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The ÒPowerÓ Thing

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ARTICLE

THE "POWER" THING

Steven L. Winter*

I shouted out/ "Who killed the Kennedys?"/ When after all/ It was you and me.¹

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¹ Mick Jagger & Keith Richards, Sympathy for the Devil, on Beggar's Banquet (Abkco Records 1968).
I. A PREFACE TO "POWER"

WHEN the Office of Strategic Services\(^2\) was formed during World War II, its agents were culled from the ranks of those already commissioned as officers. One of the tests used in recruitment involved an unlit room with a bar over a dark pit. The test was contrived so that the candidate was suspended over the pit, hanging from the bar. Most candidates assumed the test was one of strength and endurance. Proving their machismo, they held onto the bar as long as they could. These failed. A few spit into the pit beneath them to gauge its depth. They let go, dropping a few feet to the ground below. These were selected.

In a commentary on Mary Joe Frug's posthumously published *Postmodern Feminist Legal Manifesto*, Martha Minow commended Mary Joe for not deconstructing the concept of subordination:

> The manifesto displays a commitment to deconstruct—to take apart apparent dichotomies and show how apparent polarities need or complement one another or exclude other important alternatives. . . . My question here is why do you not deconstruct the notion of subordination itself? I think I have an answer; I think that your commitment to deconstruction is not for its own sake or to produce a mindlessly perpetual analytic machine that fractures concepts and ideas. I think that you are a feminist using techniques of postmodernism, just as you are a

\(^2\) The Office of Strategic Services was the forerunner to the Central Intelligence Agency.

The "Power" Thing

You want to be in control of your post-modernism just as Madonna wants to assert her control over her dress, her images, her fantasies, and her life.  

What interests me most about this passage is its explicit justification of the decision not to pursue an obvious line of analysis: Minow appreciates deconstruction's power to negate congealed dichotomies and thereby expand alternatives. She nevertheless applauds Mary Joe's refusal to follow through on these possibilities because of the perceived need to hang onto a political position.

Consider exactly how and why this is so. As many contemporary feminists have emphasized, problems of gender are less a matter of discrimination and inequality than of power. Catharine MacKinnon explains that the basic issue is that "men's position of power over women is a major part of what defines men as men to themselves, and women as women to themselves." For these feminist theorists, therefore, the concepts of domination and subordination are essential to the understanding and critique of gender relations: "[G]ender hierarchy defines sexual politics. In this view, only a transformation in the equation of gender (hence gender difference) with dominance, a delegitimation of the sexual dynamic of power and powerlessness as such, can alter it."

One can understand, therefore, why Minow might feel compelled to endorse the decision to withhold the concept of power from the "mindlessly perpetual analytic machine" that would annihilate it. Without stable normative conceptions like power, domination, and subordination, the moral challenge to gender hierarchy seems impossible. Accordingly, Minow warns that "postmodernism risks a relativism that conflicts with feminist commitments to political engagement, and with a

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5 Commenting on Mary Joe Frug's postmodern pursuit of multiplicity, Minow suggests that she "may carry that pursuit too far in one instance and stop short, appropriately, in another." Id. at 1101-02.
7 Id. at 41.
8 Minow, supra note 4, at 1103.
continuing ability to name, authoritatively, and to fight, effectively, what is oppressive. . . .”

This aversive political response to postmodernism is typical of its reception in the legal academy. We can see the strength and depth of this reaction in Minow’s characterization of deconstruction as a “mindlessly perpetual analytic machine.” This particular description suggests that both the privileging of politics and the widespread demonization of postmodernism are prompted by a prior commitment to a conception of the self as relatively autonomous and self-directing. Deconstruction, Minow realizes, puts this conception at risk. The palpable, highly specific fear is the loss of control and self-dominion. In this way, the issue of power is personal as well as political. The feminist scholar, no less than Madonna, must always “be in control of [her] postmodernism.” The alternative—and it is here that the choice of words is particularly telling—is to risk surrender to what Minow describes as a “mindless” machine.

9 Id. at 1104. In a related vein, Robin West attacks relativism and argues that objectivist forms of evaluative reasoning are necessary to such critical assessments of and challenges to the status quo as MacKinnon’s critique of gender. Robin West, Relativism, Objectivity, and Law, 99 Yale L.J. 1473, 1492-97 (1990) (reviewing Barbara Herrnstein Smith, Contingencies of Value (1988)).

10 See Steven L. Winter, Cursing the Darkness, 48 U. Miami L. Rev. 1115, 1124-32 (1994) (discussing William Simon’s misreading of Foucault) [hereinafter Winter, Darkness]; Steven L. Winter, For What It’s Worth, 26 Law & Soc’y Rev. 789 (1992) (discussing Joel Handler’s and Mark Tushnet’s reactions to and misapprehensions of postmodernism in legal scholarship) [hereinafter Winter, For What It’s Worth]. See also Barbara Herrnstein Smith, The Unquiet Judge: Activism without Objectivism in Law and Politics, 9 Annals of Scholarship 111, 117 (1992) (“It is possible, of course, to defend and promote judgments made on behalf of subordinated people with effective non-objectivist arguments. But that is just the possibility that West, like many other politically concerned objectivists, fails to grasp.”).

11 Minow, supra note 4, at 1103.


13 Minow, supra note 4, at 1104 (emphasis added).

14 Id. at 1103 (referring to a “mindlessly perpetual analytic machine”). Ironically, it
The close interweaving of questions of power and agency is not fortuitous, of course. Power connotes potency, capacity, control and, for many, is virtually unthinkable without agency. To say that A has the power to do something is to say that he or she is an agent with the capacity to act; to say that A has power over B is to say that A has the capacity to control B in some relevant way. But what could "power" possibly mean if A cannot even control his or her own choices? Thus, power connotes agency and agency in turn entails accountability. As Steven Lukes observes: "The point . . . of locating power is to fix responsibility for consequences held to flow from the action, or inaction, of certain specifiable agents."

Lukes, as we shall see, is an important influence on both Minow and MacKinnon. His self-described "radical" approach to power has been characterized as "explicitly premised upon an ethically liberal concept of agency."

This way of seeing things will seem self-evident (if not unchallengeable) to most people, for it is an entrenched part of both our philosophical tradition and our general world view. From this perspective, men's power is a corollary of their

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is this defensive denial of the contingency of her own self-privileging that leads Minow falsely to polarize the theoretical alternatives: Either one must preserve politics as usual or succumb to the ceaseless depredations of a senseless automaton. In a subsequent paper, in contrast, Minow argues that questions of choice and constraint are better understood as matters of degree than as all-or-nothing phenomena. See Martha Minow, Choices and Constraints: For Justice Thurgood Marshall, 80 Geo. L.J. 2093 (1992).

15 Steven Lukes, Power: A Radical View 56 (1974).
16 See infra text accompanying notes 176-236.
18 As Clegg remarks:
In this respect the foundational tradition of power may be said to have framed the major moves in a game of theorizing power. These moves can be traced from attempts to specify more precisely the metaphysical concerns in the 'agency view' of Hobbes, Locke and Hume. They lead to major areas of contest within the game: Is power distributed 'plurally' or held by an 'elite'? Is power intentional or not intentional? Is power confined to decision making or is it evident in non-decision making? Is not making a decision an action or a non-action? Is power a capacity for action or the exercise of action? The questions spin on as if a conceptual arachnid were endlessly weaving a linguistic funnel-web with which to ensnare our understanding.

Id. at 37. In Part III, I examine in some depth the nature of this language-game and the ways in which it is structured by a system of highly conventional conceptual metaphors. See infra text accompanying notes 79-116.
unfettered agency; men are the paradigmatic subjects. As MacKinnon explains: "Woman through male eyes is sex object, that by which man knows himself at once as man and as subject." Conversely, women's subordination consists in large part in their objectification and the concomitant denial of their agency. We can hear an echo of this view in the previously quoted passage from Minow. There, the insistent demand to validate women's power is presented with an ironic double twist: The challenge of understanding men's domination of women is subordinated to the need to maintain the feminist's control over her postmodernism.

Even with so much at stake—or, rather, precisely because so much is at stake—it may be better to light a candle than curse the darkness. If deconstruction can engender possibilities, as Minow seems to acknowledge, then it may well be helpful to deconstruct concepts such as subordination. In fact, one would

19 MacKinnon, supra note 6, at 122. MacKinnon, however, warns against the simplistic reversal that claims subjectivity on its own (male) terms: Disaffected from objectivity, having been its prey, but excluded from its world through relegation to subjective inwardness, women's interest lies in overthrowing the distinction itself. A feminism that seeks only to affirm subjectivity as the equal of objectivity, or to create for itself a subject rather than an object status, seeks to overturn hierarchy while leaving difference, the difference hierarchy has created, intact.

Id. at 120-21.

20 Minow, supra note 4, at 1103. Judith Butler offers a contrasting approach to the relations between postmodernism and politics: [I]t is no longer clear that feminist theory ought to try to settle the questions of primary identity in order to get on with the task of politics. Instead, we ought to ask, what political possibilities are the consequence of a radical critique of the categories of identity? What new shape of politics emerges when identity as a common ground no longer constrains the discourse on feminist politics? And to what extent does the effort to locate a common identity as the foundation for a feminist politics preclude a radical inquiry into the political construction and regulation of identity itself?

Judith Butler, Gender Trouble: Feminism and the Subversion of Identity at xi (1990). Cf. Pierre Schlag, "Le Hors de Texte, C'est Moi"—The Politics of Form and the Domestication of Deconstruction, 11 Cardozo L. Rev. 1631, 1670-71 (1990) ("[T]he ideational content of discussion about political or moral values—so-called 'value choice talk'—is, as a political matter, virtually epiphenomenal... [What is more important] is the political constitution of human beings as particular kinds of selves, with particular kinds of social relations to each other."); Steven L. Winter, Indeterminacy and Incommensurability in Constitutional Law, 78 Cal. L. Rev. 1441, 1472-73 (1990) (arguing that the reconstructive project requires that we relinquish our unsophisticated notion of politics).
have thought that critical analysis of power would be of the greatest and most immediate importance to those who lack it. One would have thought that the knowledge gained from deconstructing power—that is, from taking it apart and seeing how it is constructed—would actually be empowering. That is the conviction of this article; I'm for spitting into the pit. If that causes us to change our conception of ourselves, perhaps that too will be useful.21

I intend to explore the concept of power to see what it is, how it works, and who may be said to "have" it. In doing so, we will find that we must relinquish our strongest and most cherished notions of agency and autonomy in favor of a more realistic, more contingent notion of the self. At the same time, however, we will gain a deeper appreciation of the agency we do have and the way in which even the putatively disempowered in fact share it. In short, we will find that a reconceived notion of power may actually be empowering.

The argument proceeds as follows. First, in Part II, I examine and deconstruct the conventional conception of power. Typically, power is viewed either as an irreducible quality capable of explaining social behavior or it is quickly reduced to the capacity to wield force. But neither view survives the recognition that the phenomena described as "power" are necessarily situated in and conditioned upon a complex, pre-existing field of social interactions. Thus, both the reification of "power" and its (all-too-easy) reduction to force succumb to the critiques I call "the subjectivization objection" and "the objection from social contingency," respectively. The insights that emerge from these critiques yield the framework of an alternative social understanding of power.

In Part III, I examine the metaphorical structure of the concept of power to explain how and why it seems to operate so well as an ultimate explanation of the many complex social phenomena it is offered to explicate. Part IV returns to the subjectivization objection and the objection from social

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21 Cf. Drucilla Cornell, Beyond Accommodation: Ethical Feminism, Deconstruction, and the Law 131 (1991) ("The 'goal' of ethical feminism, which 'sees' the 'should be' inherent in the feminine viewpoint, is not just power for women, but the redefinition of all of our fundamental concepts, including power.").
contingency. I discuss Lukes's "three-dimensional" view of power, which, to a substantial degree, is embraced by both Minow and MacKinnon. The significant contribution of this view is that it introduces notions of social construction into the analysis of power. This advance, however, turns out to be equivocal. While the introduction of this insight successfully preserves some of the political issues elided by more traditional theories of power, it also exposes the internal inconsistency in all three-dimensional views. In the end, it is the reflexive application of its own premises that causes such views to succumb to the subjectivization objection.

This discussion will lead directly, in Part V, to a consideration of the more complex, systemic conception of power developed in the later work of Michel Foucault. Though Foucault's work is widely cited and frequently criticized in legal scholarship, it is rarely dealt with adequately. One of the distinguishing characteristics of Foucault's approach (and, ironically, what makes it so impenetrable when read through conventional, conceptual lenses) is that it defies the usual totalizing mistakes: It neither facilely subjectivizes power nor falsely elides agency. Foucault is able to avoid these common errors, first, because he methodically rejects most of the conventional metaphorical schema for power and, second, because he further radicalizes the insight about social construction. For Foucault, socio-cultural construction is an all-pervasive process from which no one escapes and in which everyone participates. This dynamic view of power underpins Foucault's claim that power is always vulnerable to disruption; it is the view that I develop here. Power as such is neither a "thing" nor a quality, capacity, or possession of particular people. Rather, power is an emergent quality that can only take shape through the joint agency of all those who participate in a given set of social relations.

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Finally, in Part VI, I consider the political implications of this deconstruction and reconception of power. Reflecting on George Orwell’s *Shooting an Elephant* and a passage from Robert Cover’s *Nomos and Narrative*, I focus on how a reconceived notion of power creates possibilities for empowerment.

II. (JUST LIKE) STARTING OVER

Issues of power are issues of politics. That seems clear enough: Questions of access to, exercise of, and limits on power are quintessentially the subject of political contestation. At the same time, the formula is reflexive: Issues of politics are issues of power. Which is to say that, no matter what the ostensible political issue might be, the ultimate issue is one of power understood as the ability to satisfy and protect one’s interests. As Jean Bethke Elshtain describes the traditional conception: “Power is a form of compulsion exerted by the already (relatively) powerful upon one another within official political institutions designed to promote the aims and interests of competing groups. It is of, by, and for elites.”

In the next Section, I return to this passage and examine the nature and the source of the metaphors it employs. Note, in the meantime, the problem inherent in this apparently axiomatic definition. If one wants to know what power is, it is circular to say that “power is a form of compulsion exerted by the already (relatively) powerful.” Of course it is. To say that to exercise

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25 Cf. Lukes, supra note 15, at 26 (“[T]he concept of power is ... what has been called an ‘essentially contested concept’—one of those concepts which ‘inevitably involve endless disputes about their proper uses on the part of their users’. Indeed, to engage in such disputes is itself to engage in politics.”) (quoting W.B. Gallie, Essentially Contested Concepts, 56 Proc. Aristotelian Soc’y 169 (1955-56)).
26 Jean Bethke Elshtain, *Power Trips and Other Journeys: Essays in Feminism as Civic Discourse* 136 (1990) (describing the definition of power in mainstream political science). Elshtain goes on to criticize this mainstream view for excluding women and the so-called “private” sphere from the domain of power. She endorses instead an approach that recognizes as power the ability to control the political agenda. On this view, the very denomination of a sphere as “private” and of certain concerns as “nonpolitical” is a (quite effective) exercise of power. Id. at 136-38.
power is to be powerful and that to be powerful is to have the ability to exercise power is descriptively (and tautologically) true. But this is only to say that every exercise of power (however defined) is the occasion for the ascription that the actor “has” power; the ascription, moreover, is a reification into a property or trait of what may only be a temporary ability.\(^{27}\) As Michel Foucault points out, “power as such does not exist.”\(^{28}\) When we use “this all-embracing and reifying term . . . an extremely complex configuration of realities is allowed to escape.”\(^{29}\) The axiomatic definition obscures, rather than reveals, what power “is”; it tells us nothing about its bases or derivations.

Much the same problem afflicts MacKinnon’s radical feminist account of power. One implication of the feminist insight that “the personal is political” is that the same phenomenon which operates at the level of the so-called “public” and “political”—that is, the exercise of power to secure the interests of the powerful—also operates at the level of the so-called “private” and the “personal.” Thus, echoing the axiomatic definition of power, MacKinnon contends that “sex is a systematic division of social power . . . enforced to women’s detriment because it serves the interest of the powerful, that is, men.”\(^{30}\) MacKinnon, however, goes further than this simple definition and identifies male power as ontological. “Power to create the world from one’s point of view, particularly from the point of view of one’s pleasure, is power in its male form.”\(^{31}\) At the same time, MacKinnon asserts that “sex—gender and

\(^{27}\) Cf. Friedrich Nietzsche, The Dawn, § 112 (1881), reprinted in On the Genealogy of Morals and Ecce Homo 189-90 (W. Kaufmann ed., Vintage Books 1989) (“Where right rules, a state and degree of power is preserved, and a diminution and increase are resisted. The right of others is the concession of our feeling of power to the feeling of power among these others. When our power is proved to have been profoundly shaken and broken, our rights cease. . . .”).

\(^{28}\) Michel Foucault, Afterword: The Subject and Power, in Hubert L. Dreyfus & Paul Rabinow, Michel Foucault: Beyond Structuralism and Hermeneutics 208, 217 (2d ed., 1983) [hereinafter Foucault, Subject and Power].

\(^{29}\) Id.

\(^{30}\) MacKinnon, supra note 6, at 40.

\(^{31}\) Id. at 121. To MacKinnon, this particular form of power is epistemological as well. Id. at 121-22 (“The male epistemological stance, which corresponds to the world it creates, is objectivity . . . . What is objectively known corresponds to the world and can be verified by being pointed to (as science does) . . . .”).
sexuality—is about power . . . ," which is to say that "male power takes the social form of what men as a gender want sexually, which centers on power itself, as socially defined." The circularity here is obvious. As we have already seen, MacKinnon identifies maleness itself with power. In short, power enables men to get what they want and what they want is power; indeed, power is what men are. Again, putting aside the tautological truth of this account, it tells us absolutely nothing about what power is.

There is an obvious rejoinder. Power is grounded in violence and the ability to inflict it; in MacKinnon’s words, “male dominance is . . . a one-sided construct imposed by force for the advantage of a dominant group.” MacKinnon gives potent expression to the relationship between male ontology and the violence that underwrites it: “Difference,” she tells us, “is the velvet glove on the iron fist of domination.” The aphoristic

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32 Id. at 133.
33 Id. at 131. It is worth considering MacKinnon’s exposition of this point. To be clear: what is sexual is what gives a man an erection. Whatever it takes to make a penis shudder and stiffen with the experience of its potency is what sexuality means culturally. Whatever else does this, fear does, hostility does, hatred does, the helplessness of a child or a student or an infantilized or restrained or vulnerable woman does, revulsion does, death does. Hierarchy, a constant creation of person/thing, top/bottom, dominance/subordination relations, does.

Id. at 137. I do not doubt that this description captures important aspects of our social reality. Cf. Norman Mailer, Why Are We in Vietnam? (1967). Nevertheless, I daresay that many may have some trouble recognizing in MacKinnon’s depiction their experience of sexuality.
34 See supra text accompanying note 6.
35 MacKinnon, supra note 6, at 92 ("[M]en’s position of power over women is a major part of what defines men as men . . . and women as women . . . ."); see also id. at 113 ("Feminism has a theory of power: . . . Male and female are created through the erotization of dominance and submission. The man/woman difference and the dominance/submission dynamic define each other.").
36 Id. at 238 (emphasis added); see also id. at 109 ("Beneath each [stereotypical] idea [about women’s nature and behavior] were revealed bare coercion and broad connections to women’s social definition as a sex.").
37 Id. at 219. Images of violence are a recurrent trope for MacKinnon. See Catharine A. MacKinnon, Feminism Unmodified: Discourses on Life and Law 45 (1987) ("Take your foot off our necks, then we will hear in what tongue women speak."); Feminist Discourse, Moral Values, and the Law—A Conversation, 34 Buff. L. Rev. 11, 28 (1985) (comments of Catharine A. MacKinnon) ("The freedom we have is so small compared to the kind of freedom that we could have if we transformed this society, if we were able to get this foot off our necks.").
form of her statement should not obscure that the violence she refers to, though sometimes subtle and covert, is certainly very real. As MacKinnon explains: "Always in the background, often not very far, is the sanction of physical intimidation, not because men are stronger but because they are willing and able to use their strength with relative social impunity." 38

The difficulty with this explanation has nothing to do with its empirical truth. There is no denying that violence against women in the form of rape, battering, sexual harassment and abuse is a fact of life that forms the menacing background conditions of women’s reality. Even so, MacKinnon’s explanation of male power presents profound theoretical problems. There is a strong sense in which MacKinnon seems to view violence as primary and foundational. 39 But, consistent with her view that gender is through-and-through a social construction, MacKinnon cannot mean to assert that male violence is in any way biological or inherent. 40 Thus, she acknowledges that male violence is itself a social product, a consequence of psychological disposition and social acquiescence. As she puts it, men dominate “not because [they] are stronger but because they are willing and able to use their strength with relative social impunity.” 41

This careful qualification, however, undermines any attempt to comprehend power in terms of physical force; indeed, the statement virtually deconstructs itself. When and why are some people willing to use their strength? When and why is the use of force given social approbation? I will refer to these problems as “the subjectivization objection” and “the objection from social contingency,” respectively. As is already implicit in MacKinnon’s scrupulously precise formulation, 42 the two objections share a common conceptual base in notions of social

38 MacKinnon, supra note 6, at 93.
39 See id. at 237 (“The force underpins the legitimacy as the legitimacy conceals the force.”).
40 See, e.g., id. at 114 (“Male is a social and political concept, not a biological attribute, having nothing whatever to do with inherency, preexistence, nature, essence, inevitability, or body as such.”).
41 Id. at 93.
42 MacKinnon does not say that men are “willing to use their strength and able to do so with relative social impunity,” but rather that they are “willing and able” to do so with (relative) social impunity.
construction. Thus, the subjectivization objection argues that the attribution of self-directing agency or "will" is inconsistent with the recognition that the "self" that wills is itself a product of social forces, attitudes, understandings and beliefs. Similarly, the objection from social contingency contends that the concept of power cannot explain social relations because the phenomena described as manifestations of "power" are themselves dependent for their efficacy on collaboration and cooperation. I develop these points in later Sections, but a few preparatory observations on the social contingency of force will help pave the way for the argument to follow.

As MacKinnon herself recognizes, the capacity to use force is contingent on its social sanction and approval. Hannah Arendt explains the source of the widespread misapprehension that conflates power with force.

Since ... violence appears as a last resort to keep the power structure intact..., it looks indeed as though violence were the prerequisite of power and power nothing but a façade, the velvet glove which either conceals the iron hand or will turn out to belong to a paper tiger. On closer inspection, though, this notion loses much of its plausibility.44

One need only contrast the events of Tiananmen Square in June 1989 with those in Moscow in August 1991 to illustrate the point. In an organized society where force is deployed through a social organization like an army or police force, the effective use of violence as an instrument of policy is dependent upon the set of social conventions that constitute a chain of command: If the soldiers refuse to fire on the people, it's a safe bet that the generals will soon be headed for the airport.45
Of course, we did not need the break-up of the Soviet Union to make the point. As Bernard Williams observes, the insight is as old as Plato’s Republic:

Thrasy'machus says that the conventions that enjoin respect for others’ interests—“justice,” as it may be called—are an instrument of the strong to exploit the weak. This immediately raises the question, what makes these people strong? Thrasy'machus speaks as if political or social power were not itself a matter of convention, and that is a view barely adequate to the school playground. His position is rapidly followed in the Republic by another, which takes this point. According to this, justice is the product of a convention adopted by a group of people to protect themselves. It is a contractual device of the weak to make themselves strong.46

The point—one might even say the deconstructive point—is that, once one recognizes the social contingency of force, “power” no longer works as a foundational explanation for justice, morality, gender relations, law or anything else.

The conflation of power with force, and its invocation as an ultimate explanation for complex social phenomena such as the law, is as much an error of the right as of the left. In distinguishing law from science, Judge Posner observes that science is based on convergence of expert opinion, while law is based on force:

To be blunt, the ultima ratio of law is indeed force . . . . If you ask how we know that Venus exerts a gravitational pull on Mars, the answer is that the people who study these things agree it does. If you ask how we know that the Fourteenth Amendment forbids the states to prohibit certain abortions, the answer is that the people who have the political power to decide

dependent on subordinate officials in a lengthened and dispersed chain of command.”).

46 Bernard Williams, Ethics and the Limits of Philosophy 30-31 (1985) (footnote omitted). As Arendt elaborates on this classical insight, power is the predictable and peculiar characteristic of the weak: “The strength of even the strongest individual can always be overpowered by the many, who often will combine for no other purpose than to ruin strength precisely because of its peculiar independence. . . . It is in the nature of a group and its power to turn against independence . . . .” Arendt, supra note 44, at 44. Thus, although they often appear together, “[p]ower and violence are opposites; where the one rules absolutely, the other is absent.” Id. at 56.
the issue—namely, the Justices of the Supreme Court—have so determined by majority vote.\textsuperscript{47}

But what this passage actually demonstrates is that law is necessarily based on convention—both the convention that the Supreme Court decides by majority vote (and not, say, by the relative physical strength of the Justices) and the convention that prompts litigants, states and the other branches of the federal government to treat the Court's decisions as authoritative. Indeed, this is precisely why Hamilton referred to the Court as the "least dangerous" branch.\textsuperscript{48}

The claim that people "with power" get to determine reality has a certain intuitive appeal. But whether it is Nietzsche on the genesis of "good and evil,"\textsuperscript{49} Minow on the etiology of "difference,"\textsuperscript{50} or MacKinnon on the construction of "gender


\textsuperscript{48} The Federalist No. 78, at 465 (Alexander Hamilton) (Clinton Rossiter ed., 1961) ("The judiciary . . . has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither \textit{force} nor \textit{will}, but merely judgment . . . .").

\textsuperscript{49} See Nietzsche, supra note 27, \textit{First Essay} "Good and Evil," "Good and Bad" \S 2, at 25-26:

[I]t was "the good" themselves, that is to say, the noble, powerful, high-stationed and high-minded, who felt and established themselves and their actions as good, that is, of the first rank, in contradistinction to all the low, low-minded, common and plebeian. It was out of this \textit{pathos of distance} that they first seized the right to create values and to coin names for values. . . . (The lordly right of giving names extends so far that one should allow oneself to conceive the origin of language itself as an expression of power on the part of the rulers: they say "this \textit{is} this and this," they seal every thing and event with a sound and, as it were, take possession of it.)

