RECONSTRUCTING LEGITIMACY

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INTRODUCTION

The dismal state of the world's poor can hardly be overstated, despite decades of development strategies on the part of the world's rich. According to the 2008 UNICEF report on The State of the World's Children, for example, the infant mortality rate of children in industrialized countries is about 4 per 1,000, while in the least developed countries the figure is around 90 per 1,000; in Sub-Saharan Africa 2,000,000 of the world's 2,300,000 children are living with HIV/AIDS; South Asians earn an average income of 777 USD, while industrialized countries enjoy 37,217 USD; the lifetime risk of maternal death of women living in the least developed countries is 1 in 24 and 1 in 8,000 in the most developed; 29% of children in the least developed countries work; 41% of people world-wide do not have access to adequate sanitation facilities. Statistics like these are easily overwhelming, and asking if the numbers are improving, declining, or exaggerated seems beside the point. They represent human rights issues of the highest order.

Faith in the free market and international aid, whether publicly or privately financed, have been two primary ways of dealing with these problems, and institutions like the World Bank have been at the center of debates surrounding development strategies. Economic theorists have struggled with the question of what *can* be done, or perhaps, what is wrong with the ways things have been done (Easterly 2006; Evans 2004; Stiglitz 2003, 2006). William Easterly, Senior Advisor for the Development Research Group of the World Bank, for example, argues that a "slowdown in developing country

per capita income growth from 2.5% in 1960 to 1979 to zero over 1980–98" can be seen when the countries of the South are weighted equally, despite major initiatives by the Bank (2001, 211). If "necessary" investment, education, population control, and debt forgiveness have proven ineffective, these theorists have been concerned to find different means of achieving more equitable living standards.

When confronted with questions about the place of international institutions like the World Bank, many moral and political philosophers have tried to assess what *should* be done. While few argue that we live in the best possible world, it is unclear what moral obligations, if any, citizens in industrialized countries have, or what the grounds of such obligations might be. Aristotelian (Nussbaum 2000), Utilitarian (Singer 2004), and Kantian (Pogge 2002) arguments have been used to tackle issues of globalization on a private level (see also Appiah 2007). But the inequalities of the global world can be addressed on a public, or institutional, level as well. Global democratic theorists are concerned with exploring the ends, if any, global institutions ought to express. However indirectly, they suggest that the World Bank should promote rights (Held 1995), autonomy (Bohman 2007), or ends determined by some kind of impartial procedure (Benhabib 2006, Rawls 1999). Or they argue that there are no such ends and that international institutions cannot be legitimate, though they may be useful (Dahl 1999).

Since these philosophers aim to help make global institutions like the World Bank more legitimate, a natural question to ask is: do they? This is a difficult question for a number of reasons, but, by looking at the kinds of questions that such theorists ask, we may move towards a way of answering it. A major orienting concern of global

democratic theory is the problem of legitimacy, which can be stated in many ways: What ends must international institutions express so that their decisions and actions are binding on those affected by them? What are the shared moral beliefs, if any, which, if institutionalized, could foster lasting peace and stability? What values define the limits of moral obligation to legitimate international institutions and when do the later become coercive? Although global institutions may not seem to face legitimation issues like nation states do, since they do not often have as much coercive power, they still have great social, political, and economic consequences for which they must be held accountable.

Despite much consensus about the problems global democratic theorists should answer, there is no agreement about the ends or the procedures providing the ends that define legitimate global institutions. Since this theoretical standoff has practical effects, it raises a few issues regarding the goal of defining universal ends for international institutions. 1) Is it the case that different contexts all require the same ends? Should the ends of the World Bank, the United Nations, and various Non-Governmental Organizations be the same? Might not different people have different, legitimate purposes for making use of such institutions? 2) Is it the case that the conditions and effects of institutionalizing such ends should not affect their validity? If, for example, the World Bank cannot be reformed to create conditions of autonomy, is the value of autonomy affected? 3) Is it the case that political philosophers could determine these ends apart from questions 1 and 2 without working with people trying to take control over their lives? Questions like these are not new, yet they are difficult to take seriously,

as it is unclear how investigations into conditions, effects, and purposes could lead to anything but a relativistic legitimation of war, coercion, and rebellion. I believe, however, that it is possible to raise such concrete concerns and still talk about legitimacy—though the meaning of legitimacy may have to be modified.

This reconstruction of legitimacy I undertake in this dissertation continues many recent attempts to pluralize political inquiry, such as those based upon Rawls's "fact of reasonable pluralism." However, I suggest that a truly pluralistic investigation of the legitimacy of global institutions may involve an experimental methodology in which philosophers and other intellectuals are co-investigators of public problems rather than definers of ends to be instantiated by laypeople. If institutions are to be criticized according to their conformity to universal ends, it is far from clear how disagreements between experts and laypeople could be resolved. Furthermore, philosophers or other experts can easily become entangled in endless disputes over which universal ends are valid, since, in the abstract, many ends are plausible. For these reasons, I suggest that *for whom* a set of ends is legitimate should depend upon the conditions and effects of realizing them for specific purposes, such as those defined by a public problem. Such an experimental methodology does not assume any connection between values and their validity nor any experts' claims to representativeness.

To develop an experimental political methodology and reconstruction of legitimacy I will draw upon John Dewey and Michel Foucault. I make this seemingly unlikely pairing for more reasons than personal preference. First, both thinkers attempted to engage in experimental political inquiry and describe the ways in which their work

might be different from expert-centric political theory and practice—Marxism or Neo-Liberalism in both cases. While many political philosophers begin with contemporary problems, Dewey and Foucault worry that their inattention to the effects their theories make possible and the purposes for which they are made is likely to lead to endless debates and uncritically exclusionary application. Marxist or Neo-Liberal solutions could work for a variety of problems; the question is: for whom do they actually work? Dewey and Foucault did not think that this could be answered by experts or laypeople alone. Instead, in the reconstruction of institutions, norms, and practices, the differential effects of such theories could be evaluated by all those involved in their use for ameliorating public problems.

The second reason I have chosen Dewey and Foucault in a reconstruction of legitimacy—a concept neither used—is to put pragmatic and post-structural traditions into dialog with questions they often eschew, such as those of post-Rawlsian political theory. In this way, the contributions to and differences between methodologies which become manifest might be productive for all three sides and provide new avenues of inquiry. Without trying to turn Rawls into Dewey or Foucault into Rawls, I would like to explore a possible space between these three important thinkers in which each has something to offer. There are, of course, many theorists who have explored some aspects of such an engagement already. I hope to add to and perhaps shed light on such work, rather than theoretically disprove previous attempts. Of course, this will be a selective reading and some aspects of each thinker will be overlooked in favor of those more salient to my project. Instead of giving a definitive interpretation of Rawls, Dewey, or

Foucault, I aim to use some of their ideas to aid in the alignment of global democratic theory and practice. To the extent that they do this can my interpretations be said to be correct.

This dissertation does not seek to refute anyone, since the value of the ideas put forward here should themselves be evaluated by those seeking to ameliorate their situations. However, I will try to show a space in which an experimental approach to global democratic theory and practice could be compared to one committed to universal legitimacy. I do not believe that theorists who accept the universal framework of legitimacy commit a logical fallacy or make bad assumptions, though I believe that expert-centric and insoluble questions global democratic theory undertakes shows that other avenues of inquiry should be attempted. My main task is simply to show that other assumptions, questions, goals, and methodologies are possible. There are many ways that theory and practice could be better aligned, but I believe that a major blockage to experimental inquiry is theoretical. The alternative to universal legitimacy is illegitimacy, whim, and infinite coercion only if certain premises are assumed. Rather than refuting these assumptions and proving the universal value of experimental political inquiry, I hope to show the potential value of this framework for a specific problem.

In Chapter One, I will outline the theory and practice of a universal framework of legitimacy. John Locke makes clear its goals, questions, and assumptions, while Karl Marx, Carole Pateman, and Michael Sandel indicate some of its effects. If theorists try to define a set of ends that represent everyone's interests and could thus provide a manifest limitation of the coercive power of governments, which, if instituted, would foster

stability and moral obligation, they must draw upon philosophical arguments like the description of human nature Locke provides. Since Locke's ends do not seem to represent everyone universally, John Rawls suggests that, if universal ends legitimate states must express are to be found, it will be by an overlap of political arguments made in abstraction from plural moral doctrines. In practice, however, reflective equilibrium places a heavy burden on philosophers to invent an overlapping consensus, since universal ends do not actually exist. Reflective equilibrium does not explain who could arbitrate a difference between laypeople and experts nor what should be done when no consensus can be obtained. If experts are still to define universal ends so that certain effects, like a decrease in coercion or increase in obligation, can occur, political liberalism may not be as pluralistic as Rawls intends.

A less expert-centric and more pluralistic attempt to criticize and transform institutions might be possible if, as I suggest in Chapter Two, one does not assume that universal ends are universally valid. Drawing upon Dewey, I will develop an experimental methodology that does not assume any particular relationship between ends, means, conditions, or effects, such as that institutionalization of a specific end will reduce coercion, create stability, or foster moral obligation. On an experimental account, the validity of a value or institution, such as negative freedom or the judiciary, depends upon its conditions and effects for specific purposes. In political matters, conditions, effects, and purposes themselves are defined by public problems. Whether or not an expert's hypothesized set of ends is legitimate, then, will depend upon the conditions and effects of reconstructing an institution, norm, or practice according to such an end for the sake of

a ameliorating a publicly-determined problem. Similarly, an institution's legitimacy depends upon its conditions and effects for dealing with the same. This experimental account of legitimacy is not radically agonistic or relativistic because previous legitimacies will inform current courses of action and the legitimacy of certain choices will depend on their effects for certain people. Creating more legitimate institutions, norms, or practices will often depend on allowing new voices to be heard, producing new names for problems, or creating new means of change.

In Chapter Three, I will use Foucault to indicate a number of ways in which experts might contribute to such attempts to increase possibilities for communication, imagination, and transformation and reconstruct typical practices of criticism. If philosophers are not to define ends which are then to be applied by laypeople, they, like other experts, might be understood as fellow problem-solvers. Though there are different tasks for different kinds of experts within experimental political inquiry, political philosophers may be able to effectively problematize or re-problematize political problems so that different ways of thinking about and acting upon problems are possible. Other peoples, events, or technologies could produce new problematizations, but philosophers may be best able to understand the differential histories of certain problem frameworks and their effects so that they can suggest new reconstructions. A problematization—such as negative rights vs. positive rights or prison reform vs. increased incarceration—is not an answer to a problem; rather it is a framework in which people can understand and address their problems. On an experimental account, criticism is not the application of valid values. Instead, to the extent that a problematization or re-

problematization makes better effects possible can it be said to be critical.

Once I have juxtaposed the theory and likely practices of universal and experimental accounts of legitimacy, in Chapter Four I will be able to bring this distinction to bear on the problem for which it was made. First, I will show how many global democratic theorists accept the universal framework of legitimacy and thus attempt to define a set of universal ends which could represent the entire world so that global institutions could be criticized and reformed accordingly. The different ends and arguments they suggest have no clear solution nor means of arbitrating between them. Though there are many forms it could take, an experimental account of global legitimacy, however, would ask: for whom are any such ends legitimate? What are their conditions and effects for specific purposes? These methodological questions might entail new ways of reconstructing existing institutions, norms, and practices that affect large numbers of people. For example, one could ask, in what ways do they cut off possibilities for other interests to be communicated? How might other problematizations be imagined? What means exist for appropriate transformation? These are concrete, pluralistic, and experimental questions which cannot be answered by theorists alone. For this reason, I cannot guarantee any value or use of the framework that orients them. I end this dissertation with an invitation to experiment with the different possibilities this intersection of theories, questions, and goals might make possible.

CHAPTER I

UNIVERSAL LEGITIMACY

Few issues have been as central to political philosophy as the problem of political legitimacy. Historically, theories of political legitimacy have defined the ends that limit the coercive force of the state by reference to a shared human nature or universal moral law. For instance, we can judge if a government is legitimate if it maximizes the greatest happiness, is directed by public reason, expresses the general will, or protects certain rights as trumps.[1] The validity of these ends is shown by philosophical argumentation

1 The search for a universal criterion for the criticism of the state can be found in many traditions in political philosophy. I will show how some of these lines of thought could be understood as taking part in what I call the "universal problematic of legitimacy" in footnotes throughout this chapter. I will leave discussion of communitarianism, feminism, and deliberative democracy until Chapter Four. Whether through appeals to human nature, to reason, or to both, the social contract tradition has attempted to define universally-accessible criteria or principles that set limits to the state. Though not everyone may hold these principles, they only need to reflect upon human nature or the requirements of reason to understand them and carry out their own criticisms of widespread institutions. These definitions of legitimacy provide a guide for creating stable governments and limit what could be a valid ground for dissent or rebellion. They show us when the government justly or unjustly coerces people. Finally, they show us our moral obligations, since a legitimate state's laws would be those we have, or could have, authored ourselves.

Besides Locke and Rawls, whom I will discuss in some detail, other canonical social contract theorists are also involved in universal definitions of legitimacy. Thomas Hobbes seeks to understand the art by which the artificial man—the state—could be created by inquiring into the passions of man in his *Leviathan* (1996 [1651]). The fear of death is the basis upon which the prudential state could be legitimated, and anyone who disagrees can but consult themselves to see the same thing. Immanuel Kant reasons that, since man is an end in himself, the state must provide a place for public discussion about the state's laws, even though we must obey them privately (1991). The monarch should only make laws that no one could reasonably reject—those that increase enlightenment or are the means by which such augmentation could occur. Anyone who consults their own reason can see that certain stipulations on reason may be required for greater reason in the long run. Jean-Jacques Rousseau's *Social Contract* argues that the legitimacy of the state rests not in any account of human nature or reason, but whether or not it expresses the will of the people (1997 [1762]). If anyone doubts if the state represents their best interests, they need but consult whether the will of the government represents the general will. When the general will goes a certain way, those who dissent may have to correct their opinions accordingly. Finally, in *On Liberty*, John Stuart Mill claims that self-protection limits

and not public participation, except insofar as the public is able to participate in philosophical argumentation. According to these thinkers, people can be shown to value certain ends over all others, no matter what they believe. The greatest happiness ought to be maximized, because humans are pain-avoiding and pleasure-seeking creatures; the state can only enforce what all people could agree to, since people are ends-in-themselves. If these criteria are not met or are overstepped, a government can be judged illegitimate. Politicians, social critics, and activists may then work to reform the government or take part in a revolution, but people do not have any moral obligation to continue to live under such conditions.

Answering the question of political legitimacy helps to deal with a set of related questions: How can coercion be minimized? How much should people have in common in order to form a common will? How can stability be ensured? When can people revolt or conscientiously object? In short, defining the legitimacy of the state goes a long way towards defining the space of politics—the government's decisions, laws, and judgments as well as citizens' demands and obligations—though each criterion of legitimacy does so in different ways. For instance, civic republicans tend to demand much of citizenship and require the state to have a formative role in civic education, while liberals often believe

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legitimate interference in both morality and politics, since it is of the greatest utility (1989 [1851]). Our human nature as pleasure-seeking and pain-avoiding makes both the criterion of utility and the harm principle evident.

All of these thinkers have made important contributions to how we might think about the state, the space of politics, and the rights and duties of citizens. However, I will suggest that, as the many definitions they give shows, no one criterion is universally right. Each and any may be useful for certain purposes. The question, then, is to understand what these purposes are and when they are served. As I will explain in more detail in this chapter, Locke's critics give reason to think that this cannot occur without reference to the conditions and effects of theoretical tools. In the second and third chapters, I will give some examples of the ways in which the validity of a definition of legitimacy might be determined for specific purposes.

that individuals should be able to define the good in their own ways, as long as they do not infringe upon the rights of others. In fact, as coherent, comprehensive, and critical as existing criteria of legitimacy may be, the multiplicity of definitions shows no clear consensus and no way to decide between them. Such theories may have paradoxically led to a decrease in legitimacy, since one criterion of justice often seems just as good as any other in the abstract. Even recent endeavors to provide procedural definitions of legitimacy are no less divided than substantive accounts and are far less clear about what must be done to reconstruct our institutions.

Though new developments in political philosophy have recognized the limitations of theories based in moral, philosophical, or metaphysical doctrine, I would like to suggest that they face similar difficulties if they do not rethink the traditional problematic or framework of legitimacy itself—that is, its assumptions, goals, questions, and practices. The multitude of different solutions that have been provided may show that the attempt to find one definition of the legitimate state in theory is a mistake. If the concept of legitimacy is to be a critical tool for the betterment of human conditions and not simply a site of abstract disputes having unpredictable effects, it may need to be reconstructed. I will argue that, though the need for a radically different political theory has been widely recognized—beginning with what John Rawls calls the "fact of reasonable pluralism''—there is good reason to think that the universal framework of legitimacy itself is one of the largest hindrances to the realization of a political practice that takes pluralism seriously.

Before developing such an alternative, I should clarify some of the goals,

questions, assumptions, and practices that typically define what I call the universal framework of legitimacy. No one of its aspects can be said to be primary, for I will try to show that each reinforces the others and that, together, they all form a particular image of political theory and practice. John Locke, who was instrumental in constructing this framework, tried to set limits to government by appeal to a state of nature that defined men's moral ends. This theoretical innovation is motivated by and allows him to answer a set of questions regarding the limits of the coercive power of the state, the possibility of avoiding modus vivendi, and the moral obligations of citizens. I will argue that this goal and set of questions are themselves funded by an unspoken assumption that political and moral questions can be answered without political or public engagement. Locke believes that philosophers have to define the shape of politics before politics could occur in the right ways. However, Karl Marx, Carole Pateman, and Michael Sandel give good reason to think that the formulation of a theory should not be disconnected from practice, for the conditions and effects of putting a theory into practice constitute its meaning; they cannot be said to be mere contingencies of its application. These criticisms suggest that people themselves should be involved in defining the legitimacy of their institutions, which, despite his emphasis on consent, Locke is far from allowing.

Recognizing that theories claiming universal legitimacy are often legitimate for only a particular group of people, John Rawls epitomizes the procedural attempt to take account of reasonable pluralism.[2] If a shared conception of constitutional essentials could be discovered in a given country, this might happen by appeal to political reasons,

2 Though Locke and Rawls are often considered liberals, it is not their liberalism that concerns me here. As I will suggest throughout, though cannot demonstrate in any detail, many political philosophers have undertaken the universal framework.

rather than substantive intuitions. The process of reason-giving replaces an appeal to moral intuitions or human nature. However, someone must first determine what counts as a reasonable reason, and Rawls does not make it clear how reflective equilibrium allows conflicting people to define the space of reason themselves. Further, he does not explain how people could evaluate the entire framework of political liberalism. Dealing with these serious issues thus falls to philosophers, experts, or those in power, since universal consensus does not exist. Though Rawls gives an inventive procedural answer to a question that has often been substantively addressed, he still assumes that legitimacy must precede politics. While he may not beg any substantive questions in theory, those who actually determine what counts as legitimate, in practice, will.

In short, the assumption that legitimacy can be defined apart from politics is likely to take laypeople out of such definition and itself requires justification. Given the fact of reasonable pluralism, one cannot assume that philosophers or any other expert could represent the people of a country without their actual consent. Because people do not universally agree, however, legitimacy may need to be reconstructed to take pluralism into account. This cannot be achieved by making minor adjustments to the universal conception of legitimacy. If political theory's plural effects for plural peoples are to be addressed, we will have to rethink its theory and practice. Embracing pluralism does not mean that we must turn to strategy, propaganda, and the affirmation of "our" values, for the "realist" rejection of legitimacy maintains the same terms of the debate.[3] Just as

3 Though I cannot make an extended defense of the claim, I would like to suggest that the "realist" attempt to abandon claims of legitimacy is problematic for two reasons. First, it maintains the framework of legitimacy as a search for a universal criterion by which states and other wide-spread institutions could be judged. And, second, it takes part in the same question-begging practice—which I

epistemological realism is simply the other side of the coin of idealism, since both accept truth as correspondence, many doctrines that reject legitimacy accept its definition. To undercut this dichotomy and form a third path that is neither skeptical nor dogmatic, I will propose an alternative framework of legitimacy, though it is first necessary to understand what it will be an alternative to.

The "Original of Political Power ... and knowing the Persons that have It"

John Locke presents one of the clearest pictures of the universal framework of legitimacy in his *Second Treatise of Government*. By solving the problem of rightful rule, he hopes to avoid the coercive and unstable rejection of legitimacy espoused by Thomas Hobbes. Like Hobbes, however, he attempts to define legitimacy through a

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will later term the appeal to "prior consent"—by putting forward a criterion of illegitimacy which is not to be validated by any actual people. Thus, for instance, in *Capitalism, Socialism, and Democracy* (1942), Joseph Schumpeter appeals to markets instead of a coercive "common good." If people are to decide how they are to be ruled, the ability to choose should trump anyone's particular preferences—one may get one's way at the next vote. Judge Richard Posner, in *Law, Pragmatism, and Democracy* (2003, cp 2004), makes a similar claim that society is composed of rulers and ruled—or, perhaps, wolves and sheep. If the ruled do not like their rulers, then they should do something about it. Democracy at least allows that. Requiring deliberation about the common good is likely to increase discord rather than created a more just society as a whole. Finally, Richard Rorty has argued that democracy does not need any universal foundations (1989, 1996). If democracy is legitimate for some people, it is because they have inherited certain beliefs about the importance of the split between the public and the private, for example (1987). Increasing the legitimacy of democracy is more a task of spreading democratic language games than criticizing any institutions—for on what basis could such criticisms be grounded?

Though often making refreshing critiques of universal standpoints that are clearly not universal, realist rejections of legitimacy often fall into the same kinds of practices. Are there not other ways to structure choices besides markets, especially given well-known criticisms about choice ordering? Are there no guidelines for the ways that the wolves rule the sheep which might transcend any ideologies the sheep might hold? Are there no other social ontologies than agonistic language games? To avoid both idealist and realist accounts of legitimacy, I suggest that a different practice of political inquiry may help evaluate the multiplicity of criteria that have been proposed. In Chapter Two, I will suggest that the value of political philosophies—be they market-based, utilitarian, Marxist, etc.—can be judged concretely by their value for people working through public problems. In theory, any of these accounts might be useful. To see how these hypotheses are actually legitimate, a different theory and practice of legitimacy might be useful.

political treatise by appeal to a state of nature to which actual people do not consent. The state of nature provides the criterion by which a political state can be judged and forms the space within which actual consent might occur. The concrete effects of instituting a Lockean state, however, have not been the freedom and equality to which all people could have consented. Locke's account requires a contract prior to the consent of the original contracting parties that limits who is allowed to contract and what their ends are supposed to be. The exclusive definition of the state as a protector of universal goods like life, liberty, and property is legitimate for only a particular group of people, i..e, enlightened, white, male, property owners. That such a prior consent and its exclusionary effects cannot be contested to by actual people, I will suggest, is due to the very problematic that defines legitimacy by universally shared ends.

The *Second Treatise* begins with a problem: If, as the *First Treatise* showed, monarchs cannot be known to be rightful rulers by being descendants of Adam, how could any rule be said to be legitimate? If God does not legitimate our rulers, doesn't might make right? Locke sets himself the task of showing the possibility of right rule, writing, "he that will not give just occasion, to think that all Government in the World is the product of only Force and Violence, and that Men live together by no other Rules but that of Beasts [...] should of necessity find out another rise of Government, another Original of Political Power, and another way of designing and knowing the Persons that have it" (§1.1; 267-8). If we are not to live like "beasts" and are to understand what rightful authority is and who has it, we should uncover the shape and origin of just power. We are invited to ask two related questions: On what basis do legitimate governments

arise, and how do we know when a government is legitimate?

To understand the origin of political power, we may first note that it is only governments that have the "power of a *Magistrate* over a Subject" (§1.3; 268). We are here embarking on an inquiry into a very specific kind of relation, one that is not the same as that of a "*Master* over his Servant, a *Man* over his Wife, [or] a *Lord* over his Slave" (§1.3; 268). What differentiates political power from these others? Perhaps the first thing to notice in the special relation between sovereign and subject is the juxtaposition of force and right. The difference is not characterized by the presence or absence of force but of an improper use of violence and a proper one. Anticipating Max Weber,[4] Locke explains that governments have the "*Right* of making Laws with Penalties of Death, and consequently all less Penalties, for the Regulating and Preserving of Property, and of employing the force of the Community, in the Execution of such Laws, and in the defense of the Common-wealth from Foreign Injury, and all this only for the Publick Good" (§1.4; 268). Political power involves legislative, executive, and, as is elsewhere made clear, judicial institutions that may use force against members of the state, but only so long as this is exercised for the sake of the public good. The difference between rightful power and mere power is, at the very least, the ends involved.

To identify the common good, or the origin and end of political power, Locke provides his well-known account of human nature. People are, by nature, free and equal, limited only by natural laws. These are not simply the laws of physics but are primarily moral obligations. Locke explains that "Reason, which is that Law, teaches Mankind,

4 I refer to Weber's classic definition of the state as "a human community that (successfully) claims the *monopoly of the legitimate us of physical force* within a given territory" (1946*,* 78).

who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions" (§2.6; 271). Our human reasoning gives us access to a moral imperative to respect the life, liberty, and property of others. These moral laws can also be deduced from the omnipotence of God, "For Men being all the Workmanship of one Omnipotent, and infinitely wise Maker; All the Servants of one Sovereign Master, sent into the World by his order and about his business, they are his Property, whose Workmanship they are, made to last during his, not one anothers Pleasure" (§2.6; 271). We, being the property of God, should not injure anyone else, including affronts to their property. This demand proscribes not only homicide and suicide but many lesser thefts as well.

Unlike a physical law that cannot be broken, however, the laws Locke is interested in describing often do not describe reality. All humans should obey the natural law that God's omnipotence entails, but human imperfection makes this so difficult that our default natural state is one of war. In a just state, "there lies open the remedy of appeal for the past injury, and to prevent future harm: but where no such appeal is, as in the State of Nature, for want of positive Laws, and Judges with Authority to appeal to, *the State of War once begun, continues*" (§3.20; 281). The state of nature then describes both the moral ideal of freedom and equality as well as the unequal and unfree existence of humans before states existed—and even now continues, particularly in absolute monarchies (§7.90; 326). Humans may naturally know what is right, but, as imperfect creatures, they need institutions to make such ideals into reality. However, even if the state creates the most just conditions possible, it will never be a guarantee against human

nature.

That war is the natural state of affairs when there is no stable power to enforce the rights entailed by our nature as God's property provides "one great *reason of Mens putting themselves into Society* and quitting the state of nature" (§3.21; 282). Unlike Hobbes's prudential conception of law, Locke explains that "Law in its true notion, is not so much the Limitation as *the direction of a free and intelligent Agent* to his proper Interest, and prescribes no further than is for the general Good of those under the Law." A true government's laws are never coercive but are in fact extensions of our moral nature. The law is created for the sake of the good, "So that, however it may be mistaken, *the end of Law* is not to abolish or restrain, but to *preserve and enlarge Freedom*: For in all the states of created beings capable of Laws, *where there is no Law, there is no Freedom*" (§6.58; 305-6). True freedom is only lasting under law, because our natural state is subject to the contingencies of might and trickery. However, the ends of the law—i.e., the protection of life, liberty, and property—are not a matter of deliberation or whim, but are instead shared obligations due to our true nature.

The moral law that defines our shared ends makes possible the critique of political or "*Civil Society;* the chief end whereof is the preservation of Property" (§7.85; 323, cp. §9.124; 351). Because political power is different from other forms of domination in that its ends are held in common, the "Publick Good" that the government is supposed to forward is defined only by the protection of property—life and liberty being subsumed under this term. Locke explains that "the power of Society, or *Legislative* constituted by them, *can never be suppos'd to extend farther than the common good*" (§9.131; 353).

Thus, the protection of natural rights is both an upper and lower limit on state action, and the sovereign's knowledge of these limits is "*the best fence against Rebellion*" (§19.226; 415). A stable government is one that expresses the ends of its people, and since anyone who consults natural law can criticize public institutions, there is no reason why the government should not do so—or at least be on its way towards doing so.

Though the ends of a just government are universally known, people still need to consent to form a community that enforces them. However unlikely or short-lived, it is possible that a multitude, or a group of unrepresented people in the state of nature, could have no need for a government. Locke assures us that "no one can be put out of this [natural] Estate, and subjected to the Political Power of another, without his own *Consent*. The only way whereby any one divests himself of his Natural Liberty, and *puts on the bonds of Civil Society* is by agreeing with other Men to joyn and unite into a Community" (§8.95; 330-1). We cannot be subject to the laws, judgments, or punishments of a particular state unless we have actually agreed to them—even if they do express what must be the common good. If this consent has not occurred, we risk infringing upon others' natural rights of freedom and equality, since "Where-ever therefore any number of Men are so united into one Society, as to quit every one his Executive Power of the Law of nature, and to resign it to the publick, there and there only is a *Political, or Civil Society*" (§7.89; 325).

We have now answered the two questions Locke posed for himself concerning the origin and recognition of just rule: how do legitimate governments arise and how do we know when they are legitimate? First, political power is distinguished from other uses of

force when it carries out the shared ends of the community, which are delimited by the natural moral law that God's omnipotence entails. Second, just political power can be recognized when people consent to the enforcement of their common ends by a particular government. If these two conditions exist, not only is the state's power not coercive but people should be morally obligated to follow its laws. The protection of life, liberty, and property, as philosophically justified by the state of nature, provide criteria that define the space of politics by limiting the actions of the state and the reasons people could give for dissenting to it. If a government protects property, and nothing else, its people should enjoy lasting peace, for, when it has to use force against its people, it only does so to enforce the moral laws that people already accept. There would be no reason for people to revolt.

Prior Consent

Locke limits public activity to the consent or dissent to an original contract, though the ends that any legitimate government should express are defined by natural law. This definition of the common good without common participation demonstrates what I will call a *prior consent*, or a contract prior to that of the original parties that preconstitutes *the people* and *their ends*. In this way, "the people" *could be* said to consent to a state that expresses those ends, since, in any modern society, they *do not* actually agree on any common ends. That the original party is composed of British, property owning, enlightened, males allows one to assume their "tacit consent" if the

government already protects property. In defining the "common" good prior to any contestation of it, Locke avoids asking for whom his natural law is actually legitimate. I would like to suggest that this is not simply an oversight on his part, for a project that seeks universal legitimacy cannot allow actual people with plural interests to determine what is really legitimate for them. A particular people and set of ends must then be presupposed. This logic can be seen throughout the social contract tradition, for such theorists emphasize consent even as they reduce it to a hypothetical construct. The goal of universally defining legitimacy provides a strong disincentive for inquiry into concrete values and legitimacies, as well as whether or not people actually consent to the "common" good that these philosophers define.

The negligible role that concrete consent plays for Locke is shown by his recourse to "tacit consent." Each individual should consent to submit to the state "as each comes to be of Age" (§8.117; 346), as is in accord with freedom and equality. But since the protection of property is the common good and end of political power, we consent when we have benefited from the institutions that express these aims. Locke explains that "every Man, that hath any Possession, or Enjoyment, of any part of the Dominions of any Government, doth thereby give his *tacit Consent*" (§8.119; 348). Since this agreement is tacit and is carried out by each in solitude—not in some kind of national assembly—"People take no notice of it, and thinking it not done at all, or not necessary, conclude they are naturally Subjects as they are Men" (§8.117; 346). In reality, however, this silence could mean many things. It could show that the state is legitimate, or it could be evidence that many peoples and interests have been silenced, either through physical

intimidation or through ideological conditioning. Locke could argue that people have every right to dissent if conditions are unsatisfactory, but the protection of property has already limited what counts as legitimate grounds for protest.

Hobbes makes the logic of prior consent particularly clear when explaining the mechanism of representation: "A Multitude of men, are made *One* Person, when they are by one man, or one Person, Represented; so that it be done with the consent of every one of that Multitude in particular. For it is the *Unity* of the Representer, not the *Unity* of the Represented, that maketh the Person *One*. And it is the Representer that beareth the Person, and but one Person: And *Unity*, cannot otherwise be understood in Multitude" (*L* 114). A multitude becomes a people (or person) only when represented by a sovereign—this requiring the consent of each individual of that multitude. Nonetheless, it is only through that sovereign that the multitude could become a people that could consent in the first place. If the sovereign is temporally and ontologically prior, this seems to assume that the multitude is already a people, yet if the unity of the people is first, this seems to assume that they are somehow already united by a form of representation. Hobbes breaks the circularity of this argument through his psychology, which guarantees that a multitude is unified by their common passions. Those "that encline men to Peace" and thus ensure that a multitude is a people "are Fear of Death; desire of such things as are necessary to commodious living; and a Hope by their Industry to obtain them. And Reason suggesteth convenient Articles of Peace" (90). The articles reason suggests, of course, are expressed by the form of sovereignty that Hobbes describes. The prior consent which determines the people and their ends, and thus the shape of sovereignty as

well, is the human nature described in the first part of *Leviathan*, "Of Man."

This practice is no different when a neutral procedure replaces a substantive set of ends defined by human nature. Kant explicitly states that majority rule requires a prior consent, for an "entire people cannot ... be expected to reach unanimity, but only to show a majority of votes.... Thus the actual principle of being content with majority decisions should be accepted unanimously and embodied in a contract; and this itself should be the ultimate basis on which a civil constitution is established." That this contract never actually occurs, being "merely an *idea* of reason," does not affect its bindingness. For, "so long as it is not self-contradictory to say that an entire people *could* agree to such a law [or contract], however painful it might seem, then the law [or contract] is in harmony with right" (my emphasis). It is "beyond reproach" and "carries with it the authority to coerce those to whom it applies, and conversely, it forbids them to resist the will of the legislator by violent means" (*PW* 79, 80-1). Kant is clear that since the people cannot come to agreement about the shape of sovereignty—or even concrete laws—the sovereign should make use of the subjunctive mood and decide what they *could* accept. Since the minority can always be imagined to endorse majority rule expressing their own interests, all the terrors that a tyrannical majority might author are to be considered legitimate, binding, and enforceable.

