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Toward Democratic "No-Rule": A Conceptual Response to Contemporary Challenges to Political Freedom

Alexander W. Brockwehl
Union College - Schenectady, NY

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Toward Democratic “No-Rule”:
A Conceptual Response to Contemporary Challenges to Political Freedom

By
Alexander Brockwehl

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ABSTRACT

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In this thesis, I argue that different conceptions of freedom yield different manifestations of governance. I demonstrate that in the United States, a private conception of freedom grounded in individual and state sovereignty has been repeated in political discourse with severe consequences for democracy. This conception of freedom derives largely from America’s founding, from a reliance on legal language, and from fundamental assumptions about the role of the people in governance. It institutionalizes social and political hierarchies through promoting and protecting individual autonomy.

In contrast to this dominant form of freedom, I sketch an alternative that encourages public engagement, political responsiveness, and citizen responsibility. My theory of freedom, based largely on the writings of Hannah Arendt, incorporates freedom’s complexity, interconnectivity, and instability. The conception of freedom that I put forth approximates the Arendtian condition of “no-rule,” enabling a form of non-hierarchical political organization in which the people actually debate and decide.

I develop this theoretical framework by applying it to contemporary case studies in American politics. Through scrutinizing the methods of judgment employed in the Sonia Sotomayor confirmation hearings, highlighting the limits of legal language in addressing protests at military funerals, and exposing the Tea Party’s reassertion of political and social hierarchies through its antihistorical and ethnocentric appropriation of freedom, I will present a new way of conceptualizing and responding to political events.

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Introduction

Freedom and democracy are terms so overused in American political discourse that one might be inclined to conceive of them as political support mechanisms rather than ideals. Politicians justify everyday decisions on loosely democratic grounds and perceived battles over citizen freedoms remain among the most contentious of all. Many theorists have argued that the ambiguity of democracy and freedom leaves these terms vulnerable to exploitation and ultimately devoid of substance or meaning. In “We are all democrats now,” Wendy Brown contends that democracy is an “unfinished principle,”¹ whose lack of specificity renders it susceptible to appropriation by various peoples and governments.

Yet I believe that categorically disregarding the principles of freedom and democracy as excessively vague serves to justify a withdrawal from the all-important ideological battle over the substance of freedom and its relationship to democratic ideals. I argue that there exists a deeply ingrained, institutionalized, and coherent conception of freedom in the United States that is repeated and rearticulated in the mainstream but that is importantly incompatible with the ideal of democracy. This conception is grounded in privacy, individualism, and sovereignty. It is rooted in the state’s promotion and protection of individual autonomy, which serves to institutionalize social and political hierarchies. This conception of freedom derives largely from America’s founding, from expectations as to how past events should inform contemporary political decision-making, from the language of statehood and legality, and from invocations of a coherent national identity. It is supported by a set of fundamental assumptions about the role of the people in governance, the relationship between the citizen and the state, and the kinds of

sacrifices that must be made in the interest of stability. In the chapters that follow I will show that this conception of freedom has been reinforced in political discourse for centuries with societal consequences that have long been overlooked. I will also seek to explain why its repetition ultimately leads away from democratic ideals and toward a political dead end.

In rejecting this conception, I will put forth an alternative way of thinking about freedom that strives toward the ideal of citizen self-governance through enabling public engagement, political responsiveness, and citizen responsibility. My conception of freedom is fluid, complex, and unstable, though not destabilizing. It derives from a belief that political rights and liberties, as defended by legal institutions, are insufficient for ensuring conditions of substantive freedom. My conception of freedom defies notions of individual, collective, or state sovereignty, instead acknowledging and celebrating the interconnected reality of political life and revealing the futility of individual, societal, and legal attempts to escape from this condition. In clarifying the conception of freedom that I am putting forth, I will distinguish the unpredictable realities of freedom from the common assumption that freedom is destabilizing and must be checked, instead asserting the possibility and need for freedom and certain forms of governance to function in a mutually reinforcing way.

In writing this thesis I aim to express my concerns about the state of our democracy. I believe that America's failure to even approximate democratic ideals can be partially attributed to how its citizens conceive of freedom. Furthermore, I contend that different conceptions of freedom can have tangible implications for shaping and molding a government in a way that aligns with or contradicts democratic ideals. In the U.S. the

repetition of past mistakes and the unquestioning acceptance of entrenched ways of thinking suggest a need for a thorough elucidation of the many elements that inform traditional notions of freedom as well as an offering of a substantive alternative. In writing about freedom I hope to achieve both of these aims, exposing the ways in which certain appropriations of freedom subjugate the individuals they claim to set free while arguing that a different conception of freedom is attainable.

In developing both my criticism of contemporary conceptions of freedom and the alternative that I intend to offer, I will consult a number of classical and contemporary theorists. Hannah Arendt and Simone de Beauvoir will guide much of my discussion. Arendt's analysis will help to reveal the complex relationship between freedom and governance while Beauvoir's discussion will strengthen my claim that freedom is a collective condition and one whose existence depends upon a certain form of responsibility.

I will also consult contemporary theorists in each chapter. Jason Frank's insights on the role of the citizen in governance, Jill Lepore's discussion of insincere political appropriations of past events, Judith Butler's allocation of responsibility for injurious speech acts, Paul Passavant's illumination of the paradox of rights, and Patchen Markell's interrogation of rule all guide my discussion in the chapters that follow. Each of their arguments addresses a particular contributing factor to the definition of freedom that I have outlined. Moreover, my discussion of their writings will help to frame the latter half of each chapter, which will focus on one or more case studies that I have chosen in contemporary U.S. politics. These case studies make manifest the implications of currents

ways of thinking about freedom, presenting modern challenges to democracy and revealing the tendency to respond to new problems in repetitive ways.

Chapter One will consider the importance of founding moments to examine how conceptions of freedom stem from formative past events. Specifically, the chapter begins by analyzing The *Federalist Papers* and elucidating the failure of the framers to incorporate the American Revolution's concept of freedom into the nation's most important founding document. By putting James Madison's argument in *Federalist 51* in conversation with Hannah Arendt and Jason Frank, the Constitution is exposed as a means of defining the limits of political space for citizens and as a method of persuading citizens that their freedom is contingent upon representative protection. By proclaiming a devotion to stability (and the power that it implied for them as educated white males) above all else, Madison and his partners were able to exclude the aims and principles of the American Revolution from the Constitution, developing a foundation that inhibited freedom under the guise of ensuring it.

After recognizing how the framers' focus on stability served to undermine the possibility of substantive freedom for citizens, the discussion moves into an assessment of contemporary interpretations of the founding. On a basic level, the common political practice of revering the Constitution constitutes a denial of freedom because it compounds the original failures of the framers to capture and enhance substantive freedom. But I contend that current interpretations of the founding have done far worse than just magnify these failures. With Jill Lepore's idea of "historical fundamentalism"² in mind, I argue that certain policymakers, activists, and judges have forwarded a reactionary agenda of Constitution worship through an insincere tribute to a

manufactured and distorted past. By assuming that America was once a homogeneous country and that the Constitution was the product of consensus and not widespread disagreement (as well as marginalization through reliance on established social hierarchies), today's Constitution worshippers aim to deny heterogeneity and discord from discussions about the role of the Constitution in shaping twenty-first century America. This practice is evident in Supreme Court confirmation hearings, in which prospective justices are examined based upon their loyalty to the "original intent" of the founders and the likelihood that they will arrive upon the very decisions that the founders would have made. In focusing on the confirmation hearings of Sonia Sotomayor in 2009, I will express how these hearings became a struggle over interpretations of the founding and over the ways in which past events should and do shape current approaches to judging and decision-making more broadly. Sotomayor's sex and race, as well as comments she made in a number of speeches throughout her career, led her to be ostracized by conservative Senators as a threat to American values and a latent "judicial activist."³ Above all, however, her honesty regarding the significance of personal experiences in informing the process of judging challenged an increasingly accepted belief, and one which has its origins in the federalist writings, that judgment should consist merely of the application of rules.

The second chapter considers how we theorize our relationship to one another and its consequences for freedom. Targeting Locke and Mill, I will interrogate private, individualist conceptions of freedom that serve as an escape from political engagement and from its associated responsibilities. I will also call into question Rousseau's notion of the "general will," employing Arendt's critique of sovereignty to refute his vision for

cohesive political engagement. With Beauvoir's "situated freedom" as a basis, I will put forth a conception of "public" freedom, positing that language is essential to facilitating appeals to the freedoms of others. I will also present the claim that freedom and responsibility are inextricably linked, and that substantive freedom can only be experienced through engagement with the world and with others.

Building upon the theories of Beauvoir and Arendt, I will dissect freedom of speech in the U.S., focusing on instances of violent speech and the legal defenses that are presented in these cases. In this section I argue that Locke and Mill's individualist framework has enabled freedom of speech to become grounds for justification of violent speech and for exemption from accepting responsibility for the consequences of such speech. In the news media and elsewhere, talking heads incite violence against their fellow citizens while hiding behind a value that, in its First Amendment manifestation, implies a separation of individual freedoms. In discussing Glenn Beck's targeting of two civil rights organizations and protests at military funerals by members of a Topeka Church, I will not propose a legal remedy to these forms of violent speech; however, I will also not concede that freedom of speech laws are too sacred to ever be condemned, even for their unintended consequences. I will instead assert the inadequacy of legal language in articulating the injury that is suffered in these cases, contending that the First Amendment is one example of the law's inability to reflect the complexities of freedom and responsibility. By emphasizing the limit of the law in these cases, I will criticize the inclination to abandon all attempts at establishing responsibility once freedom of speech rights have been invoked, instead fortifying my argument that the law is incapable of

expressing substantive freedom in such a way as to effectively mediate between competing rights claims.

The third chapter will seek to combine my discussion of our problematic orientation to the past in Chapter One with our failure to recognize the interconnectivity of our freedoms in looking at globalization's seemingly counterintuitive and highly antidemocratic enhancement of racial intolerance. I argue that the founders' reduction of political rights into a set of liberties, as well as their establishment of laws to mediate between these rights, enabled much of the ethnocentrism that pervades the contemporary United States. I will consult Paul Passavant in arguing that rights provide grounds for inclusion but also grounds for exclusion. I will also reference the works of Wendy Brown, Bonnie Honig, and Arjun Appadurai in considering how globalization challenges absolute state sovereignty, which is a core idea behind the modern nation-state.

In the second half of the chapter I turn to political and social policies that seek to reclaim sovereignty and reassert a form of national identity within the realms of religion and global capital. I consider first the issue of immigration, discussing the wall constructed along the U.S.-Mexico border and Arizona's recent law, Senate Bill 1070, which obligates law enforcement officials to determine the immigration status of anyone who may be "reasonably suspected" of being in the country illegally. With help from Arjun Appadurai, I argue that America's dependence on Mexican workers has exposed absolute state sovereignty as an illusion. Arizona's law is merely one manifestation of a state-led attempt to reassert state sovereignty and to cling to some imagined form of national identity. Next I discuss a lawsuit filed by a number of Murfreesboro, Tennessee residents to block an expansion project to build a Muslim community center and mosque.

As with Arizona's response to immigration, these citizens looked to the law in order to propagate an agenda of ethnocentrism and exclusion. However, while the Arizona law potentially calls into question the citizenship of everyone who appears "foreign," the Murfreesboro lawsuit—which claims that the rights of the plaintiffs were impinged by allowing Muslim Americans the full rights of citizens—interrogates the *quality* of citizenship that should be afforded Muslim residents. The plaintiffs' attempt to deny rights to Muslim Americans reflects the way in which globalization has produced a hotly contested political battleground. Americans have generally responded to the challenge of globalization by attempting to validate the supremacist idea behind the modern nation-state, even at the cost of entirely abandoning democracy's inherent inclusiveness.

In Chapter Four I will clarify my critique of the state, preemptively deflecting criticism that my theory of freedom tends toward anarchy by interrogating the traditional framework through which freedom and governance are considered to be in opposition to one another. I will assert that the common assumption that freedom necessarily defies an established order and that governance must limit citizen freedoms in the interest of stability is based upon citizens' acceptance of a fundamentally flawed analytic framework. Stability is an appealing prospect; however, the form of stability that governments often promise can in no way be ensured, regardless of citizens' willingness to forfeit political freedoms. Through exposing these promises of stability as insincere I will untangle the frequently accepted correlation between stability and hierarchical rule, which depends upon the assumption that freedom undermines stability. Ultimately, I will argue that freedom is incompatible with rule but not with other forms of non-hierarchical

governance, and in fact requires governance if free acts are to retain their contextual meaning.

With the freedom-governance dichotomy in mind, I will analyze the Tea Party movement in the U.S. Drawing on Jill Lepore, Jason Frank, and the authors of a number of contemporary exposés on the movement, I will argue that the Tea Party's assault on government as a threat to freedom has actually undermined the realization of substantive freedom for citizens. The Tea Party's employment of the traditional antagonism between freedom and governance has propped up a corporate-funded campaign that seeks to exacerbate existing socioeconomic inequalities through demonizing the federal government and its social policies. Under the financial tutelage of entrenched Wall Street elites like the Koch brothers, the Tea Party has organized frustrated individuals into a misguided mob hell-bent on cutting the size of government; or so its members think. The Tea Party's inherently contradictory political philosophy manifests itself in practice as a confused and incoherent right-wing group whose lone source of unity is some make-believe version of the American Revolution. Through promoting a theory of antihistory, as well as conceptions of freedom based upon individualism and ethnocentrism, the Tea Party has not only acted against the self-interests of its predominantly middle-class members but has actually fortified the conditions of rule that it claims to protest. In this sense, I will argue that the Tea Party movement has created a substantial challenge to the very value that it purports to hold sacred: freedom.

Through my analysis in each chapter I will put forth a conception of freedom that defies democracy, as well as one that is not only compatible with democracy but in fact requires it. My vision for freedom can fit only with a system of democratic governance in

which the people debate and decide. What I seek to present is not only a unique examination of political freedom, but also a new way of interpreting and responding to political events that calls into question conventional responses. While I will not present hopeful projections about the future of democracy, I write with the belief that my conception of substantive freedom can enhance democracy and that reconsidering the way we think about freedom could have substantive effects.

Chapter I. A Twenty-First Century Constitution

“Laws and institutions must go hand in hand with the progress of the human mind... as new discoveries are made... institutions must advance also, and keep pace with the times”

– Thomas Jefferson

There may well be no period in American history more commonly referenced in the country’s present-day political discourse than that of the American Revolution and the subsequent founding of the nation. Although the earliest post-revolutionary leaders of the United States were wary of inciting a second revolution, Jill Lepore explains in *The Whites of their Eyes* that “the Revolution was so brilliant and daring – and, of course, so original and definitive and constitutive – that everyone wanted to claim to have inherited it.”⁴ Today, more than two hundred years removed from American independence, there are still few claims to power endowed with more seeming legitimacy in the eyes of the people than those that assert the Revolution and its leaders or the Constitution and its framers as the source of their mandate. But with so many groups and individuals claiming to be the rightful heirs to the Revolution and the legitimate interpreters of Madison and Jefferson, whom should we listen to in determining the role that our nation’s founding moments should play in shaping our contemporary politics? In revisiting these moments and dissecting the legacy that our founders left us can we better conceptualize America’s complex relationship to the past—a relationship that is at once dependent and exploitative, reverential and irreverent?

In this chapter I will return to these founding moments because I argue that divergent interpretations of our founding moments give rise to different conceptions of

freedom. Implicit in America's founding documents are assumptions about the content of political freedom and about the extent to which the people should govern in a civil society. Similarly, contemporary interpretations of these documents not only reflect general assumptions about freedom but also imply a certain role for these founding documents in informing today's political process. In particular, highly deferential interpretations of the Constitution tend to suggest that the founders struck an ideal balance between freedom and stability, and that the goal of the political process should be to preserve and protect those freedoms that the founding documents afford citizens. These sorts of interpretations often imply that through a close reading of founding documents we can elicit the "true" or "original" intention of the founders and then apply their visionary principles to our daily lives.

While countless historians, scholars, and Supreme Court Justices have scoured the Constitution in hopes of deciphering the "original intent" of the framers, this will not be my aim. I will instead revisit important founding documents with the goal of understanding our founders' vision of freedom and subsequently analyzing the ways in which varying interpretations of our founding moments fail to fully engage the founders' conception. The decisions the founders made, the interests they prioritized, and the compromises they reached all influence our political process today and, as I will show, continue to inform the way we think about political freedom. If we are to expose a deeply ingrained conception of freedom that defies democratic ideals, I argue that we must start with America's founding.

Hannah Arendt will be essential to my analysis in this chapter, as she argues that the U.S. Constitution and Bill of Rights provided a foundation that was inconsistent with

the goals of the American Revolution. Arendt conceives of freedom as a condition experienced by a body politic through civic engagement and widespread inclusion in daily political decision-making.⁵ In her view, “freedom, which only seldom—in times of crisis or revolution—becomes the direct aim of political action, is actually the reason that men live together in political organization at all.” Without freedom, she asserts, “political life as such would be meaningless.”⁶ In Arendt’s discussion of America’s founding, she argues that the participants in the American Revolution fought for freedom but attained only liberation, which “may be the condition of freedom but by no means automatically leads to it.”⁷ The first goal of this chapter will be to understand how Arendt’s conception of substantive freedom may have been lost in transition between Revolution and governance. Arendt’s critique forces us to ask a crucial question: was the U.S. Constitution a failure upon which all subsequent moments in American political history are predicated?

How did the framers envision freedom in the new nation? Was the quest for freedom embodied in America’s founding documents? The task the framers undertook was undoubtedly difficult. They attempted to facilitate a transition from revolution, which Arendt tells us necessarily aims for freedom, to governance and its inherent tendency toward organization and stability. While I will explore more extensively in Chapter Four the complexity of the tension between rule and revolution, for now I will merely highlight the fact that the founders seemed to view anarchy and rule by elites as their lone options. As Madison makes clear in *Federalist 10*, the founders believed that certain sacrifices must be made in the interest of political stability. Specifically, they believed that it was the role of government to impose certain restraints on the citizenry in

order to guard against democracy's tendency toward faction. As Madison relates, the founders faced something of a governmental dilemma and ultimately decided that political freedom, conceived of as widespread civic involvement in political processes, could not coincide with stable governance.