\textsuperscript{50} See Martha Minow, Making All the Difference: Inclusion, Exclusion, and American Law (1990). In striking parallel to Nietzsche, Minow highlights the intimate relation between power and naming as well as the pathos of (false) distance between the powerful and those they name as different. She writes:

The attribution of difference hides the power of those who classify and of the institutional arrangements that enshrine one type of person as the norm . . . . A focus on social relations casts doubt on . . . the very claim to knowledge manifested when public or private actors label any group as different. That claim disguises the power of the namers, who simultaneously assign names and deny their relationships with and power over the named. . . . The social-relations approach embraces the belief that knowledge is rooted in specific perspectives, and that "prevailing views" or "consensus approaches" express the perspectives of those in positions to enforce their points of view in the structure and governance of society.
hierarchy,” any understanding that echoes Thrasymachus and employs the concept of power as an irreducible quality with explanatory capacity only begs the real and difficult questions. First, it evades the question of how people become powerful to begin with. Second, it elides the even harder questions concerning the workings of “power.” The intuitive sense that people in power get to determine various social issues may well be descriptively accurate—if not, at least, tautologically true. But it leaves entirely obscure the process of mediation by which this occurs. As Elaine Scarry remarks: “Each new idiom, each new metaphorical construction, only reintroduces the same problem: in the sentence, ‘Whoever wins, gets to determine the issues,’ what is it that explains the transition between the second and third words, that explains the phrase ‘wins, gets’?”

Martha Minow, for example, explains that debates over the routinely taken-for-granted structures of social life “produce competing pictures of reality. The winners secure their picture of reality as authoritative; their views about what differences matter, and why, acquire the earmarks of factuality. When a conception of reality triumphs, it comes to convince even those injured by it.” But it is not at all clear how this takes place. Just how do the winners secure their version of reality? How does a conception of reality triumph? These questions are left unanswered; the causal connections are simply assumed to be obvious entailments of the fact of “power.”

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51 Id. at 111 (citing Lukes, supra note 15) (citation omitted).
53 Minow, supra note 50, at 237 (citations omitted).
54 Thus, Minow continues: Political and cultural success itself submerges the fact that any conception of reality represents the perspective of certain groups, not a picture of reality free from any perspective. Power may be at its peak, then, when it is least visible: when it shapes preferences, arranges agendas, and excludes serious challenges from either discussion or imagination.

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Id. at 237-38 (footnotes omitted) (citing Lukes, supra note 15, at 22-25).
It is precisely these missing mediations that are supposed to be supplied by the conflation of power with physical force. The ability to use violence to enforce one's version of reality would, if valid, explain the transition between "wins, gets." Consider, however, what should be the paradigm case: victory by force of arms as in war. War, it is widely understood, "carries the power of its own enforcement; the winner may enact its issues because the loser does not have the power to reinitiate the battle." 55 But, as Elaine Scarry argues, even in this case the "obvious" explanation proves insupportable upon close examination. 56 For one thing, it is often the case that the winners suffer greater casualties than the losers. 57 For another, war rarely if ever results in the total annihilation of the opponent. 58 So exactly what is the catalyst that translates victory on the battlefield into mastery of the hearts and minds of the losers?

If the explanation is obscure in the paradigm case, the difficulty is yet more formidable when the phenomena to be explained concern everyday interactions that have become routine dimensions of the social relations within a culture. Still, the similarities may be greater than appear. After all, MacKinnon contends that gender hierarchy is maintained via the background sanction of physical intimidation. This is not so very different than the conventional view that war carries the power of its own enforcement, enabling the winner of the armed struggle to impose its interests on the loser. The inadequacy of the intuitive view leads Elaine Scarry to argue that: "War is in the massive fact of itself a huge structure for the derealization of cultural constructs and, simultaneously, for their eventual reconstitution." 59 Not all of Scarry's quite complex account of this process is pertinent to the kind of intra-cultural phenomena that concern us here. 60 But what is clearly relevant, I think, is Scarry's claim

55 Scarry, supra note 52, at 96.
56 Id. at 97-108.
57 See id. at 97-98.
58 Id. at 100-102.
59 Id. at 137.
60 Central to Scarry's account is the fact that war is a contest between two cultures and the claim that human embodiment plays a fundamental role in meaning. Id. As Scarry explains:

[T]he declaration of war is the declaration that "reality" is now officially "up for
that war itself is at base a social institution whose efficacy rests not on force, but on interpretation: "[A]lthough the power of enforcement principle is not at work in the way that it is widely believed to be, the very fact that it is widely believed to be at work may be in the end the occurrence that lets it work."61

It is this insight about the interpretive basis of power that I want to explore here. To simplify the inquiry somewhat, let me present a series of less politically charged (though hardly apolitical) hypotheticals and ask you to consider both the inadequacy of the view that reduces "power" to force and the difficulty of "locating" power in each of these cases.

(1) The leader of a street gang threatens the owner of a local store with physical harm unless he pays "protection money." Here we have a simple, straightforward case of power as compulsion grounded in force used by the powerful to promote their

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61 Scarry, supra note 52, at 108.
interests. I will refer to this case as "the prototypical scenario" because it is by reference to this simple case that most issues of power are unreflectively understood.62

(2) The storeowner is threatened by the same street tough. This time, however, there is no gang. The storeowner doesn’t believe the threats and refuses to pay the "protection money." Nothing happens. Power is only the product of a credible threat of physical force. Conversely, if the street tough is bluffing—that is, if he does not have the ability to carry out his threat—and the storeowner believes the threat nonetheless, the street tough will still have power over the storeowner. Part of the built-in difference between this and the previous hypothetical is the difference between a group and a single actor. If, in the second hypothetical, it is plausible that the storeowner does not believe the threat, it is because power is typically more effective when it is articulated by a group. The points revealed here are that power is a social product and, relatedly, that power lies not in the threat itself, but rather in the fear it creates in the victim.

(3) A street gang threatens a storeowner unless he pays "protection money." The police are aware of the extortion attempt and have the capacity to intervene to protect the owner and the business. The police look the other way. In this case, still much simplified in its details, the social dimensions are already complex. The gang has power only because of the forbearance of the police. Both the police and the gang have a measure of power based on their ability to use force, but the power of the police is greater precisely because it carries with it a social sanction and a degree of legitimacy not ordinarily available to a street gang.

(4) The storeowner is threatened by the street gang. The neighbors are aware of the extortion attempt but do not report it to the police. Unaware of the situation, the police fail to protect

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62 Cf. id. at 99 ("[T]he widely shared assumption that war carries the power of its own enforcement arises from the mental reflex of thinking about war by holding steady the contest activity as injuring but conceiving of that activity as occurring between two people each working to kill the other.").
the storeowner. Now it is the street gang that has achieved (through whatever means) a measure of social approval or acquiescence. The police, who have access to superior force and greater social authority, are powerless in this situation. But the neighbors, who may have little or no effective ability to use force, are quite "powerful" in this case because it is their decision to report or remain silent that will determine who wins and who loses. This is but an instance of the familiar adage: "Knowledge is power."^{63}

(5) A storeowner receives an extortion threat. Both the neighbors and the police are aware of the threat, but they too are afraid of the street gang, which is known to be particularly vicious. Undaunted, the storeowner goes to the local newspaper. The press report of the incident causes a scandal that forces the hand of the police. They provide protection to the storeowner. In this final version, "ultimate" power lies with public opinion. The storeowner's resourcefulness, and her willingness to risk substantial physical harm, provides her the power to effect the outcome of her predicament. Everything else is as in hypotheticals (3) and (4).

Even with these simple hypotheticals, we can see both the shortcomings of the conventional understanding of power and the outlines of an alternative interpretive understanding. "Power is never the property of an individual; it belongs to a group and remains in existence only so long as the group keeps together."^{64} While this point has been deployed to justify political power as democratic and legitimate,^{65} we can extract from this observation several different and more extensive claims. The basic insight is that power is an aspect of groups,

^{63} Note, however, that the maxim's validity is not contingent on a threat of force in the background. Suppose, for example, a person interested in something that is time-dependent but unaware of its availability. Someone who knows about this desire and knows as well about the time-dependent opportunity can use this knowledge-differential to obtain advantages from the other person.

^{64} Arendt, supra note 44, at 44. As noted above, Arendt distinguishes between "power" and "violence." See discussion supra note 46.

^{65} See Arendt, supra note 44, at 44. ("When we say of somebody that he is 'in power' we actually refer to his being empowered by a certain number of people to act in their name.").
not individuals. The more subtle insight is that power is relational and can only be articulated in a group; it takes at least two to occasion "power." As we shall see in a moment, this is true in a nontrivial sense.) Moreover, every organization that exerts power as a cohesive group is nevertheless a participant in some larger social system and, therefore, itself subject to the social processes that enable or disable "power." Thus, the more profound conclusion is that, as MacKinnon appreciates, all power is "social power."

If all power is social power, however, then its dynamic need not be expressed through hierarchy. Foucault makes a profound and important point when he insists that "power relations are rooted deep in the social nexus, not reconstituted 'above' society as a supplementary structure." The insight that power is a product of a system or network of social relations means that people at very different places in the social system may nevertheless be able to activate it. While this tends to democratize power to a degree, it is not to say that power is evenly or fairly distributed. To the contrary (and this is a crucially important caveat), typically there is a substantially different price to pay depending on one's position within that social system.

Most importantly, to recognize that all power is social power is to appreciate that power is not an external force that operates on a passive victim. Power is not a property of an actor who exercises domination over another; it is the emergent quality of a reciprocal social relation. Just as its assertion enacts power, deference can generate or sustain it. Power is the product of

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66 See Foucault, Subject and Power, supra note 28, at 217 ("The term 'power' designates relationships between partners (and by that I am not thinking of a zero-sum game . . . )."); see also Marion Crain, Feminism, Labor, and Power, 65 S. Cal. L. Rev. 1819, 1851 (1992) (observing that the feminist idea of "power, though considered a personal attribute, is primarily a capacity or a relation among people and assumes its full meaning only when it is realized by acting through communities or networks supporting individuals.") (citation omitted).

67 See MacKinnon, supra note 6, at 40 ("To radical feminism, sex is a systematic division of social power . . . "); cf. id. at 55 (criticizing Simone de Beauvoir's view for failing to explain social power); id. at 219 (arguing that the liberal model of equality ignores the fact that difference is a socially constructed perception designed to justify social power).

68 Foucault, Subject and Power, supra note 28, at 222.

69 As expressed in the epigraph to Rainer Werner Fassbinder's film adaptation of Theodor Fontane's nineteenth-century German novel Effi Briest: "The many people
an interplay of actions and attitudes between social actors, each equipped with corresponding or complementary images of a particular social relation. Thus, what produces "power" must also be in the head of those who are its subjects. In Stanley Fish's colorful phrase, "the gun at your head is your head; the interests that seek to compel you are appealing and therefore pressuring only to the extent they already live within you, and indeed are you." This is the more profound reason that power is relational. The social phenomenon of power is possible only because it is a shared hermeneutic phenomenon: It is a contingent product of common ways of understanding and living in a social world, a function of reciprocally enacted roles, routines, institutions and understandings. This leads to my final claim: that a deconstruction of "power" is also a deconstruction of the autonomy and originary capacity of the "self." While this may seem at first blush to disable politics, the advantage of this richer conception is that it reveals the potential fragility of power and the ways in which it is vulnerable to disruption.

who sense their own capabilities and needs and yet acquiesce in the prevailing system accept it in their minds, by their deeds, and thus confirm and strengthen it." ("Viele, die eine Ahnung haben von ihren Möglichkeiten und ihren Bedürfnissen und trotzdem das herrschende System in ihrem Kopf akzeptieren durche ihre Taten und es somit festigen und durchaus bestätigen.") Effi Briest (New Yorker Video: The Fassbinder Collection 1974).

71 See Foucault, Subject and Power, supra note 28, at 224 ("Power relations are rooted in the system of social networks."). For the parallel and closely related argument that all forms of normative practice—whether prescriptive or persuasive—are contingent on shared cognitive understandings, see Steven L. Winter, Contingency and Community in Normative Practice, 139 U. Pa. L. Rev. 963 (1991) [hereinafter Winter, Contingency and Community].
72 Hence the subjectivization objection. See Winter, Foreword, supra note 12, at 1616 ("In the end, then, there cannot be a public sphere of autonomous choice any more than there can be a private sphere of autonomous subjectivity.").
73 Indeed, at first blush, this seems as threatening to politics as Minow implies. See supra text accompanying notes 3-14. And it is—but only to the kind of politics "that allow legal academics to continue to address (rather lamely) bureaucratic power structures as if they were rational, morally competent, individual humanist subjects," Pierre Schlag, Normativity and the Politics of Form, 139 U. Pa. L. Rev. 801, 805 (1991).
74 Thus, as MacKinnon appreciates, the subordinated are not without power because "within the necessity of their compliance is a form of power." MacKinnon, supra note 6, at 101.
Given these insights, the prevailing discourse conventions that countenance references to "power"—along with correlative allusions to (unspecified) "elites" and (usually obscure) processes of "hegemony"—as a meaningful causal account of various social phenomena appear rather strange.\(^7^5\) (After all, it took little more than a few simple hypotheticals and a reference to Plato to show how little is in fact being said.) Indeed, in prevailing discourse, "power" operates as nothing more than a convenient stop in the infinite regress; it provides a temporary ground or foundation necessary to sustain a particular language-game. "Sure, it's turtles all the way down. But what really sustains [...] is power."

Precisely the same shortcomings attend the discourse fashionable within the legal academy that likes to explain everything in terms of "politics."\(^7^6\) The parallelism follows from the recognition that, as noted earlier, the relationship between power and politics is entirely reflexive. One might even say that the two conceptions are theoretical twins, resting, as they both do, on the same liberal concept of agency.

It is not surprising, therefore, to find otherwise sophisticated scholarship unreflectively drawing a distinction between the "skeptical nature of truth and knowledge" and the "political problem of power."\(^7^7\) The separation of these categories corresponds with (if it does not, in fact, imply) different intellectual matrices apropos of different problems. Problems of truth and knowledge are investigated as epistemological issues; problems of power are analyzed as political matters. The system, more-

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\(^7^5\) A notable exception to this naive approach is William L.F. Felstiner & Austin Sarat, Enactments of Power: Negotiating Reality and Responsibility in Lawyer-Client Interactions, 77 Cornell L. Rev. 1447 (1992).

\(^7^6\) Schlag, supra note 73, at 906 (suggesting that the conventional vision of politics "seems to be a kind of premature politicization in the sense that it leaps from a relatively widely shared notion that law is politics to a shallow, yet apparently utterly definitive, conceptualization of politics").

\(^7^7\) Allan C. Hutchinson, Inessentially Speaking (Is There Politics After Postmodernism?), 89 Mich. L. Rev. 1549, 1558 (1991) (reviewing Minow, supra note 50) ("In short, Minow is long on the skeptical nature of truth and knowledge, but short on the political problem of power . . ."). Note that this complaint would work as well if we reversed the adjectives, remarking on Minow's attention to the political nature of truth and knowledge and her elision of the skeptical problem of power. But then the substance of the criticism would be very different; indeed, it would look something like this Article.
over, is analytically nested such that the power/politics cluster lies at its base. Thus, within this conceptual system, it is easy to think of knowledge as a political issue or a product of power. But it seems counterintuitive to analyze power as an epistemological question. Notwithstanding the apparent solidity of this arrangement, it is inherently unstable. Like all such "theoretical unmentionables," concepts such as politics and power work only so long as they themselves are not treated as subjects of truth and knowledge about which we might be skeptical. "Power," in other words, retains its cogency as an explanation of social phenomena only so long as the concept itself remains unexamined—which is to say only so long as we don’t spit into the pit.

III. THE METAPHORICS OF POWER

A. Movers and Shapers

How is it that we so thoughtlessly deploy the concept of power as if it had explanatory potency? One way to approach this question is to scrutinize exactly how we talk about power. By unpacking the familiar, everyday expressions we use to communicate about it, we can uncover the shared images that constitute our unreflective, conventional conception of power. We will find that these images comprise a well-organized conceptual schema that corresponds to the prevailing understanding of power shown to be so problematic in the last Section. In other words, the apparent cogency of the claim that “people with ‘power’ get to determine reality” is a function of

78 Schlag, Fish v. Zapp, supra note 12, at 42.

[I]t is unlikely that concepts such as “power” and “cause” have any single meaning; more probably they can have no meaning apart from the models in terms of which we think about them. If that is so, then perhaps we... require, not that our models be banished, but that they be brought to the level of conscious awareness, criticized and, if need be, supplemented—or even wholly replaced....

Cf. Clegg, supra note 17, at 21-22 (“In constructing, representing and making sense of a concept like power we can never be free from the matter of words. Specific conceptions of the world... define the nature of reality as we experience it.”).
its profound resonance with our unconscious cognitive model of power.\textsuperscript{80}

Following Ball,\textsuperscript{81} Stewart Clegg credits Hobbes with founding "a discursive framework for analysis of power as motion, causality, agency and action."\textsuperscript{82} Both Ball and Clegg describe Hobbes's use of this framework as influenced by the ascendancy of mechanical science in the seventeenth century.\textsuperscript{83} But an analysis of the linguistic evidence using the tools of cognitive theory reveals that this conceptual framework is both more basic and more extensive than is suggested by Hobbes's mechanical conception. Embedded in our most common everyday expressions about power are four conceptual metaphors—POWER IS AN OBJECT, POWER IS A LOCATION (OR CONTAINER), POWER IS A FORCE and CONTROL IS UP. These metaphors, moreover, are neither isolated nor arbitrary representations peculiar to our conception of power. Rather, they are either basic conceptual metaphors, as in the case of CONTROL IS UP,\textsuperscript{84} or special cases of

\textsuperscript{80} As Stanley Fish points out, "an illegitimate appeal can hardly have an effect if there is nothing to appeal to." Fish, supra note 70, at 517. Mark Johnson makes much the same point for philosophy generally:
Philosophical theories are, for the most part, attempts to develop internally consistent systematic accounts of various folk theories that exist within a culture. . . . As a result, [philosophers] tend to adopt the same metaphorical concepts, forms of discourse, modes of argument, and so forth that are established within the folk theories they articulate. This is what makes it possible for philosophically sophisticated theories to sometimes seem intuitively correct to ordinary people.


\textsuperscript{81} Ball, supra note 79, at 211 ("[T]he mechanistic-causal model of power is three centuries old, being traceable to Hobbes, Locke and Hume.").

\textsuperscript{82} Clegg, supra note 17, at 31.

\textsuperscript{83} See Ball, supra note 79, at 213:
The picture or model of power as cause, where causality is in turn viewed through the imagery of contiguous motions or pushes and pulls, . . . was spawned in the scientific revolution of the seventeenth century—or, perhaps more accurately, in certain attempts by philosophers to come to terms with the new science and to extend its models and methods to the study of human behavior.
See also Clegg, supra note 17, at 6 ("Given the enormous success of the scientific project, it was hardly surprising that, in conceptualizing power, as in much else, the early political and social scientists sought to emulate in their principal terms and metaphors those notions conceived in mechanics by Hobbes' contemporaries.").

\textsuperscript{84} See George Lakoff & Mark Johnson, Metaphors We Live By 14-17 (1980).
basic metaphors that are indispensable aspects of our conceptual system.

Consider the following familiar expressions:
—The insurgents seized power, taking control of the government.
—She’s the titular leader, but he possesses the real power.
—She’s making a power-grab.
—How much power did he have before the new administration? A lot.

In each of these expressions, power is conceptualized as a “thing” that can therefore be seized, possessed, or quantified. This conception can be represented by the generic metaphor POWER IS AN OBJECT,85— which can then be filled out with some more specific item such as food (e.g., “watch out for them; she’s power hungry, but his appetite for power is voracious”), an instrument such as a weapon (e.g., “she’s got power, and she knows how to usehandle it”; “he wields a lot of power”), or a commodity (e.g., “she was a major power-broker, until she was indicted for influence-peddling”). An important variant of this metaphor, to which we shall return below, conceives power as a substance that can be amassed (e.g., “he has a lot of power”) until one is powerful (i.e., power-full). A closely related metaphor conceptualizes power as a resource, which can be consolidated, conserved, or wasted (e.g., “it takes time and effort to consolidate one’s power” or “he was powerful once, but he frittered it away”).

Conceptual metaphors, such as POWER IS AN OBJECT and its cognates, are not mere linguistic expressions. They also structure how we reason about “power.” Consider the sample sentence given above— “watch out for them; she’s power hungry, but his appetite for power is voracious.” The cogency of this

85 “Metaphor” here is understood as a matter of thought and not mere language: It refers to a tightly structured set of conceptual mappings in which a target domain is understood in terms of a source domain of more readily comprehended, embodied experience. This conceptual mapping is conventionally represented by means of a mnemonic of the form TARGET-DOMAIN-IS-SOURCE-DOMAIN; but it is important to understand that the metaphor is the set of conceptual mappings and not the TARGET-DOMAIN-IS-SOURCE-DOMAIN mnemonic, which is only a representation. George Lakoff, The Contemporary Theory of Metaphor, in Metaphor and Thought 202, 203-09 (Andrew Ortony ed., 2d ed. 1993).
advice hinges on the everyday knowledge that people in the grip of drives like hunger may act with particular ruthlessness when required and, therefore, that it is better to get out of the way if one can. This knowledge is then mapped onto the domain of political behavior. Similarly, the observation that “it takes time and effort to consolidate one’s power” draws on knowledge from the domain of physical objects to reason about events in the social world. If a physical substance or resource is to be available when needed, one must first expend time and effort to collect it and then to ensure that it is stored properly. This knowledge is then mapped onto the social domain to make judgments about what is required for the secure exercise of power.

These two illustrations are ordinary, even unremarkable examples of how we reason in terms of metaphor. Indeed, in both instances, the mappings and accompanying patterns of inference are so much a matter of reflex that they hardly seem like cases of metaphor at all. Below, I examine an extended passage to demonstrate how a more complex argument rests on patterns of inference supported almost solely by metaphor. The point here is simply that conceptions like POWER IS AN OBJECT, along with their obvious metaphoric entailments, are a constitutive part of our everyday rationality.

For example, consider what George Lakoff refers to as “duals.” Just as physical objects have locations, OBJECT metaphors generally entail LOCATION metaphors. One such case is our conventional conception of events. In one version of the EVENT STRUCTURE metaphor, we conceive of states as objects that we acquire or dispose of. This yields highly conventional expressions such as: “She got sick; he lost his virginity; she regained her composure.” In another version of the EVENT STRUCTURE metaphor, actions are conceived as motions along paths and the resulting states, circumstances, and conditions are understood as locations or bounded regions along those paths.

86 Id. at 218.
87 Id.
88 Johnson, supra note 80, at 36-40; Lakoff, supra note 85, at 219-28. Also related to this system is the metaphor LIFE IS A JOURNEY. Examples of the ACTIONS ARE MOTIONS metaphor include the description of a person active in the community as a mover and shaker; the description of someone who pulls rank as really throwing his
These metaphors—ACTIONS ARE MOTIONS, STATES ARE LOCATIONS, STATES ARE CONTAINERS and PURPOSES ARE DESTINATIONS—yield such familiar expressions as: “The relationship has had its rough spots, but I think we’re going to make it. We’re not at the point where we’re ready to get married, but I think we’re really in love.”

The two versions of the EVENT STRUCTURE metaphor overlap with one another in the sense that they share metaphoric entailments. One shared entailment is that, in both versions, movement corresponds with some aspect of causation. In the OBJECT version, the agent or cause transfers the effect (i.e., the metaphoric “object”) to the affected person. Thus, it is conventional to say that “the noise gave me a headache” or that “the Harvard piece brought her fame and fortune.” In the LOCATION version, movements into or out of bounded regions correspond to changes in states (e.g., “he got into trouble”) and physical forces correspond to causes (e.g., “her weak interpersonal skills held her back”).

Power, too, is a dual; like other states, it is conceptualized both as an object and as a location or container. The POWER IS A LOCATION (OR CONTAINER) metaphor is what motivates such common expressions as: “Where does the real power lie?”

(or her) weight around; and the characterization of being too busy to do something as being all tied up with work. The metaphor STATES ARE CONTAINERS (OR LOCATIONS) is what motivates (i.e., makes sense of) familiar expressions like “she is a lawyer in full-time practice, but she’s on vacation right now,” “he’s in a foul mood,” or “she’s deep in thought.”

Of course, the OBJECT-LOCATION entailment is the principal one. There is another such shared entailment that arises from the CONTAINER version of the LOCATION metaphor. Because a container is also an object, one can both enter and acquire it (at the same time, as it were). Consider, for example, three expressions describing the self-same predicament.

(1) His bad temperament always brings him trouble.
(2) With that bad temperament, he’s surely heading for trouble.
(3) His bad temperament is always getting him into trouble.

The first expression uses the OBJECT version of the EVENT STRUCTURE metaphor, in which the state (“trouble”) is an object delivered by the character flaw that is the cause. The second expression conveys much the same information (i.e., the inevitable link between character flaw and subsequent difficulties) by means of the LOCATION version of the metaphor. Here, the state is a destination toward which the subject is travelling. The third expression also uses the LOCATION version. In this last case, the state is both a container that the subject enters and an object (specifically, a container-object) that he acquires by reaching—hence, “getting into trouble.”
"She's in control here." "That agency is a bastion of power." Before announcing his re-election bid, he made sure to shore up his power-base." Note that the location/container can be filled out with a specific such as a fort or other building, as in the last two sample sentences.

Because power is at base about the ability to "shape" events, it is not surprising that we also conceptualize power as a force that can be exercised or exerted to affect others in a variety of ways. First, power can be the force that enables the powerful to take those actions (i.e., make the metaphoric "motions") necessary to reach some desired end. More commonly, power is the force that compels others to take those actions; thus, Elshtain describes the formerly dominant conception in political science that views "[p]ower as a form of direct pressure on a social actor to take a specific action."\(^90\) Alternatively, power can be the force that inhibits the actions of others or even, as Lukes observes, that shapes and governs their desires.\(^91\) Thus, it is conventional to say that "the powerful committee chair blocked all efforts at reform" or that "he has the power to bend the members to his will."

