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# AN ESSAY ON LOCAL CRITIQUE†

JOHN MOON\*

## INTRODUCTION

I consider myself a fortunate person, one of the rare law students to have been part of a course similar to an Introduction to Law. It was unstructured and fun, yet we all learned an enormous amount. The “class” consisted of bi-weekly discussions that could make the words put to paper by a theorist leap off the page causing a liberating and agitated clamor at some times and a quiet and introspective depression at others. We read and calmly conversed during the tedium of the course. Consequently, my first idea for a reaction to *An Absolutely Positively True Story* was to write a series of micro-phenomenologies with the hope that I could capture some of these experiences and tell a story that could evoke similar ideas and energy in others.

It seemed ironic, however, that an apt description of my experiences could already be found in the otherwise characteristically formal text of a law review,<sup>1</sup> let alone in a footnote.<sup>2</sup> As a result, I changed the focus of my project from a description of *what went on* to a theory of *what we are doing* when we take part in, or theorize about, political action such as the co-teaching of Introduction to Law. I think that the answers that I came up with have some relevance for any similar project that takes place on what is ordinarily known as the fringes of an institutional mech-

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My ideas have been particularly influenced by two recently published articles, *The Politics of Reason: Critical Legal Theory and Local Social Thought*, 133 U. PA. L. REV. 685 (1985), and *The Groundless Assault: A Wittgensteinian Look at Language, Structuralism, and Critical Legal Theory*, 34 AM. U.L. REV. 1231 (1985), the authors of which I would like to thank: Jamie Boyle and Steve Brainerd. In addition, several of my colleagues were inspiration and help to me. I am especially grateful to K.C. Worden, Leslie Guinan, and Jamie Boyle for their input and/or generous comments upon my final draft. The errors are found where their thoughtful criticism was met with my insistence. Finally, I would like to thank Thomas Sargentich, professor of the seminar on advanced constitutional law for which this essay was originally drafted. He encouraged me to pursue my idea of a theory of political action notwithstanding the fact that it paid little, if any, heed to the pronouncements of one-hundred and five men and one woman concerning a one-hundred and ninety nine year-old document.

1. Worden, *Overshooting the Target: A Feminist Deconstruction of Legal Education*, 34 AM. U.L. REV. 1141, 1150-51 (1985).

2. Boyle, *An Introduction to a Symposium of Critical Legal Studies*, 34 AM. U.L. REV. 929, n.1 (1985).

anism. In taking on a task that was more laborious and unfunny than my original plans, I wanted to set forth some theories that would be useful in thinking about, or even defending, this type of action generally. Accordingly, my inquiry involves far more than political activity in the setting of a law school.<sup>3</sup> For the purposes of my essay, I will call this genre of political action "local critique." As an introduction to the concept, I will define local critique as a political project that exists on the "fringe" of a pre-established institutional mechanism, emphasizes the personal experiences of those involved, and challenges existing patterns of thought.

The purpose of this inquiry, moreover, is to help find partial solutions to several vexing questions. For instance, once I believe that the justifications for a medium in which political action takes place have been thoroughly "trashed,"<sup>4</sup> how can I advocate "doing any politics" within that medium whatsoever? Isn't acting through the institutional mechanisms of an elite medium like law school not only hypocritical but actively *bad*? Is it possible to conduct political activity in a manner completely untainted by the medium? And if so, doesn't advocating this sort of activity amount to nihilism, anarchism, or something like that?

Traditional notions of political action focus on the state and its authoritative pronouncements, seeing most oppression as being an invasion of a citizen's "rights" by the state. Oppositional and radical theories on the other hand, generally focus on some other large-scale social mechanism—such as the institution of private property—and portray oppression as resulting from the inherent attributes of this mechanism. Both types of theory tend to be blind to experiences which do not "fit" within their framework. The ACLU liberal may find it hard to conceive of the everyday oppression of the work place, while the Marxist can only understand sexual harassment if it is linked back into a master, economic theory. Thus, a first source of dissatisfaction with traditional large-scale notions of politics is their exclusionary tendencies.

The second source of dissatisfaction lies not so much in the exclusionary tendencies of these ideas as in their claims to objectivity and finality. Dialectical Marxism and "Wechslerian" neutral principles both promise to take politics out of our hands and to provide us with an external calculus that makes our decisions for us.<sup>5</sup> As you may have guessed by now, I do not think that this is either possible or desirable.

Now the reader can begin to appreciate the irony of my project. The

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3. See *infra* notes 24–29 and accompanying text.