These examples give reason to believe that, if legitimacy must be universal, some prior consent will have to ground its definition. Since people do not unanimously agree, knowing what people *might have* in common requires a deduction of a shared human nature or a demonstration of fair procedures to which people never actually consent. In

the end, it is philosophers who define the common will, and, as history shows, many conceptions of legitimacy are possible. Majoritarianism is not the only sensible way of counting votes, as Kant seems to assume, nor is Hobbes' psychology the only way to describe human nature. Thus, a prior consent has to define the ends and the people who could be said to consent to one such criterion of legitimacy or another. It requires the multitude—and the sovereign—to have certain ends not determined by the multitude itself so that its consent can be assumed. Subsequent chapters will outline how people themselves could determine the legitimacy of states, but it will be useful to first see what some of the concrete effects of specific prior consents are, as well as the limitations of procedural attempts to minimize such exclusionary consequences.

Whose Ends?

Locke's formulation of and answer to the problematic of legitimacy has allowed for powerful critiques of human institutions if only the founding fathers of the American Revolution are to be counted among its inheritors. Nonetheless, the ends that appeared so obvious to him have lost their naturalness. The priority of life, liberty, and property is neither universal nor self-evident, and while few could opt out of God's moral law in Locke's time, this seems to be a distinct possibility today. The protection of property is not only an implausible common good, but it also has the effect of legitimating the ends of a certain group of people to the exclusion of everything and everyone else. Who has been given political autonomy and who has been made invisible through confinement to

the private sphere has been demonstrated by much careful work. Karl Marx, Carole Pateman, and Michael Sandel, amongst others, show these prior consents in Locke's thought and give us reason to doubt that the ideal of universal legitimacy can avoid particular exclusions which cannot be justified universally. It is, of course, possible that legitimacy might be defined without reference to actual peoples and their interests, but, as the history of the critiques of Locke and other liberals shows, this option looks less and less likely.

The Dispossessed

Among the many contributions Marx made to the critique of human institutions was his polemic against natural law theorists. Though Hegel and the Young Hegelians as well as political economists like Smith, Say, and Ricardo bore the brunt of many of his critiques, it was often because they took for granted key concepts developed by Locke. Those who accepted bourgeois society at face value did not see that existing relationships, ideas, and values, like the state of nature, were *effects* of an historical injustice and thus could therefore not form the basis of justice. The details of this critique developed from Marx's early engagement with Hegel's *Philosophy of Right*—which showed how, instead of grounding the state, civil society presupposed it morally and practically[5]—to his mature *Capital*. The thread that ties these works together is the

5 It should be noted that Hegel too saw that the supposedly autonomous man of civil society required the state for its existence (1991). The atomistic association of individuals is not natural but is produced and maintained by organizing structures and the habits they engender. For instance, Hegel argues that, instead of being guided by an invisible hand, the relationship between producers and consumers may require adjustment due to the fact that products are marketed, not to individuals, but to the public. Yet "the main reason why some universal provision and direction is necessary is that large branches of industry are dependent on external circumstances and remote combinations whose full implications

attempt to show both the false universality of liberal ideals and their historical causes.

Political economists and bourgeois intellectuals like Locke do not question private property's existence, let alone its good. While they "assume as a fact, in historical form, what has to be explained," Marx proposes that we should "proceed from an *actual* economic fact"—namely that the "worker becomes all the poorer the more wealth he produces" (*1844* 71). Despite the promises of liberation by thinkers like Locke and Smith, actual conditions belie the particularity of Locke's common good. Marx writes, "You are horrified at our intending to do away with private property. But in your existing society, private property is already done away with for nine-tenths of the population.... In one word, you reproach us with intending to do away with *your* property. Precisely so; that is just what we intend" (*MCP* 486, my emphasis). If political emancipation has been achieved, if the universal has become actual, why are so many still in chains? When so many have been deprived of a life worth living, does the protection of life do much good?

This could be the case only if we rigidly accept what has come to be defined as good. Despite concern over the years about Marx's scientism, it is clear that, above all, his dialectical materialism tries to show the historicity of social formations, ideas, and even language. We cannot become too comfortable with our theories and values if it is

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cannot be grasped by the individuals who are tied to the spheres by their occupation" (§236; 262). Market intervention is one way that it conditions civil society and its laws of supply and demand, but the state—in the broadest sense of the term—is also needed to ensure the proper education of its constituents. "[T]heoretical thought often imagines that the state is held together by force; but what holds it together is simply the basic sense of order which everyone possesses." In fact, the entirety of the *Philosophy of Right* can be seen as an attempt to logically demonstrate the dependence of all moral concepts, such as the atomistic man of the state of nature, upon a state's social constitution. This has been hitherto unrecognized, for "habit blinds us to the basis for our entire existence" (§268 addition; 289). This logic opens the door to Marx's more material analyses of multiple social forms, based in historically-determined means of production, rather than an ideal of sociality (Hegel's state) as such.

the case that the "ideas of the ruling class are in every epoch the ruling ideas" (*GI* 172). Life, liberty, and property, though perhaps noble ends in theory, have led in practice to unbelievable inequity and serve only to ideologically legitimize the bourgeoisie. Prefiguring his critique of liberal ideals, Marx writes, "This state, this society, produce religion which is an *inverted world consciousness*, because they are an *inverted world*" (*CC:I* 53). Locke's ends, which have only partially emancipated a part of the population, result from and reinstate an existing partiality in the state of society. True human emancipation would require the abolishment of the relations that make bourgeois private property possible as well as the universalization of access to the means of production.

By assuming the universality of the ends of life, liberty, and property, Locke conflated civil and political society.[6] Marx, however, tries to show an essential difference between the two. Civil society names the relations of producer and consumer, worker and manager, but political society only represents the interests of the bourgeoisie. Though the latter may act only to protect life, liberty, and property, civil society is based upon a relationship of inequality that ensures that this action works in favor of only the managing class. By positing life, liberty, and property as the only legitimate political ends, the "state abolishes, after its fashion, the distinctions established by *birth, social rank, education, occupation*, when it decrees that birth, social rank, education, occupation are *non-political* distinctions... But the state, none the less, allows private property, education, occupation, to *act* after *their* own fashion.... Far from abolishing these *effective* differences, it only exists so far as they are presupposed" (*JQ* 33). If life, liberty, and property define the space of the political, the unequal relations that are thus

6 For instance, see the *Second Treatise*, chapter seven, "Of Political or Civil Society."

deemed private are left out of common control. Perhaps these ends would be sufficient in a society of equals, but the state legitimates these differences by ignoring the inequalities of labor, birth, and education. It thus acts in the name of a particular and not common good.[7]

The Other Sex

Besides birth, social rank, education, and occupation, Marx omits sex, gender,

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7 It should be noted that, though Marx launched powerful critiques against natural law theorists, he faces similar problems in grounding political critique in an *historical* law. There are more and less charitable readings of Marx, but many have understood his work as having a scientific intent which could uncover the false consciousnesses of the both the proletariat and the bourgeoisie. The *German Ideology* and the *Communist Manifesto* most easily lend themselves to this reading, particularly when Marx and Engels seem to explain the stages of society as having some kind of inevitable logic. The question then becomes: how can those proletariat who do not experience themselves as oppressed, even after reading all of Marx's work, contradict those bourgeoisie who claim to be able to detach themselves from the ideas of the ruling class via their knowledge of dialectical materialism? The difficulties in answering this question have led theorists indebted to Marx into a variety of different directions and no clear solution (see Chantal Mouffe and Ernesto Laclau's *Hegemony and Socialist Strategy* (2001) for a helpful summary. They, however, reject legitimacy and in favor of an antagonistic realism (see footnote 2)).

In *History and Class Consciousness* (1971 [1923]), György Lukács, for instance, argues that theory and practice are united when the social structure can be viewed from a totality. The proletariat provide this point of view because the reification of social relations by and for the means of production objectively produces their subjectivization. Herbert Marcuse's *Eros and Civilization* (1955) uses a Freudian account of human nature to understand the concept of alienation as repression. This objective standpoint provides a way of distinguishing repression from surplus-repression, which might be avoided—surprisingly—by *increased* control over production. After trying to find a standpoint for the criticism of the state as a steering mechanism of private interest in the institution of the public sphere (1989 [1962]), Jürgen Habermas's *Theory of Communicative Action* (1984 [1981]) develops an account of reason that transcends cultures. Communicative action would show that the purposive rationalization of the life-world is irrational from the standpoint of communicative reason.

There are great differences among these thinkers, and they have different projects from those of Locke and Rawls, as, for instance, they tend not to be as concerned about moral obligation and the threat of moral obligation. They do, however attempt to find a universal standpoint from which the state or the basic structure of society could be criticized so that coercion could be justified (as Weber makes so clear). For this reason, they face many of the same problems of defending a universal criterion that is not experienced universally. Marxists and post-Marxists would argue, of course, that this is the very point. Since many do not realize that they are living reified lives, we need a standpoint from which we can transform their lives for the better. Despite—or perhaps because of—the number of attempts to provide such a criterion, however, such a project has not ceased to be problematic. I believe that a major reason for continued efforts in this vein is due to a an inability to understand non-universal critique. I will develop such an account in Chapter Three.

race and many other distinctions that have been marginalized in thought while being essential in actuality.[8] Carole Pateman has extensively shown that all of the classical contract theorists have rested their social contracts on a sexual contract that requires the subordination of women while giving men exclusive access to the realm of the public. She explains, "Once the original contract is entered into, the relevant dichotomy is between the private sphere and the civil, public sphere—a dichotomy that reflects the order of sexual difference in the natural condition, which is also a political difference" (*SC* 11). The very possibility of the split between public and private required by contract theorists, the classical theorists in particular, is conditioned upon a sexual consent. To protect the patriarchal system of property and to table things that might concern women—being propertyless and the property of their husbands—women had to be relegated from the public sphere. By defining women's issues as non-political, Locke and others make an essentially political distinction.

Demonstrating this hidden assumption and exclusion in the form of the marriage contract is difficult, since it was a matter of common sense—assuming we only listen to those who were thought capable of reason. As Pateman argues, "The natural subjection of women, which entails their exclusion from the category of 'individual,' is irrelevant to Locke's investigation." To make this subjection more visible, she suggests that when "he states that he will consider 'what State all Men are naturally in', in order to arrive at a proper understanding of the character of (civil) political power, 'men' should be read literally" (11). The *Second Treatise*'s qualification of political power on the basis of natural freedom and equality is predicated upon a "natural" inequality of the sexes.

8 See, for instance, Charles Mills, *The Racial Contract* (1999).

Yet this inequality should be consented to if it is to be legitimate. Such a consent is circular,[9] for, if women "naturally lack the capacities of 'individuals,' they also lack the standing and capacities necessary to enter into the original contract. Yet the social contract theorists insist that women are capable of entering, indeed, should enter, into one contract, namely the marriage contract" (54). Women should consent to their subordination, yet it is only men who are to have the capacity to make such an autonomous decision, and are thus the only ones who should own property. The prior contract is also problematic practically, for it obviously does not happen in reality, as the consent to marriage, even if this rarely occurred, was not the same as an agreement to political irrelevance. The effect of the theory and practice of assuming Locke's common good is the perpetuation of existing property relations and the guarantee that women can have no voice.

The Moral Minority

Recently, civic republicans and communitarians like Michael Sandel have argued that not only the ends of life, liberty, and property but even the very idea of neutrality or universality that liberal projects like Locke's assume is misguided. Sandel has famously criticized Rawls' theory of the self in his *Theory of Justice*, suggesting that it requires an ability to shrug off moral, personal, and historical factors.[10] Since then, he has shown in countless other cases how the ideal of neutrality and the attempt to find a minimal and

9 This circular argument is, of course, based upon the faulty generalization that only white, property-owning males were rational and autonomous. For more detail on this and similar common logical errors, see Elizabeth Kamarck Minnich's *Transforming Knowledge* (2005).

10 See *Liberalism and the Limits of Justice* (1998).

universal foundation for politics has had disparate moral impact in practice as well. Locke, of course, does begin with a substantive moral appeal to a higher law, yet this characterization decidedly sidesteps many religious issues of his time. Political power is only legitimate if it protects life, liberty, property, and nothing else, for everything else is subject to contestation. Locke believed that Catholics and Protestants could both agree that we are God's property, yet his search for universal legitimacy discounted any attempt to ask if they actually would.

In practice, the protection of life, liberty, and property faces monumental difficulties of implementation. For instance, whose lives ought we protect? What kinds of life? Where, when, and how? Do we care about criminals, animals, detainees at Guantanamo Bay, or the global poor? What happens to our standards during times of war? Are patients in a persistent vegetative state, like Terry Schiavo, really alive? Questions like these abound in contemporary debate about abortion, which Sandel spends some time discussing. The Supreme Court deciding *Roe v. Wade* attempted to take a stance that was not grounded in any moral view, since there is a "wide divergence of thinking on this most sensitive and difficult question." Instead of appealing to moral doctrine, the court applied the precedent that "the unborn have never been recognized in the law as persons in the whole sense" (*Roe*, 410 US at 159-60). Sandel argues that, "contrary to its professions of neutrality, the Court's decision presupposed a particular answer to the question it claimed to bracket" (101). Even if moral reasons are not given, this and similar rulings have moral impact. We might decide to bracket moral claims, but "what counts as bracketing may remain controversial," requiring "substantive evaluation

of the interests at stake" (102). To distinguish who is to be included in the political process and who is beyond the pale requires a moral judgment subject to contestation. The appeal to universal norms simply cover over this fact.

Sandel argues that, in the end, liberalism is self-defeating, as its minimal political space "cannot secure the liberty it promises because it cannot inspire the moral and civic engagements self-government requires" (*DD* 323). In ignoring substantive effects, it is unable to account for the kind of education that would be necessary for its own practices. His examples suggest that we ought to accept the substantive import of our legal, political, and social practices, though we need not take up the task of forming a virtuous populus, as Sandel believes. He, Pateman, and Marx show how the instantiation of Locke's universal norms could only have been consented to by particular peoples—that is, that any contract to them would have required a prior consent limiting the people constituting the original parties to property owning, enlightened males—but we need not assume that politics must then be an agonistic struggle over state power. Still, John Rawls's proceduralism, the major alternative to modus vivendi politics, may not be a satisfying option, as I will show in the following sections of this chapter. This is because, like agonistic skeptics, proceduralism works within the universal framework of legitimacy, a conception that I will later reconstruct.

The Fact of Reasonable Pluralism

Given the exclusionary theory and practice that we have seen in Locke, some

theorists have sought to avoid the pitfalls of universalizing a particular moral law by turning to procedures. John Rawls's mature work attempts to define political legitimacy in a way that is neither question-begging nor exclusionary by avoiding substantive argument altogether. He explains that "the question the dominant tradition has tried to answer has no answer: no comprehensive doctrine is appropriate as a political conception for a constitutional regime" (*PL* 135). Philosophers should stop trying to "prove" that everyone else shares the same ends (*PL* xlv). *A Theory of Justice*, for example, provided a number of powerful concepts for thinking about politics, yet it did not adequately take into account the plural ends or visions of the good life that people have.[11] The history of philosophical disagreement about the ends of the state seems to indicate that there may be a number of valid moral doctrines. Instead of endlessly arguing about such ends, it may be best to define legitimacy in a different way.

Rather than trying to show how all moral systems could be grounded in the theory of his choice, Rawls marks a new project and a new approach to legitimacy by assuming moral pluralism as a fact, and not as something to be overcome (*PL* xvi-ii). Arriving upon a common good without smuggling in a moral doctrine might seem to be an impossible task, but Rawls thinks that there may be a way to take moral conflicts seriously and define the basic structure of society via a political, not metaphysical, procedure. Briefly stated, the problem of political liberalism is, "How is it possible that there may exist over time a just and stable society of free and equal citizens profoundly

11 There is some debate about whether or not *A Theory of Justice* was in fact about legitimacy or if it simply gave an account of justice which one could accept or not. Though it is unclear whether or not he sought an Archimedean point or an entry point into the task of reflective equilibrium, the later Rawls has tried to undercut this debate by his account of political liberalism.

divided by reasonable though incompatible religious, philosophical and moral doctrines" (4)? Given the fact of reasonable pluralism, is there any procedure by which people might affirm the same constitutional essentials and the basic structure of society?

There might not be, Rawls cautions. Whether or not a shared conception of justice is possible hinges upon whether or not competing moral doctrines can reach an overlapping consensus about the features of the basic structure of society. Philosophers cannot guarantee that this occurs, for an "overlapping consensus of reasonable doctrines may not be possible under many historical conditions, as the efforts to achieve it may be overwhelmed by unreasonable and even irrational (and sometimes mad) comprehensive doctrines" (126). Instead of proving everyone's moral obligations to the state, "the aim of political liberalism is to uncover the conditions of the possibility of a reasonable public basis of justification on fundamental political questions" (xix). It may be possible that comprehensive moral doctrines could, through the right procedure, reach shared political (not moral) ends. Rawls thus changes the nature of the traditional liberal deduction of shared ends into a hypothesis of the conditions for the possibility of justice.

To provide a procedure by which we might come to define justice, instead of simply drawing up a list of supposedly shared ends, Rawls suggests a framework centered around the concept of "reasonableness." The first thing to note is that reasonable people may believe conflicting, even contradictory things about moral goods. This discord is not due to faulty reasoning, for reasonable pluralism is a caused by the burdens of judgment. Rawls affirms that the "evident consequence of the burdens of judgment is that reasonable persons do not all affirm the same comprehensive doctrine"

(60). Our human fallibility regarding, for instance, the evidence, weighting, and values involved in moral issues ensures that moral pluralism will continue for the foreseeable future. Not all beliefs are reasonable, but many moral problems allow for multiple reasonable answers.

Because reasons themselves will differ amongst peoples, cultures, and histories, there is no way to test whether or not a reason is reasonable in itself. Nor can there be an external criterion by which the content of reasons can be deemed reasonable, such as that they are formulated in terms of the greatest good or that they take into account life, liberty, and property. Instead, reasonableness defines the procedures and conditions in which reasons are presented and generated. For terms to be reasonable, "citizens offering them should reasonably think that those citizens to whom such terms are offered might also reasonable accept them" (xlii). People are reasonable if they "are ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so" (49), and if they are willing to "recognize the burdens of judgment and to accept their consequences for the use of public reason in directing the legitimate exercise of political power in a constitutional regime" (54). That is, people are reasonable if they recognize the limits of their own reasoning capacity and thus are willing to listen to and abide by others' fallible reasons as well. Again, reasonable reasons have no determined content but are only defined by their form. Reasonable people thus exhibit the idea of a fair society as defined primarily by reciprocity, since they rule themselves by reasons and expect others to do so as well.

The moral psychology bound up with the concept of reasonableness, like many of

the concepts constituting political liberalism, does not derive from any comprehensive doctrine or contestable view of human nature. It is "philosophical not psychological," because it is defined by the needs of political liberalism itself. The claims about reasonableness and rationality are not based upon psychological research but can only be affirmed according to their political results. If this account actually aids in the creation of an overlapping consensus, it is a reasonable assumption to make. We cannot invent just any account of human nature, and science may have some import, but the limits on what can be said are constituted by "the practical needs of political life and reasoned thought about it" (87). If Rawls began his account with a psychological moral psychology, as did Hobbes, this would beg the question, for there are always competing scientific accounts. However, whether or not this particular philosophical psychology "is correct for our purposes depends on whether we can learn and understand it, on whether we can apply and affirm its principles and ideals in political life, and on whether we find the political conception of justice to which it belongs acceptable on due reflection" (87).

As the example of Rawls's moral psychology shows, the mechanism of political liberalism and the overlapping consensus it makes possible work on three distinct levels. There is the framework of political liberalism which sets the form or procedure for the determination of justice, i.e., the reasonable give and take of reasons; the actual content of justice determined by the parties in the original position, e.g., the two principles of justice; and "you and me," actual citizens giving reasons and reflecting upon our intuitions, the political conception, and the framework of political liberalism (28). In the process of reflective equilibrium, we can modify either the form or the content of the

procedure if it does not match our considered judgments. We might need to change part of our framework, for example, the philosophical moral psychology. Or we may need to try a different political conception, since the two principles retained from *Theory of Justice* are not the only possible ones. The malleability of both political liberalism and our political conception allows us to take into account new developments and any disparate impact the constitutional essentials may engender. In Rawls's words, "reflective equilibrium continues indefinitely" (97), though, of course, political liberalism can only produce a conception of legitimacy if an overlapping consensus obtains.

Rawls recognizes that the framework of political liberalism, though revisable, does delimit the content of the political construction to a large extent. Defined as it is by reasonableness, his proceduralism provides us with a political conception of justice that is "broadly liberal in character," since it "specifies certain basic rights," "assigns a special priority to these rights," and "affirms measures assuring all citizens adequate all-purpose means to make effective use of their basic liberties and opportunities" (223). Though the details of the content depend upon specific political cultures, there will be some general family of resemblances between political conceptions across cultures. For instance, the "criterion of reciprocity is normally violated whenever basic liberties are denied" (xlix). If people are to give and accept reasons, they should be able to speak their minds, have means of subsistence, and the right to fair trials. These stipulations do not mitigate the pluralism of this process but are simply the result of a procedure that is not value-neutral. Pluralism does not mean that anything goes, and the specific content of the political construction, though having some general characteristics, still depends upon the

overlapping consensus of actual comprehensive doctrines.

Whose Reasons?

Though Rawls recognizes that people should be able to evaluate their institutions and refuses to ground his theory in any substantive comprehensive doctrine, there is reason to think that the universal framework of legitimacy he assumes greatly limits lay participation in practice. This cannot be proven without looking to the actual effects of proceduralism, and I will give some indication of these in the final chapter. Nonetheless, Locke and his critics point to the danger of allowing philosophers to determine the legitimacy of institutions, and I will suggest that Rawls provides few tools for anything else. Though many have attempted to show how political liberalism is itself a moral doctrine and imports substantive baggage, I will not take this route. Such criticisms miss the bigger picture of the expert-driven *practices* that political liberalism shares with substantive theories that accept the same goal of universal legitimacy. Even if Rawls himself does not assume contestable ends, the universal question political liberalism tries to answer requires just such prior consents in its application, since people do not actually agree universally. Because the fact of reasonable pluralism entails that overlapping consensus does not actually exist, experts must decide what *could be* said to be legitimate, and it is far from clear what could prove them wrong.

To show how political liberalism is likely to leave people out of discussions of legitimacy in practice, it may be helpful to see just a couple of the ways that Rawls

suggests limiting the space of reason exchange. First, he presupposes that inquiries into legitimacy should begin with the basic structure of society and could be answered apart from other concerns. Rawls writes, "our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason. This is the liberal principle of legitimacy" (*PL* 137). This principle continues Locke's goal of defining right rule via some criterion that could then set limits to the coercive force of the state and the demands citizens could place upon it. There are intuitive grounds for thinking that determining the legitimacy of the state or the structure of society could help create more legitimate conditions, but this must be itself demonstrated. Not only must the value of terms like "state" or "society" be shown, but so must the assumption that such a criterion could lead to greater legitimacy than, for instance, a bottom-up approach.[12]

Second, Rawls limits reasonableness by defining moral pluralism by comprehensive doctrines. He succinctly states, "I assume all citizens to affirm a comprehensive doctrine to which the political conception they accept is in some way related" (*PL* 12). Yet is far from obvious that people are Thomists, Utilitarians, Kantians, or Aristotelians—that is, that the only reasonable beliefs are the ones philosophers have defended. It is one thing to say that people may reasonably differ on various moral questions and quite another to say that they hold systems of belief that determine what counts as a reasonable reason, and thus what might form an overlapping consensus.

12 Though it is difficult to trace directly, Bernard Williams, especially *Ethics and the Limits of Philosophy* (1985) has been very helpful for my thinking in this vein.

Moral beliefs could also be understood, for example, as forms of habits whose value should be determined in particular contexts. Beliefs would then be hypotheses whose validity has yet to be shown rather than judgments that can determine reasonable reasons like premises to an argument.[13] Of course, we need not assume this either. The point is that any assumption about the shape of morality or the relationship between morality and politics may itself be a political concern requiring demonstration.

These examples of Rawls's definition of reasonableness are not refutations. They only show that his framework is not self-evident and must be open to contestation by philosophical laypeople—something that he himself would accept. However, the only place Rawls gives laypeople is in the hermeneutic inquiry between intuitions and the general judgments constituting the political conception. This process, which he calls reflective equilibrium, begins with collecting such "convictions as the belief in religious toleration and the rejection of slavery and try[ing] to organize the basic ideas and principles implicit in these convictions into a coherent political conception of justice." By going back and forth between the general concept of justice and our provisional beliefs, we may find a political conception of justice that accords "with our considered convictions, at all levels of generality, on due reflection, or in what I have called elsewhere 'reflective equilibrium'" (8). If this public reasoning process, involving the reasonable reason-giving of experts and laypeople, reaches a shared political conception, "this conception provides a publicly recognized point of view from which all citizens can

13 This pragmatic account is not the position I will take. I merely want to cite another possibility. Rawls does say, as we have seen, that our account of moral psychology depends on its use in political matters. However, a radically different account of morality, or of the relationship between morality and politics might undermine his project as a whole.

examine before one another whether their political and social institutions are just" (9). Without a political conception, the criticism of public institutions could only be grounded in private, philosophical, or religious standpoints.

While this account attempts to bring laypeople into the philosophical project of defining political legitimacy, it faces a number of theoretical and practical issues, in particular, regarding the stipulation that moral beliefs and public reasons must be reasonable. Given the fact of reasonable pluralism, actual people should take part in determining the ends of their institutions, yet, as Rawls asserts, they must do so in the right way. That is, what counts as a reasonable reason has to be determined prior to any reason-giving process. But, since racists and religious fundamentalists do not share "our" settled convictions, what counts as "our" reasonable reasons is exactly what needs to be shown, for it is not at all self-evident who "we" are. Rawls argues that, "if we are to succeed in finding a basis for public agreement, we must find a way of organizing familiar ideas and principles into a conception of political justice that expresses those ideas and principles in a somewhat different way than before" (9). The problem is that, since people do not agree, it is far from clear who has the authority to decide which ideas are reasonable enough be organized as well as whether or not the organized political conception actually represents people's intuitions.

Moral pluralism, which Rawls uses as a reason to rethink legitimacy, threatens the possibility of achieving an overlapping consensus. Because there is no clear moral consensus, someone will have to order moral beliefs to define a political conception. Yet, since it is highly likely that people will not all agree with such a conception—even

those deemed reasonable—it is unclear why those who order "our" beliefs have the authority to do so. Reflection must begin somewhere, with a specific group of people's intuitions, but Rawls gives no indication about how any of the tough decisions between competing conceptions should be made nor how those who do not agree could become convinced. Do philosophers have the authority to represent the people, since the people hold comprehensive religious or philosophical doctrines, and philosophers' domain of expertise is the analysis of such systematized intuitions? If this is the practical consequence of Rawls's views, it cannot simply be assumed, given the fact of reasonable pluralism. He thus needs to say more about how the differences between a plural people and a universal political conception could be addressed.

Similar questions arise at the more general level of the framework of political liberalism. Rawls assures us that determining the validity of the framework "cannot be decided in the abstract independent of actual cases." To decide if a political conception, justice, and criticism are possible, "we should find pressing questions of constitutional essentials or matters of basic justice that *cannot* be reasonably resolved by political values expressed by any of the existing reasonable political conceptions, nor also by any such conception that *could* be worked out" (li, my emphasis). The possibility of overlapping consensus can only be disproved if a political conception *cannot* and *could not* take into account conflicting values. This test is problematic for two reasons. First, Rawls assumes that the question of the validity of political liberalism comes down to whether or not a political conception can be formed. Either justice is possible, or it is not. He provides no suggestion for how the conditions for the conditions of the possibility of

justice might be created if one lives in a political culture with "mad" comprehensive doctrines. Nor is there any indication of what a other accounts of justice or political legitimacy might be. The only alternative Rawls suggests is the Holocaust (lx).

Rawls's propositions for the ways that political liberalism might be evaluated are problematic in a second way, since it seems that it could only be philosophers who could determine whether or not justice is possible. How could laypeople be expected to decide if there might eventually be a political conception that "reasonable and rational persons ... *would eventually* endorse" (119, my emphasis) if they cannot even agree upon what a reasonable reason is? Though Rawls is concerned to let plural peoples define justice for themselves, his project may paradoxically take the determination of legitimacy even farther away from laypeople. This is due to the fact that he is concerned with the conditions for the possibility of justice and has little to say about the conditions for the actuality of justice. In the end, perhaps Rawls is right to admit that the purpose of *Political Liberalism* is above all "the defense of reasonable faith in the possibility of a just constitutional regime" (172, cp. lx). It is hard to argue with faith, and perhaps even harder to glean practical tools from it.

Despite the call for a conception of justice that takes account of pluralism, Rawls provides few resources for showing the ways in which people might be involved in the determination of the basic structure of society nor what should be done when they disagree. I would like to suggest that this oversight is not due to a logical error. It is a result of the problem he seeks to address. As Kant began with the postulate that experience is unified and then demonstrated the conditions for the possibility of its

unification, Rawls starts with the assumption that justice requires universal moral consent and shows the conditions of its possibility. He faces the same difficulties in connecting actual experience with the conditions of universality, for universality is never actually experienced. People do not agree. That is the problem. Thus, in practice, philosophers have to show what *could be* universally assented to, what *should be* a way of reconciling different beliefs, what *must be* the case if justice is to exist. If we assume that reasonable pluralism is a fact, can we avoid giving philosophers the responsibility of determining which beliefs are legitimate?

Whose Framework of Legitimacy?

Recognizing that, in a pluralistic society, people should be involved in determining the legitimacy of widespread institutions, Rawls turns to a procedure wherein people and experts try to order their confused and conflicting intuitions in the hope that an overlapping consensus, strong enough to form a set of constitutional essentials, might be found. In practice, however, there is good reason to think that his proceduralism will lead to effects very much like those of Locke's substantive account. I have tried to suggest that this is due, in part, to a problematic of legitimacy that they both share. The goal of this framework is intuitive: the coercive power of the state could be considered legitimate only if it expresses the common will of its constituents. If such a common will were found, either because people consented to a set of norms or reasoned until they came upon a set of constitutional essentials, related questions could be

answered: accusations of coercion could be evaluated, stability would be ensured, and our political obligations could be defined. If we know what ends our institutions should express, we can criticize them from a point of view that everyone should be able to understand. Though this project may seem idealistic, it is unclear what alternative there might be that would not lead to coercion, instability, and prudential agreement.

As Marx, Pateman, and Sandel show, however, it is difficult to arrive upon a universal criterion that does not have particular consequences, and it is surely noteworthy that Locke's most recent defenders appeal to purely universal arguments and ignore the consequences of institutionalizing the protection of property as the sole task of the state (e.g., Nozick 1974). The former's criticisms show that even Rawls's proceduralism is likely to lead to unreflectively exclusionary effects for the simple fact that reasonable pluralism means that there is no consensus on the common good, be it moral or political. A political conception could be said to arise from the overlap of moral beliefs, but the results of this interpretive and reflective process would have to be evaluated by actual people, and Rawls makes it far from clear how disagreement between laypeople and experts could be addressed. Without explaining how value conflicts might be ameliorated or how the procedure itself could be appraised, he risks leaving it to philosophers to repeat Locke's mistake of defining legitimacy in advance of an analysis into the conditions and effects of criticizing institutions from such a perspective. It does not seem to be enough to say that all people should be involved in discussions about justice, since the very question has to do with the ways in which different people's voices can be heard.

In sharing the goal of forming a universal conception of legitimacy, Locke and Rawls assume that, once the ends of the state are defined, other things will fall into place. It is presupposed that the state is the site of politics par excellence, and that having a conception of justice is the best way to alter the basic structure of society. These points require justification. The value of an abstraction like "the state" or "the structure of society" has to be shown, and this would have to be determined by actual people. It very well may be the case that more local discussions of legitimacy would often be more effective, for instance, since they might be more easily comprehended, evaluated, or enacted. Contextual improvements might be the best way to create a more just society, and not necessarily because they have the whole in view. The assumption that having a criterion which could qualify the ends of the state, the space of politics, or the obligations of people is the best way to create more legitimate conditions is far from obvious. Given the consequences of a universal criterion like the one Locke provides, criteria whose particularity is affirmed might often be more useful.

To try to take stock of the assumptions of the universal framework of legitimacy and its critics, in the remainder of this dissertation I will suggest a few ways that political theory and practice might better address the fact of reasonable pluralism in a way that brings actual people into the evaluation of their institutions, in the broadest sense of the term. The first step in doing so is to reconstruct legitimacy pluralistically—which, I will argue, also means experimentally. The multiple ways that the ends of states have been defined, and the criticisms of each, suggests that a universal conception of legitimacy is not necessary for creating more legitimate institutions and practices. Which definition is

useful will depend on the purposes we have, and since no "we" can be assumed, this will require concrete and experimental inquiry. If political philosophy begins with actual people in their multifarious associations, their existing values and ends, and their real consents and dissents, it might be more attuned to people's actual legitimacies and illegitimacies. No methodology could guarantee this, and I will face a difficult challenge of providing a framework that says something while allowing itself to be revised and contested. In some ways, the experimental account of legitimacy I will outline is an anti-methodology, or allows for methodological pluralism, though I will make some suggestions for political theory and practice that should themselves be evaluated by those theories and practices.

