Maryland's arguments did contain several arguments about precedent, which, like most of Maryland's arguments, Marshall ignored in the decision.

¹³⁸ White, *Marshall Court and Cultural Change*, 546.

position the burden, not only of criticizing the systemic thinking Marshall established, but rejecting its most basic terms.¹³⁹

By using his axioms that, because they conjure the language of reason, do not register as rhetoric, Marshall lures his readers into considerations of big questions, seen as logical deductions associated with the American story. As White notes, “The [Marshall] Court, especially in its constitutional decisions, established itself as one of the primary recasters of its age, an institution that gave guidance for the future by returning to the first principles of the revolutionary past and restating them in light of the exigencies of the present.”¹⁴⁰ White’s analysis needs reworking, however, to emphasize the role that rhetorical invention plays in Marshall’s opinion. Marshall does not merely “[return] to first principles,” but establishes new first principles. He not only “restates” core republican principles of the founding, but invents them in and through timeless axioms. In short, he constructs a republican ideal that probably never was, but that functions nevertheless as a powerful rhetorical marker. Since it is embedded in the constitution, and not subject to the whims of legal codes, it is settled: the “time has passed.”¹⁴¹ *McCulloch* does not merely report on history, but is itself engaged in historical construction. The success of Marshall’s invention hinges on the persuasiveness of his storytelling, not his historical accuracy or ability to conjure a real founding moment.

The tidiness of Marshall’s rhetoric – and logical relations are, in this view, a kind of rhetoric – is its primary appeal. Aristotle called these “apparent syllogisms,”

¹³⁹ They could and did do this. Yet the authorial position of a justice of Marshall’s caliber makes it difficult for criticisms to register since he was capable of establishing the framework within legal arguments were made. In this sense, Maryland’s arguments seem out of date and quaint compared to Marshall’s Euclidean geometries.

¹⁴⁰ White, *Marshall Court and Cultural Change*, 73.

¹⁴¹ *McCulloch*, at 423. This strategy is similar to that which I noted in Pericles’s use of time. Marshall also uses declarations of changed circumstances to frame his claims about necessity.

suggesting that though they may be essentially open to critique, their power lies in their ability to appear stable, and to mimic mathematical and geometric forms.¹⁴² This mimesis is essential to the concreteness that underlies legal rhetoric, and that underlies any attempt to negotiate the “meaning” of necessity in legal terms.¹⁴³ The move toward abstraction is crucial to Marshall’s ability to establish a notion of necessity that takes its meaning and force from the inner logics and economies of American institutions, and not particulars, whether ideological or historical. Moving out of the moment and into the abstract is a key in Marshall’s understanding of necessity.

6.9: Conclusion

Marshall is concerned not with drawing boundaries around legal concepts, but with establishing configurations of power, including the power to determine the meaning of necessity. Marshall maintains that while the branches of government are described in the constitutional document, their tools – the means by which they perpetuate themselves – must, within bounds, be self-authorized and authored. The limits of Congress’s ability to construct the tools it deems necessary to discharge its powers stem from a) material resources (such as the placement of the execution of powers in the executive branch), b) periodic elections, and c) the delineation of mutually exclusive though oftentimes dependent spheres of action in the three branches. Though “auxiliary precautions” – such

¹⁴² Aristotle argues that though inductive examples are perhaps best suited for political rhetoric, “enthymemes excite the louder applause.” Aristotle, *Complete Works*, 1356b24-5. This is because logical relations appeal to modern sensibilities by participating in the promise of logic. The danger is that when such arguments are fallacious, they may still evoke the rhetorical power that logic carries with it.

¹⁴³ See Fish, *Doing What Comes Naturally*.

as the “parchment barriers” that Madison minimized, such as the Bill of Rights¹⁴⁴ – may also provide legal checks on power, all of them may be limited if thought to be injurious to the basic structure and survival of the constitutional structure itself.

By affording to Congress the power to determine necessity, Marshall recognizes that constitutional orders are not material in and of themselves – and are effectively powerless to determine the content of the political order – but constitute the basic rules within which political actors act. “Necessary and proper,” therefore, not only constrains the constitutional order, but expands the field of action in which political actors act.

In a more basic sense, the politics inherent in “necessary and proper” are illustrated by the fact that determinations of what is necessary may change, and that Congress constructs necessity differently at different times. Sometimes, for example, as in the case of the Bank, Congress may reverse itself:

The original [Bank] act was permitted to expire; but a short experience of the embarrassments to which the refusal to revive it exposed the government, convinced those who were most prejudiced against the measure of its necessity, and induced the passage of the present law.¹⁴⁵

In politics things do not only become necessary. Necessity, once established, may itself be undone politically. The *McCulloch* case thus makes an important contribution to the study of necessity. While I have emphasized necessity’s capacity to delimit and narrow the terms of political possibility and spaces for politics, Marshall uses it to open new spaces, affording Congress the ability to negotiate necessity’s terms in deliberation. This suggests that there is nothing inherently limiting about necessity, but that its political

¹⁴⁴ Stuart Leibiger, “James Madison and Amendments to the Constitution, 1787-1789: “Parchment Barriers”,” *The Journal of Southern History* 59, no. 3 (1993).

¹⁴⁵ 17 U.S. 402 (1819).

effects determine how it is placed and used within subsequent fields of political and legal relations.

Chapter Seven: Rhetoric, Rights and the Politics of Medical Necessity

“Necessity never made a good bargain” – Benjamin Franklin

7.1: Introduction

Robert Cover opens his classic text, *Violence and the Word*, with a startling declaration that “Legal interpretation takes place in a field of pain and death.”¹ While I do not think that Cover had in mind cases such as Marshall’s claim that “the power to tax is the power to destroy,” Cover’s point is literally true when dealing with legal issues that address embodied political questions – such as the application or suspension of *habeas corpus* – and is useful in conceptualizing the relationship between language and the world it purports to report on or attempts to capture. Cover’s provocative opening thus points toward the physical violence in which legal systems often traffic as well as the “violence” inherent in treating the world of politics as a system of structures used to subsume, in categories and logical forms, otherwise multifaceted and diverse lives. In order to reduce the world – including individual experience and testimony – so that it can fit into the more binary, and certainly more rigid categorical imperatives of legal knowledge, legal discourse reduces legal subjects to a level that makes all people equally analyzable and accountable. This reduction is problematic from both a political and ethical standpoint.

Throughout this project, I have sought to chart the politics that necessity arguments install and maintain. In this chapter I cast medical necessity not only as a

¹ Robert M. Cover et al., *Narrative, Violence, and the Law: The Essays of Robert Cover*, Law, Meaning, and Violence (Ann Arbor: University of Michigan Press, 1992).

particularly interesting instance of the politics of necessity, but a case of high stakes. I show that a critical reading of medical necessity makes clear the impossibility of disassociating a critique of capitalism and its key contemporary tools – neoliberal rationalities such as cost-effectiveness, or methods of calculation such as risk – which shape medical knowledge and govern access to care. In other words, the “metaphysics of presence” that I have used to problematize necessity is deeply bound up within and to capitalism, which in its commodification of medicine calls into question the very idea of there being an answer to what is or what is not medically necessary. In undertaking a critique of medical necessity in contemporary debates then, it is useful to remember Marx’s famous claim that, under capitalism, “all that is solid melts into air,” where medical necessity claims, which many depend upon to secure care, have been subsumed by discourses that have been appended to the medical. With this in mind, I argue that medical necessity arguments are both increasingly insecure platforms on which the access to medical care can be established and that a different discourse will ultimately need to be established to guarantee care for Americans in the twentieth-century. This argument stems from the unique relationship between necessity and the politics of care.

I proceed in four basic steps. First, I consider the rhetorical force of medical necessity, and argue that necessity not only governs access to care in the United States, but constitutes the meaning of care itself. Second, I recast medical necessity as an order of discourse rather than a set of definitions to be discovered. Third, I examine the intersections of medical necessity and two key factors and movements that bear on medical discourse: medicalization and marketization. Fourth, I apply my critique to the specific cases of Viagra and Cesarean section deliveries to show how a rhetorical analysis

of medical necessity can help chart a politics of medical care. Finally, I advance an argument about the tensions between medical necessity and capitalism that pose political challenges to both the meaning of and access to care.

7.2: Medical Necessity as Gatekeeper Concept, and an Optimistic Metaphysics

Medical necessity serves as the primary conceptual gatekeeper for distinguishing not only necessary from unnecessary care within American medical regimes, but also which benefits will be covered.² Yet, while the gatekeeper metaphor is apt, it is also misleading. As medical necessity guards the terms care, it also defines and constrains those terms. In many, and often the most vital cases, one must meet a threshold of necessity to access care, lest one's situation be deemed elective, cosmetic, or beyond the pale of recovery. The concept is also amorphous, interpretative and necessarily political. It is also, I argue, both functional and strategic, a discourse to seize upon or to avoid being seized upon by.

As is the case with necessity arguments generally, medical necessity is often misunderstood. Many people, including doctors speak of it as though it were an object of presence, something pre-existing in the already-written annals of medical knowledge. When attempts to secure care are made, however, this metaphysics is dissolved in the face of neoliberal rationalities and economic orders. Often vulnerable patients confront impermeable and seemingly irrational and labyrinthine medical codes, fueled by an optimistic faith in a thing called medical or scientific "knowledge." The decline of

² Glassman et al make the distinction between medical necessity and benefits covered in Peter A. Glassman, Peter D. Jacobson, and Steven Asch, "Medical Necessity and Defined Coverage Benefits in the Oregon Health Plan," *American Journal of Public Health* 87, no. 6 (1997): 1054.

doctors' authority under managed care has made it increasingly difficult to simply turn to doctors to mediate this knowledge. Doctors do not stand outside these orders, but are subject to them as well.

Medical necessity's dual capacity to regulate access while simultaneously defining the meaning of legitimate care stems from its regulative power within institutional orders, used first to define (or to refuse to define) certain questions as medical and, second, to dictate the legitimate means for dealing with those questions. These questions, and these means, moreover, constitute both the material and conceptual basis – what Foucault calls a system of power/knowledge – by which medical care is dispensed.³ The centrality of medical necessity and its function in regulating access to care makes medical necessity discourse as important to engage as it is problematic. In questioning medical necessity, I am calling attention to something so basic that it rarely registers as a problem, even if it is experienced as such.

Considering the number of different claimants within medical debates, it is important to notice what kind of language games constitute and accompany medical necessity. Consider the following findings from a study commissioned by RAND:

Obtaining increased value for money is a major concern in medicine. An appealing way to contain the rise in the total expenditures on medical care would be to eliminate medical services that do not benefit patients. However, this must be done without decreasing access to crucial services. Developing ways to detect when procedures were either being used or withheld for the wrong reasons is a possible method to achieve this goal.⁴

This passage, focused as it is on developing a strategy for eliminating excess, raises the question of how to develop a conceptual instrument for distinguishing different kinds of

³ See "Two Lectures," in Foucault, *Power/Knowledge*, 78-108.

⁴ James P. Kahan et al., "Measuring the Necessity of Medical Procedures," *Medical Care* 32, no. 4 (April 1994).

medical services. The impossibility of resolving the question of medical necessity (troped here as “crucial”) scientifically – that is, of finding the correct rubric – is marked by the researchers’ reinscription, even as they attempt to answer their own question, of evaluative terms: what “benefits” patients? What constitutes a “crucial” service? What constitutes “wrong” reasoning? These questions concern the shell games that necessity arguments are often used to play. The purported fixity of these terms is predicated on an assumption that “proper” determinations exist, as though the question were one of minimizing abuses in determining and not privileging certain rhetorical frames over others. The RAND researchers’ frustration is palpable, not so much with medical necessity itself as with the theory of language they seem to bring to bear as they look for necessity in all the wrong places: “Although our aggregate results confirm the utility of the concept of necessity, the lack of consensus among panelists on the necessity of indications is somewhat troubling.”⁵ Their focus on capturing the meaning of necessity, rather than engaging in a politics renders the project structurally unrequitable.⁶

Within language itself medical necessity is indeterminate. When it functions as a rhetorical tool in medical debates, its content is determined through contests over its meaning and the ability to institutionalize those meanings. As Wittgenstein argues, “It is what human beings say that is true and false; and they agree in the language they use.”⁷

⁵ Ibid.

⁶ Another problem with abstract approaches to social concepts is the inattention to or disinterest in context. Joan C. Tronto has noted the feminist call to “rely less on principles as a way to resolve moral or ethical disputes, and should pay more attention to the meanings assigned to principles in reflexive moral practices.” “Does Managing Professionals Affect Professional Ethics? Competence, Autonomy, and Care,” in *Feminists Doing Ethics*, ed. Peggy Desautels and Joanne Waugh (Lanham: Rowman & Littlefield, 2001), 188. This mode of concept formation was of course also a contribution of Wittgenstein’s. See Hanna Fenichel Pitkin, *Wittgenstein and Justice: On the Significance of Ludwig Wittgenstein for Social and Political Thought* (Berkeley: University of California Press, 1972), 85-98.

⁷ Wittgenstein, *Philosophical Investigations*, Sec. 241.

Though Wittgenstein's clarification points to the important fact that speech – and, I would add, political – communities share discursive structures, he does not suggest that these shared discourses produce shared *meanings*, since language games are comprised of an ongoing negotiation of signification and association, not the fixing of meaning, and not always by a sovereign voice. Yet, in theorizing language as a game, he does not account for the role power plays in shaping meanings, and so does not adequately account for the *politics* of language games. One of Wittgenstein's most important contributions was that speakers may use concepts as parts of language games, which constitute our “forms of life,” even when we are (philosophically, semantically) unclear as to the meaning of those terms. As far as philosophical conceptual puzzlement is concerned, Wittgenstein points to an important epistemological problem. But when a hazy concept controls access to material resources that determine life or death, and whether lives will be liveable or imbued with pain and struggle, conceptual puzzlement becomes political.

One possibility the RAND researchers do not entertain is that medical necessity's usefulness as a concept is a *result* of its indeterminacy. Part of the difficulty that doctors and patients experience within this contest stems from the fact that the terms of discourse fluctuate. On the whole, however, discursive fluctuation is a good thing. The ethics and politics of medicine, movements asserting the right to care or to make decisions about one's own bodily and mental health – to assert need, in short – depend upon the moveable boundaries that circumscribe medical necessity. From this perspective, the conditions that make medical necessity political, and allow it to be part of a politics, are the same conditions that subject it to neoliberal forces, state intervention (which is

sometimes desirable, other times not). Were medical necessity determinate in and of itself, there would be no debate at all, no contest, no meaning, no politics. There would be no need to distinguish between the necessary and unnecessary medicine or necessary and unnecessary modes of care more generally. Why, then, should the researchers be surprised, not to mention “troubled,” by their findings? What assumptions underlie the hope they suggest that their results would be or could be different?