Finally, our intuitive understanding of power incorporates the basic conceptual metaphor CONTROL IS UP.\(^92\) This is what motivates conventional descriptions of power as a matter of "having things under control" or "having the upper hand"; it is why people rise to and fall from power. Minow invokes this conventional metaphor when she observes that "Madonna wants to assert her control over her dress, her images, her fantasies, and her life."\(^93\) So, too, MacKinnon's basic claim—that "men's position of power over women is a major part of what defines men as men"\(^94\)—draws on the unreflective understanding that power consists in being "above" or "on top" of what is

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\(^90\) Elshtain, supra note 26, at 136 (emphasis added).
\(^91\) "To put the matter sharply, A may exercise power over B by getting him to do what he does not want to do, but he also exercises power over him by influencing, shaping or determining his very wants." Lukes, supra note 15, at 23.
\(^92\) The metaphor is grounded in our embodied experience of being upright in the world and its relationship both to control over our bodies and the ability to exercise control over many aspects of our environment. Lakoff & Johnson, supra note 84, at 17-21.
\(^93\) Minow, supra note 4, at 1104 (emphasis added).
\(^94\) MacKinnon, supra note 6, at 92 (emphasis added).
Thus, MacKinnon understands gender as a matter of unadorned "[h]ierarchy, a constant creation of person/thing, top/bottom, dominance/subordination relations."\textsuperscript{95} Different metaphoric conceptions of the same domain can nevertheless work together—i.e., they are metaphorically coherent and not, as commonly thought, cases of "mixed metaphors"—if they share metaphorical entailments.\textsuperscript{96} One example is the way in which the OBJECT-LOCATION dual operate together in the EVENT STRUCTURE metaphor.\textsuperscript{98} The four conceptual metaphors for power provide another example. As we have already seen, the POWER IS A LOCATION metaphor can be filled out with a specific locale premised on the POWER IS A FORCE metaphor, such as a fort (e.g., "bastion of power"). It can also be filled out with a setting based on the CONTROL IS UP metaphor, as in the phrases "she reached the pinnacle of power" or "he’s at the peak of his powers."\textsuperscript{99}

Similarly, the OBJECT metaphor can be instantiated by any instrument used to transmit force. One example previously noted represents power as a weapon, as in the expression "she wields a lot of power." But this is only one case of a more general conception premised on the metaphors POWER IS AN OBJECT and POWER IS A FORCE. Together, they yield a conventional and highly productive metaphor that conceives of power as a device for transmitting force. This conception, which can be represented by the metaphor POWER IS A MACHINE, is the basis of such familiar expressions as "an apparatus or mechanism of power" or "the levers of power." The MACHINE metaphor

\textsuperscript{95} Indeed, MacKinnon self-consciously exploits the analogical resemblance between standard sexual imagery and our conventional metaphorics of power:

\textit{[O]ne question that is raised is whether some form of hierarchy... is currently essential for male sexuality to experience itself... To put it another way, perhaps gender must be maintained as a social hierarchy so that men will be able to get erections; or, part of the male interest in keeping women down lies in the fact that it gets men up.}

\textsuperscript{Id. at 145.} \textsuperscript{96} Id. at 137. \textsuperscript{97} See Lakoff & Johnson, supra note 84, at 87-105. \textsuperscript{98} See supra note 89. \textsuperscript{99} See, e.g., Minow, supra note 50, at 237-38 ("Power may be \textit{at its peak}, then, when it is least visible: when it shapes preferences, arranges agendas, and excludes serious challenges from either discussion or imagination.") (footnote omitted) (emphasis added).
can be elaborated with any device that transmits or generates force. Thus, power can be represented as an electrical device as in Clegg's "circuits of power"\textsuperscript{100} or Elshtain's characterization in the passage that follows.

These metaphoric coherences allow the four conceptual metaphors for "power" to function together. Elshtain's description of the positivist approach to power once prevalent among political scientists provides an interesting example. She writes:

\[\text{T}he\ definition\ of\ power\ developed\ initially\ in\ mainstream\ American\ political\ science\ got\ reduced\ to\ the\ formula:\ X\ has\ power\ over\ Y\ if\ he\ can\ get\ Y\ to\ do\ something\ Y\ would\ not\ otherwise\ do.\ We\ can\ observe\ Y's\ behavior\ and\ assess\ the\ force\ X\ brought\ to\ bear.\ .\ .\ .\ Power\ is\ a\ form\ of\ compulsion\ exerted\ by\ the\ already\ (relatively)\ powerful\ upon\ one\ another\ within\ official\ political\ institutions\ designed\ to\ promote\ the\ aims\ and\ interests\ of\ competing\ groups.\ .\ .\ .\]

Power as a form of direct pressure on a social actor to take a specific action here becomes a thing in itself, measurable like amps on an electric meter.\textsuperscript{101}

This passage employs virtually every one of the conventional metaphors we have examined: POWER IS AN OBJECT ("Power . . . here becomes a thing in itself"); POWER IS A LOCATION-CONTAINER ("Power is . . . exerted . . . within official political institutions"); POWER IS A FORCE ("the force X brought to bear"); and CONTROL IS UP ("X has power over Y"; "[p]ower is . . . exerted by the already (relatively) powerful upon one another"). Nevertheless, there is nothing awkward or stilted about the passage. Because of their mutual entailments, the metaphors work together smoothly, naturally and unobtrusively.

\textsuperscript{100} See Clegg, supra note 17, at 187, 192-93 ("Any superordinate member of a complex organization will be just one relay in a complex flow of authority . . . Ideally, . . . such relays should be without resistance, offering no impedance whatsoever.") (emphasis added).

\textsuperscript{101} Elshtain, supra note 26, at 136. Although unidentified, the reference is obviously to Robert A. Dahl, The Concept of Power, 2 Behav. Sci. 201, 202-03 (1957) ("A has power over B to the extent that he can get B to do something that B would not otherwise do.").
Elshtain’s passage illustrates something more profound than the amicable coincidence of these metaphors. The systematicity of these metaphors enables them to provide a conceptual grid or schema for understanding, talking and reasoning about power. They contribute to the passage an internal logic or structure that provides the positivist view with its sense of coherence and lucidity. Although ostensibly unexpressed in the background, it is the LOCATION version of the EVENT STRUCTURE metaphor—in which ACTIONS ARE MOTIONS ALONG PATHS, STATES ARE LOCATIONS and PURPOSES ARE DESTINATIONS—that frames the logic of the passage. Thus, the positivist definition of power starts from the premise that “the aims and interests of competing groups” can only be effectuated by the instrument specifically designed for that purpose—the “official political institutions.” Thus, only the actions “within” such institutions can move groups toward their desired ends.\textsuperscript{102} Since POWER IS A LOCATION, by definition all those within those institutions are, at the least, “already (relatively) powerful.” Some, however, are more powerful than others and can exert compulsion “upon” others by bringing “force . . . to bear.” How are the “already (relatively) powerful” differentiated from one another? The answer derives from the internal logic of the metaphoric system. Those “on top” (“X has power over Y”) get to exert force on the others—which is why “[p]ower is a form of compulsion exerted by the . . . powerful upon one another.” We know from the CONTROL IS UP metaphor that height correlates with power. Why? Consider the imagistic coherence between the metaphors CONTROL IS UP and POWER IS A SUBSTANCE. The latter metaphor, as we have seen, applies knowledge from the source domain of physical objects to reason about actions and events in the target domain of power. Like a physical substance, power can therefore be metaphorically amassed until one is powerful (i.e., “full” of power). The more one has of a physical object or substance, the larger and higher the

\textsuperscript{102} Thus, the CONTAINER metaphor frames Elshtain’s larger point about the inadequacy of the mainstream approach to studying power. Her critique focuses on the ways in which this traditional view excludes women from the domains of power and politics. Elshtain, supra note 26, at 137.
The "Power" Thing

pile. This yields the generic metaphor MORE IS UP. A powerful person is one with "a lot of" power; she is, therefore, "up." In other words, the confluence of the metaphors POWER IS A SUBSTANCE and CONTROL IS UP yields the conclusion that those with the most power will be "on top." When they exercise power, they exercise it "over" or "upon" others.

But what is it about being "on top" that particularly enables them to exert force on others? The POWER IS A RESOURCE metaphor, noted earlier, expresses the shared entailments of the metaphors POWER IS A SUBSTANCE and POWER IS A FORCE. Thus, the "substance" accumulated can be conceptualized as a kind of fuel or energy "measurable like amps on an electric meter." To be "powerful" is, then, to have available more than the usual store of energy; by definition, being "on top" means having the largest accumulation of available force. These metaphors yield the inference that those with the most power are those who have the greatest capacity to exert "direct pressure on a social actor to take specific action."

To summarize, the four metaphors form a single, coherent model or schema for conceptualizing power that corresponds precisely to our conventional, unreflective understanding of the concept. Power is conceived as a substance like a resource that can be accumulated and stored, as in a container. The person who does so "has" a "lot" of power, hence is "powerful." This buildup of power is what puts a person "on top," at "the height" of his or her powers. It is also what enables him or her to exert control "over" others. To be "powerful" is to have sufficient power/energy/force either to take the actions necessary to reach some desired end, to compel others to take those actions, to inhibit the actions of others, or to shape their preferences: It is, in short, to have agency. Although it is never explicit, agency is the inescapable entailment of these metaphors: To have sufficient power to move/act or sufficient force to cause others to act is to be an agent. To put it another way, it is not so much that these metaphors give rise to a concept of agency as that they are (that is, constitute) our concept of agency.

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103 Lakoff & Johnson, supra note 84, at 15-16.

104 Although it is never explicit, agency is the inescapable entailment of these metaphors: To have sufficient power to move/act or sufficient force to cause others to act is to be an agent. To put it another way, it is not so much that these metaphors give rise to a concept of agency as that they are (that is, constitute) our concept of agency.
Strikingly, each and every one of the conventional assumptions about power shown to be so problematic in the previous Section is an outgrowth of this metaphoric model. All of our most basic, intuitive assumptions about power—that it is grounded in violence; that it is an external force that operates on a passive victim; that it is a property of an actor who exercises domination over another; that it is expressed through hierarchy; and that power and agency are synonymous—turn out to be either entailments or reductive understandings of these metaphors. Thus, the reification of power—in which what is rarely more than a temporary ability is treated as a property or trait—is an unreflective and reductive application of the conceptual metaphor in which power is understood as an object or substance.\textsuperscript{105} So, too, the widespread conflation of power with violence is an unsurprising reduction of the metaphor POWER IS A FORCE, which, after all, plays an essential role in our conceptual schema for power. The conventional assumption that power is, by definition, a matter of hierarchy rests on no firmer foundation.\textsuperscript{106} In this case, the unreflective understanding is a radical prototype effect in which the central or prototypical case—here, that (POWER) CONTROL IS UP—is taken as true of the entire category.\textsuperscript{107}

This conceptual schema is also what supplies the missing mediations in the intuitive but unsupported claim, examined earlier, that “people with power get to determine reality.” In the logic of the EVENT STRUCTURE metaphor, determination of reality is the goal-state (PURPOSES ARE DESTINATIONS) that power (understood as force or energy) enables one to reach. The claim that “people with power get to determine reality” makes intuitive sense—and therefore does not seem to need explana-

\textsuperscript{105} See Steven L. Winter, Death Is the Mother of Metaphor, 105 Harv. L. Rev. 745, 765-66 (1992) (reviewing Thomas C. Grey, The Wallace Stevens Case: Law and the Practice of Poetry (1991)) (“Because we understand abstract concepts by means of the IDEAS ARE OBJECTS metaphor, the vector of reduction runs in the opposite direction from abstraction to reification: the reduction of an idea to a thing. This process of ‘thingification’ conflates one of many possible relations into an identity or equation.”).

\textsuperscript{106} See, e.g., MacKinnon, supra note 6, at 242 (“Inequality is about power, its definition, and its maldistribution. Inequality at root is grasped as a question of hierarchy . . . .”).

\textsuperscript{107} On radical prototype effects, see Steven L. Winter, The Metaphor of Standing and the Problem of Self-Governance, 40 Stan. L. Rev. 1371, 1386 (1988).
tion—precisely because we understand the world in terms of the metaphors POWER IS A FORCE and ACTIONS ARE MOTIONS ALONG PATHS. In this metaphoric understanding, to be powerful is by definition to be able to achieve one’s desired ends or to compel others to do and to see as one dictates.

This conventional conceptual schema plays a decisive role in structuring how we analyze and reason about power. We have seen its influence in Minow’s and MacKinnon’s reductive understanding of power as hierarchy and their too easy assumption that power brings with it a kind of inexplicable (or, at least, unexplained) ontological omnipotence. We see it again in MacKinnon’s indictment of Marxist-influenced theories of the relations between state and society. For her, such theories do not adequately specify the identity, nature or source of power: “As to who or what fundamentally moves and shapes the realities and instrumentalities of domination, and where to go to do something about it, . . . is as ambiguous as it is crucial.” In making this charge, MacKinnon fully embraces the conventional metaphoric understandings that ACTIONS ARE MOTIONS, that POWER IS A FORCE, that POWER IS A MACHINE or instrumentality for transmitting that force and, finally, that POWER IS A LOCATION. Her challenge in effect consists of (or, to be more precise, is structured by) an insistence upon the entailments of this metaphoric system. Thus, MacKinnon wants to know who or what activates (i.e., “moves”) and designs (i.e., “shapes”) the mechanisms of domination and where one might go to change it, assuming all the while that there is both a determinate “someone” and a definite “somewhere” wherein power lies.

B. The Social Construction of Boris Yeltsin

If the conventional schema so strongly configures even sophisticated scholarly efforts, then we can expect it to play a yet more potent role in structuring our everyday thinking about

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108 See also Minow, supra note 50, at 237 (“When a conception of reality triumphs, it comes to convince even those injured by it.”) (footnote omitted) (emphasis added).

109 MacKinnon, supra note 6, at 159 (emphasis added). We shall explore this argument further in Part IV. See infra text accompanying notes 225-36.

110 For examples of the distorting ontological effects of these metaphors on reasoning within contemporary political science, see Ball, supra note 79, at 216-20.
The passage begins with a report of how, rather than taking personal credit, Yeltsin attributes the victory over the coup to the courage and commitment of the Russian people. But his frank recognition of the social basis of power is quickly supplanted by a version of the events that conforms to the more conventional agency view. First, Yeltsin's own assessment is dismissed as so much political posturing—a crowd-pleasing "tribute" that is proof positive of his "sure-footed political prowess." Instead, Yeltsin is presented as the active agent able to "summon the democratic yearnings of the Russian people" and "put their political will into play." The preeminence of this
agency view is consolidated with the quote from the unnamed senior diplomat. In this version, Yeltsin is promoted from decisive catalyst to exclusive author of his nation’s fate: Power, we are told, is an illusion; and Yeltsin is capable of producing it with willpower alone.

The transformation of responsibility for the defeat of the coup is astonishing, particularly when one considers that it occurs in the face of widespread media images that reinforced the sense of massive popular resistance extending to the army itself. But the balance of the article skillfully sustains this revisionist account by means of a two-part strategy. First, the article places the events firmly within the conventional conceptual schema for power. Thus, the article continues:

By the time it was over, [Yeltsin] had established himself as the force to be reckoned with . . . . Already, he has pushed all this to advantage—issuing decrees on the Russian republic's long-sought sovereignty, pre-empting the signing of the union treaty that before the coup was to redefine the republics' relationships with Moscow, redistributing power away from the Soviet national leadership.

For those who look on his appeal to the masses with trepidation, his moves to take control of central government agencies . . . . smack of an ominous overextension of his power. But supporters see these actions as a rightful attempt to defend the republic’s democratic gains against encroachments.

Mr. Yeltsin has repeatedly said he would not run against Mr. Gorbachev in the national elections foreseen under the union treaty . . . . The collapse of the coup that had apparently been timed to prevent the signing now leaves Mr. Yeltsin in a stronger position to dictate the terms of the partnership that is likely to emerge.

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112 For example, the photo immediately above this front page story bears the caption: “Outside, bystanders applauded a tank officer on a Moscow street.” Id. Over the continuation of the story on an inside page, there is a photo of thousands of Muscovites standing in the rain listening to Yeltsin’s speech. Id. at A9.
The Yeltsin program calls for demolishing central controls over the economy . . . . The conspirators, for whom Mr. Yeltsin had become anathema over the last few years, saw the emerging cooperation between Mr. Gorbachev and Mr. Yeltsin as a threat to their power base, a sign that the old system, built around the Communist Party, was on the point of final collapse.113

Once again, the passage uses virtually every one of the conventional metaphors we have examined: POWER IS A FORCE ("the force to be reckoned with: . . . Already, he has pushed all this to advantage"); POWER IS AN OBJECT ("redistributing power . . ."); POWER IS A LOCATION (". . . away from the Soviet national leadership"); "a threat to their power base"); ACTIONS ARE MOTIONS ("his moves to take control"); STATES ARE LOCATIONS (defending "the republic's democratic gains against encroachments"); and CONTROL IS UP ("The Yeltsin program calls for demolishing central controls over the economy"); "the old system, built around the Communist Party, was on the point of final collapse").

More importantly, however, the logic of the passage unfolds from the EVENT STRUCTURE metaphor. Whatever the real cause, the failure of the coup establishes Yeltsin "as the force to be reckoned with." This gives him the immediate wherewithal to get things done, "pushing" things to his advantage by "redistributing" formal power from the central government to the separate republics. This newfound strength also enables Yeltsin's "moves to take control," which are variously viewed as an illegitimate "overextension" of power (i.e, that he has gone too far) or a justified response to the "encroachments" of anti-democratic forces.

Although, at this point, the article has explained—indeed, established—Yeltsin's agency and demonstrated his power to act, it has not yet provided an account of that empowerment. The next two paragraphs begin that undertaking, employing the logic of the conceptual schema for power that we examined in connection with Elshtain's description of positivist political science. As between those within the official political institutions, i.e., "the already (relatively) powerful," those who have

113 Id. at A1, A9.
amassed the most power are “on top” and, thus, in a position to compel others. In the internal logic of this metaphoric system, the downfall of the existing power structure inevitably means that the next most powerful people will now find themselves “on top.” Thus, the article observes simply that “[t]he collapse of the coup . . . leaves Mr. Yeltsin in a stronger position.”

We still know nothing about the source of Yeltsin’s power, however, or why it is he rather than Gorbachev who gains most from the collapse of the coup. To explain that phenomenon, the article moves to the second stage of its rhetorical strategy. It builds on inferences from the conventional metaphors we have discussed and reasons by analogy, using imagistic homologies to account for Yeltsin’s distinctive capacity to obtain and sustain power. In its key passage, the article reports that:

From the moment he clambered, uninvited but unimpeded, onto a Soviet Army tank to read his challenge to the new Kremlin authorities, Mr. Yeltsin tapped into a deep popular frustration among the Russian people, who time and again have been robbed of a chance to choose their own destiny. In the past, Mr. Yeltsin has seemed to draw strength from negative circumstances. . . . So, perhaps it was to be expected that in the face of army tanks and an incipient dictatorship, he should rise to the occasion, and bring a decisive part of the population with him.

This imagistically and metaphorically dense paragraph employs several very interesting analogical arguments. The first is premised on the LOCATION version of the EVENT STRUCTURE metaphor in which ACTIONS ARE MOTIONS and PURPOSES ARE DESTINATIONS. Yeltsin’s “sure-footed political prowess” is physically instantiated by his ability to “clamber [ ] uninvited but unimpeded [ ] onto a Soviet Army tank.” In other words, Yeltsin’s ability to act freely in the face of military force demonstrates his ability to act in the political sphere in opposition to

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114 Id. at A9. In fact, the article reports that it was just this prospect that the old power structure most feared, because its leaders identified Yeltsin’s program “for demolishing central controls over the economy” with the demise of their political power: “The conspirators . . . saw the emerging cooperation between Mr. Gorbachev and Mr. Yeltsin as a threat to their power base, a sign that the old system built around the Communist Party, was on the point of final collapse.” Id. at A9.

115 Id. (emphasis added).
the old power structure. "So, perhaps," the article reasons, "it was to be expected that . . . he should rise to the occasion, and bring a decisive part of the population with him."

The second and closely related analogy is based on the metaphor CONTROL IS UP. Yeltsin's potent symbolism in climbing "onto a Soviet Army tank to read his challenge"—thus asserting his superiority over the coup-makers and the military forces ostensibly under their command—corresponds with his ability metaphorically both to "rise to the occasion" and rise to power.

The third and final analogy, however, is the most significant in rationalizing Yeltsin's power. This analogy jointly employs the metaphors STATES ARE CONTAINERS and POWER IS A SUBSTANCE. The article infers from past events that Yeltsin possesses a character trait that explains his ability to obtain power. "In the past," the article observes, "Mr. Yeltsin has seemed to draw strength from negative circumstances." In this sentence, the state "negative circumstances" is represented as a container that—since POWER IS A SUBSTANCE—is understood as a repository of "power." Yeltsin is observed to have the ability to obtain strength by extracting the metaphoric contents of this container-state. So too, the passage reasons, Yeltsin is able to "tap into" the negative circumstances of the Russian people (i.e., their "deep popular frustration" over the thwarting of democracy), absorb their political energy, and thereby "establish [ ] himself as the force to be reckoned with." It is, thus, Yeltsin's particular strength of character—his "willpower"—that enables him to act as the catalyst who can draw upon and put to use the dormant power of the Russian people.

In this metaphoric way, the article successfully sustains the revisionist account presented in its opening paragraphs. In its ultimate argument, the article does not deny the obvious conclusion that the people were the source of the power that defeated the coup. Nevertheless, the article presents a scenario in which Yeltsin is the active agent responsible for the failure of the coup: He alone has the ability to "summon the democratic yearnings of the Russian people" and "put their political will into play" because he is the one who has the capacity "to draw strength from negative circumstances." He accomplishes this
through a demonstration of his courage, vitality and capacity for action (that is, his willingness to challenge the power and authority of the conspirators). Thus, the article concludes that "[f]rom the moment he clambered, uninvited but unimpeded, onto a Soviet Army tank to read his challenge to the new Kremlin authorities, Mr. Yeltsin tapped into a deep popular frustration among the Russian people." 116

Ironically, the article supports the claim that power is an "illusion" by presenting a version of the events that exploits the shared metaphors that comprise our conventional conception of power. The effect is to constitute Yeltsin as the operative responsible for the larger events in which he took part. The effect is to (re)present the events of August 1991 in a way that confirms our intuitive understanding of power as a matter of agency. Indeed, the effect is to construct the agency view of power, and to do so unobserved and unimpeded right in front of our eyes.

IV. THE THREE-DIMENSIONAL VIEW

MacKinnon’s justly influential analysis of gender relations as a system of power has provoked extensive commentary. Many have observed that MacKinnon’s emphasis on the expropriation of women’s sexuality and on the social construction of women as objects of male power essentializes women and, thus, washes out crucial differences of race, class, age and sexual orientation. 117 Others have noted that, because MacKinnon

116 Id.
117 See, e.g., Elizabeth V. Spelman, Inessential Woman: Problems of Exclusion in Feminist Thought (1988); Angela P. Harris, Race and Essentialism in Feminist Legal Theory, 42 Stan. L. Rev. 581 (1990). For her response to the essentialist critique, see Catharine A. MacKinnon, From Practice to Theory, or What Is a White Woman Anyway?, 4 Yale J.L. & Feminism 13, 16 (1991) (“To speak of social treatment ‘as a woman’ is thus not to . . . posit anything, far less a universal anything, but to refer to this diverse and pervasive concrete material reality of social meanings and practices . . . .”). There is, however, a limited sense in which MacKinnon treats the experiences of white, middle class women as a prototype for understanding the oppression of all women. See id. at 21 (“What is done to white women is a kind of floor; it is the best anyone is treated . . . . What is done to white women can be done to any woman, and then some. This does not make white women the essence of womanhood.”). She nevertheless is emphatic in rejecting the idea that there is an inherent or essential quality to the experiences of white women and women of color that makes them all
focuses almost exclusively on what is done to women as the defining element of what it is to “be” a woman, her critique has the effect of denying women’s agency and eliding the many ways in which women both are and can be important social actors.\(^{118}\)

Although the essentialist critique has had somewhat greater currency, the agency critique goes to the heart of MacKinnon’s overall theory of power. One very effective way to explicate this point is to elaborate the converse claim, i.e., that MacKinnon essentializes men and vastly overstates men’s agency.\(^{119}\) Because I develop this argument from MacKinnon’s own analysis, it should be clear (I hope) that this is not a “defense” of men but a theoretical critique of MacKinnon’s view of power. Indeed, I argue that the problems with MacKinnon’s theory of power arise precisely to the degree that she is correct in her overall analysis of gender relations. In other words, I offer an internal critique of MacKinnon’s position that insists on traversing the entire course charted by her theoretical approach. Once we have done so, we will see that the system of gender relations that she rightly criticizes cannot possibly be explained in terms of “male power.” To the contrary. On her own account, “male power” can only be understood as the practical \textit{effect}, rather than the logical or moral \textit{cause}, of our system of gender relations.

To make this argument effectively, it will be helpful to review an antecedent theory of power that, to one degree or another,
both Minow and MacKinnon embrace. In the first Section, I begin with Steven Lukes's "three-dimensional" view of power. This self-proclaimed "radical" approach introduces notions of social construction in order to successfully preserve some of the political issues elided by more traditional theories of power. The introduction of this insight also elucidates a theoretical difficulty that plagues previous views.

Ultimately, however, this recognition of the mechanisms of social construction raises another, more profound problem. We have already seen in our earlier discussion of MacKinnon how this insight leads to the objection from social contingency that undermines the cogency and usefulness of "power" as an explanation of the relevant social phenomena.120 Here, the reflexive application of this insight exposes an internal inconsistency in the three-dimensional view. To maintain its bite as political critique, even the sophisticated three-dimensional view relies on a residual, but logically incompatible, subjectivization of those who wield power.