4. The word "trashing" is quickly becoming a term of art in modern legal theory. To trash a conception (of state, art, reason . . .), is to take that conception seriously on its own terms, reveal its incoherent nature, and find patterns that help us conceptualize its inconsistencies. See generally Kelman, *Trashing*, 36 STAN. L. REV. 293 (1984).

5. One external calculus, and a misleading one at that, is to define local critique in terms of the Critical Legal Studies (CLS) movement. CLS has clearly had an influence (good or bad) on many of the participants in this Symposium. It is true that some of those identified with CLS advocate

same phenomena which made me reject the objective pretensions of large-scale social theories such as Dialectical Marxism and Legal Liberalism, make it impossible to specify, in exact terms, what local critique *is*. Two variations of such a definition would set forth the essence or categories of local political activity. Each manner of definition fails for the same reason. For a category to be established, the existence of an essence is required. This is so, because a category necessarily sets up a dichotomy: something either falls within or outside the category. Once a category is established, therefore, something is either *this* or *that*. As one observer has noted, however, the notion of a category assumes certain abilities of reason: “[w]ithout essences (whether of words, personality, or science), how can reason justify the lines that it must draw between each side of the dichotomies?”<sup>6</sup>

The problem with a definition that relies upon essences, and correlatively upon categories, is that reason is not able to derive the objective essences that can substantiate our subjective drawing of lines.<sup>7</sup> This is so, because reason does not enable a person to make a sound distinction between the facts that one observes on the one hand; and norms, truths, essences, or scientific laws on the other.<sup>8</sup> In other words, the relativity of each of our experiences does not allow for the ascendancy of one person's rendition of what constitutes “quintessence” or “truth.” Over the years, commentators (legal, literary, artistic, psychological, semiotic, etc.) have applied this notion to virtually every area of human endeavor, so that in the words of one commentator: “[t]he corrosive skepticism of the modernist era, the breakdown of our metaphysical foundations, the decline of essences as credible trumps in the game of argumentation—all of these have been portrayed as epistemological ravens, croaking ‘Nevermore’ over the corpse of reason.”<sup>9</sup> Consequently, the dilemma encountered by a concrete definition of local critique is that it attempts

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local political activity, *see infra* notes 28–29 and accompanying text (discussing Duncan Kennedy's proposal for local politics within a law firm), and the euphemistically titled CRITICAL YOUNG PERSON'S GUIDE TO CLS (unpublished manuscript), includes a discussion of work place politics. But there are problems with trying to tie local critique too closely to CLS. Primarily, CLS people did not invent local critique, and most of them are not arrogant enough to claim any exclusive hold on it. They are merely some of the persons who engage in this genre of activity. Moreover, the CLS movement has not been successfully defined. *See* Brest, *Interpretation and Interest*, 34 STAN. L. REV. 765 (1982) (describing CLS movement as “small and fragmented”); Boyle, *supra* note 2, at 1 (referring to “the distinctly unplayful task of defining this mysterious animal [CLS]”); Note, *Round and Round the Bramble Bush: From Legal Realism to Critical Legal Scholarship*, 95 HARV. L. REV. 1669, 1669 n.3 (1982) (describing CLS as lacking a “definitive methodological approach”).

6. Boyle, *The Politics of Reason: Critical Legal Theory and Local Social Thought*, 133 U. PA. L. REV. 685, 715 (1985) [hereinafter cited as Boyle].

7. *See* D. HUME, A TREATISE OF HUMAN NATURE (1888).

8. *See generally id.*

9. Boyle, *supra* note 6, at 730. Because his article already provides a unique survey of the demise of essences and reason, my essay only raises the issue briefly. The writer apologizes for the skeletal treatment of a very complex body of “intellectual history.” For a full analysis, the reader is recommended to D. BELL, THE CULTURAL CONTRADICTIONS OF CAPITALISM 45–84 (1976); M. BIDDIS, THE AGE OF THE MASSES 315–56 (1977); Boyle, *supra* note 6, at 730–33 n.141.

to use reason to label different types of human interaction that can be labeled in an infinite number of ways due to the subjective nature of essences and dichotomies.