The prospects of harmony in the larger field of medical necessity discourse get bleaker when we note that the RAND analysis focuses only on disagreement between *doctors*, while medical necessity discourses are not limited to the agreements of medical professionals. For example, in neonatal intensive care units (NICU) some parents endure what has been described as a “rollercoaster ride” and report “cognitive confusion” as doctors themselves don’t agree on the very terms through which parents calibrate (or fail to calibrate) themselves to their child’s condition and treatment.⁸

Similar and unsuccessful attempts to define medical necessity abound. In a study of the Oregon Health Plan (OHP), Peter A. Glassman, Peter D. Jacobson, and Steven Asch note that, “Medical necessity means different things to patients, providers, and payers,” even as it still legally constitutes the “contractual basis between patients and insurers or health plans to provide medically necessary health care.”⁹ Aside from these tautologies of necessity, in terms of practice they are, “...used to determine whether a particular procedure or treatment should be provided.” As noted, Glassman, Jacobson, and Asch also note that medical necessity rubrics are different than “benefits coverage”

⁸ Linda L. Layne, “‘How’s the Baby Doing?’ Struggling with Narratives of Progress in a Neonatal Intensive Care Unit,” *Medical Anthropology Quarterly* 10, no. 4 (Dec 1996): 639.

⁹ Glassman, Jacobson, and Asch, “Medical Necessity and Defined Coverage Benefits,” 1054.

rubrics, which they define as “those that the insurer agrees to provide if and when they are required for a beneficiary's care.” Yet, it is not clear how the definitional problem associated with that which is “required for a beneficiary’s care” does not introduce the same problems as medical necessity.¹⁰ In other words, as we have seen when necessity arguments are defined through other concepts that are similarly intended to operate as filters, “required benefits” serves merely as a site of displacement for the interpretative question of medical necessity.¹¹ Does Oregon’s prioritization of “benefits coverage” err on the side of the medically necessary, or does it expand, out into the unnecessary? It is unclear how coverage decisions differ in fact from judgments of necessity, and it is therefore insufficient to say, as Glassman, Jacobson, and Asch do of the OHP, that benefits coverage merely “supplants” medical necessity or, as an administrator for the OHP claims, that “Oregon has gone out of the medical necessity business.”¹² The result of this interpretative shifting is not only that doctors’ disagreements about medical judgments can cause vacillations between patients’ and patients’ families sense of hope and despair. They are also the source of “considerable litigation...prompted by patients challenging treatment denials based on medical necessity.” Glassman, Jacobson, and Asch report that most managed care directors under the Oregon system report “that the terminology relating to medical necessity is “vague,” “ill defined,” and “open to wide interpretation.” Instead, Oregon directors lean far more often on doctors’ judgments of “appropriateness.”¹³ Yet, in many ways, this trust is premised on a more insidious set of

¹⁰ Ibid.

¹¹ Glassman, Jacobson, and Asch conclude: “shifting from a structured medical necessity approach to a defined coverage benefits approach is unlikely to substantially alter clinical decisions.” Ibid.: 1058.

¹² Ibid.: 1055.

¹³ Ibid.: 1054-5.

predictive strategies than simple deference to doctors' judgments. The model of sovereign medical determinations is long past, a relic of the Dr. Quinn, Medicine Woman days. Jonathan Imber has catalogued a series of reasons for the decline of doctors' authority, from increased specialization to changes in contemporary anxieties about care, from profit motives to an increased dependence on and faith in technology.¹⁴ It is not only the case that the meaning of medical necessity is not simply a matter of a doctor's sovereign power to determine. The OHP is also governed by a system of "capitation" wherein doctors receive financial incentives to withhold care. Harry Selker sees a potential "moral hazard" in capitation-based systems that must be weighed against the social inequalities that often accompany medical necessity rubrics.¹⁵ The OHP study found that

In fact, most medical directors felt that capitation played a stronger role than the Prioritized List in determining how physicians approached patient care because most clinical decisions could not be made simply by referring to the list of covered condition-treatment pairs.... [Instead,] the provision of covered benefits depended more on relatively unstructured physician decision making than on a structured medical necessity approach.¹⁶

The study also found that "the financial incentives of capitation...better promoted appropriate, individualized, and cost-effective patient care than did medical necessity."¹⁷ Apparently, the materiality of price controls and financial incentives constrain doctors' judgments more determinately and predictably than interpretative schemes do—so well in fact that Oregon "had to change its oversight function from preventing overuse to

¹⁴ Jonathan B. Imber, *Trusting Doctors: The Decline of Moral Authority in American Medicine* (Princeton: Princeton University Press, 2008).

¹⁵ Harry P. Selker, "Capitated Payment for Medical Care and the Role of the Physician," *Annals of Internal Medicine* 124, no. 4 (1996).

¹⁶ Glassman, Jacobson, and Asch, "Medical Necessity and Defined Coverage Benefits," 1055.

¹⁷ *Ibid.*

ensuring that Medicaid clients received needed items and services.”¹⁸ It is thus difficult, and perhaps impossible, to evaluate the relative importance of assessments of appropriateness and individualization, which are not only vague themselves, but are called into question by their placement alongside cost-effectiveness.

Despite these shifts and new pressures, doctors are merely one voice in the contest over the terms of discourse of medical necessity, and a fractured voice at that, engaged in internal struggles over causes and proper care with physicians’ review boards, group consultations, external reviews sanctioned by states via appeals processes with the ability to overturn decisions. Doctors today are also located within systems of internal and external appeals that increase the potential for tension between patients and doctors, and skepticism about doctors’ judgments.¹⁹ As internal appeals processes often lack the perception of disinterested objectivity, external appeals processes become especially important. This process, regulated by the state, allows for processes whereby health insurance provider determinations of medical necessity can be overturned. This layering of bureaucracy, of course, is part of a more general and sweeping trend. For example, Joan Tronto notes that

At present, professionals find their work and their control of their professions increasingly surveyed by managers. In the health field, for example, managers have come to play an increasingly central role in various forms of health care systems, from the privatized U.S. system of “managed care” to within the National Health Service in the United Kingdom. The justification for inserting managers into the work of professionals is to control costs.²⁰

¹⁸ Ibid.: 1056.

¹⁹ Aaron Seth Kesselheim, “What’s the Appeal? Trying to Control Managed Care Medical Necessity: Decisionmaking through a System of External Appeals,” *University of Pennsylvania Law Review* 149, no. 3 (Jan. 2001).

²⁰ Tronto, “Does Managing Professionals Affect Professional Ethics?,” 188.

Though these changes effect medical practitioners of all stripes, they are particularly problematic as regards doctors' authority because so much American law continues to defer to their determinations, even as their judgment may have lost some of its force; this shift therefore creates a power vacuum in the determination of medical necessity. For example, Rosalind Petchesky notes that one of the common misreadings of *Roe v. Wade* is that it protects a woman's "right to choose" to have an abortion. Quoting Kristin Booth Glen, Petchesky notes that in *Roe* "the Court 'was not upholding a woman's right to determine whether to bear a child, as abortion proponents and feminists had argued. Instead, it was upholding a doctor's right to make a medical decision!'"²¹ Instead, "Above all, 'medical necessity' makes the physician the final arbiter of the abortion decision."²²

The well-worn American advertising trope, "Ask your doctor if X is right for you?," plays upon such skepticism by suggesting that doctors may not be considering all options and that patients may need to advocate for themselves. This is no doubt sometimes the case. But it is also reasonable to consider that such advertisements may be a factor in the increasing fear on the part of doctors that is leading some to practice what is commonly known as "defensive medicine," where doctors prescribe those diagnostics, treatments and medicines that are even marginally related to symptoms to protect themselves from malpractice suits.²³ John D. Lantos notes the different situation contemporary doctors are in: "Today, as a matter of legal and moral principle, there have been two important shifts. First, it is acknowledged that doctors have dual loyalties. They

²¹ *Abortion and Woman's Choice: The State, Sexuality, and Reproductive Freedom*, Rev. ed. (Boston: Northeastern University Press, 1990), 271.

²² *Ibid.*, 289.

²³ Petchesky points to a similar practice in obstetric technologies in "Fetal Images: The Power of Visual Culture in the Politics of Reproduction," *Feminist Studies* 13, no. 2 (1987): 273.

work for their patients but also, sometimes, for managed-care companies, corporations, drug companies, government agencies and others.”²⁴

According to Lantos, the effect has been that “[t]o a certain extent, we have diluted the internal morality of the medical profession and tried instead to compensate by amplifying the moral input of the patient.” Yet, though doctors’ voices may have been stripped of some of their historical (and sovereign) power, they are still placed at the center of responsibility for the outcomes of medical care, and legally responsible in a way that belies the decentralization and shifts in medical necessity discourse. Lantos argues that doctors nonetheless remain “a locus of accountability. If things go badly, the doctors are to blame. If things are going to change, doctors have to be the leaders. In this role doctors, like insurance companies, become the embodiment of our belief that we are not helpless against the randomness of the world. If we don’t like the way things turn out, we can hold the doctors responsible. We can punish them.”²⁵

The politics of necessity becomes increasingly complex, however, when we consider the changing and increasing constraints of systems that “create the background against which [doctors] are forced to act.”²⁶ One result of the challenge to doctors’ judgments is the proliferation of self-diagnosis, fueled by the internet, and the seizure of this proliferation by medical advertising. Of course, there is good reason to be skeptical of patients’ understanding of their conditions from a medical perspective.²⁷ This skepticism becomes all the more urgent when we consider the synergies of self-diagnosis

²⁴ The Lazarus Case: Life-and-Death Issues in Neonatal Intensive Care (Baltimore: Johns Hopkins University Press, 2001), 85.

²⁵ Ibid., 4.

²⁶ Ibid., 6.

²⁷ Brian S. Alper, “Curbside Consultation: Usefulness of Online Medical Information,” *American Family Physician* 74, no. 3 (2006).

and direct to consumer marketing.²⁸ Yet, we cannot dismiss out of hand the potential benefits of patients educating themselves about their options; it is good that patients ask more questions today than they used to.²⁹ The contemporary proliferation of popularly-accessible medical books and internet web sites (such as WebMD) adds new layers and voices to the contest over medical necessity claims, but there is inherent loss in these changes, particularly as concerns patients' relationships to doctors. The wresting of medical expertise from the privileged domains of doctors, and the potential of a transfer of the meaning of medical necessity to parties, such as health insurance providers or the state, simply shifts the power to determine to parties that make highly decontextualized judgments about appropriate medical care and the meaning of necessity. More importantly, if patients are no longer able to use their doctors to persuade health insurance providers or appeals committees that care is necessary, who will advocate for them? Which authorities guard the gates of medical necessity when doctors' judgments are no longer enough? Are doctors charged with issuing second judgments via external appeals processes to be trusted when they are paid by the companies that they oversee?

There is no easy position that one can default to here. If there were, we would be suspicious of its politics and its terms. Aside from the essentially-contested nature of the internal workings of the medical sciences, the facts of scientific inquiry are thought by some to be intrinsic to science itself, created, as Bruno Latour imagines, in the laboratory

²⁸ Bill Hendrick, "Self Diagnosis from TV Drug Ads Can Be Dangerous," *The Atlanta Journal-Constitution*, 1/08/07 2007.

²⁹ Simon J. Williams; Michael Calnan, "The 'Limits' of Medicalization?: Modern Medicine and the Lay Populace in 'Late' Modernity," *Social Science & Medicine* 42, no. 12 (1996).

and therefore of dubious utility when applied in the world.³⁰ Kenneth Burke puts the problem like this:

In its transcendence of natural living, [science's] technical scruples, its special tests of purity, a clinic or laboratory can be a kind of secular temple, in which ritualistic devotions are taking place, however concealed by the terminology of the surface. Unless properly scrutinized for traces of witchcraft, these could furtively become devotions to a satanic order of motives. At least such was the case with the technological experts of Hitlerite Germany.³¹

It is unfortunate that Burke builds his critique of the science question around Hitler when that critique point needs to be made available for thinking through less exceptional moments in history. It is a rhetorical form that we are addressing in calling science into question, not a particular moment in time, even as those forms are only interpretable by understanding their moment. The same must be said of necessity which in its expansiveness cannot be contained in a timeless theory, but must be understood in the concrete engagement with specific texts.

There is a paradox inherent in necessity's dual condition: contested, but still empowered as the gatekeeper of medical care. A recent study puts the problem like this: "The history of medical necessity can be seen as a history of conflict over meanings and attempts by various groups to gain public support for their particular view and for the 'facts' that they claim about it."³² Because of the centrality of conflict in these debates, the study concludes: "Viewed in this context, attempts to achieve consensus on the meaning of medical necessity are likely to fail"³³

³⁰ Bruno Latour, *Science in Action: How to Follow Scientists and Engineers through Society* (Cambridge: Harvard University Press, 1987).

³¹ Burke, *A Rhetoric of Motives*, 32.

³² Cathy Charles et al., "Medical Necessity in Canadian Health Policy: Four Meanings And . . . A Funeral?," *The Milbank Quarterly* 75, no. 3 (1997).

³³ Ibid.

It is important to remember that though something may be deemed medically necessary, this determination does not automatically evoke social responses. Since the U.S. lacks universal, single-payer health care, it has evaded questions of medical necessity on a broad political scale that countries such as Canada or the UK have engaged.³⁴ In other words, the largely privatized responsibility for addressing medical needs has largely privatized deliberations over the meaning of medical necessity, forestalling broad social discussions. On the other hand, broad-based, public deliberations over the meaning of medical necessity are more common and vigorous in Canada because universal health coverage forced a debate over how to distribute finite resources and care. Where American health care depends upon competition, the Canadian Health Act (CHA) prohibits providing services for profit that the government provides because, as one study puts it, such provisions “erode the public system by destroying its broad base of support and increasing costs.”³⁵ This policy is intended both to remove the possibility that medical judgments might be made for profit and not care, but also to keep costs low and regulated—they are designed, that is, to maintain the *system*.³⁶ This universality strives to keep the agreed upon services considered medically necessary bound in a tightly woven political economy, but also forces Canadians to engage the

³⁴ David Gollaher, *Circumcision: A History of the World's Most Controversial Surgery* (New York: Basic Books, 2000), 114. The literature bears this out. Much of the medical necessity scholarship focuses on Canada, though the literature dealing with American health care does appear to be growing.