Among my primary concerns in approaching this chapter is the tendency of contemporary interpretations of the founding to ignore the complexities of the dilemma that the Constitution's framers faced. Today we see Supreme Court Justices and their right-wing cheerleaders advocating a "textualist" form of constitutional interpretation and anti-government activists proclaiming a need to replenish Thomas Jefferson's "Tree of Liberty," yet rarely does it seem that these individuals even consider the compromises the framers made or their likely failures. With glorified images of the Constitutional convention, in all of their distorted forms, wielding considerable influence today, it becomes particularly important to weigh the implications of accepting interpretations of the founding that invoke a certain vision for the past that is unsubstantiated by historical fact. As explained in a September 2010 column in *The Economist*, referring to the proliferation of so-called "Constitution worship," the stakes are high: "When history is turned into scripture and men into deities, truth is the victim."⁸

This chapter will begin by revisiting founding moments to determine to what extent the Constitution provides a foundation consistent with the Arendtian notion of freedom. Using the federalist debates as a guide, I will consider the questions raised by the framers at the time of the nation's founding as to who should rule, how their power should be checked, and where "we the people" would factor in. The intent of this section will be to extract from *The Federalist Papers* a definition of freedom that can then be

juxtaposed to the one put forth by Arendt. The goal of this kind of comparative analysis will be to understand the extent to which the Constitution's framers believed citizens should be involved in political processes and to assess the authenticity of their attempt to reconcile stable governance with freedom.

From this basis in the nation's founding moments, the discussion will move to contemporary (mis) representations of the American Revolution and the U.S. Constitution. The "battle over the Revolution" that Jill Lepore describes, is becoming more fierce with each passing day. Over the last few decades, many politicians, pundits, and activists have successfully and insincerely appropriated the aims of the Revolution, the language of the Constitution, and the ideals of the framers in order to forward a radically regressive, intolerant, and ethnocentric agenda. As might be expected, such devotion to a particular, nonexistent past is highly restrictive and, I will argue, is incompatible with democratic ideals. The notion that solutions to present problems lie in looking backward and not forward, whether subscribed to as a quasi-religious doctrine or merely exercised as a political ploy, yields a highly static conception of freedom that directly contradicts the one presented by Arendt. What makes these appropriations so powerful and dangerous, however, is their antihistorical nature, as they nostalgically invoke an image of America's past that never actually existed.

Finally, I will consider how forms of constitutional reverence have penetrated jurisprudence by influencing public expectations about the process of judging. Through examining the 2009 confirmation hearings of Supreme Court Justice Sonia Sotomayor, I hope to show how the static conception of freedom that I have revealed produces a set of assumptions about the process of judging and the extent to which individuals—and

particularly those who are not white males—should be entrusted with the responsibility of weighing various factors in making important decisions. During the Senate confirmation hearings, a number of conservative senators alleged that Sotomayor was a future judicial activist who would disregard the Constitution upon joining the bench. Their suggestion that judging should be merely the passive application of rules reflects a Madisonian conception of freedom as a condition protected by a powerful few for the perceived best interest of everyone else.

Ultimately, after scrutinizing the founders' conception of freedom and deconstructing contemporary interpretations of founding moments, I hope to illuminate how conceptions of freedom derive from the establishment of a certain relationship with the past. While the founders failed to allow for citizen involvement in political processes, contemporary appropriations of the founding tend to compound their failure, further excluding citizens from decision-making. In this sense, I will not suggest that the founders are fully responsible for the proliferation of a conception of freedom that is incompatible with democratic ideals. Rather, I intend to merely recognize their influence in producing a conception of freedom that has had, and continues to have, profound consequences for democracy.

Part I. Constitutional Failure: The Loss of Revolutionary Freedom

“If revolution had aimed only at the guarantee of civil rights, then it would not have aimed at freedom but at liberation from governments which had overstepped their powers and infringed upon well-established rights,”⁹ asserts Hannah Arendt in *On Revolution*. As Arendt suggests here, the revolutionaries who took up arms against the British desired more than a changing of the guard; they sought “to build a new house

where freedom can dwell.”¹⁰ As she elaborates, “only where change occurs in the sense of a new beginning, where violence is used to constitute an altogether different form of government, to bring about the formation of a new body politic, where the liberation from oppression aims at least at the constitution of freedom can we speak of revolution.”¹¹

Arendt argues that the revolutionaries wanted freedom insofar as they wanted to take political action and develop an entirely new form of government in which the people would debate and decide publicly. According to Arendt, they sought “a form of political organization in which the citizens lived together under conditions of no-rule, without a division between rulers and ruled.” (On revolution 22) If conditions of no-rule were the core aim of the Revolution, then we must ask whether or not this form of freedom was attained through the establishment of a republic.

In *The Federalist Papers*, written to New Yorkers in support of the Constitution during the debate over its ratification, Alexander Hamilton, James Madison, and John Jay—under the pseudonym ‘Publius’—offer their view as to what role the people should play in the new government. In *The Federalist 10*, Madison confronts the enduring tension between state stability and citizen autonomy in his discussion of faction. He defines faction as “a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.”¹² Madison is evidently concerned about the permanence of the union, but his notion of faction is based upon the assumption that a free citizenry would necessarily destabilize an established order. This assumption, as we will further explore, enables the exclusion of the citizenry from the governing process. Furthermore,

it raises questions as to how the content of the “aggregate interests of the community” might be determined, who might be authorized to accurately defend these interests, and whether or not any communal interest could be established as “permanent” and thus assume primacy over all other interests.

A contemporary interpreter of Madison, Jason Frank (*Constituent Moments*), asserts the importance of potentially destabilizing and even subversive activities in reclaiming the power of the people. He terms such activities “constituent moments,” broadly defined as instances “when the underauthorized...seize the mantle of authorization, changing the inherited rules of authorization in the process.”¹³ Although such activities may at times (though not always) threaten established governmental processes, they distinguish themselves from other forms of disobedience in that they “enact their claims wholly on the democratic authority of the people themselves: out of these enactments a new democratic subject emerges.”¹⁴ Far from being anti-democratic, constituent moments are the product of unrestricted exercise of the will of the “demos.” These free actions transgress societal limitations, but in doing so carve out a new democratic political space.

While Frank would likely see faction as not only inevitable but in fact necessary to the exercise of freedom, Madison devotes much of *The Federalist 10* to exploring ways to eliminate it. Abolishing liberty would eliminate the causes of faction, but Madison is wary of doing so, for he believes the protection of such liberties is “essential to political life” and thus “the first object of government.”¹⁵ However, it is essential not to confuse his concept of liberty with even the most diluted form of freedom. Unlike freedom, which, as suggested by Frank, transgressively demands a new political space,

liberty operates in an already established space whose limits are outlined by representatives of the people's "permanent interests," not "the people" themselves.

Having conceded that the causes of faction cannot be eliminated, Madison aims to alleviate its effects. It is to this end that Madison endorses a republic as a superior form of government to a democracy, concluding that "a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction."¹⁶ Madison is correct in determining that democracy cannot cure disagreement and contentiousness; however, his assessment overlooks the fact that the process of democracy does not aim to do so. Democracy, or governance by the people, is inherently an exercise in the free exchange of ideas that defies regulation and rejects the idea that certain voices should be silenced or ignored. It is here that one can see how through portraying differences of opinion as dangerous and destabilizing, Madison has altered the terms of the debate from concentrating on the collective interest of the union to focusing on protecting the private interests of certain citizens.¹⁷ Along this vein, he declares, "Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths."¹⁸ By implying that democracy would undermine basic rights, Madison warns citizens of its supposed dangers. In portraying democracy as inherently uncontrolled and uncontrollable, he aims to convince citizens that it is in their best interest to knowingly and willingly forfeit much of their agency to representative structures theoretically capable of harnessing and limiting the influence of purportedly destabilizing factions.

Frank takes issue with Madison's diagnosis of democracy. In addressing democratic theorists, Madison writes that those who have "patronized" democracy "have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions."¹⁹ But Madison's allegation is entirely disingenuous and grossly mischaracterizes democracy's proponents. As Frank emphasizes, the sheer beauty of democracy lies in the inherent diversity of its constituent parts and the divergence of opinion that it facilitates. When Frank speaks of the people as a "constituent and constituted power" which is "at once a source of public authority and a source of resistance to public authority"²⁰ he does not naively expect that citizen interests will coincide. Instead, he recognizes those conditions of instability that can and will be caused by activities of defiance and insurrection, but embraces them as an essential component of the democratic process. At issue for Frank is not whether democracy can limit opposing voices, for it is far too obvious that it cannot. At the heart of the question of faction is freedom: will citizens be able to engage one another publicly with the intent of taking action and having their voices heard or will they instead be limited to enjoying those basic liberties that have been selected by their representatives? Under the latter conditions, the individual is generally excluded from the daily process of governing.

Although the existence of representative structures necessarily implies a lack of individual agency, Madison is insistent upon illustrating the merits of representation. Much of Madison's argument in favor of a republic derives from a perception that certain individuals are more apt than others at discerning the "common interest" and subsequently representing it through enacting laws. Madison speculates, "it may well

happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose.”²¹ This endorsement of representation is at once naïve and oppressive. First, it assumes the existence of a coherent “public good” as voiced through representative bodies. Second, it asserts that those individuals endowed with particular powers of representation will not only be capable of differentiating between public interests and their own interests but will also be willing to choose those interests that may contradict their own. Finally, it suggests that individuals shall be elected for displaying characteristics such as wisdom and discretion that naturally elevate them above other citizens, as opposed to those attributes such as compassion and empathy that would instead enable them to fully understand and appreciate citizen interests. In fairness to Madison, he does acknowledge that “the effect [of representation] may be inverted”²²; however, he only pays lip service to such a possibility, contending that the problem of poor representation can be largely solved by increasing the size of the governing body.

Writing about the American Revolution, Arendt bemoans the loss of freedom in the transition between winning the war and establishing a governing body. In her view, the Revolution undoubtedly called for far more than its end result. Liberation, “could have been fulfilled under monarchical rule,” she asserts. Freedom, on the other hand, “necessitated the formation of a new, or rather rediscovered form of government; it demanded the constitution of a republic.”²³ The American Revolution introduced to those involved the “experience of being free” and, consequently, “the experience of man’s faculty to begin something new.”²⁴ But the founding of the nation was ultimately disappointing, as the founders opted for a form of social contract instead of a government

in which the people govern. A far cry from the Greek “polis,” in which freedom necessitated a “political space proper” where people would publicly participate in certain activities that recognized the need for the presence of others,²⁵ in the new republic individuals would be permitted highly limited access to public spaces and would be led to believe that their interests were inevitably in conflict with those of others. In this sense, the founders failed to fulfill the legacy of the Revolution.

While the Constitution provided the framework for a set of liberties to replace freedom as the goal of government, the establishment of a Bill of Rights made the Constitution’s denial of substantive freedom far more tangible. By establishing these inalienable rights, representative bodies were able to solidify their role as a protective entity. The implication, cited repeatedly by Madison in *The Federalist 10*, was that outsiders and opponents to those in power sought to challenge the liberties of citizens and that only established representative institutions could stand in their way. In a large sense, the development of a Bill of Rights was a way of claiming victory for the development of “democracy” but had no significance with regard to enabling the pursuit of public freedom. Referring to basic rights, Arendt states, “All of these liberties, to which we might add our own claims to be free from want and fear, are essentially negative; they are the results of liberation but they are by no means the actual content of freedom which...is participation in public affairs, or admission to the public realm.”²⁶ As Arendt suggests, freedom is not attained on an individual level, but is instead the source of a perpetual and daily pursuit experienced *collectively* by a body politic through civic engagement. An individual can achieve freedom only through “admission into the public realm.” The establishment of a Bill of Rights implied both a static and individualist conception of

freedom, suggesting that rights had been wrested from the British, achieved for the American people, and now needed to be protected by representative governing bodies. Thus, it might be concluded that the Bill of Rights solidified the Constitution's negation of substantive freedom.

Part II. Contemporary Appropriations of a Nonexistent Past

Having established in the first part of this chapter the Constitution's failure to allow citizens to actively pursue freedom through civic involvement, we must consider the consequences of accepting the Constitution as a definitive foundation of democracy. "He took his debt to the founders seriously,"²⁷ writes Jill Lepore, speaking about Austin Hess, a Massachusetts tea party leader whom she met in April 2009. As Hess explained to her, referring to America's founders, "we believe that we are carrying on their tradition."²⁸ Hess' assumption raises the following questions: what exactly is the tradition of the founders, is this tradition worth carrying on, and, if so, who should be given the responsibility of doing so?

Lepore warns us of the dangers of revering the Constitution and other moments in our nation's founding. Such admiration can induce individuals to subscribe to an ideology of "historical fundamentalism," which she defines as:

The belief that a particular and quite narrowly defined past—'the founding'—is ageless and sacred and to be worshipped; that certain historical texts—'the founding documents'—are to be read in the same spirit with which religious fundamentalists read, for instance, the Ten Commandments; that the Founding Fathers were divinely inspired; that the academic study of history (whose standards of evidence and methods of analysis are based on skepticism) is a conspiracy and, furthermore, blasphemy; and that political arguments grounded in appeals to the founding documents, as sacred texts, and to the Founding Fathers, as prophets, are therefore incontrovertible.²⁹

With the rise of the Tea Party, “historical fundamentalism” is rapidly becoming more and more evident as a quasi-religious doctrine that seeks to inform political philosophy. The Tea Party’s appropriation of the language of the revolution will be explored in greater detail in Chapter Four; however, this chapter will put forth the claim that the proliferation of “historical fundamentalism” is by no means a new development brought on exclusively by the Tea Party. For decades, politicians, activists, and particularly judges have employed the essence of the Constitution as a means of justifying a particular decision, stance, or judgment. To what extent these claims of constitutionalism are actually legitimate, as well as whether or not such claims should be endowed with greater authority than those deriving from the context of the claim, are among the questions that this discussion will seek to answer.

The Constitution and the Court

While the spirit of the Constitution pervades American daily life in countless ways, there is no arena within which the document demands greater consideration than that of jurisprudence. As stipulated in the Constitution’s Article III, “The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.”³⁰ In practice, this has long meant that federal courts are given the awesome responsibility of interpreting the Constitution and applying it to contemporary case law. But the term “interpret” is extremely vague. For some, interpreting means recovering the general values and ideas presented in the Constitution, while for others it entails attempting to decipher in seemingly rigorous detail the “original intent” of the nation’s founders.

A thorough examination of the various methods of interpretation is well beyond the scope of this discussion. Thus, in this section I will focus solely on an increasingly widespread public expectation that justices will not only thoroughly consult the Constitution before making judgments but also that they will arrive upon the decision that the nation's *founders would have made*. I will argue that the latter criterion, used first for assessing potential justices and subsequently for evaluating their judgments, compounds the framers' failure to address freedom in any substantive way, both by unquestioningly accepting the framers' reduction of freedom to a set of prescribed liberties and by converting a necessarily free process (judgment) into one in which participants are obligated to uphold certain preselected principles to the preclusion of others. This criterion also serves to undermine the legitimacy of the Constitution itself. When judgments are confined to an antiquated document, based upon the undeniably false assumption that it will provide sufficient answers to the questions raised by the challenges of today, that document becomes exposed to distortion, manipulation, and, most importantly, coercion into new spaces of political decision-making within which it can claim no actual authorization. Under a guise of protecting the purported values of the Constitution, the judiciary has invaded and occupied these public spaces, jointly shared by citizens and their representatives, vastly increasing its comparative power and undermining freedom and democratic processes.

In Wendy Brown's short essay, "We are All Democrats Now," she writes about the ever-expanding role of the court:

At the same time, courts themselves have shifted from deciding what is prohibited to saying what must be done—in short, from a limiting function to a legislative one that effectively usurps the classic task of democratic politics. If living by the rule of law is an important pillar of most genres of democracy, governance by courts

constitutes democracy's subversion. Such governance inverts the crucial subordination of adjudication to legislation on which popular sovereignty depends, and overtly empowers and politicizes a non-representative institution.³¹

In Brown's view, the judiciary's increasingly invasive role is one of many "late modern powers and processes [that] have eviscerated the substance of even democracy's limited modern form,"³² and in doing so have served to undermine the essential concept of democracy: governance by the people. I contend that this invasion has been legitimized through a large-scale judicial appropriation of the Constitution, whereby the Constitution has been relegated to a means of defending particular judgments that not only extend well beyond the language of the Constitution, but in fact may constitute the very negation of the document itself.

During the debates over ratification, the anti-Federalists foresaw the potential dangers of an overly powerful judicial branch. In Brutus XI, Brutus expresses concern as to the lack of checks on the judicial branch, predicting that it would use its control for the purpose of self-aggrandizement at the expense of the people. Writing of the Supreme Court, he cautions:

They will give the sense of every article of the constitution, that may from time to time come before them. And in their decisions they will not confine themselves to any fixed or established rules, but will determine, according to what appears to them, the reason and spirit of the constitution. The opinions of the supreme court, whatever they may be, will have the force of law; because there is no power provided in the constitution, that can correct their errors, or controul their adjudications³³

Though Brutus could be applauded for his clairvoyance, the contemporary Court has usurped its power in a far more dangerous way than even he imagined. To use Brutus' language, the Court has, in fact, claimed to be confined by fixed or established rules, namely those stipulated in the Constitution. Beginning with the Rehnquist court, and later with the Reagan and Bush appointees, the Court has developed a standard of judgment

that purportedly demands rigid adherence to the text of the Constitution. But in doing so, it has developed a constitutional dichotomy whereby individuals are deemed to either protect the Constitution or seek to defile it, and to judge in its favor or judge in the interest of its long-term detriment. The problem with such a concept—besides its stark insincerity and the simple fact that even the most seemingly reverent justice is highly capable of exhibiting “activist” tendencies—is that it converts certain judgments into unquestionable ones and appropriates the framers for the purposes of defense. As a consequence, the very “spirit” of the Constitution begins to adopt a protective, fearful, and intolerant complexion that leads us to believe that change and inconsistency necessarily imply loss. Suddenly, we find ourselves believing that the Constitution needs protectors and viewing those who speak the loudest in its name as worthy of its defense.

The development of this binary lens through which to view constitutional interpretation is partly to blame for the increasing polarization of the Court along party lines. Judicial appointees increasingly embody a set of values and beliefs that coincides with those of the president and his political party. But also at work is a greater tension within the Court, between progress and preservation, between the hope for change and the inevitability of loss. The judiciary is increasingly the site of a tug-of-war over the future of America. And so the task of interpreting the Constitution—the defining symbol of a grandiose past with its social hierarchies, national images, and “moral” values—has involved forming an unalterable and inescapable relationship with the past that either scrutinizes and interrogates it or admires and reveres it. As Lepore writes, “The past haunts us all. Just how is a subject of this book. But time moves forward, not backward. Chronology is like gravity. Nothing falls up.”³⁴

During the recent hearings of Supreme Court nominee Sonia Sotomayor, the fear of loss that struggles over the Constitution evoke was on full display. The questioning of Sotomayor took on a particularly confrontational tone, as a predominantly white and predominantly male Senate Judiciary Committee interrogated a Puerto Rican woman who had managed to leave the housing projects in the Bronx to attend Princeton University and Yale Law School. Despite a nearly immaculate record, Sotomayor had uttered two words that would provide ammunition to her detractors: “wise Latina.”