In the second Section, I return to the work of feminist theorists like Minow and MacKinnon. First, I explain why the three-dimensional view is particularly well-suited to their concerns; indeed, it seems almost tailor-made for feminist analysis. I then show that the theoretical approach to power employed by both Minow and MacKinnon either stems from or runs parallel to that of Lukes. One consequence of their adoption of this theoretical framework is that their positions become vulnerable to the same theoretical difficulties that vex the three-dimensional view. In Minow's case, reflexive application of the insight about social construction confounds the heavily subjectivized view of power that forms the heart of her "social-relations" approach. MacKinnon, in contrast, understands but ultimately disregards the reflexive force of the insight because it frustrates the political payoff of her claim that male power is constitutive of reality.121 To maintain its bite as feminist critique, MacKinnon's view is forced to a subjectiviza-

120 See supra text accompanying notes 39-48.
121 See MacKinnon, supra note 6, at 121 ("Power to create the world from one's point of view, particularly from the point of view of one's pleasure, is power in its male form.") (citation omitted).
tion and reification of "male power" that is unsustainable on her own, otherwise perceptively put theoretical premises.

First, the background.

A. Subjectivization and Social Contingency

In a famous monograph, Steven Lukes characterized three conceptual models or "views" of power that he identified as one-dimensional, two-dimensional and "radical" or three-dimensional.\(^{122}\) The one-dimensional view corresponds to the positivist notion of power discussed earlier. This is the view of the pluralists like Robert Dahl, who offered the classic definition: "A has power over B to the extent that he can get B to do something that B would not otherwise do."\(^{123}\) It is the most easily understood and most readily accepted view because it fits well with our intuitive conceptions of power and agency. As described by Lukes, this "view of power involves a focus on behaviour in the making of decisions on issues over which there is an observable conflict of (subjective) interests."\(^{124}\)

The two-dimensional view, articulated initially in an article entitled *Two Faces of Power*,\(^{125}\) arises as a critique of the first. It argues that power is not merely a matter of control over active decisionmaking, but is exercised as well by insuring inaction on critical issues.\(^{126}\) Thus, the two-dimensional view "incorporates into the analysis of power relations the question of the control over the agenda of politics and of the ways in which potential issues are kept out of the political process."\(^{127}\) It treats non-decisionmaking as a particularly efficient means of decisionmaking.\(^{128}\) Moreover, it recognizes that power may inhere in institutional procedures that are designed

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\(^{122}\) Lukes, supra note 15, at 9-10.


\(^{124}\) Lukes, supra note 15, at 15 (emphasis omitted).


\(^{127}\) Id. at 21; see also Elshtain, supra note 26, at 137 ("Power . . . is not limited to X making a decision that compels Y but to X devoting himself to limiting the scope of political decision making to consideration of only those issues he finds nonthreatening.").

\(^{128}\) Lukes, supra note 15, at 17-18.
systematically to skew the process to benefit the interests of one group over another.\textsuperscript{129}

Lukes advanced his three-dimensional view of power as a response to and critique of these earlier approaches. He criticized the prior views for "adopting too methodologically individualist a view of power" and, therefore, for being insufficiently attuned to "the socially structured and culturally patterned behaviour of groups."\textsuperscript{130} He argued, moreover, that power may be at work even when there is no overt conflict or manifest grievance to be kept off the agenda: "To put the matter sharply, \( A \) may exercise power over \( B \) by \ldots influencing, shaping or determining his very wants."\textsuperscript{131} He elaborated with a rhetorical question:

\begin{quote}
[Is it not the supreme and most insidious exercise of power to prevent people, to whatever degree, from having grievances by shaping their perceptions, cognitions and preferences in such a way that they accept their role in the existing order of things, either because they can see or imagine no alternative to it, or because they see it as natural and unchangeable \ldots ?]\textsuperscript{132}
\end{quote}

Lukes offered the following definition: "\( A \) exercises power over \( B \) when \( A \) affects \( B \) in a manner contrary to \( B \)'s interests."\textsuperscript{133} The crux of Lukes's redefinition—and what largely distinguishes his view from its predecessors—lies in his distinction between preferences (i.e., subjective interests) and interests (i.e., "real" interests). Even when \( A \) obtains the assent of all the affected \( B \)s, \( A \)'s action (or inaction) may still be an act of power if it is against \( B \)'s interests, objectively viewed. Accordingly, the three-dimensional view continues to recognize that power is exercised through overt decisionmaking and through control over the agenda. But, in incorporating these first two dimensions in its analysis of power, the three-dimensional view disclaims their individualist and conflict-oriented assumptions. Instead, the three-dimensional view

\textsuperscript{129} Id. at 16-17 (citing Bachrach & Baratz, supra note 125).
\textsuperscript{130} Id. at 22. On Lukes's view, the two-dimensional approach "still assumed that nondecision-making is a form of decision-making." Id. at 20.
\textsuperscript{131} Id. at 23.
\textsuperscript{132} Id. at 24.
\textsuperscript{133} Id. at 34.
considers all the ways in which a system gets people to act against their real interests, including the operation of social forces and other more pervasive processes of socialization.

For Lukes, the significant value of the three-dimensional view is that it "is radical in both the theoretical and political senses."\(^{134}\) It is theoretically radical because it focuses on the largely invisible ways in which a social and political order may be systematically biased in favor of certain groups. More than any other, Lukes's approach offers a "deeper analysis" and a "serious sociological . . . explanation" of "all the complex and subtle ways in which the inactivity of leaders and the sheer weight of institutions" operate to perpetuate subordination.\(^{135}\)

The three-dimensional view is politically radical in at least three ways. First, it avoids the legitimist tendencies of competing conceptions of power.\(^{136}\) Because it sees power in the formation of "perceptions, cognitions and preferences," the three-dimensional view preempts any attempt to justify existing political arrangements by reference either to consensus or to the absence of articulated grievances.

Second, and correspondingly, the three-dimensional view is radical in its conception of interests. Lukes explained that "any

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\(^{134}\) Id. at 9.

\(^{135}\) Id. at 38 (emphasis omitted) (contrasting the one-, two- and three-dimensional views).

\(^{136}\) Lukes notes the legitimist tendencies of some of the competing conceptions of power. With respect to Talcott Parsons, he notes that "the linking of power to authoritative decisions and collective goals serves to reinforce his theory of social integration as based on value consensus by concealing from view the whole range of problems that have concerned so-called 'coercion' theorists, precisely under the rubric of 'power.'" Id. at 29. With respect to Arendt, he observes:

[S]imilarly, the conceptualisation of power plays a persuasive role, in defence of her conception of 'the res publica, the public thing' to which people consent and 'behave nonviolently and argue rationally', and in opposition to the reduction of 'public affairs to the business of dominion' and to the conceptual linkage of power with force and violence.

Id. at 30.

The tendency of the one-dimensional view of pluralists like Dahl to find that power is in fact distributed pluralistically and democratically has been widely noted. See, e.g., Clegg, supra note 17, at 53 ("As is well known, Dahl's conclusion is that no one single elite does govern: different actors (people, in fact) prevail over different issues, producing a 'pluralist' rather than an 'elitist' distribution of power. The methodology, whether designed to or not, produces a pluralist representation of power."). But see Lukes, supra note 15, at 11 ("I think that [the pluralists' concepts, approach and method] are capable of generating non-pluralist conclusions in certain cases.").
view of power rests on some normatively specific conception of interests.”137 Liberals, for whom autonomy is the governing principle, ascertain interests by reference to existing preferences expressed through participation in (or abstention from) politics or markets.138 “The radical, however, maintains that [people’s] wants may themselves be a product of a system which works against their interests . . . .”139 Accordingly, Lukes’s view depends on a notion of “real” interests that, he acknowledges, may be difficult to ascertain.140 Nevertheless, he insisted that such interests are in principle empirically verifiable.141

137 Lukes, supra note 15, at 35 (footnote omitted).
138 Id. at 34 (“[T]he liberal takes [people] as they are and applies want-regarding principles to them, relating their interests to what they actually want or prefer, to their policy preferences as manifested by their political participation.”) (footnote omitted).
139 Id. (discussing Antonio Gramsci, Selections from the Prison Notebooks of Antonio Gramsci (Quintin Hoare & Geoffrey Nowell-Smith eds. & trans., 1971)).
140 Lukes recognized that this “counterfactual,” as he called it, generates significant theoretical difficulties. Id. at 46-48. He invoked Gramsci’s argument that, at times when domination is relaxed, the subordinated may begin to formulate their own view of their interests. Id. (discussing Antonio Gramsci, Selections from the Prison Notebooks of Antonio Gramsci (Quintin Hoare & Geoffrey Nowell-Smith eds. & trans., 1971)).
141 Lukes, supra note 15, at 25. Like all theories that employ a concept of “hegemonic power,” Lukes’s view suffers from the familiar problems of identifying and justifying its attribution of “false consciousness.” See James C. Scott, Domination and the Arts of Resistance: Hidden Transcripts 72 (1990) (“Since any theory that purports to demonstrate a misrepresentation of social reality must, by definition, claim some superior knowledge of what that social reality is, it must be, in this sense, a theory of false consciousness.”) Thus, Wrong observes that a notion such as “real” or “objective” interests . . . often amounts to little more than the judgment that the group under consideration ought to give priority to those interests which the observer would prefer them to pursue . . . . The arrogance and implicit authoritarianism of such an outlook, which claims to know better than other people themselves what is good for them, are unmistakable.

Wrong, supra note 45, at 183. See also infra text accompanying notes 250-51. Lukes characterizes the radical’s conception of interests as what people “would want and prefer, were they able to make the choice.” Lukes, supra note 15, at 34 (footnote omitted). For this reason, Clegg suggests that Lukes would have done well to work with a regulative conception like Habermas’s “ideal speech situation.” Clegg, supra note 17, at 92-95. Note, however, that Lukes’s view of “real interests” remains dependent on the same notion of autonomy at the heart of the liberal conception. See Wrong, supra note 45, at 187 (quoting Lukes’s acknowledgement of this fact). In that sense, it is not really radical.
Third, and most important for our purposes, the three-dimensional view is politically radical because it marks out the most extensive domain of application. As Lukes explained, every concept of power identifies a different range of behavior for analysis because every "way of conceiving power (or a way of defining the concept of power) that will be useful in the analysis of social relationships must imply an answer to the question: ... 'what makes A's affecting B significant?'"\(^{142}\) The three-dimensional view is radical in the sense that it includes within its concept of "significant affecting" aspects of social relations ordinarily taken for granted. It extends the analysis of power beyond the domain of conventional politics and official institutions to areas previously considered apolitical. In this way, it opens for potential consideration even the most basic terms and conditions of social life.

Beyond these advantages, the three-dimensional view also suggests how one might address the theoretical conundrum that, as discussed previously, afflicts so many other views of power: It provides a way of explaining the progression from "wins" to "gets" in the intuitive claim "[w]hoever wins, gets to determine the issues."\(^{143}\)

Earlier, we considered war as a paradigm case with which to test this intuitive claim.\(^{144}\) But take the simplified case in which someone threatens violence to enforce his or her will, as in the series of hypotheticals examined previously.\(^{145}\) Even here, it is not at all clear why the outcome should be submission rather

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For an alternative approach which appreciates the ways in which the subordinated may be perfectly aware of their interests but, nevertheless, opt to accede to the claims of power, see infra text accompanying notes 281-85, 323-29, & 371-78.

\(^{142}\) Lukes, supra note 15, at 26. Lukes explains that behind[ ] all talk of power is the notion that A in some way affects B. But, in applying that . . . notion to the analysis of social life, something further is needed—namely, the notion that A does so in a non-trivial or significant manner. Clearly, we all affect each other in countless ways all the time: the concept of power, and the related concepts of coercion, influence, authority, etc., pick out ranges of such affecting as being significant in specific ways.

Id. (reference omitted).

\(^{143}\) See Scarry, supra note 52, at 96 (discussed supra text accompanying notes 49-61, 106-108).

\(^{144}\) See supra text accompanying notes 55-61.

\(^{145}\) See supra text accompanying notes 62-63.
than defiance.146 Why don’t all the storeowners decide that it is in their long-term interests to resist extortionate behavior and act like the courageous storeowner in hypothetical number five? Recall Bernard Williams’s observation that one lesson of the Republic is that “justice is the product of a convention adopted by a group of people to protect themselves.”147 So why should the outcome be submission rather than defiance?148

I will refer to this generic difficulty with the intuitive claim as “the problem of compliance.” It appears as soon as one ties the concept of power to a notion of interests because, in so doing, one builds into the very definition of “power” the most compelling reason for its resistance. But the problem arises with even greater force once one introduces the question of values. Strange as it may seem to modern sensibilities, historically, martyrdom has been a frequent result of attempts to achieve domination by force. The nonviolent protests of the civil rights movement, which I discuss in Part VI, provide a more contemporary, sometimes equally lethal example. Indeed, as I discuss below, the marches and sit-in demonstrations supply a cogent illustration of Arendt’s claim that power and violence are opposites: “Violence appears where power is in jeopardy, but left to its own course it ends in power’s disappearance.”149

146 Cf. Wrong, supra note 45, at 101-02 (noting that “typologies of the forms of power... are asymmetrical in focusing on the motives of the power subject for complying rather than on those of the power holder for seeking and retaining power” and suggesting that “this reflects a tendency in Western culture to regard the former as psychologically more problematical”). There is, of course, an entire range of behavior between the extremes of submission and defiance. Frequently, people do react with a mixture of ostensible compliance and quiet, “hidden” resistance. See Scott, supra note 141, at 136 (“Most of the political life of subordinate groups is to be found neither in overt collective defiance of powerholders nor in complete hegemonic compliance, but in the vast territory between these two polar opposites.”). But this only underscores the problem with Lukes’s view, because hidden resistance of this sort indicates that the subordinated are often, in fact, conscious that their interests are being frustrated by power.

147 Williams, supra note 46, at 30-31.

148 Collective action problems provide only a partial answer; one of the points of hypothetical five is that the appeal to justice (there effectuated by going to the newspapers) acts as a kind of coordination device. Cf. Derek Parfit, Reasons and Persons 56-66 (1984) (explaining why “Contributor’s Dilemmas often need moral solutions”).

149 Arendt, supra note 44, at 56.
Again, it is not clear why the outcome should be submission rather than defiance.

The problem of compliance corresponds to the second half of what Foucault identified as the "double 'subjectivisation'" that follows from a purely "negative" understanding of power.

In the aspect of its exercise, power is conceived as a sort of great absolute Subject which pronounces the interdict (no matter whether this Subject is taken as real, imaginary, or purely juridical) . . . . [T]he problem is always posed in the same terms, . . . an essentially negative power, presupposing on the one hand a sovereign whose role is to forbid and on the other a subject who must somehow effectively say yes to this prohibition.\(^{150}\)

In the conventional "negative" understanding, in which power is conceived as an external force that operates on a passive victim, the problem of compliance arises precisely because of foundational assumptions about human agency and subjectivity.

In contrast, a "productive" conception of power resolves this theoretical difficulty because it reveals how people are constructed to accede to the claims of power. This is the substantive point behind Fish's spirited epigram, which bears repeating: "the gun at your head is your head; the interests that seek to compel you are appealing and therefore pressuring only to the extent they already live within you, and indeed are you."\(^{151}\) So, too, Lukes argues that power works to shape people's "perceptions, cognitions and preferences in such a way that they accept their role in the existing order of things."\(^{152}\)

The three-dimensional view thus avoids the problem of compliance by introducing notions of social construction into the analysis of power.

The difficulty, however, is that this notion also interjects an especially crippling complication for the three-dimensional view. As previously noted, Lukes's view also depends upon a traditional conception of agency.\(^{153}\) Thus, he insisted that

\(^{150}\) Foucault, Power and Strategies, in Power/Knowledge, supra note 60, at 134, 140 [hereinafter Foucault, Power and Strategies].

\(^{151}\) Fish, supra note 70, at 520.

\(^{152}\) Lukes, supra note 15, at 24.

\(^{153}\) See discussion supra text accompanying notes 15-17. Clegg argues quite persua-
[t]o use the vocabulary of power in the context of social relationships is to speak of human agents, separately or together, in groups or organisations, . . . significantly affecting the thoughts or actions of others (specifically, in a manner contrary to their interests). In speaking thus, one assumes that, although the agents operate within structurally determined limits, they none the less have a certain relative autonomy and could have acted differently.\textsuperscript{154}

Indeed, Lukes maintained that there would be no reason to talk about power otherwise; for him, the whole point "of locating power is to fix responsibility for consequences held to flow from the action, or inaction, of certain specifiable agents."\textsuperscript{155} Yet, it is just this traditional conception of agency that is undermined by the recognition of the social construction of the subject.

On Lukes's own account, it is difficult to see how these "specifiable agents" could themselves have escaped the processes of social construction. By hypothesis, these processes are so powerful that they produce people (the subordinated) who not only act in ways inimicable to their own real interests, but who are incapable even of perceiving their real interests. Thus, for Lukes, the subordinated are so acculturated to "the existing order of things" that "they can see or imagine no alternative to

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\textsuperscript{154} Lukes, supra note 15, at 54.
\textsuperscript{155} Id. at 56.
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it” or, indeed, “see it as natural and unchangeable.” Those “in power,” on the other hand, are supposed to have achieved sufficient autonomy from these same processes of social construction that they are able to imagine the unimaginable and act differently—indeed, in ways inimicable to their interests. But this cannot be; the “powerful” too must have been socialized to see their interests and privilege as natural. To paraphrase Lukes, surely the perceptions, cognitions, and preferences of these “specifiable agents” were shaped in such a way that they would act in conformity with their role in the existing order of things. Isn’t that how the existing order perpetuates itself?

In part because of her greater care and precision, these contradictions will be both more perspicuous and more pressing when we turn to MacKinnon’s view. In the meantime, let me consolidate the general theoretical point with respect to Lukes and the three-dimensional view. Perhaps the most effective way to do so is by unpacking Lukes’s use of the spatial metaphor—that is, his characterization of various theoretical views of power as one-, two- and three-dimensional. His use of this metaphor places him firmly within the conventional conceptual schema for power examined in the previous Section. It leads him, moreover, to reinscribe the two most significant features of the traditional negative understanding of power: (1) that power operates as an external force on a passive victim; and (2) that power is a property or capacity of a self-directing agent. In this way, Lukes reproduces the very conception of power that his theory appeared to transcend.

The first thing to notice about his use of the spatial metaphor is the way in which it helps create that appearance of

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156 Id. at 24.
157 Cf. Winter, Contingency and Community, supra note 71.

No one rises in a bureaucracy unless she makes it her own (and, simultaneously, it makes her its own). The efficient manager is one who can direct the organization’s human resources with total commitment and single-mindedness, free of the compromise, doubt, and cynicism that infect the enactment of a detached role.

Id. at 980-81; Wrong, supra note 45, at 113 (“[T]he power holder too is driven to legitimate his power, to see it as predicated by the very nature of things, in order to assuage the guilt created by the use of violence against other human beings.”).

158 See supra text accompanying notes 38-43.
159 See supra text accompanying notes 101-04.
transcendence. The spatial metaphor is extremely effective as a rhetorical matter because it immediately brands the preceding views as simplistic (i.e., one-dimensional) and flat (i.e., two-dimensional). By implication, Lukes’s view is better and more sophisticated because it considers the full range of power operations and not just the first two of three dimensions. The second thing to notice about his use of the spatial metaphor is that it is, in fact, highly conventional. The “three-dimensional” image thus works to his rhetorical advantage because it resonates so strongly with our conventional conceptual schema for power. Given an intuitive understanding of power that is structured by the metaphors POWER IS AN OBJECT and POWER IS A LOCATION-CONTAINER, only a “three-dimensional” view is likely to seem adequate to its subject. In both these ways, Lukes’s metaphoric characterization lends cogency to his theoretical view.

At the same time, however, the spatial metaphor comes encumbered with certain liabilities. As Lukes himself recognizes, the use of the vocabulary of power commits one to speaking in a particular way using particular concepts with all their ready-made implications. Thus, when Lukes describes his concept of power as “three-dimensional,” we can anticipate that his view will betray tell-tale traces of the conventional CONTAINER metaphor. And so it does. One of the most familiar and powerful entailments of the CONTAINER metaphor is closure. This is the sense in which “containment” connotes the success of control, check, inhibition and restraint. It is just this sense of the metaphor that is manifested in Lukes’s totalizing conception of power. On Lukes’s account, the subordinated are so thoroughly entrapped within the framework of power that they are unable either to perceive their own interests or even to imagine alternatives to the existing order.

There is a second way in which Lukes’s three-dimensional view is shaped by the CONTAINER metaphor. Consider Lukes’s argument that, structural limitations notwithstanding, the powerful should be recognized as morally responsible agents. He explains that “although the agents operate within structurally

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160 Lukes, supra note 15, at 54 (quoted supra text accompanying note 154); see also Clegg, supra note 17, at 21-22 (quoted supra note 79).
determined limits, they none the less have a certain relative autonomy.”\textsuperscript{161} Here, the effects of the conventional conceptual schema in which \textit{power is a container} can be seen in Lukes’s static spatialization of power formations. He reduces power-structures to a set of boundary conditions that confine the behavior of these “specifiable agents” whom he would hold accountable. This, in turn, makes use of that portion of the \textit{event structure} metaphor in which \textit{actions are motions} and, therefore, constraints on action are understood metaphorically as constraints on motion.\textsuperscript{162} The effect, of course, is simultaneously to reify “power” and reinscribe the agency of particular social actors.

As in the previous use of the \textit{container} schema, Lukes’s carefully nuanced statement at first affirms the capacity of structure to shape and control action. But this statement simultaneously announces its opposite. Even as it acknowledges that power-structures govern behavior, it denies the practical and moral relevance of those limits. In doing so, it trades on a different entailment of the \textit{container} metaphor. Fundamental to the concept of a container is the distinction between the receptacle and its contents. In presenting power formations as a container external to its agents, Lukes effectively detaches those agents from their determining structures. For Lukes, these specifiable agents “act \textit{within} structurally determined limits” but are not themselves \textit{structured by} those determinants. Lukes thus denies the productive conception of power—his “third-dimension”—that was the central innovation of his theoretical view. By separating his “specifiable agents” from their determining structures, Lukes reinstates them as self-directing, \textit{originary} actors (even if within limits). Their freedom of action may be restricted, but their capacity for free choice, and therefore moral responsibility, is not.

\textsuperscript{161} Lukes, supra note 15, at 54 (emphasis added).

\textsuperscript{162} See Steven L. Winter, Transcendental Nonsense, Metaphoric Reasoning, and the Cognitive Stakes for Law, 137 U. Pa. L. Rev. 1105, 1214-22 (1989) (discussing the concepts of “rights” and “law” as structured by means of the metaphors \textit{actions are motions} and \textit{constraints on actions are constraints on motions}); cf. Johnson, supra note 80, at 37-38 (elaborating the mappings of the \textit{location} version of the \textit{event structure} metaphor upon which many of the concepts of morality are based).
In an important sense, then, Lukes's "radical" view of power is sabotaged by the limitations of the conventional metaphors he so unreflectively employs. Notwithstanding his attempt to integrate notions of social construction into the analysis of power, Lukes never really advances beyond the traditional negative conception of power because he is unable to escape the conceptual entailments of these conventional metaphors. Indeed, the shortcomings of Lukes's spatial metaphor lead to the basic inconsistency that plagues the three-dimensional approach.

One of the contributions of relativity theory is the understanding that time is an essential fourth dimension of even physical objects. Analogously, Lukes's theoretical approach fails because it omits this fourth dimension from its analysis of the social phenomenon of power. As we have just seen, we first encounter Lukes's agents at the moment of choice and (in)action. At that moment, all the historical particulars about those agents that the three-dimensional view should have alerted us to consider are mysteriously bracketed. Lost is any sense that their background, their education, their traditions, their past experiences—in short, who they are and how they came to be—might in any way influence, govern or impel either their choices or the "perceptions, cognitions and preferences" that lead to those decisions.

The omission of time is all the more striking when one considers Lukes's contention that only his three-dimensional view adequately accounted for "the sheer weight of institutions." But what is that "weight" if not the build-up of institutional practices over time? An institution is neither a specific place, a particular building, an identifiable group of individuals, nor a book of behavioral prescriptions. Whether we are speaking of IBM or the rules of etiquette, an institution is nothing more (or less) than the practices, reward structure, and attendant processes of socialization that successfully reproduce a set of roles, values, and routines in an ever-changing group of people who constitute the institution's "personnel." (Consider, for example, the powerful social and psychological dynamics provoked by the rebuke that so-and-so isn't "a team player.")

163 See Lukes, supra note 15, at 38.
In short, an institution is the continuation over time of "socially structured and culturally patterned behaviour." It is the amalgamation of the routinized actions of successive groups of socially constituted individuals.

Thus, the three-dimensional view is not nearly the advance that it sometimes seems. Although Lukes recognizes power in the formation of perceptions, cognitions and preferences, he does not follow through on the implications of the insight about social construction. Because he continues to operate with the conventional metaphorical schema for power, he continues to think about power as an external force that operates on a passive victim in much the same way that a container shapes and inhibits what is trapped within. And because he fails to see power as something genuinely internal to the subject, it is easy for him to miss the obvious conclusion that those who "wield" it must also be subject to just the same processes of social formation. As a consequence, Lukes continues to see the powerful as active agents mysteriously autonomous of these same hegemonic forces.

In short, Lukes's three-dimensional view ignores the reflexive power of its own insight. Although it provides a way to think about the difficult questions concerning the workings of power, it continues to evade the question of how people become powerful to start with. It elides time and, in so doing, neglects the social processes of power—that is, the constitution over time of those social agents who, on any conventional account, would be identified as "the powerful."

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164 Id. at 22.
165 Here, I am following Berger and Luckmann. As they explain:

"Only through such representation in performed roles can the institution manifest itself in actual experience. The institution, with its assemblage of "programmed" actions, is like the unwritten libretto of a drama. The realization of the drama depends upon the reiterated performance of its prescribed roles by living actors. . . . Neither drama nor institution exist empirically apart from this recurrent realization."

Peter L. Berger & Thomas Luckmann, The Social Construction of Reality: A Treatise in the Sociology of Knowledge 70 (1966); see also Steven L. Winter, The Meaning of "Under Color of" Law, 91 Mich. L. Rev. 323 (1992) (discussing the doctrinal and conceptual problems that arise from the fact that "the State" is an institution in this same sense).

166 See supra text accompanying notes 49-54.
This elision, however, is a political necessity for Lukes. For him, the entire point of a theory of power is to fix responsibility. But Lukes preserves his political agenda only at the cost of an internal contradiction. Because it grants some subjects precisely the agency necessary to account for the subjection of others, the three-dimensional view fails in the end to come to grips with a productive view of power. It continues to operate with a naive view of social construction as an external process that, precisely because it is conceptualized as exogenous to the self, remains open and available to conscious (hence, partisan) control. Consequently, the three-dimensional view only appears to avoid Foucault’s “double subjectivization.” Ultimately, it betrays its own insight by subjectivizing those who wield power and reinscribing the traditional negative conception.