³⁵ Carolyn A. DeCoster and Marni D. Brownell, "Private Health Care in Canada: Savoir or Siren," *Public Health Reports* 112, no. 4 (1997): 301. In Canada, the idea of establishing a two-tier system (as exists in the UK) is raised from time to time as a way of alleviating public resources, but has thus far been dismissed as corrosive of attempts to keep overall costs low. See John E. Wennberg, "Medical Necessity and the Debate over [Expletive Deleted] Care," *Public Health Reports* 112, no. 4 (1997). and an exchange in letters in Carolyn A. DeCoster and Marni D. Brownell, "Decoster and Brownell Reply," *Public Health Reports* 112, no. 6 (1997).

³⁶ Enforcement of these policies is a constant struggle. See Ann Silversides, "Canada Health Act Breaches Are Being Ignored, Pro-Medicare Groups Charge," *Canadian Medical Association Journal* 179, no. 11 (2008), <http://www.cmaj.ca/cgi/content/full/179/11/1112>.

question of medical necessity directly. By socializing medical care, the semantic question is also socialized whereas, in the American model, it remains privatized. In other words, universal health care makes visible the politics of access by forcing a political question about the social meanings of necessity.³⁷

Baker and Bhabha note that “While universality holds that everyone is covered, it has never meant coverage for everything.” Medical necessity is thus the central regulatory mechanism of the CHA that determines what will be covered. In Canada,

medical necessity is a contentious battleground in which citizens and government are locked in an interpretive struggle over the scope of this coverage, and the types of services deemed to be medically necessary. Disputes about medical necessity can arise when services that had previously been listed are de-listed, whether based on “evidence-based” analysis, physician-government negotiations designed to respond to financial constraints or the political viewpoint of the government of the day. Alternatively, they may arise when a new treatment has been developed and remains to be decided whether or not its claim for recognition is warranted.³⁸

Outside the order that medical necessity provides, the determinations of individual doctors are seen as irregular; and yet, the regulation of need assessments is the backbone of such systems. Moving toward a more rigid definition of medical necessity by way of a fixed rubric involves a corollary delegitimatization of doctors, calling their judgments into question and seeking to regulate to control the way in which their judgments interact with those of health insurance providers. These moves, in other words, consist of a focus on meaning structures rather than professionals empowered to make determinations.

³⁷ Charles, et al argue that contests over the meaning of medical necessity in Canada proliferated in the 1990s in order to confine the scope of care and protect Canada’s fledgling health care system. Charles et al., “Medical Necessity in Canadian Health Policy.”

³⁸ David Baker and Faisal Bhabha, “Universality and Medical Necessity: Statutory and Charter Remedies to Individual Claims to Ontario Health Insurance Funding,” *Health Law Review* 13, no. 1 (Winter 2004). Wennberg argues that both Canada and the US “have failed to confront the conundrum of what constitutes medical necessity and therefore our ability to identify when valuable care is being rationed.” Wennberg, “Medical Necessity and the Debate over [Expletive Deleted] Care,” 302.

They participate in the metaphysics of presence that I have identified throughout this study as a central problem in the pursuit of a politics of necessity.

The Canadian case indicates that medical necessity is often evoked in the service of restricting care and protecting its health care system for a longer run. But Charles et al argue that debates about medical necessity are a distraction from the broader issues at stake in health care. Specifically, they argue that Canadians should focus on more pervasive social values as “these will set the broad boundaries within which structural reforms to health care can take place.”³⁹ In this view, medical necessity changes as social values change. They conclude that “the ambiguity of medical necessity [is] advantageous to the [Canadian] federal government” both in terms of reducing taxpayer costs and “preserving the national health insurance program and the collectivist values that underlie it.”⁴⁰ The Canadian example shows what a robust politics of medical necessity looks like, and guards against cordoning off medical judgments from social commitments to care.

7.3: Medical Necessity as an Order of Discourse

Medical necessity’s power stems, at least in part, from its ability to mark a particular condition as involuntary or coerced. Nobody, the assumption goes, chooses to put themselves in need of medical care. Yet, a society that turns increasingly to medical necessity arguments is also at risk of displacing the effects of social questions – environment, diet, education, poverty, etc. – onto an autonomously conceptualized body, cordoned off from social analysis. Pointing in particular to difficulties procuring wheelchairs that meet a range of difficult social conditions, Glassman, Jacobson, and

³⁹ Charles et al., “Medical Necessity in Canadian Health Policy,” 388.

⁴⁰ Ibid.: 387.

Asch note that “the concepts of medical necessity and defined coverage benefits do not address well socio-medical issues faced by many Medicaid patients now being shifted into managed care.”⁴¹ Of course, the lines between necessary and unnecessary care – cosmetic, elective, experimental – are far less important politically in societies where individuals are expected to fend for themselves. This formulation attempts to evade the question of medical necessity altogether by privatizing it. This, in turn, functions to keep medical judgments and the knowledge they yield from appearing political.

Medical necessity is the product of complex social negotiations about public and individual responsibility and judgments about legitimate claims for care. Consider just a few common examples that Americans struggle with: the line between physical therapy and routine exercise; suspicion toward chiropractics; the contested validity of alternative or homeopathic medicines; the shame around psychotherapy and its relation to psychiatry. Consider the liberal discourses that shape narratives of personal responsibility in diet, exercise and sexual practices, and attention paid to the corresponding costs for medical care and assuming the risk stemming from “lifestyle” choices. Dietary practices, the decision whether or not to smoke, sexual promiscuity, and narratives of responsibilities associated with diseases such as cancer are often called upon to shift the responsibility for care back to the person who is said to have brought on the condition herself. Consider also narratives of social responsibility, from workers who have for decades inhaled asbestos and lead paint, to 9/11 responders who now struggle to breathe. In one model, the way people live results in the need for different kinds of treatment, which leads some to ask why such costs should be redistributed. In another model,

⁴¹ Glassman, Jacobson, and Asch, "Medical Necessity and Defined Coverage Benefits," 1057.

medical need may be presented as a brute fact that society has an obligation to address. The fact that social norms and politics bear on responses to the medically necessary points not only to the politicization of medical necessity, but how that politics doubles back to protect, reinforce and call upon those norms. Medical policy thus plays out many of the tensions between social power and individual responsibility that have been central to the history of Western political theory. Meanwhile, questions about advertising, misleading information about environmental causes of cancer and the attempt to keep such causes from changing how we think about individual responsibility, all struggle to enter the order of medical necessity discourse. Opening the gates of medical necessity is cast as enabling by making the previously medically unnecessary necessary; the shift is often cast as not true, a bad case of false necessity. Tight control over the scope of medical necessity is often justified as a prophylactic against inappropriate, mistaken and fraudulent abuses of the idea of medical necessity. Care may be invoked to restrict access to care when individuals are forced to assume responsibility for their condition, as in the language of “moral hazard,” wherein providing care may be recast as harmful. Yet, because of the political nature of medical necessity determinations, this rubric amounts to little more than the tailoring of necessity arguments to particular interests. In these cases necessity serves primarily as means of justification.

7.4: Medical Necessity and Medicalization

One cannot consider medical necessity without also examining the process by which conditions are medicalized. Peter Conrad argues that medicalization is a “broad definitional process, which may or may not directly include physicians and their

treatments (though it often does). Subcultures, groups, or individuals may vary in the readiness to apply, accept, or reject medicalized definitions.”⁴² The question of medicalization is at the center of the political question not of what is or is not properly medical, but who gets to decide and define, of political power and discursive authority.

Medical necessity and medicalization debates are different, though related, contests. There may, for example, be important differences, in terms of political valence, between medicalizing childbirth, infertility, alcoholism, menopause, cancer, asthma, shyness, and the sexing of bodies.⁴³ The relative position of these conditions in medical terms is usually the result of their having been framed through political debates, which also suggests the importance of critical engagements with race, gender, class, age and other key categories of political analysis. We cannot presume that medicalization is *ipso facto* desirable or undesirable, nor can we assess the benefits of framing the situations of individual people without first considering the politics of such cases. This further suggests that skepticism about the idea of medical need is an ethical imperative and that turning to medical arguments may come with political consequences.

The prefix “medical” functions doubly. Those seeking care must prove that their condition is medical. Put differently, they must medicalize their condition to be considered for treatment under the rubric of medical necessity. Medicalization, in this view, constitutes a form of legitimacy that, depending on the condition, one may or may not want affixed to them. On the other hand, those attempting to assert their independence may argue for demedicalization in order to keep medical regimes, and their politics, at bay. It is for this reason that I call medical necessity both functional and

⁴² "Medicalization and Social Control," *Annual Review of Sociology* 18 (1992): 211.

⁴³ *Ibid.*: 213.

strategic. Its usefulness and effects depend on particular political contexts and configurations of power.

The conflation of the true with the useful – to get access to care, to demand of those seeking help that they use medical language – should evoke skepticism. There are significant problems associated with forcing those seeking care to frame their position in terms of medical necessity. Drawing upon a selection of transgender politics literature,⁴⁴ Judith Butler notes one case in which a

butch, nearly trans, person who wanted both her cancerous and noncancerous breasts removed [to minimize the chances of a recurrence] understand that the only way she could gain the benefits of mastectomy was to get cancer in her other breast or to subject own gender desires to medical and psychiatric review. Although she didn't consider herself trans, she understood that she could present as trans in order to qualify for the GID [Gender Identity Disorder] and insurance benefits.⁴⁵

Butler summarizes the identity politics at work in the pursuit of medical freedom like this:

One pays for one's freedom, as it were, by sacrificing one's claim to use language truthfully. In other words, one purchases one sort of freedom only by giving up another...The only way to secure the means by which to start this transformation is by learning to present yourself in a discourse that is not yours, a discourse that effaces you in the act of representing you, a discourse that denies the language you might want to use to describe who you are, how you got here, and what you want from this life.⁴⁶

In short, those asserting needs are sometimes forced into framing their situation medically to gain access to care. Such a framing may be the most effective or even the

⁴⁴ George A. Rekers, "Gender Identity Disorder," *The Journal of Family and Culture* 2, no. 3 (1986); Richard Green, "Transsexualism and Sex Reassignment, 1966-1999 (Presidential Address to the Harry Benjamin Int'l Gender Dysphoria Association)," <http://www.symposion.com/ijt/greenpresidential>.

⁴⁵ *Undoing Gender* (New York: Routledge, 2004), 86-7.

⁴⁶ *Ibid.*, 91. Dean Spade applies similar analysis to social welfare more generally in Dean Spade, "Compliance Is Gendered: Transgender Survival and Social Welfare," in *Transgender Rights*, ed. Paisley Currah, Richard M. Juang, and Shannon Minter (Minneapolis: University of Minnesota Press, 2006).

only available means of securing care.⁴⁷ The intersection of sexuality and these needs is, however, always at risk of raising the specter of a disorder, which may in turn may constitute that person's only chance of getting care.

As James E. Sabin and Norman Daniels note, "By restricting access to medical solutions in the name of medical necessity, insurers attempt to limit individuals' claims that they are suffering from illnesses rather than everyday life."⁴⁸ Medical necessity's gatekeeper role constrains individuals' ability to be truthful about who they are in order to make themselves socially legible, forced to cast themselves as objects of medicine. In health care discourses, medicalized bodies become legible bodies. This, too, is not an accidental feature stemming from the hegemonic position of medical discourse, but implicit in its role as the guardian of legitimate care. It is for this reason that anyone defying the binary structure of the necessary-unnecessary divide must find a position of social legibility within the medical order to gain recognition.

In this sense, it is important that political projects to access care utilize whatever tools may be available to aid people in need. This casts a slightly different light on the politics of medical necessity insofar as concerns strategic efforts to access care since efforts to remove GID from the Diagnostic and Statistical Manual (DSM) of the American Psychiatric Association, however problematic the pathology may be, do not attend to the question of how people in need will access care. It is therefore both ethically

⁴⁷ Taking seriously the lived lives and needs of trans people, Paisley Currah has consistently advocated such a pragmatic approach. See Paisley Currah, "Gender Pluralisms: Under the Transgender Umbrella," in *Transgender Rights*, ed. Paisley Currah, Richard M. Juang, and Shannon Minter (Minneapolis: University of Minnesota Press, 2006), and Paisley Currah and Dean Spade, "The State We're In: Locations of Coercion and Resistance in Trans Policy," *Sexuality Research and Social Policy: Journal of NSRC* 4, no. 4 (December 2007).

⁴⁸ "Determining "Medical Necessity" In Mental Health Practice," *The Hastings Center Report* 24, no. 6 (1994).

insensitive and politically unwise to advocate the mere removal of these pathologies since they may be the only means of gaining access to medical attention. Efforts to contest medicalization require companion projects concerned with protect people in the medical's absence.

The rhetorical focus of medical necessity discourses is the regulation of resources for care, yet all parties in contests over medical necessity identify the care of patients as their focus. In other words, nobody enters these debates openly declaring intentions to deny care—even if that is their focus or mandate in practice. Instead, denials are reframed in positive terms, as even those seeking to root out unnecessary expenses do so under the sign of protecting the integrity of legitimate, necessary care. With this discourse at the center, serving as the rhetorical foundation, we are therefore concerned as much with the outside as with the inside of medical necessity. I am concerned, in other words, both with medical necessity, as it appears as a concept, and those discursive structures that surround and shape it.