Multiplying legitimacy also means that politics could include affairs beyond the state. Governments, of course, play a large role in the direction of human affairs, but there are many other aspects of life that may require criticism and transformation, since they affect people's lives in common. Focusing only on the state or other widespread institutions may blind us to means that are not bureaucratic and ends that are not universal. There are many institutions that educate, direct, discipline, surveil, and coerce besides—and perhaps even more than—the state. Allowing these other determining factors a primary place instead of relegating them to secondary phenomena may even change the ways we think about coercion, consent, and autonomy. To limit ourselves to any particular kind of institution would seem to close off inquiry into the multifarious and ubiquitous human practices that affect people's lives, labeling as "private" what may need to become public. And, of course, assuming that any institutions, beliefs, or practices are

private or a-political is exactly what needs to be demonstrated.

Like its treatment of politics, an experimental framework of legitimacy would also not assume any particular understanding of morality or any necessary connection between morality and politics. In different cases, it may be best to think of moral beliefs as judgments, hypotheses, or habits. Morality need not ground politics, nor must we be morally obligated to obey the state when it expresses the common good. The relation between moral beliefs and the existence of coercion, the stability of the state, or our moral obligations has to be concretely shown. Any or all of these may be useful ways of thinking, but that should be determined by the actual legitimacies they help create or prevent.

Finally, if no necessary connection can be assumed between universal ends and the creation of more legitimate institutions, I will need to outline a new model of criticism and expertise. Given the fact of reasonable pluralism, the suggestions experts make can no longer be assumed to be valid apart from their actual effects for plural peoples. Even if people themselves come to a political conception, it is not certain that the conditions and effects of transforming institutions accordingly will be legitimate. Thus, rather than a top-down model, where experts and critics define valid values, and policy-makers, activists, and laypeople apply them, criticism might be reconstructed plurally, contextually, and experimentally. In this way, criticism would be part of a process of joint learning, where norms and other hypotheses would be experimentally revised in light of their effects in ameliorating concrete problems. Who is an expert or what counts as criticism would be retrospectively determined, though previous cases

should provide indications of both.

The experimental framework of legitimacy, which I juxtapose to the universal model, itself has no guarantee of universal applicability. To provide some indication of its value, I will show how it might provide new paths of political theory and practice in global democratic theory that are not expert-centric, though the use of this framework should itself be determined contextually, plurally, and experimentally. Reconstructing central goals, questions, and assumptions of much political philosophy will require transformations in practice, and it would contradict the aims of this inquiry to assume that I have finally discovered what politics *should* look like. Much of my project is negative, highlighting concepts and practices that might be avoided, but the greatest part of the work to be done is imaginative and experimental. I hope to contribute to this prophetic task by providing practical and theoretical approaches for inquiry into political problems, but, as two of the most imaginative political thinkers of our times state, "The greatness of a philosophy is measured by the nature of the events to which its concepts summon us or that it enables us to release in concepts" (Deleuze and Guattari 1994, 34).

CHAPTER II

POLITICS AS PUBLICS AND PROBLEMS: AN EXPERIMENTAL ACCOUNT OF PLURAL LEGITIMACIES

In Chapter One I outlined the theory and practice of what I termed "the universal problematic of legitimacy" with reference to Locke and Rawls. Theorists working within this framework aim to define a shared set of ends that limit the coercive power of the government and the claims citizens can make upon it. Anyone who recognizes such ends can then legitimately criticize and reform widespread institutions. Whether the criterion of legitimacy is defined by a state of nature or a shared set of political ends found by an overlapping consensus of reasons, Locke and Rawls agree that answering macro questions about the state or the basic structure of society is essential for effecting widespread institutional change. In practice, however, plural people do not actually agree about the ends a state should express. Finding a universal criterion requires interpretation, and Locke and Rawls provide few tools—besides consent and reflective equilibrium, respectively—that explain the ways in which people could contest expert understanding or deal with disagreement. This is important because, as Marx, Pateman, and Sandel show, ends that look uncontroversial in the abstract may not have universally valid effects. When universals are actually put into practice, they lead to partial inclusions and exclusions and, as I have termed it, thus require the prior consent of particular peoples and ends. Rawls's assumption of the fact of reasonable pluralism is a step towards pluralizing the sites of contestation of "the common good," but I would like

to suggest that the further move of pluralizing legitimacy may be even more useful for helping people evaluate and transform problematic institutions themselves. To flesh out this proposal, this chapter and the next will sketch an alternative framework of legitimacy that is neither universal nor relative but experimental.

The danger the universal framework of legitimacy manifests might be described as a misalignment between theory and practice. The expert-centric methodology that Locke and Rawls share, despite their many differences, assumes that a criterion of legitimacy can be defined apart from its application, and historical precedent shows that it often leads to effects that are not attuned to the conditions and ends of their realization. Of course, the unreflectively exclusionary practices this framework is likely to engender could result from any theoretical work, and it is conceivable that universal ends may be universally legitimate. The fact of reasonable pluralism, however, gives us reason to think that a methodology that explicitly names the challenge of aligning theories and practices may be valuable in many cases, one of which I will examine in Chapter Four. That political choices are between different means or ends implies that politics is inherently exclusionary, though not all marginalized options are created equal. I will describe a methodology that begins and ends with the fact of exclusion, a consequence of the fact of reasonable pluralism. This may help attune theory to concrete differences and foster a more reflectively exclusionary politics.

A methodological shift could occur in many ways. Since the universal framework of legitimacy has guided much political inquiry and practice, I will reconstruct the goals, questions, assumptions, and—hopefully—practices of this account. An experimental

framework of legitimacy may provide a set of theoretical tools and assumptions that help align theory and practice in ways that create more legitimacies than universal attempts would. This is because the alternative account I develop is oriented by the premise that, given the fact of reasonable pluralism, no theory or set of ends can be assumed to be legitimate for anyone without inquiry into their concrete conditions and effects for specific purposes. The goal of the experimental framework, then, cannot be to define legitimacy by a set of universal ends. Instead, it seeks to find ways of letting people themselves evaluate their institutions by turning our attention to the conditions and effects of meeting their goals. This methodology should help make the exclusions involved in political action explicit and point towards ways of ameliorating conflicts of value.

Highlighting the question of *for whom* an institution, theory, mean, or end is legitimate allows new questions to be raised regarding existing inequalities and power differentials while it undercuts other concerns. It also requires new conceptual tools for thinking about politics. If, in general, the conditions and effects of realizing a value with reference to certain interests defines its validity, the value of political ends should be understood in relation to the collective action undertaken and institutions created to realize them. Accordingly, John Dewey suggests that politics can be understood as shared problem-solving, such that, even though he rarely used the term, political legitimacy could be defined by the successes and failures of such undertakings. If an institution is experienced as problematic, either because it does not carry out its designed ends or prevents people from carrying out their own ends, it might become more

legitimate if its reconstruction helps forward those ends or new ends deemed more important. The legitimacy of an institution like the state or the economy depends upon its conditions, effects, and ends, which requires concrete inquiry into the experiences of specific people. These might end up being universal, but this has to be shown.

The experimental account of legitimacy does not then avoid the problem of prior consent raised in Chapter One; it embraces it. Instead of trying to provide a criterion of legitimacy that does not beg any questions, it may be more productive to ask what institutions are legitimate for which people in what ways, i.e., which institutions beg the right questions. I turn to John Dewey to help develop this framework of legitimacy because of his insights into the experimental evaluation of institutions. Since those seeking answers to universal questions of legitimacy often overlook the radicality of Dewey's approach, he may seem like an odd choice.[14] To address the most important

14 When his readers understand legitimacy as a test of the state's ends, Dewey has been interpreted as providing either a normative ground via an account of human nature, i.e., as a communitarian or civic republican (Taylor 1989; Festenstein 1997; Green 1999; Rorty 1999; Talisse 2003), or as giving an epistemological argument that procedurally structures the definition of ends, i.e., as a proceduralist (Putnam 1992; Westbrook 2005). These interpreters are divided on the *grounds* upon which Dewey defines democracy, whether they agree with such grounds or use them to reject Dewey's position. A related and more general disagreement arises over whether or not, for Dewey, democracy needs philosophical foundations at all. Rorty and others have tended to think that his politics oriented his philosophy (Rorty 1990; Cambpell 1992; Ryan 1995), while many more have tried to show that his philosophical grounds directed his political engagements (besides those listed above, see Westbrook 1991, Savage 2001). According to this line of questioning, interpreters are often conflicted over whether or not Dewey had a political agenda or a philosophical framework of democracy, as well as what the relationship between the two might be.

It is not my purpose here to defend my use of Dewey against any and all comers, but I would like to suggest that there might be an experimental alternative that funds these radically different questions and interpretations. Dewey was not interested in philosophically grounding democracy nor abandoning foundations. His more theoretical work was not just a means of carrying out his political ends, such as the outlaw of war, nor were his more political engagements simply means of advancing out his philosophical ends, such as growth or community. Instead, his philosophy and his politics were to aid experiments in ameliorating public problems, which were themselves transformatively understood as a result of the former. As Michael Eldridge suggests, the *Public and Its Problem* was both a means of dealing with a situation and provided a set of ends in light of which situations could be evaluated

situations of his day Dewey did provide a number of solutions, such as educational reform, the building of communities, the importance of communication between strata of society. Nonetheless, his more theoretical writings show that these should all be considered hypotheses for the amelioration of specific problems. Similar problems will recur and general structures must be constructed to deal with them, but Dewey never defined legitimacy in advance of contextual experimentation nor reduced democracy to inquiry or community or any other catchphrase. He created new ways of thinking about democracy and education that were to be cashed out by those involved in reconstructing particular problems. For my purposes, more important than these specific answers is the framework he suggested for aligning theory and practice.

The methodology Dewey helps outline will not provide yet another definition of the legitimate state but will instead show an entirely different framework in which legitimacy can be understood and determined. I will not create a list of norms or procedures that legitimate institutions should express in order to compel assent. In fact, it would be contradictory, on the very terms of an experimental account of legitimacy, to define what might be legitimate without reference to concrete peoples and problems. It cannot even be said to be a methodology in any traditional sense, for the value of the experimental account of legitimacy itself should be shown by its use in ameliorating

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(1998). Whatever political or philosophical suggestions he made, Dewey's methodology—insofar as it can be called a methodology—requires that the value of either be contingent upon its concrete conditions and effects for specific purposes. In fact, almost all of his most important key terms, like "education" or "experience," are hypothetical means and ends rather than foundations. This does not mean that we cannot give any grounds for democracy, but that defining democracy in a certain way should be sensitive to changing contexts. The good Dewey / bad Dewey distinction Rorty makes between the cultural critic and the metaphysician (1982, 72-89) furnishes two of many possible roles experimental political inquiry may take. Sometimes criticism requires new categories; sometimes categories require criticism. This will depend on present needs, and these should be experimentally determined and evaluated.

specific problems. I will not argue for this methodology in this chapter but will instead simply outline one of its possible shapes. I hope to have given some reason to think that this account will be helpful in creating more legitimate institutions, because, as we have seen in Chapter One, the universal problematic of legitimacy often leads to uncritically exclusionary practices and endless theoretical debates. In Chapter Four, I hope to provide even more reason for putting this framework into practice because of how it provide tools for rethinking global democratic institutions, though, on the terms of the experimental framework itself, this cannot be proven in theory.

Human Nature and Experimental Method

Before looking more specifically at ways of experimentally determining political legitimacy, it may be useful to begin with some probable components of experimental inquiry by examining Dewey's treatment of the value and meaning of "human nature." Various accounts of human nature have been used to limit the coercive power of the legitimate state, because they provide a set of norms that appear to be both universal and foundational. Dewey would be the last to deny that there are common traits of human biology or sociology, but the plurality of ways that a set of essential needs can be selected shows that labeling as human nature a certain set ends may require a different methodology. Even a universal need does not tell us how, when, where, or even if it should be fulfilled, for there are many other competing needs, many of which may have little to do with our status as humans. Since the selection of one set of traits or another is

undertaken for a specific purpose, such as criticizing the state, an experimental method would suggest that the value of such a selection should be determined by its use for that purpose.[15] The two moves of embracing purposes and of determining their meaning by reference to the conditions and effects of realizing them are two central marks of experimental inquiry. [16] On this account, one should not assume any particular connection between means and ends, such as that ends are given and means must be experimentally sought, as in a vulgar pragmatism, or that ends are completely divorced from means, as is the case in much moral philosophy. Instead, experimental inquiry should help explain concrete relations such as: which means are needed to meet what ends, what effects are the consequences of those means, and which ends might have better means and effects.

Human nature has been called upon in many ways in order to criticize institutions. We have been said to be egoistic atoms, political animals, pleasure-lovers and pain-avoiders, members of communities, pawns in the clashes that determine the course of history, wolves and sheep, particular manifestations of spirit, sociated selves, and friends and enemies, to name only a few. One of the most longstanding debates over the definition of human nature has been the "antinomy" (*FC*; *LW* 13:111) between liberals

15 Many feminists have recognized that inquiry is purposive and should avow its purposes in order to better realize them (e.g., Smith 1987, Hartsock 1983, Harding 1987, and Collins 1990).

16 Compare this Deweyan account of experimental inquiry to Foucault's response to the question, "What is Critique" (2002)? In this lecture, which anticipates his essay which asks the question, "What is Enlightenment" (2006), Foucault suggests that critique may be understood as a process involving 1) description of current constellations of discourses and powers (archaeology), 2) description of how these practices came to be acceptable (genealogy), and 3) tactics of selection and engagement (strategy). These may mirror Dewey's outline of experimental inquiry, which involves 1) effects, 2) conditions, and 3) purposes? And, perhaps even more provocatively, they may resonate with Nietzsche's three kinds of history—1) monumental, 2) antiquarian, and 3) critical—and Heidegger's 1) present, 2) past, and 3) future ecstasies (Nietzsche 1997; Heidegger 1996).

and civic republicans. If people are essentially self-interested and atomistic, then the universal validity of life, liberty, and property as well as small government follow; if people are altruistic and social beings, then the right of self-development and large-scale government intervention are necessary. In both cases, once the state has been limited to its proper sphere, a number of outcomes are assumed to follow, such as the elimination of coercion, the creation of a stable government, or the assurance of a more just society. In short, definitions of human nature are used to set the ends of the state, which, if instituted, guarantee certain effects.

Either liberalism or republicanism may seem useful in the abstract, and proponents of each side can give examples of when the other fails, but the sheer number of natures people have posited gives good reason to think that we can be legitimately described in many ways, depending on our purposes. This does not mean that any account is as good as any other. It only implies that one account, and even the need for a single account, cannot be assumed. Dewey argues that the interminable theoretical disputes between conceptions of human nature show that "isolation of any one factor, no matter how strong its workings at a given time, is fatal to understanding and to intelligent action" (*FC*; *LW* 13:379). Why should a selection of a set of desires, needs, or beliefs have universal applicability, especially if it was created for a particular purpose? An experimental methodology suggests that these purposes should be explicitly stated, to the extent that it is possible, if one account is to be evaluated or compared to another. This is the first step towards determining the value of a definition of human nature.

The assumption that, since many possible ends could be selected—that is, given

the fact of reasonable pluralism—the purposes for selecting them have no necessary connection to the value of such ends is one of pragmatism's most original contributions to moral and political theory and practice. Simply because a set of ends, such as self-preservation, are selected to limit the state and create a less coercive society does not mean that, when the state is so limited, less coercion actually occurs. This may seem obvious but, whether or not this is explicitly assumed, the practice of moral and political inquiry on a universal framework often ignores the conditions and effects of fulfilling a purpose. The assumption of a disconnect between facts and values and the assumption that universal applicability is necessary are two common causes of such practices. Dewey's distinction between a value and its validity for a specific purpose is a positive way of stating the negative assumption that there is no necessary connection or split between facts and values.[17] Only concrete inquiry could explain the particular relationships between certain facts and values. Moral judgments cannot be assumed to be, for example, preferences which can be ordered and evaluated in reflection. They are also "judgments about the *conditions* and the *results* of experienced objects; judgments about that which should regulate the formation of our desires, affections and enjoyments" (LW 4:212; emphasis and de-emphasis added).

The second component of an experimental method, then, is to ask if selected ends, i.e., accounts of human nature, actually do what they are meant to do. As Dewey

17 Though this methodology may raise alarm bells for those concerned about committing the "naturalistic fallacy," see Williams (1983) for a skeptical account of this conceptual tool. See Welchman (1995) and Pappas (2008) for an explication of Dewey's view that, contra much moral philosophy, a moral belief is not a moral judgment, since the validity of a set of ends is not the same as the having of such ends. The validity and meaning of a moral belief cannot be assumed and will depend upon its conditions and effects.

suggests, this involves inquiry into the conditions and effects of the actions undertaken on behalf of such ends. If characterizing people as egoists is supposed to help decrease harm, one could investigate into whether or not this actually occurs. Without concrete investigation, "[n]either competition nor cooperation can be judged as traits of human nature. They are names for certain relations among the actions of individuals as the relations actually obtain" (*FC*; *LW* 13:142). Instead of asking whether individuals are self-serving or altruistic in general, an experimentalist would ask how understanding certain people as competitive or cooperative in certain ways helps transform institutions that thwart those ends for the better. Rather than debating if autonomy is naturally occurring or socially produced, one could inquire into the ways in which prioritizing social autonomy helps create conditions that create more social autonomy. Looking to effects is also important because, as Marx, Pateman, and Sandel show, they are rarely universally good. Comparing effects with purposes is a useful tool for avoiding faulty universalization.

The determination of the value of conceptual tools, such as accounts of "human nature," via contextual analysis in reference to specific purposes and their conditions and effects is not simply means-ends or instrumental reasoning.[18] This is because purposes themselves can be evaluated by the means that further them and compared with the conditions and effects of realizing other purposes. For instance, if creating more profits

18 While critical theorists in particular worry about the expansion of empirical methods to more aspects of life as Dewey suggests (Horkheimer 2004; Habermas 1983), this concern is due, in part, to the narrow interests that experimentalism in the form of science has hitherto served. Science is not inherently good or bad but depends upon the ends served and the consequences achieved. "The crucial problem," then, "is how intelligence may gain increasing power through incorporation with wants and interests that are actually operating. The very fact that intelligence in the past has operated for narrow ends and in behalf of class interests is a reason for putting a high estimate upon its possible role in social control, not a reason for disparaging it" ("Intelligence and Power"; *LW* 9:111).

for the "prison industrial complex" requires a diversion of resources that could be used for prison reform, the latter ends may trump the former (Davis 2003). Which courses of action should be taken will depend upon a wide variety of purposes and how they may be achieved. Dewey explains, "Ends have to be adjudged (evaluated) on the basis of the available means by which they can be attained just as much as existential materials have to be adjudged (evaluated) with respect to their functions as material means of effecting a resolved situation" (*LTI*; *LW* 12:490). This experimental account of inquiry into ends cannot say authoritatively which ends or means ought to be forwarded but only hypothesizes that the clearer we are about our ends and means, the better the decisions we will be able to make. No ends, means, or relation between the two is given.

An experimental methodology should avoid certain common problems associated with appeals to human nature that neither affirm the purposes for their appeal nor investigate into whether such purposes are met. First, without owning up to the purposes for which a set of ends is selected, one cannot explain when they are valid and when they are not. This is often considered a virtue, for a universal human nature is exactly what is sought. Nonetheless, Dewey suggests that presupposing that social phenomena are "predetermined by the constitution of human nature … is the source of serious social ills. Intellectually it is a reversion to the type of explanation that governed physical science until say, the seventeenth century: a method now seen to have been the chief source of the long-continued retardation of natural science. For this type of theory consists of appeal to general forces to 'explain' what happens" (*FC*; *LW* 13:143). General forces, instincts, desires, or beliefs—such as self-preservation, the need for security, imitation, or

the desire for truth—do not explain when phenomena are caused by one feature, by its perversion, or by another cause, for they do not provide any indication of when, where, and how they cause anything. I can claim that we need small government because people are egoists; on the contrary, you can say that, since people's true altruism has been corrupted, it is all the more imperative that elites take paternalistic action. Without some kind of scope or purpose delimiting the applicability of the set of ends an account of human nature provides, no reason—besides subjective preference—can be given for why one is more valid than another.

Second, an experimental methodology also avoids assuming that selected ends necessitate any effects, such as the creation of more legitimate social institutions. History has shown how dangerous such assumptions can be, since they often avoid inquiry into the possibilities of other human natures, social institutions, and unintended consequences. It may be the case that a set of norms or desires does universally trump all others, but, according to an experimental method, this cannot be assumed. While one form of the state or society is taken to be that which accords with our true nature if not perverted by "contingent" factors, "reference to components of original human nature, even if they actually exist, explains no social occurrence whatever and gives no advice or direction as to what policies it is better to adopt" (*FC*; *LW* 13:143). One does not have to assume the mutability or permanence of any human needs to admit that they could take many different shapes. This can be demonstrated in the ways that even basic needs like food are fulfilled in different parts of the world as well as how more complicated economic transactions have occurred in different times. Human natures thus cannot necessitate any

social forms for they are themselves to be evaluated and transformed ("Does Human Nature Change?"; *LW* 13:287-93).

This method is foreign to many contemporary attempts to define a set of essential human needs or capacities.[19] Since the value of a list of human capacities will depend upon the circumstances in which they are used, the experimental method suggests that they explicitly state and are formulated for such purposes. Which interests should be left out and which needs or capacities should be prioritized cannot be determined in the abstract from the particular purposes people have. Any universal list risks leaving out some group's interests, and it cannot determine the ordering of any preferences. For instance, we may decide to decrease our food consumption for a time to increase our industrial and production in the future. A list of universal needs is unlikely to help us understand the tradeoffs involved in such a difficult decision. If it is to help us become better human beings, it should be understood as an hypothesis which is to be evaluated by its consequences in actually creating better human beings. The value of such a list will

19 Today human nature is often either embraced in a form of Aristotelian essentialism (Nussbaum 1992; Sen 1999), Marxism (Gould 2004), or communitarianism (Taylor 1989). In "Human Functioning and Social Justice: In Defense of Aristotelian Essentialism" and other works, Martha Nussbaum presents a set of categories of human flourishing in her argument against post-structuralist skepticism about human nature, writing, "The idea is that once we identify a group of especially important functions in human life, we are then in a position to ask what social and political institutions are doing about them. Are they giving people what they need in order to be capable of functioning in all these human ways? And are they doing this in a minimal way, or are they making it possible for citizens to function *well*" (214). It is true that radical skepticism rejects cross-cultural criticism—as if cultures were determinant objects—but deconstruction and essentialism need not be our only options. Dewey combines insights import should be decided by reference to the conditions and effects they make possible for specific purposes. An understanding of human relations is often important for coming to terms with a problem, but such descriptions can be deemed "essential" only when they have successfully ameliorated a problem. Whether or not a set of categories "will command a very wide consensus, and a consensus that is fully international" (223) has yet to be determined and cannot be decided in advance. Even if everyone in the world agreed on a set of ends, rights, or norms, Dewey suggests that the value of such agreement could not be determined without experimental inquiry into their uses for dealing with concrete purposes or problems. See Ackerly (2000), Dietz (2003), for other attempts to escape the dichotomous uses of human nature.

depend upon the concrete experiences of the people involved and their reasons for wanting to become better human beings. How does it help us "differentiate conditions into obstructive factors and positive resources … to indicate the intervening activities which will give the movement (and hence its consequences) a different form from what it would take if it were left to itself" (*LTI*; *LW* 12:494)? Experimental questions about purpose, conditions, and effects may change the ways such lists are formed as well as the shape they take.

Since "[h]uman beings combine in behavior as directly and unconsciously as do atoms, stellar masses, and cells; as directly and unknowingly as they divide and repel" (*PP*; *LW* 2:330); since any of the multiplicity of human needs, values, or practices may be "essential" depending on one's purposes at hand, an experimental methodology suggests that subsequent evaluation of institutions should be made with reference to these concrete needs and contexts. The universal framework of legitimacy, by requiring a universal and foundational ground often provided by an "essential human nature," prevents inquiry into the circumstances in which such an account might actually be appropriate. Pluralizing and contextualizing characterizations of human nature does not mean that no grounds for criticizing institutions can be given, nor does it mean that just any can. An experimental methodology would assume that it is only concretely and with reference to specific purposes that the value of a particular description of human relations—as well as other orienting questions, norms, and values—could be evaluated. This methodological postulate means that there is no single way of determining the legitimacy of any institution, including the state, and that any such determination should

occur through contextual inquiries for specific purposes. How exactly this is to be done will now be examined in more detail.

Publics and Problems: Experimental Method and Politics

The example of Dewey's treatment of human nature helps provide an outline of an experimental political methodology. On such an account, common ends, like those defined by an account of human nature, should be evaluated by the concrete conditions and effects of realizing them. Though there are many possibilities of realizing experimental methods in political issues, Dewey suggests that theories, ends, and values be tested in relation to the problems that publics face.[20] The conceptual framework defined by publics and problems is a hypothesis about how institutions, beliefs, and practices that affect large numbers of people may be more intelligently criticized and

20 I use the terms "publics" and "problems" for a number of reasons. First, a public is distinguished from "people" to indicate that they have some understanding of a problem and their implication in it, however vague. For instance, there is a vague global public concerned about recent economic downturns that recognizes, correctly or incorrectly, that only central banks have the ability to fix things. Second, publics are ephemeral, fleeting phenomena depending upon the ways in which problems are understood and compete with other problems. Rather than a monolithic public that has an opinion, publics are conflicted and in conflict about what is problematic and what should be done about it. Third, I use the term "public" to distinguish this account of political action from Habermas's "public sphere" which ideally models the "ideal speech situation." In its dealing with a problem, a public may go through a wide variety of changes, many of which may not be well characterized by uncoerced speech. I hope to suggest that "For whom was the problem ameliorated?" will often be a better question than "Was deliberation about it ideal?"

Publics and problems are also useful because they name the subjective and objective poles of the dialectic of political change. Problems are not "out there" waiting to be solved by technical experts. Nor are public values "out there" waiting to be instantiated in political institutions. Publics have interests and purposes that are to be transformed and tested by problems. Problems have materiality and shape that are modified and evaluated by attempts to address them. For this reason, I want to avoid the language of "communities" or even "traditions," as some thinkers sympathetic to Dewey have suggested (e.g., Stout 2004), just as much as I try to steer clear of any perennial problems like coercion, modus vivendi, or moral obligation.

transformed. Today, of course, experts or elites often name and frame political problems, and publics are inchoate or uninformed, but this framework provides a means of criticizing current practices. The more people, according to ability and need, define common problems, determine their purposes, and evaluate the action undertaken to address them, the more they take part in an experimental method, and the more valid political action is likely to be.[21] There are no guarantees of this hypothesis, for problems named and directed by experts may sometimes lead to effective change. However, since problems and their attempted solutions affect different peoples in different ways, it is unclear how expert practices could be evaluated without taking these perspectives into account. Furthermore, it is uncertain how political action could be evaluated without people deciding which purposes are most important to them. An experimental account of political inquiry should help make these purposes and the conditions and effects of meeting more determinate.[22]

If institutions, norms, and practices are to be evaluated by concrete conditions and

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21 For some explication of the terminology of naming, framing, choicework, action, evaluation and other aspects of public action, see Matthews (2006) and Yankelovitch (1991).

22 *The Public and its Problems* is not sufficiently clear on this point, perhaps because it dealt with a concrete difficulty—advertising, propaganda, and their effects on intelligent inquiry—and was a focused response to Walter Lippman's *Public Opinion* and *The Phantom Public*. However, when supplemented by Dewey's other works, *The Logic* in particular, his experimental approach becomes clear. See also William Caspary's *Dewey on Democracy*, which emphasizes Dewey's emphasis on politics as "conflict-resolution" (2000, esp. Chapter 1), as well as Larry Hickman's *John Dewey's Pragmatic Technology*, which characterizes publics as tools created for the amelioration of problems. The latter writes, "many forms of political organization may function so as to exercise effective control of the problematic situations that call various publics—and the larger public called the state—into existence." This means that even the "state is a means of social inquiry by and for its constituents. It is a constructed artifact like other tools and utensils" (1992, 172). I will make use of these characterizations of publics as tools—and the perhaps ungangly plural version of the word—to aid in the resolution of conflicts in order to emphasize the experimental nature of social and political practice and theory as well as the means and ends of testing them.

ends, an important first step[23] is to recognize that the problems that shape our purposes are not given. Dewey suggests "[w]e take then our point of departure from the objective fact that human acts have consequences upon others, that some of these consequences are perceived, and that their perception leads to subsequent effort to control action so as to secure some consequences and avoid others" (*PP*; *LW* 2:244, cp. *LTI*; *LW* 12:491). Since institutions, norms, and practices affect different people in a variety of ways, the naming of a problem is a political act.[24] No naming of public problems can be assumed valid or off limits, for whether or not a set of issues is a matter for public concern should be the result of inquiry, not the starting point. How a problem is first characterized is likely to change, as the phenomena that are first included in a description will be understood in a new light after further investigation. They may be concomitants of a deeper cause, or they may be unconnected to the undesired consequences we experience. Still, people's concerns, no matter how inchoate, should begin to frame the context within which courses of action can be taken and evaluated.

A great many relationships, institutions, beliefs, and values will not be essential to the amelioration of a problem and are thus "private," though a few will be a matter of public concern and will help reconstruct the problematic situation. We can distinguish between those consequences "which affect the persons directly engaged in a transaction,

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23 These aspects of public problem solving are inter-penetrating facets rather than parts of a stage theory, since, for instance, naming a problem implicates certain courses of action, while taking one path rather than another may refine how the problem was or should have been named. It may not be necessary to explicitly carry out any of them, though the hypothesis is that each has its place in realizing more experimental politics.

24 In their distinction between tame and wicked problems, Rittel and Webber (1973) suggest that the former can be named and solved by experts, while the very naming of a wicked problem is contestable, as the courses of action such naming makes possible lead to exclusions for which reasons must be given. Wicked problems cannot be treated as tame problems, because what would count as a solution requires public contestation.

and those which affect others beyond those immediately concerned. In this distinction we find the germ of the distinction between the private and the public" (*PP*; *LW* 2:244). Though whether or not a problem is itself a matter of public concern will later be decided, a public can begin to rule out that which is likely to be irrelevant to the problem as well as that which might be essential. It should be noted that the scope of an action or group of actions does not necessarily correspond to its publicity. Many actions with relatively widespread effects, such as those of multinational corporations, are not regulated to a great extent; some with few consequences, such as non-traditional marriages, are. Selecting certain transactions for further inquiry is thus the first order of a public. This is clearly a difficult task, as almost anything could be a matter of public concern, and, as situations and consequences are constantly changing, what is to be considered a matter of public concern will change as well.

Just as a public defines a problem, it is itself defined in relation to a problem. A public "consists of all those who are affected by the indirect consequences of transactions to such an extent that it is deemed necessary to have those consequences systematically cared for" (*PP*; *LW* 2:245-6). A public does not simply consist of all those affected by an institution, for it must first be decided what "being affected" means. Many problems could affect or be caused by billions of people, so who is implicated in what ways will have to be more clearly determined. There is no guarantee that any issue could affect all people in the same way or to the same extent.[25] As there are a multiplicity of problems, a multiplicity of publics may form—in response to neighborhood real estate concerns,

25 Not even global warming is guaranteed to unite us all, for its differential effects and duties may make it difficult to call it by one name. Whether or not climate changes are global has to be shown, not assumed.

catastrophic natural events, consensual sexual conduct, interstate commerce, celebrity fashion, animal extinction, or any other perceived issue. Given the variety and fluidity of human associations and actions, public problems will arise and change as will their respective publics. There is no certain public nor perennial political problems but rather a shifting set of issues that are to be addressed by those determined to be affected by them.

In the ongoing definition of a problem and public, possible courses of action will arise, for "any problematic situation, *when it is analyzed*, presents, in connection with the idea of operations to be performed, *alternative* possible ... consequences" (*LTI*; *LW* 12:495). What were once isolated occurrences now become related hypothetically so that certain means could be taken and ends achieved. The application of such conceptual tools is always an experimental affair with no guarantees, as "genuine problems are set only by actual social situations which are themselves conflicting and confused" (*LTI*; *LW* 12:492). Clarifying these situations will help to define the tools that could ameliorate them, and, as courses of action are analyzed, problems themselves will change, so that, for example, what was once a matter of international human rights may become primarily a trade issue. The definition of a problem, its possible solutions, and the public each determine the other. New situations should be interpreted in the light of previous ones, but, since all problems and publics are different, a reliance on previous solutions may limit effective responses to contemporary conditions. Publics should be careful not to let conceptual tools like "utility" or "rights," the "political" and the "moral" become "glittering generalities," (*FC*; *LW* 13:86) so "that the problems which exist are already

definite in their main features," requiring only the application of a set of known norms or procedures (*LTI*; *LW* 12:487).[26] Just as a public and problem are not given, neither should a course of action be.

Evaluation of interpretations of a public, a problem, and potential solutions can become more concrete once action is actually taken, though this may involve doing nothing at all, constructing more hypotheses, or waiting. First, however, who decides what should be done should be determined by the projected consequences. A majority vote or a decision by representatives may be the best procedure, perhaps due to long-term concerns like the formation of citizens or the prevention of corruption, but sometimes non-democratic procedures may be necessary in order to achieve democratic results.[27] The distinction between democracy as a way of life and democracy as a form of government helps to make this point clear. Dewey explains that "[t]he political and governmental phase of democracy is a means, the best means so far found, for realizing ends that lie in the wide domain of human relationships and the development of human personality. [Democracy] is, as we often say, though perhaps without appreciating all that is involved in the saying, a way of life, social and individual" ("Democracy and

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26 See Ian Shapiro's *The Flight from Reality in the Human Sciences* for a counterpart to Dewey's "glittering generalities." While political scientists attempt to eschew normative and theoretical questions, "[p]olitical theorists often fail to appreciate that any claim about how politics is to be organized is bound to be a relational claim involving [actual] agents, actions, legitimacy, and ends" and appeal only to "gross concepts" (14). This split in theory and practice, or this "flight from reality," "is not without consequences for reality as we will see. At best it marginalizes the potential effects of political and social criticism, and sometimes it contributes to the maintenance of oppressive social relations—however unwittingly" (2).