B. Naming and Blaming

Everything that makes Lukes’s three-dimensional view radical also makes it particularly useful for feminist theory. What distinguishes the three-dimensional view is its contention that the subordinated are socially constructed to accept and take part in existing arrangements. To the extent it is true, this claim effectively rebuts any attempt to justify the prevailing system of gender relations by pointing to women’s acquiescence or participation in that system. Along much the same lines, the three-dimensional view’s radical conception of interests stresses how those interests are themselves constructed by “power.” This claim is doubly advantageous for feminist theory. On one hand, it provides a forceful response to any effort to defend

167 Post makes precisely this mistake. See Winter, Foreword, supra note 12, at 1602-08.

168 Clegg makes an analogous point with respect to related theories: Hegemony becomes the metaphorical basis for constituting sovereign dominion even in the face of individuals who do not act: . . . . prohibition runs deep into the consciousness of the possible range of actions that individuals may have. Order, where it has been achieved, is secured by the sovereign power exerting dominion over the very ingredients of individual consciousness: the appetites, passions and especially the interests that these individuals have. Thus, the supreme prohibitory concept of power comes to hold sway precisely through constituting individuals in such a way that they are not being actors in particular scenes of power.

Clegg, supra note 17, at 29.
existing practices by reference to women's preferences. On the other, the three-dimensional view's corresponding conception of "real" interests offers feminist theorists a privileged position from which to launch their normative critique.

By way of illustration, consider Dennis Wrong's argument in support of his intentionalist view of power. Wrong contends that, because "all social interaction produces . . . unintended effects," we cannot avoid "restricting the term power to intentional and effective acts of influence." Wrong gives the example of a woman who does not "mean to arouse a man's sexual interest by paying polite attention to his conversation at a cocktail party." For Wrong, this is the kind of phenomenon that cannot be included within a theory of power without making it all-encompassing.

As Clegg points out, however, the example is particularly ill-chosen.

The example of sexual etiquette at a cocktail party . . . implies a complex set of conventions which ground and pre-figure power relations: a woman, who out of courtesy pays attention to another person at a party; a man, for whom polite attention paid to him by women is sufficient to cause sexual arousal; cocktail parties as arenas in which this complex game is played out. This complex game glosses a whole practice of sexual politics, of male power and female subordination, which Wrong does not admit to the discourse of power.

Clegg sees the cocktail party as an institutionalized social practice that serves as a matrix for power relations. On this view, the cocktail party consists of a highly structured set of conventions that authorize some behaviors and discourage others. Men are permitted—if not, indeed, encouraged—to initiate conversations with women who interest them sexually. Women, in turn, are expected to react graciously—if not, in fact, flirtatiously.

169 Wrong, supra note 45, at 4. Wrong would analyze some of the excluded phenomena under the concept of "social control," within which he includes routinized interactions by which a group regulates group members. Id. at 3-5.
170 Id. at 4.
171 Clegg, supra note 17, at 74 (reference omitted).
The taken-for-granted quality of these expectations is what underwrites Wrong's cocktail party example. Because Wrong understands a woman's polite attention as a commonplace, i.e., as the expected baseline behavior, it is easy for him to mistake it for an "innocent" act with unintended consequences. But, as Lukes emphasizes, it is exactly when such expectations are so effectively ingrained that they are neither noticed nor questioned that we are in the grip of "the supreme and most insidious exercise of power." Indeed, on a three-dimensional view, the very fact that women feel obligated to act courteously by feigning interest in men's quite often tiresome palaver is understood as a product of the socialization processes that constitute our system of gender-power.

Wrong not only misses this entire dynamic, he inverts it. Because he adheres to an agency view of power, Wrong sees the cocktail party as nothing more than a neutral forum in which agents act. Consequently, all that he can discern in the cocktail party example is a potential instance of power being exercised by the woman on the basis of her unintended effects on the man. In contrast, a three-dimensional view reveals the cocktail party as a social institution that enacts an intricate system of power. Accordingly, it appreciates that the cocktail party is an instance in which power is being brought to bear on the woman.

The difference could hardly be of greater consequence for feminist theory. The traditional agency view tends to obscure the operations of power that lurk beneath the surface of familiar social relations. The singular advantage of the three-dimensional view, in contrast, is its ability to break open congealed aspects of social life and expose them to scrutiny. As Lukes claimed, one of the strengths of the three-dimensional view is that it provides the best account of how power is effectuated through

173 For those who are unconvinced by this characterization, consider the testimony of a young woman concerning her behavior before and after transferring to Antioch College with its stringent policy on sexual conduct. Previously, "she 'didn't ever stick up' for herself . . . . 'It was easier to just do it an[d] get it over with then say no, no no, . . . . Now I don't feel like I have to capitulate. Now if I say no and a man doesn't listen . . . I have some big clout behind me.'" Jane Gross, Combating Rape on Campus In a Class on Sexual Consent, N.Y. Times, Sept. 25, 1993, at 1, 9.
“the sheer weight of institutions.” 174 It is easy, therefore, to understand the appeal that the three-dimensional view has for feminist theorists. Whether the challenge is to the workings of settled institutions or to unequal treatment that is justified in terms of some putatively natural “difference,” 175 the three-dimensional view provides both the most useful analysis and the most trenchant critique.

The influence of the three-dimensional view is explicit in the case of Minow, whose “social-relations” approach is premised on Lukes’s view of power. Her central claim is that the “attribution of difference” used to justify particular social relations merely hides the power of those who classify and of the institutional arrangements that enshrine one type of person as the norm, and then treat classifications of difference as inherent and natural while debasing those defined as different. . . . [T]he very claim to knowledge manifested when public or private actors label any group as different . . . disguises the power of the namers, who simultaneously assign names and deny their relationships with and power over the named. 176

Minow embraces the claim of the three-dimensional view that power operates most effectively through the creation of hegemony. Following Lukes, she maintains that “[w]hen a conception of reality triumphs, it comes to convince even those injured by it. . . . Power may be at its peak, then, when it is least visible: when it shapes preferences, arranges agendas, and excludes serious challenges from either discussion or imagination. 177 Accordingly, Minow’s social-relations approach repudiates claims of legitimation based on consensus and rejects any attempt to justify particular social practices by reference to the widespread acceptance of social values. 178

174 Lukes, supra note 15, at 38.
176 Minow, supra note 50, at 111.
177 Id. at 237-38 (footnote omitted) (citing Lukes, supra note 15, at 22-25).
178 Id. at 111 (“The social-relations approach embraces the belief that knowledge is
The "Power" Thing

As noted previously, however, adoption of the three-dimensional view also commits one to its weaknesses. Thus, Minow's position is vulnerable to the difficulty that arises from the reflexive application of the insight about social construction. After making the strong hegemonic claim characteristic of the three-dimensional view, Minow signals her awareness of the problem by dropping a footnote describing two divergent approaches to this claim: "generic views that see society as oppressing every individual while enlisting the individual in its service through socialization; and particularized views that conceive of some winning groups oppressing particular losing groups." Given the strongly political cast of her position, it comes as no surprise that hers is, in fact, a particularized view in which certain winners actively oppress particular losers. Thus, when she defines the social-relations approach, Minow presents the processes of power as the doings of specific, active agents—"those who classify." Difference, according to Minow, is neither an objective reality nor a culturally structured perception. It is an attribution. It is the product of particular agents who act in a self-interested fashion: "The name of difference is produced by those with the power to name and the power to treat themselves as the norm." Because their characterizations have hegemonic force, "the namers" (as she calls them) are able to "treat classifications of difference as inherent and natural while debasing those defined as different." Thus, "when public or private actors label any group as different," the extent of their power can be measured in the hegemonic effect that "disguises the power of the namers, who simultaneously assign names and deny their relationships with and power over the named." The resulting "consensus rooted in specific perspectives, and that 'prevailing views' or 'consensus approaches' express the perspectives of those in positions to enforce their points of view in the structure and governance of society." (citing Lukes, supra note 15).

179 See supra text accompanying note 177.
180 Minow, supra note 50, at 238 n.35 (discussing Lukes, supra note 15, at 22-25).
181 Id. at 111.
182 Id.
183 Id. (emphasis added).
184 Id. (emphasis added).
approaches” or “prevailing views” turn out merely to “express the perspectives of those in positions to enforce their points of view in the structure and governance of society.”

The moral and political bite of Minow’s approach depends on this subjectivization of those who wield power. Through the consistent use of the active voice, Minow presents her powerful “winners” as autonomous actors knowingly engaging in specific acts of naming, labelling, enforcing and debasing. In this syntactical way, she reproduces the traditional agency view of power. As was true of Lukes’s “specifiable agents,” Minow’s powerful social actors are not themselves the products of social forces that shape their preferences and perceptions in any particular way. For Minow, as for Lukes, the processes of social construction seem somehow to apply only to the subordinated.

But where Lukes at least acknowledges that powerful “agents operate within structurally determined limits,” Minow presents us with powerful social actors who don’t seem to be constrained at all. For Minow, culture and its institutions at best play a secondary role in corroborating the originary act of labeling. “Naming another as different seems natural and obvious when other professionals, social practices, and communal attitudes reinforce that view—and yet these sources of confirmation may merely show how widespread and deep are the prejudice and mistaken views about the ‘different’ person.” She never considers whether these “widespread and deep” prejudices might preexist any particular public or private actor. She never explores the possibility that the historical predominance of these mistaken views might have something to do with the perceptions and cognitions of “those who classify.” For Minow, social practices and communal attitudes serve only as confirmation and reinforcement of the name of difference produced by the powerful; the larger social matrices—that is, the historical and institutional practices, the roles and routines of behavior, the habits of mind and the resulting conceptual frameworks—in which the “namers” must themselves have been formed are

185 Id. (emphasis added) (citing Lukes, supra note 15). Note the use of the POWER IS A LOCATION metaphor.
186 Lukes, supra note 15, at 54.
187 Minow, supra note 50, at 111.
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never factored in as a possible basis for, or origin of, those mistaken views.\textsuperscript{188}

To put the point strongly: The logical and conceptual flaw of the social relations approach is that, at base, it isn't very social. Minow simply credits the autonomous power of the namers with the capacity to produce "difference."\textsuperscript{189} But, as Pierre Bourdieu points out, the very perception of difference can only occur to subjects situated and participating in social practices and conditions that make those differences relevant.\textsuperscript{190} Minow fails to see that it is only with and through those social matrices that the powerful can think and act. Accordingly, she does not see that it is the depth and breadth of these cultural prejudices which makes the "attribution" of difference seem plausible to those others who must follow the lead of her powerful "namers." Thus, Minow runs afoul of both the subjectivization objection and the objection from social contingency.

MacKinnon, on the other hand, is meticulous about how she wields the treacherous insight about social construction. While she is therefore able to elude the social contingency trap, her political project ultimately locks her into the subjectivization and reification of "power" characteristic of all three-dimensional views.

The distinctive element in MacKinnon's theory of power is her answer to the question of who wields it: Gender hierarchy is a system of social power "enforced to women's detriment because

\textsuperscript{188} Cf. Michel Foucault, On the Genealogy of Ethics: An Overview of Work in Progress, in Dreyfus & Rabinow, supra note 28, at 229, 250 ("It is not just in the play of symbols that the subject is constituted. It is constituted in real practices—historically analysable practices.") [hereinafter, Foucault, Genealogy of Ethics].

\textsuperscript{189} In this way, Minow's view is, as noted earlier, more akin to that of Nietzsche. See supra notes 49-51 and accompanying text.


But the fact remains that socially known and recognized differences only exist for a subject capable not only of perceiving differences but of recognizing them as significant, ... i.e. only for a subject endowed with the capacity and inclination to make the distinctions that are regarded as significant in the social universe in question.

MacKinnon makes much the same point with respect to putative "differences" between the genders. MacKinnon, supra note 6, at 218-19 (quoted supra note 175).
it serves the interest of the powerful, that is, men." On virtually every other particular, her theoretical approach to power tracks Lukes's three-dimensional view. Thus, for MacKinnon, power functions through control over the mechanisms of social construction and the hegemony that those mechanisms make possible: "Power in society includes both legitimate force and the power to determine decisive socialization processes and therefore the power to produce reality." On her view, therefore, male power monopolizes both force and the ability to produce "truth":

Combining, like any form of power, legitimation with force, male power extends beneath the representation of reality to its construction: it makes women (as it were) and so verifies (makes true) who women "are" in its view, simultaneously confirming its way of being and its vision of truth, as it creates the social reality that supports both.

So, too, MacKinnon observes that male power decisively determines every aspect of the social agenda from sports to health care, work, scholarship, citizenship, history, religion and sex.

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191 MacKinnon, supra note 6, at 40.
192 Although she does not expressly rely on Lukes, it is clear that MacKinnon is familiar with his work. She discusses it in a long endnote that explains why, under any theory, the system of gender relations must be understood as a system of power and, therefore, a system of political relations. Id. at 291-92 n.22. But in referring to Lukes, MacKinnon actually cites to his description of the two-dimensional view. Id. (citing Lukes, supra note 15, at 18). Strikingly, she pays scant attention to Lukes's three-dimensional view with its uncanny similarity to her own theoretical approach. (Notably, Lukes's name does not appear in the index.) It is, of course, impossible to say how much of this apparent correspondence derives from a common grounding in Marxist theory. See, e.g., id. at 48-49 ("This account of the man/woman division is much like the marxian account of the class division: a social structural response by human beings to a material condition that is essential for survival, maintenance of which is in the interests of those who have the dominant role and against the interests of those who are dominated."). MacKinnon's contribution—and her distinctive twist on Marxist theory—is her contention that "[m]en are women's material conditions." Id. at 137-38.
193 Id. at 122; see also id. at 205 ("Pornography can invent women because it has the power to make its vision into reality, which then passes, objectively, for truth.").
194 Id. at 230.
195 See id. at 224.

Men's physiology defines most sports, their health needs largely define insurance coverage, their socially designed biographies defined workplace expectations and
Consistent with the three-dimensional view, MacKinnon maintains that women (i.e., their interests, their identifying characteristics) are themselves constructed by "power":

Socially, femaleness means femininity, which means attractiveness to men . . . . Gender socialization is the process through which women come to identify themselves as . . . sexual beings . . . that exist for men, specifically for male sexual use. It is that process through which women internalize (make their own) a male image of their sexuality as their identity as women, and thus make it real in the world.\textsuperscript{196}

Famously, MacKinnon's totalizing conception of power is uncompromising in its insistence on women's complete construction by male power.\textsuperscript{197} Just as Lukes's subordinated are so thoroughly acculturated that they cannot even imagine alternatives to the existing order,\textsuperscript{198} MacKinnon maintains that women are so utterly dominated that their "situation offers no outside to stand on or gaze at, no inside to escape to, too much urgency to wait, no place else to go, and nothing to use but the twisted tools that have been shoved down our throats."\textsuperscript{199} And, consistent with the three-dimensional view, MacKinnon deploys the point to rebut efforts to excuse the status quo by reference

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\textsuperscript{196} Id. at 110-11. Criticizing Carol Gilligan's thesis in particular, and liberal idealist feminist works in general, MacKinnon argues:

To the extent materialism means anything at all, it means that what women have been and thought is what they have been permitted to be and think . . . . Perhaps women value care because men have valued women according to the care they give . . . . Perhaps women think in relational terms because women's social existence is defined in relation to men. The liberal idealism of [Mary Daly's, Susan Griffin's and Carol Gilligan's] work[ ] is revealed in the ways they do not take social determination and the realities of power seriously enough.

\textsuperscript{197} See, e.g., id. at 149 ("what is surprising is that not all women eroticize dominance, not all love pornography, and many resent rape"); id. at 314 n.63 ("One might ask at this point, not why some women embrace explicit sado-masochism, but why any women do not.").

\textsuperscript{198} See supra text accompanying note 132.

\textsuperscript{199} MacKinnon, supra note 6, at 117.
to women's collaboration. "Women's complicity in their condition does not contradict its fundamental unacceptability if women have little choice but to become persons who then freely choose women's roles."\textsuperscript{200}

In one important respect, however, MacKinnon improves on the standard version of the three-dimensional view. She is uncommonly sensitive to the implications of the insight about social construction. Since "sexuality is its social meaning,"\textsuperscript{201} it follows that maleness, too, must be socially constructed: "Masculinity precedes male as femininity precedes female, and male sexual desire defines both."\textsuperscript{202} At first blush, at least, MacKinnon seems uniquely faithful to the underlying premise of the three-dimensional view. She breaks with traditional individualist assumptions and focuses, as Lukes advises, on "the socially structured and culturally patterned behaviour of groups."\textsuperscript{203}

Thus, on her view, the structure and pattern that determine both men and women is a system of gender power whose "defining theme . . . is the male pursuit of control over women's sexuality—men not as individuals or as biological beings, but as a gender group characterized by maleness as socially constructed, of which this pursuit is definitive."\textsuperscript{204} For MacKinnon, moreover, the hegemony of this system is total because its constant reproduction by men and women becomes thoroughly naturalized in the social conditions of the culture.\textsuperscript{205}

Thus the perspective from the male standpoint is not always each man's opinion or even some aggregation or sum of men's opinions, although most men adhere to it, nonconsciously and without considering it a point of view, as much because it makes sense of their experience (the male experience) as because it is in their interest. It is rational for them.\textsuperscript{206}

\textsuperscript{200} Id. at 124.
\textsuperscript{201} Id. at 151.
\textsuperscript{202} Id. at 131.
\textsuperscript{203} Lukes, supra note 15, at 22.
\textsuperscript{204} MacKinnon, supra note 6, at 112.
\textsuperscript{205} See, e.g., id. at 94 ("Each woman, in her own particular, even chosen, way reproduces in her most private relations a structure of dominance and submission which characterizes the entire public order.").
\textsuperscript{206} Id. at 114.
The end-product is a social world in which inequality is institutionalized and, therefore, "in which, epistemologically speaking, most bigots will be sincere." As a result, sex discrimination law "misdiagnoses the stake the dominant have in maintaining the situation, because neither it nor they know they are dominant."

Although MacKinnon explicitly recognizes the social contingency of the system of gender power that she so trenchantly critiques, she does not follow through on the implications of her own theoretical approach. For it should follow from her analysis that men, too, are subjected to the regulation and control of this system of gender relations (although, obviously, in very different ways). MacKinnon, however, balks at this conclusion. Thus, for example, she gives short shrift to "the phenomena of 'compulsive masculinity.'" MacKinnon cannot accept the implications of her own analysis because it would undermine her critique and disable her political project.

We can see MacKinnon struggling with the tension between her theory and her politics when she writes:

> Once the veil is lifted, once relations between the sexes are seen as power relations, it becomes impossible to see as simply unintended, well-intentioned, or innocent the actions through which women are told every day what is expected and when they have crossed some line. From the male point of view, no injury may be meant. But women develop an incisive eye for routines, stratagems, denials, and traps that operate to keep women in place and to obscure the recognition that it is a place at all. Although these actions may in some real way be unintentional, they are taken, in some other real way, as meant.

Notwithstanding MacKinnon's artful finesse in the final sentence, there is a manifest difference between "may" and "are." MacKinnon acknowledges the unintentional quality of the actions of

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207 Id. at 244 ("Sex inequality is thus a social and political institution.").
208 Id. at 234.
209 Id. at 231.
210 Id. at 281 n.15.
211 Id. at 94 (footnote omitted).
the socially constructed male, but only tentatively. Thus, she observes that, “[f]rom the male point of view, no injury may be meant” and, therefore, “these actions may in some real way be unintentional.” But, with their more “incisive eye,” women know that these actions are nevertheless to be understood as intended, that is, “they are taken, in some other real way, as meant.”

MacKinnon’s theory of power is, in Minow’s classification, a particularized view in which specific winners oppress particular losers. Thus, although MacKinnon seems to get it right in her theoretical description, she is nevertheless forced by her political position to yield to the now familiar temptation to subjectivize and reify “male power.” It is only in this way that her theory of power can fix political responsibility for the system of gender relations she so eloquently censures.

This subjectivization comes out most clearly when MacKinnon is criticizing some other theory for not adequately accounting for the reality of male power. For example, she complains that “[p]ost-Lacan, actually post-Foucault, it has become customary to affirm that sexuality is socially constructed. Seldom specified is what, socially, it is constructed out of or, far less who does the constructing . . . .” She criticizes Foucault because his theory leads to the conclusion that “[p]ower is everywhere therefore nowhere, diffuse rather than pervasively hegemonic.” The obvious problem is that, if power is diffuse, responsibility cannot be fixed.

Similarly, in a revealing footnote, MacKinnon rejects attempts to revive Friedrich Engels’s account of working-class sexism as a product of capitalism because it would also follow that

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212 See supra text accompanying notes 179-80. This is clear in MacKinnon’s frequent criticism of others for lacking the appropriate theory of power. See, e.g., MacKinnon, supra note 6, at 290 n.18 (“Roberto Unger, . . . for example, does not advance any substantive theory of power (class or gender) . . . . It is entirely unclear, as a result, just what is at stake in social hierarchy; that is, how and in what way some are concretely benefited, hence enforce and hold onto their position . . . .”); id. at 270 n.18 (“The work of Berger and Luckmann is very helpful, although it does not go far enough and does not understand power . . . .”).

213 Id. at 131 (emphasis added) (footnote omitted).

214 Id.
ruling-class men, who also learn sex roles, must both be oppressed by them and receive the benefits of them. This seems, in a feminist view, to be an attempt to define favored male groups out of the problem, evading the more straightforward and elegant feminist explanation: male power over women is a distinctive form of power that interrelates with the class structure but is neither derivative from nor a side effect of it. In this view, men oppress women to the extent that they can because it is in their interest and to their advantage to do so.²¹⁵

In this passage, MacKinnon candidly acknowledges that the reflexive application of the insight about social construction would blunt the force of feminist critique. As a consequence, she all but abandons her claim about the social construction of gender in favor of an account that sounds remarkably like the liberal conception of the individual as a self-interested, rational actor.²¹⁶

Indeed, MacKinnon’s flight from her own insight about the social contingency of the system of gender power is virtually complete. In three distinct, but deeply problematic moves, she substantially shifts her theoretical stance from a view of gender power as a social construction to a quite traditional agency view of power. First, she essentializes men by reducing them to their socially constructed need for power/sex: “[M]ale power takes the social form of what men as a gender want sexually, which centers on power itself, as socially defined.”²¹⁷ Second, she subjectivizes men by focusing on their ability to choose to act in a manner that maximizes their self-interest thus defined. Accordingly, she asserts that “[i]t is not only that men treat women badly, although often they do, but that it is their choice whether or not to do so,”²¹⁸ and that “men oppress women to the extent that they can because it is in their interest and to

²¹⁵ Id. at 260 n.65 (emphasis added).
²¹⁶ On her claim that sexism is “rational” for men, see also supra text accompanying note 206.
²¹⁷ MacKinnon, supra note 6, at 131.
²¹⁸ Id. at 94 (emphasis added). Significantly, MacKinnon’s political critique cannot recognize for men any of what her theoretical approach tells her must be true for women. Where “women have little choice but to become persons who then freely choose women’s roles,” id. at 124, men do not appear to be constrained or constructed to choose in any particular way. They just simply choose. That alone is enough.
their advantage to do so." Finally, she reifies male power, declaring:
  — "Power to create the world from one's point of view, particularly from the point of view of one's pleasure, is power in its male form."
  — "[F]eminism sees the male point of view as fundamental to the male power to create the world in its own image, the image of its desires, not just as its delusory end product."
  — "[M]ale power extends beneath the representation of reality to its construction . . . ."
In these final quotes, MacKinnon has completed the transition from her original, sophisticated claim that gender is through-and-through a social construction to a more conventional, almost caricatured representation in which male power is the omnipotent author of all social construction.

The upshot, of course, is the traditional view in which power is a property of an originary agency—here, "male power"—that operates as an external force on a passive victim. In fact, all that separates her from the traditional agency view is the characteristic three-dimensional claim that male power is "pervasively hegemonic." Thus, MacKinnon's explanation of what makes a theory "feminist" is presented in terms of self-directing agency and all-encompassing force. "A theory of sexuality becomes feminist," she explains, "to the extent it treats sexuality as a social construct of male power: defined by men, forced on women, and constitutive of the meaning of gender."

How can this be? How can MacKinnon square this assertion of exclusive male agency with her own insight that the system of gender power is reproduced through the actions of men and women? How can she begin with the conviction that sexuality is socially constructed—that "[m]asculinity precedes male as

219 Id. at 260 n.65 (emphasis added).
220 Id. at 121 (footnote omitted).
221 Id. at 117-18.
222 Id. at 122.
223 Id. at 131.
224 Id. at 128.
225 See supra note 205 and accompanying text.
femininity precedes female”226—and end with the claim that men “define” that social construction and “force” it on women? How can she start with the social contingency of maleness and finish with the conclusion that the system of male power is a matter of “choice” on the basis of calculated self-interest?

MacKinnon mediates these otherwise insuperable contradictions by employing a subtle, but undefended distinction between masculinity and maleness, on one hand, and men and male power, on the other. This enables her simultaneously to acknowledge that masculinity is socially constructed and that men are exercising originary, self-interested control, without considering whether these claims cohere. They do not. On her own account, men as a gender group are “characterized by maleness as socially constructed.”227 What they “control,” therefore, is simply the system of gender power that men and women have both been programmed to reproduce. What they “control,” therefore, is simply the system of gender power that controls them, makes them who they are and, thus, reproduces itself.

The distinction seems to work nevertheless for two nested reasons. At the first level, the distinction works as a rhetorical matter because it separates men as grammatical and ontological subjects (“male power”) from men as the transitive objects of social construction (“masculinity” and “maleness”). By consistently maintaining this usage, MacKinnon is able to deflect attention away from the conceptual collapse that occurs when the linkage between the two is made.