7.5: Medical Necessity and Marketization

The indissociability of neoliberal rationalities from medical judgments, as well as the political-economics of those judgments, make a critique of capitalism central to a consideration of what comes to be considered medically necessary. Such considerations are made within the context of cost-benefit analyses and projections of what expanding the scope of the category will mean in terms of the maintenance of the system that necessity is charged with governing. Conrad and Leiter point out that medical necessity

functions differently based on the kind of market in which it takes place. In mediated markets, they explain,

there is an indirect relationship between consumers, on the demand side, and medical producers or providers, on the supply side, with third party payers occupying an intervening role. Third party payers (typically private or public insurers) intervene in the exchange relationship between consumers and providers or producers in two ways: by defining what is "medically necessary" and then paying for only those goods and services that they have deemed medically necessary. The degree of control exercised by third party payers varies, depending upon the level of "management"⁴⁹ of care being exercised. Medical necessity is the key mediation device in mediated markets.⁵⁰

Of course, both mediated and unmediated markets need to be continually recreated, and they are often challenged. U.S. markets (and the marketplace of ideas that propels it) is particularly fueled by the Food and Drug Administration Modernization Act (FDMA) of 1997,⁵¹ which allows advertising directly to patients on television, radio, online and in print, even as these consumers could not purchase those drugs without a prescription. The pharmaceutical industry, for its part, defends this practice with a rhetoric of patients' choice,⁵² arguing that their "consumer education campaigns" make patients aware of their

⁴⁹ One striking example of such management on the global level is the almost total control of the World Health Organization by economists. For analysis, see Chapter 4 of Rosalind P. Petchesky, *Global Prescriptions: Gendering Health and Human Rights* (London: Zed Books; United Nations Research Institute for Social Development, 2003).

⁵⁰ Peter Conrad and Valerie Leiter, "Medicalization, Markets and Consumers," *Journal of Health and Social Behavior* 45, no. Extra Issue: Health and Health Care in the United States: Origins and Dynamics (2004): 161.

⁵¹ See the FDA report at <http://www.fda.gov/CDER/guidance/105-115.htm>.

⁵² This language of patients' choice, led by the Cato Institute, has manifested as well in efforts by private insurers to forestall state and national health care plans. See, in particular, Cato's argument for why market-based systems are superior to single payer plans from the perspective of cost-effectiveness and "individual liberty." John H. Cochrane, "Health-Status Insurance: How Markets Can Provide Health Security," *Policy Analysis* 633 (February 18, 2009). Also at the head of this effort is America's Health Insurance Plans, the major trade organization representing private American health insurance providers. See John K. Iglehart, "The Struggle for Reform: Challenges and Hopes for Comprehensive Health Care Legislation," 360, no. 17 (2009). and Bobby Caina Calvan, "Big Health Insurer's Calls to Members Draws Criticism," *The Sacramento Bee*, April 24, 2009.

options.⁵³ These advertisements have the capacity to change public conceptions of existing conditions,⁵⁴ create conditions where they did not exist before, so that they put pressure on their doctors to consider prescribing and health insurance providers to cover those drugs. There is, of course, a wide range of different social positions and circumstances surrounding these conditions. For example, on the one hand are conditions produced simultaneously with the drugs that treat them, such as Restless Leg Syndrome while, on the other, campaigns for recognition of war-related conditions, such as Post-Traumatic Stress Disorder and Gulf War Syndrome. The point is not to criticize the expansiveness of pathologization in and of itself because, as I have noted, medicalization is often the only way for people to get the care they need for dealing with serious conditions. Rather, my point is to attend to the political narratives that accompany new conditions. The success at normalizing some conditions, while others fail, reveal quite different – but both important – stories about the foundations of medical necessity.

While advocacy efforts to call attention to medical needs are crucial, it is impossible to determine in the abstract where lines should be drawn between such claims and that which advertising campaigns produce in the interest not necessarily of care, but expanding markets. Even beyond accepted conceptions of what is medically necessary, it is still unclear what the social response should be. This is because medical necessity often functions as a stopgap measure that is called upon in response to failures in other domains of social policy, thus becoming a looking glass into the state of other social

⁵³ Conrad and Leiter, "Medicalization, Markets and Consumers," 171. See also Kalman Applebaum, "Marketing and Commodification," *Social Analysis* 44 (2000).

⁵⁴ Sontag's study of illness metaphor is useful here, as is Emily Martin's *Flexible Bodies*, which attends to the centrality of narrative in understanding disease. Emily Martin, *Flexible Bodies: Tracking Immunity in American Culture from the Days of Polio to the Age of AIDS* (Boston: Beacon Press, 1994).

structures. For example, while some societies – such as the Scandinavian countries – give greater emphasis to the health of mothers and babies in early stages of pregnancies, which in turn mitigate sometimes dangerous neonatal conditions, Lantos notes that “[to] a certain extent, neonatal intensive care [in the United States] has become necessary because we have created a society that produces a lot of premature babies.”⁵⁵ The creation of the sick, seen from the perspective of economic incentives, simultaneously constitutes the opening of a market. It is for this reason that countries, such as Canada, seek to remove both material incentives and the appearance of such specters.

Unmediated, private markets tend to emerge when insurers define a problem or treatment as not medically necessary. However, as the belief in a security threat can cause a real war, the widespread belief in a drug can drive a real market (especially if available over the counter). This suggests that medical necessity is as much a social faith as a regulative concept. Refusals to pay by insurance companies do not simply result in making that treatment unnecessary, but may shift costs to patients, some of whom may be able to pay out of pocket, but most of whom will either have to make hard choices about their care or go into debt to pay for it themselves. Delisting certain procedures as medically necessary often constitutes a mere “shift of funding from public to the private sector and an overall increase in health care costs (both public and private).”⁵⁶

This view suggests that official determinations of medical non-necessity do not necessarily alter the public imagination. Consider some recent cases:

The in vitro fertilization debate turns on whether infertility treatment is medically necessary; consumers say it is and should be covered by insurance while insurers claim having children is a social choice, not a medical one. We see medical

⁵⁵ Lantos, *The Lazarus Case*, 119.

⁵⁶ Charles et al., "Medical Necessity in Canadian Health Policy," 378.

necessity reflected in the human growth hormone and Viagra cases as well, even if the term is not typically applied. Consumer advocates claim that human growth hormone is a medical necessity since medical treatment could mitigate the suffering, stigma, and discrimination due to the biological limitation of extreme shortness. Is the treatment of erectile dysfunction a medical necessity? In terms of insurers, the answer is, “sort of.” When insurers cover the cost of Viagra, they often limit it to four to eight pills a month. Does this mean sexual intercourse is a medical necessity four to eight times a month?⁵⁷

“Sort of” – necessity’s other – flags the problem associated with examining medical necessity without simultaneously engaging in a critique of the boundaries between the medically necessary and unnecessary. Despite the illusion of the existence of a solid, scientific referent – that some things are, in fact, necessary, and others not – these medical necessity arguments turn out to indicate not what necessary care is, but what kind of social values have been established through medical discourses. Being denied entry into this order, being told that one’s suffering is not legitimate, constitutes a moment of social exclusion. This approach to medical necessity discourse suggests that social values are, at least in part, embedded in the discursive arrangements that are established through available technologies, as well as investments in and dispositions toward care. In this view, necessity arguments are a primary indicator of social values.

There are rhetorical gymnastics at work in medicalization within neoliberal contexts. Medical professionals engaged in navigating medical necessity arguments must provide care for patients in need while restricting that notion of need. As Lantos notes, “[a]s a society we seem to want it both ways—to give the parents both freedom and responsibility for the choices they made but then to constrain those choices by a web of policies, subsidies, regulations, and restrictions that narrowed the choice down to

⁵⁷ Conrad and Leiter, “Medicalization, Markets and Consumers,” 169.

something almost meaningless.”⁵⁸ In providing the rhetorical matter to make these cases, scientific and medical arguments have proven highly malleable, as norms are called upon to justify both exclusions and inclusions.

Alan Lyles adds yet another layer to these constraints: FDAMA may be a response to filtering mechanisms of managed care “that limit the physician’s prescription authority [and] also reduce the potential of promotional activities targeting physicians; consequently pharmaceutical companies have responded by seeking alternative ways to influence physician prescribing.”⁵⁹ The U.S. government, fueled by the pharmaceutical industry and its formidable lobbying efforts, has accommodated these efforts. FDAMA marks the U.S. as the only nation to allow manufacturers to advertise prescription drugs directly to patients.⁶⁰ In the U.S., then, we would expect to find, and do find, a discourse of medical necessity that is generated through these advertisements—which, of course, is precisely why companies pay for them. According to Peter Mansfield et al, “direct to consumer” advertising wields the determinate effect of “increas[ing] the use of drugs and medical services and ... wealth for pharmaceutical, advertising, and media companies.”⁶¹ While Canada and most industrialized nations have seen fit to reject such advertising, the American Medical Association (AMA) has repeatedly rejected calls to do so in the U.S.⁶²

⁵⁸ Lantos, *The Lazarus Case*, 129.

⁵⁹ "Direct Marketing of Pharmaceuticals to Consumers," *Annual Review of Public Health* 23 (2002): 27.

⁶⁰ New Zealand changed its laws in 2005.

⁶¹ Peter R. Mansfield et al., "Direct to Consumer Advertising," *British Medical Journal* (2005).

⁶² Jeanne Lenzer, "American Medical Association Rejects Proposal to Ban Consumer Adverts for Prescription Medicines," *British Medical Journal* 331, no. 7 (2005).

It is unclear what, if anything, may come from FDA's recently announced plans to revisit the question.⁶³

Market-based medical systems also multiply the reasons to distrust doctors' medical judgments. In largely for-profit medical systems such as that of the U.S., all that is solid about medical knowledge melts into air, forcing patients to become vociferous advocates of their own care, cognizant that their health is subject to market forces and econometric projections. This melting has created not only an increased frustration about medical bureaucracy on the part of patients, but the marketization of access. In some (admittedly limited) cases, these movements have created a black market of necessity judgments, or Certificates of Medical Necessity (CMNs), for patients who, for whatever reason, cannot get them from doctors. In 2006, for example, the owner of a Texas medical supply company was convicted of selling CMNs for \$500-\$1000 each.⁶⁴

According to Leiter and Conrad, "Paxil's application to [anxiety disorders] has contributed to the medicalization of emotions, expanding medical jurisdiction over emotions such as worry and shyness"... and that their "Efforts to define [anxiety disorders] as conditions, and market Paxil as treatment for them, have been extremely successful."⁶⁵ This medicalization has been aggressively pursued by companies who stand to gain mightily from marketing medical solutions to formerly non-medical problems. As Frederick Crews argues, the DSM is a central front in this war over

⁶³ Susan J. Landers, "FDA to Study TV Drug Ads' Influence on U.S. Consumers," *American Medical News* 2009.

⁶⁴ "Sugar Land Man Faces Health Care Fraud Charge," *Fort Bend Herald & Texas Coaster* (2006), <http://www.herald-coaster.com/articles/2006/04/20/news/news01.txt> and "Information Issued by U.S. Attorney's Office for the Southern District of Texas on Oct. 18: DME Owner Pleads Guilty in Wheelchair Scam," *US Fed News Service* (2006), <http://www.highbeam.com/doc/1P3-1152628151.html>. For more on Certificates of Medical Necessity, which govern access to many Medicare services, see the DHHS web site, at http://www.cms.hhs.gov/MedicalReviewProcess/05_certificatesofmedicalnecessity.asp.

⁶⁵ Conrad and Leiter, "Medicalization, Markets and Consumers."

classification, and the move from the DSM-III to the DSM-IV marks a discernible shift from psychology to psychiatry.⁶⁶ The skepticism generated, for example about the American Psychiatric Association's close ties to the pharmaceutical industry is also unfortunate since it calls into question the motivations of those who may, in fact, be the only ones capable of institutionalizing a mode of care for people in need. The result has been a widespread culture of undermining and poking fun at these new conditions rather than engaging in a critique of the political economy of the American medical and pharmaceutical industries. Such is the result when medical discourses are undermined by its neo-liberal and cultural bedfellows.

The contestability of medical necessity arguments suits them well to neoliberal rationalities. Those critical of these rationalities are also forced to work with them. For example, aside from ethical imperatives, many advocates in support of a single-payer American health care system argue that such a system would reduce bureaucracy and operate more efficiently than a patchwork system of private providers.⁶⁷ Whether this is true or not is a different matter from the wisdom of the rhetorical frame. Arguments must meet the imperatives of the extant economic order and all parties must work within the discourses that sustain that order. Self-assertions of need are rarely unsuccessful because such claims must be made within systems that legitimate them; they cannot issue only from a voice that has not already been subsumed and authorized by the system. This is because medical necessity is contentious discourse and not a stable concept. Parties utilize it to obtain access to resources that they would be denied if they did not. Health

⁶⁶ Frederick C. Crews, "Talking Back to Prozac," *The New York Review of Books* 54, no. 19 (2007).

⁶⁷ Physicians for a National Health Program, "Single-Payer FAQ: Won't This Just Be Another Bureaucracy?," http://www.pnhp.org/facts/singlepayer_faq.php#bureaucracy.

insurance providers may argue for the validity of medical necessity arguments if so doing minimizes long-term costs that would stem from the need for more extensive and expensive medical care in the future.⁶⁸ For example, a representative of Mutual of Omaha notes that “to deny as not medically necessary outpatient psychotherapy to someone who is “merely unhappy” may be very shortsighted if that individual decompensates for lack of treatment and is hospitalized for major depression. In this scenario, the clinician may have increase costs in the long run, as a result of short-term medical necessity focus.”⁶⁹

What is considered necessary is determined as part of a broader strategy of care, and not a simple denial of coverage. The point is to minimize the total weight borne by the system, which requires attention to immediate conditions as much as predictions. The resulting paradox of medical necessity is that health insurance providers are one of the few groups that consistently fight the expansion of what is considered medical, even if they do so only for reasons of profit: “the engines of medicalization are found in the marketplace nexus of the biotechnology industry and rising consumerism. The brakes take the form of insurers, including private and government sponsored managed care.”⁷⁰

The rise of managed care was of course a response to increasing costs and possibilities introduced by medical technologies. The stakes of medical necessity debates rise as medical technologies expand, each of which alters the scope of medical possibility. While there are more options, however, there are also more afflictions and needs. Technology, then, does not solve problems surrounding medical necessity, but creates new questions even as it may offer solutions. Medical care is rationed through

⁶⁸ See, e.g., Ford’s response to Sabin and Daniels in William E. Ford, James E. Sabin, and Norman Daniels, “Wrong Necessity,” *The Hastings Center Report* 25, no. 2 (1995).

⁶⁹ Ibid.: 2. William Ford is Vice President and Director of Mutual of Omaha’s Integrated Services.