This dilemma can be exemplified by an analysis of a postulated dichotomy between local and "mainstream" political activity. By "mainstream," I mean what people commonly refer to as "political" practice: "[o]f, pertaining to, or dealing with the study, structure, or affairs of government, politics, or the state."<sup>10</sup> For example, pornography is commonly regarded as essentially a first amendment issue, a matter of mainstream political discourse. Rather than spending all of our time debating about the constitutionality of pornography regulation, however, it might be better to spend some of it attempting to publicize the harm to women caused by pornography. In light of this harm, a group of individuals might get together and hold a reading group to raise their consciousness of the issue. In addition, the group might distribute circulars promoting their cause in the local "adult theater" district. This kind of group activity could be called local critique: it is inter-personal in character and seeks to question an existing belief system. The focus of the group's method is non-institutional (*i.e.* the group's members are not testifying before the city's zoning board). But the association among the individuals of the group<sup>11</sup> and the distribution of handbills<sup>12</sup> also partake of the traditional aspects of first amendment<sup>13</sup> protection. Thus, the group's activity can be conceptualized in legal terms, the exercise of a constitutional right, as well as a local critique.

Thus, a concrete dichotomy between "mainstream" and "local" activity dissolves in ordinary, daily affairs. Moreover, ideas about the "essential nature of a problem" obscure possible solutions such as those taken by the anti-pornography group. Consequently, a categorized definition of local political activity that relies upon categories or essences limits the diversity and significance of our thought processes much like first amendment doctrine on the issue of pornography did not provide the group with an alternative cosmology for addressing this harm. One Commentator notes:

Our use of the first amendment freedom of speech illustrates the way in which language games and reification limit our conceptual inquiries. . . . Should this concept really be the receptacle for dump-

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10. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1015 (1976).

11. See NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 460-61 (1958) (discussing the "close nexus between the freedoms of speech and assembly").

12. See Lovell v. Griffin, 303 U.S. 444 (1938).

13. U.S. Const. amend. I (providing in part that "Congress shall make no law . . . abridging the freedom of speech. . . .").

ing conflicts such as flag burning and pornography? Divisions erected in our discourse allow us to announce that the First Amendment protects certain activities and not others. Such divisions have the same origins that allow us to distinguish between what a woman should do and not do, between politics and law, and between reason and passion. In each case, the distinction has the appearance of naturalness or common sense. But the lines drawn are the product of arbitrary and unconscious political choices, not some concrete grounding.<sup>14</sup>

So what do I have to offer instead of a vision of political action that is either exclusionary or essentialized? I will attempt to describe a vision of everyday politics, a vision I will call local critique. The easiest way to introduce what I am advocating is to say what I don't think. I don't think that any action that doesn't involve the storming of the Winter Palace is hopeless. I don't think that a law school, or anywhere else for that matter, is "essentially co-opting," and I don't think it is impossible to effect significant change in the lives of others. In other words, I think that we can (and should) work on projects that focus on inter-personal politics as well as, say, the arms race, that we have an opportunity to do this kind of work in a law school and that we should go ahead and *do it* without whining about co-optation, "revolution not reform," or any of the other hypo-radical maxims that reduce to excuses for quietism. I hope this essay provides a liberating theory, one that takes account of the pre-established hierarchies, institutions, and personal relationships in our world, but does not "blindly force [our] understanding of concepts into preconceived patterns by saying 'Yet *this* is how it has to be.'" <sup>15</sup>

### I. LOCAL POLITICAL ACTIVITY

Let me describe how the Introduction to Law class fits with what I've been saying. In this section of the essay, I set out in more detail what I mean by the term "local critique." In so doing, I explain why I have chosen the term that I did. One possible explanation would involve a Sisyphean task in lexicography. Another would involve an attempt to cut through the Gordian knot of post-modernist social theory that is implicated by the notion of local political activity. Instead, I propose three imprecise characteristics of this sort of activity. Then, the meaning of this term is clarified by a presentation of several examples of local political activity. Naturally, this method of description is subject to a typical criticism of

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14. Brainerd, *The Groundless Assault: A Wittgensteinian Look at Language, Structuralism, and Critical Legal Theory*, 34 AM. U.L. REV. 1231, 1237 (1985).

15. J. Gill, *Wittgenstein and the Function of Philosophy*, 2 *Metaphilosophy* 137, 139 (1971).

critical legal theory, vagueness.<sup>16</sup> Upon completion of this section, however, the reader should be able to recognize local critique when she sees it.

### A. *Introduction to Law: A Reified Description*

A starting point for this inquiry is a description of what happened in the Fall of 1984 at the University of New Mexico when Introduction to Law was "taught" for the first time. I describe the course in terms of three abstract essences or "reifications."<sup>17</sup> Naturally, one could find an infinite number of "reified" ways to describe Introduction to Law, ranging from an analysis of the ways that the furniture was arranged during the discussion groups, to the male and female "voices"<sup>18</sup> spoken during those discussions. The description of the class along the lines that I propose, however, is helpful for it allows one to recognize vastly different types of political activity that, at least to some degree, square with the notion of local critique. Once recognized, these particular abstractions are useful for setting up a theory of political action.