In a broader sense, Sotomayor was accused of “empathetic justice” and exhibiting activist tendencies. In a 2001 speech at the University of California, Berkeley titled “A Latina Judge’s Voice,” Sotomayor offered candid insight into the influence of personal experiences on the process of judgment: “personal experiences affect the facts that judges choose to see. My hope is that I will take the good from my experiences and extrapolate them further into areas with which I am unfamiliar. I simply do not know exactly what that difference will be in my judging. But I accept there will be some based on my gender and my Latina heritage.”³⁵ Sotomayor’s honesty ultimately came back to haunt her in the Senate hearings, as she was repeatedly asked, often indirectly, about the extent to which her identity as a Latina woman might influence her decision-making. For his part, President Obama may have made matters worse by asserting, honestly, that life experiences are important in considering a prospective justice, for “it is experience that can give a person a common touch and a sense of compassion; an understanding of how the world works and how ordinary people live.”³⁶ In their respective reflections upon the proper role of experiences in shaping judgment, both Obama and Sotomayor acknowledged the inevitability of experience in informing judgment. In both cases,

instead of focusing on whether experiences influence judgments, they chose to focus on *how* exactly those experiences might affect judgments and what types of experiences might mold an individual into a good judge.

In contrast to the viewpoints expressed by Obama and Sotomayor before the hearings, during the hearings the very notion that one would consider any criteria other than the Constitution in judging was anathema. Heather K. Gerken, a Yale Law Professor and New York Times contributor, grumbled, “confirmation hearings will inevitably drain the life out of the law itself.” As she elaborated, “the inexorable logic of politics has led both senators and nominees to depict judging as an either/or choice: either the law involves the technocratic application of rules to fact, or it involves free-form democratic engineering. But there is a vast space between those two positions, and somewhere in that space lies the reality of judging.”³⁷ This either/or choice described by Gerken often hinges on the role that individuals envision for the Constitution within the sphere of judgment.

Sotomayor, despite the more genuine sentiments she had expressed in her speech at Berkeley, was careful not to suggest that she would take into account any factors other than the Constitution in making judgments. Nonetheless, in voting against her confirmation, a number of Republican senators stated that they were not fooled. “I was not convinced that Judge Sotomayor understands the rights given to Americans under the Constitution, or that she will refrain from expanding or restricting those rights based on her personal preferences,” exclaimed Senator Charles Grassley, before voting against Sotomayor. Alabama Senator Jeff Sessions expressed similar concerns, questioning

whether Sotomayor possessed “the deep-rooted convictions necessary to resist the siren call of judicial activism,” and ultimately determining that she did not.

The Sotomayor hearings illuminate divergent assumptions about the process of judgment. A number of conservative senators, in admonishing Sotomayor for her supposed tendency toward judicial activism, implied that judging should be merely the application of rules. Their assumption that judgments are best when judicial latitude is limited reflects Madisonian concerns about instability, as well as an acceptance of his solution that independent decision-making must be controlled. Interestingly, there is no evidence to suggest that conservative justices are less apt than liberal justices to make decisions that break from precedent. I would argue that all justices are susceptible to many forms of influences in their decision-making, regardless of their political orientation. Nonetheless, it often seems that these hearings are intended merely to influence perception. With this in mind, the hearings tend to send a message to the general public that it is conservatives, not liberals, who are concerned with protecting the sanctity of the Constitution.

The hearings of Sonia Sotomayor also exposed the hypocrisy and sheer absurdity of judicial blindness and strict constitutionalism. Everyone watching and participating was obviously aware of the historic newness of the hearings. Sotomayor was the first Latina and only the third woman ever to be nominated to the nation’s highest court. As Jill Abramson explains, for Americans who had watched Anita Hill testify during the Clarence Thomas hearings, the parallels were eerily similar.³⁸ Nevertheless, the contemporary nomination hearing requires that participants play the part, reinforcing the notion that justices should (*and actually do*) only consider the Constitution in making

judgments. This, of course, is so obviously not the case to the remotely critical viewer that the entire proceeding becomes a mockery of the law and a pathetic display of partisan politics. In the Sotomayor hearings Republicans repeatedly attempted to sidestep the reality that Sotomayor was a woman and a Puerto Rican, as if to suggest that acknowledging that they could see her race and sex would undermine their supposed objectivity in judging her.

At the core of Republican discontent in the wake of the Sotomayor hearings was far more than just the admittance of a potentially left-leaning justice to the Court. Sotomayor was someone who could never have been considered for a Supreme Court post at an earlier point in American history, and thus embodied a new reality for the country and a new direction. During the hearing, she politely defended the Constitution and its prescribed liberties, but everybody knew that she had witnessed too much, learned too much, and judged far too much to confine herself to a document written when women could not vote and slavery was legal. As she diagnosed in her speech at Berkeley,

America has a deeply confused image of itself that is in perpetual tension. We are a nation that takes pride in our ethnic diversity, recognizing its importance in shaping our society and in adding richness to its existence. Yet, we simultaneously insist that we can and must function and live in a race and color-blind way that ignores these very differences that in other contexts we laud.³⁹

In this speech Sotomayor illuminates the conflict at the heart of American politics over the willingness of Americans to recognize the pluralist reality of today. Those who advocate race-blindness tend to suggest that somehow through ignoring differences, those differences will disappear. Yet failing to see difference is highly dangerous. As I have explained in this chapter, a denial of heterogeneity develops from fervent loyalty to a particular notion of a nonexistent homogeneous past. In the courtroom, the Constitution

becomes the partition and the Court the battleground between those who yearn for a homogeneous past that never existed and those who embrace the country's heterogeneous present and future. It is because subscribing to a "color-blind" ideology entails denying this internal conflict and ignoring the complexity of its origins that such an ideology is so delusional.

* * *

As I have aimed to relate in this chapter, the founders' conception of freedom continues to inform how we think about freedom today. Their decisions regarding the role of citizens in governing are still valued and respected. These decisions also resulted in the establishment of a legal apparatus that acts to reinforce their judgments. In the chapters that follow I will build upon the argument that I have made in this chapter and the distinction that I have drawn between substantive or public freedom and the individualist form of liberty that the founders conferred upon citizens. In doing so, I will note the residual effects of our founding moments, as our interpretations of these moments continue to shape our conceptions of freedom. The framework I have developed in this chapter should enable us to eventually move beyond this Madisonian conception of freedom to envision a far more substantive role for the citizenry in political decision-making.

Chapter II. The Responsibilities of Freedom

“The *raison d’être* of politics is freedom, and its field of experience is action. This freedom which we take for granted in all political theory and which even those who praise tyranny must still take into account is the very opposite of ‘inner freedom’ ... The experiences of inner freedom are derivative in that they always presuppose a retreat from the world, where freedom was denied, into an inwardness to which no other has access. The inward space where the self is sheltered against the world must not be mistaken for the heart or the mind, both of which exist and function only in interrelationship with the world”⁴⁰

-Hannah Arendt

As the first chapter explored, the founding of the United States produced a conception of freedom that continues to shape political processes to this day. Through the process of drafting the Constitution and the subsequent Bill of Rights our founders reduced our political freedoms to a set of individual liberties that would then require protection from representative governing bodies. Moreover, they justified the exclusion of citizens from daily political life on the grounds that disagreement and debate would destabilize the young nation. Their neglect of substantive freedom had a profound effect upon our way of thinking about freedom, as it led us to conceive of freedom as distinctly outside the public realm. In an important sense, freedom became a condition achieved on an individual level. Moreover, the founding documents expressed a highly minimalist conception of freedom, offering an unwritten social contract by which the state promised

to protect certain citizen interests in exchange for those citizens' forfeiture of the right to participate in daily political decision-making.

This chapter will explore the theoretical and tangible consequences of considering individual freedoms as distinct from one another. It will also analyze the American legal framework, arguing that the law mirrors and reinforces this minimalist conception of freedom. I will focus largely on responsibility in this chapter, considering the extent to which individualist conceptions of freedom may presuppose some form of exemption from responsibility for those acts that seem to begin and end with the individual who commits them. As I will suggest in this chapter, this concept of individual acts as isolated, which derives largely from the "harm principle" introduced by John Stuart Mill, is something of an illusion. Almost no political act can be assumed to impact only the individual who commits it, as only through escaping politics altogether can one conceivably act in a way that does not impact others. As I will argue in this section, a retreat from political engagement is by no means an act of freedom. To the contrary, as Arendt will help to illuminate, such an escape constitutes freedom's opposite, as political freedom can never be experienced in isolation.

Having exposed individualist conceptions of freedom as inconsistent both with the content of freedom and the realities of political life, I will offer an alternative conception of freedom based upon the notion that individuals are interconnected and mutually dependent. Building upon the theories of Arendt and Beauvoir, I will assert that freedom cannot be achieved on an entirely individual level, for individuals need others in order to pursue freedom through active political life. This condition of mutual dependence requires a new articulation of responsibility, which allocates responsibility to

individuals for the ways in which their actions influence the conditions within which others act. I will further assert in this section that language is essential to facilitating the sort of political engagement that freedom requires.

With language in mind, I will spend the second half of the chapter discussing the First Amendment in the U.S., with a particular focus on instances of violent or hateful speech. Judith Butler's theory of linguistic agency will guide me as I attempt to avoid the traditional tendency to seek legal remedy for instances of violent speech. Instead, in considering the case of a deranged Glenn Beck listener who attempted to bring Beck's violent threats to fruition, I will articulate a new form of responsibility that recognizes language's constitutive capabilities. In doing so, I will not suggest that this articulation provides a solution, but rather that violent speech overwhelms the simplicity of the First Amendment.

The second case study that I select will further my claim that the law is inadequate in encapsulating the trauma and injury of violent speech acts. The Supreme Court's hearings and subsequent decision regarding protests at military funerals should make manifest the limits of the law in responding to complex conflicts over fundamental rights. While I will not propose that I have a solution to the enduring problem of how to punish violent speech, I will instead illuminate how our reliance on this minimalist legal language has served to reinforce individualist conceptions of freedom.

Through my analysis in this chapter I hope to expose individualist conceptions of freedom as simplistic and incompatible with the realities of political life. I also intend to assert the need for a more complex conception of freedom, both for reaching a form of

political organization that more closely approximates democracy and for establishing responsibility in cases where guilt for a particular injury is difficult to establish.

Part I. Abandoning Individualism and Sovereignty

In order to argue that the concept of freedom that I am putting forth better aligns with democratic ideals of citizen self-governance than the individualist notion reflected in the Constitution, I will first need to briefly explore the theoretical history of “individualist” freedom. The notion of freedom as individual and private was not unique at the time of our nation’s founding nor is it today. “Freedom has been a philosophical problem of the first order”⁴¹ for some time, explains Hannah Arendt. The philosophical tradition has long been to equate freedom with the free will and to assume that freedom can only be experienced internally and in isolation from others. John Stuart Mill argued that “the appropriate region of human liberty” is the “inward domain of consciousness.”⁴² Furthermore, in developing the harm principle, which he took in part from John Locke, Mill asserts that an individual should be free to act in whatever way he chooses, so long as he does not harm others. As Mill proposes, “the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.”⁴³ Both the harm principle and the inward experience of freedom imply that freedom is an individual condition that is best experienced without others. Arendt criticizes Mill for conceiving of freedom as a retreat into the “inward space into which men may escape from external coercion and *feel* free.”⁴⁴ As Arendt suggests, Mill’s individualist conception of freedom is really only achievable if one escapes politics altogether.

While Arendt focuses largely on proponents of individualist theories of freedom, she also criticizes Jean-Jacques Rousseau for his notion of the “general will” and collective sovereignty. In an ideal state, Rousseau wrote, “the citizens had no communications one with another” as “each citizen should think only his own thoughts.”⁴⁵ Arendt denounces Rousseau’s theory of freedom as tyrannical because she believes that sovereignty, whether individual or collective, is in fact an illusion that undermines freedom. According to Arendt, Rousseau’s likening of freedom to sovereignty “is perhaps the most pernicious and dangerous consequence of the philosophical equation of freedom and free will.” As she further explains, equating freedom and sovereignty, “leads to either a denial of freedom—namely, if it is realized that whatever men may be, they are never sovereign—or to the insight that the freedom of one man, or a group, or a body politic can be purchased only at the price of freedom, i.e., the sovereignty of all others.”⁴⁶ In this passage, Arendt exposes Rousseau’s definition of freedom as not only problematic but in fact oppressive. Rousseau’s notion of the general will is intended to liberate people from the chains of civil society; however, as Arendt points out, a sovereign collective may be just as oppressive as any other form of governing body. Rousseau’s theory that individuals are capable of reaching a collective or general consensus is not supported by the history of political organization. In its actual manifestation, collective sovereignty would likely require a lower class of men over which its power can be exerted and thus might yield freedom’s antithesis.

Arendt goes a step further than merely discrediting Rousseau’s association between freedom and sovereignty, arguing that “freedom and sovereignty are so little identical that they cannot even exist simultaneously.” As she continues, “Where men

wish to be sovereign, as individuals or as organized groups, they must submit to the oppression of the will, be this the individual will with which I force myself, or the “general will” of an organized group. If men wish to be free, it is precisely sovereignty they must renounce.”⁴⁷ Here Arendt once again illuminates sovereignty’s dependence on oppression. This dependence relates to the claim put forth in the first chapter that the freedom sought by those who fought in the American Revolution was lost in the drafting of the Constitution. In the *Federalist 10*, James Madison discussed the need for a governing body to arbitrate between individual wills, ascertain the “collective interest,” and finally act on behalf of this “collective interest.” As I argued in the first chapter, by endowing representatives with such a task, citizens were excluded from the public realm within which the governing process took place. In this case, sovereignty for “the people” as a collective and purportedly unified entity was purchased at the expense of the freedom of actual citizens.

Important to reinforce for the purposes of this chapter is the tripartite distinction Arendt makes between Mill’s “inner freedom,” Rousseau’s “general will,” and her own definition of freedom. Arendt’s conception, like Rousseau’s, requires a public space and is a condition that can only be experienced by a group. However, unlike Rousseau, Arendt acknowledges the difficulty, if not impossibility, of reaching a coherent consensus on complex political questions. Her goal is not to ascertain a “general will” but merely to secure a public space in which civic-mindedness and lively debate might triumph. For Arendt, individuals can only experience freedom through interrelation with others, as only through our interactions with others are we alerted of our capacity for freedom: “We first become aware of freedom or its opposite in our intercourse with others, not in the

intercourse with ourselves.”⁴⁸ While liberation may be possible in isolation, Arendt contends that “freedom needed, in addition to mere liberation, the company of other men who were in the same state, and it needed a common public space to meet them—a politically organized world, in other words, into which each of the free men could insert himself by word and deed.”⁴⁹ Thus, we need others in order to experience freedom, and we need a public political space within which we can engage others. It is from this foundation that we can elaborate upon the conception of freedom that will be put forth in this chapter.

Part II. The Interdependence of Freedoms and the Appeal

Though Arendt has provided us with a convincing argument that freedom cannot be experienced in isolation, the challenge becomes finding a way to articulate the interconnected relationship between human freedoms. For this endeavor, Simone de Beauvoir is useful, as she contends that the freedoms of respective individuals are not only interrelated, but actually mutually dependent. She claims in “Pyrrhus and Cineas” that one cannot affirm his freedom without first affirming the freedom of others: “Respect for the other’s freedom is not an abstract rule. It is the first condition of my successful effort. I can only appeal to the other’s freedom, not constrain it.”⁵⁰ In this passage Beauvoir introduces two concepts that are extremely important. First, as an individual in the world I am dependent upon others: I can only achieve freedom for myself through respecting the freedom of others. Second, for the purposes of achieving my freedom, I must appeal to the other’s freedom in a way that enables his pursuit and does not inhibit it. As she writes, “The other’s freedom alone is capable of necessitating

my being. My essential need is therefore to be faced with free men...we need others in order for our existence to become founded and necessary.”⁵¹

Beauvoir also develops in her essay the concept of “situated freedom,” or the idea that an individual is responsible for determining the conditions within which others act. Beauvoir writes, “Each of my actions by falling into the world creates a new situation for him. I must assume these actions.”⁵² On the surface, this theory may seem like a simple call for individual accountability; however, it is actually a demand for far more. As she explains, we are not merely responsible for our actions but for the constant and inevitable impact that we have on the world that we share with others:

What concerns me is the other’s situation, as something founded by me. One must not believe that I could elude the responsibility for that situation on the pretext that the other is free. That is his business not mine. *I* am responsible for what I can do, for what I am doing. There is a convenient and false way of thinking that authorizes all abstentions, all tyrannies...but only the impoverished man can declare himself free in the midst of his misery. In abstaining from helping him, I am the very face of that misery. The freedom that rejects or accepts it absolutely does not exist for me. It exists only for the one in whom it is realized. It is not in his name; it is in the name of *my* freedom that *I* can accept or reject it.⁵³

In other words, upon entering into the world we are in constant interaction with the freedoms of others, and can choose to constrain or appeal to these freedoms. But regardless of what we choose, and especially if we do not choose, we still bear responsibility for the situation that we provide for others. In this sense, we are never and can never be exempted of responsibility in those instances where we come into contact with the freedom of another: “I am the facticity of his situation,” asserts Beauvoir. “The fate that weighs on the other is always us...Immobile or in action, we always weigh upon the earth. Every refusal is a choice, every silence has a voice. Our very passivity is willed; in order to not choose, we still must choose not to choose. It is impossible to

escape.”⁵⁴ Thus, an individual’s freedom is at once dependent upon others and depended upon by others; he is always responsible for everything with which he comes into contact. Far from the classical philosophical notion of freedom as a retreat from the world, Beauvoir asserts that once we enter the world we can never actually escape, for we are in continual and unavoidable interaction with the world and with others.

When we combine Arendt’s and Beauvoir’s insights regarding the interconnectivity between human freedoms, we are able to reach a robust definition that challenges the definition put forth by Mill. Freedom is no longer a means of exemption or escape, but is instead a condition that is inextricably bound to responsibility. In pursuing our freedom we cannot escape the influence that we will inevitably have on the freedoms of others. Their combined definition seems far more plausible than that of Mill, but we are still left with the question of how exactly we can and should interact with one another and particularly, in Beauvoir’s terms, how we can “appeal” to the other’s freedom.

Beauvoir has a response to this question regarding the appeal: language. As she explains, “language is an appeal to the other’s freedom since the sign is only a sign through a consciousness that grasps it again...All men are free, and as soon as we deal with them we experience their freedom.” Through language, we are able to recognize and come into contact with another’s freedom. In our pursuit of freedom we can choose not to address others and instead ignore them, as Mill might suggest, but Beauvoir asserts that this would effectively disenable our own pursuit: “If we want to disregard these dangerous freedoms, we must turn away from men. But then our being draws back and loses itself. Our being realizes itself only by choosing to be in danger in the world, in danger before the foreign and divided freedoms that take hold of it.”⁵⁵ Once again, we

can only achieve freedom through engaging and recognizing the freedoms of others, and language is crucially important for doing this.