⁷⁰ Conrad and Leiter, “Medicalization, Markets and Consumers,” 171.

what is deemed medically necessary and must address new possibilities that pose challenges to order. This suggests that new technologies do not simply make for better medical possibilities; they also raise new questions about the meaning of necessity. Managed care is well-positioned to restrict the scope of the medical, and hence the social costs of expanding that scope. It does this by placing particular cases outside of established guidelines. For example, Joseph W. Schneider and Peter Conrad argue that, “It has long been an axiom in medicalization studies that the only way to get human services paid for is to turn life difficulties into medical problems. Yet under managed care insurers are responding to this medicalization by restricting payment for these services. Insurance constraints do not necessarily affect the conceptual level of medicalization but they constrain access to medicalized solutions at the patient level.”⁷¹

Of course, providers are not necessarily concerned in their denials with finding alternative sources of care for the denied. The championing of demedicalization is fueled in part by attempts to maximize profit. These people are left to fend for themselves as their claims, in being denied, are not recognized as legitimate within the broader discursive order. This, I would add, is not an insidious incursion by managed care, but its acknowledged purpose. Ultimately, insurers are not as concerned with the definition of concepts as they are to allow the least number of claimants access to the coverage the gatekeeper concept guards.

Though health insurance providers may have cause to restrict the scope of medical necessity, the political question remains, and is in fact provoked by the fact of such restrictions: what norms govern these restrictions and what are their effects? What,

⁷¹ Having Epilepsy: The Experience and Control of Illness (Philadelphia: Temple University Press, 1983).

moreover, is their political valence? If one is precluded from accessing that which only medical necessity can provide, what tools can those in need of care access? And what is the status of someone whose condition has been deemed outside of the necessity rubric? What is society's responsibility to those people?

Conrad and Leiter note that "Technology and science alone...do not themselves lead to shifts in necessity discourse. More is needed than new facts." In particular, a whole series of discursive forces must contribute: "...it is important to emphasize that new biomedical knowledge or interventions alone cannot engender medicalization. Etiology or treatment may be a central component of a claim to medicalization, but those claims must be championed by supporters or promoters of a diagnosis, be they physicians, patients, lay advocates, or commercial entities such as drug companies."⁷²

Similarly, Petchesky calls into question the politics of technology at work in childbirth, noting that "Despite their benefits for individual women, amniocentesis, in vitro fertilization, electronic fetal monitoring, routine cesarean deliveries, ultrasound and a range of heroic 'fetal therapies'...also have the effect of carving out more and more space/time for obstetrical 'management' of pregnancy."⁷³ Medical necessity arguments serve to systematize policies by developing a series of arguments to mediate between technology and the provision of medical services.

Neoliberal medical necessity arguments claim to merely point to discourses of science and medicine, but not create them. In other words, they obscure by denying the presence of their "values beneath the values" in a purely descriptive manner. Yet, recasting description as a rhetorical practice, and then recasting purportedly descriptive

⁷² Conrad and Leiter, "Medicalization, Markets and Consumers," 159.

⁷³ Petchesky, "Fetal Images," 271.

rhetorics to see the values that underpin them is key for making sense of their politics. These questions hover above and circle around attempts to find a proper place for science's role in containing the meaning of medical necessity. Medical intervention is necessitated when natural processes become deficient or dangerous. Science and the possibilities afforded by medical technologies to expand or even alter the natural are generally acceptable only when such expansions and alterations reinforce – and do not alter or contest – social norms. However, once we grasp that the medicine-science relationship is, at least today and at least in part, neoliberal, the picture appears quite different than a simple focus on medical care suggests.

As noted above, medical (and especially pharmaceutical) advertising in the U.S. literally sells both diagnosis and treatment. A major consequence of advertising directly to potential patients is that it allows new disorders, conditions and diseases take hold of their perceptions of illness. In this process not only are conditions identified and theorized, but new patients are created through those conditions. Consider a few recent examples: erectile dysfunction, restless leg syndrome, chronic fatigue syndrome, pre- and peri-menstrual dysphoric disorder, irritable bowel syndrome, and Munchausen syndrome by proxy.⁷⁴ To be clear, this is not to say that these are not, or could not be, diseases, or that they do not warrant medical treatment under the umbrella of a necessity claim. Instead, it is to call attention to the unfortunate skepticism that must accompany new modes of care because of the fact that the expansion of medical markets generates profit. The problem, in other words, is not medicalization, but capitalism, which calls into question attempts to develop new medical discourses. Conrad and Leiter call this process

⁷⁴ A controversial poll on “non-diseases” challenged the “medicalization of the human experience,” see Richard Smith, “In Search Of “Non-Disease,” *BMJ* 324 (2002).

wherein both definition and solution are produced by the medical establishment, “medical commodification” where medical companies define previously non-medical conditions in newly medical terms and then reap the benefits of selling remedies for them. Others refer to the phenomenon as “disease-mongering.”⁷⁵ These diseases, and the remedies that accompany them, in turn become part of a medical economy. Conrad and Leiter summarize the point well: “The constant development of new technologies, treatments, and drugs sparks consumer interest in obtaining access to these new medical goods and services, and advertising can further increase consumer demand.”⁷⁶ Doctors, sensitive to the new environment shaping patients’ fears and expectations, have proven willing to engage these technologies and treatments and prescribe the drugs. This, in turn legitimates the medical necessity claims and perpetuates a medical mythology dependent upon the circulation of necessity discourses.

7.6: Two Cases of Medical Necessity

There are many cases worth reviewing to illustrate the discursive dynamics and politics of medicalization and medical necessity. In this section I review two cases of American health care: the recent proliferation of Viagra to treat erectile dysfunction, and rising Caesarian Section (C-section) rates. In both cases I aim to show how the intertwining of social norms, neoliberal rationalities, negotiations of complexity, and medical arguments shape medical necessity debates.

⁷⁵ Ray Moynihan, Iona Heath, and David Henry, "Selling Sickness: The Pharmaceutical Industry and Disease Mongering," *BMJ* 324 (2002). See also the April 2006 issue of *PLoS Medicine*, which dealt extensively with disease-mongering. In particular, see Ray Moynihan and David Henry, "The Fight against Disease Mongering: Generating Knowledge for Action," *PLoS Medicine* 3, no. 4 (2006).

⁷⁶ Conrad and Leiter, "Medicalization, Markets and Consumers," 160.

a. Viagra

Erectile dysfunction (or “ED”) came into the public lexicon in the early 1990s through an aggressive campaign, led by the pharmaceutical company, Pfizer, suggesting that impotence was a widespread problem amongst American men and that it was treatable. Through these new social narratives, a problem was identified and framed in medical terms which, in turn, promised to make a dark secret speakable in public contexts.⁷⁷ By 1992, the cause of ED had been fixed, having moved from a psychogenic to biogenic disorder. This opened doors for thinking about possible pharmaceutical treatments.⁷⁸ Viagra, which began testing in 1989, was approved by the U.S. Food and Drug Association (FDA) in 1998. In most ways, the story of Viagra is not much different than that of other drugs. However, Viagra helps us to see the doors that the medicalization of ED closed, such as the ability to think about the social effects of gender norms themselves, the possibility that men were evaluating their sexual performance in terms of unobtainable fantasies that, if made the standard, would always leave them deficient and in need of medical treatment.⁷⁹ I am suggesting that we take seriously the possibility that the impossibility as well as the pursuit of idealized positions makes medicalization lucrative. Similarly, suspicion about the circulation of medical necessity arguments in the media (including advertisements) is warranted because there is big

⁷⁷ Leonore Teifer, "The Medicalization of Impotence: Normalizing Phallocentrism," *Gender and Society* 8 (1994).

⁷⁸ Conrad and Leiter, "Medicalization, Markets and Consumers," 163.

⁷⁹ At about the same time as ED was taking shape, Americans were attempting to make sense of what was coming to be known as “Gulf War Syndrome,” a collection of medical problems that soldiers returning from the war in Iraq were experiencing. Among the symptoms soldiers reported was impotence and “sexual malfunction.” See R. W. Haley, T. L. Kurt, and J. Hom, "Is There a Gulf War Syndrome? Searching for Syndromes by Factor Analysis of Symptoms," *Journal of the American Medical Association* 277, no. 3 (January 15, 1997).

money in pathologization and the construction of those ideals that underpin them. As Moynihan et al put it bluntly, “A lot of money can be made from healthy people who believe they are sick.”⁸⁰ The effect is discernible: “Medicalization narrows the definition of health and widens the definition of sickness.” The effect is that the “marketing of Paxil, Viagra and to a lesser degree, human growth hormone targets relatively healthy people. Drug companies’ search for markets creates broader disease definitions for their products, indirectly reducing what is ‘normal.’”⁸¹ It is not new knowledge or technology that engenders medicalization, then, but how they are used to change our understanding of bodily conditions and experiences. Mere existence of new knowledge does not in and of itself alter the terms of medical necessity; medical necessity arguments function in more expansive social fields than a collection of facts.

According to Conrad and Leiter, “the insurance industry attempted to counteract increased medicalization of male sexual dysfunction by restricting access to Viagra.”⁸² At first, as with all new drugs, many health insurance companies hesitated to validate the medical necessity of Viagra, while others limited access to it. All of this occurred, however, within the context of an aggressive advertising campaign that juxtaposed images of frustrated men lying sleeplessly in bed with men riding motorcycles and participating in other rituals of manly power. The effect was the mainstreaming of a drug whose success was facilitated by the companies’ ability to advertise directly to consumers. Even if health insurance companies wouldn’t pay (which they eventually came around to doing anyway), many men proved willing to pay for it themselves.

⁸⁰ Moynihan, Heath, and Henry, "Selling Sickness: The Pharmaceutical Industry and Disease Mongering."

⁸¹ Conrad and Leiter, "Medicalization, Markets and Consumers," 171.

⁸² Ibid.: 163.

Conrad and Leiter argue that “One important social benefit from the popularity and widespread use of Viagra is a reduction of the stigma of sexual dysfunction.”⁸³ Yet, despite advertising aimed at bringing the question out into the public, there seems little evidence that Viagra has become socially *acceptable*, or that it has altered the basic terms of male health. In fact, the most famous ads by figures such as Bob Dole and soccer legend Pelé were powerful precisely for their courage in admitting that they took Viagra even as they faced the specter of social mockery. The result, contra Conrad and Leiter, is that in making ED speakable, Viagra reinforces social norms, rearticulating the very shame that makes them marketable since the condition it treats does not exist outside of those norms that define the drug. The Viagra web site is intent on assuring its visitors that “ED is a medical condition.”⁸⁴ The main problem with the framing of erectile dysfunction in physiological and medical terms is that it closes the spaces for rethinking the norms that govern sexual expectations. Like neo-liberal rationalities that point to individual cases to evade social critique, drugs like Viagra may conceal social forces at work in American sexuality. Medical necessity and social critique stand in converse relation here. As ED becomes medicalized, social narratives become increasingly inaccessible.

Yet, there is something more disturbing and important about the particular necessity questions circulating around Viagra. On an episode of “Oprah” in 2007, for example, Dr. Oz, “America’s Doctor,” pointed out that “keeping a penis healthy isn’t just important for making sure your love life is working...it’s important for making sure your entire body is working. ‘The penis really is the dipstick of the body,’ he says. ‘The penis

⁸³ Ibid.

⁸⁴ <http://www.viagra.com/erectile-dysfunction-treatment-options.aspx>

tells you if everything's working, because if it's not working, the odds are stuff inside of you is not functioning the way it's supposed to be.' ”⁸⁵

I close this discussion of Viagra with Dr. Oz's observation (unfortunately put through an imagery of “dipsticks”) because it raises a key problem of neoliberal medical necessity discourse: its fetishism and myopia is often at odds with medical goals. More than ED as a sexual problem (which it undoubtedly is), Dr. Oz is concerned with the fact that poor blood flow to the penis could signify poor blood flow elsewhere, such as the brain. This, of course, raises the specter that that which is treated as a “sexual problem” could actually be a red flag for an immanent stroke, which Viagra will most likely not effect. Yet, the politics surrounding Viagra does not foreground – and even obscures – this problem. The penis, in other words, has become less of an indicator of health than a phallogocentric fetish in Viagra narratives. In other words, the fetishization of a “sexual” problem that drives a medical necessity discourse precludes a broader medical problem that manifests in a sexual symptom.

Since they are subject to economies of meaning and market-based rationalities, medical necessity discourses tend to call attention to certain social meanings and problems (primarily those that advertising emphasizes), while obscuring or downplaying others that may be more systematic, dangerous and even life-threatening. Medical necessity arguments may mislead rather than contribute to a better understanding of health and reinforce stereotypes and anxieties. In other words, the need to frame medical necessity in ways that make medical products attractive on the marketplace may make them questionable in terms of their relationship with health.

⁸⁵ Oprah.com, “300 Men Want to Know,” http://www.oprah.com/slideshow/health/menshealth/slideshow1_ss_oz_20071001_350/4.

b. Caesarian Section

The optimistic metaphysics of necessity suggests that there are some conditions in which Caesarian births (commonly known as C-section) are necessitated and some in which they are not. The decision to deliver by C-section is far more complicated than this optimism suggests since a complex politics always already encumbers it. This section lays out some of the key dynamics of that politics from an American perspective and shows how it can illuminate medical necessity.

Before turning to C-section, however, a brief review of the history of the medicalization of childbirth is in order, as it is in this theater that C-section politics take place. In their study of childbirth, Richard W. Wertz and Dorothy C. Wertz argue that the rise and legitimation of the American Medical Association (AMA) was to a large extent made possible by the medicalization of childbirth, on the one hand, and the delegitimation of midwifery on the other.⁸⁶ The AMA was founded in 1848 to unite local doctors' organizations to "exclude irregulars from practice," set new standards and, eventually, establish licensing laws that sidelined midwives. The AMA launched an aggressive professionalization campaign, requiring doctors to attend college and establishing other institutional norms conducive to organization.⁸⁷ Given the organizational success of American doctors and the relative disorganization of American midwives, "midwives were an easy competitive target for medicine."⁸⁸ Mostly upper class women used doctors "among a variety of therapies and practitioners," but "[t]his

⁸⁶ Lying-In: A History of Childbirth in America (New York: Free Press, 1977).

⁸⁷ "The Flexner Report in 1910 revealed that 90 percent of doctors then without a college education and that most had attended substandard medical schools." Ibid., 55.

⁸⁸ Ibid., 47.

variety of choice distressed regular doctors, who were fighting for professional and economic exclusivity.”⁸⁹ This history does not only reduce to an organized group of powerful men who sought to delegitimize midwifery, but is part of the broader legitimization strategy of medicine itself. In short, doctors *used* the attack on midwifery to establish themselves, marginalize midwifery, and protect their practices.