At the second level, the distinction works because it is consistent with the unreflective understanding of and the conventional metaphoric schema for power that we have previously examined. Recall that this model employs the LOCATION version of the EVENT STRUCTURE metaphor, in which ACTIONS ARE MOTIONS ALONG PATHS, STATES ARE LOCATION-CONTAINERS and PURPOSES ARE DESTINATIONS.228 Masculinity

226 MacKinnon, supra note 6, at 131. See supra text accompanying notes 201-04.
227 MacKinnon, supra note 6, at 112.
228 See supra text accompanying notes 101-04. Thus, for example, MacKinnon observes that the defining quality of the system of gender power “is the male pursuit of control over women’s sexuality.” MacKinnon, supra note 6, at 112 (emphasis added).
is, thus, a social construction (STATES ARE LOCATION-CONTAINERS). Consistent with the logic of the CONTAINER metaphor, “maleness” includes each and every individual male who would not be “male” but for the endurance of this particular, contingent, social conception. Male power, too, is a container (POWER IS A LOCATION-CONTAINER). Moreover, it is the same container because on her account “male power takes the social form” of the sexualization of women’s subordination. But this, of course, is none other than the social construction called masculinity.

We have seen previously how the conventional conceptual schema in which POWER IS A CONTAINER corresponds with the reification of “power” and the reinscription of the agency of particular social actors. Just as Lukes’s “specifiable agents” retained “a certain relative autonomy and could have acted differently” notwithstanding their “structurally determined limits,” MacKinnon’s men retain the capacity to choose notwithstanding the fact that their masculine behavior is socially constituted. So, too, we have already seen how the POWER IS A LOCATION-CONTAINER metaphor shapes the inference that all those within the relevant social institution are understood as “already (relatively) powerful.” In MacKinnon’s case, this leads to the inference that all men have power to oppress women at their whim because all those within the social institution referred to as male power are, at the least, already relatively powerful and have the wherewithal to exert compulsion upon others.

In this way, MacKinnon can acknowledge the reflexivity of the insight about social construction and still claim, without any apparent contradiction, that male power “create[s] the world in its own image, the image of its desires.” Although she

229 See MacKinnon, supra note 6, at 131 (emphasis added) (“[M]ale power takes the social form of what men as a gender want sexually, which centers on power itself, as socially defined.”).
230 Lukes, supra note 15, at 54.
231 See supra text accompanying notes 101-04 (discussing Elshtain, supra note 26, at 136).
232 See MacKinnon, supra note 6, at 5 (referring to “the power of all men over all women”).
233 Id. at 118.
The "Power" Thing appreciates that maleness is socially constructed, she offers an account in which what has been constructed is a male agency understood in the most conventional terms of power and self-directing subjectivity.\textsuperscript{234} With this attribution of agency comes responsibility, notwithstanding the fact that on her account this agency ("male power") should be seen as one effect of the system of gender relations rather than its root cause.\textsuperscript{235}

As with all three-dimensional views, this subjectivization of "power" is an indispensable element of its preferred political project. MacKinnon's is an incessant, unrelenting desire to know "who or what fundamentally moves and shapes the realities and instrumentalities of domination" so that she will know "where to go to do something about it."\textsuperscript{236} But, in embracing the conventional metaphors that constitute our intuitive understanding of power, MacKinnon relinquishes all her hard-won theoretical insight and reinscribes in her radical feminism the most traditional agency view of power. MacKinnon wants to know whom to blame for the subordination of women, and for that she needs responsible agents. Otherwise, she won't know where one can go to insist that things be changed.

V. POWER, IN ALL FOUR DIMENSIONS

A. Preserving and Transcending

Foucault's work has been characterized as a decisive break with previous views, particularly those (such as Lukes's approach) that depend upon conceptions of ideology and other forms of "sovereign" power. The sense of deliberate rupture is captured in Foucault's famous dictum that "[w]e need to cut off

\textsuperscript{234} See, e.g., id. at 114 ("The feminist theory of knowledge is inextricable from the feminist critique of power because the male point of view forces itself upon the world as its way of apprehending it.") (emphasis added). At one point, MacKinnon even seems to abandon entirely the insight about social construction in favor of a philosophically idealist position attesting to "[m]en's power to force the world to be any way their mind can invent." Id. at 122 (emphasis added).

\textsuperscript{235} Cf. Jana Sawicki, Disciplining Foucault: Feminism, Power, and the Body 38 (1991) ("[T]he process through which male desire has been constructed remains unanalyzed. We are left to surmise that an unalienated and monolithic male desire is actually reflected in the current system.").

\textsuperscript{236} MacKinnon, supra note 6, at 159.
the King's head: in political theory that has still to be done.”237 Consistent with this admonition, Foucault abjured what Minow would call a “particularized” view in which certain “winners” oppress particular losers.238 He specifically disclaimed any intention of constructing the kind of “theory” of power, what MacKinnon calls a “substantive theory of power,”239 that explains how it emerged, who “has” it, or how they “got” it.240 Rather, Foucault undertook to develop “a grid of analysis which makes possible an analytic of relations of power.”241

I shall be arguing that Foucault’s theoretical understanding of power is both less and more of a break with the past than commonly supposed. On one hand, Foucault’s systemic approach to power is the logical extension of those that preceded it. I argue that Foucault is perhaps best understood as having further radicalized the insight about social construction that lies at the heart of Lukes’s three-dimensional view. On the other hand, Foucault’s methodological statements reveal a sustained and systematic effort to displace the metaphorical schema that constitutes our unreflective understanding of “power.” I argue, moreover, that these ostensibly contradictory characterizations offer the most cogent account of what many find so obscure in Foucault’s sometimes difficult theorizing about power.242 Indeed, I argue that these two seemingly

237 Michel Foucault, Truth and Power, in Power/Knowledge, supra note 60, at 109, 121.
238 Minow, supra note 50, at 238 n.35. Foucault, however, did not ignore or deny that some benefit from particular power relations while others suffer. See infra text accompanying notes 326-32.
239 See MacKinnon, supra note 6, at 290 n.18.
240 Michel Foucault, The Confession of the Flesh, in Power/Knowledge, supra note 60, at 194, 199 (“If one tries to erect a theory of power one will always be obliged to view it as emerging at a given place and time and hence to deduce it, to reconstruct its genesis.”) [hereinafter Foucault, Confession of the Flesh]; see also 1 Michel Foucault, The History of Sexuality 82 (Robert Hurley trans., 1978) [hereinafter Foucault, History of Sexuality].
241 Foucault, Confession of the Flesh, supra note 240, at 199; see also Foucault, History of Sexuality, supra note 240, at 82.
242 See, e.g., Alan Hunt, Explorations in Law and Society: Toward a Constitutive
disparate conceptual moves are at the heart of his singular reconception of the nature of power.

Foucault broke with traditional views because he understood all too well the disabling grip of the conventional representation of power. He referred to this conventional representation as the "juridico-discursive" model because it assumes that "power acts by laying down the rule: power's hold . . . is maintained through language, or rather through the act of discourse that creates, from the very fact that it is articulated, a rule of law. It speaks, and that is the rule." On this model, power is schematized in terms of a legislative authority, a negative, inhibitory or repressive edict, and an obedient subject.

Foucault identified four problems with this model. The first he called "the paradox of its effectiveness." On this model, power is "poor in resources" and "incapable of invention." Because it "only has the force of the negative on its side," it is in theory able only to enforce limits on action rather than to produce effective behavior under variable and contingent circumstances. The second problem is what we referred to...
earlier as the problem of compliance. If power were never anything but repressive, if it never did anything but to say no, do you really think one would be brought to obey it?249

A productive theory of power such as the three-dimensional view resolves these problems by recognizing power at work in the formation of the perceptions, cognitions and preferences of the subordinated.250 But this solution typically comes only at the cost of another difficulty. As Foucault observed, theories of power that depend upon notions of hegemony and ideology presuppose problematically strong notions of both truth and subjectivity.251 This is the difficulty, for example, with Lukes's notion of real interests. On one hand, it requires an autonomous individual subject that is able at least in principle to discern its authentic needs. At the same time, that assumption entangles the three-dimensional view in insuperable contradiction. It commits the three-dimensional view to the idea both that the subordinated are socially constructed by power and that they are capable—again, at least in principle—of escaping that construction to think and act like autonomous subjects who can discern their "real" interests. In short, the three-dimensional view supplants the first two problems with a third that we might call "the authenticity problem."

The fourth and, in some ways, most revealing problem with the juridico-discursive model is its all-or-nothing quality. This problem is the most revealing because it is a direct consequence of the conceptual structure of the model, which is built upon the dualism of an active agency (the legislative authority) and a passive subject (the obedient subordinate). Thus, as we have
seen throughout, the three-dimensional view's totalizing conception of power tends both to subjectivize the powerful as origi-
nary, self-directing agents and to elide the agency of the subordinated. Foucault observed a similar totalizing effect with respect to the contending psychoanalytic accounts of sexuality. Notwithstanding their very different conceptions "of the nature and dynamics of the drives," both "the thematics of repression and the theory of the law as constitutive of desire" employ the exact same model of power.\textsuperscript{252} Consequently, they lead to one of two contradictory but equally totalizing results—"either to the promise of a 'liberation,' if power is seen as having only an external hold on desire, or, if it is constitutive of desire itself, to the affirmation: you are always-already trapped."\textsuperscript{253}

Foucault's alternative conception of power avoids the problems of effectiveness and compliance because, as is widely recognized, it too emphasizes the productive dimension of power.\textsuperscript{254} What sharply differentiates Foucault's approach from the others, however, is that it does not understand productive power as the particular province or tool of dominant groups. Instead, it sees productive power in the processes that construct individuals as individuals in the first place. In a widely cited passage, Foucault advised that we

not . . . ask why certain people want to dominate, what they seek, what is their overall strategy. Let us ask, instead, how things work at the level of on-going subjugation, at the level of those continuous and uninterrupted processes which subject our bodies, govern our gestures, dictate our behaviours etc. In other words, . . . we should try to discover how it is that subjects are gradually, progressively, really and materially constituted through a multiplicity of organisms, forces, energies,

\textsuperscript{252} Foucault, History of Sexuality, supra note 240, at 82-83.

\textsuperscript{253} Id.

\textsuperscript{254} See, e.g., Honneth, supra note 247, at 165 ("For Foucault the idea that the use of particular methods of power is able to bring forward productive effects is, to a certain extent, the key to a historically adequate theory of power."); Charles Taylor, Foucault on Freedom and Truth, in Foucault: A Critical Reader 69, 75-76 (David Couzens Hoy ed., 1986) ("[W]here the old law/power was concerned with prohibitions, . . . the new kind of power is productive. It brings about a new kind of subject and new kinds of desire and behaviour . . . . It is concerned to form us as modern individuals.") (reference omitted).
materials, desires, thoughts etc. We should try to grasp subjection in its material instance as a constitution of subjects.\textsuperscript{255}

This broader understanding of productive power in the antecedent processes of social construction simultaneously builds on and goes beyond Lukes’s three-dimensional view. It builds on Lukes’s view that power is at work in the formation of the perceptions, cognitions and preferences of its subjects. At the same time, it goes beyond Lukes’s view because it understands these processes of social construction as all-pervasive, applicable to all subjects. Which is to say that, once power is recognized in the very formation of the individual subject, it is no longer possible to skirt the fact that the powerful, too, are subjects produced by the operations of power.\textsuperscript{256}

In this sense, Foucault’s view can be seen as the logical extension of its predecessors. The one-dimensional view represents the prototypical scenario of sovereign power understood as the ability of A (the active agent) to compel B (the passive subject) to act in ways that promote A’s interests rather than B’s. The two-dimensional view extends this model by including in its analysis of power the ability of the powerful to insure inaction as, for example, by control over the agenda. Lukes’s three-dimensional view takes this conception of sovereign power one step further and extends it to the processes of social construction that define the perceptions, cognitions and preferences of the subordinated.

Foucault’s approach merely follows through on the logical trajectory of this analysis by recognizing that the insight about social construction applies reflexively and, thus, is equally pertinent to those who exercise power. On this point, we might think of Foucault as Lukes without the internal contradiction. In effect, Foucault advances a “four-dimensional” view that radicalizes the insight about social construction and thereby

\textsuperscript{255} Foucault, Two Lectures, supra note 60, at 97.
\textsuperscript{256} Thus, Foucault explained that power is “a machine in which everyone is caught, those who exercise power just as much as those over whom it is exercised.” Michel Foucault, The Eye of Power, \textit{in} Power/Knowledge, supra note 60, at 146, 156 [hereinafter Foucault, Eye of Power]. Note that, here, Foucault employs the conventional metaphor \textsc{power is a machine}. See also Foucault, Two Lectures, supra note 60, at 98 (“In other words, individuals are the vehicles of power, not its points of application.”).
The “Power” Thing avoids the facile subjectivization of those who wield “power.” Of course, this understanding undermines the model of sovereign power because it subverts the concept of originary, self-directing agency that underlies the very notion of sovereignty. But it has the virtue of preserving the most important insight of the three-dimensional view even as it transcends it. Foucault’s productive view of power is, thus, an Aufhebung of its predecessors.

By embracing the full reflexive force of the insight about social construction, Foucault’s approach also deepens the productive view in another way. Once the concept of originary, self-directing agency is undermined in this manner, it becomes much more difficult to think of “power” as a static property or “thing” possessed by such an agent. As Stanley Fish observes with respect to authorial intention, “it is hard to think of intentions formed in the course of judicial or literary activity as ‘one’s own,’ since any intention one could have will have been stipulated in advance by the understanding of what activities are possible to someone working in the enterprise.” To recognize that the powerful are socially constructed is to recognize that the putative controllers are themselves controlled, that the “creative” author is already authorized by antecedent creators, and that power (to create, to control, etc.) is not so much a capacity owned as a process shared. In short, a reflexive application of the insight about social construction yields a dynamic view of power.

This dynamic conception is, then, the second major dimension of Foucault’s singular reconception of the nature of power. Foucault’s extension of the insight about social construction led him to reject the conventional metaphoric conception of power as a “thing” possessed by identifiable individuals (the “sovereign,” the “powerful,” the “winners,” etc.). This rejection in turn yields an understanding of power not as a static property of self-directing agents, but rather as the emergent quality of a dynamic system of performances. Thus, Foucault explained that power

257 Fish, supra note 70, at 98-99.
258 See, e.g., Honneth, supra note 247, at 155 (“Strategic action among social actors is interpreted as the ongoing process in which the formation and exercise of social power is embedded.”) (discussing Foucault).
is never localized here or there, never in anybody's hands, never appropriated as a commodity or piece of wealth. Power is employed and exercised through a net-like organisation. And not only do individuals circulate between its threads; they are always in the position of simultaneously undergoing and exercising this power.\textsuperscript{259}

In this way, the first conceptual move (extending the existing tradition of theorizing about power) entails the second move (breaking from the conventional metaphorical schema for power). Together, these conceptual moves produce Foucault's distinctive view of power as productive and dynamic. On this view, power is everywhere but not all-determining; it is omnipresent, but not omnipotent. It is everywhere because every individual is socially constructed by the processes of power. But it is not all-determining precisely because it \textit{is} a process. As such, every individual is a necessary participant in its construction and perpetuation. As Foucault put it: "The individual is an effect of power, and at the same time, or precisely to the extent to which it is that effect, it is the element of its articulation."\textsuperscript{260}

There is more to be said about the content and consequences of this dynamic understanding of power, to which we shall return in the next Section. Before doing so, however, it is important to understand how closely the substance of this view is related to the metaphors by which power is conceptualized. As we saw earlier, the failure fully to appreciate the reflexivity of the insight about social construction follows from the conventional metaphoric conception of power as a "thing" such as a CONTAINER-OBJECT. Thus, Lukes's static spatialization of power relations obscures the antecedent processes of social formation that construct certain social agents as powerful.\textsuperscript{261} Foucault, in contrast, spurned the static spatialization of power relations precisely because he understood the way in which the reification of "power" operates to block both the force of the insight about social construction and the concomitant understanding of power as the active dimension of ongoing social relations: "The idea

\textsuperscript{259} Foucault, Two Lectures, supra note 60, at 98.

\textsuperscript{260} Id.

\textsuperscript{261} See supra text accompanying notes 158-65.
that there is either located at—or emanating from—a given point something which is a ‘power’ . . . [is] based on a misguided analysis . . . . In reality power means relations, a more-or-less organised, hierarchical, co-ordinated cluster of relations.”

In elaborating this productive, dynamic conception of power, Foucault found it necessary to uproot almost the entire metaphorical schema that constitutes our unreflective understanding of “power.” This is clear in his methodological discussion in The History of Sexuality, where he laid out his reconception of power in five relatively succinct, if, perhaps, recondite, propositions.

First, Foucault explained that power is not “something that is acquired, seized, or shared, something that one holds on to or allows to slip away; power is exercised . . . in the interplay of nonegalitarian and mobile relations.”

Second, he maintained that power relations are not external to economic, social or intimate relationships. They are, rather, both immanent to and productive of those relationships: “Relations of power . . . are the immediate effects of the divisions, inequalities, and disequilibriums which occur in the latter, and conversely . . . the internal conditions of these differentiations; relations of power are not in superstructural positions, with merely a role of prohibition or accompaniment; they have a directly productive role . . . .”

Third, it follows from this that “there is no binary and all-encompassing opposition between rulers and ruled[, . . . no such duality extending from the top down.” Indeed, “[p]ower comes from below” because, as he elsewhere explained, “power relations are rooted deep in the social nexus, not reconstituted ‘above’ society as a supplementary structure.”

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262 Foucault, Confession of The Flesh, supra note 240, at 198.
263 Foucault, History of Sexuality, supra note 240, at 94.
264 Id. (“Relations of power are not in a position of exteriority with respect to other types of relationships (economic processes, knowledge relationships, sexual relations), but are immanent in the latter . . . .”).
265 Id.
266 Id.
267 Id.
268 Foucault, Subject and Power, supra note 28, at 222.
Fourth, Foucault maintained that power is intentional but not subjective. That is, power is the concatenation of myriad tactics and confrontations pursued for discernable aims that, nevertheless, pervade society without emanating from an identifiable source: "[I]t is often the case that no one is there to have invented them, and few who can be said to have formulated them...."

Fifth, and finally, he insisted that power always entails resistance because resistance is internal to power. As he elsewhere explained:

there are no relations of power without resistances; the latter are all the more real and effective because they are formed right at the point where relations of power are exercised; resistance to power does not have to come from elsewhere to be real, nor is it inexorably frustrated through being the compatriot of power. It exists all the more by being in the same place as power....

Many find these five propositions Delphic and obscure, if not downright impenetrable. Little wonder. In these five propositions, Foucault renounced the conventional conceptual schema that constitutes our unreflective understanding of power. He insisted that power is not an object (i.e., power is not "something that is acquired, seized, or shared, something that one holds on to or allows to slip away"); that power is not a location (i.e., "The idea that there is either located at—or emanating from—a given point something which is a ‘power’ [is] based on a misguided analysis"); and that power/control is not up (i.e., "relations of power are not in superstructural positions," but rather that "[p]ower comes from below" in the "moving substrate of force relations").

In rejecting these conventional metaphoric understandings, moreover, Foucault’s analytic effectively eviscerates the conventional equation of “power” and “agency.” For once the concept of power is de-reified in this way—power being neither an OBJECT nor a CONTAINER—it can no longer be conceived as a substance like a resource that can be accuinulated, stored and

\[269\] Foucault, History of Sexuality, supra note 240, at 95.
\[270\] Id. at 96 (“Resistances . . . are inscribed in the latter as an irreducible opposite.”).
\[271\] Foucault, Power and Strategies, supra note 150, at 142.
\[272\] Foucault, History of Sexuality, supra note 240, at 93-94.
then invoked at will in order to compel or inhibit the actions of others. Thus, as we saw above, Foucault cautioned that power "is never localised here or there, never in anybody's hands, never appropriated as a commodity or piece of wealth."273

The only part of the conventional conceptual schema that does survive Foucault's analytic is the POWER IS A FORCE metaphor.274 But even it does not survive untouched, for it is no longer the conventional version in which power is conceived as an external force operating on a passive victim. Rather, Foucault transformed the POWER IS A FORCE metaphor in two novel ways that correlate with his distinctive view of power as dynamic and productive. In the first, power is understood as the push and pull internal to social relationships. Thus, he suggested that "power must be understood in the first instance as the multiplicity of force relations immanent in the sphere in which they operate and . . . as the process which, through ceaseless struggles and confrontations, transforms, strengthens, or reverses them."275 In the second, power is conceived as a life-giving force that is as constitutive of the subject as the blood that pumps in one's veins. Thus, he explained that "in thinking of the mechanisms of power, I am thinking . . . of its capillary form . . . , the point where power reaches into the very grain of individuals, touches their bodies and inserts itself into their actions and attitudes, their discourses, learning processes and everyday lives."276 Here, power is represented as a productive force internal to the person that animates behavior, perception, perspective, and knowledge.

At the same time, the metaphor of power in its "capillary form" works to synthesize the productive and dynamic dimensions of Foucault's view of power. As noted above, Foucault rejected the conventional top-down model of power in

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273 Foucault, Two Lectures, supra note 60, at 98.
274 Thus, he concluded that "[i]t is in this sphere of force relations that we must try to analyze the mechanisms of power." Foucault, History of Sexuality, supra note 240, at 97 (emphasis added).
275 Id. at 92.
276 Michel Foucault, Prison Talk, in Power/Knowledge, supra note 60, at 37, 39 [hereinafter Foucault, Prison Talk]. Foucault here employs a variant of the metaphor POWER IS A RESOURCE. As noted earlier, this metaphor expresses the shared entailments of the metaphors POWER IS A SUBSTANCE and POWER IS A FORCE. See discussion supra text accompanying notes 85-86, 101-04.
which a sovereign rules the social body (i.e., as the "head" of state) in favor of a bottom-up model in which power emanates from the "moving substrate of force relations." He did not, however, discard the conventional metaphor of the "body politic," but rather transposed it so as to bring into focus "the multiple forms of subjugation that have a place and function within the social organism." He recommended that the analysis of power should be "concerned with power at its extremities, in its ultimate destinations, with those points where it becomes capillary, that is, in its more regional and local forms and institutions." In this way, Foucault incorporated the different dimensions of his analysis in a single image: The productive force that flows through the very grain of individuals extends throughout the social body to animate even the most quotidian social relations.

For all his self-conscious effort to displace the conventional metaphoric schema for "power," even Foucault could not entirely escape such conventional metaphors as POWER IS A FORCE and the "body politic." Foucault recognized the metaphorical quality of our conceptual schema for "power" and understood the distortions of thought that arise as a consequence. But that did not leave him free to transcend the conceptual schema and simply choose a new way to talk about things. In an important sense, conceptual metaphors of this sort are not optional because they are constitutive of reason. Instead, Foucault sought to reconstitute our understanding by means of a two-part strategy. First, he labored to make us self-conscious of the metaphorical nature of our assumptions about power. Second, he reworked some of the conventional metaphors, elaborating them in ways that express new and different entailments. In this way, Foucault's remarkable reconception of power managed simultaneously to preserve and transcend not only previous theories of power, but also our conceptually entrenched metaphorical understanding of it.

277 Foucault, History of Sexuality, supra note 240, at 93.
278 Foucault, Two Lectures, supra note 60, at 96 (emphasis added).
279 Id. (emphasis added).
B. The Everywhere of “Power” (on Misreading Foucault)

Foucault’s subtle, intellectually sophisticated view of power often seems to elude the grasp of his critics. Sometimes, this is because the critic seizes on but one portion of his more complex theory. Other times, it is because the critic insists on reading Foucault’s unique reconception of power through the lens of some quite conventional assumptions: Obviously, it will be difficult to appreciate a theory which emphasizes that power is a process if one continues to view power as a “thing” under the control of identifiable agents.

By far, the most important aspect of Foucault’s thought—and the point that defeats several of the most prominent critiques—is his insistence that power can only be understood as the product of a dynamic system. It is precisely because it is a dynamic view that Foucault’s approach is able to negotiate without contradiction a series of conclusions that would otherwise be quite paradoxical: i.e., that power is constitutive but not absolutely controlling, all-pervasive but not total, and intentional but not subjective. And it is precisely because they fail fully to appreciate this point that critics tend to misread Foucault in a way that reinscribes the usual totalizing mistakes—either subjectivizing “power” or eliding agency.

Consider Foucault’s statement that “[w]e should try to grasp subjection in its material instance as a constitution of subjects.” 281 Foucault’s play on the terms subject/subjection (in French, sujet/sujection) is a deliberate double entendre. 282 For Foucault, power is effective “at the level of those continuous and uninterrupted processes which subject our bodies, govern our gestures, dictate our behaviours etc.” 283 At the same time, this productive view of power is never absolutely controlling for Foucault precisely because what it produces are subjects, that is,

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281 Foucault, Two Lectures, supra note 60, at 97.
282 Not only is the pun just as good in English, but it is remarkable that we have no word for the individual as originary subject that isn’t double-edged in just this way. Thus, “agent” and “agency” have the same paradoxical double meaning as “subject.” Even the term “actor” carries with it the double connotation of originary agent and mere performer.
283 Id.
agents capable of acting in particular ways. Thus, although power is still a metaphorical force for Foucault, it is not the force of the imposition, inhibition or constraint but of impetus to action: "[I]t incites, it induces, it seduces, it makes easier or more difficult; in the extreme it constrains or forbids absolutely; it is nevertheless always a way of acting upon an acting subject . . . ." Consequently, power can be "exercised only over . . . subjects who are faced with a field of possibilities in which several ways of behaving, several reactions and diverse comportments may be realized." 

Take the example of unreconstructed, gender-stereotypical roles such as wife/mother and father/provider. However much one thinks that the traditional role of mother is a construct of the system of gender power, no one supposes that it is merely a matter of passive compliance with the dictates of patriarchal authority. As anyone who has cared for a two-year-old knows, to be a mother requires empathy, dedication, resourcefulness, patience, and ingenuity. Because roles like wife/mother and father/provider require a pattern of conduct under shifting and often challenging circumstances, their existence depends on imaginative enactments by actual subjects.

This is the profound flaw in Robin West's admonition that feminists not accept Foucault's theoretical approach to power. West argues that Foucault's notion of productive power is inapposite to the system of gender power because, in her words, "patriarchal power is experienced by modern women as intensely nondiscursive, as utterly unimaginative, as profoundly negating, and, in short, as frightfully and pervasively violent." On her own account, however, mothers' relationships with their dependent children are anything but unimaginative and self-negating. For West, of course, this is just a function of the "simple, utterly unremarkable physical facts of life." But many would recognize this capacity to care for and nurture children as a complex, sometimes fragile social production.