27 This point may appear shocking to those who narrowly associate democracy understood as voting with political legitimacy. Majority rule is often a useful way of dealing with problems, perhaps for the simple reason that it is something that everyone understands. Nonetheless, its value cannot be assumed away by a hypothetical a priori, as Kant suggests. It should be shown by its conditions or effects for actual problems. Hypothesizing when majority rule or minority rule is useful should depend upon concrete conditions and effects.

Educational Administration"; *LW* 11:217). State apparatuses, just like publics, are tools designed to deal with common problems. Every situation is different, but certain rules of thumb will arise, such that one kind of problem should go to economic experts while another should be relegated to state legislatures. There will always be new court cases, wars, and cultural issues that challenge these structures, but it should be remembered that the these decision-making structures are to be tested by these events and not vice versa.

Judging whether a conflict has been sufficiently ameliorated is the final task of the public after action has been taken. To tell whether or not a successful redirection has occurred is difficult even if the problem, course of action, and conditions of success have been precisely defined. A policy put into practice is an experiment, for "(1) it represents the adoption of one out of a number of alternative conceptions as possible plans of action, and (2) its execution is followed by consequences which, while not as capable of definite or exclusive differentiation as in the case of physical experimentation, are none the less observable within limits, so they may serve as tests of the validity of the conception acted upon" (*LTI*; *LW* 12:502). Any action is going to cause concrete changes, though it may be difficult to tell what they are, just as it is difficult to know if a problem has been well defined. Further inquiry, action, and observation are likely to be necessary, for the solution of one problem will often create new ones—whether simply in the determination of the value of the changes effected or through the new ways of life produced by institutional reconstruction. Though we can aim for universal legitimacy, we are likely to achieve far less. This is not a fact to be lamented but a temper for superficial schemes or utopian dreams.

The gross outline of politics as publics and problems will be shaded in further, but I hope to have begun to clarify what an experimental political practice might look like. An experimental methodology for investigating shared means and ends is (1) pluralist (or purpose-ive) (2) contextual, and (3) experimental because the validity of public action, institutions, norms, or practices is determined by their (2) conditions and (3) effects in solving (1) publicly defined problems. Or, as Dewey explains, "problems with which inquiry into social subject-matter is concerned should, if they satisfy the conditions of scientific method, (1) grow out of actual social tensions, needs, 'troubles'; (2) have their subject-matter determined by the conditions that are material means of bringing about a unified situation, and (3) be related to some hypothesis, which is a plan and policy for existential resolution of the conflicting social situation" (*LTI*; *LW* 12:493). If political issues are to be dealt with in their singularity, the ways of dealing with them should be tested by the needs at hand. The definition of the problem and possible courses of action, the execution of the experiment, and the judgment of the results are, accordingly, the major tasks of the public.

Before using Dewey's experimental political framework to reconstruct the problematic of legitimacy, a word should be said about the use of scientific or experimental methods in social concerns. Though Dewey often said that scientific methods ought to be applied to social and political matters, this was more a matter of inspiration than the universal application of laboratory procedures.[28] It is not the case

28 Even some of Dewey's most sympathetic readers accuse him of methodological monomania (e.g., Boisvert 2003). Though I believe this is a consistent interpretation, I hope, with the aid of Foucault, to temper some of his emphasis on scientific method, harmony, and expertise. For this reason, I follow John Stuhr, who suggests that, a *genealogical* pragmatism (or experimentalism) should thematize the

that all people have to become scientists in order for problematic situations to be intelligently reconfigured. Primarily, experimentalism in political practice is characterized by the "belief in the ability of human experience to generate the aims and methods by which further experience will grow in ordered richness" ("Creative Democracy"; *LW* 14:229). Problems, ends, and means are to be defined by conditions and effects, and not by any supposed givens, whether they be biblical demands, current practices, intuitions, historical precedents, or expert knowledge. Courses of actions are to be measured by their effects in people's lives, but this is far from requiring double-blind tests. In short, while ends and means are usually defined by reference to concrete problems or purposes—though perhaps implicitly—experimentalism suggests that their value should be as well (*EN*; *LW* 1:15-7).

An Experimental Account of Legitimacy

Given the empirical methodology of social inquiry thus outlined, the problematic of legitimacy as traditionally understood will have to be extensively reconfigured. Universal legitimacy ignores purposes, conditions, and effects in defining a universal criterion of the state., and, on an experimental account, political legitimacy might be the

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historical and differential conditions of particular inquiries. "Dewey does not embrace openly these sorts of questions in his *Logic*, and thus ... pays no explicit attention, for example, to issues of race, ethnicity, gender, age, class, sexual orientation, body—to issues of difference and identity and matters of power. The subject of his pattern of inquiry readily appears as an abstract universal self, a subject from no place and no time." Besides Foucault's suggestions, which I will develop in the next chapter, I believe that Dewey's language of publics and problems could help foster experimental inquiries that are genuinely experimental, that is, attuned to their purposes, conditions, and effects. A "pragmatism [or experimentalism] that refuses to forget that facts are selected rather than self-sufficient should not forget to attend to the differences and oppositionalities inherent in all such selection, including its own" (1997, 113).

result of only one kind of valid action undertaken by people. It might be best, then, to pluralize legitimacies, like truths, as "processes of change so directed that they achieve an intended consummation" (*EN*; *LW* 1:128). What is just, what is right, what is legitimate, would simply be that which meets a public's desired goals. Different publics will find different practices, institutions, or norms legitimate according to their different problems, for not only will circumstances and ends vary greatly, but the possible means of achieving certain ends will as well. This evaluation of means, of course, will also determine what ends are legitimate for institutional reform, but both ends and means are to be evaluated with reference to public problems. Regularities and general structures will arise, but the virtue of this framework of legitimacy, as opposed to the traditional view, is that it requires us to always ask *for whom* a set of practices, norms, or institutions are legitimate. This, in turn, provides means of criticizing current ends and means and requires explanation for why certain interests are excluded.

A number of important consequences follow from an experimental account of legitimacy. First, legitimacy admits of degrees. Not only may more legitimate courses of action always be found, but what is legitimate itself has to be determined in relation to other possible options, the past, as well as projected futures. "To be good is to be better than," not to be good as such (*EN*; *LW* 1:57). Legitimacy is not something that is either had or not according to a simple criterion, nor is the answer to illegitimate situations to keep applying it. Instead, a legitimate course of action is one in which the ends and means furthered are in some way better than those previously attempted. This "betterness," of course, is to be contextually defined. On an experimental framework of

social inquiry and action, "[m]istakes are no longer either mere unavoidable accidents to be mourned or moral sins to be expiated and forgiven. They are lessons in wrong methods of using intelligence and instructions as to a better course in the future. They are indications of the need of revision, development, readjustment" *(RP; MW* 12:180). Having some degree of legitimacy is not difficult, but expanding the number or quality of interests met can take many attempts. Thus, in addressing one problem, it is often useful to understand how the future will be affected as well as what information the past provides.

Second, not only can more legitimate solutions always be found, but changing conditions, values, and technologies will *require* new approaches. These transformations create new problems as well as new courses of action, for, "[w]hen we look back at earlier periods, it is evident that certain problems could not have arisen in the context of institutions, customs, occupations and interests that then existed, and that even if, *per impossibile*, they had been capable of detection and formulation, there were no means available for solving them" (*LTI*; *LW* 12:481-2). New experiences make new ends and means possible, as well as new problems and frameworks for understanding them. Though many historical institutions and practices would clearly be illegitimate today, such as Japanese internment camps and Jim Crow laws, we should recognize that we have the benefit of the experience of these events. Given the circumstances and knowledge of the time, internment camps may have been the best option, but the world is now different because of this tragic experiment. The possibility of the widespread

legitimacy of any such future action is quite small.[29] Rather than being content to label the publics of the past as morally depraved, perhaps one should try to understand exactly why such courses of action were carried out so that future occurrences may be prevented.[30]

Third, and as this example shows, drawing attention to the fallible and experimental character of political action highlights the great possibility of tragedy. The stakes are high in political matters, though we are accustomed to having the feeling of certainty. An experimental account of legitimacy highlights the question: Why was it that such a course of action was seen as legitimate? Furthermore, for whom was it really legitimate? Despite the best of intentions, an end in actuality "may be indifferently an ecstatic culmination, a matter-of-fact consummation, or a deplorable tragedy. Which of these things a closing or terminal object is, has nothing to do with the property of being an end" (*EN*; *LW* 1:83). Just because something is desired does not mean that its effects will be desirable. Making legitimacy part of an experimental methodology should at least help to define the reasons and conditions for failure, instead of allowing undesired results to be blamed on whatever is convenient, such as a minority party. So that past tragedies may not have occurred in vain, a knowledge about the conditions, values, knowledges,

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29 Note, however, that this experience can be used to create situations that are legitimate for a minority. Though some may draw upon the conditions of these camps and their similarities to concentration camps in WWII in order to decry current practices—irrespective of the aims any leaders might have to protect national security—others may use this information to *perfect* similar institutions. The architects of Guantanamo Bay, for instance, were careful both to choose a site outside of U.S. territory and to label the prisoners "enemy combatants," two measures not taken in the creation of Japanese internment camps. These measures stave off any immediate claims of illegitimacy, since prisoners do not fall under the protection of the U.S. Constitution or the Geneva Conventions.

30 This may seem callous or shocking, but I would suggest that it might be useful to ask what purpose it serves to blame previous cultures and peoples. Such avenues are potentially useful lines of inquiry, but they may also serve to cast a blind eye to current practices which should be ameliorated.

and possible courses of action of past situations is likely to be essential for intelligently dealing with new events.

Finally, this pluralization and contextualization of legitimacy emphasizes the exclusionary character of ends served. Though internment camps were created for the sake of "national security," this really meant that Japanese immigrants were not part of the nation. Such universal rhetoric often obscures its differential effects. No matter how often these mantras are repeated, exclusion, "[s]elective emphasis, choice, is inevitable whenever reflection occurs. This is not an evil. Deception comes only when the presence and operation of choice is concealed, disguised, denied. Empirical method finds and points to the operation of choice as it does to any other event. Thus it protects us from conversion of eventual functions into antecedent existence." Ignoring the necessity of exclusion and treating certain ends as universally valid is what Dewey calls "*the* philosophic fallacy, whether it be performed in behalf of mathematical subsistences, esthetic essences, the purely physical order of nature, or God" (*EN*; *LW* 1:34). Fairness, equality, or tolerance may have unfair, unequal, or intolerant consequences, especially when they are employed as slogans and not as experimental solutions to concrete problems for avowed purposes.[31] The dogmatic application of certain ends will blind one

31 In this vein, see, for example, Wendy Brown's enlightening inquiry into the many effects of the discourse of tolerance in her book *Regulating Aversion*. She finds that this rhetoric often depoliticizes political relations, allowing those who are tolerant to act in the name of civilization in order to correct the wrongs of the intolerant, for "[a]lmost all objects of tolerance are marked as deviant, marginal, or undesirable by virtue of being tolerated, and the action of tolerance inevitably affords some access to superiority" (14). The tolerant are not simply more advanced, but they are also more autonomous, as the "division into those who are said to be ruled by culture and those who are said to rule themselves but enjoy culture renders culture not simply a dividing line between various peoples or regimes or civilizations, and not simply the explanation for political conflict, but itself the problem for which liberalism is the solution" (20-1). By feigning cultural neutrality, liberalism allows for the tolerant to make the intolerant civilized and free. As shown by the deployment of this rhetoric in the current wars

to their uncontrollable and unpredictable—but also manipulable and obfuscatory—effects. No norm, goal, or procedure can guarantee its own value, for only through investigation into the consequences of ends and means can their actual value be determined. To embrace the perhaps ineliminable exclusions of our political institutions, one should attempt to be as clear as possible about who is excluded and why.

In short, a legitimate institution, practice, or norm works provisionally and with reference to the amelioration of specific problems for the sake of concrete interests. Thus, when taking action, what is legitimate for whom should be stated as explicitly as possible, instead of assuming that an expert's selection of universal norms will have universally valid effects when institutionalized. Tragedy is always possible, but the concrete determination of conditions, ends, means, and effects may help avoid uncritically exclusionary practices. Since more legitimate courses of action have to improve upon existing situations, though rarely, if ever, achieving universally valid results, there is nothing arbitrary or uncritical about this account. An experimental approach undercuts the dichotomy between *de facto* and *de jure* definitions of legitimacy—i.e., that might makes right or that what is determined in theory is legitimate—by making evaluation depend upon transformation for specific purposes. Legitimacy should be experimentally demonstrable, but this in no way requires the legitimation of the status quo or the denial of legitimacy. I will say more about how an experimental account of legitimacy can provide for the criticism of ends and avoid the charge of relativism in the next chapter. In the subsequent pages of this chapter I will

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in Afghanistan and Iraq—by moderates and progressives, no less—a shibboleth like "tolerance" can have consequences that greatly outstrip its common sensical value.

show how this methodology undercuts many common objections to this account. But before this, I would like to draw out some practical consequences of this framework.

Increasing Legitimacy: Communication, Imagination, Transformation

If institutions, practices, and norms are evaluated in terms of their conditions and effects in ameliorating publics' problems, it may seem that an experimental account of political inquiry would allow for no general structures or generalizations. However, this framework is not skeptical about the value of states, rights, laws, cultural norms, markets, NGO's, or any other widespread contemporary institutions. It simply suggests that their value should not be shown by *de facto* existence or *de jure* arguments. Rather than showing how one such institution might be said to be legitimate it may be useful now to provide a few criteria by which more legitimacies are likely to arise. As the experimental account of legitimacy I have developed has been defined in terms of publics and problems, increasing legitimacies often depends upon transformations of both. For instance, since action can be taken on behalf of only a set number of goals, the greater the number of interests that actually come to determine the problem and course of action taken, the more legitimate it is likely to be. Furthermore, as the interests at stake in an issue may have contradictory goals, the discovery of new means and ends that might change the framework of the problem is often central. Finally, flexible institutions are typically an essential component of change, for reconstruction depends on malleable conditions. Such suggestions might help open up other institutions, norms, and practices

to critical inquiry and show the need for reconstructing in order to deal with many political problems.

First, one way of increasing legitimacy is by increasing the number of interests represented in the naming and framing of problems, decision-making processes, and the evaluation of outcomes. This often requires reconstructing institutions, norms, and practices of communication so that a plurality of voices can be heard which have been hitherto marginalized or unrecognized. Resolving conflicting interests is a question of "how conflicting claims are to be settled in the interest of the widest possible contribution to the interests of all—or at least of the great majority. The method of democracy—inasfar as it is that of organized intelligence—is to bring these conflicts out into the open where their special claims can be seen and appraised, where they can be discussed and judged in the light of more inclusive interests than are represented by either of them separately" (*FC*; *LW* 11:56). That we rarely achieve such transparency today is often due to institutions that are attuned to only one set of interests, such as those of elites or experts. They preclude the recognition of a broader range of values and, thus, do not even admit that a value conflict exists. It is difficult for shared inquiry to occur if problems are not recognized, and a great step towards ameliorating issues felt by one public may be increasing the number of people who see the same difficulties.

The expansion of legitimacy thus often requires institutions, norms, and practices that foster communication so that concerns, interests, and values can be widely recognized. Much scientific research, for instance, is highly undemocratic, not only because its goals are directed and funded by private corporations and war machines, but,

more importantly, because institutions that could pluralize the interests that might direct them do not exist.[32] In part, this may require mediating institutions that communicate and synthesize the results of research so that publics can evaluate trade-offs and form their own interests. For this reason Dewey called Walt Whitman the seer of democracy, as he realized that "[p]resentation is fundamentally important, and presentation is a question of art" (*PP*; *LW* 2:349). In part, there may need to be institutions that communicate public interests into researchable topics and funding streams. While there are now many efforts to connect universities to public interests in more aligned ways,[33] it is clear that schools cannot take all of the responsibility for this communicative work. For instance, traditional and new medias may need to take on a large role as well.

Besides creating mediating institutions, increasing communication might often require making more shared forms of life. Shared understanding is made possible by shared action—and vice versa—for to "understand is to anticipate together, it is to make a cross-reference which, when acted upon, brings about a partaking in a common, inclusive, undertaking" (*EN*; *LW* 1:141). If two very different people or groups of people need to communicate to deal with a problem, their activities often need be transformed.[34] For example, if institutions were created so that geneticists and the elderly could

32 Dewey emphasized that laypeople do not have to have scientific knowledge to engage in debates about scientific research. They only need to understand the consequences of certain courses of action by connecting technical information to their lived experiences and activities. Contrary to the realist assertion that laypeople lack such intelligence, the "[p]ossession of the capacity to engage in such activity *is* intelligence" (*EN*; *LW* 1:142). If people are unable to intelligently engage in the direction of certain institutions, this may be an indictment of those institutions rather than any people.

33 The field of community engagement is struggling with the question of aligning the practices of universities and publics. See Boyer (1990) and the Kellogg Foundation report on the Future of State and Land-Grant Institutions (1999).

34 Though many thinkers have drawn upon Wittgenstein's conception of language games, a few have placed equal importance on the forms of life they structure and which are structured by them. Changed practices may come from new linguistic interventions, but they may also be a result of new performances (see Bourdieu 1998, Butler 1990, Medina 2006).

communicate interests and findings, the goals, meanings, and possibilities of genetic research would change for both. This does not mean that people need to have the same values in order to communicate, but it does entail that they should have some shared activities or institutions they can draw upon in order to share the same meanings. In this example, researchers and elderly people may need to be related as working towards the same goals, rather than as producers and consumers of technologies. Communication thus also provides a means of criticizing ways of life that make shared inquiry very difficult, such as gated communities, "the bottom line," or gender norms.

A second concrete way of increasing legitimacy is imagining and discovering new possibilities for thinking and action.[35] We are often stuck in old routines simply because we cannot conceive of any alternatives. Communication is one way of discovering new potential values and courses of action, for new ways of life can arise in the unpredictable events that occur when we try to form bridges between different interests and peoples. This is shown by the fact that "[a]ll discourse, oral or written, which is more than a routine unrolling of vocal habits, says things that surprise the one that says them." When impasses occur in dealing with political problems, what is most lacking is often the "surprise" of a new way of thinking about a problem. This may occur simply by including voices that have not be heard before, but it also may require expert suggestions for reframing issues. The expert is not the one who knows the right answer to a problem but is rather the "one who has skill in making experiments to introduce an old meaning into different situations and who has a sensitive ear for detecting resultant harmonies and

35 Caspary (2000) emphasizes this aspect of Dewey's political methodology as well. Other thinkers who give imagination a central role for the amelioration of public problems include Deleuze and Guattari (1987, 1994), Derrida (1994), Laclau and Mouffe (2001), and Kristeva (2002).

discords" (*EN*; *LW* 1:152). As I will argue in Chapter Three, Foucault is one of the best contemporary examples of this kind of experimental expert who makes attuned suggestions to concrete problems in order to imagine new ways of thinking, living, and valuing.

It may seem odd to characterize imagination as a step towards creating more legitimate institutions, but a new situation without a concomitant response in thought is often highly problematic. For instance, when industrialization drastically changed the ways humans interact while laissez-faire liberalism and Marxist revolution remained the only possible ways of construing the situation, this was an example of what Dewey called "cultural lag." Such failures of imagination "exist on a wide scale when there has been a period of rapid change in environment accompanied by change in what men do in response and by a change in overt habits, but without corresponding readjustment of the basic emotional and moral attitudes formed in the period prior to change of environment" (*FC*; *LW* 13:97). Thus, Dewey's project in *Individualism Old and New*, was to cast off old individualistic moral habits and to begin to think of new ways of understanding human action in an industrialized world. Similarly, as this dissertation tries to suggest, we face conditions today that do not fit the universal questions of legitimacy that continue to dominate much of political thought.

The need for imagination can also go a long way to explain what is often called "ideology." Today, "[o]ur prevailing mentality, our 'ideology,' is said to be that of the 'business mind' which has become so deplorably pervasive." Dewey asks, "Are not the prevailing standards of value those derived from pecuniary success and economic

prosperity" (*ION*; *LW* 5:69)? To the extent that norms like self-interest and conspicuous consumption drown out alternative values, they comprise an ideology. This definition separates the traditional understanding of ideology from its reference to material interests—which makes the identification of ideological conditions rather straightforward—and creates a practical problem of imagining and creating conditions in which more people can be involved in imagining alternatives. Philosophers cannot be assumed know what is *really* in people's best interest, for their constructions should be tested by publics and their problems. Whether or not conditions are "ideological" has to be shown after previous values have been demonstrated to be rigidly confining by reference to new conceptual frameworks that have been created. But, as every situation is going to involve some reconceptualization, all problematic situations are to some extent ideological.

A third way to increase legitimacy is to create new possibilities for transformation or growth. Sometimes we are so mired in our habits that we cannot even disrupt them with sustained reflection, and communication and imagination are useless if behaviors cannot actually change.[36] Conscious reflection is often not enough to change people's attitudes, actions, or beliefs when social institutions have the power to co-opt deviant practices or assimilate marginal discourses into their own terms. Routine, unthinking, or bad habits are "so severed from reason that they are opposed to the conclusions of conscious deliberation and decision.... Only an environment which secures the full use of

36 See Shannon Sullivan's *Revealing Whiteness: The Unconscious Habits of Racial Privilege*. Indianapolis: Indiana University Press. She argues that, as white people's unconscious attitudes towards race show, it is not acts of will but changed environments that might interrupt the ways we think and act. Of course, it is through certain kinds of communication that such working through might occur, as Noëlle McAfee argues (2008).

intelligence in the process of forming habits can counteract this tendency" (*DE*; *MW* 9:54). A practical problem thus arises for reconstructing institutions to foster intelligent change, for, as individuals are only as flexible as their environments, the possibility of creating more legitimate institutions, norms, and practices often hinges upon their ability to change.

Dewey focused a great deal on developing teaching methods that taught children to "the habit of learning," of "learn[ing] to learn" (*DE*; *MW* 9:50), but this goal applies to other social institutions as well. One of Dewey's essential insights was that education, like Foucault's concept of power, happens constantly and everywhere—not just in the schools—so that the creation of environments that allow people to learn and change in intelligent ways should take place at many levels and in many areas. To what degree do talk radio, the office cubicle, or the highway system fix habits in unproductive ways, and to what degree do they provide opportunities for change and for forming ways of dealing with new changes? If rich blacks and poor whites have difficulty coming to terms on political issues, surely media, segregated neighborhoods, and educational materials that reinscribe stereotypes and values are often partly to blame for the lack of transformation on either side. We have also seen how some political battles, like the Israel-Palestine conflict, have become even more entrenched through religious institutions, because these provide such powerful and inflexible ways of interacting with others. Political battles may be won in such situations, but lasting change may require major religious reconstruction, a task similar to that Dewey himself attempted in *A Common Faith*.

Increasing communication, imagination, and transformation are a few of the many

possible ways for creating more legitimate institutions within democratic societies. Rights discourse, for example, has been another particularly powerful tool for reconstructing problematic situations, though its universal rhetoric may ignore historical and structural forces. Communication, imagination, and transformation place emphasis on how existing institutions structure the ways publics can intelligently redirect their affairs to a great extent. In this way, they are "prior" to determining the legitimacy of a course of action and therefor allow one to ask questions about the conditions of the actuality of legitimacy, such as: To what extent do specific institutions block recognition of certain issues that need to be ameliorated? Which ideologies fix the terms of debate, and how might we imagine other possibilities? How can a more dynamic populous be created through schools or medias? Though the means of dealing with concrete problems will always be different, it is likely that at least one of these three common conditions need to be met in order to increase the legitimacy of existing practices. The existence of communication, imagination, and growth, however, cannot guarantee legitimate effects. Whatever courses of action are taken may always fail.

These three criteria additionally show that the creation of more legitimate situations often depends on experts and cannot happen simply through "public" deliberation or decision-making. As I will spend much more time showing in the next chapter, their expertise is often a prerequisite for decision-making or deliberative processes. Artists or philosophers may be needed to imagine new frameworks in which communication might occur or ways of life in which we might take part. Executive decisionmakers might have to make structural changes or limit media representations in

order to make shifts that make conscious reflection effective. Psychoanalysts may need to suggest ways of understanding traumas that prevent peoples from engaging in mutual education. The work of experts in all of these cases should be held accountable to people in their efforts to deal successfully with problems, but they show that creating legitimate conditions sometimes requires actions that are initially illegitimate.

Moral Obligation, Modus Vivendi, and Coercion

Having outlined an alternative account of legitimacy as well as some of the practical problems it often entails, it remains to be seen the ways in which questions and concerns associated with the traditional problematic might be dealt with on these terms. When are people morally obligated to obey the state? How can stability be ensured? When is coercion legitimate? On an experimental account, these questions cannot be answered apart from the conditions and effects of dealings with public problems. However, such an approach is unlikely to satisfy those who accept the universal framework of legitimacy, for, if there is no one principle that qualifies the legitimate state, how can we be sure that people are morally obligated to respect it? If what is legitimate is simply "what works," why can't I revolt if it doesn't work for me? How does the experimental account of legitimacy prevent the coercion of minorities—or of the masses by a minority elite? Though I do not deny the potential importance of these questions, I will suggest that, just as there is no problem of legitimacy in general on the experimental view, there is no problem of coercion, modus vivendi, or moral obligation

in general. There are some general ways of increasing legitimacy, as we have seen, but their value is to be experimentally evaluated.

As we saw in Chapter One, the universal framework of legitimacy is often motivated by and informs questions of moral obligation, modus vivendi, and coercion. In order to motivate a duty to the state even when we do not get our way, philosophers try to find a criterion that distinguishes a legitimate state from one we need not obey. People are morally obligated to obey laws and governments made according to universally valid norms or procedures, and the state can coerce those who are confused about what their obligations are. If such norms or procedures cannot be found, the worry is that individual action, though perhaps temporarily creating peaceful conditions, will eventually be guided by self-interest. Modus vivendi compromises are the only alternative. Finally, since the state has the authority to coerce dissenters—and indeed, must do so if society is to be stable and if people are to live according to laws they made—one must be exceedingly careful about the grounds of such coercion. If the state does not express common ends, it is coercive and against its people's true interests, no matter what their interests may appear to be.

On the experimental account of legitimacy, however, these concerns should be contextually investigated with reference to concrete purposes. Instead of assuming that we need an account that could compel the assent of a person in general, the experimental framework suggests one asks why *these* people keep breaking *that* law *here* and *now.* What is causing *those* people's experience of illegitimacy, and what, if anything, can be done about it? General questions about moral obligation, modus vivendi, and coercion

may help create more legitimate institutions, norms, and procedures, but an experimental account would suggest that this should be determined experimentally, that is, with reference to concrete purposes, conditions, and effects. If the concrete purposes for asking such questions are not affirmed, it is difficult to understand the differential effects of answering them, and it is easy to assume that one's favorite answer has better effects than it actually does. Rather than dealing with a situation on its own terms and doing the real work required to reconcile interests, political treatises are often concerned to find answers to questions without asking for whom they are actually answers. And ignoring the concrete effects of realizing particular ends often silences alternative interests, as Marx, Pateman, and Sandel show.

For instance, in trying to justify eminent domain to people who do not want their property confiscated, it is quite possible that they will not be compelled to be morally obligated in actuality. This does not mean that one can simply say that they are "beyond the pale," since we have theoretically demonstrated the validity of such confiscation. Determining the validity of such action is likely to be a complicated process involving deliberation, expert knowledge of past situations, mutual education, etc. Judging them to be "beyond the pale" is not as simple as referring to a criterion "we" know to be right. It is possible that the most legitimate course of action is to minimize the number of such occurrences. Experimental legitimacy, being a matter of degrees, can always be increased, though such actions may never be morally binding for its victims. This is a reality that should be addressed in concrete ways, such as by creating more communicative institutions between people and the government, instead of justified

solely by reference to "universal ends."

Avoiding general questions about stability does not necessitate prudential compromises between incommensurable or irreconcilable communities or interests. Compromises are a part of life. Some are lasting, some are not. Assuming that all compromises will lead to instability makes it difficult to intelligently deal with situations in which compromises are the most legitimate course of action. Opposed parties may become less opposed if dialog occurs, or a compromise itself may lead to situations that reconcile those interests by creating new forms of life. Whether or not a compromise is problematic has to be determined by the publics affected by that compromise themselves. If a compromise is unstable, the only stable option may be to reconstruct the interests of both sides, not to demand that they both accept an expert's favorite interest. This is not an easy task, made even more difficult by religious entrenchment, for example, and may require the resources of theoretical analysis of values—such as appeals to fairness, truth, or community—but it may not. Drawing attention to particular effects of religious discourse may already begin the task of reevaluating priorities as well as imagining new practices and meanings.

Finally, rejecting the assumption that a universal criterion for limiting the coercive power of the state will necessarily create less coercive conditions does not rule out reducing coercion in concrete ways. Many theorists assume that if the state is not legitimate for everyone in the same ways and for the same reasons, then unlimited violence against minorities may follow. I have suggested, however, that asking *for whom* specific state actions, laws, or rulings are legitimate may be a more effective way of

creating more legitimate institutions. This is because "universal" criteria often have particular conditions and effects. An experimental account of legitimacy may be best able to show when institution, norm, or practices are illegitimate for a group of people, and thus point to concrete ways of reconstructing them. Questions of coercion would thus be situationally answered and evaluated, and they need not be centered on the state. It may be that be that by creating more flexible institutions that a great deal of coercion could be lessened.

In short, the experimental framework of legitimacy undercuts the questions of moral obligation, modus vivendi, and coercion associated with the universal problematic. If there is no problem of legitimacy in general, there is also no problem of moral obligation, modus vivendi, or coercion in general. One should thus look to specific regions where laws are not being followed, where compromises are being broken, or where people are being coerced, and these are certainly not the only, or even primary, questions we might have to ask. I have suggested a provisional general question—i.e., why does a certain group of people experience the effects of certain institutions as illegitimate, and what can be done about it—but this formulation points inquiry to particular concerns so that generalizations and questions are answerable to concrete practices. Whether utilitarian, communitarian, or contractarian, answers to the traditional question of legitimacy just like its motivating questions may play a part in solving public problems, but this cannot be known or decided without investigation into conditions and effects. Creating more legitimate practices may be better achieved by beginning with actual peoples and the ways they are trying to restructure their lives.

Beyond the State

The universal framework of legitimacy often ignores the fact of reasonable pluralism because, since universal consensus does not exist in practice, it must resort to question-begging means of defining common ends. To pluralize investigation into ends, I have used Dewey to suggest a different methodology for evaluating public institutions, practices, and norms. In order to avoid assuming any particular relationship between ends and means, an experimental methodology proposes that the purposes for which institutions, practices, or norms are created should be tested against the conditions and effects of realizing them. When it comes to political ends and means, Dewey suggests a conceptual framework of publics and problems. Publics begin with a selective naming of the causes and effects of a problematic situation, frame certain solutions, carry out some action, and then judge the transformations that result, so that what is legitimate will depend upon the public and the ends they want to meet. The value of philosophical tools, such as questions about moral obligation or the presumption of incommensurable differences, just like artistic creations or scientific hypotheses, are to be judged by publics in their engagements with problems.

One consequence of this account is that it draws attention to the concrete ways in which particular institutions are legitimate for specific groups or interests. These questions are not possible on the universal model, since it assumes that legitimacy is either universal or non-existant. Theorists have tried many different ways of inventing different universal conceptions of legitimacy, or showing procedures by which such

conceptions could be reached, but they have no way of asking how these criteria can be evaluated. An experimental account of legitimacy aims at providing just such a set of questions by assuming that legitimacy is not universal and by providing a methodology for showing the ways in which legitimacies occur. This account does not deny that such inquiry is exceedingly difficult, yet the plurality of different ways that "universal legitimacy" has been defined suggests that an approach that embraces purposes and practices may have effects that are more attuned to the plurality of practices and purposes.

An experimental framework is not just a methodology, for it suggests a few general ways of increasing legitimacy. For instance, one could increase the number of interests served by trade institutions. The problem, of course, is bringing these interests into the conversation about the legitimacy of such major structuring forces, though I have made a few suggestions for some common ways to do so. If people cannot communicate—in the richest sense of the word—it is unlikely that they could come to recognize the same problems, let alone agree on any important matters. Modus vivendi is certain to occur when people have nothing in common and have no way to form shared experiences, as the topography of many American cities today makes clear. If people cannot imagine any other frameworks—whether due to a lack of conceptual resources or the rigidity of existing institutions—increasing legitimacy beyond the status quo will be very difficult. Finally, if institutions and peoples cannot change, they will be unable to react to the novel situations, peoples, beliefs, values, and ideas they ought to face. More needs to be said about how conflicts of interest can be solved in practice, of course. In

Chapter Three, I will go into greater detail regarding some ways in which effective institutional critique and transformation is likely to occur. In Chapter Four, I will provide a concrete case in which these tools may be of some use.

It may be objected that my definition of legitimacy is no less universal or abstract than any previous accounts. I readily admit that this may be a possibility but argue that this should be judged in terms of its concrete effects, not its dissertation form. Since the problem with the universal problematic of legitimacy is its likely consequences and not any logical errors it may have committed, my alternative should not be judged primarily in theory either. I hope that, like other experimental concepts such as "experience" or "power," the experimental understanding of legitimacy will result in changed practices. Whether or not abstract definitions are good or bad may not be able to be determined in abstraction from particular problems. It is of course possible that a universal foundation for the state will be found, but the endless conflict between these accounts indicates that a more contextual and pluralist approach will have better results, as it will allow one to take the effects of theory, norm, or procedure into an account of its value. I hope to have given some reason for this approach in Chapter One, though the more concrete analysis in Chapter Four will more concretely evaluate these two frameworks.