The justification for replacing midwives with certified doctors was made in the name of women’s safety.⁹⁰ The move also gendered childbirth, as male doctors became the guardians of women’s newly scientized bodies, where “maleness became a necessary attribute of safety, and femaleness became a condition in need of male medical control.”⁹¹ “[I]t became unthinkable that a woman could both give birth and attend to birth. Giving birth was the quintessential feminine act; attending birth was a fundamental expression of the controlling and performing actions suitable only for men.”⁹²

Wertz and Wertz argue that gender “bias identified functions, attributes, and prerogatives, which unfortunately could become compulsions, so that doctors as men may have often felt that they had to impose their form upon the processes of nature in birth.”⁹³ They conclude that:

Women gradually gave to doctors the medical control of birth, the manipulation of their bodies, but they did not give over the rituals of birth. In a compromise that mirrors earlier accommodations between religion and science, women allowed men to treat them as natural machines that might go wrong, but they kept the spiritual meaning of birth for themselves. Social childbirth continued as a divided affair: the body in the hands of men, the spirit in the company of women.⁹⁴

⁸⁹ Ibid., 54.

⁹⁰ Ibid., 56.

⁹¹ Ibid., 72.

⁹² Ibid., 59.

⁹³ Ibid., 72.

⁹⁴ Ibid., 25-26.

In this regard, it is important to call attention to the language of C-section. The Oxford English Dictionary defines the practice as “the delivery of a child by cutting through the walls of the abdomen when delivery cannot take place in the natural way, as was done in the case of Julius Caesar.”⁹⁵ The OED treats C-sections as a strategy that is called upon when nature cannot run its course, with the failure of nature marking the need for medical intervention. Though it is now believed that Caesar was not born by this (or a similar) procedure, C-sections still conjure associations of authority and command, of Caesars, Czars and Kaisers. In other words, the persistence of the name has maintained the practice’s etymological proximity to (male) power.

Historically, at least in the U.S., women received C-sections primarily to deal with “breech” births, where the baby is not positioned to be delivered head first. As Shiono et al show, while 11.6% of breech births were carried out by C-section in 1970, by 1984 that number had reached 80%.⁹⁶ The additional 20% of vaginal breech births are the result of a series of exceptions.⁹⁷ Many doctors will not raise the question of whether a patient not thought to be at risk of breech birth should consider a C-section, though others, fearful of liability suits stemming from withheld options, will.⁹⁸ In many cases, it appears as though the decision is simply a birthing woman’s preference. Some critics have cast doubt on doctors’ support for so-called “maternal request” C-sections, both for the additional fees doctors are paid for performing them and out of the suggestion that

⁹⁵ “Cæsarean, *Adj.*,” in *The Oxford English Dictionary* (Oxford: Oxford University Press, 1989).

⁹⁶ P. H. Shiono, D. McNellis, and G. G. Rhoads, “Reasons for the Rising Cesarean Delivery Rates, 1978- 1984,” *Obstetrics & Gynecology* 69 (1987).

⁹⁷ American College of Obstetricians and Gynecologists, “Mode of Term Singleton Breech Delivery. ACOG Opinion No. 265,” (Washington: ACOG, 2001).

⁹⁸ P. Dhankhar, M. M. Khan, and I. M. Alam, “Threat of Malpractice Lawsuit, Physician Behavior and Health Outcomes: Testing the Presence of Defensive Medicine,” *Academy of Health* (2005), <http://gateway.nlm.nih.gov/MeetingAbstracts/ma?f=103623177.html>.

doctors themselves may benefit from scheduled deliveries, which some fear may place their own convenience over careful medical considerations.⁹⁹

Yet, as Wertz and Wertz note, midwives had developed a range of practices to deal successfully with such births.¹⁰⁰ Statistics indicate, moreover, that such procedures were as reliable as those employed by their counterparts in institutional medicine.¹⁰¹ Medical problems may of course arise in the cases of certain births, as they may with all interactions and manipulations of bodies. Rather, the question requires understanding the role of C-section in the overall medicalization of childbirth and asking if and why their increased frequency is warranted. What discursive forces are at work in making them necessary? At a minimum, such practices are connected to an enlarged spectrum – including medical, cultural, legal, and economic considerations – of prenatal, natal and postnatal care.¹⁰²

To make sense of medical necessity and C-section we must remember that C-section is an invasive form of surgery requiring large abdominal incisions, general anesthesia, and a three-to-five day hospital stay. It is no mere *substitute* for vaginal delivery, but a qualitatively different mode of engagement with women's bodies. C-section does not evade of the risks of vaginal delivery, but introduces a host of problems of its own. Since risk always accompanies surgery, it is cases where doctors recommend them in the absence of widely-accepted conditions (such as breech births), or when women request them in the absence of medical necessity determinations (Cesarean

⁹⁹ Carey Goldberg, "NIH Rethinks Elective Caesarean Births," *The Boston Globe* March 30, 2006.

¹⁰⁰ Wertz and Wertz, *Lying-In*, 17-18.

¹⁰¹ Ibid.

¹⁰² Rayna Rapp challenges the conventional wisdom of prenatal technologies such as "ultrasound imaging, amniocentesis, chorionic villus sampling, percutaneous-umbilical chord sampling, and other evolving experimental interventions...." See "Refusing Prenatal Diagnosis: The Meanings of Bioscience in a Multicultural World," *Science, Technology, & Human Values* 23, no. 1 (Winter 1998).

Delivery on Maternal Request, or CDMR¹⁰³) that call for a politics of the medical necessity of C-section, as these judgments are at the center of a range of social forces. Doctors often advise obese and diabetic women to make use of C-sections, and higher rates of these diseases have contributed to the medicalization of childbirth.¹⁰⁴ Ellen S. Lazarus has shown that women's views of technology and the medicalization of childbirth correlate closely with class indicators, as poor women trade control over the process of childbirth (such as securing the newest technologies) for continuity of care.¹⁰⁵

The statistics underscore the stakes of C-section politics, as recent research of "low-risk mothers who have no known medical reason for the operation" has indicated that C-sections yield higher mortality rates than vaginal delivery.¹⁰⁶ A recent study found that the "neonatal mortality rate for cesarean deliveries with no labor complications or procedures was 2.4 times that for planned vaginal deliveries."¹⁰⁷ This becomes a cause for concern in light of the fact that C-section rates have risen steadily, peaking recently (in 2007) at about 32% of American births.¹⁰⁸

¹⁰³ Within the context of necessity debates, CDMRs are also sometimes referred to as "C-sections-on-demand," an expression that mimes "abortion-on-demand." The language of "demand" serves to emphasize both the force of the "demand" and their place outside of necessity arguments.

¹⁰⁴ See Charlene Laino, "C-Section Rates: Obesity to Blame?," WebMD Medical News, <http://www.webmd.com/news/20060509/c-section-rates-obesity-to-blame>; Phuong Ly, "A Labor without End," *The Washington Post* May 27, 2007.

¹⁰⁵ "What Do Women Want?: Issues of Choice, Control, and Class in Pregnancy and Childbirth," *Medical Anthropology Quarterly* 8, no. 1 (March 1994).

¹⁰⁶ Nicholas Bakalar, "Voluntary C-Sections Result in More Baby Deaths," *The New York Times* 2006. The study cited is Marian F. MacDorman et al., "Infant and Neonatal Mortality for Primary Cesarean and Vaginal Births to Women With "No Indicated Risk," United States, 1998-2001 Birth Cohorts," *Birth* 33, no. 3 (2006).

¹⁰⁷ Marian F. MacDorman et al., "Neonatal Mortality for Primary Cesarean and Vaginal Births to Low-Risk Women: Application of An "Intention-to-Treat" Model," *Birth: Issues in Perinatal Care* 35, no. 1 (2008).

¹⁰⁸ Shari Roan, "Premature Births Down but C-Sections Continue Rise," *The Los Angeles Times* (March 18, 2009), http://latimesblogs.latimes.com/booster_shots/2009/03/premature-birth.html.

The intersections of C-section and various domains of social power raise a number of questions about C-section when it is deemed a medical necessity. The ability to schedule births by C-section underscores the difference between medical convenience and necessity, but also introduces the problem of how to distinguish between them. This is especially problematic as neoliberal rationalities call into question the means by which one may make the distinction, as well as the ethics of making it, as when cost-effectiveness is the primary calculation. For example, some scholars have raised the possibility that doctors may prefer C-section because it is less disruptive to their schedules, with researchers pointing in particular to the relative decline in C-section deliveries at night and on weekend.¹⁰⁹ Though scheduling is widely raised as a specter, Keeler and Brodle find only particular instances, but no trend that suggests that convenience is a major factor.¹¹⁰ Regardless of the problem in fact the specter of convenience is another instance of neo-liberalism's ability to call forestall the ability to think about care in the more direct terms of "practices."

Others express concern about financial incentives, and advocate "decoupling physician reimbursement levels from the cost of the technology that is used may help to restrain the diffusion of procedures whose additional benefit is exceeded by their incremental cost."¹¹¹ Like RAND and the OHP's efforts to develop coherent notions of medical necessity, reaching consensus about the appropriate conditions under which C-

¹⁰⁹ W. Fraser et al., "Temporal Variation in Rates of Cesarean Section or Dystocia: Does Convenience Play a Role?," *American Journal of Obstetrics and Gynecology* 156 (1987).

¹¹⁰ Emmett B. Keeler and Mollyann Brodle, "Economic Incentives in the Choice between Vaginal Delivery and Cesarean Section," *The Milbank Quarterly* 71, no. 3 (1993): 365.

¹¹¹ Gruber and Owings find that "physicians overused cesarean delivery relative to the level that would be chosen by a financially disinterested medical provider," but find that the "magnitude of this response, however, was fairly small...." Presumably, decoupling would remove the linking between C-section to profit. "Physician Financial Incentives and Cesarean Section Delivery," *The RAND Journal of Economics* 27, no. 1 (1996): 120.

sections are warranted would presumably mitigate some of this suspicion. This is because, as Hillman notes, “whereas most physicians will act in the patient’s best interest when the medical decision is clear-cut, the effect of financial incentives may be most important in cases where the correct decision is not obvious.”¹¹² Of course, considerations of financial incentives are not limited to doctors. As we would expect, there are differences in costs between these two modes of delivery; for example, against the earlier assumption that C-sections were more expensive than non-surgical deliveries,¹¹³ a recent study found that “[a]verage total charges for vaginal deliveries...may be higher than average total charges for Cesarean sections.”¹¹⁴ This suggests that, aside from the effect on individual doctors, C-section may be attractive from the perspective of institutional resources. According to Jonathan Gruber and Maria Owings, “In terms of just the time investment, cesarean delivery is much more efficient for the ob/gyn; unlike normal childbirth, cesarean deliveries can be scheduled in advance, and they often take less time than a normal childbirth with extended labor.”¹¹⁵

Some scholars argue that doctors may prefer C-section because it provides a greater malpractice liability shield.¹¹⁶ In many cases, first deliveries are performed vaginally and subsequent deliveries via C-section. Conventional wisdom has it that once women have had a C-section, returning to vaginal delivery is risky because of problems

¹¹² A. L. Hillman, "Health Maintenance Organizations: Financial Incentives, and Physicians' Judgments," *Annals of Internal Medicine* 112 (1990): 893.

¹¹³ See, e.g., Keeler and Brodle, "Economic Incentives in the Choice between Vaginal Delivery and Cesarean Section," 365.

¹¹⁴ Vahé A. Kazandjian et al., "Does a Cesarean Section Delivery Always Cost More Than a Vaginal Delivery?," *Journal of Evaluation in Clinical Practice* 3, no. 1 (2006).

¹¹⁵ Gruber and Owings, "Physician Financial Incentives and Cesarean Section Delivery."

¹¹⁶ Helen I. Marieskind and U.S. Dept. of Health Education and Welfare. Office of the Assistant Secretary for Planning and Evaluation/Health, *An Evaluation of Cesarean Section in the United States: Final Report* (Washington: The Office, 1979).

with placental location and bleeding from C-section scar tissue. Due to questions of liability, therefore, many doctors are being advised against and even prohibited by some health insurance providers to allow Vaginal Births after C-sections (VBACs). In arguing against VBACs, however, providers also cite the increased resources that VBACs require.¹¹⁷ The trend against health insurance provision for VBACs raises the possibility that medical necessity determinations may be judged by calculations of liability suits, and not medical judgments. Or, from a slightly different angle, medical judgments might be issued only within the context of suits, when judgments are forced.

Much of the literature, in short, counsels skepticism about the role doctors play in C-section advocacy. However, while doctors report that women are increasingly requesting C-sections for non-medical or obstetric reasons, a concern echoed by a recent National Institutes of Health study,¹¹⁸ a study by Declercq et al found that women rarely request C-sections without a significant belief in the medical necessity of the operation.¹¹⁹ In addition, Declercq et al argue that diagnosis (not election) has served as the primary cause of rising frequencies of C-sections.¹²⁰ A review of the CDMR literature by Jenny Gamble and Debra Creedy similarly found that “[f]ew women request a cesarean section in the absence of current or previous obstetric complications.” Gamble and Creedy worry

¹¹⁷ Victoria Stagg Elliott, "C-Section Rate Climbs as Options Diminish," *amednews.com*, <http://www.ama-assn.org/amednews/2003/08/11/hlsc0811.htm>. This means that modes of delivery may have different geographical valences, as in rural hospitals that are understaffed or resourced, lacking equipment that surgeries require or the requisite beds for the longer recovery period that C-sections require.

¹¹⁸ "NIH State-of-the-Science Conference Statement on Cesarean Delivery on Maternal Request," *NIH Consens Sci Statements* 23, no. 1 (2006).

¹¹⁹ E. R. Declercq et al., "Listening to Mothers II: The Second National U.S. Survey of Women's Childbearing Experiences," *Childbirth Connection* (2006), <http://www.childbirthconnection.org/listeningtomothers>.