As the next section will show, when we seek to apply this theoretical framework to interactions in the physical world, we arrive at a number of challenges. In the discussion that follows I will examine the First Amendment, which governs speech in the U.S., to illuminate the interconnected reality of individual freedoms, but also to expose the propensity for conflict and confrontation between individuals in their exercises of freedom. Beauvoir tells us that “any speech, any expression is an appeal; true contempt is silence.”⁵⁶ However, certain forms of speech inhibit the freedom of another instead of appealing to it and make us question whether or not an appeal is always possible when there exist what would seem to be irreconcilable conflicts. We must consider particular ways of addressing one another that may undermine our respective pursuits of freedom.

Part III. Hate and the First Amendment: Addressing Speech’s Paradoxical Capabilities

“Congress shall make no law...abridging the freedom of speech.” As stated in the First Amendment, the right to free speech seems simple enough. The rights outlined in the First Amendment are considered by many to be the cornerstone of American liberal democracy and the building block upon which all subsequent legal rights have been developed. But despite its seeming clarity, the First Amendment has for some time been a source of controversy, largely due to its lack of specificity regarding what speech, if any, should not be protected.

In Beauvoir’s terms, it would seem that the First Amendment importantly enables our pursuit of freedom by allowing us to appeal to the freedoms of others. In “Pyrrhus

and Cineas,” she describes the two conditions that must be met in order for the appeal to be possible: “First, I must be allowed to appeal. I will therefore struggle against those who want to stifle my voice, prevent me from expressing myself, and prevent me from being...Next, I must have before me men who are *free for me*, who can respond to my appeal.”⁵⁷ These conditions are particularly important when considered in the context of debates regarding the scope of the First Amendment. Many politicians, activists, and theorists have rightly identified the threat posed by violent or hateful speech; however, their proposal to develop a legal means by which to limit such speech would seemingly deny Beauvoir’s first condition: our ability to appeal. On the other hand, through Beauvoir’s analysis we can see *why* attempts have been made to legally regulate hate speech. Hateful speech acts deny Beauvoir’s second condition, as they are committed with the intent of dehumanizing their target and stripping him of his ability to respond to the initial appeal. In this sense, Beauvoir’s discussion illuminates the complexity of regulating hate speech, but does not direct us toward a legal solution.

If we accept for the time being that there may be no legal means by which to compromise between protecting free speech rights and curtailing injurious speech, then are we forced to accept a world in which anything goes? In our discussion at the beginning of this chapter we established that individuals can never be isolated in the world, that individual freedoms are in continuous interaction with one another, and that each of us is responsible for our constant and inevitable impact in determining the conditions within which other human beings act. Thus, absent legal recourse, we must aim to reach a conceptualization of speech capable of allocating responsibility for certain speech acts without encroaching upon a fundamental civil and political right.

In *Excitable Speech: A Politics of the Performative*, Judith Butler seeks to arrive at such a conceptualization. Butler recognizes the quandary that we find ourselves in when we try to regulate certain kinds of speech. As she explains:

It is therefore impossible to regulate fully the potentially injurious effects of language without destroying something fundamental about language and, more specifically, about the subject's constitution in language. On the other hand, a critical perspective on the kinds of language that govern the regulation and constitution of subjects becomes all the more imperative once we realize how inevitable is our dependency on the ways we are addressed in order to exercise any agency at all.⁵⁸

In this passage, Butler alludes to the dangers of regulating language. We are dependent upon language, she argues, for it is only through being addressed that we are brought into being as subjects.

The key to understanding Butler's assertion is her notion of agency, and particularly the agency of the subject who performs a speech act and an agency that she contends is ascribed to language itself through the act of utterance. As with Beauvoir, who asserts that through appealing to another's freedom we recognize him and thus bring him into being, Butler believes that we constitute others through verbal address. In her words, "the act of recognition becomes an act of constitution: the address animates the subject into existence."⁵⁹ Thus, it is the constitutive capacity of language that makes regulating language difficult and even dangerous. Furthermore, as she explains, "the body is alternately sustained and threatened through modes of address." In this sense, regulating speech in the hopes of limiting its ability to threaten and injure would also destroy language's ability to constitute and sustain individuals, and thus would deprive individuals of an agency that can only be enabled by language. According to Butler, "it is by being interpellated within the terms of language that a certain social existence of the

body first becomes possible.” Therefore, just as we need to appeal to the other’s freedom in order to achieve freedom for ourselves, we need to be addressed and to address others in order to be brought into social existence. Most importantly, only through being addressed does our acquisition of agency become possible.

This notion of acquiring agency through language has serious implications for our comparative assessments of individualist conceptions of freedom and those more public and interconnected notions as envisioned by Beauvoir and Arendt. Butler argues that through addressing one another we become vulnerable and accessible to each other, and that once addressed we can no longer ever return to isolation. Striking a tone very similar to that of Beauvoir, Butler stresses this point: “The address that inaugurates the possibility of agency, in a single stroke, forecloses the possibility of radical autonomy.”⁶⁰ Put another way, Butler, much like Arendt, believes that no man is ever sovereign. For Butler, among the most important implications of language is that it shatters the illusion of sovereignty and replaces it with agency. As she asserts, “whereas some critics mistake the critique of sovereignty for the demolition of agency, I propose that agency begins where sovereignty wanes.”⁶¹ Echoing Arendt’s point regarding the mutual exclusivity of freedom and sovereignty, Butler does not believe that there exists an alternative to this interconnected vision for the world. Her analysis instead reveals the ways in which we ironically depend upon language but are also vulnerable to being threatened by it.

In addition to the agency of the subject that is developed through address, Butler asserts that language has its own distinct yet related form of agency. As Shoshana Felman explains In *The Scandal of the Speaking Body*, the relationship between language and the body is a complicated one, consisting at once of “incongruity and inseparability.”⁶²

Because of this relationship, there can never be a “fully intentional speech act.”⁶³ To the contrary, all such acts are partially “unknowing,” or blind about their effect in the sense that, as Butler asserts, “the speech act says more, or says differently, than it means to say.”⁶⁴ For both Butler and Felman, this acknowledgment of the unpredictability and spontaneity of speech is essential for assessing the intent and impact of certain kinds of speech. As Butler explains in describing the reasons for her writing this book, all speech is “excitable” to the extent that it “is always in some ways out of our control.”⁶⁵

Butler’s and Felman’s combined notion of linguistic agency might appear to liberate the subject of responsibility; however, separating the speech act from its consequences may actually enable us to better establish responsibility for certain speech acts. Through distinguishing the act from its effects Butler undermines the common inclination in critical hate speech discourse to seek to establish exclusive guilt on the part of the utterer. Butler calls this inclination the “sovereign conceit,” as “the one who speaks hate speech is imagined to wield sovereign power, to do what he or she says when it is said.”⁶⁶ As Butler’s argument reveals, when discussions about violent speech are diluted to simply establishing guilt for physical acts, we are inclined to envision subjects as sovereign and thus deny their embeddedness in the world. The disagreement becomes one that can never be resolved regarding the normative reach of free speech. For this reason, Butler offers an alternative suggestion: “Untethering the speech act from the sovereign subject founds an alternative notion of agency and, ultimately, of responsibility, one that more fully acknowledges that way in which the subject is constituted in language, how what it creates is also what it derives from elsewhere.”⁶⁷ Much like Beauvoir’s theory regarding our embeddedness in the world, Butler’s theory

similarly takes into account the way in which we constitute and are constituted by others through our interactions with them. Her theory liberates us from the individualist framework that empowers and perpetuates circular arguments over blame and guilt, and instead forces all of us to rethink the ways in which we conceive of and establish responsibility.

Violent Speech in an Increasingly Accessible Media Age

In order to reach a new way of thinking about responsibility in instances of hate speech, Butler argues that we must embrace the “gap that separates the speech act from its future effects.” She claims that the gap between act and injury “has its auspicious implications,” for “it begins a theory of linguistic agency that provides an alternative to the relentless search for legal remedy.”⁶⁸ This gap, while often ignored or unrecognized, is at the heart of disagreement regarding hateful speech. How can we assess the injury of a speech act that merely incites violence or provokes hate, but does not act upon these violent or hateful tendencies?

The challenge of answering this question is nowhere clearer than in addressing today’s media pundits’ and their reliance upon hateful and angry speech as a means of attracting and maintaining an audience. Mostly, this question has been left in abeyance as advocates for censorship or even just “responsible media” have found themselves in a seemingly inescapable legal quandary. But On July 17, 2010 the influence of violent speech in the media became manifest when Byron Williams, a previously convicted felon who was stopped by police for speeding and driving erratically on I-580 in Oakland, California, told police that media pundit Glenn Beck had inspired him to “start a revolution by traveling to San Francisco and killing people of importance at the Tides

Foundation and the ACLU."⁶⁹ After a shootout that lasted twelve minutes, a wounded Williams was finally subdued and arrested by the California State Police. Williams, who had been wearing body armor, had fired a fully loaded handgun, rifle, and shotgun at police. After being taken to the hospital for treatment of gunshot wounds, he revealed to police his intention to harm members of the two organizations.

The Tides Foundation and the American Civil Liberties Union (ACLU), which respectively seek to promote social justice and advocate individual rights, would seem to be unlikely targets for a deranged and desperate criminal. But according to Williams, it was media pundit Glenn Beck who had inspired his hatred and venom toward Tides and the ACLU through various rants on his television show on Fox News. "I would have never started watching Fox News if it wasn't for the fact that Beck was on there," Williams told the media watchdog organization Media Matters for America, "and it was the things that he did, it was the things he exposed that blew my mind."⁷⁰ According to Media Matters, "Beck had attacked Tides 29 times on his Fox News show in the year-and-a-half leading up to the shooting," indicting the organization as part of a supposed money-laundering conspiracy directed by Barack Obama, George Soros, and Petrobras Oil Company.⁷¹ The Christian Science Monitor reports, "Beck has referred to Tides as 'bullies' and 'thugs' whose mission is to 'warp your children's brains and make sure they know how evil capitalism is.'" Recently, the self-proclaimed "progressive hunter" had warned the foundation "I'm coming for you."⁷² It is clear that Beck and other right-wing media pundits informed Williams' antipathy toward these groups, but can they actually be held in any way responsible for Williams' actions?

In the wake of the incident, progressive organizations and newspapers vilified Beck for inciting violence. The Tides Foundation Founder and CEO Drummond Pike wrote an op-ed in the San Francisco Chronicle shortly after the incident and spoke of the “obligation of every American, especially those whose voices are amplified by the media, to foster civil discourse and dialogue among those who may disagree about public matters.”⁷³ A few months later, after the connection between Beck and Williams had been better established, Pike wrote a letter to companies that advertised on Fox News, urging them to stop advertising on the channel or risk being among the many with blood on their hands.⁷⁴ Rich Roberts, of the International Union of Police Associations, charged that “The Becks of the world are people who are venting their opinions and it is inflammatory.”⁷⁵ But Pike, Roberts, and others were seemingly grappling with an unavoidable fact: there exists no legal means by which to punish this kind of hateful speech, even if it evidently incites violence.

Judith Butler discusses extensively the frustrations of those who wish to punish individuals for using language that threatens or endangers. “Those who seek to fix with any certainty the link between certain speech acts and their injurious effects will surely lament the open temporality of the speech act,” writes Butler. “That no speech act has to perform injury as its effect means that no simple elaboration of speech acts will provide a standard by which the injuries of speech might be effectively adjudicated.”⁷⁶

As illustrated in the Beck case, Beck’s intimidation tactics did not perform a particular injury, but instead merely exposed the targeted parties as vulnerable to a certain type of threatening address.

The Beck-Williams case illuminates the interconnected reality of human freedoms and discredits individualist claims of freedom. Beck's exercise of free speech rights shaped the conditions within which Byron Williams acted, and Williams' actions had tangible consequences for the police officers who were caught in his line of fire. But calling for a legal response to Beck's rhetoric, by focusing on the injury committed by Williams, would not only undermine freedom of speech rights but would further empower Beck by attributing to him a sovereign influence in shaping the thoughts of others. Moreover, such a claim could lead us into an unending debate over the extent of guilt for a particular though physically unidentifiable injury. Conversely, if we abandon this causal framework, we can seek a new method of allocating and articulating responsibility.

In Williams' interviews with reporters after the incident, he revealed that Beck's approach, as well as the chalkboard he used, reminded him of school. Most importantly, because Beck directly addresses his audience, Williams came to view him as a teacher, and one to whom he felt increasingly accessible. It is important to realize that while Beck's targets were new, his material, much like that of a grade school teacher, was recycled. Just as a grade school teacher renews the strength of the Bill of Rights by reading the ten amendments to the class, Beck revitalized old claims of leftist conspiracy theories by recontextualizing them. The claims Beck makes on his show do not originate or emanate from him, but instead are repeated and rearticulated by him. Origination, which attributes sovereign creative capacity to the speaking subject, is different from repetition, which conversely imagines the speaking subject as a human sponge who utters what he derives from elsewhere. Butler explains this distinction well: "The legal effort to

curb injurious speech tends to isolate the ‘speaker’ as the culpable agent...the responsibility of the speaker is thus misconstrued...the speaker renews the linguistic tokens of a community, reissuing and reinvigorating such speech. Responsibility is thus linked with speech as repetition, not as origination.”⁷⁷ If we acknowledge and emphasize that a speech act is neither fully contextual nor fully sovereign, then we are able to embrace our embedded existence in the world and its implications for articulating and allocating responsibility in instances of hate speech.

Using this framework, we can undertake the complex task of assessing Beck’s culpability. As Butler states,

The one who utters hate speech is responsible for the manner in which such speech is repeated, for reinvigorating such speech, for reestablishing contexts of hate and injury. The responsibility of the speaker does not consist of remaking language *ex nihilo*, but rather of negotiating the legacies of usage that constrain and enable that speaker’s speech. To understand this sense of responsibility, one afflicted with impurity from the start, requires that we understand the speaker as formed in the language that he or she also uses.⁷⁸

Thus, with Butler’s assistance, we can assert that Beck is responsible for exploiting our state of vulnerability to one another as a condition founded through language. We are able to recognize that Beck’s words had an impact not because they were unique, but because they invoked and renewed conspiracy theories that had lain dormant since the most recent democratic presidency, and because he made these theories accessible to us once again. Beck illustrates the paradox of language, which, as Butler has told us, is at once capable of sustaining and threatening existence.

The Loss of Linguistic Agency Through Legal Articulation

While embracing the “gap” between intention and injury leads us to a more profound articulation of responsibility in the Beck case, those in favor of legally

regulating hate speech have often tried to ignore or even close this “gap” so as to punish the responsible individuals. In *Words that Wound: Critical Race Theory, Assaultive Speech, and the First Amendment* the four authors seek to fix the link between speech acts and their injurious effects in order to assert the need for a legal revision or rearticulation of the First Amendment. Their assertion, when applied to the Beck case, raises the question of how to establish guilt on the part of a subject who commits a hateful *speech* act when faced with a legal standard that relies almost exclusively on physical evidence.

The legal need for physical evidence raises a challenge to those hoping to put people like Beck behind bars, but it also illustrates the inadequacy of the law in responding to and rectifying instances of hate speech. The four authors of *Words that Wound*, in their admirable quest for a more just and humane world, fail in my view to recognize the inability of the legal system to respond to the demands imposed upon it by hate speech. As they assert in the introduction, “In this book we use the words of law and politics to fight the words that wound and exclude. We seek a legal system that recognizes and remedies the harm of the structures of have and have-not, and we express our solidarity with all who join us in that quest.”⁷⁹ The solution proposed in this book is to use the instruments of the law to respond to the challenges posed by hate speech, but I argue that the legal system is not capable of “recognizing and remedying” the highly complex and deeply ingrained societal structures that enable and encourage hateful speech. Moreover, by coercing hate speech narratives into the limiting confines of a legal context, the traumas experienced by victims of hate speech are largely lost, for the law cannot encapsulate them.

In my view, the attempt in *Words that Wound* to articulate the traumatic narratives of hateful speech in legal language raises an important consequence for society as a whole. In the final page of the introduction, the four authors assert the gravity of the issue they are taking up:

“What is ultimately at stake in this debate is our vision for this society. We are in this fight about the first amendment because it is more than a fight about how to balance one individual’s freedom of speech against another individual’s freedom from injury. This is a fight about the substantive content that we will give to the ideals of freedom and equality—how we will construct ‘freedom,’ as a constitutional premise and a defining principle of democracy.”⁸⁰

While they are aware of the larger implications of this discussion, it is central to my argument that the law is unable to give “substantive content” to freedom. Only through understanding our embeddedness in the world, a condition which the law has to this point proven incapable of recognizing, can substantive freedom be achieved. In trying to establish guilt on the part of the utterer of violent speech, the authors of *Words that Wound* ascribe sovereignty to the speaker and a “magical efficacy to words,”⁸¹ both of which deny the interconnected nature of human freedoms. The law requires that a link between act and effect be established, however, the mere attempt to establish such a link in the case of hateful speech compounds the threat posed by the speech act itself. Specifically, it deprives the act of its traumatic context as an experience of repeated suffering for the victim and as a traumatic injury whose enclosure within a traditional causal framework serves to prolong the victim’s loss of agency.

The Inadequacy of the Law

A recent case before the Supreme Court revealed the limits of the law in addressing hate speech. *Snyder v. Phelps*, heard by the Supreme Court in October 2010, pitted Albert Snyder, the father of a U.S. Marine who had died in the war in Iraq, against

the Westboro Baptist Church of Topeka, Kansas, which had protested at the funeral of Snyder's son. Westboro Church claims "God is punishing the United States for its tolerance of homosexuality by killing its soldiers."⁸² The church consistently uses military funerals as one of many venues to promote its message. After the protests at his son's funeral, Mr. Snyder sued the church for invasion of privacy and intentional infliction of emotional distress and was awarded \$11 million by a federal district court; however, the church won its subsequent appeal of the ruling on First Amendment grounds. On March 2nd, 2011, the Supreme Court ruled in favor of the Westboro Church, asserting in an 8-to-1 decision that protests at funerals constitute protected speech.⁸³

The oral arguments presented on October 6, 2010 provide a good sense of how legal language falls short in articulating the injuries resulting from hate speech. From the outset, the trauma experienced by Mr. Snyder and many others was marginalized in favor of the competing legal narratives of the free speech rights of the protestors and the privacy rights of the mourners. Justices Ginsberg, Kagan, and Scalia questioned both the prosecution and the defense in order to determine whether or not the First Amendment protected the protests. Justice Ginsberg in particular probed the prosecutor, Sean Summers, seeking to identify a victim and, in doing so, to establish a link between the speech act and the emotional injury. As Ginsberg pointed out, members of the same church had protested at the State Capitol and Annapolis earlier the same day. They had used almost all of the same signs at all three protests, thus begging the question of whether "those signs targeted the family rather than the whole U.S. society."⁸⁴ Through her line of questioning, Ginsberg highlighted the need for a link between the speech act

and a particular victim in order to deem the church's speech unprotected by the First Amendment and thus an invasion of privacy.