If this alternative account of legitimacy seems too utopian, as Dewey's call for a more intelligent political practice appeared to many people, I would argue that it more accurately describes what we already do and could do better. People do not construct hypothetical situations to judge the validity of their institutions except when problems are experienced. The power of Locke's or Rawls's theories comes not primarily from the

arguments for them but the effects they have for people's problems. Two of the greatest tasks in everyday political practices, then, are creating ways to make recognition of problems wide enough for their effective amelioration and providing means for their naming, framing, and solution to be open to contestation. Since neither militant fundamentalists nor isolated academics can determine what our problems *really* are, any intolerable conditions experienced by anyone is a candidate for larger concern, and whether or not the need or resources for dealing with such issues exist is for future publics to judge.

Whether or not people are intelligent enough to understand and evaluate such problems cannot be determined in the abstract from concrete conditions either. If people are to have control over their lives, they should start by taking control over their lives—according to need and ability, of course. It is obviously the case that no human could be involved in understanding and evaluating every public problem that affects them, but this simply means that solutions will have to take this reality into account. Experts will have increasingly important roles to play in political affairs, but the final arbiter of success or failure will have to come from people's lived experiences and needs. That people are not transparent to themselves and require experts for this task as well simply adds another layer of complexity to the work of defining and solving problems, but there is no reason to despair of this task. In fact, judging from the miserable conditions resulting from millenia of expert rule, there is good reason to think that more democratic practices will lead to more democratic results. Usually when it is said that people are too stupid to understand the forces that determine their lives, the effect is to protect one of these very

forces. Dewey's faith in human potential, rather than being naïve, is far from being disproved.

It is true that the pragmatic approach I have outlined presents more difficult tasks for political practice than have been assumed by much political theory. Like genealogy, the amelioration of shared problems is a "gray, meticulous, and patiently documentary"—as well as experimental and social—labor (Foucault 1980, 139). Answers are not given in advance, expert experience is not prioritized, and certainty is not an option. Local knowledge, public discovery, transformative communication, growth, and hypothesis formation and testing characterize this approach. The wasted resources of academic infighting spent on trying to solve insoluble problems may be better used in the imaginative reconstruction of problematic institutions, as they need all the help they can get. Deweyans no less than other theorists have been guilty of ivory-tower abstractionism, but I hope to have shown that Dewey provides resources for rethinking political theory and practice more radically than many have realized.

Part of the revolutionary nature of this approach lies in its broadening of the scope of legitimacy and the space of public problems, though, due to the universal problematic of legitimacy's focus on the state, I have had to limit my examples. However, it should be clear that any institution, action, belief, practice, or value could be subject to questions of legitimacy. The state is just one of many structures that educate, control, and norm ways of life. We do not consent to the state just as we do not consent to export processing zones or heteronormative practices, but there are ways to reconfigure these institutions in which we take part. Just as it makes little sense to define the legitimate

state as such, there is no fair trade relation or non-violent gender/sex norm as such. These structures should be reconstructed according to the needs of particular peoples. Any number of relations or norms could be good, so it is only by concrete analysis that we might know which really are appropriate.

An experimental account of legitimacy is not utopian in one final way. The resources are already being spent, institutions are already being reconstructed, but it is narrow interests that are currently in control. Dewey asks, "Is not the problem at the present time that of securing experts to manage administrative matters, other than the framing of policies? It may be urged that the present confusion and apathy are due to the fact that the real energy of society is now directed in all non-political matters by trained specialists who manage things, while politics are carried on with a machinery and ideas formed in the past to deal with quite another sort of situation" (*PP*; *LW* 2:312). If people are to have control over their lives, political theory will have to move from the nation state to the rhizomatic territory of multinational corporations, population flows, and cultural capitals. This is not an impossible task—at the very least requiring an increase in interests represented—for, to a great extent, the means of more democratic control already exist.

CHAPTER III

CRITICISM AND THE PRACTICE OF POLITICAL INQUIRY

As we saw in Chapter One, the universal problematic of legitimacy that requires universal ends for the limitation and criticism of widespread institutions like the state risks resorting to experts to do the work of reconciling value conflicts. Since there are no clear universal ends, experts need to invent them. Moreover, because the goals and questions the universal framework asks are premised upon such a set of ends, theorists accepting this account rarely provide resources for asking *for whom* the set of ends invented by experts are actually legitimate, as Locke's tacit consent and Rawls's reflective equilibrium show. To begin to find an alternative to this expert-centric framework of legitimacy, I have used Dewey to provide some suggestions of ways in which institutions could be evaluated that are attuned to plural purposes and interests. If expert suggestions are judged by their use in reconstructing institutions to create more legitimate responses to public problems, the kinds of exclusions Locke's human nature validated might be better avoided. Since philosophers and other experts do not determine the ends of legitimate institutions on an experimental framework, in this chapter I will provide one suggestion for how their roles might be usefully understood.

One way that the difference between practices of expertise bound up with the universal and experimental frameworks can be shown is through their differing practices of critique. Though accounts of critique have varied widely, the universal framework

assumes that political problems can be solved hierarchically. There is a division of labor between the theorist who demonstrates the validity of certain norms or procedures and the critic who actually applies them to specific institutions. According to the experimental method, however, this account of theory and practice is misguided for two main reasons. First, the plurality of possible ends suggests that their value cannot be determined in the abstract from their application. Means need not determine ends, but a strict separation between conditions, effects, and ends cannot be assumed. Second, if ends always determine means, practice has no way to revise theory on account of new situations and the results of previous experiments. New events may require new theories, values, and procedures, yet the theorist, abstracted from all this, can only continue to trace out new ideals for "our" intuitions.

An experimentalist, however, hopes to realize a different relation between theory and practice, a different kind of criticism. If legitimacy is to be determined experimentally, experts are those who describe a public or problem in such a way that successful reconstructions can occur. Accordingly, an experimental practice of criticism is not an application of known values undertaken by any one critic or group of activists, but is rather a public's identification, transformation, and evaluation of a problem in which a theorist takes part. On the experimental account, theorists and activists participate on the same level, in a dynamic relation oriented to a public problem. Who might be an expert will depend upon how their knowledge of past histories and present needs helps a public with future amelioration. Since expert knowledge is functional and not definitional, the way experts use their knowledge ought to be attuned to these

concrete functions. Theory should arise from and be tested in practices so that, instead of being prior to critique, theory is actually just one part of the work of criticism carried out by people. Accordingly, I would like to suggest that widespread and extensive institutional reform may help theorists become more effective in helping publics deal with their problems, though it is not my place to say what these changes should be in any kind of detail.[37]

Michel Foucault exemplifies an experimental expert, as he has always worked to deal with situations or problems that are "intolerable,"[38] though the dominance of the hierarchical, one-directional understanding of political theory and practice has led to his being misunderstood in two ways. Since many theorists believe that criticism is the application of universal values, they accuse Foucault of either surreptitiously importing some universal norms or of having no basis for criticism.[39] Critics and activists, used to having certain criteria and courses of action, blame Foucault for not providing any answers to the questions he raises. These charges presuppose a relation between theory and practice that Foucault explicitly rejects. Whether or not a criticism is critical does not depend upon the correct deployment of a set of concept or values on the experimental model. Instead, criticism is determined by the having of critical effects. If, for instance, *The Birth of the Clinic* creates a new problem space in which reformers, doctors, patients, and administrators can create better medical practices, than it may be considered part of a

37 The reasons for this reticence should become clearer in the course of the chapter. I hope to open up a different way of thinking about the institution of political theory, though the way to deal with this "problematization," as Foucault would call it, cannot be answered by me or any other theorist without concrete dialog and experimentation by theorists and activists themselves. Outreach programs at some land-grant universities and interdisciplinary centers at many universities are working through different ways of addressing these issues.

38 See Glucksmann (1992, 336–339).

39 See Habermas (1990), Walzer (1988), Fraser (1985), Rorty (1990).

critical enterprise. If it fails to do anything like this, it is an instrument without a use. Abstract questions about how criticism is possible—Does it require an outside perspective? Does it require a set of universal criteria? Can it avoid relativism and essentialism?—are therefore only important to the extent that they aid in creating critical transformations.

Foucault provides only a few examples of how intellectuals could take part in more effective criticism before he died, and he recognized that the solution to any given problem will not require the language of power or an archeology of *epistemes*. Nonetheless, his historical and differentiated approach attempts to realize an experimental relation of theory and practice wherein experts create new "problematizations" for publics to use and evaluate. As the world is exceedingly complicated and growing more so every day, and as most problems are usually only vaguely or clumsily felt in the first instance, the main task of the intellectual is to help a public define itself and its problem. This often involves helping to find ways for marginalized voices to be heard, inventing new frameworks or concepts, or showing the ways in which institutions block intelligent redirection. Because successful criticism depends upon intelligent action directed toward particular purposes, an historical sense and an attunement to differences is often vital. The conditions that now exist were themselves responses to past problems, so understanding what ways of life have been made possible by what relationships may be essential for reconstructing these inherited structures. Legitimate situations are to be formed and evaluated through the transformation of previous solutions that were made possible by prior problematizations.

There are other roles experts can take to help publics deal with their problems besides problematization, though, on an experimental account, their expertise should be determined according to the conditions and effects they make possible for public action in addressing a problem. Artists, psychoanalysts, journalists, bureaucrats, and educators might all have different positions to play given an experimental framework. However, since publics need problematizations to understand themselves, their problems, and the possible ways things could be different, I will emphasize this role, which may have import for political philosophers in particular. Since Foucault usually made assessments of his work in interviews instead of his books, I will have to draw heavily upon the former while making reference to the goals and effects of the latter. I hope to show that it is useful to understand his work within a broadly experimental framework, though he adds much to a experimental relation of theory and practice by virtue of his own situated, local, and experimental practices. Finally, like the previous chapter, I will set this account off from the universal understanding and practice of criticism, though I will not argue for it here. Any reference to other theorists is simply to help characterize this experimental framework. The use of this methodology will itself have to be proven by its effects, of which I will provide some indication in the next and final chapter.

Specific and Universal Intellectuals: Problematization or Proximity to Truth

To begin to see how Foucault experimentally reconfigures the practice of criticism, and, accordingly, one role of experts in creating more legitimate institutions, it

will be useful to start with his contrast between two norms of expertise: the expert as spokesperson for universal truth and the expert as "specific intellectual." The former embodies a very different relationship between theory and practice than the latter in terms of her knowledge, actions, and goals. The universal intellectual assumes that the validity of norms can be determined apart from their effects—either by analyzing intuitions, representing communities, or generating lists—so that criticism is the mere application of these ends to problematic institutions. Given an experimental account of the evaluation of values, however, which does not assume that problems can be defined in the same ways or involve the same choices, the validity of any theoretical work cannot be assumed to be separated from its conditions, effects, and purposes. Thus, the specific intellectual who hypothetically outlines possible ways of understanding a problem for a specific purpose should take the place of the universal theorist who provides a single program for dealing with all problems. By working to help specific people understand certain problems better, a specific intellectual has a concrete purpose and context within which her theorization can be evaluated.

Foucault contrasts the specific intellectual with the "universal intellectual," the man of science born in the Enlightenment, whose proximity to truth provided technical and moral expertise. Like the man of god, the universal intellectual had access to—or at least approached—natural laws; unlike the church fathers, however, he had a new kind of technical knowledge as well. He "spoke, and was acknowledged the right of speaking, in the capacity of master of truth and justice" ("Truth and Power," 126). Truth and justice are represented by this persona as the domain of scientific knowledge, and the moral

validity of scientific knowledge was guaranteed by its status as natural law. That is, the universal application of this knowledge could be assumed to be valid, because the scientific method guaranteed its truth, hiding behind this world of appearances. Whether a Comtean social scientist or a Marxist historical materialist, the universal intellectual merely had to transcribe these universal laws, so that administrators and managers—the "merely *competent instances* in the service of the state or capital" (127)—could apply them. On this "trickle down" model of expertise a select group of people have access to truth and justice, while others merely instantiate their universally valid knowledge. These applications have no bearing on the validity or formation of universal norms or procedures.

Whether or not such expert knowledge has ever existed, the one-directional practice of universal expertise dangerously assumes that experts are universally representative. Foucault affirms a different model of expertise that has arisen since terrifying scientific "advancements" like the atomic bomb have led many to question this belief. If, according to an experimental methodology, the validity of scientific knowledge depends upon the purposes to which it is put, experts should be more attuned to the practices in which their work has meaning. Not Marx but Oppenheimer exemplifies the "specific intellectual" who has "become used to working... within specific sectors, at the precise points where their own conditions of life or work situate them (housing, the hospital, the asylum, the laboratory, the university, family and sexual relations)" ("Truth and Power," 126). Note that the specificity of the specific intellectual is not determined by the setting in which she works or the conceptual tools she uses but

by her participation in an experimental endeavor to ameliorate public problems. These problems determine the specific intellectual's purpose, which, rather than being the marker of contingency, is a condition for valid knowledge, for the value of any expertise depends upon the needs it is meant to satisfy. The knowledge to create atomic bombs or incite proletarian revolution is valuable if one wants to kill millions of civilians, but this is likely to be a goal that few share.

A specific intellectual's work, then, is engaged in a different set of practices than those of the universal expert. Though it should respond to actual problems and needs and be evaluated by how she helps them be addressed, existing problems are often not clear or, what is more likely, are imperfectly problematized by conceptual apparatuses developed for prior situations—what Dewey called "cultural lag." Thus, a great deal of a specific intellectual's work may be bringing new tools and new possibilities for publics dealing with these new felt problems, which Foucault calls "problematization." It is an expert's "problematization that responds to these difficulties, but by doing something quite other than expressing them or manifesting them: in connection with them, it develops the conditions in which possible responses can be given; [problematization] defines the elements that will constitute what the different solutions attempt to respond to" ("Polemics, Politics, and Problematizations," 118). As many public problems involve conflicting values, unrepresented voices, old vocabularies, or sedimented institutions, new problematizations may be needed to change the space of a problem as initially given.[40]

40 Only a few of Foucault's readers prioritize his work on problematization (Rajchman 1984); Koopman forthcoming; see also Deleuze and Guattari 1994), many preferring to split his work into three parts and

The value of a problematization is not guaranteed by any institution of expertise, like the university, but is tested experimentally and with reference to concrete problems and points of view. Whether or not an expert has usefully helped to name and frame a problem and its public—that is, whether or not she is an expert—can be shown by the transformations she makes possible. Unlike the universal intellectual, whose work is legitimated by her proximity to truth, Foucault declares, "I am an experimenter and not a theorist.... What I've written is never prescriptive either for me or for others—at most it's instrumental and tentative" ("Interview with Michel Foucault," 240). So-called "laypeople" might create useful problematizations, just as much as a natural event, new technology, or linguistic practice could. And, of course, the already existing economic problematization an economist might provide, the rhetoric of human rights that an ethics professor brings, or the dichotomous picture a journalist portrays could be highly useful. As an expert in discourse analysis, Foucault's work is not essentially different from any of these practices. He simply brings another set of tools to the reconstruction of problematic situations, though, unlike many problematizations, the specificity or purposiveness of his work should help prevent it from being universally applied.

Thus, despite Foucault's skepticism about expertise, he does not suggest that we

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then trying to understand how all the pieces fit together (Dreyfus and Rabinow 1983, Han 2002, Oksala 2005, Paras 2006). As Foucault makes clear in interviews and lectures after *Discipline and Punish*, however, inquiries into knowledges, powers, and the ways of thinking and acting their interplays make possible—not simply upon ourselves—are simply different aspects of subjectivization/objectification (see also Deleuze 1984). While his different books may emphasize certain facets of this unity, my emphasis on problematization and genealogy does not imply a deprecation of archaeology. If I do not highlight this later term, it is because of the structuralist connotation it has unfairly been given, though problems and power cannot be completely separated from issues of discourse. In the end, my purpose is not to argue for one reading over all others. Rather than uncovering the true Foucault, I think it is more useful to ask what uses his ideas make possible (see Scott 1996; McWhorter 1999; Miller and Rose 2008; Rabinow 2003; Hacking 1998; Davidson 2001).

embrace or reject experts. The task is to engage their problematizations in the right ways, by looking at the effects they make possible rather than assuming their universal validity. As he well recognized, institutional structures often make it difficult for anyone other than a handful of specialists to interpret and direct the amelioration of problems. Specialists then appear to be experts, as the problem space imposed on a public offers no alternative problematization. On an experimentalist model, one cannot assume a specific problematization can be applied universally. If "truth isn't outside power or lacking in power," if it "is a thing of this world" (131)—that is, if it is often exclusionary, interested, purposeful—tempering the partial exclusions and values bound up with any specialist's position cannot be achieved by ignoring them but by paying attention to the specific ways that their knowledge structures the analysis and transformation of particular problems. In part, this may be achieved by being as concrete as possible about the purposes one wishes to serve. In part, institutions that maintain the domination of a particular discipline or problematization may need to be reconstructed so that other problematizations may be attempted.

Foucault, of course, only provided a few ways for thinking about political problems beyond the state and its political parties, the economy and rights, and other entrenched problematizations. Given the demands of effective problematization, it is staggering that he was able to become an expert on the many issues in which he was involved. That he is so exceptional may show the problematic character of institutions of expertise that reproduce unimaginative and narrow ways of thinking and acting. The fact that he hadn't "written a single book that was not inspired, at least in part, by a direct

personal experience," lends plausibility to the possibility that it is because of Foucault's extra-academic experiences that he was able to move beyond many inherited problematizations. If the "experience through which we grasp the intelligibility of certain mechanisms (for example, imprisonment, punishment, and so on) and the way in which we are enabled to detach ourselves from them by perceiving them differently will be, at best, one and the same thing" ("Interview with Michel Foucault," 244), perhaps one should ask what sort of experiences the university, the academic journal, or the philosophy conference allow many theorists to have today. Furthermore, what problematizations and what forms of expertise do they make possible?[41]

Problematization as Effective History

If, on the experimental account of legitimacy, the work of a specific intellectual may involve helping to define a possible problem space so that people can understand and address their felt needs, what, more positively, does it take to do so successfully? Foucault suggests that, above all, problematizations should be genealogical, i.e., perspectival and historical analyses of practices that are attuned to differences. Avoiding the one-directional and non-genealogical work of universal intellectuals which ignores the differences between problems is both a negative and a positive task, and many of the terms Foucault employed show the nature of this move. The concept of power, for example, does not require that it be the primary tool of analysis in every situation. Instead, it provides a way of analyzing specific situations by asking exactly *how* powers

41 See footnote 33.

are enacted in specific institutions and how these might be changed for certain purposes. Similarly, the language of events should help develop an attunement to the differences among and similarities between contexts that should help to understand what the present may require, rather than subsuming it under the language of the past. The conceptual resources of power and events should assist specific intellectuals with their shared engagement in public problems, by attuning their work to the purposes it is meant to aid. There may be many other ways for intellectuals to help people engage their problems more effectively, but, by paying attention to the differences and similarities between previous situations and actions taken to address them will often be a part of successful problem amelioration.

The ontology of events is the first way that Foucault breaks from universal problematization, as it requires an attention to discontinuities—not just continuities—as well as the plural causes that have formed the present. Discontinuities have to be given a place in contextual analyses, because uncritically assumed continuities level the differences that face peoples and their problems. This does not mean that institutions are discontinuous rather than continuous, but that careful analysis of the ways that practices are iterated *and* interrupted is often essential for understanding present relations ("Truth and Power," 114). Avoiding recourse to concepts that define an original and persevering power, such as "self-interest," "class struggle," "tradition," "the great man," or "oppression," is difficult (see "On the Archaeology of the Sciences," 302-20). Foucault suggests that discourse analysis may be important to aid in this task, though describing the shifts in fields of knowledge [connaissance] is not the only way of understanding the

history of the present, as his later works show. What is primary is developing an attunement to actual practices rather than assuming their continuity with past events.[42]

Thus, instead of understanding present events via reference to some overarching unity—or embracing its absolute radicality—an experimentalist does not prioritize any relation between events. This "pluralization of causes" ("Questions of Method," 227) means that many factors may play a role in determining the shape of the present, so that deciding which are most important will often require difficult interpretive work. One cannot assume that the occurrences of today have the same causes as those of the past. The problem, then, "is at once to distinguish among events, to differentiate the networks and levels to which they belong, and to reconstitute the lines along which they are connected and engender one another." From this understanding of events "follows a refusal of analyses couched in terms of the symbolic field or the domain of signifying structures, and a recourse to analyses in terms of the genealogy of relations of force, strategic developments, and tactics" ("Truth and Power," 116). Since many other events could usefully be related to a problematic situation, the selection of one or another is a strategic concern depending upon the purposes at hand.

Like the ontology of events, the concept of power does not explain *what* has happened, is happening, or should happen but is meant to get at *how* occurrences

42 Though there are some temperamental differences between Deweyan reconstruction and Derridean deconstruction, the Jamesian emphasis on continuity and Foucaultian analyses of discontinuities, these two traditions share methodological commitments to asking "how" rather than "what" and provide ways of answering the value of this "how" through reference to past, present, and future "whats." Let us not forget that Foucault once said, however ironically, "As you know, no one is more of a continuist that I am: to recognize a discontinuity is never anything more than to register a problem that needs to be solved" ("Questions of Method," 226).

happen.[43] Though Foucault's constant use of the singular form of this term is problematic, he invites us to ask how power "operates on the field of possibilities in which the behavior of active subjects is able to inscribe itself." There are many possible answers. For instance: "It is a set of actions on possible actions; it incites, it induces, it seduces, it makes easier or more difficult; it releases or contrives, makes more probable or less; in the extreme, it constrains or forbids absolutely, but it is always a way of acting upon one or more acting subjects by virtue of their acting or being capable of action" ("The Subject and Power," 341). In acting on actions, or defining the space of action, powers channel future events and are themselves shaped by previous powers, though the content of action is undetermined as yet. Due to the historicity of powers, as well as the situatedness of any statements about it, it makes little sense to talk about power as such. The shape powers take, as well as the value of such definitions, thus has to be determined locally and from differential positions.

Foucault did, of course, make many general statements about the shape of power as a tool of analysis, but he refused to call this a theory, or a unifying framework that

43 Foucault's use of "power" is similar to many pragmatic concepts like experience, education, or democracy in that it does not define any essential regularities of existence but is itself to be understood and evaluated in light of particular existences. This, as Gilles Deleuze explains, is the empirical methodology: concepts do not explain anything but are themselves to be explained. If this definition of empiricism is unfamiliar, this may be due, as James argues, to the fact that most empiricists have smuggled rationalism in through a priori concepts like "sense data" or "language games." Post-Darwinian philosophers like Peirce, James, and Dewey as well as Nietzsche, Foucault, and Deleuze emphasize the event—or, better, eventuation—to try to help make possible a new relation of theory and practice that attempts to let the latter determine the former rather than vice versa. As James was well aware, however, a concept like power can always be interpreted by "vicious intellectuals" and "logic choppers" as just another definition of essential reality. To convince others of the value of this move is not easy, for, "[a]s long as one continues *talking*, intellectualism remains in undisturbed possession of the field. The return to life can't come about by talking. It is an *act*; to make you return to life, I should set an example for your imitation, I should deafen you to talk, or to the importance of talk, by showing you, as Bergson does, that the concepts we talk with are made for purposes of *practice* and not for purposes of insight. Or I should *point*, point to the mere *that* of life, and you by inner sympathy should fill out the *what* for yourselves" (1977, 131).

provides the key to understanding all events. There are many other possible tools for addressing situations that are "intolerable." On an experimental model, whether or not power is useful for an inquiry depends on one's purposes or present needs, which can be hypothesized via historical analysis. As Foucault explains, "[w]e have to know the historical conditions that motivate our conceptualization. We need a historical awareness of our present circumstance." Power's use also depends upon the effects it makes possible for fulfilling such purposes: "The second thing to check is the type of reality with which we are dealing" ("The Subject and Power," 327). Can the events being analyzed be usefully described by the language of power? Material, historical, and empirical factors take part in determining the answer to this. In the institutional analyses he provided of penal reform and sexuality, Foucault clearly thought that power could be a useful tool. But it is not the only one.

Both the ontology of events and the conceptual framework of power are designed to help the specific intellectual be specific by attuning her problematizations to the problem she attempts to usefully characterize as well as the likely effects they make possible. These tools are meant to provide an alternative to the practice of resorting to oracular concepts, though they also express the hypothesis that situated and experimental analysis will often be more effective than unifying concepts. Together, they express the suggestion that problematizations should often be genealogical. Genealogy is "a form of history which can account for the constitution of knowledges, discourses, domains of objects, etc., without having to make reference to a subject which is either transcendental in relation to the field of events or runs in its empty sameness throughout the course of

history" ("Truth and Power," 119).[44] The language of events, power, and genealogy are to help intellectuals avoid certain habits, but, more positively, a problematization as a tentative "history of the present" (*DP* 31) written for such an express purpose will often be an effective way of helping a public identify and transform problems.

A history of a present, as a differential account of the eventuations that make certain contemporary conditions possible, often takes the shape of an analysis of institutions and practices, as these name the regularities that arise in experience. If one does not assume that either ideal or material factors are essential, one should begin with concrete practices, or the "places where what is said and what is done, rules imposed and reasons given, the planned and the taken-for-granted meet and interconnect." The analysis of practices should occur "with the aim of grasping the conditions that make these acceptable at a given moment; the hypothesis being that these types of practice are not just governed by institutions, prescribed by ideologies, guided by pragmatic circumstances—whatever role these elements may actually play—but, up to a point, possess their own specific regularities, logic, strategy, self-evidences, and 'reason'" ("Questions of Method," 225). Given the pluralities of causes and multiplicity of relations between agents, environments, discourses, and practices, institutions, like concepts, cannot be assumed to control their effects completely. Genealogically understanding just how practices determine and are determined by each other—how power occurs—is often key to defining attuned problematizations.

Such historical and differential analysis of events is not just a recounting of facts, for these events are selected from a huge number of practices and causes for the purpose

44 See footnote 40 for my use of genealogy instead of archaeology.

of understanding and transforming the present in specific ways, and are effective to the extent that they do so. Perspectival attunement to past eventuations and present needs create possibilities for shaping future practices and values in specific directions. Genealogy or "[h]istory becomes 'effective' to the degree that it introduces discontinuity into our very being." The right description can aid in the imagination of better futures. "This is because knowledge is not made for understanding; it is made for cutting" ("Nietzsche, Genealogy, History," 88). Cuts, breaks, and shifts from inherited and pre-reflective activities could occur through a break, a revolution, or a completely new set of concepts, but it is likely that, without an historical attunement, such novelties will be subsumed into the machinery of the past. Not only is effective history disruptive, but effective problematization is effective history.[45]

Of course, a perspectival attunement to histories of practices cannot guarantee any effects. Genealogical problematization also needs to be an experimentalism. Foucault explains, "We should transform the field of social institutions into a field of experimentation, in order to determine which levers to turn and which bolts to loosen in order to bring about the desired effects. It is indeed important to undertake a campaign of decentralization, for example, in order to bring the users closer to the decision-making centers on which they depend, and to tie them into the decision-making process, avoiding the type of great, globalizing integration that leaves people in complete ignorance about

45 Pragmatic experimentalism is often accused of being too rooted in the present, as "what works" may seem to be a matter of current affairs, and thus, the status quo. Foucault hypothesizes that successful pragmatics is conditioned upon genealogical analysis, for if one wants to know what futures will "work," one needs to understand the conditions that made such events possible and the interests thereby advanced and excluded. One should remain aware of the selective interests that guide and determine one's inquiries.

the conditions of particular judgments. We should then multiply these experiments wherever possible on the particularly important and interesting terrain of the social, considering that an entire institutional system, now fragile, will probably undergo a restructuring from top to bottom" ("The Risks of Security," 370). Genealogical problematization is part of a much larger practice of institutional transformation that determines the value and meaning of such intellectual work. It is likely that, since they should avoid the practices of the universal intellectual, these conceptual constructions will provide more effective redirection of existing practices to the extent that they are attuned to their histories and differences. Nonetheless, this has to be left to their results in helping people's struggles with concrete problems.

An Experimental Account of Criticism

Now that I have outlined one task of specific or experimental intellectuals—the creation of historically and differentially attuned problematizations—we can examine the larger practice of criticism in which experts should be engaged. If, as on the experimental account of legitimacy, one assumes that the value of criticism is determined not by its appeal to expert-determined norms but by its effects in helping publics deal with problems, an intellectual's work is not critical unless it leads to critical effects—or, as Foucault aptly phrases it, "when critique has been played out in the real, not when reformers have realized their ideas" ("Questions of Method," 236). On this model, the specific intellectual is part of a whole body of inquiry and experimentation interested in

transforming problematic institutions, norms, and practices. The expert task of reconstructing problems and their possible solutions is thus only one part of facilitating "a whole social project, a work within and upon the very body of society" ("Interview with Michel Foucault," 288). Criticism is not simply an action carried out by a subject, such as a critic or a community, upon a given object, such as a state or economy, on the basis of some universal norms. It is instead constituted by the experimental response of a public to a problem and the results that arise.[46] The value of this account, I hope to suggest, lies in its highlighting the conditions and tests of successful intellectual work and thus helping to better align theory and practice.

Rather than providing a specific program of criticism, I will outline some consequences of seeing problematization as merely one part of experimental political inquiry. First, a problematization is not a solution to be applied, but a space in which problems and solutions can arise and which themselves may need to be problematized. The problems made possible by intellectuals—such as the perception that reforming our food system is essential to reducing many kinds of pollution—"cannot easily be resolved. Years, decades, of work and political imagination will be necessary, work at the grass roots, with the people directly affected, restoring their right to speak.... It's a matter of working through things little by little, of introducing modifications that are able if not to find solutions, at least to change the given terms of the problem" ("Interview with Michel Foucault," 288). The effects of problematizations will depend upon material, social,

46 In this respect, I share Habermas's attempt to move past the philosophy of consciousness that attempts to base criticism in either the social body or the state. See *Between Facts and Norms* (1996, 298-9). I do not believe, however, that the way to undercut this dichotomy is via a universal demonstration of the presuppositions of discourse but rather through a radicalization the model of criticism Habermas assumes.

institutional, communicative, and imaginative factors, and it may take years for even small shifts to occur. New roadblocks requiring new problematizations may spring up from any side, and the problems made possible by a new problematization will often require another one. Though an attunement to histories and differences ought to aid in creating useful problematizations, no effects are guaranteed.

Second, since publics have already understood themselves and their problems along the lines of conceptual apparatuses or problematizations formed in response to and made possible by prior situations, new problematizations should be attuned to these histories. For instance, it is because of the tradition of rights, invented by the new bourgeoisie, that many contemporary problems occur within this framework; it is because of the history of economic theory and development that problems are seen in terms of the government's role in markets. Since every expert suggestion is bound up with a way of defining a problem and thus involves an exclusion of other problematizations, new problem spaces should be attuned to the effects of previous problematizations as well as the similarities and differences between past and present situations. New problematizations are not formed ex nihilo but are rather reconstructions of past patterns of thought and action. To successfully deal with the antinomy between reforming prisons or building new ones, for example, "there would be a considerable amount of work to do in order to renovate the conceptual categories that inspire our way of approaching all of these problems.... For the moment, we lack completely the intellectual instruments to envisage in new terms the framework within which we could achieve our goals" ("The Risks of Security," 370). The renovation of past categories should be attuned to present

conditions for the sake of effecting future transformations.

Because various problematizations may allow vastly different treatments of "the same" problem, and because these effects cannot be completely predicted, it follows that, thirdly, intellectuals should multiply possible ways of thinking and acting. Rather than trying to show that everyone could accept their point of view, specific intellectuals should create new possibilities for institutions to be evaluated and contemporary practices reconstructed. This practice of criticism "would bear the lightning of possible storms... [It] would try not to judge but ... would light fires, watch the grass grow, listen to the wind, and catch the sea foam in the breeze and scatter it. It would multiply not judgments but signs of existence; it would summon them, drag them from their sleep. Perhaps it would invent them sometimes—all the better" ("The Masked Philosopher," 323). The multiplication of problematizations should often be useful for dealing with our felt problems, because, though we already have conceptual resources for understanding the present—such as utility, rights, community, difference—we frequently suffer from "inadequate means for thinking about everything that is happening" (325).

Fourth, multiplying problematizations does not require experts to infinitely problematize and reproblematize contemporary situations, for, whether or not another round of problematization is necessary will depend upon the effects it would make possible. Though almost anything could be better, a public will prioritize only certain issues. Unlike the radical doubt of Descartes, the purpose of problematizing should depend upon felt problems. Foucault explains that "for a domain of action, a behavior, to enter the field of thought, it is necessary for a certain number of factors to have made it

uncertain, to have made it lose its familiarity, or to have provoked a certain number of difficulties around it. These elements result from social, economic, or political processes" ("Polemics, Politics, and Problematizations," 117). The point is that problems are neither given nor require constant production. Sometimes a problem needs to be reproblematized so that more people can understand how they are implicated by it. Sometimes a situations needs to be reframed so that people can understand what should be done. In short, the very determination that something counts as a problem requiring reproblematization is a contestable, experimental endeavor that cannot be determined by experts alone. That this choice is itself mediated by expert suggestion and experimentation is simply part of the complexity of political inquiry.