Of the many ways that one could essentialize the characteristics of Introduction to Law, three abstractions are important for the purposes of this essay. First, there existed an emphasis upon the inter-personal experiences of the individuals who were involved in the project. Those enrolled in the course wrote papers, conducted discussions, held parties, and sang in small groups. Those "teaching" the course took steps to obviate the hierarchy that is unnecessarily created by the labels of "student" and "professor." The "teachers" called themselves "non-teachers," renounced their authority, and exhibited vulnerability. In short, they *acted* like human beings, and as a result, they *interacted* with students.

16. See Menand, *Radicalism for Yuppies*, NEW REPUBLIC, March 17, 1986, 20, 21 (stating that CLS "offers only the fuzziest idea of what the good life might be and how it can be attained." *Id.*).

17. "Reification" is a term of art in critical legal theory. To "reify" is to excise an aspect of our daily experience and abstract this experience into an essence. Thus abstracted, reification nullifies experience as a constraint on the way one might manipulate the essence through argumentation. See generally Boyle, *Ideals and Things: International Legal Scholarship and the Prison-house of Language*, 26 HARV. INT'L L. J. 327, 328-30 (1985); Gabel, *Reification in Legal Reasoning*, 3 RESEARCH IN LAW AND SOCIOLOGY 25, 26-28 (S. Spitzer ed. 1980).

Admittedly, this essay relies heavily upon the reification of Introduction to Law in particular and political action in general. This reliance is not misplaced. The danger of reification lies in this: once an aspect of experience is abstracted into an essence, one is easily lulled into accepting the essence as a factual truth that is not to be questioned. See Gabel, *supra*. In contrast, reifying local critique along the lines I propose does not so limit our freedom by closing visions of viable political action, but emancipates us by constructing a theory that accounts for an expansive variety of political activity. See *infra* notes 24-29 and accompanying text.

18. The concept of male and female voices is borrowed from C. GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THERAPY AND WOMEN'S DEVELOPMENT (1982). For insightful reading on the topic of a gendered approach to law school, see Frug, *Rereading Contracts: A Feminist Analysis of a Contracts Case Book*, 34 AM. U.L. REV. 1065 (1985); Worden, *supra* note 1.

Second, the course challenged the existing structure of legal education by relying on methods which were alien to that medium. Throughout the course, the attempt to challenge the objective cosmology of liberal legalism was conducted through discussion and song, not Socratic Method and case briefing. As the course materials lambasted the standard law school fare of apolitical conceptions of law, traditional methods of legal pedagogy were challenged by the manner in which the course was conducted. Thus, one could describe the method of Introduction to Law, as a reaction against the false necessities that are indoctrinated throughout the rest of a law school experience.

Part of the way that the method of Introduction to Law challenged legal education was that the stuff of the course took place at the "fringe" of the institutional mechanism containing it, the University of New Mexico School of Law. As such, the students were listed at the Registrar's Office and the teachers were paid with a check signed by the University's Treasurer. Indeed, the discussions were even held at the University's campus. This institutional structure, however, is aptly described as the ephemeral background in which the course "really" took place—within the discussion groups themselves.

Third, this description could not possibly ignore the law school setting in which the course was conducted. There is no denying that Introduction to Law was one feature within the medium of law school, an institution which exerts its own political pressures.<sup>19</sup> Notwithstanding the liberating, innovative, and emancipatory character of the course, it took place within an environment which most assuredly had its hierarchical, oppressive, and stultifying qualities,<sup>20</sup> as well as characteristics which allowed the course to take place in the first place.

Throughout the rest of their tenure in law school, however, most all the students of Introduction to Law will be forced to listen passively to professors' seemingly apolitical ruminations on "transcendental nonsense"<sup>21</sup> and attempt a metaphorical regurgitation on the pages of a Blue Book at the end of each semester—the result being first-year mystification, second-year boredom, and third-year burn out. The law school setting, consequently, was a great influence upon the course. Although Introduction to Law was a laudable effort at transcending the law school setting by

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19. KENNEDY, LEGAL EDUCATION AS TRAINING FOR HIERARCHY, IN *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 40 (1983).

20. Having never visited the University of New Mexico, I must qualify my statement. I describe the UNM environment on the basis of my experiences with law schools generally. For examples of those experiences put to paper, see Kennedy, *supra* note 19; Worden, *supra* note 1.