In *Snyder v. Phelps* the verdict, though legally significant, is rendered emotionally meaningless for the simple fact that the traumatic effect of the speech act cannot be rectified through legal compensation. In this case, the collective trauma, inflicted by the hateful speech act and experienced by not only the Snyder family but also by countless gay soldiers who have been vilified and victimized for their military service, cannot be encapsulated within the competing legal narratives of First Amendment Rights and Privacy Rights. As Butler argues, hate speech is effective largely because of its ability to perform and repeat the ritual of subordination, specifically by reenacting the violence committed against a marginalized or oppressed group.⁸⁵ In *Snyder v. Phelps*, Westboro Church's verbal assault served to resubordinate gay soldiers whose prolonged and habitual suffering can largely be attributed to their having to conceal their identities in order to serve in the military, thereby forfeiting their agency at the time they enlist. By repeating the language used to validate past hate crimes, the members of Westboro reenacted violence against gay people, but made such language newly accessible through claiming that gay service members were responsible for wartime deaths. Unfortunately, because of the demands of justice and the methodology of the nation's highest court, the legal proceedings in the Snyder case did not provide gay service members with a means of responding to these acts of subordination, but instead "denied their claim to visibility."⁸⁶

I emphasize the inadequacy of the law as an instrument for addressing the trauma of hate speech because how we respond to certain speech acts largely dictates the ways in

which words will be repeated and rearticulated. Butler emphasizes the importance of responding to hate speech in such a way that agency is not forfeited but instead reclaimed:

“The language that counters the injuries of the speech, however, must repeat those injuries without precisely reenacting them. Such a strategy affirms that hate speech does not destroy the agency required for a critical response. Those who argue that hate speech produces a ‘victim class’ deny critical agency and tend to support an intervention in which agency is fully assumed by the state. In place of state-sponsored censorship, a social and cultural struggle of language takes place in which agency is derived from injury, and injury countered through that very derivation.”⁸⁷

In this passage, Butler asserts that we cannot simply ignore a hate speech act, but that the nature of the response is crucially important. Echoing Kristin Bumiller, who argues that state intervention renders the victim helpless by framing issues “in terms of legal discourse,”⁸⁸ Butler denounces state regulation for necessitating the forfeiture of agency by the victim. Thus, an effective response to hate speech must address and even repeat the speech act while not reenacting its violence or reinforcing its subordinating effect.

In conceptualizing such a response, Butler consults Toni Morrison, who argues that hate speech threatens the very existence of language, and that the struggle over the future of language is won and lost through its resignification. In Morrison’s 1993 Nobel Lecture in Literature, she tells the following parable: “young children play a cruel joke and ask a blind woman to guess whether the bird that is in their hands is living or dead. The blind woman responds by refusing and displacing the question: ‘I don’t know...but what I do know is that it is in your hands. It is in your hands.’”⁸⁹ For Morrison, the blind woman is a practiced writer and the bird symbolizes language. The blind woman’s refusal to answer the children’s question “shifts attention away from the assertions of power to the instrument through which that power is exercised.”⁹⁰ As Butler explains, when

language seeks to “‘encapsulate’ or ‘capture’ the events and lives it describes...it acquires its own violent force... The violence of language consists in its effort to capture the ineffable and, hence, to destroy it, to seize hold of that which must remain elusive for language to operate as a living thing.”⁹¹ Conversely, the woman’s response constitutes a refusal to “effect that capture,”⁹² and is thus a means of restoring and revitalizing language. Instead of answering the children’s cruel question, which would have deprived her of agency, the woman recasts their question as one of responsibility, particularly over the future of language. As Butler and Morrison reveal in this parable, through resignifying hate speech, such speech can be effectively countered and the victim of hateful utterances can reclaim his agency.

The woman’s response is also significant because of its orientation toward the future of language. Hate speech threatens language by seeking to deprive both it and its addressee of agency. Thus, the way we respond to hate speech is essential to whether or not language lives or dies. As Butler asserts at the end of the introduction,

Indeed, as we think about worlds that might one day become thinkable, sayable, legible, the opening up of the foreclosed and the saying of the unspeakable become part of the very “offense” that must be committed in order to expand the domain of linguistic survival. The resigni-fication of speech requires opening new contexts, speaking in ways that have never yet been legitimated, and hence producing legitimation in new and future forms.⁹³

Butler’s vision for language is empowering on an individual level and revolutionary on a societal one, providing a call to action that demands our reclamation of agency and our acceptance of responsibility for our embeddedness in the world.

* * *

By breaking from the classical theoretical inclination of equating freedom with individuality and sovereignty, in this chapter I have instead conceived of freedoms as

interconnected and interdependent, as well as tied to mutual responsibility. Departing from this highly abstract foundation, I have explored in more tangible terms the implications of such a conception of freedom in terms of its effect on human interactions. With the help of Simone de Beauvoir, I recognized that one must appeal to the freedoms of others through language. Judith Butler illuminated the importance of agency in enabling such an appeal.

The second part of this chapter focused on hate speech in the U.S. because such speech threatens agency and thus threatens our freedom. How we respond to hate speech is important, as the response can either restore our interconnectivity, and in doing so reestablish the potential for freedom, or it can seek to isolate individuals and further deprive them of agency. A legal response to hate speech may well constitute the latter option, as it appropriates the injury of the victim in order to decrease our accessibility to one another and deny our freedom. Instead, hate speech must be countered in a way that resignifies speech and reclaims the agency that the hateful speech act was intended to deprive us of. Such a response transforms the nature of the appeal and restores the possibility for freedom. Moreover, it recognizes our vulnerability to one another, and accepts our responsibility for how we repeat language and thus how we enable the freedoms of others.

Chapter III. Globalization and the Politics of Exclusion

“There is a fundamental, and dangerous, idea behind the very idea of the modern nation-state, the idea of a ‘national ethnos.’ No modern nation, however, benign its political system and however eloquent its public voices may be about the virtues of tolerance, multiculturalism, and inclusion, is free of the idea that national sovereignty is built on some sort of ethnic genius.”⁹⁴

—Arjun Appadurai

In Chapter Two I considered the consequences of individualist conceptions of freedom with a focus on speech. I used incidents of hateful speech to support my claim—derived from similar claims made by Arendt and Beauvoir—that we have a constant and inevitable impact on the world and on others. I argued that the ways in which we interact with one another enable or disable our respective pursuits of freedom, and thus that freedom can only be achieved through others. In Chapter One I examined how the establishment of a Constitution and Bill of Rights served to limit the exercise of freedom by U.S. citizens. I highlighted the dangerous argument posed by James Madison in *Federalist 10* that regulating freedom may be necessary in the interest of protecting citizens from the dangers of faction. Most importantly, however, I considered America’s problematic orientation to its founding moments and to a past that some of its citizens and public servants glorify insincerely and appropriate illegitimately for political means. I argued that Madison’s disdain for minority opinions and disregard for the voices of marginalized groups importantly enabled this form of contemporary appropriation of the

founding moments, whereby visions of a homogeneous past that never existed are nostalgically invoked.

When we juxtapose my argument in Chapter Two regarding the interconnectedness of human freedoms with the legal argument made by Madison and repeated in contemporary discourse, we find that there is considerable tension between a system of legal rights that seeks to mediate between the exercise of individual freedoms and a theoretical contention (validated in reality) that claims such mediation is never fully possible. I recognize that my argument may be uncomfortable for some in that it leaves individuals without legal remedy for complex conflicts of freedom; however, accepting my argument that our pursuit of freedom is profoundly impacted by others, and vice versa, might make individuals more inclined to collaborate with one another in recognition of shared interests. On the other hand, if one chooses to endorse the Madisonian claim that freedom is a matter of rights, that some individuals should be afforded certain rights and others should not be, and that rights must be limited in the interest of the “public good,” then we arrive at a highly troubling conception of freedom as bound with conflict, power struggles, and winning and losing. I argue that this position—elaborated upon in Chapter One and long reflected in American political discourse—is magnified by the global challenges of today. Put another way, America’s reactionary and exclusionary response to recent global phenomena can be traced back to its origins, and to the establishment of a government endowed with the task of mediating between individual claims to rights and deciding which individuals and groups deserve rights.

In *On Democracy*, published in 1998, Robert Dahl predicted that more heterogeneous populations would be destabilizing to democracy.⁹⁵ So far, Dahl has been proven right. The influx of people of a race, ethnicity, or religion different from that embodied by the majority of citizens has yielded startling effects, not only in the United States but throughout much of the western democratic world (and, though not relevant to my argument, throughout much of the non-democratic world as well). Globalization, once projected to bring a new age of cooperation and cohesion, has exacerbated preexisting tensions along potentially divisive lines. Instead of prompting unity, globalization has produced a tendency toward fear and exclusion that has manifested itself in political, social, economic, and religious policies toward groups and individuals deemed “foreign.” None of these policies follow the tradition of inclusion and accessibility that is central to theoretical governance by the “demos.”

To many, this phenomenon seems counterintuitive. After all, in the U.S. we send thousands of American students to study abroad each year to immerse themselves in another culture, with the assumption that increased exposure to people of a different way of life will generate a more worldly and accepting citizenry. Therefore, why wouldn’t bringing the “study abroad experience” to our backyards have a similar effect? For those who dreamed of a world without conflict, globalization seemed to be the cure; however, twelve years after Dahl’s prophecy, we can confidently assert that he was right and the optimists were wrong.

In this chapter I will use Dahl’s prediction as a jumping off point, but not as an all-encompassing response to the trends we are witnessing today. I will argue that our conception of freedom was always vulnerable to appropriation by such exclusionary and

intolerant ideologies; globalization just brought our fears of foreignness to the fore. Purported outsiders have been excluded and alienated in the U.S. throughout the country's history, from the subjugation of African slaves to the expulsion of Native Americans from their land. However, the ways that policies of exclusion are being carried out—by public figures and concerned citizens alike—are unique. While previous exclusionary measures emphasized the existence of a moral or providential hierarchy to justify an outright claim to superiority, contemporary methods stress *loss* as a byproduct of change. More specifically, contemporary policies of exclusion are justified through convincing citizens that including these groups will directly and adversely impact them, their rights, and their freedom. The driving forces behind this increasingly antithetical relationship between freedom and the “outsider” will be fleshed out in this chapter.

Arendt and Beauvoir, in contrast with Locke and James Madison, have given us a foundation for the claims that will be made in this chapter, but we will need to consult contemporary theorists in order to build upon their arguments regarding freedom. Paul Passavant, Bonnie Honig, Arjun Appadurai, and Wendy Brown are all are concerned with the relationships between nationalism and globalization, rights and exclusion, national identity and citizenship, and intolerance and freedom.

Paul Passavant will be particularly useful, as he will argue persuasively that liberal rights and nationalism are inherently correlated, and that each one enables and enhances the other. From this premise, I will consider how globalization magnifies the relationship between nationalism and rights. I will argue that exclusionary responses to globalization follow the ideological tradition of the contemporary nation-state, namely, the idea that the nation-state should be sovereign and superior. I will also consult Wendy

Brown in examining how nation-states' diminishing ability to exercise absolute sovereignty in protecting their borders has generated fear in both states and citizens and has produced various irrational responses to the perceived problem of foreignness. I will argue that these responses, though incapable of yielding their desired results, derive from a conceptual linkage between freedom and sovereignty that undermines the principles of substantive freedom that I have outlined in the previous chapters.

Finally, I will apply the conceptual framework that I have developed to a discussion of two types of reactionary exclusion that have become prevalent in the U.S.: religious intolerance toward Muslims and ethnic intolerance toward Mexicans. Exclusionary civil, social, and political approaches toward these groups reflect the increased importance that nation-states and their members have begun to put on citizenship. American ethnocentrists tend to question the validity of Mexican citizenship and the quality of Muslim citizenship, denying these groups the important precursor to rights and calling identity into question at a highly vulnerable point. The American Constitution and its amendments allocate rights only to citizens; if one can successfully argue that certain individuals are lesser citizens, then one can effectively take away any number of their fundamental rights.

Through my analysis it will become clear that globalization has enhanced ethnic and religious intolerance, but I hope to extend my analysis beyond this obvious point to show how such forms of intolerance lead toward an escape from politics and away from democratic ideals. In the course of my argument I will assert that racism, ethnocentrism, and exclusion cannot coexist with the form of freedom that I have endorsed in which citizens debate and decide publicly. Policies of exclusion and alienation do not merely

impact the peoples at whom these policies are targeted. As I asserted in Chapter Two, public freedom is a condition that can only be experienced by a collective group. Because exclusionary policies deny equal access to decision-making processes, they threaten those conditions of freedom that largely depend upon admission into the public realm, and, therefore, their implementation harms everyone in a political community.

Part I. Rights and Nationalism: An Exclusionary Odd Couple

Rights and nationalism are often considered to contradict, counteract, and even work against one another. Rights, which later became a crucial bargaining chip according to many social contract theories, were initially intended to protect individuals from abuses of power. Nationalism, on the other hand, has always asserted a certain type of societal or collective autonomy. Because it has long been assumed that nationalism, which tends to benefit established governments, and rights, which tend to benefit individual citizens, work against one another, rarely has the relationship been examined in sufficient detail.

In *No Escape: Freedom of Speech and the Paradox of Rights* Paul Passavant argues that the relationship between liberal rights and nationalism is not an adversarial one. As he asserts, “liberalism and nationalism are correlated under ‘modern’ conditions, and in fact may function to intensify each other.”⁹⁶ Elaborating upon this point, he explains, “recognizing rights for subjects entails producing subjects for rights.”⁹⁷ In other words, establishing rights for an individual or group necessarily implies determining or selecting *who* will be granted admission into that group. This selection process yields a form of collective identity, developed upon those traits that members embody and that non-members do not. In this sense, it is not so much that affording legal rights to citizens

might enhance nationalistic sentiment, but instead that through their shared dependence upon identity, nationalism and liberal rights function cooperatively in distinguishing those who belong from those who do not. As Passavant explains, “the conditions of legal inclusion,” like those of nationalism, “are, necessarily, exclusive grounds.”⁹⁸

Though Passavant’s argument regarding the mutually reinforcing relationship between nationalism and rights applies to liberal democracies generally, the relationship may be particularly evident in the U.S. In the U.S., the Constitution confers rights upon citizens and rights are gained only through citizenship. As Passavant explains, “One’s existence as a rights-bearing subject is inextricably linked to one’s national identity.”⁹⁹ But what are the important contributing factors to a national identity and how is some form of national identity used to establish belonging?

Passavant identifies language, territory, and blood as important factors in determining national identity; however, he also reinforces my claim from Chapter One regarding the significance of the past. As I explained in that chapter, worshipping or revering the past—and particularly an imagined past whose characteristics are unconfirmed, or even challenged, by historical fact—can have serious implications for shaping present-day identity politics. Believing, for instance, that the founders achieved an ideal form of governance that can only be destabilized and undermined by change leads to highly troubling conclusions when applied and incorporated into a method of responding to immigrant and minority communities. Simply put, such an orientation to the past enables and even validates exclusion. Passavant echoes this claim:

Some of the synthetic work of mainstream theory promotes a version of American exceptionalism as it invents a phony coherence for the U.S. system by suggesting that the framers of the Constitution created a unique system in which rights and

the community are in balance and that a return to these principles would solve contemporary problems.¹⁰⁰

Passavant's assessment resembles the diagnosis I offered in Chapter One of the senators who questioned Sonia Sotomayor. The assertion that solutions to contemporary problems lie in looking backward to our founding moments is commonly presented in the news media and in Congress. Such an argument stems from the idea that change will endanger the balance struck by our founders and thus undermine our democracy. It is through this methodology that the tendency to equate change with loss is developed.

The Sotomayor case also illustrated how different notions of "Americanness" inform conceptions of national identity. Passavant argues, "there is a gap or play between different conceptualizations of what it means to be American." As he elaborates, "No single conceptualization of the American nation could totally control all questions of nationality, precisely because the nation is an 'imagined community'—a construct—rather than something that really and objectively exists separately from attempts to represent it."¹⁰¹ Envisioned this way, a struggle takes place over national identity that is never won or lost but instead persists indefinitely. Within the context of this struggle, liberal legal rights are appropriated in the interest of strengthening and reinforcing grounds for exclusion. Passavant shows how this is a dangerous trend: "while claims regarding American identity enable rights to be recognized, such claims are a source of danger from which there is no escape as long as the logic of this system continues to operate."¹⁰²

Passavant describes an enduring struggle that has taken place for some time; however, I argue that this struggle is particularly important and contentious today. Globalization is widening the gaps between different conceptions of national identity, and

it is within these increasingly large gaps that the conditions for rights and citizenship can be easily exploited and appropriated for political gain. Later in the chapter I will draw upon certain extreme responses that validate this claim.

Part II. State Supremacy and the Illusion of Absolute Sovereignty

Before I move into exclusionary responses to foreigners, we must further dissect the origins of these responses. Passavant's analysis suggests that these responses may be an attempt to protect or defend a particular vision of American identity; however, this alone does not explain why globalization has produced such an aversion to diversity. Building upon Passavant's contribution, Bonnie Honig argues that exclusionary responses are indicative of a more widespread approach to foreigners that considers foreignness a "'problem' that needs to be solved by way of new knowledge, facts or politics."¹⁰³ As she accurately points out, "what should 'we' do about 'them'?"¹⁰⁴ is a question perpetually posed by sociologists, economists, and politicians alike. Rephrasing the question, and instead asking, "What problems does foreignness solve for us?" might lead us to developing a far more inclusive approach to foreignness.

In referring to "we," Honig implies the existence of a sovereign group or collective entity. The common question that she scrutinizes-- "what should we do about them?" --asserts a rigid, static, and unchanging collective identity in demarcating "us" from "them." Globalization complicates the process of demarcation, as borders become more porous and differences become less defined. As Honig expresses, however, the desire to assert an envisioned identity remains fervent. Moreover, the role of the state becomes increasingly important, as states must choose how to respond to popular tendencies toward a collective identity and away from democratic inclusiveness.