Fifth, rather than requiring the rejection of other problematizations, many political theories and moral philosophies could be understood on this model as possible ways of thinking and acting that do not claim to represent any universally valid knowledge.[47] For instance, Habermas's ideal speech situation may be a useful tool for defining certain problems, but its concrete validity cannot be determined by his lengthy arguments for its universal validity. They may form part of the account of why such an hypothesis might work, but material and historical explanations of a similar concept's use in a similar situation may be more important. This methodological point is the greatest difference between Foucault and many contemporary theorists, for he rejects, not theory, but the

47 The experimental question about Rawls, then, would not be whether or not he gives self-contained or coherent arguments—though this may be important—but when and how the concepts he invents are useful. We could then compare "the original position," "reflective equilibrium," or "the difference principle" with Deleuze and Guattari's "micropolitics," "nomadology," or "schizoanalysis," for example, in ameliorating certain value conflicts. Despite, or perhaps because of, the tremendous differences between these philosophers, they have all contributed to the conceptual frameworks of many different fields of inquiry.

one-directional, expert-directed practices in which much theory is bound. It may appear as though he intends that "power" should take the place of the "ideal speech situation" as the essential way of understanding and criticizing institutions, particularly because he does not often spell out the interests or purposes for which his genealogies may be useful. But Foucault explains, "I've never claimed that power was going to explain everything.... For me, power is what needs to be explained" ("Interview with Michel Foucault," 284). The meaning of power, just like the ideal speech situation, should be determined by its concrete effects for specific problems.

Finally, an experimental account of criticism allows institutions of expertise to be evaluated according to their use in helping publics understand and transform their problems, and not, as the universal framework requires, whether or not they effectively translate ends into means. The complexity of the modern world would be intractable without institutions of expertise like universities and colleges, professional organizations, and bureaucracies. Yet such institutions may easily reproduce the practices of what Foucault calls the universal intellectual. For instance, political parties are an institution of expertise that severely limits the possibilities for understanding political problems due to their rigid problematizations. "One may wonder whether the political parties are not the most stultifying political inventions since the nineteenth century. Intellectual political sterility appears ... to be one of the salient facts of our time" ("Interview with *Actes*," 396). An experimental account of criticism allows one to ask whose goals are advanced when such institutions limit problems to being named in terms of individual freedom, nostalgia, meritocracy, and limited government or social determination, utopia, equal

opportunity, and revolution. As a powerful historical and contemporary factor, the state will loom large in many problematizations, yet what may be most needed today "is a political philosophy that isn't erected around the problem of sovereignty, nor therefore around the problems of law and prohibition. We need to cut off the King's head: in political theory that still has to be done" ("Truth and Power," 122).

Effective Histories

On an experimental account of expertise, or relationship between theory and practice, the King's head may be cut off by re-imagining criticism as a social process carried out by specific publics dealing with problematic situations and requiring a multiplicity of courses of action and ways of thinking. Foucault accordingly pluralized his own interventions into institutions, norms, and practices without giving any certain answers regarding what should be done. I would like to highlight three institutions in which he attempted to create avenues for increasing legitimacy by expanding possibilities for communication, imagination, and transformation: the penal system, political philosophy, and sexuality, respectively. These three institutions require dissimilar analyses, are aimed at different audiences, and might require a variety of problems and reforms. In every case, Foucault does not prescribe what should be done, nor does he delegate any particular peoples to do it. This is a virtue, as he and Dewey would argue, because what will count as a critical analysis of a situation—what is "effective history" or problematization—is to be determined by the effects of peoples' dealings with public

problems for specific purposes.

Discipline and Punish, like many of Foucault's works, cannot be summarized easily, as it extends into many different fields, histories, powers, and problems. One of its most powerful contributions to ways of understanding penality, however, is its suggestion that both penal reform and prison proliferation are two sides of the same coin. Though both positions assume that the prison is a necessary institution for contemporary society, only a modus vivendi between the two is possible due to their vastly different ends. The former, believing that the prison should correct people, seeks to remove obstacles to this goal, such as cruel and unusual punishment; the latter, concerned not with correction but with deterrence, wants to multiply deterrents. The popularity of these problematizations has waxed and waned throughout the years, but their shared premise that the prison system is problematic—though for different reasons—has remained unchanged. Whichever of the two points of view wins out for a time will have more to do with external factors than with intelligent communication and experimentation. There are no means in sight for resolving this situation, though this is not a problem in itself unless either of the two groups understand the conflict in this way.

To provide the possibility that problematizations of the prison system are not working well, and thus perhaps create a new point of shared communication, Foucault attempts to form a new problem space wherein these different groups may be transformed. This is done in two ways: first, by looking to the effects of the actual institutions and thus turning an interminable debate about ends into an analysis of effects; and second, by showing how, on these grounds, prisons are not failures at all but are

actually legitimate for certain purposes. He suggests, "For the observation that prison fails to eliminate crime, one should perhaps substitute the hypothesis that prison has succeeded extremely well in producing delinquency, a specific type ... of illegality" (*DP*, 277). Rather than assuming that discussion about prisons should be organized around one set of ends or another, Foucault proposes that those involved first ask what its effects are. They might then find that "penality does not simply 'check' illegalities; it 'differentiates' them, it provides them with a general 'economy'" (272). Foucault suggests that prisons have been exceptionally good at producing a group of people that are potential delinquents, "a relatively small and enclosed group of individuals on whom a constant surveillance may be kept" (278).

By turning to the effects of the prison system and introducing a new framework for understanding them, Foucault opens up the possibility for a reconciliation and transformation of these historically divided positions. Real communication and actual prison reform may now be undertaken for a broader set of needs, instead of polarized posturing and the continuation of old practices under a parade of new names. Nonetheless, it is not up to Foucault to decide whether or not this framework is helpful for those affected by prisons nor what the future of penality will look like. "If prisons and punitive mechanisms are transformed, it won't be because a plan of reform has found its way into the heads of the social workers; it will be when those who have a stake in that reality, all those people, have come into collision with each other and with themselves, run into dead ends, problems, and impossibilities, been through conflicts and confrontations" ("Questions of Method," 236). Though the specific intellectual cannot

determine how critique will be played out in the real, she is not thereby absolved of concern for people and their problems. Rather, she should be attuned to the nuances, valences, differences, and histories that structure the potential effects of her interventions.

Foucault's transactions with the prison system shows the kind of work in which a specific intellectual might take part in order to bridge communicative dissonances. Rather than inventing one set of criteria to be applied to all institutions, she would multiply the possibilities for communication, criticism, and evaluation by imagining new frameworks for recognizing problems. Unless some common, perhaps longterm, ground can be found that transforms the narrow interests currently allowed expression, the most legitimate option for a group of people may be a modus vivendi or tyranny of the majority. It is likely that not everyone will find a voice nor will everyone be satisfied by the effects of a new problem space, but this simply requires new problematizations and new possibilities for amelioration. Despite Foucault's careful and enlightening work, it is clear that many illegitimacies are still produced by penality. This is to be expected, as true reform will require a great deal of work by everyone involved. It is always easier to maintain the status quo.

Like his engagements with penality in France, Foucault's remarks about and interventions with political theorists attempt to help imagine a different set of questions than those defined by the tradition from Locke to Marx. The state-centered political problematizations in France in the late middle half of the last century admitted few possibilities for thinking about new political problems. Unlike the traditional questions of the state and its sovereignty, these novel situations seemed related to “a developing

crisis of government" more generally ("Interview with Michel Foucault," 295). "To pose the problem in terms of the State means to continue posing it in terms of sovereign and sovereignty, that is to say in terms of law." Foucault does not mean to suggest that the state is not important, but that "relations of power, and hence the analysis that should be made of them, necessarily extend beyond the limits of the State. In two senses: first of all because the State, for all the omnipotence of its apparatuses, is far from being able to occupy the whole field of actual power relations, and further because the State can only operate on the basis of other, already existing power relations" ("Truth and Power," 122-3). Understanding political problems in terms of the law and the police may not always be legitimate. For example, to address the questions being raised in education, medicine, and family structures, Foucault suggests that we think in terms of institutions and power, but not necessarily those of the state.

The hope is not just that this framework will help describe current problems but that political problematizations and the institutions that help to maintain them, such as the PCF, will broaden the ways in which practices may be interpreted and effected. The framework of power "implies that there are many different kinds of revolution, roughly speaking as many kinds as there are possible subversive recodifications of power relations, and further that one can perfectly well conceive of revolutions which leave essentially untouched the power relations which form the basis for the functioning of the State" ("Truth and Power," 123). Instead of leaving us with few options for solving legitimation crises—such as widening the limits of the state, broadening the moral obligation of citizens to it, or *coup d'etat*—the framework of power should help multiply

possibilities for revolution and reform. Though there are, of course, many different state models, power seems able to take a wide variety of forms and thus makes possible a large number of analyses and interventions.

The rigidity of state-centered political problematizations can be seen in how many theorists have simply appropriated Foucault's language of power by the dichotomy between coercion and legitimate political power, such as is manifested in the universal framework of legitimacy. Power is read as coercion—an unconsented act done by one body and affecting another. Understood in this light, Foucault seems to be trying to prove that legitimate power is impossible.[48] Foucault himself admits that some of his earlier writings may have been unclear on this point,[49] yet it should be clear that he uses "power" in a much broader sense. As explained above, it is a matter of structurings and destructurings, sometimes happening at non-conscious and non-individual levels, in which many people and no one in particular take part. It is meant to draw our attention to the plurality of ways in which institutions arise and are transformed, and so it cannot be assumed that these will take the forms of coercion or consent, let alone a sovereign and a

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48 Walzer thus understands Foucault as a pluralist Hobbesian who sees coercion everywhere. "Foucault believes that discipline is a literal necessity; he abhors all its forms, every sort of confinement and control; liberalism for him is nothing more than discipline concealed. Since he cannot point to an alternative and better discipline, social criticism must always be a futile enterprise" (1988, 204).

Rorty echoes Walzer, saying that, against the Platonic project to ground just politics in some ahistorical fact of human nature, "Foucault inverts this attempt. Since he sees human subjectivity as a contingent product of contingently existing forces, he does not believe that there is any such ahistorical noncontingent core. So he concludes, at least in his anarchist moments, that every social institution is equally unjustifiable, that all of them are on a par. All of them exert 'normalizing power'" ("Moral Identity and Private Autonomy: The Case of Foucault", 197).

49 In later interviews, Foucault often remarked that discipline, for example, is only one aspect of *assujettissment* and that *Discipline and Punish* may have been too one-sided on this issue. In describing the four technologies of subjectivization/objectivization—those of objects, sign systems, domination, and selves—he remarks, "Perhaps I've insisted too much on the technology of domination and power" ("Technologies of the Self," 225; see also "Sexuality and Solitude," 177). See also footnote 40.

subject. Accordingly, power is much closer to what James means by experience, Dewey by education, or Nietzsche by will to power than Locke or Hobbe's understanding of the term.

Finally, Foucault tried to aid in the transformation of the institutions of sex and gender that have become rigidified around certain images, norms, and practices. His works on sexuality[50] try to show, above all, the specific ways in which our relationships to ourselves are mediated by social and political institutions and transactions. Since so much of what makes a life recognizable today is tied to sexuality, the transformation of sexuality will require, in sum, new ways of life. This is shown in the fact that gay relationships have been able to find recognition—even by gays themselves—not in terms of overdetermined courting rituals and marriage but by less proscribed sex acts. Foucault explains, "Homosexuals were not allowed to elaborate a system of courtship because the cultural expression necessary for such an elaboration was denied them.... So when a homosexual culture and literature began to develop it was natural for it to focus on the most ardent and heated aspect of homosexual relations." Cocteau, Genet, and Burroughs, for instance, have focused on sexual acts because "the homosexual imagination is for the most part concerned with reminiscing about the act rather than anticipating it.... [T]his is all due to very concrete and practical considerations and says nothing about the intrinsic nature of homosexuality" ("Sexual Choice, Sexual Act," 150).[51] As the possibilities for

50 I do not want to get into the debates between sex and gender here and will accordingly use the term "sexuality" to stand in for the complicated ways that sex and gender occur.

51 Foucault may be criticized for himself reifying "the homosexual imaginary." However, on an experimental account of criticism, the validity of this concern depends on the differential effects of Foucault's work. At least one result is his massive contribution to Queer Theory. The Foucaultian, experimental question about generalizations like "the homosexual imaginary," just like "power" or "discursive regimes," is: for what purposes are the effects it makes possible valid?

changing the institutions of sexuality have been narrow, homosexuals have experimented where they could, developing entirely new ways of experience pleasure, as in S&M practices ("Sex, Power, and the Politics of Identity," 165).

Nonetheless, these experiments should carry out "the prospect that gays will create as yet unforeseen kinds of relationships that many people cannot tolerate" ("Sexual Choice, Sexual Act," 153) if they are to interrupt the widespread and rigid relations of sexuality. Transformation of such institutions cannot come about without major reconstruction. To this end, Foucault tries to help create a new problem space wherein the imperative of self-knowledge and self-renunciation of sexual desire—exemplified in the Christian confessional—is juxtaposed with the Greek care of oneself, in which sexuality is only one aspect of a individual's health. By providing people with possibilities for new experiences of themselves, through interviews and his histories of sexuality, Foucault aids the transformation of these institutions simply by showing the events that produced the singularity of contemporary forms of sexuality and that could have been otherwise. Even when people like homosexuals know perfectly well how oppressive sexual institutions are, it cannot simply be through conscious acts of will that conditions change. The "matter of constructing cultural forms" ("The Social Triumph of the Sexual Will," 157) will require new ways of thinking, new modes of experimentation, new languages and voices, and new pleasures and desires which may then add up to a new way of life.[52]

These interventions into the problematizations of the penal system, the theory and practice of political philosophy, and the norms of sexuality demonstrate three concrete

52 See McWhorter (1999) on the uses of Foucault's genealogy for queer transformations.

ways that a specific intellectual could aid people in the experimental reconstruction of more legitimate institutions. Though problematizations can take many forms, their formulation will often need to be directed towards ways of creating new possibilities for communication, imagination, or transformation. In these examples, the role of the specific intellectual is roughly the same: instead of telling people what their desires are or defining a program for action, Foucault provides new ways of thinking and acting in regard to specific problems with which people themselves can experiment. For "the masses no longer need [the intellectual] to gain knowledge: they *know* perfectly well, without illusion; they know far better than he and they are certainly capable of expressing themselves. But there exists a system of power which blocks, prohibits, and invalidates this discourse and this knowledge, a power not only found in the manifest authority of censorship, but one that profoundly and subtly penetrates an entire societal network. Intellectuals are themselves agents of this system of power—the idea of their responsibility for 'consciousness' and discourse forms part of the system" ("Intellectuals and Power," 207). In order for intellectuals to create problematizations that help people frame and deal with the problems that they already "know," rather than taking part in practices of universal expertise, great institutional reform may be necessary. Foucault himself shows how difficult such institutional shifts can be, but there is no reason to be pessimistic that such changes cannot occur. Analysis into the reasons why certain specialists exclusively legitimate some courses of action, for instance, may be a start to putting attuned problematizations into effect.

The Value of Criticism: Representativeness vs. Transformative Effects

Having provided a few examples of Foucault's attempts to aid in the criticism of institutions in a manner more aligned with practices, I can now show the ways in which this account deals with the questions the universal understanding of critique tries to answer. If we are concerned with defining a set of ends which can be used by politicians, public intellectuals, and activists to make more legitimate or valid institutions, we will mostly be interested in discovering the source of the authority to represent people. Accordingly, there are those who believe that such authority comes from argumentative ability, such as Rawls and Habermas, and those who believe that it comes from a certain connection to a community, like Walzer and Rorty. If, on an experimental account, we are interested in what problematizations might transform the ends and means of a public so that they can more effectively deal with present problems, we will be interested in understanding the context in which attuned reproblematizations could be made. Debates about the representativeness of one set of experts/ends are undercut by attempts to create a space in which publics can decide how to better represent themselves. Though I will make reference to some of these theorists in this section, my purpose is not to refute them but to juxtapose the practices of criticism they share with those of an experimental account.

The first way to define a set of representative ends is by appeal to reasons that others could be shown to accept. John Rawls and Jürgen Habermas are the most well-known examples of this kind of argumentation. For example, Rawls argues that "the

principles of justice for the basic structure of society are the object of [a hypothetical] original agreement. They are the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality" (1999 [1971], 10). In *Between Facts and Norms* Habermas makes the case that "the legitimating force of a discursive process of opinion- and will-formation, in which the illocutionary binding forces of a use of language oriented to mutual understanding serve[s] to bring reason and will together—and lead[s] to convincing positions to which all individuals can agree without coercion" (1996, 103). Despite the differences between these thinkers, they share the assumption that the philosopher's task is to define common ends so that institutions can be criticized and reformed according to them. Specific concerns do not come into such ends' formation or validation but are, at most, concrete instantiations of them.

As Rawls later realized, this account has to deal with the fact that there are many kinds of reasons that appear to be rational, though, as I suggested in Chapter One, he says little about how the reasonable reasons defined by experts can be evaluated. Foucault rejects such expert-centric definitions of the rational, though not because he is a relativist or irrationalist. He explains, "I think the blackmail that has very often been at work in every critique of reason or every critical inquiry into the history of rationality (either you accept rationality or you fall prey to the irrational) operates as though a rational critique of rationality were impossible, or as though a rational history of all the ramifications and all the bifurcations, a contingent history of reason, were impossible" ("Structuralism and Post-structuralism," 441). Instead of uncovering reasonable reasons to which all

reasonable people could reasonably assent or the pragmatic-ideal presuppositions of a rational society, Foucault affirms the possibility of experimentally determining the rationality of specific ends and means in reference to public problems. His problematizations make possible different reasons, though whether or not these are irrational or arbitrary depends upon the purposes for which they were created. As Foucault never tires of saying, his problematizations often attempt to show how power produces and is produced by certain reasons. Instead of asking how "we" can put power to work, he asks for whom the concept of power works.

The second common way to define the values that are to be applied is by appeal to the norms of a community or language game. Richard Rorty and Michael Walzer exemplify this approach. Recognizing that different people hold different beliefs, they try to avoid the debates over "reason" by grounding their ends in inherited norms. For instance, Rorty argues that, rather than justifying anything, political philosophers are simply trading idealizations. Rejecting truth for description, he claims that it is "impossible to say that one language of moral and political deliberation, and the set of social practices intertwined with that language, is more rational than another" (1996, 334). Instead of being more rational, his account of justice simply "seem[s] to cohere better with the institutions of a liberal democracy than the available alternative do" (1989, 197). Walzer gives a more nuanced account of the differences among communities and experts, though he still defines the ends of criticism with the beliefs of the experts of a community: "There is a tradition, a body of moral knowledge; and there is this group of sages, arguing. There isn't anything else. No discovery or invention can end the

argument; no 'proof' takes precedence over the (temporary) majority of sages" (1987, 32). If asked why a certain critique is valid, Rorty and Walzer respond: because it represents the ends we share—or, rather, those that the experts tell us we share.

This approach must face difficult questions about how a community could come to share the same beliefs, how a critic could become representative of those values, and how it could be known that their application to a problem would have the same validity for everyone in "the community." In response to Rorty, Foucault argues that "the problem is, precisely, to decide if it is actually suitable to place oneself within a 'we' in order to assert the principles one recognizes and the values one accepts; or if it is not, rather, necessary to make the future formation of a 'we' possible by elaborating the question. Because it seems to me that the 'we' should not be previous to the question; it can only be the result—and the necessarily temporary result—of the question as it is posed in the new terms in which one formulates it" ("Polemics, Politics, and Problematizations," 114-5). Foucault does not claim to represent any community, because, on an experimental framework, the value of any criticism or transformation based upon even shared values cannot be assumed to have valid consequences for the entire community. If, for instance, *Madness and Civilization* allowed for effective criticism—that is, it allowed psychiatric institutions to be successfully reconfigured according to certain points of view—the validity of such purposes or ends is a product, not a postulate.

Despite the different ends defined by Rawls, Habermas, Rorty, and Walzer, they share a division of labor between expert and laypeople that results from trying to find a

standpoint that guarantees the value of the application of such norms. On an experimental account, however, the validity of realizing a set of values cannot be assumed to be determined by the fact that people hold them or could be shown to hold them. Accordingly, Foucault suggests that one-directional theorization and application could be replaced by experimentation in which expert problematization—which is not always necessary—plays only one part. Criticism might then describe the whole process beginning with a people's felt problem, an expert's hypothetical problematization, and the public's experimentation, transformation, and evaluation of the situation. The specific intellectual's task is not to discover what people universally believe but to define spaces in which beliefs could be experimentally tested and revised. Rather than trying to guarantee the validity of certain criticisms or reforms, the expert hypothesizes ways of understanding and experimenting upon a problem. The work of specific intellectuals is not to differentiate between the true or false, the valid or invalid, but to provide experiences that make possible the transformation of institutions so that means and ends can be determined to be true or false, valid or invalid ("Interview with Michel Foucault," 242-3). The validity of means and ends, criticisms and values, courses of action and reasons, depend upon their conditions and effects in ameliorating a public's problem, all of which take place in a space made possible by certain problematizations.

On an experimental framework, then, successful criticism will involve the transformative work of a social body on itself, in which intellectuals are co-actors. Of course, whether or not such transformations are critical will depend upon purposes, conditions, and effects. In a conversation with Foucault, Gilles Deleuze explains, "A

theorizing intellectual, for us, is no longer a subject, a representing or representative consciousness. Those who act and struggle are no longer represented, either by a group or a union that appropriates the right to stand as their conscience" ("Intellectuals and Power," 208). Rather than concerning herself with how she represents the people—via a claim to which all rational people could agree, the values of a community, human nature, an economic history, or an empirically-generated list—the specific intellectual does not claim to represent peoples or points of view. She instead attempts to engage in the practices in which people are already struggling by providing provisional and tailored tools for understanding them. The one-directional division of labor associated with the traditional problematic of legitimacy wherein theorists validate values and critics apply them—wherein the people's representation is guaranteed by experts—is replaced with a more complicated relationship in which the work of publics, problems, and experts is judged by all three in the effects they produce. Deleuze summarizes, "A theory [or problematization, in our terms] does not totalize; it is an instrument for multiplication and it also multiplies itself" (208).

Because theorists who require ends to be validated before their application are united in their practice if not the ends they endorse, they misunderstand Foucault in similar ways. For instance, Gayatri Spivak worries about according too much truth to people's desires (1988). Isn't it the case, she asks, that people's economic interests represent (*darstellen*) their true desires more than their political interests do (*vertreten*) (276)? If Foucault and Deleuze do not provide a set of ends to ground ideology critique, such as is provided by the economy, then they cannot provide a conception of false

consciousness and thus cannot provide a basis for criticism: “In the name of desire, they reintroduce the undivided subject into the discourse of power” (274). According to Spivak, Foucault's books can only be used as tools to forward given ends while providing no means for inquiring into the validity of those ends, for “representing [the masses], the intellectuals represent themselves as transparent” (275). As I have tried to show, however, Foucault is not rejecting criticism in favor of a relativist affirmation of the status quo; he is instead sidestepping the question of representation undergirding the conception of criticism that Spivak uncritically accepts. If his genealogies are not critical themselves, can they not be understood as being part of a project of criticism undertaken by publics themselves?

I hope to have clarified the ways in which an experimental practice of criticism undercuts the concern to show the validity of a standpoint, i.e., the authority of the expert, before the critic, politician, or activist can do her work. Foucault suggests that the purposes, conditions, and effects of the social work of criticism can determine its validity. The representativeness of “reason” or the “norms of a community” should not be assumed on the experimental framework. In fact, the language of representation is not even appropriate, as Deleuze succinctly states: “Representation no longer exists; there's only action—universal action and practical action which serve as relays and form networks” (“Intellectuals and Power,” 206-7). Though political theory has moved beyond groundings in the natural light, many of its practices have not. Representation continues to be the goal of experts who represent the truth and thus the people as well. Yet if the meaning of values, concepts, and norms are determined by the practices which

structure and are made possible by them, problematization and critical transformation should be grounded in such practices and effects and not by any expert's claim to authority. I would now like to begin to show more concretely what this understanding of criticism might mean for the practice of political theory.

Criticism and the Practices of Political Theory

I have shown that an experimental practice of expertise is designed to avoid expert-centric practices by aiding in the transformative work people undertake on their institutions, norms, and practices. Rather than trying to demonstrate the universal validity of a particular problematization, experts should aim to be co-investigators of public problems by helping people find valid ways to ameliorate situations. That is, they should be specific, not universal. One way to do so is by providing new ways for thinking about and acting upon problems, but this is not the only way to align theory and practice. Most important is the recognition that the ways problems are understood will affect action taken to deal with them, as well as the means by which the latter will be judged. Since a problematization, like the environment, the economy, or justice, allow problems to be seen as environmental, economic, or judicial, the actions it makes possible in relation to a public problem provides a point of view from which it can be judged. New problems may be sufficiently ameliorated by use of inherited problematizations, though Foucault suggests that genealogical—that is, historically and differentially attuned—reproblematizations may often be necessary.

This framework of criticism highlights the fact that experts often affect how problems are named and framed. Since on an experimental account, no problems, interests, or solutions can be assumed, the ways in which intellectuals shape them should be explicitly recognized and evaluated. If the purposes for which problematizations are invented, such as the amelioration of a public problem, are not stated, the result is likely to be an endless debate over possible ways of seeing and acting. Since many problematizations may be useful, it is important to ask for whom the effects they make possible are actually legitimate. For this reason, an experimental framework of criticism and expertise should have a better chance of letting people themselves determine the value of a way of naming and transforming a problem than a universal account criticism, the value of which is guaranteed by expert knowledge. Dewey and Foucault suggest that any and all of the many problematizations intellectuals like political philosophers have suggested could be right, depending upon the needs of a specific public and its problem. Which norms or procedures are correct should be empirically determined in their use for ameliorating practices by people themselves.

Another consequence of this account is that it suggests that problematizations should be multiplied rather than unified. Though shared problematizations, ends, or means may often be useful, as universal theorists well realize, it is sometimes important to pluralize possible ways of understanding or responding to a problem. To distinguish between these two needs, Foucault suggests that problematizations be understood in terms of the effects they make possible for certain purposes. Accordingly, he does not suggest that every problem requires reproblematization so that nothing ever gets done.

Since many old problematizations will be appropriate for new situations, what is most important is recognizing when a new way of thinking and acting might be useful. There is no certain test of this, but it might be useful to attempt conceptual reconstruction: when problematizations are irreconcilable regarding a certain issue, when problematizations seem disconnected from their purposes, or when situations have become intolerable for large numbers of people, as Foucault's forays into penality, political theory, and sexuality suggest.

An experimental account of expertise may also provide reason for transforming institutions, norms, and practices that produce and reproduce the activities of the universal intellectual. If these structures take part in expert-centric practices by promulgating certain problematizations regardless of the problems at hand, they risk limiting the kind of action that could be taken and the interests that may be served. If such practices are to be replaced by historically attuned problematizations that are genealogically grounded in practices having differential effects, widespread change may be required, for not only might the kinds of questions and the answers given have to be different, but the *ways* theorists' work originates and is evaluated may require transformation as well. Insofar as they create exclusionary and rigid problematizations, experimental criticism might have implications for institutions like the university, the media, or the government; as well as the practices of grocery stores, employers, and religious groups; or the norms of greeting, sexuality, or athletic groups. These structures need not all be problematized, except as according to need and ability. An experimental framework of criticism merely provides a way in which norms, practices, and institutions

could be evaluated.

I have tried to show how the Deweyan framework for the evaluation of values and the Foucaultian practice of criticism undercut many of the questions and concerns of universal theory and practice, though, again, I have not yet provided an argument in favor of experimentalism. The experimental modes of inquiry they attempt to make possible are neither essentialist nor relativist, universal nor arbitrary. Generalizations are necessary for even recognizing a problem as a problem, but their validity is provided by the effects they make possible. Purposive inquiry is neither necessarily arbitrary nor embedded in incommensurable language games, for its "objectivity" is shown by its consequences. Even though reason or the values of one's community cannot guarantee the validity of the effects they make possible, criticism is still possible on this model. In fact, the assumption that ends must be defined prior to the problems they are meant to solve is likely to uncritically occlude the needs of the singular situations publics face. Universal problematizations may be useful, but, as their value is actually determined by the practices in which they come to bear, the ways in which they are deployed may often need to change.

Finally, I should say a few words to head off the criticism that I am taking part in the very kind of theory that I deprecate. Like Dewey and Foucault, my quarrel is not with theory in general but with certain kinds of theorizing that could be better aligned with the problems theory is supposed to help address. Most theorists begin with actual problems or hope that their work will better the common good. The question is: do they avoid the expert-centric practice of telling people what their own good is or what they

must do to realize it? Do they theorize in a way attuned to the changing needs, technologies, interests, relations, and goals of changing peoples? The experimental hypothesis is that theory that defines its purposes—to the extent that this is possible—has the best chance of avoiding being a dogma to be applied at whim or an ideology affirmed by whomever its effects best serve. Problem-centered theory is likely to be attuned to its purposes and can be evaluated against other theories made to address the same goals. My experimental account of political inquiry, including the language of publics and problems, specific intellectuals and problematizations, is no different and should be evaluated by its use in ameliorating public problems by those working to improve their lives—specifically, as I will soon show in more detail, in reference to global institutions like the World Bank. Some problematizations will have better effects than mine and other theories and practices will have other uses.

Now that the theory and practice of an alternative framework of political engagement has been sufficiently outlined with the help of Dewey and Foucault, it is possible to begin to indicate its value with respect to the universal model. To do this, I will turn to the problematizations of global political theory. There we will see that the practices of the universal framework are, as it were, writ large, for much of the research in this field is involved in finding the one norm or procedure to which the entire world could agree. The same questions and problems arise: What ends would limit a global "state," and how would we know when it expresses them? Instead of these efforts to reduce global problems to one problematization, Dewey and Foucault provide resources for multiplying ways of acting globally. While the importance of international

institutions, like the United Nations, the World Bank, and Human Rights Watch cannot be doubted, perhaps the role of the global political theorist should be to create additional possibilities for dealing with concrete problems rather than attempting to limit ends to one.

CHAPTER IV

GLOBAL LEGITIMACIES AND MULTIPLE PROBLEMATIZATIONS

In Chapter One, I showed how attempts to define an account of the legitimate state or structure of society that represents all its constituents often leads to expert-directed practices. Though Rawls takes himself to be radicalizing the Lockean project of defining justice by appealing to procedures rather than contestable norms, he does not explain in any detail how people could actually evaluate the legitimacy of institutions or what they should do when differences occurs. The vagueness of reflective equilibrium leaves a great deal of the difficult work of ameliorating value conflict to philosophers. Expert centered practices may be better avoided, as I suggest in Chapter Two, by letting publics determine legitimate courses of action in their dealings with shared problems. On this experimental account, legitimacy is reconstructed plurally, contextually, and experimentally, so that it may be better to speak of "legitimacies" which are defined in the context of problems from the concrete point of view of publics rather than by theorists alone. In Chapter Three, I suggested that this alternative framework of legitimacy requires changes to the practices in which intellectuals are embedded. Instead of trying to define universal ends or programs for action, experts could create genealogical problematizations with which publics themselves could experiment in working upon their problems. Criticism would then be thought of as an act carried out by a social body upon itself in which intellectuals take part, rather than the mere application

of values whose value is guaranteed by them.

Now that I have outlined the theories and likely practices of the universal and experimental frameworks of legitimacy, we can return to the motivation for this project: how can global institutions be best criticized and transformed? To provide a space for a comparative analysis, and to ensure that the contextual account I have developed is tested contextually, I will examine the theory and practice made possible by each paradigm. Because many global democratic theorists do not engage in the kinds of public-driven inquiry developed in Chapter Two, they often become entangled in endless universal disputes over the intuitions or procedures that define legitimate global politics. Instead of creating historically and differentially attuned problematizations whose value is determined by experimental transformations of shared problems carried out by publics, as developed in Chapter Three, they are likely to repeat the practices of universal intellectuals in which the legitimacy of global institutions is defined by experts and applied by laypeople. The radical potential of global democratic theory to transform the practices of the universal framework is thus often attenuated by attempts to define global legitimacy universally.[53]

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53 This is true of many other fields, in particular deliberative democracy, feminism, and communitarianism. For instance, much of the radicality of feminism is lost when feminists accept the universal framework of legitimacy, either to attempt to communicate new insights to other theorists or to understand the meaning of their own work. Because this paradigm seeks a definition of legitimate politics to which all could, in theory, consent, it requires pluralism, difference, and context to be unexperimentally subsumed by the values of communities, the histories of institutions, or even human nature. Inquiry into ameliorating problematic situations for women and other historically oppressed peoples is replaced by universal arguments for the conditions of the legitimacy of such inquiries. Though, as I hope should be clear by now, I do not at all disparage reflection into the methodologies or values used to help ameliorate conflicts, the value of such considerations should be provided by their effects. The universal framework of legitimacy, which ignores effects, has often lead to endless debates about methodologies and values with no clear way to arbitrate them. This is particularly clear in feminism.

For instance, when Iris Young defines justice as "the elimination of institutionalized domination and oppression" (Young 15), she means to combat the effects of distributive accounts, which turn our attention to static material goods instead of social systems with differential histories (15-16). If *Justice and the Politics of Difference* helped to effect such a shift, however, it was likely to be spite of this universal account of justice which is grounded in the very paradigm of distributive justice from which she wants to distance herself. For, in providing a new way of saying "justice is ___," Young helps fill academic journals with debates over which intuitions really define justice. Must it stem from a communicative ethic (34)? Does it require a division between the right and the good (35)? Must democracy be the opposite of domination (38)? Young has clearly helped to change the kinds of things that theorists talk about, but to what extent does her formulation actually help practices become more intelligent? It is far from clear that the abstract debates with which she takes part actually help any people better determine their own fates. This is the danger in trying to change practices universally—a danger my dissertation faces as well. One can simply try to effect new practices and risk reverting back to old habits, because the vocabulary for describing such work is lacking. Or one can try to create universal tools for new practices, which other theorists will try to subsume under pre-existing models. I take my project to follow this second alternative and take up the torch that Young and others have carried, though it too is likely to just provide more fodder for abstract debate.