21. This term denotes legal concepts such as "[c]orporate entity, property rights, fair value, and due process." Cohen, *Transcendental Nonsense and the Functional Approach*, 35 COLUM. L. REV. 809, 820 (1035) (emphasis in original).



focusing on inter-personal group experience and utilizing a method foreign to the law school setting,<sup>22</sup> its proponents cannot ignore its very medium.

### B. Why the Term "Local Critique"?

Introduction to Law can be characterized as a political project that directly assaulted many established preconceptions of legal education. More specifically, the course consisted of an inter-personal effort that attempted not to legitimize the very system it assaulted by utilizing methods of instruction that were foreign to accepted practice within law schools. As such, the course can be described as a "local critique," a term borrowed from Michel Foucault to describe a type of theoretical project:

I would say, then, that what has emerged in the course of the last ten or fifteen years is a sense of increasing vulnerability to criticism of things, institutions, discourses. A certain fragility has been discovered in the bedrock of existence—even, and perhaps above all, in those aspects of it that are most familiar, most solid and most intimately related to our bodies and our everyday behavior.

. . . So the main point to be gleaned from these events of the last fifteen years, their predominant feature, is the *local* character of the criticism. That should not, I believe, be taken to mean that its qualities are those of an obtuse, naive or primitive empiricism; nor is it a soggy eclecticism, an opportunism that laps up any and every kind of theoretical approach; nor does it mean a self-imposed asceticism [sic] which taken by itself would reduce to the worst kind of theoretical impoverishment. I believe that what this essentially local character of criticism indicates in reality is an autonomous non-centralized kind of theoretical production, one, that is to say, whose validity is not dependent on the approval of the established regimes of thought.<sup>23</sup>

The title of this essay derives from the three characteristics and the

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22. This strategy for political action is based upon the notion that conducting political action through existing institutional mechanisms reinforces legitimating ideologies, dominant institutions, and hegemonic culture. See, e.g., Gabel & Kennedy, *Roll Over Beethoven*, 36 STAN. L. REV. 1, 33-34 (1984) (discussing legal rights); Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049 (1978) (discussing civil rights law); Klare, *Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941*, 62 MINN. L. REV. 265 (1978) (discussing labor law).

23. M. FOUCAULT, *POWER/KNOWLEDGE* 80-81 (1980) (emphasis in original).

I have limited the discussion of this essay to political actions taking place in particular localities (e.g. a law school, an elevator, a shipyard, a P.T.A. meeting) and the discourse this activity generates. Local critique is a similarly useful notion when examining large-scale, "global" social theories. For a discussion of both varieties of local critique, see Boyle, *supra* note 6, at 773-78.

I use the term local critique to signify a method of group activity. Consequently, a number of interchangeable phrases can be used: local political activity, a local project, local oppositional activity, etc.

tension between them. This sort of political activity is "local," because it is "non-centralized" and, therefore, takes place in a variety of settings. Introduction to Law was a project that occurred at one law school, not legal education generally. But, from the description given in the paper by Karl Johnson and Ann Scales, it seems as though the project impacted greatly upon the "everyday behavior" of those involved. This is the first characteristic I described—emphasizing the individual experience of those involved in the project.

Whereas the Marxist professor might teach a "revolutionary" property class in a very traditional way, Introduction to Law sought to destabilize a system not only through the substance of the project, but particularly by its method. The class was an end in itself, as well as a means to an end. Thus, the class squared with the second standard characteristic of a local critique in that it took place on the fringe of an institutional mechanism and conventional practice.

The class cannot be understood in isolation. It was in relation to, and an implicit critique of, the rest of the participants' experience in legal education. In so doing, those in Introduction to Law attempted not to legitimize the medium constraining the project. Nevertheless, projects such as Introduction to Law do occur within a dominant and constraining medium. Of course, the project was inevitably affected to some degree by what Foucault described as "accepted regimes of thought."

The immediate reaction of the hypo-radical to this third characteristic of a local critique is to argue that the project will be co-opted. After all, law schools, like leper colonies, are supposed to be "unclean" as regards to "revolutionary purity." The hypo-radical purist might argue that the course may not have changed legal education as much as it might have merely made a fundamentally flawed program more bearable, and consequently giving it a veneer of legitimacy. She might note, for example, the only reason that students co-taught the course was that they were "empowered" to do so by their professors. For reasons that will become clear later in the essay, I disagree.