States are concerned about identity because sovereignty, which is the foundational principle of the contemporary nation-state, depends upon a coherent sense of identity and belonging. As Wendy Brown explains, globalization challenges and undermines absolute state sovereignty. In *Walled States, Waning Sovereignty* Brown defines sovereignty as including the following attributes:

supremacy (no higher power), perpetuity over time (no term limits), decisionism (no boundedness by or submission to law), absoluteness and completeness (sovereignty cannot be probable or partial), nontransferability (sovereignty cannot be conferred without canceling itself), and specified jurisdiction (territoriality).¹⁰⁵

Brown contends that nation-state sovereignty “has always been something of a fiction in its aspiration and claim to these qualities;” however, she believes globalization is exposing this fiction in a particularly glaring way. As she explains, “The monopoly of those combined attributes [of sovereignty] has been severely compromised by growing transnational flows of capital, people, ideas, goods, violence, and political and religious fealty.” (22) In this sense, it is the viability and believability of complete state sovereignty—a goal that was never achievable—that is waning. Globalization cannot eliminate state sovereignty; however, in challenging certain assertions of absolute sovereignty it makes manifest the contradictions between the theoretical inclusiveness of liberal democracy and the practical demands of the sovereign nation-state.

Brown supports her claim regarding globalization’s challenge to state sovereignty by analyzing the construction of walls from a theoretical perspective. As she illustrates, the project of walling, when carried out by a democratic regime, is impractical, hypocritical, and unethical. Though walls may be constructed for many reasons, Brown argues that walls are built as a result of the state’s unease at its decreasing ability to exercise complete control. Walls might be viewed not as solutions to contemporary

problems but instead as vestiges of state power. “Rather than resurgent expressions of nation-state sovereignty, the new walls are icons of its erosion,” asserts Brown; “they reveal a tremulousness, vulnerability, dubiousness, or instability at the core of what they aim to express.”¹⁰⁶ As Brown reveals, in constructing walls, states reveal their uneasiness at the “ungovernability by law and politics of many powers unleashed by globalization.”¹⁰⁷ But are the walls a logical response to such fears? And what are the repercussions of walling?

In the age of globalization, walls cannot physically satisfy their aim to keep everything out. As Brown explains, “walls often function theatrically, projecting power and efficaciousness that they do not and cannot actually exercise and that they also performatively contradict.”¹⁰⁸ Paradoxically, these costly walls do not actually achieve their putative goals, yet they do serve another function. In putting a wall around a society, the state performs a kind of “staged sovereignty,” suggesting that it maintains protective powers that are in fact “radically limited by modern technologies and paths of infiltration.”¹⁰⁹ This projection of power may be blatantly misleading, but it responds to a human desire; walls provide a “reassuring world picture.”¹¹⁰ Furthermore, as Brown points out “The popular desire for walling harbors a wish for powers of protection, containment, and integration promised by sovereignty.”¹¹¹ Thus, while the walls may be impractical, nation-states likely look to achieve more in the process of building the wall than just a practical, physical objective. Specifically, these walls constitute a reassuring response to constituent concerns about foreignness and diminishing state sovereignty.

Many suggest that walls are irrelevant, for while they are costly and impractical, they provide empty reassurance to an anxious public. And if inefficiency and cost were

the lone setbacks of walling, we may even be able to accept the practice on a theoretical level. However, Brown points out that walling is not merely inefficient or impractical; walls are inherently violent structures that harm and endanger the underpinnings of the political society they seek to enclose. We must consider the paradox of putting a wall around a democratic country, whose political ethos is one of inclusion, acceptance, and equality. Brown captures this paradox well in arguing that walls undermine democracy:

Like the Berlin Wall, contemporary walls, especially those around democracies, often undo or invert the contrasts they are meant to inscribe. Officially aimed at protecting putatively free, open, lawful, and secular societies from trespass, exploitation, or attack, the walls are built of suspended law and inadvertently produce a collective ethos and subjectivity that is defensive, parochial, nationalistic, and militarized. They generate an increasingly closed and policed collective identity in place of the open society they would defend. Thus, the new walls are not merely ineffective in resurrecting the eroding nation-state sovereignty to which they respond, but they contribute new forms of xenophobia and parochialism to a postnational era.¹¹²

Seen through this lens, walls are outdated not only in their ineffectiveness but also in the political principles they reflect. Walls assert a form of absolute state sovereignty that cannot be preserved in the face of globalization. Yet walls should be seen as just one manifestation, one symptom, of exclusionary responses to globalization. While the physical effect of walling will be explored later with regards to the U.S.-Mexico border wall, on a metaphorical level, the tendency to build walls reveals a discomfort with globalization so pervasive that it yields a willingness to neglect fundamental freedom-enabling principles in order to reassert control. Citizens and governments have become so fearful of diminishing sovereignty that they have adopted methods of physically enforcing national identity that contradict and undermine the fundamental principles of the societal structures they seek to protect. Contemporary walling is a futile exercise, but it is the byproduct of a confrontation between the nation-state's yearning for complete

state sovereignty and the realities of globalization. My goal of this chapter is not to overcome this deeply rooted conflict but instead to recognize it, emphasize its existence, and show how conceptions of freedom based upon sovereignty do not assist us in functionally addressing and responding to it. Moreover, while sovereignty leads us astray in responding to globalization, substantive freedom embraces diversity as part of an increasingly contested political landscape, facilitating an inclusive response to new challenges instead of an escape from politics altogether.

Part III. Two Types of Sovereignty, Two Types of Exclusion

As I have argued so far, national identity, whether based upon access to certain rights or acceptance within a “sovereign” collective, determines belonging as it pertains to the nation-state. In developing a coherent national identity, the citizens and the state often function cooperatively, extending their shared belief in the nation’s exceptionalism. Arjun Appadurai elaborates upon this shared sense of identity in *Fear of Small Numbers*. He argues that the very idea behind the modern nation-state is dangerous, relying on the preservation of a national identity or “national ethnos” that implies some form of “ethnic genius.”¹¹³ Globalization, he argues, has not only challenged the underlying assumptions of the nation-state, but it has also undermined ethnos-based responses to perceived threats. As Appadurai explains, eliminating and accentuating differences has become impossible in the age of “high globalization”: “The brutality, degradation, and dehumanization that have frequently accompanied the ethnicized violence of the past fifteen years are a sign of conditions in which the very line between minor and major differences has been made uncertain.”¹¹⁴ Globalization has exposed the fictional idea behind the modern nation-state; however, this does not mean that proponents of this

“national ethnos” have conceded. Instead, they have initiated a struggle over the future of the nation-state, launching a violent and desperate campaign with the goal of reasserting the demarcated boundaries that the nation-state’s survival requires.

This campaign can be seen in two arenas, both in the U.S. and in parts of Western Europe. Brown argues that sovereignty, though waning, “[appears] today in two domains of power...political economy and religiously legitimated political violence.”¹¹⁵ In the remainder of the chapter I will assess how the United States has responded to challenges related to global capital and religious violence, and in doing so will validate Brown’s claim. Specifically, I will consider political and civil policies toward Mexicans and Muslims and the ways in which both groups have been increasingly targeted as embodiments of American fears of change and loss. U.S. dependence upon migrant workers from Mexico exposes absolute sovereignty as an illusion, while Muslim Americans challenge a widespread identity-based conception of America as a cohesive Christian nation. Exclusionary policies toward both groups seek to deny the realities of globalization and turn back the hands of time by nostalgically reasserting a mythical national identity. In both cases, the policies that I will target seek to limit the access of these groups to political processes, thus undermining conditions of substantive freedom while inhibiting the political rights of those who embody the perceived threat of foreignness.

“Reasonable Suspicion:” Arizona’s New Measuring Stick

Border security and immigration policy have been a source of increasing political attention in the U.S. over the last couple of decades, but little progress has been made with regard to refining or strengthening U.S. immigration policies. The demand for

greater enforcement of immigration laws is not new; however, such demands have rarely, if ever, prompted the development of logical and realistic policy recommendations. In Wendy Brown's exposé on walling she discusses the wall-building project along the U.S.-Mexico border and explains why it might be considered one of the least effective methods of curtailing immigration. The project, she argues, was "born out of a tension between the needs of North American capital and popular antagonism toward the migration incited by those needs, especially their effect on wages, employment, and the demographics and cultures composing and in some eyes decomposing the nation."¹¹⁶ As she explains, the paradox of the U.S.-Mexico border wall is that the U.S. is dependent upon the cheap labor that it "purports to lock out."¹¹⁷ The wall serves to highlight the irony of placing walls around democracies and makes painfully evident the fiction of absolute state sovereignty. As Brown asserts,

The U.S.-Mexico barrier stages a sovereign power and control that it does not exercise, is built from the fabric of a suspended rule of law and fiscal nonaccountability, has multiplied and intensified criminal industries, and is an icon of the combination of sovereign erosion and heightened xenophobia and nationalism increasingly prevalent in Western democracies today."¹¹⁸

Like most contemporary walls, the U.S.-Mexico border wall has proven ineffective at keeping people and things out, namely immigrants in this case. By most accounts, immigrants have merely been rerouted, not deterred, and the rate of migrant deaths has increased. Moreover, many argue that physical impediments like the wall provide an incentive for immigrants to remain permanently in the U.S. once they have successfully entered the country. Because the wall and other approaches have so clearly failed, new methods have been adopted to curtail immigration.

In April 2010 the Arizona state legislature developed a new law in hopes of cutting the number of Mexican immigrants entering and residing in the U.S. The Support Our Law Enforcement and Safe Neighborhoods Act (Arizona SB 1070), which was due to take effect in July but has since been challenged in federal courts, would put state law enforcement officials in the position of cracking down on illegal immigration, a task usually left to federal authorities. The law states the following:

For any lawful contact made by a law enforcement official or agency of this state or a county, city, town, or other political subdivision of this state where reasonable suspicion exists that the person is an alien who is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person.¹¹⁹

The “reasonable suspicion” clause is arguably the most controversial portion of the bill, as it confers upon law enforcement officials the legal obligation to act on their suspicions, regardless of what the source of those suspicions may be. Enforcement of the law requires that law enforcement officials develop, either consciously or subconsciously, some concept of what an “alien” looks like. In this sense, national identity, and specifically individual law enforcement officers’ notions of American identity, is not only incorporated in legal language, but becomes central to the effective enforcement of the law.

The Arizona law targets citizenship both as a way of legalizing identity-based exclusion and as a method of striking fear into the minds of immigrants. Because individual conceptions of national identity are translated into law enforcement practices, “reasonably suspected” persons are thus at the mercy of any such conceptions. For an immigrant, the difference between two law enforcement officials’ notions of what an American looks like could mean the difference between remaining in the U.S. and being

deported. Moreover, because the law further stipulates that all “reasonably suspected” persons must possess documentation proving their citizenship or risk monetary and legal punishment, even citizens who appear “foreign” become reliant upon police officers’ conceptions of national identity in order to enjoy the full rights of citizens. Passavant’s correlation between rights and identity is made manifest in the Arizona law, as the protection of rights for certain individuals depends largely on those individuals’ compatibility with a certain conception of national identity.

Besides its institutionalization of certain conceptions of American identity, the law also has the potential to transform the relationship between civilians and the police by greatly expanding discretionary policing powers. President Obama warned in his initial statement following the enactment of the bill that it threatened “to undermine the trust between police and our communities that is so crucial to keeping us safe.”¹²⁰ The law creates an atmosphere of antagonism and distrust between citizens and law enforcement officials; however, the majority of Americans support the law.¹²¹ Might it be that Americans feel reassured by the Arizona law which, like past discriminatory laws such as the Patriot Act, serves to reassert state sovereignty? Claims of state sovereignty are undermined by American dependence on low wage labor; however, the Arizona law denies this dependency, instead reaffirming American independence and exceptionalism.

Religious Intolerance: Blaming Muslim Americans for 9/11

Discriminatory practices against Muslim Americans in many ways follow the xenophobic example of Arizona’s immigration policy; however, there are important differences that have made the domestic fight against Islam more overtly violent and hateful in recent years than that against immigration. The struggle against illegal

immigration takes place in a clearly demarcated zone, where physical barriers can be erected as symbols of state sovereignty. Furthermore, immigrant rights can easily be taken away or threatened under the pretense that citizenship is required for basic rights. Above all, in the case of immigration, it seems clear where the perceived “threat” is coming from. None of these features exist in the civilian-led fight against Islam. Anti-Muslim sentiment derives loosely from the events of September 11, 2001, but the connection between Islam, a religion practiced by millions, and Al Qaeda, the terrorist group responsible for the attacks, is tenuous. The complexities of this relationship are well beyond the scope of this chapter; however, the difficulty of identifying the real and viable threat of terrorist acts initiated by Islamic fundamentalists is important to mention. Specifically, the fluidity of the threat from Al Qaeda and other non-state actors poses a challenge of identification that nation-states have so far proven unable to meet.

Civilian responses to the attacks on 9/11 have reflected a widespread fear of American identity loss. While the federal government has initiated foreign wars in Afghanistan and Iraq, civilians’ domestic responses to Islam have suggested that there exists a perceived threat within American borders. Nearly ten years removed from the attacks, the fear, anger, and bitter hatred that the event provoked in many Americans is still evident, and it is often displaced upon Muslim Americans. Because of the difficulty of adequately identifying the non-traditional enemy or effectively asserting state sovereignty, blaming Muslim Americans has seemingly become a default response. Through subjugating an identifiable religious minority group, average citizens have attempted to reassert their conception of American identity.

One manifestation of frustration and fear displaced upon Muslim Americans recently appeared in Murfreesboro, Tennessee where for more than a year a battle has been waged over the expansion of a Muslim Community Center. A similar project in New York City has received widespread attention; however, the ongoing debacle in Tennessee may better encapsulate the current state of American Islamophobia.

In November 2009 a Muslim congregation bought a new space, as its old one had become too small. What seemed like a benign expansion project to build a community center and mosque soon became a battle over religious freedom when two months later the site was vandalized. In August 2010 construction equipment was set on fire and gunshots were fired nearby the site, prompting many church members to stay home instead of attending routine services. Throughout the summer, opponents of the project protested nearby the site, while one local Republican congressman accused the Islamic center of training terrorists.¹²²

The drama took a strange turn in September 2010 when three residents of Rutherford County filed a lawsuit. In the lawsuit, the residents contended that they “have been and will be irreparably harmed by the risk of terrorism generated by proselytising for Islam and inciting the practices of sharia law.” They further claimed that sharia “advocates sexual abuse of children, beating and physical abuse of women, death edicts, honour killings, killing of homosexuals, outright lies to Kafirs (those who don’t submit to sharia law), Constitution-free zones, and total world dominion.”¹²³ The Economist mocked the lawsuit in its November 2010 article on the subject, pointing out that “Murfreesboro has had a mosque for decades, and does not seem infested with ‘Constitution-free zones.’”¹²⁴ Nonetheless, the myths that protestors have chosen to

believe reveal an overheated and anxious public looking to displace its frustrations on the nearest target.

The plaintiffs' approach of seeking legal recourse to block the project is important to consider in light of our earlier discussion regarding the link between rights and national identity. In arguing that they were adversely impacted by the prospect of the Muslim community center, the plaintiffs challenged and called into question whether Muslim Americans should be afforded the same rights as other citizens. By putting the court in the position of arbitrating between competing rights claims, they hoped the court would deny freedom of religion in favor of appeasing their seemingly irrational fears. In invoking laws to undermine the project, these individuals did exactly what Passavant describes, using rights as a means of enforcing a particular conception of American identity.

Attempts to link the mosque to terrorist organizations revealed the intensity of residual frustrations of American citizens. Unable to enact revenge upon legitimate targets, citizens have instead chosen places like Murfreesboro to fight back. As the limits of state sovereignty become increasingly obvious, these types of responses to foreignness should be expected; however, attempts to exclude these groups may serve to magnify the very threat that they struggle to identify and respond to.

If the Islamophobic campaigns we have recently witnessed in Murfreesboro and New York City become a trend, it will be important for legal and social institutions to stand their ground. Rights-based attempts to exclude Muslim Americans, if entertained, will further institutionalize intolerance and exclusion. For the purposes of my discussion, protecting certain individuals' rights to the preclusion of others would reward civilian

attempts to escape an increasingly diverse political environment and thus divert Americans further away from substantive freedom.

* * *

The challenges posed by globalization are unlikely to disappear in the near future. As borders continue to weaken and domestic economies become increasingly interdependent and global, the U.S. must make choices as to how it will respond. Will perceived outsiders continue to be excluded to the detriment of democracy and, potentially, at the risk of increasing America's likelihood of being targeted for terrorism? Or will the limits of the state be recognized and accepted as a sign that a long-term shift, in both our political and social approach, is in order? Embracing the conception of freedom that I have endorsed throughout the preceding chapters would lead us to abandon the nation-state discourse of superiority and exclusivity, instead reestablishing our devotion to democracy's inclusiveness. In the age of globalization rights are still important, but our conception of freedom must expand upon this minimalist framework. Only through enabling diverse and widespread involvement in political decision-making can we establish a response to globalization that revitalizes democracy, even in the face of the unique and complex forces that challenge it.

Chapter IV. Freedom and Stability

“By teaching us to associate phenomena such as regularity and continuity with hierarchical relations of command and obedience, the idea of rule can encourage the sort of withdrawal from practical engagement that is required to maintain the illusion of mastery.”¹²⁵

—Patchen Markell

In the first three chapters I adopted a fairly critical stance toward the state. In the first chapter I condemned the state for limiting freedom under the guise of ensuring political stability. I questioned the concept of entrusting representative bodies with the task of ascertaining a “public” or “collective interest” and subsequently authorizing them to defend this interest. I argued that some rights are often conferred and protected by states in exchange for citizens’ voluntary forfeiture of other rights as a means of paradoxically limiting substantive freedom for citizens. In the second chapter I illustrated the limits of the state in mediating between competing rights claims. I asserted that the individualist nature of rights contradicts a far more collective reality in which all kinds of individual acts influence one another and determine the conditions within which others act. I highlighted the inadequacy of the law, as an extension of the state, in solving enduring problems regarding responsibility, specifically in cases of violent or hateful speech. In the third chapter I revealed the state as a reflection of the people and their anxieties in response to globalization. I considered the ways in which rights can be appropriated in the interest of demarcating boundaries of inclusion and exclusion and interrogated the notion of all-encompassing state sovereignty. Here I criticized the state

for feeding off of and reinforcing citizens' fears of foreignness and for responding in ways that threaten conditions of freedom.

My indictments of organized governance in the previous chapters may appear to champion unlimited citizen freedoms in place of a centralized state. My criticism of the state in these chapters as often times dishonest, hypocritical, inept, and insecure could be construed as leading down a path toward lawlessness and anarchy. But in this chapter I will preemptively respond to criticism that my theory of freedom tends toward anarchy. Although government is typically conceived of as a source of stability that necessarily limits freedom, the relationship between freedom and governance need not be an adversarial one. The oft-presented choice between freedom and stability, instability and organized governance, is a false one whose persistent strangle hold on political thought is itself a very real and daunting challenge to substantive freedom. Freedom is not challenged by conditions of stability; freedom is undercut by the false choice presented by what Patchen Markell terms an "oppositional matrix"¹²⁶ between freedom and governance, and by the foundational idea that governance necessarily constitutes rule.