Carol Gould faces similar difficulties in defining justice as the realization of human capacities for self-development in *Globalizing Democracy and Human* Rights—even as she makes a highly effective criticism of the methodology of much political theory. If we ground democratic decisions on rights, she explains, "the constitution-making decision should itself involve some democratic or consensual procedure." If we found rights on a democratic procedure, we have failed to understand that "the very idea of consensus implies the free and equal status of those who entered into the agreement.... Thus it would seem to presuppose the very rights that it would authorize." Gould correctly shows the question-begging shape of much political justification, though the shape of political thinking can take many other forms than a circle and can be grounded in many other contents than justice and democracy—such as the move to communities and inheritances that Rorty takes. Nonetheless, Gould makes the same move as Hobbes, Locke, Mill, and Marx in positing a universal starting point in human nature, arguing that it would only be circular "if the rights that were instituted by the constitutional convention were the same rights that authorize the process of constitution making. The regress ends and the circularity is avoided, however, if we take the democratic or consensual determination of constitutionally guaranteed rights as a recognition of those rights that are ingredient in human action and, more specifically here, as a recognition that it is these rights that are at the basis both of the authority of the democratic or consensual procedure that sets constitutional guarantees and of the democratic structures of self-governance that the constitution itself establishes" (39-40). The regress is supposed to end at a social ontology of humans as freely self-developing, yet no explanation is given as to why this basis should be consented to prior to the consent of democratic procedures or constitutional conventions rather than some other ground. Again, without an experimental account of when, where, or how such an account of human nature is effective, Gould opens the door to interminable argument about the norms or procedures of legitimate politics while practices can continue to be dealt with arbitrarily.

The move to the "concrete universal" that many feminist theorists have recently made is another step towards contextual politics while speaking the language of the universal tradition—perhaps another indication of how needed an experimental conception of legitimacy is. For instance, Martha Nussbaum outlines a set of universal rights which will have particular instantiations in many of her works (1992, 2000). Yet without making the further experimental move wherein the particular practices determine the value of such "universals," Nussbaum and others face insoluble difficulties in justifying one set of universals over another. In some ways, Young's attempt to replace notions like "reasonableness" in favor of values like "the elimination of institutionalized domination and oppression" without falling back on human nature and the semi-empirical foundation of Nussbaum's lists are steps in an experimental direction. Nonetheless, because these formulations accept the framework of the universal

The universal framework of legitimacy funds roughly two positions in global democratic theory. The first, while apparently containing two very different approaches, seeks philosophical justification of a universal definition of legitimate global politics via a particular set of norms or procedures. David Held tries to extend liberalism beyond the state, while James Bohman represents the communitarian attempt to do the same. Though both provide different arguments and arrive at different norms and global institutions, their shared methodology is characterized by an appeal to intuitions. Given a certain intuition, they say, global democracy is legitimate if and only if it forwards certain related norms. John Rawls and Seyla Benhabib attempt to move beyond these substantive arguments in favor of a proceduralism that could delimit substantive disagreement. Differing, again, in form and content, Rawls and Benhabib share the methodology of Held and Bohman by trying to define a procedure that could provide a single criterion for evaluating global institutions without concrete inquiry into the shifting and plural needs of publics or the problems these institutions are meant to solve.

On the universal framework of legitimacy, the only alternative to substantive and procedural argumentation is skepticism or realism, as exemplified by Robert Dahl. This standpoint argues that intuitions and procedures beg the question and cannot garner universal consent. Thus, global legitimacy is a contradiction in terms. As I will argue, however, this approach carries out the same methodology of its alternative, for Dahl must also provide a question-begging argument for delimiting his account of democracy

framework of legitimacy, they can just as easily reinscribe non-pluralist politics if they do not help lead to changed practices. It is possible that these works may be strategic assets for transforming dominant discourses, but, a more effective way of undercutting these arguments and of making "universals" attuned to their effects may be by beginning and ending with concrete problems and experimental efforts to address them.

without concretely determining the ways in which consensus occurs or does not occur. Whether Held, Bohman, Rawls, Benhabib, or Dahl take part in such definitions or try to show that there is no such thing,[54] they exemplify the universal framework of legitimacy in assuming that a universally valid definition of global democracy ought to define the space of legitimate politics and that, once such a criterion is found, criticizing and transforming global institutions accordingly will make them more legitimate. The plurality of these approaches gives good reason to think that the value of a universal definition of legitimacy cannot be assumed or that, in other words, a different methodology may often create more legitimacies.

John Dewey and Michel Foucault help to define a different account of legitimacy and an alternative practice of transformation and criticism that should help better align theory with the problem-amelioration with which people are already involved and could do better. Rather than trying to demonstrate the value of any particular set of ends or means, Dewey and Foucault propose that political theorists help people themselves problematize, experiment upon, and evaluate global institutions. The question-begging nature of political theory should be embraced, not denied. It is meant to help actual people, not delimit the space in which "people" and "help" are defined. Even if everyone agreed in the abstract that the United Nations or the World Bank should promote human rights or some other end, experimental inquiry would have to occur into its successes and failures in so doing, as well as the ways in which—and the people for whom—these

54 Like the epistemological problem of knowing the thing-in-itself, which leads to rationalist attempts to define the conditions for the possibility of truth and skeptical denials of it, the universal framework of legitimacy has led to attempts to define universal ends or to deny their possibility. To dissolve these dichotomies it may be necessary to engage in inquiry that is not based upon the will-in-itself.

effects were actually valid. In other words, unless the UN's effects are the same for all people, they do not, in fact, agree about what kinds of rights should be protected, in what ways, and by whom. This will require plural, contextual, and empirical work, for, on an experimental model, the value of a human right is inseparable from the conditions and effects of promoting it. Consequently, Dewey and Foucault suggest that, rather than trying to narrow down our options for dealing with problems to one criterion of legitimacy, theorists should multiply the possibilities for criticizing and transforming institutions and for creating new legitimacies.

I would like to emphasize that much of the work done by Rawls, Held, or others working within the universal framework may be extremely useful, though not because of the arguments they provide or the self-evidence of any intuitions. If, as Dewey and Foucault suggest, the value of even the most abstract theory should be determined by its effects, there can be no purely universal demonstration of the value of a norm or procedure. This is not cause for despair, however, for the experimental approach allows ends to be evaluated by their concrete effects for particular purposes. For instance, though Rawls may not be able to defeat all comers in theory, a combination of some of his insights with those of Bohman, for example, might help some people deal with a particular problem, even though they seem to be universally incompatible. In this way, many of the debates of political theory could be dissolved via an experimental point of view, for the differences between competing definitions of legitimacy would be determined by their effects, not their premises.

Since I argue that particular purposes define the value of even universal attempts

to define legitimacy, I will not try to prove—via self-evident intuitions or the coherence of my account—that the experimental framework of legitimacy is correct in every case or for every public problem. I will not even argue that global democratic theory should become more experimental. I only hope to provide a space in which the universal and experimental approaches could be evaluated, though the actual judgment of either will have to come from their use in solving concrete public problems. I will show that, given certain purposes, the experimental framework should lead to better consequences in certain cases, and I will try to give some indication of what these cases might be. On the experimental account, there is no proof of its superiority to any other framework in general. The question is of when, where, how, and for whom it helps create more legitimate institutions. If the problems, actions, or criticisms that the experimental framework makes possible are not useful for any particular purpose, there is no fundamental argument I could provide for it.

The Universal Framework

Before defining a space in which the universal framework and the experimental alternative might be judged, it will be useful to bring together some of the main points made in this dissertation thus far. In particular, the experimental framework I have developed over the last two chapters should be summarized, though I would first like to summarize the universal framework outlined in Chapter One. This approach should be more familiar than the experimental alternative, though my abstract treatment of a broad

spectrum of political philosophers may have seemed unfair. I have painted this framework in such broad strokes in order to distinguish certain tendencies, rather than specific philosophers or even schools, from those of the alternative I have tried to trace. For instance, the later Rawls may very well have more to say in his defense against my characterization of him, yet the value of this picture of a set of concerns and problems in political philosophy should not be determined primarily by whether or not it can successfully portray every philosopher. Since it would be worthless if no set of questions or issues could be characterized by it, I have tried to show how Locke and Rawls can be thought of along these lines and have indicated in footnotes how other thinkers and schools of thought might as well. But, in the end, the value of this picture is in how it helps to juxtapose an alternative that better ameliorates public problems.

I have tried to outline the universal account through a set of goals, problems, and assumptions. No one of these is primary, as, for example, a set of assumptions funds the goals and problems that make those assumptions useful. For this reason, I have tried to describe a set of practices and ways of thinking that forms a coherent whole. Philosophy done within this framework, I argue, is not simply mistaken and does not commit a logical fallacy. Given certain assumptions and goals, it is perfectly reasonable to be committed to the projects this framework makes possible. However, it does not easily allow questioning about its assumptions and goals and, thus, its own value. In assuming legitimacy must be universal, it often does not make it clear how actual people with conflicting values could contest the definition of justice or even what should be done when people do not agree. Even on its own terms, there are good reasons to think that

this framework is not as useful as it may seem, as the sheer plurality of answers to this problem over the years give no reason to think that the right set of norms or procedures are around the corner. For this reason, a great deal of my work has been to show that another set of goals, problems, and assumptions is not only possible but may be useful as well.

The universal framework of legitimacy has the following primary goal. It seeks to define just coercion, legitimate rule, or "right power," in Locke's terms by reference to a common good or conception of justice which a legitimate state must express. In a complex modern society, where many different values vie for expression, one set of interests should not be able to trump another and direct the coercive power of the state without appeal to ends that all share. A rule must therefore be found for discriminating between coercion that is illegitimate and that which could, at least in theory, be justified. The alternative to such a rule is exemplified by Hobbes, the sworn enemy of this framework. He believed that there was no way to distinguish legitimate from illegitimate coercion and that the best solution to a bad situation was a balance of power in which no interest trumped any other absolutely. Such a modus vivendi, however, is unstable and may lead to injustices, e.g., against minorities. In order to avoid such politics as repressed war, many subsequent theorists have attempt to find a rule, a set of norms, or a procedure that could gain widespread consensus by transcending individual differences. The rule often takes the following form: If legitimate coercion is that to which all people could consent, it must express the universal value X (rights, utility, deliberation, etc.). However, the rule can take other, less ostensibly democratic forms: If legitimate coercion

must be done in people's best interests, the group of experts who might know these interests are Y (Gods, political philosophers, scientists, etc.).

A series of questions are bound up with this goal, though they are generally oriented by the concern of coercion. The same rules, norms, or procedures that would, if institutionalized, eliminate unjust coercion from the practices of widespread institutions are also likely to both prevent modus vivendi and foster stability. Since everyone could be shown to agree upon such rules, they would have no reason to revolt against institutions that expressed them, for, despite what they may think or feel, such institutions are just. If a rebellion against such institutions did occur, it could be quelled legitimately, for people are morally obligated by the universal norms or procedures. This, of course, is only on the assumption that widespread institutions, like the state, do express such rules and do not overstep their boundaries. People should not be obligated to obey any intrusion into their lives which is not in their true interests. However, it is not only institutions, but the plurality of people's beliefs that may be limited as well. Whether it concerns the beliefs fostered by educational practices or the kinds of argument that may be heard in public discourse, there is a limit to pluralism. In short, questions concerning the limits of the state and the obligations of the people fund and are funded by the goal of finding a rule determining just and unjust rule. Both largely define the space of legitimate politics.

The questions and goal of the universal framework of legitimacy are funded by a number of assumptions, though one in particular lends credence to the others. Simply stated, the universal framework assumes that ends cannot be evaluated by reference to

experience. Values are understood as beliefs that people hold, and since there is no empirical justification of a value, there is no way to falsify or corroborate a moral belief other than by reference to other beliefs. The very fact that someone holds a value makes it valid unless it contradicts other values, whether it be Locke's natural law or Rawls's comprehensive doctrines. The task of the political philosopher is thus limited in two ways. First, she can only examine how a value coheres with other values, and, consequently, she does not have to look to the consequences of a value in order to determine its value. Finding a rule to which all people could in theory assent is then a matter of finding a norm or procedure that is both coherent with other values and could be said to transcend or ground them. Whether or not institutionalizing such a norm or procedure leads to valid consequences—such as whether it reduces coercion or instances of rebellion—is not taken into account at all, for such questions do not even make sense on this account. Instead, universal questions about the state, the people, and legitimacy are asked and answered apart from any contextual analysis into how states occur, what people are affected, or the ways in which legitimacies and illegitimacies happen.

Because of these goals, questions, and assumptions, the universal framework makes possible a set of practices—though, of course, these practices reinforce the universal apparatus. Most importantly, the understanding of values as divided from facts creates a division between theory and application wherein theorists determine correct values and critics apply them to institutions. The value of these applications is determined by the value of the norms or procedures used, and this is defined by a theorist's ability to argue for the coherence or self-evidence of a certain set of intuitions.

The unexpected or undesirable effects of an application, and thus a theory, are seen as contingencies and not as constituents of its true value. Application is divided from theorization such that the former can neither reform nor determine the applicability of the latter. Of course, on the experimental framework, this division between theory and practice cannot be assumed, for experience has provided many cases where good theory makes for bad practice.

This attempted separation between theory and practice has the further consequence that arguments for certain norms or procedures are replayed again and again with no means of resolving them. For instance, the purely universal debate between liberalism and communitarianism is a conflict between intuitions: freedom from constraint or autonomy via constraints. The continuance of these positions is due to their ability to help us interpret and control our lives, but they are not universal solutions. Since these two intuitions are useful in certain circumstances, it is unlikely that any unempirical argument will lead one to categorically trump the other. Thus, if carried out in abstraction from effects, these debates will continue, much like the larger question of reconciling the plurality of beliefs with the unity of the state via a universal rule. The plurality of answers to these questions—rights, utility, autonomy, virtue, rational behavior, fairness, self-actualization, self-determination, non-domination, the requirements of communication—are perhaps due to the multitude of ways that the problems facing publics might be ameliorated. For this reason, the experimental framework suggests a turn to concrete contexts to determine when, where, why, how and for whom such an answer is valid.

In sum, the universal framework of legitimacy requires a universal criterion of the ends that limit the coercive power of a legitimate state and the obligations of people. Because effects do not determine the value of these ends, it is often through an appeal to intuitions or the norms of a community that such criteria are defined. Political theory has, accordingly, become much less deductive and much more hermeneutic. This represents a step in the right direction, as I hope to show, yet it is one that has not yet taken seriously the pluralistic criticisms of Marxists, feminists, communitarians, critical race theorists, deliberative democrats or global democratic theorists. Indeed, many of these theorists have not been able to capitalize on the radicality of their own views.[55] If

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55 Communitarianism, like feminism and deliberative democracy, has many resources to provide new ways of thinking about political problems. However, the framework of legitimacy has limited the effectiveness of its criticisms. For instance, Michael Walzer's *Spheres of Justice* (1983) is a refreshing response to John Rawls' *A Theory of Justice* and other similar works. Unlike Rawls' attempt to find a basic structure of society that is legitimate universally, Walzer argues that "the principles of justice are themselves pluralistic in form; that different social goods ought to be distributed for different reasons, in accordance with different procedures, by different agents, and that all these differences derive from different understandings of the social goods themselves—the inevitable product of historical and cultural particularism" (6). He invites us to examine the possibility that justice is meaningless without investigation into context. Yet, at the very same moment, he suggests a non-contextual understanding of justice, which he calls complex equality: "complex equality means that no citizen's standing in one sphere or with regard to one social good can be undercut by his standing in some other sphere, with regard to some other good" (19). The different spheres of justice are all to be ordered by the threat of tyranny, so that no person or group can gain dominance in too great a number of contexts. This definition, which sounds like a return to a Hobbesian balance of powers, simply makes liberals think that their suspicions of pluralism were right, for Walzer cannot provide an answer to concerns about modus vivendi, moral obligation, or coercion. Rather than trying to address these issues, communitarians might do a better job of avoiding them by changing the problems and practices with which philosophers are concerned, instead of trying to fit new ways of thinking into old terms, arguments, and methodologies.

Communitarian thought has also allowed for a powerful criticism of Rawlsian and Post-Rawlsian theory due to its focus on substantive moral claims. In *Liberalism and the Limits of Justice* (1982), Michael Sandel argues that a single definition of justice cannot be found, because people are unable to step outside of their particular values, histories, and communities to determine justice as such (see Taylor 1992). This line of thinking has led to the criticism of substantive accounts based on the fact of reasonable pluralism as well as to a distinction between procedural and substantive definitions of legitimacy and justice. However, the communitarian alternative has itself been forced to accept the position of either substantive moral philosophy or grounding thick, community-based politics on more neutral norms, such as autonomy or self-determination. Neither of these options is particularly appealing, yet communitarianism could take a third path if it commits itself to concrete analyses into

one wants to take the "fact of reasonable pluralism" seriously, is it not reasonable to reconfigure legitimacy in a pluralistic, contextualist, and experimental manner—that is, according to the effects of actual people dealing with concrete problems?

The Experimental Framework

Dewey and Foucault provide resources for reconstructing legitimacy and for developing an alternative model of political inquiry. Like the universal point of view, the experimental framework is defined by a set of goals, questions, assumptions, and practices, and, similarly, no one of these can be said to be primary; each aspect is mutually reinforcing and helps constitute a coherent framework. By making reference to Dewey's reflections on pluralism and the evaluation of values, I outlined a different account of how the validity of political theories and values could be defined, that is, by their effects for particular peoples working through concrete problems. Though I have used the same word, it may best on this model to speak of legitimacies that are produced by experimental transformations rather than legitimacy. On this framework, a universal definition of legitimacy is merely one way of creating more legitimate institutions. Similarly, its often unreflectively exclusionary results are not limited to attempts to divide theory from application; all theory risks being unattuned to its conditions and effects. Since it the conditions and effects of the transformations a theory makes possible

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problems in which issues of community are primary. It does not have to show that communities are the site of politics that trumps all others. If communitarians want to avoid interminable debates with liberals, they will have to change the terms of this debate. The experimental framework may help do so.

are always practices related to some one, Dewey suggests that political theory might often be more effective if it begins and ends with publics and their problems. Foucault provides a few examples of how theorists might work with people to critically transform institutions instead of defining legitimacy for them. Both help rethink how theory might answer to practice and try to theorize in a way that encourages practical inquiry.

The goal of the experimental framework is to help people more effectively reconstruct the institutions, situations, environments, or any other problematic structure that impacts their lives. Because there are many problems, institutions, peoples, and values, the experimentalist puts the concrete problem first rather than trying to universally narrow the number of tools available to a set of universally valid norms or procedures. Certain regularities will, of course, arise, as the effects of rights discourse make clear; yet the use of these tools should ultimately depend on the task at hand, as the application of such tools to new problems also shows, e.g., the attempts to think of health care as a human right, housing as a human right, etc. Because problems are problems for people, the test of their amelioration should be determined by people, not by an arbitrarily selected group of people or a rule known in advance to be correct. Thus, in many ways, the goals of this framework are negative: not to assume that the state is the site of politics, not to assume that people might be represented by one norm for all purposes, not to assume that the existence of a belief determines its value. More positively, however, the goal is to allow legitimacies to be defined in as many ways as is necessary, and this requires concrete analysis into the ways that institutions structure different peoples' lives. Instead of assuming that an institution's validity is determined by the values it is

supposed to express—and which in turn are supposed to be validated by the intuitions of experts—the experimental framework tries to foster concrete inquiry into the ways in which institutions are or are not actually legitimate.

Accordingly, this account of legitimacy is bound up with a number of questions. Rather than prioritizing concerns about moral obligation, modus vivendi, or coercion—that is, of the relationship between the state as such and the people as such—the experimental framework makes more situated, local, and experimental questions possible. Dewey and Foucault suggest that experimentalists keep three related concerns in view. 1) *An empirical question*: For whom is an institution, norm, procedure, or practice legitimate? What interests are served? What are the effects? 2) *A comparative question*: How do these effects compare with those of other institutions, norms, procedures, or practices? What other interests might be served? What other effects could be produced? 3) *A genealogical question*: What power structures and values make these institutions possible? What institutions, norms, procedures, or practices are at the root of current situations? What other frameworks might be possible? These concerns should help carry out experimental, concrete, and differential analyses of values, institutions, and practices, in which effects should form a large part.

The experimental framework has two important assumptions. First, it assumes that values are experientially grounded and can be experimentally evaluated. Values are not simply valid because people hold them, but because of the conditions and effects they have for them. Value judgment thus requires some kind of action and an analysis of effects with reference to other values or previous effects; it cannot simply involve

reflection or analysis. Unlike the realist presupposition that values are somehow objective—either ontologically or as necessary features of human experience—the experimentalist thinks that values are produced in certain contexts. Unlike the skeptical assumption that values are just the sediment of certain histories that "we" happen to share, the experimentalist assumes that these values are effects—in part caused by historical institutions, but in part caused by the work that they do for people. The experimentalist thus believes that values are objective and subjective, since they are objectively produced, though such effects are not assumed to be universal. Accordingly, they should be both objectively and subjectively evaluated—that is, contextually, plurally, and empirically. The experimental framework assumes, second, that the evaluation of widespread values should be connected to publics working through problems. These two terms (publics and problems) name the "subjective" and "objective" poles of political inquiry and reconstruction. There are other ways for people to transform their institutions and there may be other ways to evaluate them, though, for the purposes of this dissertation, I have focused on publics and problems as a plausible way of doing so.

These assumptions may seem too great, but, if one is trying to move past dichotomies between facts and values, as it seems that many are, the experimental approach is a powerful way of doing so. Realist and skeptical approaches, in rejecting the pre-Enlightenment assumption that facts and values are the same—that the value of science is provided by its proximity to God's mind—simply split facts and values and provide no way to reconcile them. Facts then become subject to moral judgments that

appeal to grounds for which no reasons can be given, other than coherence, self-evidence, inheritance, etc. Instead, the experimental approach simply assumes that no particular relationship between facts and values can be assumed. The question is to understand the particular ways that concrete facts condition certain values or that specific values help produce a set of facts. These assumptions about value are then lent plausibility, or shown to be implausible, by their effects in solving political problems. In fact, these and similar effects are the only things that could, on experimental terms, judge the validity of such assumptions. I hope that the questions and effects made possible by this framework in the field of global democratic theory might begin to do so.

One major consequence of this approach is that it requires legitimacy to be determined with reference to particular peoples. Rather than assuming that the institutionalization of certain values will have valid consequences, the experimental framework calls for attuned experimentation and analysis into differential consequences. It is possible that such local, differential, and experimental work will not be more effective than universal approaches, but it is the only way that might allow one to tell. Though it is not possible to predict with any certainty what the effects of the problematizations made according to the experimental framework might be, it is likely that those made genealogically—that is, those attuned to histories and differences—will take seriously the singularity of a problem while making reference to its similarity to previous situations. This approach does not express a metaphysical assumption about the nature of experience. Rather, it stems from a commitment to empirical method that James called "radical empiricism." One cannot assume, experimentally, that new

situations have any particular relationship with past events. Accordingly, as Foucault suggests, it is necessary to pay attention to how these events occur.

In avoiding the extremes of subsuming a political problem to previous results or despairing of its radical difference from past events, it can be difficult to find a helpful middle ground. Though every situation will have habitual responses of varying usefulness, Dewey and Foucault suggest three possible avenues of inquiry for (re)constructing a problematization. In what ways do existing institutions produce possibilities for *communication*? What forms of *imagination* of alternatives do they make possible? How do they provide resources for flexible *transformation*? Though these three questions are not necessary for providing a new understanding of every problem, they provide a set of tools for genealogically analyzing the conditions of the present. It is through these problematizations that current situations can be understood by reference to the past as well as to the future courses of action they allow. Theory is not then connected to practice in any kind of top-down manner, but is rather a part of the entire process of public-formation, problem-recognition, experimentation, and evaluation, or what I have called criticism.

In sum, the experimental framework demands concrete analysis into the ways that certain interests are served by certain institutions and suggests means of evaluating and transforming those values. It suggests that effects will be best when we know what interests are actually served by institutionalized values, rather than assuming that their effects would be universally valid if only the right values were found. It provides a way of evaluating and transforming these institutions experimentally, not by reference to a

value known to be valid because it is presumed to represent a community. Of course, the intuitions and values that universal theorists attempt to demonstrate un-experimentally may be lead to legitimate effects—and, in fact, they are held to be valid because this is the case. On the experimental framework, however, they represent only a beginning, as universal constructs should be oriented by the effects they are meant to produce. I have suggested that, in political issues, the experimental test should be oriented by a public problem, where people's experiences are the basis for their evaluation. Of course, the difficulties in accurately judging effects are great, especially when people are rarely experts on the topic at hand, when they disagree, when they live on different continents, or when they speak different languages. Yet one has to address these empirical problems if people are to be masters of their own fate. Leaving matters wholly up to experts is likely to exclude many of the interests that may be affected, as contemporary global democratic theory done on the universal framework will show.

Legitimacy Writ Large

Now that I have summarized the two frameworks outlined in this dissertation, I can begin to show the ways that global democratic theory has been dominated by a universal approach as well as some of the effects that this has in transforming and criticizing global institutions like the World Bank. Despite many exciting and imaginative developments in this field, however, much of the literature is concerned with philosophically demonstrating the validity of one form of global politics over another, so

that inquiry into particular institutions first requires knowledge of the universal ends they are to express.[56] Here, the problems of the universal framework of legitimacy are, as it were, writ large, for demonstrations of universal validity must show that one value or procedure grounding such politics is more valid than all others for all humans—despite cultural, historical, economic, social, gender, class, race, and personal differences. Unsurprisingly, there is a great deal of skepticism about attempts to extend the non-universal values of liberalism or communitarianism, for example, to global politics. Even the recent attempts to argue for historical universals or value-neutral procedures must prove that such grounds are shared by all peoples and trump all other values. Given such

56 Deliberative democracy, like feminism, communitarianism, and global democracy, has resources for dealing with problems experimentally. However, instead of concrete investigation into institutions that thwart intelligent inquiry or suggesting specific ways for making deliberation possible, much deliberative democratic literature has been concerned with universally demonstrating that it is more legitimate than other accounts of democracy. For example, Amy Gutman and Dennis Thompson's *Why Deliberative Democracy* (2004) aims to "provide the most justifiable conception for dealing with moral disagreement in politics" (10) via a second order theory. Moral pluralism shows that a procedure must be found that can adjudicate moral debates. Deliberative democracy fits such a need, and is able to order these other debates (56), producing decisions that are binding (5). Deliberative democracy trumps rights or aggregation because it expresses the value of "mutual respect" (79) and thus creates the conditions in which the kinds of rights a public needs could be determined and the space in which aggregation could be legitimate. Yet David Estlund argues that deliberation is not the legitimate form of democracy because it is grounded upon a contestable value like "mutual respect" but because it is most likely to produce correct answers. This epistemic defense of deliberative democracy tries to undercut any normative grounding for deliberation and appeals to value-neutral norms like truth or inquiry (see also Misak 2000; Talisse 2004).

What unites these very different theorists is their attempts to ground deliberative democracy universally via a shared norm that trumps and orders moral conflict. Once the right grounding is found, decisions made deliberatively can be known to be legitimate, and those who, unreasonably, do not agree with its outcomes can be coerced. Instead of such arguments, the experimental framework suggests that the legitimacy of deliberation be determined by its effects. When and where does it actually help create moral obligations in concrete situations? For whom does it help create lasting solutions to problems? How does it reduce instances of coercion? Furthermore, by asking these questions with reference to particular peoples and problems, it provides means of asking which of these, or other goals, are to be most prioritized. Appeals to "mutual respect" or "truth" may provide indications of the value of certain forms of deliberation, but it is likely that more genealogical problematization and experimentation will help to provide better ways of showing how certain kinds of deliberation could help ameliorate specific problems. Deliberative democracy could become experimental if it sidestepped the universal framework of legitimacy, made concrete suggestions for increasing deliberation, and provided reasons for why this would be useful for solving particular problems. In this way, the value of deliberation could be determined and other approaches could be weighed against it.

difficulties, global democratic theory has become stuck on the issue of legitimacy. Either a universally valid set of norms or procedures can define legitimate global institutions, or global politics is a reversion to the Hobbesian or anarchic war of all against all. In order to show how a number of the pivotal discussions of legitimacy in global democratic theory are based upon universal assumptions, I will categorize three approaches to the debate: substantive/historical, procedural, and skeptical. Because I will show that theorists grouped under these fields share one methodology, rather than a definite content or argumentative form, these designations are rough, though not without their use.

In David Held's important *Democracy and the Global Order*, he argues that, though the nation state has dominated democratic theory and practice, new developments in global complexity undermine one of its essential assumptions. In a world where an earthquake in Indonesian may disrupt stock markets in Europe, or where population flows in North America blur any stable characterization of citizens or borders, one can no longer presuppose that there is a "'symmetrical' and 'congruent' relationship between political decision-makers and the recipients of political decisions" (1995, 16). That is, since it is no longer clear that citizens can hold their representatives accountable nor that representatives may be able to enact satisfactory policies for their citizens, Held argues that we must both rethink and extend democracy globally. The erosion of state sovereignty means that legitimate global power ought to marry the resurgence of the decentered form of power most apparent in Medieval Europe with state-centered constitutional structures (140). Held finds the conceptual resources for reconstructing democracy in the liberal principle of autonomy, "a principle embedded in the public

political culture of a democratic society" (148).

Rights need not be understood as the domain of nation states but can be understood as conditions for the possibility of autonomy—or as entitlement capacities. He writes, "The autonomy of the citizen can be represented by that bundle of rights which people can enjoy as a result of their status as free and equal members of particular communities" (150). If people are to be truly autonomous—and this has become more and more difficult in a globalized world due to the limitations of state sovereignty—the purpose of global institutions must be to protect such entitlement capacities or rights. However, recognizing that "endless abstract debates" may follow from such a purely conceptual analysis, Held understands that the "meaning of the principle of autonomy must be further unfolded in the context of an examination of the conditions of its entrenchment" (159). This is undertaken as a thought experiment of the ways that global institutions might forward autonomy. Though it must be recognized that "if one stands outside the liberal democratic tradition, then the acceptance of the premise, let alone the result, would be in doubt" (160), the thought experiment shows the conditions for the possibility of disagreement: "the conditions of democratic dialogue" (167). One can then see seven sites of power, or seven areas in which rights must be realized, which global institutions must address in order to entrench autonomy.

The implementation of these rights requires international law. Held argues that "the establishment of a cosmopolitan community—a community of all democratic communities—must become an obligation for democrats" (232). Though sovereignty would no longer be directly tied to states, "networks of states," "sub-national entities," or

“transnational communities, organizations, and agencies” might allow sovereignty “to be stripped away from the idea of fixed borders and territories and thought of as, in principle, malleable time-space clusters” (234). By grounding the principle of legitimacy in autonomy, and because of the subsequent reconstruction of rights, sovereignty can be rethought of as people taking control of their rights without the intermediaries of states. Still, Held suggests that international law must itself be ratified by individual states (270-3). Extending the United Nations' constitutional structures is the framework of the new global order, a global "state" with legislative and coercive power, though taking a quite different form from what is traditionally understood as a state.

Though there is much worthy of analysis in Held's book, I will focus on his argument for autonomy. At the very moment that he locates a new grounding for legitimate cosmopolitan governance, he admits that “the principle of autonomy can only be fully traced to one of the core traditions of Western democracy—the liberal democratic tradition” (149). And, as we have seen, when further tracing out the meaning of autonomy, he says that one must stand inside the tradition to agree with the results of the thought experiment he runs. At the same time, however, the thought experiment shows the conditions for the possibility of agreement and disagreement and provides a universally valid understanding of autonomy. In short, by attempting to avoid an account of rights that appeals to human nature or natural law, Held's historical grounding of rights in the liberal tradition raises important questions about the ways in which arguments for legitimate cosmopolitan democracy should be made. Many theorists since Held have expanded upon and refined the principles that define sovereignty and rights, and they

have contested the shape of new institutions of sovereignty, yet, in sharing Held's project of conceptually grounding a new understanding of the structure of sovereignty, they face the same problems.

For instance, while communitarianism has often appeared antithetical to cosmopolitanism, a few theorists have taken up the challenge to provide a set of communitarian norms to define global democracy. James Bohman has recently argued that the republican principle of self-determination, unlike the liberal emphasis on noninterference, can provide a basis for human rights that is not proscribed by the state (2008, 4-5). All rights are then grounded in the primary right to initiate deliberation. Once self-determination has been shown to trump other norms, cosmopolitanism should be rethought transnationally, as one global government is unable to take seriously the diversity of peoples determining their own fates (44). Though not requiring a single state with coercive authority, the community of humanity should be united by plural public spheres which, though particular, are forums that "manifest the commitment of participants to freedom and equality" and "address an indefinite audience" (60). Thus, despite having a very different picture of legitimate global politics, Bohman's methodology is quite similar to Held's. He provides few reasons for why self-determination should trump autonomy or any other value in all cases, yet this should be an essential step in any such argument for universal government. For this reason, it is hard not to see these historical or substantive arguments as anything but idiosyncratic.

Theorists have tried many paths to solve the tension between universal justification and particular argumentation evidenced in Held's and Bohman's works, and

the problem can be stated in various ways.[57] How can one provide a universal definition of human rights or legitimate global institutions without being subject to one's particular beliefs or, what is more, a cultural imperialist? What values do all people hold, and how could this be demonstrated? On what basis can we criticize the governments of others when their peoples hold radically different values than we do? Without universally valid norms or procedures, a universally legitimate form of global politics is not possible. Still, the two common options of appealing to human nature or to a contingent historical institution are not satisfactory to many. While it is true that simply because something is discovered in a particular time and place does not mean that it does not have wider application, arguments like Held's fail to explain why those who do not hold liberal values should do so. Nor does he tell us what to do with those who do not. Are they relegated outside the cosmopolitan order? Is there no way to criticize those who do not hold our values? Must cosmopolitan governance await universal consensus?