### *C. The Variety of Local Critique*

The following examples are included to aid in clarifying the meaning of my use of Foucault's term and to illustrate the diversity of settings in which local critique occurs. Instances of local oppositional activity abound in the law school setting. A local critique is involved when a student group writes a letter to the faculty asking them to hire more women or minority professors, arranges a Sanctuary on campus, or circulates a petition calling for the introduction of more public interest courses into the curriculum. Another example is the "no hassle pass" movement at

Harvard Law School during the 1982–83 academic year.<sup>24</sup> This political program consisted of an unstructured organization of students and professors who attempted through personal lobbying efforts to enact a school policy allowing a student called upon in class to “pass” without being hassled by the inquiring professor.<sup>25</sup> Over his embarrassed objections, I also want to use as an example James Boyle’s attempts to teach his torts class in a way that would “demystify the [first-year doctrinal] subjects that seemed to cause such psychic angst to first year students and that set the stage for the disenchantment, apathy and boredom of the second and third years.”<sup>26</sup>

So far, I have commented on legal education. Local politicking is not limited to “Langdellian” surroundings. One medium noted for local politics is the work place. Local mobilization can take place in a “sphere” as seemingly public as a labor dispute or involve an apparently “private sphere” concern such as increasing the number of women and minorities on a university’s faculty.<sup>27</sup> One scenario of work place politics is the corporate law firm, a place where a lawyer can subtly “resist illegitimate hierarchy and alienation”<sup>28</sup> in such a way that she can “be able to do left office politics without being fired, and make partner.”<sup>29</sup> From what has been said, local oppositional activity can also take place in the most monolithic of institutions, the workings of government,<sup>30</sup> insofar as it somewhat coincides with the three enunciated characteristics: action focusing on interpersonal experience that consists of a method foreign to the medium that is challenged.

Up until now, I have been trying to expand the potential number of ways of thinking about political action without betraying my project by conceptualizing it.<sup>31</sup> Consequently, I have proposed a purposely vague definition of local critique so as to dissuade the reader from adopting a “cook book” approach to political action that focuses on a “recipe” of three necessary ingredients—“I need a dash of structure transcendence with a dab of marginal activity, and a pinch of interpersonal experience.” I will confess that I may have reified and manipulated the stuff of Intro-

24. See Gabel & Kennedy, *supra* note 22, at 55.

25. See *id.*; see also J. BOYLE, CRITICAL LEGAL STUDIES: A YOUNG PERSON’S GUIDE 18 (1984) (unpublished) (discussing strategy to politicise an anti-nuclear campaign within a law school).

26. Boyle, *Anatomy of a Torts Class*, 34 AM. U.L. REV. 1003–05 (1985).

27. See Boyle, *supra* note 25, at 18. The concepts of public and private spheres are developed in Kennedy, *The Stages of the Decline of the Public/Private Distinction*, 130 U. PA. L. REV. 1349 (1982).

28. Kennedy, *Rebels From Principle: Changing the Corporate Law Firm from Within*, 33 HARV. L. SCH. BULL. 36, 38 (fall 1981).

29. *Id.*, at 40.

30. See generally Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1978 WIS. L. REV. 29 (1978).

31. See Gabel & Kennedy, *supra* note 22, at 1.

duction to Law. I did so, however, with the purpose of accomplishing the "concrete task of writing things that evoke successful moments of struggle, to realize, in direct relations, what good possibilities there are in life."<sup>32</sup>

So far, I have argued that Introduction to Law can usefully be seen as an example of local critique, and I have tried to indicate why someone might want to engage in this sort of activity. I have talked about the decline of large-scale social theories, historical objectivity, and neutral essences. I have also talked about how people often experience the exercise of *power* in a way that does not fit with a standard conception of politics. These realizations, which signify how the common conception of political activity does not always square with the fine texture of social interaction, might lead one to engage in a local critique such as Introduction to Law.

I have argued that someone, not only can, but should engage in political action on the fringes of established institutions. I do not mean to denigrate institutions as mechanisms for social change, but to reveal that these mechanisms have an *internal reality*, in which people work and interact, as well as in the *external reality* that we read about in constitutions, political philosophies, and committee reports. As a result, the essay advocates that we expand our ways of thinking about political action.