In this chapter I will not present a merit-based defense of the state nor will I rescind my previous condemnations. I will instead argue that despite the many ways in which the state serves to inhibit the exercise of freedom, my vision for freedom is actually contingent upon stable governance. Government is undoubtedly part of "the problem," but is also the very basis of the only possible solution. In order to clarify and substantiate this conclusion I will need to scrutinize and ultimately discredit the classically conceived oppositional relationship between freedom and stable governance.

Importantly, all of my prior criticisms of the state have revealed the extent to which states rely upon the freedom vs. stability dichotomy. Madison warned in *Federalist 10* that without organized government to protect property and individual rights, chaos would ensue and rights would be undermined. Similarly, in responding to globalization, elected officials have repeatedly warned that laissez-faire policies toward immigrant communities and minority groups would be destabilizing and could threaten democratic foundations. As Patchen Markell asserts, governmental institutions “are properly objects of democratic criticism not because they produce order and stability but...just insofar as they predicate the order and stability they produce on the narrowing of some or all citizens’ practical horizons.”¹²⁷ Thus, when states present themselves as stabilizing forces in order to increase their authority and limit that of the people they govern, they tend to reinforce the notion that freedom defies and challenges established conditions of stability.

By interrogating the traditional correlations between governance and stability, freedom and destabilization, I will be able to stress the need for organized governance without rescinding my previous critiques of state assertions of power. My analysis will rely heavily upon Arendt’s distinction, drawn out by Patchen Markell, between governance and rule. Arendt and Markell indirectly argue that correlating governance and rule facilitates a subsequent correlation between rule and stability. Importantly, freedom inherently opposes the concept of rule, though not that of stable governance.

I will consult Arendt, as well as Beauvoir, in asserting that freedom’s potential compatibility with conditions of stability does not mean that free acts can be predicted or foreseen. Both theorists contend forcefully that free acts are merely a point of departure,

and that all acts are partially unknowing. This claim will reinforce the argument I made in the second chapter, as the impact of free acts upon others will need to be revisited.

Finally, I will examine the Tea Party Movement as a prime example of a group whose ideological bent reflects its acceptance of the false choice between organized governance and freedom. Self-proclaimed advocates of individual freedom, Tea Party members are perpetually deriding government for overstepping its bounds and limiting their rights. Interestingly, the individuals whom they admire and revere—such as Thomas Jefferson, James Madison, and Thomas Paine—are the very founders whom I criticized in Chapter One for deceiving the citizenry into forfeiting its political agency. As the complexity, hypocrisy, and incoherence of this Tea Party contradiction could make our heads spin, I will again consult Jill Lepore and Jason Frank in the hopes that their insights will shed light upon this purportedly revolutionary movement. I will argue that the Tea Party's antipathy toward government is misplaced, reckless, and exceedingly dangerous. Its lack of clarity as to the content of freedom and the ends of government has led the movement in a perilous direction. Its threats of violence and revolution must not be mislabeled as among those activities which Frank would consider "constituent moments." By relying on the notion that government threatens freedom, the Tea Party is not reclaiming political agency from elected representatives on behalf of underrepresented groups, but is instead revealing itself as an exploited and easily appropriated force whose right-wing corporate puppet-masters have coerced its frustrated members into antagonizing blameless individuals.

Ultimately, I will argue in this chapter that freedom is inherently unstable, but not necessarily destabilizing. My goals in this chapter are twofold: to disassociate freedom

and revolution by asserting that exercises of freedom do not inherently defy an established order; and to expose the false sense of stability upon which freedom-inhibiting institutions precariously rely. My conception of freedom challenges many of those presented by constitutionalists as well as anarchists but it should not be misconstrued as a call to arms. I will seek to develop in this chapter the potential for a relationship of mutual dependence and reinforcement between my conception of freedom and certain forms of organized governance.

Part I. Illusive Stability and the Monopoly of Rule

Many democratic theorists have addressed the seeming antagonism between freedom and governance over the last few decades amid their attempts to rationalize the organization and institutionalization of a form of government—democracy—that inherently tends toward disorder and shapelessness. In his essay on the “constitutionalizing” of democracy, Sheldon Wolin suggests that the evolving relationship between democracies and constitutions has pulled democracy away from its revolutionary origins.¹²⁸ Wolin views constitutions as mechanisms of institutionalization that initiate a tendency toward procedures, process, routinization, and ritualization and away from spontaneity in decision-making, which he identifies as an integral foundation of democracy.¹²⁹ As Wolin asserts, “[institutionalization] tends to produce internal hierarchies, to restrict experience, to associate political experience with institutional experience, and to inject an esoteric element into politics.”¹³⁰ For Wolin, the “diametrically opposed”¹³¹ forces of revolution and constitutionalism tug at the heart of democracy, and he is concerned that constitutionalism is winning out. Wolin worries that the spontaneous spirit of democracy may be lost if actual democracies continue to

embrace the order and stability that constitutions provide and reject the impulsiveness that may have motivated democratic development in the first place.

Encouraging a shift away from constitutionalism, Wolin proposes instead a democracy based upon his concept of “rational disorganization.”¹³² “I propose accepting the familiar charges that democracy is inherently unstable, inclined toward anarchy, and identified with revolution,” asserts Wolin, “and using these traits as a basis for a different, aconstitutional conception of democracy.”¹³³ Wolin’s critique of the influence of constitutionalism in mutating and ultimately reshaping democracy is an apt one and one that I partially echoed in the first chapter, but his proposed alternative of adopting a system of “rational disorganization” is exceedingly vague. A society based upon such a principle might be perfectly democratic in some idealized sense, but its implications for freedom may well be far too complex for us to predict. While I have been critical of certain forms of state influence, I have conceded that the state is crucially important in certain circumstances in enabling freedom for citizens. Wolin’s rejection of the prospects of organized governance altogether seems reckless. Moreover, he accepts what I deem a false choice between organization and anarchy, endorsing the latter as a result of his comparative assessments of revolution and governance through the traditional binary lens.

Breaking from Wolin and others, I argue that one does not have to abandon organized governance in order to enable and encourage conditions conducive to freedom. Not all of the characteristics that Wolin identified as inherent to institutionalization are necessarily inherent to governance. Despite insinuating the contrary, Wolin describes just one form of governmental organization, namely that which relies upon subordination and

the establishment of hierarchies; this is not the only way in which individuals can organize.

In *The Human Condition* Hannah Arendt interrogates the likening of organization to hierarchy. She argues that rule is developed upon a fictitious notion “that men can lawfully and politically live together only when some are entitled to command and others are forced to obey.”¹³⁴ As she explains, the assumption that rule is the lone alternative to anarchy derives from the theories of individuals as old as Plato and Aristotle, who, in order to “find a substitute for action,” determined that “every political community consists of those who rule and those who are ruled.”¹³⁵ Importantly, these theorists did not intend to organize or control politics but were instead seeking an escape from politics altogether, “from the frailty of human affairs into the solidity of quiet and order.”¹³⁶ It was in the interest of this goal that Plato developed a distinction between “those who know and do not act and those who act and do not know.”¹³⁷ Seeking stability, Plato and Aristotle arrived upon rule as a means of avoiding and alleviating the complexities and challenges of political life. It seemed that rule would provide conditions of relative safety and security in comparison to other options; however, Arendt suggests that rule is not the only means of organizing and governing a people.

While the model developed by Plato and Aristotle has provided the appearance of an escape from the instability and uneasiness that political life provides, it is essential to assert that this is but one method of political stabilization. As Patchen Markell explains, rule is based upon conceit: “the fact that structures of subordination often do produce more or less stable orders does not mean that they are the only forms of human relationship that can do so, nor does it mean that their strategies for ensuring stability are

sustainable.”¹³⁸ Markell makes two crucial points here relating to the illusiveness and deceptiveness of rule. First, while rule often coexists with conditions of stability one cannot extrapolate from this correlation that one causes the other or that rule is the only form of organization compatible with stability. Put another way, the common inclination to equate rule with stability is based upon the establishment of an unsubstantiated (and impossible to substantiate) causality between subordination and stability. Secondly, the underpinnings of ostensibly stable structures may be far more fragile than they appear. Governments that oppress and subordinate tend to seem very much in control, but their power ultimately resides with the people they oppress and the extent to which those individuals’ fears of disorder will continue to outweigh their desires for liberation.

Markell’s second claim regarding the sustainability of stability deserves further scrutiny, as I believe we must separate rule from stability in order to accomplish our larger goal of distinguishing rule from other forms of governance. Stability props up and fortifies rule and its foundational assumptions, including the premise that some individuals must sacrifice freedoms in the interest of preserving safety and security. By claiming a monopoly on conditions of stability, proponents of rule suggest that freedom and stability cannot coexist. But Markell’s claim suggests that rule projects a sense of stability that it cannot provide and relies on its image as a provider of stability in order to maintain and reinforce existing hierarchical structures. The claim of rule, namely that future destabilizing events can be predicted and prevented, is the illusion of rule that ascribes anarchic qualities to freedom so as to dissuade free action.

Rule’s promise of stability derives from the past but is oriented toward the future, reflecting not only an intent to preserve a condition that ostensibly already exists, but,

more importantly, implying an ability to actually control whether or not the promise can be fulfilled. The inclination of people toward rule may reflect a relative discomfort with newness. In the wake of World War II, Arendt wrote extensively about totalitarianism and denounced the tendency to conflate totalitarianism with other more recognizable forms of authoritarian government. By equating “totalitarian government with some well-known evil of the past,”¹³⁹ individuals were better able to cope in the wake of totalitarianism, and could more easily reconcile the emergence of totalitarianism with their preconceptions about the world. But as Arendt argues, such an approach is an escape from true understanding, developed from the sense that “we have inherited the wisdom of the past to guide us through [evil].”¹⁴⁰

In Arendt’s essays she argues forcefully that past events cannot present accurate predictions for the future. Moreover, when an event takes place, “everything changes,”¹⁴¹ and we can never be fully prepared for this change. As she explains, “Just as in our personal lives our worst fears and best hopes will never adequately prepare us for what actually happens...so each event in human history reveals an unexpected landscape of human deeds, sufferings, and new possibilities which together transcend the sum total of all willed intentions and the significance of all origins.”¹⁴² Arendt’s claim is crucial to our consideration of the promise of stability. Claims to stability rely on a belief that prediction is possible, but Arendt’s notion of beginning challenges this belief, instead suggesting that sustained stability can never be ensured. The inclination to look to past events in interpreting and responding to present challenges, as I argued in Chapter One, constitutes a futile attempt to make sense of changes that seem overwhelming or disconcerting. Not only do such interpretations undermine our ability to pursue freedom,

but they concurrently lead us astray in attempting to become more knowledgeable through engagement with the world.

Arendt offers extensive insights into the unpredictability of events, but Markell and Beauvoir are particularly useful in elaborating upon the inconsistent realities of the human condition. As Markell asserts, “To say that all events exhibit unexpectedness... is to say that no degree of certainty about whether something will or will not happen, and what it will turn out to be, can smooth over the difference between ‘not yet’ and ‘already’”¹⁴³ Yet stability aims to do exactly what Markell claims is impossible—to “smooth over” this difference through ensuring certain future results. So why do people tend toward rule?

Arendt has suggested that people are uncomfortable with not knowing, but Beauvoir offers a more comprehensive assessment of the human condition in *The Ethics of Ambiguity*. In her critical work Beauvoir forcibly opens the reader’s eyes to an ambiguous and unstable human condition that is both empowering and terrifying. She asserts that individuals exercise real control over their lives with limited influence from larger forces; however, she explores man’s reluctance to seize his potential agency and resultant inability to understand his condition. Even if promises of stability can never be guaranteed, individuals are easily enticed by such promises because they are uneasy about the openness and uncertainty of a world that is almost fully in their hands. As Beauvoir explains, “Men do not like to feel themselves in danger. Yet, it is because there are real dangers, real failures, and real earthly damnation that words like victory, wisdom, or joy have meaning. Nothing is decided in advance, and it is because man has something to lose and because he can lose that he can also win.”¹⁴⁴ In this passage Beauvoir asserts

the agency of man, but she also introduces a level of control that is frightening to many. Stability provides a sense of complete reassurance and safety, whereas freedom does not. As Beauvoir explains, embracing freedom entails exposing oneself to the realities of an interconnected and ever-changing world.¹⁴⁵ We tend to forfeit the choice of freedom voluntarily and submit to rule, for choosing freedom is so difficult and uncomfortable that perceived conditions of predictability and continuity seem preferable.

Part II. Freedom: A Coherent Alternative to Rule

Arendt, Markell, Beauvoir, and I are all interested in an alternative to rule that might better enable the pursuit of freedom. So far I have aimed to demonstrate how rule is not our only choice in embracing governance and rejecting anarchy. I have also considered how expectations for the future can serve to challenge and undermine freedom, implying that claims to unconditional stability detract from our ability to experience freedom. Yet, having exposed rule's inability to ensure stability, we must now consider whether or not freedom can provide any form of stability at all. Rule's promise of stability and the expectations it induces have encouraged theories of freedom to be deemed destabilizing. For example, Arendt's notion of "beginning," a crucial component of her definition of a free act, has been misconstrued by many as inciting revolution because of its seeming break from the flow of time. However, while Arendt has suggested that certain historical revolutions have met the criteria by which she defines free acts, it would be a grave error to assume that she would consider only those acts that defy an established order "free." I will explain in this section how Arendt's conception of freedom is potentially compatible with certain forms of governance. I will argue that her focus on beginning and newness does not reflect an obsession with revolution but instead

an honest assessment regarding the limits of governance and the conditions of stability that it seeks to provide. I will argue that foreclosing the possibility of complete stability does not mean that some form of stability is not possible. Moreover, I will illustrate how some form of governance may actually be required in order to give free acts some contextual meaning.

In replacing rule with a form of organized governance that enables freedom, it must be conceded that this new form can provide only a modest form of stability (modest insofar as it can claim only not to encourage revolution, but cannot claim to actively discourage it) and that one cannot retrieve the same feeling of stability that rule provides. However, it will become clear that freedom does not inherently challenge stability, but instead demarcates the outer limits of stability and serves to make manifest the reality that almost nothing can be predicted or foreseen.

In order to better articulate the prospective relationship between governance and freedom, we must return to Markell's and Arendt's critiques of rule. In Markell's essay he asserts, "the paradox that democratic theorists have identified in the relationship between democracy and rule may best be understood neither as a problem to be solved nor as a limitation to be accepted, but rather as a symptom of the ongoing dominance of political theory and practice by the idea of rule."¹⁴⁶ In order to overcome the dominance of rule, it is essential to abandon the rule-anarchy dichotomy, as neither can provide conditions of substantive freedom.

It is significant that Markell's indictment of rule is non-discriminating in that it targets both rule's proponents and critics fairly equally. As we have examined so far, proponents of rule rely upon a common inclination to equate rule with stability; however,

most opponents of rule tend to accept this likening of rule to governance as well, proposing some form of “controlled” anarchy as an alternative. Markell clarifies in his reading of Arendt that Arendt criticizes rule “not to celebrate those phenomena that are conventionally taken to be rule’s opposites, such as disorder, instability, interruptions of regularity, or radical breaks in continuity, but to prise apart phenomena that the idea of ‘rule’ has taught us to see as inseparably connected.”¹⁴⁷ Through making this point Markell distinguishes Arendt from Wolin and others whose criticisms of rule ultimately yield an acceptance of anarchy as the preferable alternative. Wolin’s framework, like that of proponents of rule, leaves us with only two choices, neither of which is favorable to my conceptualization of freedom. Accepting rule entails sacrificing certain freedoms in favor of reassurance and security, while embracing conditions of anarchy may translate into a higher level of individual freedom (conceived narrowly in this case as autonomy or independence), but produces countless consequences as well. Arendt’s rejection of Wolin’s binary framework enables the possibility of another option.

Unlike Wolin’s critique of rule, Arendt’s criticism allows for the subsequent assertion that governance may in some cases enable the exercise of freedom. In reading Arendt, Alan Keenan writes that Arendt understands freedom’s need for “the support of political foundations in order to become more than an occasional or marginal occurrence.”¹⁴⁸ In this passage Keenan suggests that conditions of perpetual anarchy would undermine freedom. While anarchy allows for unlimited autonomy, it is likely to also result in the loss of those contexts in which free acts have actual meaning.

In order to understand Keenan’s point, let us return to my discussion of Arendt in Chapter Two, in which I related Arendt’s vision for free acts as forms of engagement

with the world and with others. For Arendt, free acts constitute a type of beginning, but not in its traditional sense. As Markell explains, Arendt's notion of beginning "picks out not the spontaneous patterns, but the sense in which action, whether disruptive or not, involves attention and responsiveness to worldly events." Markell's assessment of beginning is crucially important as it provides a criterion by which to determine whether or not an act is a free one; namely whether or not the act engages and responds to the world. Describing an act as one of beginning does not express the extent to which the act is defiant or even spontaneous, but instead reflects whether or not the act in question engages the world. In order for these kinds of free acts to be possible, and thus to have meaning, it would seem that some form of organization may be necessary. As Markell claims, freedom is threatened not by the "enforcement of regularity, but [by] the erosion of contexts in which events call for responses, and, thus, in which it makes sense to act at all."¹⁴⁹ Just as rule threatens freedom, conditions of anarchy similarly undermine freedom by stripping potentially free acts of their contextual meaning. Without any organization, the desire, and in some cases need, to act freely in response to others, could dissolve. Neither anarchy nor rule enable freedom in the way that we have conceived of it, and in many cases both choices may actively threaten and limit the possibility of freedom.

In my readings of Wolin, Markell, Arendt, and Beauvoir I have exposed the choice between governance and freedom as a false one. I have sought to lay the groundwork for a conception of freedom that functions in accordance with governance, but that also defies many of the ideas that we traditionally associate with rule, such as a particular form of hierarchical stability. Through providing the potential for freedom to

coexist with governance, I hope to enable a form of freedom that retains its contextual meaning while existing outside of hierarchical limitations.

Part III. The Tea Party: A Revolution?