To address these and other questions raised by substantive projects like Held's, some theorists have attempted to develop a basis for legitimate global politics not through

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57 This question is at the root of a long-standing debate within feminist theory in particular (see Dietz 2003 for an apt summary). How can women raise consciousness about human rights violations throughout the world when there is no consensus about what constitutes a human right violation—even in extreme cases like female circumcision? How can one even use a category like "women" when "women" are always differently empowered and disempowered? Should "women" refer to the possession of a chromosome, a position in a hierarchy, or solidarity in a movement? Historically, feminists have had two choices when dealing with such problems of naming. They can work within existing categories, such as by extending rights that men have traditionally had to women, as seen in equal pay for equal work movements. Or they can "deconstruct" categories and show how terms like "women" are always mapped in relation to other structures like race, class, and sexual orientation. Leslie McCall suggests a third, experimental alternative, which she calls an "intercategorial approach," wherein the value of categories is not simply assumed or rejected but is determined by their effects (2005, 1784-5). Due to her social-scientific background, she examines the meaning of such terms via statistical analysis, but she points towards a critical use of categories that is much more broadly experimental. Statistical analysis is only one way in which a problem may be experimentally ameliorated.

an appeal to historical institutions or intuitions but by reference to hypothetical procedures. John Rawls epitomizes this approach. In *The Law of Peoples*, he argues that the proceduralism developed in *A Theory of Justice* and characterized by both the original position and reflective equilibrium can be extended to international justice. It is not states but representatives of peoples that are parties of the international original position, because, while people can be reasonable, states are "moved solely by their prudent or rational pursuit interests" (27). That people are able to give and take reasons and act upon such reasons is one of the conditions for the possibility for global justice, because only people can act out of moral obligation to principles they themselves have chosen. Without such moral consensus, it is only by modus vivendi that states could avoid war, and that would not be lasting. Stability for the right reasons, unlike an unstable balance of powers, "describes a situation in which, over the course of time, citizens acquire a sense of justice that inclines them not only to accept but to act upon the principles of justice" (45).

There is no deductive argument that could demonstrate the shape of a just global order, and so it is essential to understand "whether a realistic utopia is possible, and the conditions under which it might obtain" (1999, 5-6). If it is reasonable to think that liberal peoples could agree to a set of international principles (such as the eight listed on page 37), and that non-liberal states could accept them, then a law of peoples is a reasonable utopia. Unlike *A Theory of Justice*, in which parties in the original position were allowed to choose from various comprehensive doctrines, "the representatives of well-ordered peoples simply reflect on the advantages of these principles of equality

among peoples and see no reason to depart from them or to propose alternatives" (41). Rawls is careful to say that the law of peoples is not simply a justification of liberal manifest destiny, because we cannot assume that moral obligation to such law requires that people live in liberal states (60). "The reason we go on to consider the point of view of decent peoples is not to prescribe principles of justice for *them*, but to assure ourselves that the ideals and principles of the foreign policy of a liberal people are also reasonable from a decent nonliberal point of view" (10). Once such a list is generated, we can be sure that international relations do not have to be reduced to the war of all states against all others, and "our hope becomes reasonable hope" (23).

Though the law of peoples is made by convening imagined representatives of people who are ignorant of the state to which they will belong, it does not require a global cosmopolitanism. Taking people as they are and laws as they might be, as Rawls, echoing Rousseau, asserts, a realistic utopia must respect the existence of states. At some later date, a global cosmopolitanism may succeed, but, for now, we must deal with the possibility of forming a law of peoples from liberal and decent states (83). One should bear the goal of the law of peoples in mind: to eliminate gross human rights violations, genocide, and other crimes against humanity. "[O]nce the gravest forms of political injustice are eliminated... these great evils will eventually disappear" (7). The law of peoples is a moral idea for peace and has no larger goal, such as a comprehensive doctrine may have, to restructure political orders. Decent and "liberal peoples have nothing to go to war about" (47), Rawls argues. If this is not true, a global cosmopolitanism would not be able to save us.

By stepping back from cosmopolitan aims, Rawls avoids the danger of universalizing the particular that Held faces in delineating a universally valid norm to ground global politics. His proceduralism is not rooted in any particular historical beliefs or contingent institutions. Though the account he gives is liberal, it is politically liberal, for nonliberal states could endorse it. He is right to point out that, "[t]o the objection that to proceed thus is ethnocentric or merely western, the reply is: no, not necessarily. Whether it is so turns on the *content* of the Law of Peoples that liberal societies embrace" (121). In other words, one must look to the effects of a Law of Peoples to decide upon the legitimacy of its exclusions. Nonetheless, like his *Political Liberalism*, analyzed in Chapter One, who gets to decide upon what principles and how reflective equilibrium should occur is far from clear, especially in a global context. Rawls again asserts that "[w]hether our conjecture is borne out will depend on whether you and I, here and now, can, on due reflection, endorse the principles adopted" (30), yet he gives no indication of what to do when people disagree—in reflection, or, what is more likely, in the effects produced by the institutionalization of the values supposed to be agreed upon. How do we know when we agree, who can dissent, and what structures exist to make and institute these decisions? Instead of providing means to answer these difficult, empirical questions, Rawls provides resources for a one-directional model of theory and practice, such as when he suggests, "It is the task of the student of philosophy to articulate and express the permanent conditions and the real interests of a well-ordered society. It is the task of the statesman, however, to discern these conditions and interests in practice" (97).

Rawls does not even answer the basic question of why one should use the

framework of the original position and reflective equilibrium to determine international law, except that it might seem right to some people. Reflective equilibrium does not explain how his proceduralism could be evaluated, and there are plenty of other paths one could take. Seyla Benhabib, for example, describes a different proceduralism in her Tanner Lectures published as *Another Cosmopolitanism* (2006). In her investigations into "the scarf affair" in France and debates over immigration and citizenship in Germany, she finds that the validity of cosmopolitan norms is not dependent upon any particular deployment of a democratic norm—an "iteration" in her language—which may lead to good or bad consequences, but on the process of iterating a universal norm (47-9). To bridge the gap between universal norms and particular cultures, what is needed are "multiple iterations" (70). These iteration are given authority by "the power of democratic forces within a global civil society" (71, deemphasis mine). That is, the already iterated instantiations of global justice grant the basis for the authority for future iterations, and "such norms and principles are morally constructive" (72). They create a new order. In short, Benhabib suggests that, rather than any particular global institutions being legitimate, the process of contestation and deliberation, the iteration of universal norms in multiple ways, is itself legitimate. Neither federalism nor a cosmopolitan state is necessary. The ways the new global order will be produced are multiple.

Like Rawls, Benhabib provides few resources for determining which iterations are better than others or for explaining why her proceduralism trumps others. These examples indicate that, though proceduralism seems to offer a way to obviate some of the problems of using a substantive doctrine to describe global legitimacy, it too may import

substantive criteria or lead to substantively different effects. Rawls is, after all, describing global justice based upon liberalism, political or not, and Benhabib is drawing upon controversial post-modern philosophy. The lack of any way to arbitrate the differences between these two theorists raises the question of whether or not proceduralism is any less particular than substantive theories of global justice. Because of this worry, some theorists have taken a skeptical turn, arguing that the language of legitimacy simply does not apply to global politics. It is not simply the realist school of international relations that puts this assumption at its heart, but, surprisingly, democratic theorists like Robert Dahl as well.

Dahl argues that, despite the many difficulties facing attempts to define democracy—such as deciding whether it is a system of popular sovereignty or a way to preserve rights, knowing at which point on the spectrum democracy becomes undemocratic, and agreeing upon how much delegation should be allowed—we should be able to agree that democracy involves some amount of participation (1999, 20-22). Since individual input decreases the greater the number of people brought together to decide upon an issue, "global democracy" will decrease an individual's say to virtual insignificance, and, consequently, is a contradiction in terms. Dahl argues that "we should openly recognize that international decision-making will not be democratic" (23). Nonetheless, he continues, this is "not to say that [international organizations] are undesirable... I see no reason to clothe international organizations in the mantle of democracy simply in order to provide them with greater legitimacy" (32). Since the participation that the meaning of democracy requires can be realized only on a small

scale, global institutions may be useful, but the language of justice or legitimacy should not apply to them.

Though Dahl does take a very different position from those of Held or Rawls, he shares the same methodology. For, though Dahl highlights some of the difficulties in defining democracy, his argument against global democracy requires that one accept a definition very close to that developed in *Democracy and its Critics* (1989). Yet other definitions of democracy, and of global democracy, have been offered. If we define democracy iteratively, as does Benhabib, cosmopolitan iterations are legitimate. If we believe that justice is grounded in autonomy and the right to initiate deliberation, as does Bohman, then many structures of the EU should be extended. These examples show to what extent global democratic theory has been dominated by the universal framework of legitimacy which requires theorists to deny the concrete reasons that would show when anyone would want to accept any of these assumptions. But, rather than doing the work of finding out when, where, why, how, and for whom such theories work Held, Bohman, Rawls, Benhabib, and Dahl attempt to demonstrate the validity of their claims in theory. In theory, however, any of these plans might work. For this reason, in global democratic theory, much like democratic theory that accepts the universal framework of legitimacy, endless universal debates between universalized particulars—including the rejection of any universal—have been the rule.

These theorists show the kinds of questions and practices that arise when the universal framework is applied to global institutions. Though motivated by a desire to criticize and transform widespread institutions, they do not look into the ways that the

criticisms and transformations they make possible actually lead to more legitimate institutions. They separate questions of ends from inquiry into conditions and effects, assuming that a universal norm is universally valid. Coercion will be decreased, stability will be ensured, and people will be morally obligated by some cosmopolitan ethics once a set of universal ends is found. If laypeople want to transform the World Bank, experts only tell them the ends such an institution is supposed to serve. Politicians, policy-makers, and peoples can criticize it for forwarding free market values instead of autonomy, rights, or the ends found by democratic iterations or a law of peoples. But it does not make sense on this framework to ask *for whom* transforming the World Bank on the basis of such ends is actually more legitimate. Rather than providing evidence that I am making a straw man argument, the tenuous link between universal global democratic theory and institutions like the World Bank shows how much the universal framework assumes. The dangers of requiring universal agreement become all the greater in global affairs as the need for expert-centered practices becomes all the greater.

Experimental Global Legitimacies

Despite their differences, Held, Bohman, Rawls, Benhabib, and Dahl share a methodology that attempts to ignore the particular reasons actual people might have for making use of their theories. None of this means, of course, that their work may not be useful. They are important thinkers exactly because they provide problematizations that can lead to legitimate social changes, but they may be even more useful if one does not

assume that such theories must be legitimate for all peoples in all places. For this reason, I suggest that global democratic theory may be helpfully reconstructed experimentally. On an experimental account, this means that theory about the ends international institutions like the World Bank should express or the means of reforming them should not begin with questions about international institutions in general. Nor should they assume the validity of such ends or means prior to their conditions and effects for certain purposes. Instead, theoretical work should be part of certain people's struggles to make the World Bank work for them.

Beyond this bare sketch, I cannot say in detail what a legitimate experimental transformation of an institution like the World Bank should look like. Different publics and their problems will require different forms of inquiry and different institutions, norms, and practices. This does not mean that anything goes but, on the contrary, provides a way of showing when certain institutional designs or actions are illegitimate—that is, with reference to their conditions and effects for certain interests. It is important to understand what has worked for which publics and problems so that institutions can be prepared for similar situations that arise in the future. Rather than being solely a matter of the ends institutions like the World Bank should express, its legitimacy should be determined by publics working through certain problems. I can provide some schematic recommendations for theorists based on a contrived example, but they should remain hypotheses to be revised by others.

The first thing, then, is to begin with actual people who experience the World Bank as problematic because it does not help them successfully deal with the problems

they are trying to address. Let's say the people of North Cambia, a fictitious country in the South, are facing famine and hunger strikes. Clearly this is something international aid organizations should be able to do something about. Yet we should first ask if is it correct to say that the problem is one of famine? Or is the famine a result of the changing price of food in the international market, perhaps because of the increased use of corn for biofuel? Maybe land distribution as a result of colonial times keeps many on bad land while a corrupt post-independence government distributes aid to a few cronies? Perhaps it is not an issue of a food deficit but a population surplus, and famine is the natural result of human overextension on a planet with scarce resources? Is North Cambia simply stuck in a vicious cycle of poverty, having no prospects due to a lack of investors and no investors because there are no prospects? Perhaps the strikes are a threat to public safety and are the immediate issue? Did global warming cause drought and a poor crop yield? Or was it simply bad luck?

One obvious way of understanding the connection between the World Bank and North Cambia's famine is in terms of the growth of Gross Domestic Product. Since standards of living increase, on average, with rising GDP, the World Bank could try to make loans or investments into key areas of the economy to "jump start" growth, such as by calculating the "financing gap." Given its near total failure in helping developing countries develop (Easterly 2001, 2006), however, this may not be a useful way to problematize the issue. In fact, it may be the case that the World Bank will be unable to do anything to stop famine or prevent future famines. If it were possible, however, it cannot be assumed that GDP should trump other considerations, such as human rights,

the environment, or political stability. For example, if increasing output would require child labor or a loss of women's rights, due to the level of technology in a country, it may not be in their interests to do so. The Industrial Revolution did exactly this in the West. Increasing GDP might mean increasing pollution and threaten, water supplies, as melting glaciers in India are today. Increasing output may require political change, which, if requiring violent revolution, may be worse than the alternatives. "Growth" can take many forms, few of which the people of North Cambia may want.

Because of trade-offs such as these, experimental inquiry is often an uncertain and messy affair. Not only can "the" problem be named in many ways, but the resulting choices and implied actors vary widely as a result. "It" is not something that can be defined and addressed by experts, because each point of view involves exclusions that should be accepted by the people involved—and this also involves determining who the people involved are. Action determined solely by experts is likely to make exclusions that are not legitimate, since it is unclear what a legitimate course of action would be without the relevant choicework. Equally important is the fact that expert action taken on behalf of others excludes the possibility that people can act for themselves and thus reinforces passive behavior (McKnight and Kretzman 1993). Despite the many problematizations listed above, most of them do not involve action undertaken by North Cambians themselves. But is it the case that they must wait around for someone else to solve their problems?

Often what is needed are new ways of thinking about and dealing with problems, either because existing choices do not work or do not work for the right people. Finding

ways to address problems that are more inclusive may often involve increasing possibilities of communication, imagination, or transformation, as we have seen Dewey and Foucault suggest. For instance, though people need not consent on the definition of an issue, they may not be able to communicate enough to work complimentarily, due to religious or racial conflict. Reconstructing racial or religious institutions, norms, or practices might thus be necessary to deal with problems like famine. Sometimes new ways of understanding problems need to be imagined, as, for example, when cash crop systems, thought to be a poor country's comparative advantage in a global market, keep many impoverished and hungry or are environmentally destructive. Are there other models for escaping famine and poverty that also forward other interests, such as the environment or political stability? Finally, long histories of colonization or dependence on foreign investment and aid may have led many North Cambians to be unable to be actors themselves. New institutions, norms, or practices may be necessary for their issues to be best addressed, as some experiments in deliberation as a process the educate agency have shown (Nemeroff 2008).

These suggestions show that intellectual work to help the North Cambians deal with their problems should often be genealogical problematizations, that is, historically and contextually-attuned suggestions for thinking about and addressing problems that the North Cambians themselves weigh and choose. The suggestions of global democratic theorists like Held or Rawls may be useful, but this should be up to the conditions and effects they make possible for the North Cambians. A framework of human rights, for instance, could put blame on the government, which either ignores the history of

international relations that have led to bad governments (Felice 1999) or requires political instability at the wrong time. A law of peoples designed to rule out gross political injustices and foster peace may not be able to explain what the World Bank or other international institutions could do. Theorists who understand the singularity of the present problem and similarities to other problems should be able to help suggest the pro's and con's of certain problematizations and courses of action, as well as to help imagine new ones.

Experts can only provide possibilities and cannot make the actual exclusionary choices in experimental inquiry. This is a point Jane Addams well recognized in connection with the changes brought about by industrialization. Without detailing any necessary forms, she explains that what is often needed in response to new situations is "a new line of conduct" (2002, 9). That is, without people themselves making choices and changing conduct, there is no experimental inquiry. The social ethic Addams calls for is not a new standard by which all people should judge their actions. It involves new experiments in *ethoi* or habits of living in response to novel problems, of which no expert—such as George Pullman—can be the sole arbiter. Accordingly, the North Cambians, in their attempts to deal with the problems they face, should experiment with different solutions—one of which may be action on the part of the World Bank.

As these intricacies show, experimental inquiries will result in a plurality of legitimacies, though they are likely to share a few characteristics. First, people's experiences define the problem and the correctness of the relevant courses of action, not experts. It is quite possible that no course of action is legitimate because, for example,

people have not taken upon the requisite work building communicative links between divided groups, or are unable to make changes themselves due to depoliticizing educations. Second, inquiry into what should be done involves both ends and means, not simply a discussion of values to be implemented. If people themselves have not weighed their priorities based upon the consequences experts have hypothesized on the basis of certain problematizations, it is hard to see what might count as a legitimate course of action. Third, the results of any action taken have no guarantee. Inquiry that presupposes any ends or means is likely to illegitimately narrow possibilities for thought and action. In the international arena, this usually means that things are often done to or for people, but not by people themselves. Fourth, possible problematizations, means, and ends are based in past experience. Rather than being anti-theoretical, experimental inquiry may require more theory or more categorization of previous problems and courses of action to help deal with new ones. Finally, institutions, norms, and practices which arise on the basis of similar problems and public choices are necessary, but their value is something to be shown rather than assumed. It is hard to hypothesize what new structure will form in response to new developments across the globe, but it is certain that their tenure has a limit.

What all this means for the World Bank will vary greatly depending upon publics and problems. To the extent that it can forward ends that people have chosen or make possible new lines of communication or transformation, it may be highly legitimate. If, as David Ellerman claims, it is highly unlikely that the Bank can help people help themselves, rather than imposing a certain kind of help upon them (2005), new

international institutions, norms, or practices may need to be created. The value of the Bank or the ends it is meant to forward ultimately depend upon people's choices—or lack thereof—regarding the definition of a problem and the action taken to ameliorate it. People may decide to understand and deal with a problem in many ways. The theorist should try to help multiply their ability to do so, but there are many limits to such work. The difference in methodology between this account and the practices of universal global theorists should now be clear. Though there is no guarantee that the experimental framework will be more successful in helping people deal with their problems than the universal account, it should be useful in the cases in which: the definition of a problem is contestable; the courses of action are exclusionary; people's interests are not fully-formed; previous problematizations have failed; or people need to be actors.

Objections to Experimental Global Legitimacies

Having shown some of the ways in which an experimental approach may provide a way of adjudicating the plurality of definitions of global legitimacy and of taking the plurality of different interests and power structures seriously, I must answer some theoretical and practical objections. First, it may appear as though I am simply suggesting yet one more proceduralism that will solve all the world's problems if only instantiated in the right ways. Like the expert-centered proceduralisms of Rawls or Benhabib, I am open to attacks of cultural imperialism, gender bias, universal certainty, and armchair philosophy. It is true that, like other political theorists, I am supplying a

theory of how to conceptually and practically deal with political problems, and I am the last to deny the importance of theory. Nevertheless, there are two, predominantly practical, differences between this approach and the universal framework. First, the practical value of this framework is to be shown on its own terms and not by any universal appeal. It is certain that it will not be useful for all cases, and it shows the means for deciding when it is and when not—that is, through its use in helping people ameliorate concrete problems. I cannot predict its successes or failures to any degree of certainty, though I have provided some indication of its use in dealing with international affairs. In many ways, this dissertation's goal is simply to aid in the opening of many new sites of inquiry. Second, and relatedly, this framework is different from what has been called "proceduralism" because it does not attempt to guarantee any effects, such as the discovery of morally obligatory norms, the avoidance of modus vivendis, or an end to illegitimate coercion. Its effects will be multiple and should be dealt with in multiple manners.

Since an experimental framework should help make practices more intelligent by providing ways to make theory more attuned to its conditions and effects, it faces roadblocks that are both theoretical and practical. Because I am interested in engaging with institutions of expertise like political theory, I have focused on universal habits that have blocked plural, contextual, and empirical inquiry into the effects of such institutions. To help create possibilities for a more intelligent relation between theory and practice, I have attempted both to characterize a framework for such thinking, which I have called "universal," as well as to offer an alternative set of questions, goals, and assumptions. If

one remains within the universal framework, however, this attempt will be judged by how it theoretically answers universal problems of moral obligation, coercion, or modus vivendi. Yet, on the experimental account, these are useful problematizations only to the extent that they help solve real problems. While the experimental framework has been framed in theory, i.e., in a dissertation, it provides no universal answers and instead suggests a few revisable ways for evaluating institutions and problematizations empirically. Taking cues from pragmatist concepts like "experience" or "logic" and post-structuralist concepts like "event" or "power," which are all meant to direct inquiry into exactly *how* experience, logic, events, or power occur, this framework requires investigation into *how* legitimacy happens rather than validating the merely universal musings of what I think should be legitimate.

In this way, rather than allowing for an infinite number of injustices because genocide "works" for a group of people, as may be objected, the experimental account requires honesty about the people for whom a set of norms or procedures are legitimate in practice. It maintains that we cannot assume that a set of norms or procedures, developed entirely in theory, will have legitimate consequences. Even if there was consensus among theorists about which norms or procedures could order others and form a basis for the construction and criticism of global institutions—and, as we have seen, this is far from the case—the experimentalist suggests that the universal coherence or representativeness of a belief is not the only determinant of its value. For this reason, it is not the experimentalist who allows for unlimited atrocities by "letting a thousand flowers bloom." On the contrary, it is the universal theorist who risks making all manner of

violence and exclusion possible by eschewing the evaluation of the differential effects that "universal" norms and procedures have. The experimentalist suggests that the creation of more legitimate institutions will come from an attention to the ways that contemporary situations are problematic for some and not for others—not by relegating such matters to questions of application.

It is true that many things that are legitimate for some people are not legitimate for others. An experimental framework's focus on such differences is a strength, not a weakness, for a clash of legitimacies points to a problem to be ameliorated. Rather than glossing over such differences, as the universalists do, or throwing up one's hands in the face of irreconcilable language games, as the skeptics do, Dewey and Foucault suggest that attuned experimentation is the one way that a norm transcending the situation or ironic resignation might be legitimated. There may be no legitimate solution to a problem as it now stands, but the only way to find out is through experimentation—in values, practices, institutions, media, educations, etc. The flight to theory is likely to ignore the difficult work required to transform the interests, habits, or problematizations at hand, though, of course, it may still work. On the experimental framework, one cannot assume that the solutions to problems are all waiting to be discovered in theory.

But, it may finally be objected, legitimacy cannot be determined by practices because the current state of affairs is not legitimate. How could we know what is just by looking at injustices? Again, an experimental framework would answer that any way of thinking about current politics, such as that it is all unjust, should be judged by its effects. It is likely that more attuned questions about exactly *how* the world is legitimate for some

and illegitimate for others will be more useful. A more legitimate state of affairs may arise through the effects of universal efforts, but whether or not this is the case will require the kind of concrete and experimental inquiry that the universal framework tries to avoid. One should not ignore the complexities of the world or the differential effects of global institutions. Rather, these should form the beginning and end of universal work.

Despite these theoretical objections, there are just as many practical difficulties in implementing the experimental framework of legitimacy. First and foremost, social inquiry is difficult enough in small communities; global social inquiry is near impossible. It is certainly the case that cultural, linguistic, historical, spatial, and temporal factors complicate global experimentalism more so than in smaller groups of affected peoples. Yet there is no clear alternative or escape from this difficulty if people are to take part in creating legitimate global institutions without resorting to expert rule. This difficulty may point to a way of criticizing such structures, if practical concerns thwart meaningful participation to such an extent that a lack of accountability overrides the other benefits such institutions may provide. In other words, Dahl may often be right that legitimacy decreases as the population involved increases and participation decreases, though what participation means—and what it means in relations to other values—for which institutions will vary.

The experimental framework accordingly provides means for criticizing existing institutions—not only by means of their effects for concrete peoples, but, more specifically, by the ways that they structure inquiry into themselves or other institutions.

In what ways do global economies, mass media, consumption habits, cultural norms, or ways of speaking allow for useful reconstructions of institutions and in what ways do they lend to unintelligent or manipulative practices? These questions require concrete analyses and do not allow any easy answers regarding the viability or value of global institutions as such. For this reason, I cannot supply any concrete suggestions about whether or not the United Nations is legitimate nor can I make any recommendations for the ways in which the global economy should be restructured. Instead, the experimental framework suggests a methodology for finding answers to these questions: plural, contextual, and empirical inquiry oriented by public problems. It is through such experimental analysis that the meaning of institutions could be determined so that they can be intelligently reconstructed.

Multiplications

The experimental framework has great promise for taking the pluralism of values and the differential effects of global institutions seriously, since it encourages questions like, "What are the ends, means, and effects of certain practices of the World Bank, and for whom are they legitimate?" It does not assume that experts best understand peoples' interests, the problems they face, or the differential effects of transforming institutions. The universal framework, on the other hand, limits action by a particular set of norms or procedures that are then to be applied to global institutions. The largest possible problem of the universal framework is that it limits possibilities for effective action, and this often

means that people are not seen as actors themselves. Of course, the transformations and criticisms made possible by ends determined by experts will be legitimate for some people, but, as the experimental framework suggests, they should be tested with reference to concrete problems and people's attempts to deal with them. To this end, this framework encourages a methodological pluralism. What are the legitimate ways of ameliorating a problem, and how can the number of interests served be increased? This may require concrete inquiry into the ways old answers actually work, but new problematizations may often be needed.

Global experimentation and institutional reconstruction is already occurring in multiple ways, though the interests constructing and evaluating such projects are often narrow. I hope to help make these practices more intelligent and less exclusionary by providing one way for rethinking the theory that describes and directs them. The evaluation and transformation of global institutions should be oriented by publics' attempts to work through shared problems, not by expert determination of universal ends. That is, on the experimental framework, one should not simply construct a theory so that one can hope that legitimacy might one day be possible. One should inquire into the ways in which a set of ends and means that actually helps create peaceful conditions could be invented. This requires more than an analysis of ends, even if carried out by large numbers of people. It may involve expanding the number of interests that can be communicated and recognized, as many theorists who emphasize recognition have realized. New ways of thinking and acting may need to be invented, as many post-modernists and post-structuralists have attempted. Different transformative possibilities

made possible by new educations may be required, as many identity theorists have understood. Many people are trying to democratize political theory, and I hope to have made some small contribution to these endeavors.

Because there are so many and such wide-spanning problems facing people today, an experimental framework of global legitimacy would suggest that intellectuals should help multiply new problematizations with which various peoples can experiment. Universal global democratic theorists have done much to decouple questions of legitimacy, justice, and democracy from the necessity of a sovereign state, yet much more has to be done to pluralize possibilities for transforming potentially problematic institutions like the World Bank and inventing better ones. No one can predict the new forms by which peoples will better control their world, and so, rather than trying to justify one form of such control in advance of future problems, political theorists should try to make genealogical shifts in the ways of conceptualizing and controlling the most important events of people's lives. It is because neither experts nor people know what will be most important for them without concrete experimentation that the plans for such experiments should be attuned to the power structures, histories, differences, and the past successes and failures of similar institutions.

CONCLUSION

In this dissertation, I developed what I call an "experimental" methodology for political inquiry and show its probable effects when compared to the kinds of practices made possible by the questions global democratic theorists often ask. The framework of universal legitimacy is designed to help create more legitimate institutions, yet, since no clear universal ends exist, experts are needed to determine which are truly universal. Global democratic theory thus becomes a series of endless debates about ends and their philosophical justification. The validity of the ends such theorists suggest is not determined by the context or effects of their application, but is assumed to be a result of the fact that all people share them. An experimental methodology, which does not assume that legitimacy must be universal nor that ends have any necessary validity, may better help align global democratic theory and global institutions, norms, and practices. This is because such an approach would try to concretely determine for whom institutions and their reconstructions are valid by looking to their conditions and effects. The expertise of any intellectuals who help transform and evaluate global institutions, norms, and practices—such as by creating new problematizations that create new possibilities for communication, imagination, and transformation—is determined by their contribution to the amelioration of specific public problems. For this reason, global democratic theorists might do better to help create multiple problematizations for specific purposes than to try to invent a set of ends by which all problems should be named and solved.

In Chapter One, I outlined the goals, questions, and assumptions of the universal

framework of legitimacy through reference to John Locke. To define a set of ends that set limits to the state such that any coercion on its part is justified, stability is ensured, and obligation is compelled, he takes recourse to an account of human nature. As Karl Marx, Carole Pateman, and Michael Sandel show, however, ends that seem universal may not actually be so for all peoples. According to John Rawls, this "fact of reasonable pluralism" shows that, if a set of ends is going to be found, it will only occur through the overlap of political reasons made in abstraction from plural comprehensive doctrines. Rawls thus changes the basis upon which the ends of the state are determined, though he does not substantially alter the project of universal legitimacy that the *Second Treatise* exemplifies. For this reason, Rawls needs experts to decide which reasons are reasonable and which are substantive as well as to reconcile different reasons into one political conception. That actual people have little role to play in determining the legitimacy of institutions that affect them is hinted at by the ambiguities inherent in reflective equilibrium, for it is far from clear, for example, who is to judge when experts and laypeople disagree or what is to be done when our only options are "mad" comprehensive doctrines. The difficulties Locke and Rawls face in showing how one set of ends represents all people's real interests may be undercut, I suggest, by reconstructing the framework of legitimacy itself.

In Chapter Two, I suggested that a pluralist conception of legitimacy that would not leave the fact of reasonable pluralism to be solved by experts might require an alternative methodology for political inquiry. To develop this new framework of legitimacy, I drew upon John Dewey's reflections into political, social, and scientific

inquiry, rather than any of his specific interventions into politics. For Dewey, experimental inquiry into the validity of ends pays attention to the conditions and effects of realizing them for specific purposes, such that, for example, the validity of applying human rights to the global economy will depend upon the conditions and effects they make possible for certain interests. Dewey proposes that one way to help make political inquiry experimental is to ground it in public problems. These help provide the purpose for attempting to transform norms, institutions, or practices, and they make possible concrete ways of determining the effectiveness of any action taken. There is no reason to assume, on an experimental model of political inquiry, that a set of universal norms or concerns about coercion, modus vivendi, or moral obligation will actually help create more legitimate institutions. Instead, the legitimacy of situations should be judged by their conditions and effects for specific publics and purposes. The central question of this framework is: *for whom* is an institution, norm, or practice legitimate?

In Chapter Three, I proposed a different model of expertise based upon Foucault's distinction between the universal and specific intellectual. Rather than determining ends which are to be applied by laypeople, as is often the case with theorists working within the universal framework of legitimacy, a specific intellectual affirms the purposes for which she works and for which any ends she proposes should be judged. Her specificity is not a function any particular position in a social group, methodology, or set of ends, but by the specification of her goals and the ways in which people could evaluate her success in so doing. There are many ways that intellectuals could be co-actors rather than unaccountable directors of public action, though I focused here on how political

philosophers might situate their work. If public problems could be defined and solved in many ways for many purposes, one way intellectuals could help is to create different ways of thinking about and acting upon problems, or what Foucault calls "problematization." Natural events, communicative media, or new technologies might re-problematize situations, but intellectuals may often be best situated to create problem spaces that are attuned to the history of problematizations and their differential effects so that present needs might be best addressed. Problematizations are not programs which should be carried out by politicians and activists; rather, they produce problems. Like human rights or GDP, they create possibilities for thinking and acting with which publics working through problems can experiment.

Though chapters One through Three were motivated by a possible misalignment between the realities of global institutions like the World Bank and the rhetoric of some global democratic theorists, it was only in Chapter Four that I gave any kind of indication of its possible value in ameliorating problems with global impact. Instead of trying to tell world leaders what to do to fix the World Bank, this dissertation has attempted to re-problematize the ways in which inquiries into such global institutions might be carried out. Rather than engage in the endless debates about which ends, if any, the World Bank should express, as do Held, Bohman, Rawls, Benhabib, and Dahl, experimental inquiry into global institutions might multiply ways of communication, imagination, and transformation regarding global problems that the Bank tries to ameliorate. What structural factors make public evaluation of the Bank difficult or impossible? What institutions of expertise prevent different namings of public problems other than, for

example, capital accumulation? Which sedimented norms and practices hinder public direction of the Bank's resources? These questions may not lead to any better effects on the part of the World Bank, but they are likely to help deal with problems with no clear answer and aid peoples who need to act to solve them.

A theorist

> who takes the betterment of humanity for his aim and end must also take the daily experiences of humanity for the constant correction of his process. He must not only test and guide his achievement by human experience, but he must succeed or fail in proportion as he has incorporated that experience with his own. Otherwise his own achievements become his stumbling-block, and he comes to believe in his own goodness as something outside of himself. He makes an exception of himself, and thinks that he is different from the rank and file of his fellows. He forgets that it is necessary to know of the lives of our contemporaries, not only in order to believe in their integrity, which is after all but the first beginnings of social morality, but in order to attain to any mental or moral integrity for ourselves or any such hope for society.[58] (Addams 2002, 78-9)

58 Please forgive the gender of this passage, but it becomes quite unwieldy otherwise. I do not think it unfair to assume that Addams would share my belief that the passage should hold for women and transgenders as well as men.

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