In addition, this essay takes account of what people experience in institutions in general and in law school in particular. First, this essay reveals that one can mount local oppositions because of the "open" texture of legal education. Law school is not a Gulag. It is full of genuinely concerned people who want to make the place better and the education more relevant, as well as those who are formalistic martinets. Second, it is a good idea to engage in actions on the fringe of the law school mechanism. Indeed, it is valid to mount an action that makes sense only with reference to some existing construct. As such, Introduction to Law was both a critique and a utopian proposal. It is true that the course would have little or no meaning taken out of the law school context, for it is not a plan for the remaking of society. But, it worked at what it set out to accomplish within its own specific context. Third, the project was carried out without being co-opted. This is because the idea of "the structure" is just as much a reification when it is used to justify radical inaction as to justify a formalist judicial decision. In contrast, the local critique is a project that challenges existing constraints in method and substance. In short, the participants in a local project act out their opposition to the constraining and focus upon their experiences in doing so.

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32. *Id.*, at 3.

## II. THE 'FANCY' THEORY UNDERLYING A THEORY OF LOCAL CRITIQUE

In the second section of the essay, I want to describe four intellectual precursors to local critique, two of which concentrate on the possibilities for personal action and two of which give some texture to our understanding of the constraints of our abilities to act. My aim, in short, is to be a kind of research assistant to someone who was in the same position as those involved in Introduction to Law. Such a person might want to know what fancy theory could tell her about the constraints of accepted practice within the law school setting—the way that classroom design fits in with black letter teaching, as well as the topics of discussion that deans, students, or professors will automatically consider to be “matters of law” or “matters of politics” without examining their decision. In addition, she will want to have some framework for thinking about, or circumventing, all of this stuff—of making the impossible possible, of taking responsibility for one’s actions or inaction.

In this section, I attempt to provide such a guide. First, I describe, in brutally truncated fashion, the ways in which existentialism and phenomenology might help a person in the position I described. Then, I describe the work of Wittgenstein and Gramsci in a similarly abridged manner. I do so to reveal how notions called “the form of life” and “hegemony” explain how one might think about the constraints and methodological difficulties that are faced by any effort at local critique.

### A. *The Phenomenological and Existential Approaches to Local Critique*

Due to the demise of essences and *a priori* truths that were postulated in the first part of the essay,<sup>33</sup> the discourse of humankind could be viewed as a morass of political arguments.<sup>34</sup> Consequently, the power of our rationality was placed in doubt. As a result, one of the tasks of modern philosophy was to restore a sense of value in ourselves, although it was an admittedly subjective task.<sup>35</sup> Two of the manifestations of this endeavor that are important for the purposes of this essay are phenomenology and existentialism.<sup>36</sup> These two visions embrace the principle that worthwhile theoretical inquiries examine the subjective thoughts and experiences of

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33. See *supra* notes 6–9 and accompanying text.

34. See generally Boyle, *supra* note 6.

35. See H. PITKIN, WITTGENSTEIN AND JUSTICE 218 (1972).

36. This essay uses these two terms with the understanding that they do not connote two separate modes of analysis. Indeed, the analyses frequently overlap. See, e.g., Gabel, *supra* note 17 (discussing reification in terms of Sartrean phenomenology and existentialism). The author intends only to briefly survey this complicated and weighty body of thought and apologizes for any distortion in so doing.

an individual. Each of these theories provide ample support for local critique.

Phenomenology is the study of one's knowledge of occurrences or "phenomena."<sup>37</sup> As such, phenomenology is an attempt at directing the focus of philosophical inquiry from the seemingly distant realm of ontology or metaphysics to one's immediate experience.<sup>38</sup> Under basic tenets of phenomenological thought, an individual must examine her reactions to her perceptions and not be constrained by presuppositions that would lull her into reinterpreting her experiences so that they fit neatly into a picture that is dictated by social conventions.<sup>39</sup> By doing so, a phenomenological approach allows one to discover possibilities for acting that unexamined social conventions have foreclosed.<sup>40</sup> Thus, phenomenology exalts the notion of an autonomous, subjective self; through introspection of experience, one can act ever more autonomously and consequently perceive new experiences that set the groundwork for even more freedom.

It should be apparent from this brief survey that phenomenology introduces powerful conceptions of the attainment of freedom that buttress a theory of local critique. Primarily, both local critique and phenomenology emphasize the experience of an individual subject.<sup>41</sup> In addition, the local and phenomenological projects both cultivate the freedom of its participants by experimenting with activity that is not yet prescribed by the social conventions of a particular context. As noted, local critique challenges the existing order by utilizing methods that are foreign to the accepted practice of the existing structure.<sup>42</sup> Through these actions, one realizes that she need not act in the conventional manner. The liberating aphorism of phenomenology became the precise lesson of Introduction to Law: my law school experience *can* be better than the conventional law school career, if I make it so.