“[The bombers] took to the ultimate extreme an idea advocated in the months and years before the bombing by an increasingly vocal minority: the belief that the greatest threat to American freedom is our government, and that public servants do not protect our freedoms, but abuse them...Our founders constructed a system of government so that reason could prevail over fear. Oklahoma City proved once again that without the law there is no freedom.”¹⁵⁰ —Bill Clinton

In order to substantiate my claim that the classically conceived antagonism between freedom and governance serves to undermine freedom in identifiable ways, I will turn now to a contemporary manifestation of this antagonism—the Tea Party—and assert its consequences for freedom. The Tea Party, which has been praised by those on the right for its mobilization of frustrated individuals and condemned by those on the left for its seemingly misplaced attacks on the Obama administration, has received more recognition in the mainstream media over the last two years than any other politically active group. The Tea Party prides itself on advocating citizen freedoms, but believes that such freedoms are undermined and threatened by government. The missions of both the Tea Party Express and the Tea Party Patriots, two of the most prominent nationally active Tea Party organizations, reflect concerns about constitutional adherence, the size of government, and excessive limits to market liberalism.¹⁵¹

When the Tea Party first emerged into the mainstream in early 2009, many assumed that the cause was the historically high rate of unemployment. With an

increasing number of individuals being left without work, it seemed likely that these people might displace their frustrations on the government. Subsequent polling data suggests, however, that Tea Party members are likely not the individuals whose daily survival is threatened by current economic conditions. The majority of Tea Party members are less concerned about unemployment than they are about limiting the size of government through cutting taxes and decreasing spending. Moreover, Tea Party supporters tend to be wealthier and better educated than the general public.¹⁵²

Once the unemployment theory was debunked, it became commonplace to lump the Tea Party in with the Republican Party. At first glance the Tea Party's interests seem to be more or less aligned with those of the Republican Party; and Tea Party members, as well as the representatives they select (whether or not they have voted in recent elections), do tend to associate themselves more with the Republicans than with the Democrats. But dismissing the Tea Party as merely a part of the Grand Old Party might lead us to oversimplify a movement that is in many ways new, unique, and quite complex.

In analyzing the Tea Party one must distinguish between the rhetorical claims made by Tea Party members and the actual aims of the movement, as well as examine the extent to which Tea Party activities actually further the cause of their envisaged goals. For example, while Tea Party members often refer to their movement as a "revolution," I will argue that the goals of the movement consist of the achievement of certain political ends which are not all that revolutionary; a "restoration" might be a more accurate and descriptive term. And while Tea Party websites suggest the existence of a clear political platform, Tea Party ideology is remarkably incoherent and contradictory. The Tea Party

name may be the best example of the movement's hypocrisy, invoking revolutionary events whose actual motivations were entirely inconsistent with Tea Party ideology. Yet, as Lepore explains, the Tea Party's duplicity is a major source of its strength and among the reasons why it deserves further exploration:

Nothing trumps the Revolution. From the start, the Tea Party's chief political asset was its name: the echo of the Revolution conferred upon a scattered, diffuse, and confused movement a degree of legitimacy and the appearance, almost, of coherence. Aside from the name and the costume, the Tea Party offered an analogy: rejecting the bailout is like dumping tea; health care reform is like the Tea Act; our struggle is like theirs.¹⁵³

The Tea Party's ideological inconsistency and hypocrisy can be considered part of a broader method of acquiring political power through deceiving citizens, namely by using perceptions, in place of facts, as the basis for action. By rousing citizens' already existent fears of diminishing civil liberties, the Tea Party has been able to propagate a purportedly freedom-enabling agenda that in fact defies conditions of substantive freedom in all of the ways that I have described in the previous three chapters. Through invoking an antihistorical version of the past, promoting an individualist conception of freedom, and provoking anxieties and fears of foreignness induced by globalization in order to advance theories of ethnocentrism, the Tea Party has replicated the traditional freedom-governance antagonism and, in doing so, has dangerously appropriated the language of freedom and democracy as a means of fortifying and reinforcing political and social hierarchies of rule.

Fortifying Rule

In Chapter One I argued that activists, politicians, and judges have capitalized upon the legitimating force of the American Revolution and the subsequent founding of the nation, insincerely glorifying the country's founding moments in order to forward a

political agenda that undermines substantive freedom. Beginning with its name, the Tea Party has exemplified such insincere glorification, invoking past events for political purposes despite these events' factual inconsistency with Tea Party aims. Jill Lepore considers the Tea Party to be an "antihistorical" phenomenon, relying on an ideology of historical fundamentalism that considers "the academic study of history (whose standards of evidence and methods of analysis are based on skepticism) [to be] a conspiracy and, furthermore, blasphemy."¹⁵⁴ Because the political practice of antihistory categorically disregards facts, Tea Party members have been able to harness the force of the American Revolution and exploit its political strength while abandoning the substance of revolutionary principles and neglecting any obligation to adhere to them.

The Tea Party's appropriation of the revolution and misrepresentation of its aims can best be seen in the movement's claims that revolutionaries shared their contempt for, and fear of, an intrusive and excessively large government. Lepore relates the story of Massachusetts state senator Robert Hedlund who delivered a speech on April 15, 2009 (tax day) in which he told supporters that the American Revolution "was about a collection of interested citizens afraid of seeing their economic success determined by the whim of an interventionist governmental body."¹⁵⁵ These claims, combined with complaints about "taxation without representation," served as a driving force behind the Tea Party's antipathy toward government. By suggesting that the Tea Party was continuing the revolutionaries' fight against big government, Tea Party leaders manufactured a legacy of distrust and suspicion of elected officials that served to validate much of the inflammatory rhetoric directed toward a president who had received 53% of the popular vote in 2008.

Yet the Tea Party's use of antihistory constitutes more than merely hypocrisy, inconsistency, or even fiction. The practice of antihistory not only encourages individuals to question the evidentially and factually driven sphere of history, but also to engage certain traditions, legacies, and actual events and repeat them in a contemporary setting. As Lepore explains, "the statement at the core of the far right's version of American history...was more literal than an analogy. It wasn't 'our struggle is like theirs.' It was 'we are there' or 'they are here'...Antihistory has no patience for ambiguity, self-doubt, and introspection."¹⁵⁶ Tea Party members do not merely invoke the revolution for political means but remarkably appear to believe at times that they are actually living the revolution. Tea Party members share "a set of assumptions about the relationship between the past and the present that...defies chronology, the logic of time."¹⁵⁷ Indeed, while the Tea Party has manufactured a false sense of the American Revolution in order to forward its political agenda, at least as damaging has been its invocation of a real past and its seeming desire to return there.

In a May 2009 speech, Fox News pundit Sean Hannity proclaimed, "It took more than two hundred years, but it now looks like we are headed back to where we started."¹⁵⁸ Much of Hannity's vision for "where we started" is fabricated and inconsistent with the reality of the 1770s; however, there are aspects of his vision that derive from a very real history of opposition to federal government. The words of Hannity and Hedlund, which helped to mobilize the Tea Party in its embryonic stages, revert back to a vision for America based upon states' rights. Their claims echo those made by states' rights advocates for nearly a century following American Independence, which culminated in the confederacy's assertion of independence and the initiation of the Civil War.

Tea Partiers' aggression toward federal government has served to endorse assertions of state autonomy. From condemning Barack Obama's speech to the nation's schoolchildren as "indoctrination" to spawning the lawsuit led by over twenty state attorney generals in response to the passage of health care reform—termed "Obamacare" and "socialist medicine" at Tea Party rallies—the Tea Party has prompted a return to the states' rights debates of the nineteenth and twentieth centuries that hinged on issues of race and constitutionalism. Tea Partiers have aimed to associate themselves with the American Revolution, but their antipathy toward government evokes a much darker chapter in American history in which white confederates assailed the federal government in order to retain slave-holding rights. Tea Party members consistently deflect the "race question," but accepting this sweeping denial of racial motivations would be assuming far too many coincidences. The Tea Party emerged following the election of the first black president in American history and much of the momentum behind the Tea Party stemmed from the development of the "birther" movement, a contingency that claims Barack Obama was not born in the United States.

Tea Party leaders have consistently sought to distinguish themselves from racist movements on the far right, but they have simultaneously projected a message which labels Barack Obama as foreign and dangerous. Their fears that Obama will undermine American political traditions by importing socialist values from elsewhere exemplify the forms of ethnocentrism that I discussed in the third chapter. Despite Tea Party attempts to shed the racist label, Tea Party rallies still tend to be almost exclusively white person affairs.

A National Association for the Advancement of Colored People (NAACP) report on the Tea Party published in October echoed the widespread concerns of endemic racism within the movement. According to the report, “The Tea Party movement has unleashed a still inchoate political movement who are in their numerical majority, angry middle-class white people who believe their country, their nation, has been taken from them,”¹⁵⁹ Addressing specifically the issue of President Obama’s birth, the New York Times, in its reading of the report, stated that the leaders of five of the six major nationwide networks within the movement, as identified by the NAACP, “have raised questions about the validity of President Obama’s birth certificate.”¹⁶⁰ It bears noting that the report did not imply that all Tea Partiers are racist; however, it expressed concern at the movement’s seeming unwillingness to recognize and condemn the substantial contingent within their ranks who have espoused values of white supremacy and racial intolerance.

The NAACP report recognizes the relative diversity of opinions represented by the Tea Party and its authors are careful not to generalize; however, I believe some generalizations can and should be reached. A brief look into the background of those individuals who are funding Tea Party activities, for example, exposes much about the actual goals that the movement’s activities aim to achieve. In an op-ed written by New York Times opinion writer Frank Rich in August 2010, Rich argued that the “billionaires bankrolling the Tea Party” should make us question the legitimacy and substance of Tea Party grievances. As Rich explained, “There’s just one element missing from these snapshots of America’s ostensibly spontaneous and leaderless populist uprising: the sugar daddies who are bankrolling it, and have been doing so since well before the ‘death

panel' warm-up acts of last summer.”¹⁶¹ Rich's article reveals the propensity for a conflict of interest between the political aims of a citizen movement supposedly intended to reclaim individual agency for average citizens and the economic interests of an ultra-wealthy cohort of America's financial elite.

Rich's article was published during a week in which Jane Meyer wrote a related and influential article in the *New Yorker*, entitled “Covert Operations: The billionaire brothers who are waging a war against Obama.” Meyer's article exposed the Koch Brothers as the financial impetus behind the Tea Party movement. The Koch brothers, she asserts, “are longtime libertarians who believe in drastically lower personal and corporate taxes, minimal social services for the needy, and much less oversight of industry—especially environmental regulation.”¹⁶² It goes without saying that the interests of the Koch brothers are divergent from and in many ways contradict those of middle-class Americans.

The Koch brothers, though public about their lifetime philanthropic endeavors, have sought to be far more discreet about their political activities. In 2004 David Koch started the Americans for Prosperity Foundation, which, after a relatively humble start, has since become a major backer and mobilizing agent of the Tea Party movement. In July 2010 the Americans for Prosperity Foundation sponsored a summit in Austin, Texas called “Texas Defending the American Dream.” According to Meyer, “five hundred people attended the summit,” yet Koch “did not attend the summit, and his name was not in evidence.”¹⁶³ As Meyer further explains, the summit, which was meant to serve “as a training session for Tea Party activists in Texas,” was advertised as “a populist uprising against vested corporate power.” An advertisement said, “today, the voices of average

Americans are being drowned out by lobbyists and special interests, but you can do something about it.”” As Meyer points out, “the pitch made no mention of its corporate funders.”¹⁶⁴

Rich and Meyer, in exposing the self-interested beneficiaries of the Tea Party, reveal the glaring inconsistencies between Tea Party rhetoric and the ideological driving force behind the movement. The Tea Party claims to be a vehicle for citizen mobilization and increased political agency; however, these citizens are being mobilized in order to serve the interests of politically and economically powerful individuals who hope to fortify existing societal hierarchies that actually function to the detriment of average citizens. On the surface the Tea Party may seem like a movement to empower citizens, but by relying on the freedom-governance dichotomy it serves to undermine freedom while fortifying rule and its inherent hierarchical structures.

Returning briefly to my discussion of Jason Frank’s book *Constituent Moments* in Chapter One, Frank defines constituent moments as times “when the underauthorized...seize the mantle of authorization, changing the inherited rules of authorization in the process.”¹⁶⁵ In writing his book, Frank is concerned with the extent to which the people actually rule, whether or not they have authority or are merely the grounding of public authority for their representatives, and whether or not political power is seated in the people.¹⁶⁶ In conceiving of the people as “at once a constituent and a constituted power,”¹⁶⁷ Frank suggests that constituent moments may well consist of those instances in which individuals act as a “source of resistance to public authority.”¹⁶⁸

Tea Party members might argue that their so-called revolution could be considered worthy of a “constituent moment,” for a central Tea Party claim is that its

constituency is underrepresented. Yet my analysis has suggested that the Tea Party's not-so-revolutionary movement actually undermines citizen attempts to overcome entrenched political and social structures. The short-term effect of Tea Party activities may include the mobilization of citizens and increased political engagement; however, in the long term, the Tea Party's envisioned ends consist of returning to a certain form of status quo in which "the people" are likely even less powerful than they were before. The Tea Party's supposed reclamation of freedom, based on the fundamental assertion that the government impinges upon freedom, actually reproduces hierarchies of rule.

* * *

Through my analysis in this chapter I have aimed to reveal that the traditional assumption that freedom defies an established order is illusive and misleading. I have asserted that promises of stability respond to natural tendencies and anxieties but rely upon a proclaimed ability to predict and foresee that no regime possesses. Through promising stability, hierarchical regimes are able to promote the assumption that freedom is destabilizing and dangerous, and thus to induce the voluntary forfeiture of citizen freedoms. Contrary to most of the theoretical literature on this topic, I have proposed that freedom can coexist with certain forms of stable governance, namely a system in which the people govern.

In order to demonstrate the power of the prevailing assumption that freedom and governance are opposed to one another, in the latter half of the chapter I initiated a discussion about the Tea Party movement, whose message and platform rely on this assumption. My discussion of the Tea Party showed how this oppositional framework can be employed deceitfully as a means of fortifying the hierarchical political structures. I argued in this section that the Tea Party has developed and disseminated theories of

antihistory, ideologies of ethnocentrism, and individualist conceptions of freedom in order reinforce a freedom-governance dichotomy that misrepresents freedom and reinforces rule.

V. Conclusion

In *On Revolution*, Arendt writes, “Thus it has become axiomatic even in political theory to understand by political freedom not a political phenomenon, but, on the contrary, the more or less free range of non-political activities which a given body politic will permit and guarantee to those who constitute it.”¹⁶⁹ I have written this thesis against the political backdrop that Arendt describes, and in response to an increasing tendency to conceive of freedom as apolitical. I have written about a country in which political action and activism, and even a clear interest in politics, are looked down upon. America is a place where politicians are still enemy number one, even with middle-class families still reeling from the residual effects of a devastating financial disaster orchestrated by Wall Street’s millionaire elites. Freedom, it seems, has been so disassociated from the political sphere, that freedom and politics only metaphorically come into contact when it is alleged that a private and individualist form of freedom is under assault by politicians. It seems ironic that freedom is considered sacred in the U.S. and yet the content of political freedom is rarely, if ever, actually experienced.

Since the Revolutionary War, America has undergone an odd political evolution, defined largely by passivity and withdrawal. For centuries Americans have assumed that the U.S. is ahead of everyone else—more democratized, more liberalized. But this sense of political sophistication has only bred a justification for complacency and provided a reason to accept the status quo. The recent rise in grassroots political activity might have appeared to be a promising sign, but it has since become clear that these anti-government protests are the product of a corporate-funded distraction campaign. The rise of anti-government sentiment during the Obama administration has not produced political

freedom's reawakening, but has instead compounded our collective confusion about who we are and where we are headed.

So it might be asked why I have chosen to write about freedom, especially now. In conversations over the past nine months, I have been asked, on a broader level, why I chose to write a theory thesis: "Why not write about something tangible, something real?" The only response I can muster is that writing about a particular political issue would be unfulfilling. It would involve surrendering to the dominant discourse of the day by addressing a symptom of America's political identity crisis but not the source of it. The fact that we already value so highly a misguided notion of freedom leads me to believe that it is still worth asking whether or not people might eventually be convinced that they should care also about their political freedoms.

As I wrap up this project I must admit that I am no more confident about the future of American democracy than I was before I began; however, optimism has never been the primary criterion by which a work of political theory should be judged. I do not suggest that this thesis is an antidote or even a partial solution; rather, this work should stand on its own as the reflections of a frustrated young democrat.

What I have written is timeless in its devotion to democracy, yet uniquely contemporary in its choice of targets for criticism. This thesis can be read in many ways. It is at times a story about challenges to freedom, both past and present, and the way these challenges are reinforced by mainstream political discourse and the state legal apparatus. At other times, it is a selective and highly limited history of turning points in American politics that provides a hypothesis about when and where America started moving away from democracy and toward rule by a powerful few. But above all, what I

have sought to provide is a different way of thinking, interpreting, and ultimately responding to political events. In my selection of theorists to consult, case studies to discuss, and theoretical frameworks to develop, I have tried to create a unique work that might encourage the reader to think about political life in a new way. While Arendt tells us that freedom is a condition experienced through action, I might add that the most important precondition for freedom is a way of thinking that makes freedom desirable, possible, and worth striving toward.

In some sense I hope that my completion of this work will provide a voice for the people whom America's trajectory away from freedom has left behind. The America that I live in is a place defined by unfulfilled expectations and broken promises. It is a place that so badly needs widespread inclusion in public debate and political decision-making, but which is becoming less likely to reach these ends with each passing day. Real democracy is something of a fantasy at this point, a distant dream that is unlikely to ever be realized.

What I have tried to provide is a thorough critique of the ways in which freedom is conceived and repeated in political discourse. Through examining distinct time periods such as the founding and the age of globalization while contemplating enduring questions regarding the limits of free speech rights and the proper balance between freedom and organized governance, I have attempted to show how certain responses to contemporary problems derive from similar responses to past challenges. I suggest that the repetition of these responses has produced a general shift further away from substantive freedom and toward a more solidified and stratified political system of exclusivity and hierarchical rule.

In addition to my critiques, I have provided a different way of conceptualizing freedom that wrests the responsibility of political decision-making away from the powerful few and returns it to the body politic. This conception of freedom derives primarily from the theoretical writings of Hannah Arendt. Like Arendt, I believe conditions of substantive freedom not only can coexist with democracy, but in fact reinforce and fortify democratic institutions. My devotion to democracy is based on the Arendtian notion of no-rule and the idea that true governance by the people might enable the weakening of those political institutions that solidify and aggravate existing inequalities. I believe that only through striving toward democratic “no-rule,” can we, in Arendt’s terms, “build a new house where freedom can dwell.”

NOTES

INTRODUCTION

¹ Wendy Brown. "We are all democrats now," *Theory & Event* 2010.

² Jill Lepore, *The Whites of Their Eyes* (Princeton: Princeton University Press, 2010) 16.

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¹⁷ I use the phrase "certain citizens" because it is essential to remember that the framers of the Constitution were primarily concerned only with the interests of white land-holding males. Women were excluded from the deliberative process as were slaves. In this sense, the Federalist Papers were largely an attempt to appease white males and their land-holding interests.

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CHAPTER V. CONCLUSION

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