284 Foucault, Subject and Power, supra note 28, at 220.
285 Id. at 221.
286 West, supra note 22, at 61 (footnote omitted).
287 Id. at 80-81.
288 Id. at 80.
289 See, e.g., Nancy Chodorow, The Reproduction of Mothering: Psychoanalysis and
Indeed, West's suggestion that this nurturing behavior has a simple biological basis is undercut by the tragic reality of abuse, neglect, and exploitation of children by parents of both genders.290

The importance of productive power in the construction of the agency of the subordinated is yet more clear when one considers such traditionally "feminine" behaviors as lavish concern for one's appearance and sexual allure toward men. Presumably, West would not consider this an innate, biological characteristic of women. Indeed, in support of the argument that "patriarchy shatters our will to create," West quotes Tillie Olsen's observation that "[L]ittle has been written on the harms of instilling constant concern with appearance; the need to please, to support; the training in acceptance, deferring."291 But this remark makes clear that patriarchal power is, in fact, quite productive: It instills compulsive concern with one's attractiveness; it inculcates a need to please; it instructs in the habits of deference. One might even say that the whole point of this aspect of gender power is to produce particular kinds of subjects capable of acting creatively and vivaciously in exciting, pleasing, and feeding the egos of men. From the Gothic romance to the contemporary "bodice-buster," moreover, this social production of women as sexual subjects has been at least as much a matter of discourse as of violence.292

the Sociology of Gender 218 (1978); see also Winter, Contingency and Community, supra note 71, at 977-80, 987-88 (examining the processes by which parental roles are socially constructed and internalized by individuals such that they become constitutive of one's sense of identity).

290 Cf. Alice Miller, Thou Shalt Not Be Aware: Society's Betrayal of the Child 161 (H. & H. Hannum trans., 1984) ("One of the simplest and completely unnoticed forms of perpetuation of [abuse] is abuse of one's children for one's own needs, which are all the more urgent and uncontrollable the more deeply repressed the original trauma.").

291 West, supra note 22, at 92-93 (quoting Tillie Olsen, Silences 28 (1978)).

292 As Sandra Lee Bartky points out, even such negative behaviors as the emotional or sexual "preference" for domination are, at least in part, discursively constructed: The feminine taste for fantasies of victimization is assumed on virtually every page of the large pulp literature produced specifically for women. Confession magazines, Harlequin romances, and that genre of historical romance known in the publishing trade as the "bodice-ripper" have sales now numbering in the billions, and they can be bought in most drugstores and supermarkets across the land. The heroes of these tales turn out to be nice guys in the end, but only in the end; before that they dominate and humiliate the heroines in small
This is not to deny the validity of West’s point that violence plays an important role in the perpetuation of male power. To the contrary, as West points out, even men who would never employ violence against women nevertheless benefit from the repercussions of women’s experience of violence or the threat of violence at the hands of other men. It is to say only that this reduction of power to violence is not tenable. If West were right and violence were the sole (or even predominant) means of maintaining male power, patriarchy would long ago have capitulated to the paradox of its effectiveness. With nothing but the force of the negative to work with, it would have produced nothing but the kind of unimaginative, unstimulating, self-abnegating partners described by West.

Foucault, in contrast, insisted on the importance of distinguishing between relations of violence and relations of power:

A relationship of violence acts upon a body or upon things; it forces, it bends, it breaks on the wheel, it destroys, or it closes the door on all possibilities. Its opposite pole can only be passivity, and if it comes up against any resistance it has no other option but to try to minimize it. On the other hand a power relationship can only be articulated on the basis of two elements which are each indispensable if it is really to be a power relationship: that “the other” (the one over whom power is exercised) be thoroughly recognized and maintained to the very end as a person who acts . . .

On Foucault’s view, power is a process that is necessarily participatory because it depends on the actions and reactions of disparate and—it bears repeating—unequal actors. Power cannot annihilate agency because it necessarily depends on it. Thus, Foucault defined “the exercise of power as a way in which certain actions may structure the field of other possible actions.”

“Gestapo-like” ways.


294 Foucault, Subject and Power, supra note 28, at 220.

295 Id. at 222.
This understanding of power as a way of acting upon an acting subject is what underlies Foucault's observation that "[t]he individual which power has constituted is at the same time its vehicle." Only subjects can act on other subjects; yet, in each and every case, the subject is herself an effect of prior actions. To return to the example of gender-stereotypical roles, neither the woman who enacts the traditional wife/mother role nor the husband who expects it is the author or creator of that role. To the contrary, they have learned their respective roles through interactions with their own parents and others in a social context in which those roles were already endowed with very particular social meanings. At the same time, however, there is no such "thing" as a wife/mother or father/provider separate from the people who enact those roles. When a woman performs the traditional wife/mother role, she enacts the system of gender power and becomes a vehicle for the realization of all its consequences. Thus, to paraphrase Foucault, every actual wife/mother is an effect of the system of gender power, and at the same time, or precisely to the extent to which she is that effect, she is also the element of its articulation.

But this dynamic view of power also means that, as a practical matter, power can never be total. As Foucault explained, the "strictly relational character of power relationships" presupposes that there must always be a companion, accomplice, cohort, or confederate to "play the role of adversary, target, support, or handle." Thus, even the enactment of the wife/mother and father/provider roles in their most unreconstructed, gender-stereotypical form will inevitably entail resistance. This very traditional configuration of male power can be realized only in the performance by the subordinated partner of the required incidents of her role. This means that, as with any form of social power, its success is contingent on its faithful reenactment. Yet, it always remains open to the subordinated partner to couch her performance anywhere along the broad spectrum that

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296 Foucault, Two Lectures, supra note 60, at 98. In the paragraphs that follow, I am reproducing and condensing an argument that I elaborated initially in Winter, Contingency and Community, supra note 71, and which also appears in Winter, For What It's Worth, supra note 10, at 813-14.

297 See supra quoted text accompanying note 260.

298 Foucault, History of Sexuality, supra note 240, at 95.
stretches from deferential compliance through shamming, grumbling, sulking, footdragging, “working to rule,” limit-testing, and mocking all the way to outright defiance. Because the role must be acted out, it always provides the occasion for resistance.

The consequences of such resistance, moreover, are never foreordained in any simple or straightforward way. The disruption of expected routines—dinner not on the table, the children not bathed—can be either the occasion for discipline or the successful expression of defiance. Which it will be in any given case will depend on a myriad of contingent factors, including inequalities in wealth, social options, psychological tenacity, or degree of sentimental attachment. Noncompliance with the expectations of her role may provoke a disciplinary response such as anger, scorn, or physical abuse. Or, depending on context, it may succeed in exposing the inequity of the arrangement and underscoring the impotence of the ostensibly dominant partner. In each and every case, however, the construction of “power” will be something in which both partners will have participated. How that construction “comes out” will depend upon the larger social circumstances in which the drama unfolds as well as the more intimate social and psychological resources that each partner brings to the table.

In principle, then, power is always open to challenge and renegotiation. Because the role must be personified in each and every case, each enactment is also a potential reconstruction. Thus, as Foucault explained, power is omnipresent “not because it has the privilege of consolidating everything under its invincible unity, but because it is produced from one moment to the next, at every point, or rather in every relation from one point to another.” In the very necessity of its continued performance lies the possibility of power’s disruption.

Finally, this dynamic understanding also explains why power is intentional but not subjective. We have already seen how recognition of the social construction of the subject undermines the notion of originary subjectivity. Subjects form intentions;

299 See generally Scott, supra note 141, at 184-201 (discussing developmental processes of domination and resistance by subordinate groups).

300 Foucault, History of Sexuality, supra note 240, at 93.
but any intentions developed during the course of an established activity or role are, in an important sense, prescripted by the purposes and possibilities that constitute that particular endeavor as an endeavor. In theory, of course, a subject could be secondary or derivative in this way and still be both self-directing and sovereign with respect to others. But Foucault’s dynamic understanding vitiates even this conceit because the strictly performative and contingent nature of power relations means that power is necessarily a joint production of the reciprocal strategic actions of the relevant players. Thus, the profound implication of his dynamic view of power is that the intention-forming subject does not “own” his or her own power. What we refer to as “power” is really the sum of an ongoing system of performances that include assertions of authority, resistance, and subsequent adjustments.

More importantly, the outcome of such relational struggles will be regulated by a variety of situational factors such as social options, strategic alternatives, potential alliances, and institutional contexts. Consequently, the “tactical productivity” of any calculated stratagem or maneuver will be a function, not of the subject’s intention, capacity, or resolve, but of the entire economy of ongoing strategic interactions. To think of power as the province of the intentional subject is to make the mistake of equating power with its “internal point of view.” In actuality, however, the tactics that work are those that “find[] their base of support and their condition elsewhere.” I will give an example shortly, in response to the aggregation critique that some more traditional theorists have levelled against Foucault. In the meantime, we might say that for Foucault a tactic only matures into a meaningful strategy after it has connected with other power relations and managed to overcome, coopt, incorporate, or circumvent its resistance. Even then,

301 Id. at 102.
302 Cf. id. ("[I]t is a question of orienting ourselves to a conception of power which replaces . . . the privilege of sovereignty with the analysis of a multiple and mobile field of force relations, wherein far-reaching, but never completely stable, effects of domination are produced.").
303 Foucault, Two Lectures, supra note 60, at 97.
304 Foucault, History of Sexuality, supra note 240, at 95.
305 Accordingly, it is not at all clear why Hunt thinks that Foucault “says much less”
the outcome or effect may be quite unlike what was initially intended. Because efficacy and effect are contingent on a variety of contextual factors both internal and external to the power relation, the strategy that emerges may be very different than the calculated tactic that gave it birth.

Several commentators have argued that, having repudiated the subjective dimension of power, Foucault "is left with no means of accounting for the aggregation or globalization of power." Alan Hunt contends that Foucault's claim that local tactics are adapted, transformed, and integrated into global strategies of domination "can only make sense if we reintroduce some privileged agent" such as "the ruling class." In a related vein, Axel Honneth argues that because he initially supposes an uninterrupted string of strategic conflicts, Foucault excludes at the conceptual level any possibility of a mutual overcoming of the struggle in the provisional state of stabilized power. Thus, there inevitably remains for him only the possibility of interpreting the institutionalization of positions of power as a process of the constant use of force. . . . He understands relations of social power as the aggregate states of strategic action obtained through permanent and technically highly perfected uses of force.

than Poulantzas. Hunt, supra note 242, at 279 (referring to Nicos Poulantzas, State, Power, Socialism (1978)). Other than the reference to reified entities like social movements and classes, Hunt's characterization of Poulantzas would seem equally applicable to Foucault: "Strategy only emerges ex post facto through the collision of mutually opposed tactics in which the general line of force is conceived as the complex resultant of the balance of forces involved when the specific tactics . . . clash and compete." Id. (citation omitted).

306 Foucault gives the example of the development of modern psychoanalysis: Whereas to begin with the child's sexuality had been problematized within the relationship established between doctor and parents (in the form of advice, or recommendations to keep the child under observation, or warnings of future dangers), ultimately it was in the relationship of the psychiatrist to the child that the sexuality of adults themselves was called into question.

Foucault, History of Sexuality, supra note 240, at 99.

307 Hunt, supra note 242, at 278.

308 Id. Cf. Foucault, Power and Strategies, supra note 150, at 142 (describing power as "a multiform production of relations of domination which are partially susceptible of integration into overall strategies").

309 Honneth, supra note 247, at 174.
As we shall see in a moment, however, what Hunt and Honneth advance as analytical arguments turn out to be nothing more than assertions of their disagreement.

Although there are important differences between Hunt and Honneth, what underlies both critiques is the assumption of the conventional schema for power—in which A (the active agent) affects B (the passive subject) in ways that serve A's interests—as the elemental unit out of which larger strategies and condensations of power are developed. In other words, both assume the conventional model in which power is schematized in terms of the dualisms of active agency and passive subject, of a legislative subjectivity and an objective order, or, to put it more abstractly, of subjects and objects (including, of course, submissive victims).

This is, perhaps, most clear in Honneth's reasoning. He thinks that Foucault must reduce power to force because, on Honneth's account, subjectivity is the only other alternative. Thus, Honneth claims that "[e]ach social stabilization of a position of power—that is, each establishing of however limited a relation of power—presupposes the interruption of the struggle in the form of a normatively motivated agreement, or of a pragmatically aimed compromise, or of a permanently emplaced use of force."310 Honneth recognizes that, for Foucault, power emerges from an ongoing process, that is, from "an uninterrupted string of strategic conflicts."311 But he cannot see how such a process can yield a stable position of power (POWER IS A LOCATION), let alone how such an ongoing process can be aggregated (POWER IS A RESOURCE) into an institution (POWER IS A CONTAINER). Honneth concludes, therefore, that something must happen to arrest the struggle if there is to be a moment of "power." For Honneth, the only two possibilities are reason or force. The participants can employ reason to reach an accommodation (however temporary) on the basis of either communicative action ("a normatively motivated compromise") or strategic action ("a pragmatically aimed compromise"). Alternatively, one of the partners can resort to force.312 Clearly,

310 Id.
311 Id.
312 See id. ("Whereas the first two ways for the solution of a strategic conflict
Foucault does not believe that power is a matter of conscious agreement and coordination. Honneth concludes, therefore, that social institutions must appear to Foucault "merely as means of a one-sided rule by force."  

Honneth's account, however, bears very little resemblance to Foucault's actual position. Where Foucault carefully distinguished between power and violence, Honneth reads him as conflating the two. Where Foucault explained that "power means relations," Honneth returns to the most conventional reification of power. Where Foucault argued that much modern power operates through discursive practices that produce particular subject-formations, Honneth reads him as claiming that power is maintained only by specialized uses of force. Where Foucault insisted that power is a way of acting on an acting subject, Honneth reduces it to the capacity of a self-directing agent (the subject) to impose force on a passive victim (the object). 

In fact, Honneth consistently misreads Foucault as reducing the individual to the status of an object upon which power acts. Thus, he attributes to Foucault "a blind automatism," "a crude behaviorism," and "a fundamentally mechanistic conception" in which "Foucault is interested not in . . . [t]he human body . . . as a unity of physical and psychical processes, but rather, following an intentionally physicalist program, . . . as a mechanically functioning system of energy." In short, Honneth understands Foucault as interested only in the construction of the modern individual as object. But, as Dreyfus represent cases of a two-sided stabilization of social power, the third solution represents the improbable case of a merely one-sided stabilization of a position of social power.

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313 Id.
314 Michel Foucault, Confession of the Flesh, supra note 240, at 198 (emphasis added).
315 Foucault, History of Sexuality, supra note 240, at 17-35, 58-70; see also Michel Foucault, The Politics of Health in the Eighteenth Century, in Power/Knowledge, supra note 60, at 166, 166-82 (discussing politics of health as developed from fragmentary origins, rather than from vertical imposition) [hereinafter Foucault, Politics of Health].
316 Honneth, supra note 247, at 168, 195; see also id. at 166 (reading Foucault as describing norms of conduct as nothing more than "rigidly reproduced patterns of action.").
and Rabinow explain, this represents only one half of a more complete theoretical investigation in which Foucault undertook to examine the construction of the modern individual as both subject and object. 317

Although it takes a more sophisticated form, essentially the same problem attends Hunt's objections. Hunt reasons that "[t]he limitations of Foucault's treatment of 'strategy' stem from his insistence on the diversity of power relations while, at the same time, he rejects both structural determination and the logic of (objective) interests." 318 In other words, Hunt assumes that Foucault cannot account for the aggregation of tactics into strategies because he has available neither of the usual alternatives. On one hand, Foucault has no active agent who might be responsible for coordinating and consolidating local tactics into global strategies. On the other hand, Foucault denies the explanatory cogency of such familiar objective determinants as material conditions or "real" interests. Hunt thinks that this is a problem because he believes that "[t]o talk of strategy is to imply some explanatory principle for the historical patterns of power relations." 319 Because Foucault offers no such explanation, Hunt concludes that Foucault's concept of strategy is reducible to "results" and that Foucault's claim that power is nonsubjective is reducible to the familiar sociological notion of "unintended effects." 320 In short, explanation for Hunt can only take the form of subjective or objective determinants; otherwise, it can only be a matter of random events.

Hunt's unreflective adoption of the conventional schema for power is also what underwrites his confusion concerning tactics and strategies. Hunt thinks that what Foucault does is "to conflate 'tactics,' the multiple wills and intentions of agents, with the suggestion that the aggregation of these tactics manifests the existence of a 'strategy.'" 321 Moreover, Hunt believes that this aggregation cannot take place without "some privileged agent"

317 Dreyfus & Rabinow, supra note 28, at xxvii (Foucault's studies "show us how our culture attempts to normalize individuals through increasingly rationalized means, by turning them into meaningful subjects and docile objects."); see also id. at 143-83.
318 Hunt, supra note 242, at 278.
319 Id.
320 See Id. at 278-79.
321 Id. at 278.
because he simply cannot make any sense of "the idea of strategy without positing the existence of [a] strategist." \footnote{Id. (referring to this as a "deliberately ambiguous" concept).}

Behind both these statements is the assumption embedded in the conventional schema that causal efficacy— that is, power—is a matter of intentional action by an agent.

Of course, it is just this subjectivist model of power that Foucault so effectively critiqued. Foucault disavowed the idea that power can be understood as the mere aggregation of intentional tactics. "I believe that power is not built up out of 'wills' (individual or collective), nor is it derivable from interests." \footnote{Michel Foucault, The History of Sexuality, in Power/Knowledge, supra note 60, at 183, 188 [hereinafter Foucault, "Short History"]. As he explained: For a long time, the great problem was how it was possible for the will of individuals to be represented in or by the general will. . . . This takes no account of the complexity of the mechanisms at work, their specificity, nor the effects of inter-dependence, complementarity, and sometimes of blockage, which this very diversity produces.}

To the contrary, he understood that the success of localized tactics is dependent not only on the ongoing play of tactical maneuver and resistance within each power-relationship, but also on the larger "strategic envelope that makes them work." \footnote{Foucault, History of Sexuality, supra note 240, at 100. For Foucault, this is a reflexive relationship in which the overall strategy is delineated by the specificity of the localized tactics, and those tactics are enabled by the larger field of strategic interactions. Id.}

This means, as we have seen, that power cannot be subjective because both the causal efficacy of a tactic and its outcome are contingent on factors over which no intentional agent could possibly have control. More importantly, it means that the aggregation problem is a false one. Since the success of a tactic is contingent on the way it links up with an entire field of strategic action, an effective local strategy is, in a critical sense, already integrated into a larger strategic domain of which it is both a constituent and a consequence. As Foucault explained, "every power relation makes a reference, as its effect but also as its condition of possibility, to a political field of which it forms a part." \footnote{Foucault, Short History, supra note 323, at 189 (emphasis added).}
To see this point, consider again the example of a gender-
stereotypical power relation like that of wife/mother and fa-
ther/provider. Suppose it is 1960. The woman is tired one day,
and she refuses to perform her expected routines: Dinner is not
on the table, and the children are not bathed. What happens?
Perhaps she endures a reprimand—or worse—and it never
happens again. Or, maybe, it matures into an act of defiance
that precipitates a confrontation. Whether this boycott will
succeed as resistance or succumb to discipline will depend on the
attributes of the players and the social ambience of the play.

One important determinant will be the relative wealth and
status of the players. Clearly, the woman is in a weaker position
if she is economically dependent on the man. She may not be
able to compete in the job market to support herself because her
parents thought that it made no sense to send a daughter to
college. The only job open to her may be as a secretary for
some male executive who, equally used to being catered to at
home, will expect her to bring his coffee or pick up his laundry.
Perhaps she has professional training and is already working in
some “pink collar” ghetto such as nursing. Once again, she will
be taking orders from mostly male doctors. Typically, she will
be earning less than her husband who, as the family’s primary
breadwinner, is also likely to have a job that places more
onerous demands on his time. In any of these cases, the woman
is apt to be at a serious disadvantage in the conflict precipitated
by her act of defiance. Dominance in the local power relation
will therefore be conditioned by the surrounding social circum-
stances, which is to say, by the net effects of all these other
power relations.

This analysis leads to two separate conclusions. First, there
simply is no “problem” of aggregation for Foucault. As he
explained:

[T]he manifold relationships of force that take shape and come
into play in the machinery of production, in families, limited
groups, and institutions ... form a general line of force that
traverses the local oppositions and links them together ....
Major dominations are the hegemonic effects that are sustained by all these confrontations.\textsuperscript{326}

Hunt dismisses this statement as nothing more than a skillful use of the conventional mechanical metaphor for power to make it appear that intentional tactics can be aggregated without any supervening subjective agency.\textsuperscript{327} But Foucault’s understanding of power as a product of ongoing strategic relations provides a sophisticated alternative explanation of this linkage. Like all dynamic systems, the various elements feed back on one another. Consequently, different power relations need not be directed by an overall logic or organizing principle in order to function together. Rather, heterogeneous relations—in the home, the workplace—affect one another such that, even without a controlling subjectivity, “the rationality of power is characterized by . . . tactics which, becoming connected to one another, attracting and propagating one another, but finding their base of support and their condition elsewhere, end by forming comprehensive systems.”\textsuperscript{328}

Second, because systems of power relations have such ecological properties, a dynamic view does not necessarily yield an understanding of power as endlessly mutable or ephemeral. It is one thing to recognize that power is neither a “thing” nor the static property of particular actors, but rather that it is an

\begin{itemize}
  \item \textsuperscript{326} Foucault, History of Sexuality, supra note 240, at 94.
  \item \textsuperscript{327} Hunt, supra note 242, at 276-77.
  \item \textsuperscript{328} Foucault, History of Sexuality, supra note 240, at 95. Thus, at the outset, Foucault explained that power must be understood in the first instance as the multiplicity of force relations immanent in the sphere in which they operate . . . ; as the process which, through ceaseless struggles and confrontations, transforms, strengthens, or reverses them; as the support which these force relations find in one another, thus forming a chain or a system . . . ; and lastly, as the strategies in which they take effect, whose general design or institutional crystallization is embodied in the state apparatus, in the formulation of the law, in the various social hegemonies.
  \item Id. at 92-93. Hunt remains skeptical as to whether Foucault’s approach can actually provide such an account of the consolidation of power into the more concentrated sites of power such as the state, the military and economic institutions. Hunt, supra note 242, at 276, 278. But this does not present a conceptual problem as long as one understands that Foucault’s genealogical method implies that such institutions must be understood as contingent historical \textit{products} rather than inevitable or intentional \textit{productions}. For one such sketch of the development of the modern nation-state, see Clegg, supra note 17, at 241-72.
\end{itemize}
ongoing interplay of strategic maneuvering between partners. But it is quite another to conclude that power is precarious and to assume, therefore, that things could easily be different. The various situational factors that influence and condition power relations will frequently interlock so as to render power relatively secure. Indeed, the available evidence suggests that, notwithstanding dramatic changes in the consciously-held values concerning gender relations, there is much greater persistence with respect to the underlying practices that constitute our contemporary system of gender power.329

Thus, although power may be everywhere, it does not follow that everyone is equally situated. "Certainly everyone doesn't occupy the same position; certain positions preponderate and permit an effect of supremacy to be produced."330 True, power is vulnerable to disruption because it "is produced from one moment to the next."331 But this does not mean that social transformation is in any sense easy. Foucault cautioned that, although "the moving substrate of force relations" is in principle always "local and unstable," it is nevertheless true that "power" as an overall effect of those mobilities can appear "permanent, repetitious, inert, and self-reproducing."332 Part of the problem is that, because power is everywhere, it must be confronted and reconstructed everywhere.

VI. CONSTRUCTION AND COMMITMENT

In the previous Section, I tried to present a relatively faithful reading of Foucault. Here, I return to the objection from social contingency to develop some of the practical and political implications of this deconstruction and reconception of power. Although I will be building on several of Foucault's insights, I will be diverging from Foucault's views as he articulated them.

329 See Lisa Belkin, Bars to Equality of Sexes Seen as Eroding, Slowly, N.Y. Times, Aug. 20, 1989, at 1 ("Men, while generally expressing support for women's pursuit of equality, said there had been more changes than women saw, with less cost to women than women reported. They suggested they had overcome sexism more thoroughly than women acknowledged, and they saw less need for further changes than women did.").
330 Foucault, Eye of Power, supra note 256, at 156.
331 Foucault, History of Sexuality, supra note 240, at 93.
332 Id.
I argue that power should be understood as the product of an interplay of actions and attitudes between social actors, each equipped with corresponding or complementary images of a particular social relation. This claim about the interpretive basis of power forms the cornerstone of my argument that the deconstruction of the traditional conceptions of power and agency offers new possibilities for empowerment.

To start, what might it mean to say that power comes from below?

Earlier, we examined the unreflective assumption that power is a matter of hierarchy and located its source in the conventional metaphorical schema for power. In contrast to this conventional wisdom, I argued that all power is social power and, therefore, that it can be activated by people at very different positions within the social system. Indeed, as Foucault maintained, this is true even within explicitly hierarchical organizations.

It's obvious that in an apparatus like an army or a factory, or some other such type of institution, the system of power takes a pyramidal form. Hence there is an apex. But even so, even in such a simple case, this summit doesn't form the 'source' or 'principle' from which all power derives . . . . The summit and the lower elements of the hierarchy stand in a relationship of mutual support and conditioning, a mutual 'hold' (power as a mutual and indefinite 'blackmail').

Consider the case of the factory. Since management must rely on line personnel to perform their tasks, the success of the enterprise is dependent on the continued compliance by the subordinates with the designated routine. This compliance can always be compelled through disciplinary measures, of course.

333 In contrast, Foucault argued that, at least with respect to what he called "bio-power," "[i]f power takes hold on the body, this isn't through its having first to be interiorised in people's consciousnesses." Foucault, "Short History," supra note 323, at 186. But this putative difference should not be overstated. I do not doubt that these actions, images, and attitudes are deeply inscribed in our physical habits (such as posture and comportment). Nor do I doubt that the greater part of this process occurs without the conscious awareness of the subject. See supra note 60.

334 See supra text accompanying notes 104-07.

335 See supra text accompanying notes 59-74.

336 Foucault, Eye of Power, supra note 256, at 159.
But even the successful use of discipline comes only at a price—at a minimum, the marginal cost in time and energy diverted from the business at hand. Excessive discipline or discipline that is perceived as unfair may also lead to resentment, undermining morale and efficiency. At the least, then, the subordinates in an explicitly hierarchical organization have power up to their ability to exact such costs. And that cost may not be marginal at all, since it increases with the level of disruption.