¹²⁰ Gruber and Owings, "Physician Financial Incentives and Cesarean Section Delivery," 101.

that the “focus on women’s request for cesarean section may divert attention away from physician-led influences on the continuing high cesarean section rates.”¹²¹

As with all medical necessity arguments, decision-making depends upon the narration of the situation, most importantly by doctors, as this shapes parents’ understanding of available options. For this reason, some scholars argue that the rise of electronic fetal monitoring through a host of new technologies has foregrounded and broadened the specter of “fetal distress” in ways that may increase the perception that C-section is necessary.¹²² On the other hand, while C-sections may reduce contingencies stemming from the more unpredictable process of labor, they also introduce contingencies such as infection and error, both of which are common effects of surgery.¹²³

As a counterbalance, some medical associations, as well as the U.S. government, are actively seeking to reduce the rate of C-section deliveries through public awareness campaigns about the increased risk for complications. The NIH study, for example, calls for the creation of a comprehensive web site to provide information about C-section.¹²⁴ Yet, as I have argued about medical necessity arguments generally, it is dangerous to reduce deeply contextual questions about which mode of delivery is best to a rubric that can govern necessity determinations, especially if such an approach leads to a failure to critique the social dimensions of childbirth. The relative risks of C-section and vaginal birth are still highly contested and under-researched and, since the establishment of a

¹²¹ Jenny A. Gamble and Debra K. Creedy, "Women's Request for a Cesarean Section: A Critique of the Literature," *Birth* 27, no. 4 (2001).

¹²² Shiono, McNellis, and Rhoads, "Reasons for the Rising Cesarean Delivery Rates, 1978- 1984." See also Petchesky, "Fetal Images," 294.

¹²³ Of course, different women have different access care, as along lines of race and class. See, e.g., D. C. Aron et al., "Variations in Risk-Adjusted Cesarean Delivery Rates According to Race and Health Insurance," *Medical Care* 38, no. 1 (2000).

¹²⁴ "NIH State-of-the-Science Conference Statement on Cesarean Delivery on Maternal Request."

rubric would suggest a resolution of the contests, we must be concerned with the political dimensions of such a resolution. Rubrics established to determine medical necessity cannot capture the extent to which different delivery procedures carry with them qualitatively different kinds of benefits, risks and considerations. Instead, an analysis of such rubrics and the qualitative effects they have on the meaning of medical necessity vis-à-vis C-section requires political critique.

7.7: Paradoxes and Strategies: Envisioning a New Politics of Medical Necessity

It may be that the key contribution this chapter makes is also its most basic, namely to recognize that medical necessity is a form of social discourse, or what Farquhar calls a “discursive representation.” According to Farquhar, “Most discursive representations cannot grasp that reproductive technologies are shifting practices and not static entities, because the discourses share, albeit sometimes unwittingly, reproductive medicine’s self-representation as value-neutral, objective, and politically disinterested.”¹²⁵

While acknowledging the important contributions that medicine and science have made, we cannot lose sight of the fact that medicine, and medical knowledge, is as discursive as the knowledge that underpins science more generally. Remembering this enables us to respond to and engage medical claims when they are governed by values that we want to either reject, challenge, or accept only provisionally. This discursivity places medical necessity at a precarious intersection, accessible as a tool for expanding access to medical care, as well as repressing, by pathologization, in ways that will belie

¹²⁵ Dion Farquhar, *The Other Machine: Discourse and Reproductive Technologies* (New York: Routledge, 1996), 16.

the original values that underpinned one's decision to turn to medical argument in the first place. Medical necessity is not a one-dimensional plane on which actors can be simply placed as on a chess board, but a pliable tool that can be used differently by different actors at different moments, who may be free or subjugated or, perhaps (and more likely) both. In this sense, medical necessity is both similar and unique to other necessity rhetorics. It is similar in that all necessity arguments lack absolute grounding, and are the subject of interpretative and political contests but are also key tools in high-stakes contests. Medical necessity is unique in its deep embeddedness with political economy, but also the particularly tense ethical considerations it raises in light of the fact that cost-effectiveness is often theorized in the same framework as well-being and survival. Finally, the relationship between necessity arguments and rights (including human rights) adds a complexity to medical necessity as a discursive frame that other necessity arguments lack.

In noting the double-effect of medicalization, and using medical necessity arguments to advocate for political positions, the dangers of empowering medical discourses become clear. This is particularly true insofar as they cannot be controlled completely and, in effect, constitute a transfer of power to medical authorities. Petchesky notices this problem at work in contemporary American abortion politics, where "Medical necessity...may be used to expand women's access to necessary reproductive health services or to restrict women's sphere of action in favor of parents' or physicians' authority."¹²⁶ Though they may secure care, medical arguments may also be used to disempower, bringing about a loss of individual capacity to determine what one needs for

¹²⁶ Petchesky, *Abortion and Woman's Choice*, 289.

oneself or their family. Yet, in terms of rhetorical strategy, medical arguments are still far more powerful in American culture than arguments about the importance of choice.

Butler notes that,

At least in the United States where socialized medicine is largely understood as a communist plot, it won't be an option to have the state or insurance companies pay for these procedures without first establishing that there are serious and enduring medical and psychiatric reasons for doing so.¹²⁷

It is for this reason that abortion rights advocates continue to turn to medical arguments.

Petchesky notes that *Roe vs. Wade* appropriated the only effective discourse that was available at that time, but also cautions that there are pitfalls to anchoring public health questions with medical arguments. For example, when medical argument rather than a right to choose secures access to abortion, questions of ethical and political import are left vulnerable to changes in science. Women's bodies are still left unsecured politically, subject to changes in medical knowledge. This is true, despite the fact that medical arguments may be tactically required to secure reproductive rights:

Understood expansively, however, "health reasons" for abortion may provide the broadest practical basis for abortion services within the health-care system as it is currently structured. This is why the medical emphasis in *Roe v. Wade* may have been, at a particular moment, relatively progressive for women.¹²⁸

This "practical basis" constitutes a recognition of the order of American political discourse, and highlights the importance of focusing on ways to manipulate that discourse, which individuals and groups must do to combat medical politics configured to deny care, whether for explicit reasons of cost-effectiveness or something else (such as religious or other conservative arguments). Three choices seem to confront abortion rights advocates, none of which need be exclusive, and none of which is without its

¹²⁷ Butler, *Undoing Gender*, 90.

¹²⁸ Petchesky, *Abortion and Woman's Choice*, 292-3.

flaws: 1. develop and manipulate the rhetoric of choice; 2. abandon choice as a framework and focus on broadening the argument for the necessity of access to safe abortions or, 3. turn more fully to rights, on the national or international level, or both. While there are limits and traps are inherent to medical necessity arguments, Petchesky argues that rights, though limited in ways that have been the subject of much scholarly debate,¹²⁹ are comparatively self-sustaining, and not subject to the whims of changes in medical knowledge. Rights, in other words, are won and secured politically.¹³⁰ Those who use medical arguments to win political contests may find themselves and their causes subjected to unwanted and after repressive medicalization. For example, liberal discourses portray Assisted Reproductive Technologies (ARTs) as salves for “reproductively deficient bodies,” which results in subsuming bodies within liberal contexts, outside of which they are barely if at all recognizable. In these discourses ARTs become appendages of newly medicalized (because infertile) bodies. Only with the onset of ARTs, according to Farquhar, did “involuntary childlessness become medicalized.”¹³¹ Similarly, sonograms may be used to provide much needed information about the status of developing fetuses, but can also be used to manipulate women considering whether or not to have an abortion. Medical necessity is thus not simply a question of what technologies are available, and what their benefits and risks may be, but of the related

¹²⁹ See Williams, *Alchemy*, and Wendy Brown’s critique in *States of Injury: Power and Freedom in Late Modernity* (Princeton: Princeton University Press, 1995), 121-8. Since *States of Injury* was published, Brown has taken pains to clarify the mischaracterization of her position as “against rights.” She opens a recent essay by noting that rather than taking a stand “for or against rights,” she wants to “map some of the conundrums of rights for articulating and redress women’s inequality and subordination in liberal constitutional regimes.” “Suffering the Paradoxes of Rights,” in *Left Legalism/Left Critique*, ed. Wendy Brown and Janet E. Halley (Durham: Duke University Press, 2002), 420.

¹³⁰ Sonia Corrêa, Rosalind P. Petchesky, and Richard Parker, *Sexuality, Health and Human Rights*, Sexuality, Culture and Health (New York: Routledge, 2008), 152.

¹³¹ Farquhar, *The Other Machine*, 64.

political discourses with which they intersect. The productive function of power – in this case, to medicalize – thus suggests that medical discourses operate, or are always vulnerable to operating, doubly. Farquhar notes that,

By separating parenting into genetic, biological, and social-legal aspects, ARTs change and challenge the fetishizing of blood ties, the nuclear romance of reproduction, and their concomitant sexual identities. They declare the constructedness of reproduction by posing alternative ways to conceive.¹³²

It is also in this constructedness that ARTs' double effect is produced. As technologies change, arguments won along medical lines may no longer be defensible since necessity arguments won in relation to older technologies, and the medical narratives these technologies enabled may be deemed no longer necessary. For this reason alone, although the strategy of using these arguments may constitute a compromise to political realities, the ultimate goal should be to secure political arguments on political grounds, beyond (or prior to) a metaphysics of medical necessity.

I would also like to point to a more general lesson about the rhetoric of necessity from these considerations. Medical necessity arguments are effective because they cater and respond to a cultural norm that makes the absence of choice the primary source of its legitimacy. Part of the validation of necessity is the assumption that one does not choose to need care, where necessity's power thus stems from its ability to appear exclusive of choice.

Appeals to the social consequences of those choices to mobilize a society to address their causes require thinking beyond the metaphysics of individual responsibility. If we re-envision and re-work the rhetoric of choice that serves as necessity's "other," then medical necessity begins to appear increasingly insufficient as a conceptual

¹³² Ibid., 191.

gatekeeper for practices that can determine not only life or death, but the quality, worth and meaning of lives. This is particularly true if we reclaim necessity from its unquestioned location within neo-liberal economic orders, which exposes as conventional and contingent many of the constraints said to govern it. In a more distant future, we might envision a politics of health provision that lies beyond the necessity threshold altogether. Such a politics would require seeing beyond the medical necessity arguments that are currently used to regulate medical economies. Possible strategies for opening such a system might include appropriating rhetorics of self-determination and freedom in the service of securing social investments in capacity building rather than rights claims. Or, it might require the development of strategies to cultivate a public discourse around health that does not reduce to medical necessity, but is concerned with supporting broadly construed regimes of health rather than making the primary question of social policy what is to be done with the already sick.

Optimally, this would be carried out in ways that do not make crisis rhetoric the only source of legitimacy. The recent spate of incentive packages from insurance providers – such as rebates for exercising or quitting smoking – point in the right direction, although they obviously also cater to neoliberal rationalities.¹³³ Health and care would have to be recast as fundamentals of civic life and not mere policy options. Care would have to be taken to ensure that such capacities are not simply rehashed neo-liberal capacities, such as employability or fertility, but are truly fit for a post-liberal project. Such efforts would also have to consider the possibility that rhetorics of medical necessity might be *inherently* neo-liberal. Maybe, that is, medical necessity discourses

¹³³ Francesca Lunzer Kritz, "Some Employers Offer Rewards for Workers' Healthful Behavior," *The Los Angeles Times*, April 6 2009.

suffer from the same focus on lowest-common denominators and economization that liberal discourses do (e.g. self-preservation, opportunity, rights) and cannot therefore transcend the market-based rationalities that govern them.

Another possibility would of course be to advocate a politics that gives greater weight to self-assertions of need, perhaps through a politics of respect for the ability to determine and declare one's needs. There may also be some cases where we could imagine lifting the threshold entirely. This would require taking seriously people's claims about who they are and what they need—not only to survive, but to live. Given the rationalities that historically – and quite possibility inherently – accompany medical necessity arguments, the potential success of this strategy is dubious, since assertions would need to be unmediated, or mediated at a much higher threshold, and would thus be repelled by neo-liberal rationalities.

If this is the case, then it seems worth considering the need to exchange a dependence on necessity arguments for another foundation of liberal thought: rights. For example, while skeptical of much of liberalism's impact on (in this case global) health politics, Corrêa, Petchesky and Parker argue that "...human rights offer the most viable rhetorical structure currently available to civil society groups for making social and erotic justice claims and seeking redress or accountability."¹³⁴ Despite this turn to rights, however, they also follow Pheng Cheah and Jacques Derrida in warning that "human rights by themselves are necessary but insufficient to meet the demands of justice."¹³⁵

¹³⁴ Corrêa, Petchesky, and Parker, *Sexuality, Health and Human Rights*, 152.

¹³⁵ Ibid., 161. See Pheng Cheah, "Positioning Human Rights in the Current Global Conjuncture," *Public Culture* 9, no. 2 (1997) and Derrida, "Force of Law: 'the Mystical Foundation of Authority'."

What Corrêa, Petchesky and Parker prefer about the rights-based approach – as opposed to market-based rationalities such as cost-effectiveness or needs – is that it “provides both the norms upon which movements can base social justice claims and shame corporate and government violators – even when, in practice, enforcement is weak. Market-based and cost-effectiveness approaches fail in this regard because they are ethically closed systems; that is, they measure value only by private preferences or by price, with the lowest costs having the highest value.”¹³⁶

They also note that rights-based approaches can account for and call attention to relations of power and other political dynamics in ways that other approaches cannot, implying “duties, not charity.”¹³⁷ The approach they advocate thus calls into question precisely what is sometimes believed to be the source of necessity rhetoric’s force: its ability to depoliticize capacity.

This advocacy of rights, however, also has something important to contribute to our understanding of the politics of necessity. Corrêa, Petchesky and Parker’s concern about needs-based arguments actually seems to stem from necessity’s dependency on other forms of knowledge, rationalities and analyses. In other words, medical necessity derives its force from other discourses, which in turn makes them contingent and dependent, vulnerable to epistemic shifts, and unable to stand on their own. Rights, on the other hand, are necessary to themselves, sustained politically, not “[reliant] on the beneficence of unnamed, impersonal forces – whether they be donors, the state, an abstract ‘society’, or, more tenuously still, the market.”¹³⁸

¹³⁶ Corrêa, Petchesky, and Parker, *Sexuality, Health and Human Rights*, 153.

¹³⁷ Ibid., 155.

¹³⁸ Ibid., 152.

Though rights may be superior to necessity arguments for securing access to care, they are neither sufficient nor exclusive. No one strategy can overcome all of the challenges associated with securing medical care in neo-liberal orders. The turn to rights, moreover, has historically introduced additional problems such as competition among groups for recognition and resources that rights entail, and the exclusionary nature of rights. Yet, even as the rhetorical reading of medical necessity underscores problems associated with grounding care in medical need, it points us to the importance of political solutions to political problems. Having eschewed the metaphysical approach to necessity, foregoing the politics of definition, the rhetorical foundations of medical necessity may become key sites of engagement, but may also serve as traps.