Subordinates, however, exercise more profound and directly constitutive power than suggested by this rudimentary economic model. Consider the cold reception typically faced by the newly promoted foreman who, having just come from the shoproom floor, tries to continue his or her previous relationship as "one of the guys." Much the same thing occurs when research assistants or law review editors insist on calling you "Professor" even though you have repeatedly asked them to use your first name. In each of these cases, the subordinate is actively engaged in the social construction of authority. In each of these cases, the subordinate is both an effect of a system of power and a vehicle of its reproduction.

Still, these phenomena only scratch the surface of the constitutive power that subordinates can exercise with respect to their lawful superiors. George Orwell presents a poignant illustration in his elegantly concise essay, *Shooting an Elephant*. Orwell depicts an incident from his service as a subdivisional police officer in Burma during the 1920s, doing, in his own words, "the dirty work of Empire." An elephant in heat was running amok in the bazaar. When Orwell arrived to investigate, he found that the elephant had killed a man, "an Indian, a black Dravidian coolie." Orwell sent for an elephant

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337 Orwell, supra note 23. This essay is rich in psychological detail and insight; not surprisingly, it has been used as text in examinations of power by other scholars. See Scott, supra note 141, at 10-16 (discussed infra text accompanying notes 347-359). In fact, however, the essay is believed to be an artful mixture of fact and fiction. Bernard Crick, *Introduction* to Audrey Coppard & Bernard Crick, Orwell Remembered 9, 18 (1984).

338 Orwell, supra note 23, at 91.

339 Id. at 93.
gun, though he "had no intention of shooting the elephant."\textsuperscript{340} As he proceeded to a nearby rice paddy where the elephant had come to rest, Orwell was followed by "practically the whole population of the quarter . . . all shouting excitedly that I was going to shoot the elephant."\textsuperscript{341}

Orwell found the elephant peacefully eating grass, "no more dangerous than a cow."\textsuperscript{342} Since the elephant's heat had obviously passed, Orwell decided that it was quite unnecessary to shoot it.

But at that moment I glanced round at the crowd that had followed me. It was an immense crowd, two thousand at the least and growing every minute. . . . I looked at the sea of yellow faces above the garish clothes . . . And suddenly I realized that I should have to shoot the elephant after all. The people expected it of me and I had got to do it; I could feel their two thousand wills pressing me forward, irresistibly. . . . Here was I, the white man with his gun, . . . seemingly the leading actor of the piece; but in reality I was only an absurd puppet pushed to and fro by the will of those yellow faces behind. I perceived in this moment that when the white man turns tyrant . . . [h]e becomes a sort of hollow, posing dummy, the conventionalized figure of a sahib. . . . He wears a mask, and his face grows to fit it. I had got to shoot the elephant. I had committed myself to doing it when I sent for the rifle. A sahib has got to act like a sahib; he has got to appear resolute, to know his own mind and do definite things.\textsuperscript{343}

Orwell did not hear the gun when he fired, just "the devilish roar of glee that went up from the crowd."\textsuperscript{344}

It is rare to have a storyteller of Orwell's acuity. But what Orwell portrays with such keen insight is precisely what a postmodernist would refer to as the centering of the subject. In Orwell's account, the ostensibly dominant official is constrained to act out a script not of his choosing. He finds himself a stock character, "the conventionalized figure of a sahib." What governs his actions is neither his own will nor his own best

\textsuperscript{340} Id. at 94.
\textsuperscript{341} Id.
\textsuperscript{342} Id. at 95.
\textsuperscript{343} Id. at 95-96.
\textsuperscript{344} Id. at 97.
judgment, but rather the demands of this character as enforced through the expectations of his audience, the crowd of colonial subjects. This leads Orwell to describe himself as "an absurd puppet" and a "hollow, posing dummy," when he had thought of himself as the "the leading actor of the piece." But, of course, he is the leading actor. It is just that, like most actors, he is performing in someone else's theatrical production. Orwell feels as if he's in a play, and he is anyway.

In Orwell's essay, the power-subject is unmasked as the contingent incident of the ongoing practices of colonialism rather than the self-directing author of those practices. At the same time, the colonial subjects are revealed as active agents in the construction of their own masters. As James Scott observes, "Orwell is no more free to be himself, to break convention, than a slave would be in the presence of a tyrannical master."

Commenting on Orwell's explanation of the decision to shoot, Scott emphasizes the way in which the public transcript demands "a credible performance of haughtiness and mastery" from the dominant no less than it compels "a credible performance of humility and deference" from the subordinate. Scott, however, draws two distinctions between these performances. First, he notes that the subordinate must perform out of weakness, while

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345 Orwell's account thus presents the flip side of Alasdair MacIntyre's description of the function of a cultural character in constructing and decoding social meaning. Such characters partially define the possibilities of plot and action. To understand them is to be provided with a means of interpreting the behavior of the actors who play them, just because a similar understanding informs the intentions of the actors themselves; and other actors may define their parts with special reference to these central characters. So it is also with certain kinds of social role[s] . . . . They furnish recognizable characters and the ability to recognize them is socially crucial because a knowledge of the character provides an interpretation of the actions of those individuals who have assumed the character. It does so precisely because those individuals have used the very same knowledge to guide and to structure their behavior.


346 At various points in the story, Orwell is quite conscious of this. As he takes aim at the elephant, he hears "a deep, low, happy sigh, as of people who see the theatre curtain go up at last." Orwell, supra note 23, at 97. And, no doubt aware of Chekhov's famous dictum that a gun on the wall in the first act must be fired in the last, Orwell realizes that "I had committed myself to doing it when I sent for the rifle." Id. at 95.

347 Scott, supra note 141, at 11.

348 Id.
“the necessary posing of the dominant derives not from weaknesses but from the ideas behind their rule, the kinds of claims they make to legitimacy.” 349 Second, he points out that the subordinate who fails to perform risks retribution. 350 In contrast, Scott accepts at face value Orwell’s explanation that, at the moment of truth, he realized that “[t]o come all that way, rifle in hand, with two thousand people marching at my heels, and then to trail feebly away, having done nothing—no, that was impossible. The crowd would laugh at me.” 351 Scott concludes that the dominant who fail to perform risk only ridicule. 352 Both distinctions seem quite wrong, however. Like the subordinated, the dominant too perform out of weakness. For when the powerful fail to fulfill their role, a great deal more than ridicule is at stake. Derision of this sort may only mask fear; but it may also mask a concomitant rage that needs only a moment of weakness to erupt into violence. Indeed, Scott notes that a few years after Orwell’s tour of duty an enormous revolt took the English by surprise. 353 Those in power may, like the colonial English in Burma, understand this dynamic only dimly. But what the dominant fear most is not that they might get caught in a contradiction and suffer ridicule; what they fear most are the awful consequences of weakness. As George Bernard Shaw wryly observed: “The most anxious man in a prison is the governor.” 354

It is not incidental, therefore, that Orwell opens his narrative with a harsh description of the hatred he felt from the Burmese. He recounts in detail their constant jeering and baiting “whenever it seemed safe to do so.” 355 Slowly but surely, this humiliation by one’s putative subordinates takes its toll. Orwell says that it all “got badly on my nerves. The young Buddhist priests were the worst of all.” 356 And, so, before beginning the

349 Id.
350 Id.
351 Orwell, supra note 23, at 96.
352 Scott, supra note 141, at 11.
353 Id. at 15.
354 George Bernard Shaw, Man and Superman, in Seven Plays by Bernard Shaw 735 (1951).
355 Orwell, supra note 23, at 91.
356 Id.
story proper, Orwell discloses the terrible conflict engendered by all this hatred: "With one part of my mind I thought of the British Raj as an unbreakable tyranny, as something clamped down . . . upon the will of prostrate peoples; with another part I thought that the greatest joy in the world would be to drive a bayonet into a Buddhist priest's guts." Consequently, it comes as no surprise when we learn from Scott both that the revolt was led by a Buddhist monk and that it "was crushed with a good deal of gratuitous brutality."

Scott's reading of Orwell is shaped, in large part, by the conventional understanding in which power constructs meaning and maintains its rule through brutal force. But a closer examination of Orwell's essay suggests just the opposite: Power maintains its rule through meaning, and even the brutal force of the oppressor is socially constructed. Thus, Orwell is candid about the need to affect a demeanor of potency and control if he is to maintain his authority:

For it is the condition of his rule that he shall spend his life in trying to impress the 'natives', and so in every crisis he has got to do what the 'natives' expect of him. . . . A sahib has got to act like a sahib; he has got to appear resolute, to know his own mind and do definite things.

At the same time, Orwell's frank disclosure of the grislier feelings experienced by the colonial officer reveals some of the ways in which even power's violence is socially constructed. Orwell describes the psychological capacity for cruelty as a product of his "rage against the evil-spirited little beasts who tried to make my job impossible." The power of these humiliations is so great that these social interactions can transform an anti-imperialist like Orwell into a potentially vicious oppressor.

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357 Id. at 92.
358 Scott, supra note 141, at 15.
359 See id. at 14 ("The capacity of dominant groups to prevail—though never totally—in defining and constituting what counts as the public transcript . . . is . . . no small measure of their power.").
360 Orwell, supra note 23, at 95-96.
361 Id. at 92. Later in the story, Orwell attests that "with the crowd watching me, I was not afraid in the ordinary sense, as I would have been if I had been alone. A white man mustn't be frightened in front of 'natives'; and so, in general, he isn't frightened." Id. at 96.
This process of social construction is not unilateral, of course. When the white man's face grows to fit the mask he wears, his racial attitudes also have something to do with it. Thus, Orwell recounts that the younger Europeans chided him for killing the elephant "because an elephant was worth more than any damn Coringhee coolie."\footnote{Id. at 98-99.} And Orwell himself refers to the native Burmese as "little beasts" and "sneering yellow faces."\footnote{Id. at 92, 91.}

Orwell's sensitive, insightful narrative reveals how power is produced in the play of meaning in which both oppressor and victim are deeply complicitous. Power, including the willingness to use force, is not only socially contingent, it is a matter of meaning all the way down.

This insight has profound implications, as Robert Cover explains. "The uncontrolled character of meaning exercises a destabilizing influence upon power."\footnote{Cover, supra note 24, at 18.} Cover gives the powerful example of the civil rights sit-ins of the early 1960s. He writes:

In the face of official interpretations of the Constitution that permitted continued discriminatory practices in public accommodations, the movement had this choice: it could conform its public behavior to the official "law" while protesting that the law was "wrong," or it could conform its public behavior to its own interpretation of the Constitution. There is both "disobedience" and "obedience" in either case. But only obedience to the movement's own interpretation of the Constitution was fidelity to the understanding of law by which the movement's members would live uncoerced. Thus, in acting out their own, "free" interpretation of the Constitution, protesters say, "We do mean this in the medium of blood" (or in the medium of time in jail) . . . .

By provoking the response of the state's courts, the act of civil disobedience changes the meaning of the law articulated by officialdom. For the courts, too, may or may not speak in blood. To be sure, judges characteristically do not have to use their own blood to create meaning; like most power wielders, they usually write their bloodier texts in the bodies of the inmates of the penal colony. But the fact that all judges are in
some way people of violence does not mean they rejoice in that quality or write their texts lightly.

A community that acquiesces in the injustice of official law has created no law of its own. . . . The community that disobeys the criminal law upon the authority of its own constitutional interpretation, however, forces the judge to choose between affirming his interpretation of the official law through violence against the protesters and permitting the polyomia of legal meaning to extend to the domain of social practice and control. The judge's commitment is tested . . . .

On its face, this passage is about the role played by committed groups of non-governmental actors in the creation of legal meaning. It reflects Cover's pluralist understanding of law as an ongoing cultural production of human communities, rather than an artifact of formal lawmaking. For all its anti-statism, however, Cover's legalism still sits uncomfortably with Foucault's rejection of the juridico-discursive model. Yet, it requires no great stretch of the imagination to see the parallels between them. Cover's account of the implicit negotiation that takes place between the protesters and the judge is remarkably similar to Foucault's understanding of power as an ongoing process of social construction in which dominant and subordinate both participate. Like Orwell's account of the mutually constitutive relations of meaning between colonial subject and oppressor, Cover provides a window on the way in which power is mediated and constructed through strategic maneuvering over the direction that social meaning will take.

Consider Cover's explication of the options facing the movement. It could accept the legality of the discriminatory provisions and simply protest their injustice. But to do so, Cover observes, would be to accept subordination and submit to coercion. It would be, in effect, to confirm both the authority

365 Id. at 47-48.
366 See id. at 11 ("the creation of legal meaning—'jurisgenesis'—takes place always through an essentially cultural medium.") (footnote omitted); Robert M. Cover, Violence and the Word, 95 Yale L.J. 1601, 1602 n.2 (1986) ("[T]he thrust of Nomos [i]s that the creation of legal meaning is an essentially cultural activity which takes place (or best takes place) among smallish groups.").
367 Cover, supra note 24, at 47 ("[O]nly obedience to the movement's own interpre-
of those laws and the power of those responsible for their enactment and enforcement. Instead, the movement could elect to challenge the legal status of those discriminatory acts, defy them openly, and put its members at risk of physical violence at the hands of state officials. By choosing that option, it agrees to pay a potentially high price for its normative commitments.368

The decision publicly to assume that risk, however, has two very immediate and dramatic payoffs. First, it abruptly transforms the nature and significance of the events that follow. The burglar who rationalizes his actions with the slogan “property is theft” does not thereby challenge the hegemony of the private property regime. To the contrary. The fact that he acts surreptitiously or otherwise tries to elude apprehension tends to confirm—at least, for everyone else—the illicit quality of his actions. Public disobedience of the property laws, on the other hand, has a different meaning altogether. As Scott explains, there is an important distinction between the failure to comply and a declared refusal to do so. “The former does not necessarily breach the normative order of domination; the latter almost always does.”369 He elaborates: “The open refusal to comply with a hegemonic performance is . . . a particularly dangerous form of insubordination . . . because any particular refusal to comply is not merely a tiny breach in a symbolic wall; it necessarily calls into question all the other acts that this form of subordination entails.”370 Thus, a public act of defiance by the movement, let alone an act of defiance that claims warrant in the supreme law, is a direct challenge to the hegemony of the system of segregation.

The second payoff is that the decision to defy the law and accept the consequences dramatically changes the stakes for the officials charged with its enforcement. In the crucially important sense identified by Foucault, it is an act of power. Reineinber, Foucault defined “the exercise of power as a way in which

368 “Just as living in the economic world entails an understanding of price, so living in the normative world entails an understanding of the measures of commitment to norms in the face of contrary commitments of others.” Id. at 53.
369 Scott, supra note 141, at 203.
370 Id. at 205.
certain actions may structure the field of other possible actions." As long as the movement conforms to the law while merely protesting its legitimacy, the dominant majority and its officials are free to act as they please. By openly challenging the hegemony of the segregation laws, however, the sit-in movement forces those officials to what Cover correctly identifies as a very uncomfortable choice: Either the judge brooks defiance, calling into question the law's privilege and, in effect, conceding the legitimacy of the challenge; or he enforces the law, obliging him to affirm the authority of this unjust law or otherwise take responsibility for the violence he authorizes in its name. In either event, the authority of both the judge and the law has been put at risk by the actions of the protesters. If the judge allows defiance to succeed, it may spark more general rebellion. But if the judge authorizes force to compel compliance, the danger is every bit as great. For what the judge sees as lawful force may appear to others as nothing more than a naked act of violence. Indeed, this was precisely the effect of television news broadcasts of official violence against black protesters in Birmingham in May of 1963 and at the Edmund Pettus Bridge, March 7, 1965, during the march from Selma to Montgomery.

If Cover's account highlights the power of the subordinated to affect—sometimes, even, determine—the course of social meaning, he certainly does not gloss over the brutal realities of power. He is unusually forthright in emphasizing that the implicit negotiation between dominant and subordinate takes place "in the medium of blood." Cover, moreover, fully appreciates that the dominant and subordinate bring very different resources to the process. Where the subordinate wager their own lives and well-being, the dominant typically expend the blood of others (whether soldiers or prisoners) rather than their own. Though both parties exercise power in the struggle over meaning, they do not (at least typically) have to pay anything like the same price for their participation. On this view, what

371 Foucault, Subject and Power, supra note 28, at 222.
372 The same was true later during the protests against the Vietnam War.
373 Cover, supra note 24, at 47.
374 Id.
we commonly refer to as "having" or "being in power" is in actuality the differential ability to inflict costs.

These reflections on Cover help flesh out several of Foucault's important claims. For Foucault, the exercise of power lies in the ability to structure the field of other possible actions. The differential ability to inflict costs is a primary, if highly conventional way in which power operates to channel the behavior of others. This can take the obvious form of formal legal sanctions in the hands of the state. But much the same process occurs in other, less formalized social relations. To return to the example of a gender-stereotypical power relation, the performance of the traditional wife/mother role can be regulated by an array of power-mechanisms ranging from physical abuse to positive inducements in the form of lavish gifts or displays of affection. And, because these power relations do not exist in isolation, they are equally likely to be supported by a variety of disciplinary mechanisms from outside the relationship. These may include discrimination in the job market or intense social disapproval of any conduct deemed deviant (such as working outside the home or raising children on one's own).

Precisely because these are power relations, though, the ability to inflict costs—and, thus, channel behavior—is never unilateral. This dynamic can take many different forms, as illustrated in Cover's examination of the intense struggle over meaning in the exchange between the protesters and the judge. In this way, Cover's discussion elucidates and extends Foucault's point that "relations of power . . . are the immediate effects of the divisions, inequalities, and disequilibriums" within social relationships.375 It is not just inequalities in power or material conditions that can "engender states of power."376 Relations of power can arise from inequalities in access to the resources of meaning and legitimacy, and these discrepancies do not always favor those in power. This is why so much more than ridicule is at stake when the powerful act in ways which contradict the

375 Foucault, History of Sexuality, supra note 240, at 94. See supra text accompanying notes 263-65.
376 Foucault, History of Sexuality, supra note 240, at 93.
public professions that justify their rule, a point that Scott himself appreciates.377

Inequalities in psychological and emotional states can have much the same effect. This is easy to see within more intimate relations, where states of dependency can be and frequently are very powerful positions. This is one point of the co-dependency movement, of course. But any devoted parent can tell you first-hand that the helpless infant is the most powerful person in the household precisely because of the parents' total commitment to the baby's welfare. Much the same is true at the other extreme of the power spectrum. This is why the side that has suffered fewer casualties can still be the one that loses the war. The difference between victory and defeat can be a matter of whether those losses exceed the level that is socially tolerable. In the final analysis, then, the social contingency of power means that "power" is a matter of relative interpretive conclusions. Counterintuitive as it may seem, "power" is at base a hermeneutic phenomenon.

This does not mean that power is in any sense imaginary. To say that power is a matter of interpretation is not to say that one can make it disappear merely by thinking it away. Power is quite real as a social fact. It is real precisely to the extent that it is based on cultural meanings that people internalize and act on. To be more precise, power is an interpretive institution. Like all social institutions, it exists only so long as the actors who constitute it continue to reproduce their respective roles and routines. This social contingency makes power vulnerable to disruption, as we have seen, because the "powerless" always have the power to withhold or vary their performance. But power is a social phenomenon, not a subjective individual invention. When some actors withhold their performance, the reaction of the others can be quite real indeed.

Still, this understanding of power as an interpretive institution has direct and immediate consequences for empowerment.

377 See Scott, supra note 141, at 11 ("[A]n elected head of a republic must appear to respect the citizenry and their opinions; a judge must seem to venerate the law. Actions by elites that publicly contradict the basis of a claim to power are threatening.").
Because it is a matter of meaning all the way down, even the most pervasive system of power can never be all-powerful. Those "in" power may achieve an effective monopoly on force and, with it, the capacity to impose terrible costs on those who resist. But they can never fully control the resources of meaning—Lukes, Minow, and other theorists of hegemony, notwithstanding. Thus, Cover's profound point is that even the ability to inflict costs is secondary to the power to control meaning. The uncontrolled character of meaning destabilizes power because no one can dictate the valuation or meaning of those "costs" or the interpretation that others will put on the decision to incur them. This is why martyrdom, civil disobedience, and other forms of sacrifice are such powerful weapons.

It remains true, of course, that any individual who elects to pay the cost may turn out to be a fool rather than a martyr. Whether the sacrifice succeeds will depend both on how others interpret it and, even more crucially, on whether they are willing to act on that interpretation. But, as Scott notes: "Massive desertion by serf or peasant conscripts has helped bring down more than one ancien regime. Under the appropriate conditions, the accumulation of petty acts can, rather like snowflakes on a steep mountainside, set off an avalanche." The onus of commitment is that the act of sacrifice necessarily precedes the knowledge of its consequences. But the power of commitment is that, if enough others elect to follow the example of committed action and risk the consequences, it can create the very real possibility that no one at all need pay the price.

VII. OBJECT LESSONS

Why deconstruct the notion of power? Why risk destabilizing conceptions like domination and subordination upon which so much of feminist theory seems to depend? Even if the critique of these subjectivized views of power is right, might it not be the case that the identification of a responsible party is a strategic necessity of effective political action?

To these questions there are two answers, one idealistic, the other pragmatic. When I declared myself in favor of spitting

378 Id. at 192 (footnote omitted).
into the pit, I meant in part to challenge the unwritten rule that every scholarly venture must be preceded by a careful (if silent) calculus in which one gauges the normative or political consequences of one’s intended analysis. Sometimes, knowledge may be valuable for its own sake. But, even within the normative paradigm that dominates the academy, it is surely common ground that an analysis held hostage to a normative and political agenda courts serious distortion. That, in any event, was part of what I tried to demonstrate in Part IV.

The second answer is more pragmatic. Consider what might happen if a political movement strives for power on the basis of some version of the conventional understanding. Suppose it manages to achieve many or all of its stated objectives, implementing a variety of laws or policies designed to end subordination. One unhappy possibility is that the movement finds to its surprise that it has come to the wrong place and seized the wrong levers. Worse yet, the movement might in fact succeed and find that it has managed only to reshuffle the players. In either event, “power” will have remained intact precisely because it never was a location or an apparatus in the first place. “Power” will have endured precisely because it was never anything more than the actions, practices, and institutions that we have been engaged in all along. And that, unfortunately, would mean that power would still be busily at work constructing those new players as the same old subject-formations.

Many people find Foucault’s approach distressing because it seems to mean that power is everywhere and inescapable. Thus, Robert Post worries that:

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379 Indeed, a politics-driven theory may be every bit as problematic as a theory-driven politics.
380 Cf. MacKinnon, supra note 6, at 159 (“As to who or what fundamentally moves and shapes the realities and instrumentalities of domination, and where to go to do something about it, . . . is as ambiguous as it is crucial.”).
381 Cf. Foucault, Eye of Power, supra note 256, at 164-65 (“Do you think it would be much better to have the prisoners operating the Panoptic apparatus and sitting in the central tower, instead of the guards?”); MacKinnon, supra note 6, at 121 (“A feminism that seeks only to affirm subjectivity as the equal of objectivity, or to create for itself a subject rather than an object status, seeks to overturn hierarchy while leaving difference, the difference hierarchy has created, intact.”)
If "power," to use Foucault's words, "makes individual subjects," then . . . [t]he issue is not merely one of historical determinism and consequent political passivity, but, more deeply, of the possible meaning of politics. . . . It would seem that any potential political outcome would merely reinscribe initial conditions of deprivation.382

Others find Foucault's approach disheartening because it means that there is no Archimedean point from which to act to transform the world. Thus, MacKinnon expresses her concern that Foucault's theory leads to the conclusion that "[p]ower is everywhere therefore nowhere, diffuse rather than pervasively hegemonic."383 For both sorts of critics, it is not much solace to be told that power must be confronted and reconstructed everywhere.

Foucault's own response to such concerns was that his "position leads not to apathy but to a hyper- and pessimistic activism."384 In contrast, I want to suggest that there is something encouraging, even affirming about Foucault's reconception of power. The conventional understanding of power as a quality or "thing" possessed by the dominant can have implications quite as bleak as suggested by Post. If power is some "thing" that the powerful "have," then how are the subordinated to remedy their situation? This predicament appears in its worst form in three-dimensional theories of power, where power is supposed to construct so absolutely that the subordinated are unable either to perceive their own interests or even to imagine alternatives to the existing order. In consolation, the three-dimensional view offers to identify those agents who may be held responsible. Even if this view were correct, it would tell us only where to go to do something about it. But it would tell nothing about how we might get those "in" power to listen.

By comparison, Foucault's understanding of power as an attribute of a system of relations is, for an anti-humanist like Foucault, surprisingly humane and "liberating." Many find

382 Post, supra note 22, at xiii (quoting Foucault, Subject and Power, supra note 28, at 221-22) (citations omitted).
383 MacKinnon, supra note 6, at 131.
384 Foucault, Genealogy of Ethics, supra note 188, at 232.
politics impossible or futile without the identification of some villain who can serve as a focal point for mobilization. This is perhaps acceptable when the villain is someone to be vanquished and then relegated to the proverbial dust-bin of history. But it is quite another matter when the demonized foe is someone with whom one is deeply enmeshed on a day-to-day, even intimate basis. The first advantage of this systemic understanding of power is that it suggests an alternative to the cycle of naming and blaming that so often polarizes rather than helps in the struggle to rectify the very real problems of inequality and subordination.

The second advantage of this reconception of power is that it is, in a profound sense, empowering. To understand power as a property of a social system of relations is to see power as a shared resource that can be activated from many different positions within that system. Once power is understood as relational, it becomes apparent that at least some of what the dominant "have" must already be available to the subordinated. Indeed, there is an important sense in which this second point is the same as the first. The deconstruction of power is also the deconstruction of the agency and autonomy of the traditional liberal subject. This means that responsibility for subordination and inequality cannot be localized in certain identifiable agents; it is widely distributed throughout the social network. To the exact degree that this understanding of power diminishes the agency of the dominant, it amplifies the agency of the subordinated. What it subtracts from one part of the network, it necessarily redistributes to the other.

Still, transformation is not going to be easy. And those who try to effect change will almost certainly pay the price. But at least we know why.