Having begun this chapter with a nod to Cover and the “field of pain and death” in which legal interpretation is carried out, we can now see why the rhetoric of necessity in medical discourse carries such force. There is no “outside” in these debates to which one can turn in appeal. Instead, we may extend and revise Donna Haraway’s important and widely quoted point that “who controls the interpretation of bodily boundaries in medical hermeneutics is a major feminist issue.”¹³⁹ The rhetorical strategy that governs the nature of this control – secured through necessity arguments, rights, or some other rubric – is of central importance. Medical politics has much to learn from these feminist origins. All efforts to secure politically and ethically sensitive health care must engage the question of interpretation. If these engagements do not center on what is necessary or not, then the question shifts: who is entitled to what care by the simple fact of their being human?

¹³⁹ Donna Haraway, "A Manifesto for Cyborgs: Science Technology, and Socialist Feminism in the 1980s," *Socialist Review* 80 (1985).

Chapter Eight: Conclusion

“Necessity is the mother of taking chances.” – Mark Twain

8.1: Societies of Risk and Chance, Rhetorics of Necessity

In the introduction to *Black Skin, White Masks*, Frantz Fanon explains that he will not begin, as is custom, with a discussion of methodology. Instead, he will “leave methods to the botanists and the mathematicians,” as “there is a point at which methods tend to devour themselves.”¹ Fanon’s statement is a warning against the various means by which political thinkers may render the knowledge they produce irrelevant through methodological orthodoxy and myopia. Fanon seems concerned in particular with excessively reductionist theoretical frameworks.

Political theorists, of course, always deploy methodological frameworks to constrain and focus their questions and claims, even if they do not always use the language of methodology. But when they forget that this is what they are doing, and what others before them have done, they render their findings and their visions not only epistemologically vulnerable, but potentially dangerous because methods that “devour themselves” may produce knowledge that appears necessary, invulnerable to perspective and revision.

Of course, the rhetorical approach to necessity (and other questions as well) also runs such a risk. Throughout this project I have called attention to rhetorics of necessity that suggest solidity, determinism, predictability, and uncontestability but, in using rhetoric to evaluate these phenomena, have not subjected rhetoric itself to such scrutiny. I

¹ Fanon, *Black Skin, White Masks*, 12.

have emphasized the politics at work when these rhetorics are deployed in a world that is neither fixed, nor determined, nor predictable, but, in a more positive sense, is also contestable, if only in principle and not often in practice. In associating contestability with politics, I have sometimes called attention to, as well as problematized, the oft-cited relationship between freedom and anti-necessitarianism. Pericles's use of necessity arguments to make the case for inevitable war was one such case. In other cases – in Marshall's reading of "necessary and proper," for example, and in strategic uses of medical necessity – I have shown how necessity arguments can be used to open political spaces and provide tools with which political positions can be secured. I have shown that necessity is an important political question because of both its ubiquity and rhetorical pliability. However, despite my focus on the evolving tensions between the rhetoric of necessity and a view of politics that requires the opening and maintenance of spaces of possibility, an important paradox began to arise in the mid-to-late twentieth century, and continues to shape the twenty-first. While necessity arguments continue to proliferate – no doubt aided by the promise of science and narratives of progress – much of contemporary science continues to advance findings that suggest the need for a move away from necessity and its corollary rhetorics of determinism.

Ian Hacking notes that "The most decisive conceptual event of twentieth century physics has been the discovery that the world is not deterministic."² He details a century of movement away from necessary laws and predictive sciences and argues that the rise of statistics was not evidence of an increasingly deterministic, controlled world, but was made possible by a move toward indeterminism. According to Hacking,

² Hacking, *The Taming of Chance*, 1.

There is a seeming paradox: the more the indeterminism, the more the control. This is obvious in the physical sciences. Quantum physics takes for granted that nature is at bottom irreducibly stochastic. Precisely that discovery has immeasurably enhanced our ability to interfere with and alter the course of nature.³

Hacking's key point is that chaos and disorder in the world provides the condition of possibility for making sense of it. A world that was already ordered would afford no opportunities for the theorist in her capacity to give meaning, to narrate, or posit natural forces. Things become especially interesting in this light if we follow Hacking in his appropriation of C.S. Peirce, who advanced an "evolutionary epistemology" of science where "method and reality do not fit by good fortune or preestablished harmony," but rather "[e]ach defines the other"⁴ and where laws, hence metaphysics, evolve from and require that our mental apparatuses evolve along with them. In other words, science is understood by Peirce as a dialectical process wherein scientific engagements with the world create new understandings of that world. As the world evolves (again, by chance), so too do – or must – the minds that seek to understand it. The picture Peirce provides is that of a deeply poetic scientist who is comfortable in his poetry, seemingly free from the metaphysics of presence and the need for science to be something in the world, rather than an activity in which scientists engage in world creation.

This, of course, is all well and good as concerns science and the study of the world. Maybe it is possible that some scientists do or can embrace the consciousness of their vocation that Peirce points to, and which allows them to not only welcome contingency and the inherently poetic nature of the scientific process, but a non-teleological evolutionary model of scientific development. Yet Hacking also marks a

³ Ibid., 2.

⁴ Ibid., 213.

divide that points to the need for a rhetorical approach to necessity: “This erosion of determinism made little immediate difference to anyone.”⁵

Before turning to the significance of this admission, however, I would like to add into the mix an additional twentieth century challenge to the notion of necessity: risk.⁶ Ulrich Beck argues that, “[i]n advanced modernity the social production of wealth is systematically accompanied by the social production of risks.” According to Beck, contemporary theories of modernization need to account for how “the risks and hazards systematically produced as part of modernization [can] be prevented, minimized, dramatized, or challenged.” For Beck “modernization is becoming *reflexive*.”⁷ This reflexivity calls attention to technology, but also technology’s constant introduction of new problems, which it is in turn charged with solving, thus beginning the cycle anew. In risk societies “the calculation of risk as it has been established so far by science and legal institutions *collapses*.”⁸ Later, in a chapter explicitly on the political challenges of negotiating the terms of a risk society, Beck argues that this inability to calculate is the result of a major shift in highly industrialized societies, which are no longer bound-up in an attempt to tame nature, but have come to control nature to such an extent that its problems are rarely external to social orders, knowledges and decisions. In this sense, “the risk society is characterized essentially by a *lack*: the impossibility of an *external* attribution of hazards.” In risk societies, hazards no longer issue from external forces (whether gods, nature, or the economy). Instead, they

⁵ Ibid., 1.

⁶ Ulrich Beck, *Risk Society: Towards a New Modernity* (London: Sage Publications, 1992).

⁷ Ibid., 19. All emphases found.

⁸ Ibid., 22.

are the reflection of human actions and omissions, the expression of highly developed productive forces. That means that the sources of danger are no longer ignorance but knowledge; not a deficient but a perfected mastery over nature; not that which eludes the human grasp but the system of norms and objective constraints established with the industrial epoch.⁹

Taken together in their disparate interests and arguments, Hacking and Beck suggest a disjuncture between contemporary understandings of the world and the rhetoric of necessity. Modern science was hewn out of the enlightenment commitment to uncovering rational structures of natural orders and using them to improve human existence through an expanded knowledge base. As I have noted, modern science had to cast aside rhetoric to attain the solidity and logical relations it required. As necessity was to freedom during that period, increased mastery over nature, with its necessary laws, promised new potentialities for political and social life. On the other hand, if contemporary science tends toward thinking the relationship between humans and the world dialectically, whereby human activity not only changes (perhaps inalterably) the world that scientists study and in which political theorists must theorize, then the promise of stability and order in and of itself is not only insufficient, but politically dangerous. Such a picture of the world suggests that the conceptual tools theorists bring to bear on the political world must be responsive (though not necessarily respond) to such changes.

To be sure, because of language's representational, metaphorical nature, there has most likely always been a tension between the essentially contingent, contestable world and the rhetoric. If we were to undertake a comparative study of necessity rhetoric, we should expect to find cultural variation, in degree, quality and political valence, of these tensions. Taken reductively, however, one way to cast this project is as an extended

⁹ Ibid., 183.

examination of the spaces between necessity rhetoric and a world that is never, and can never, be captured by it. This view suggests at least three important points about necessity rhetoric.

First, changes in scientific, mathematical and other forms of technical knowledge do not necessarily effect changes in necessity rhetoric. As the world is conceptualized as increasingly chaotic, governed by chance, including genetic mutations and alterations, non-teleological narratives, narratives of constantly mutating risks rather than truth or predictability, necessity rhetorics can remain stubbornly in place. This is true despite the incompleteness of mathematics and the elusiveness of quarks. Whereas Nietzsche argued that science may function as a “hiding place,” changes in contemporary science suggest that those hiding places may be no longer safe; the result must either be a clinging-to outdated modes of science by those threatened by scientific developments that no longer mitigate their fears, or the invention of new rhetorical structures – pseudo-sciences, perhaps – in which stable narratives can be reinscribed. Either way, the analysis suggests a great deal of autonomy in these two domains of technical knowledge and the rhetorical structures through which publics talk about the world. In other words, changes in how we understand of the world do not necessarily disrupt or alter how publics understand and talk about it.

Second, a psychoanalytic reading suggests that changes in scientific and other forms of technical knowledge, when they tend toward chance, randomness and risk, may actually excite or exacerbate necessity rhetoric. The problem here is that this problem is not accidental, but functional insofar as necessity arguments can serve as attractive sources of psychic stability. This suggests, as I have hinted throughout, that the politics of

necessity is in part a manifestation of a longing, located differently at different times, for stability in the face of loss – in this case the loss of a world believed to be predictable, regulatable, programmed or programmable. As Freud argues, in the face of death, “it is easier to submit to a remorseless law of nature, to the sublime [*Anankē*],” where [*Anankē*] functions as “only another of those illusions which people have created ‘*um die Schwere des Daseins zu ertragen*’ ” – to bear the burden of existence.”¹⁰

Third, it is possible that necessity itself might be changing, and may thus enjoy a less secure, less necessary future, both in terms of its place within forms of technical knowledge and rhetoric. In the previous chapter, for example, it became clear that the essentially contested nature of medical necessity, as well as its subsumption by political economy, may have had the result of making the once solid notion of necessity politically ineffective to the point that the language of rights appears relatively attractive, despite its limitations and pitfalls. Similar reconsiderations may be in order in other domains where necessity arguments have been historically important. As necessity is understood increasingly to be a form of discourse, at the same time as risk, cost-effectiveness, liability, and always vulnerable security apparatuses and permeable borders shed publics of illusions – born of a metaphysics of presence – of total control, necessity rhetorics will either be shored up against these changes, creating an ever-increasing discursive farce that continually fails to account for the experiences in the world, or they will have to change. This disjunction, of course, will inevitably contribute to an “uneasiness,” as Freud maintained. Yet, in each case the political project will be to seek discursive structures that can more successfully meet the political challenges posed by a changing

¹⁰ Beyond the Pleasure Principle, in Freud, *The Freud Reader*, 616.

world. In this sense, the theorist's task must be to attend to the evolving rhetorical structures through which those problems are described and addressed.

More generally, the point is not to let this relationship go unchallenged as a permanent condition of political life, but to work productively with the effects of a fetishized world of necessity arguments; as I have indicated, the problems associated with necessity are not seared permanently into some political DNA. Instead, I am suggesting that we recast the relationship between political actors and language in explicitly social terms, pushing beyond the justifications that have long supported them and that make them attractive objects to leave be. One might of course claim that this relationship will change merely by the fact that political dispositions change. But I want to suggest that the problematizing of language is not tangential to the task of assuming political dispositions, but at their core. In other words, assuming a critical disposition toward language is, in itself, an alteration of the basic terms of political life since it exposes the structures operating within regimes of power/knowledge and makes them accessible to political contestation. This is not merely the classic move from the claim that justice (or another political concept) is an ideal form to the claim that it is "socially constructed." Rather, it is a move toward reading the metaphysics of language politically, as arguments, and of understanding what is happening when a necessity argument is made, maintained, or altered. By learning to read political knowledge as rhetoric, we simultaneously learn how to respond to it. These responses, moreover, are technical in that they are comprised of political strategies aimed at specific forms of language and strategic rationalities, each of which carries with it a particular (though no doubt sometimes multiple) political force.

All too commonly, analyses of the intersections of politics and language conclude with a declaration that “it’s just rhetoric.” Similarly, one might object that I am making necessity into “just rhetoric.” Instead of disavowing this position, however, I want to own it, and read this “just” not as a diminutive, but an amplifier. Rather than undermining the project of rhetoric, this “just” provides us with a roadmap and points us toward an important site of political engagement. In this view, “just rhetoric” is recast, from a pejorative to a methodological clue. If necessity is just rhetoric, then political theorists must read it rhetorically if they are to understand how it functions and make an engagement with that rhetoric *as rhetoric* part of their political project.

Political theory is uniquely suited for these rhetorical engagements because it rejects not science, but the scientistic tendencies that plague other disciplines that fancy themselves scientific. Moreover, it possesses critical tools to *see* these tendencies. The best political theory will read arguments about reason as rhetorics of reason. Focused instead on the development of innovative practices in the formation of political possibility, and not the discovery of knowledge or the proving of facts, political theory benefits – and does not suffer – when it understands itself in terms of its rhetorical practices, seeing its vocation as a form of world-building, concerned with persuasion through poetic practices, as a “meaning-making enterprise” that “depicts a world that does not quite exist, that is not quite the world we inhabit.”¹¹ Political theory is also unique in that its political commitments can protect it from falling into the trap of critiquing language for language’s sake, of thinking, for example, that doing literary analysis requires that one trade in the possibility of political critique. Political theory, in

¹¹ “At the Edge: The Future of Political Theory,” in Brown, *Edgework: Critical Essays on Knowledge and Politics*, 80.

fact, might be the only tradition that can use rhetorical analysis without getting lost in rhetorical analysis at the expense of the political.

Beyond apparent necessity, beyond what always already exists, political theory is – or at least can be – the discipline that *writes* this “world that does not quite exist.” But first, theorists must assume a vantage point from which they can see both that and how the world with which they engage has been written. Then, they must read that world as written, as a project of vision made with discernable, criticizable rhetorical structures. Only then, once they have assumed such a position, can they undertake the important work of undoing, redoing, writing, re-writing and revising the political.

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