The second vision, the existentialist, similarly gives primacy to the value of the subjective self. This tendency in our discourse was formulated succinctly by Jean Paul Sartre: "Existence precedes essence."<sup>43</sup> With no essences to rely upon, one has the almost overwhelming responsibility of determining how to conceive of oneself *and* the immediate

37. See generally F. Dallmayr, *Beyond Dogma and Despair*, 97-98 (1981) (setting forth basic development of phenomenological inquiry); Boyle, *supra* note 6, at 741-42 n.164 (same).

38. Edmund Husserl is generally credited with a germinative influence in phenomenological inquiry. See E. HUSSERL, *IDEAS: A GENERAL INTRODUCTION TO PURE PHENOMENOLOGY* (1982).

39. See I. M. MERLEAU-PONTY, *THE VISIBLE AND THE INVISIBLE* (1968).

40. See A. SCHUTZ, *THE PHENOMENOLOGY OF THE SOCIAL WORLD* (1967).

41. See *supra* text following note 18 (setting forth individual experience as the first characteristic of local critique).

42. See *id.* (setting forth local critique's second characterization as utilizing a method uncommon to the challenged structure).

43. J. SARTRE, *ESSAYS IN EXISTENTIALISM* 35-36 (1965).

stage of world history.<sup>44</sup> Consequently, introspection upon the daily texture of social interaction is the existentialist framework in which an individual decides issues of morality.<sup>45</sup>

Existentialism serves local critique well. It supports the effort of a local project to construct a new reality within an existing medium. Because the emphasis of a local critique is the experience of its members,<sup>46</sup> the actual method of a local critique sets a groundwork in which project members directly observe the outcome of moral dilemmas that accompany political conflict among persons. These experiences are intense. Those involved in a local project deal with real people in an actual struggle, not merely the filing of a motion or the casting of a ballot. They see the results of their efforts immediately, in others and themselves. The snippets from student journals provided by Karl and Ann make clear that Introduction to Law possessed all of these characteristics. In sum, the emphasis of the local critique on personal experience enlarges the potential for cultivating the freedom of its members by directly exposing them to actual moral dilemmas.

### *B. Wittgenstein's and Gramsci's Approach To Local Critique*

But the very commentaries on the transcendence of constraint that make phenomenology and existentialism so attractive, also raise the issue of how one is to view the medium or "structure" in which action takes place. Consequently, the third characteristic of local critique,<sup>47</sup> which the discussion of phenomenology and existentialism did not address, is raised. Without the aid of an overarching *a priori* truth that says otherwise, one cannot deny the effects not only of the immediate medium of the local project, but the much broader structures such as language and understanding. Unfortunately, such a truth is not available.<sup>48</sup> What do we do? This part of the essay provides two complimentary ways of addressing this issue, derived from the work of Ludwig Wittgenstein and Antonio Gramsci.

Ludwig Wittgenstein's analysis of language is important to a theory of local political action, because it provides insights on how one can be able to act autonomously within a structure.<sup>49</sup> Wittgenstein attempted to

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44. See generally J. SARTRE, CRITIQUE OF DIALECTICAL REASON (Sheridan-Smith trans. 1982).

45. See J. FELL, HEIDEGGER AND SARTRE 1-30 (1979); M. HEIDEGGER, THE BASIC PROBLEMS OF PHENOMENOLOGY (A. Hofstadter trans. 1982).

46. See *supra* text following note 18 (setting forth emphasis upon individual experience as the first characteristic of local critique).

47. See *supra* text following note 18 (setting forth existence of local project as third characteristic of local critique).

48. See *supra* notes 6-9 and accompanying text.

49. This section deservedly begins with a caveat. Wittgenstein never addressed the topic of political action. In fact, he did not directly address political theory or even the subjectivist/structuralist tension. This section of the essay is based in large part upon the observations of Brainerd, *supra* note 14,

expose the unconscious assumptions in our discourse—our “form of life”—so that one could realize the culturally accepted “givens” that influence our perception.<sup>50</sup>

Wittgenstein’s analysis of structure is based upon the meaning of words within language. His thesis is that a word can only have meaning when it is placed within the entire context of an all-encompassing and inter-related linguistic framework. Simply put, “the meaning of a word is its use in language.”<sup>51</sup> Generally, this potentially tautological statement is of great importance if one considers that knowledge of the entire language structure, and consequently the meaning of a single word, necessitates that the listener possesses a very complex set of understandings to decode the linguistic framework.<sup>52</sup> Compare this idea to your experience of the complex set of “understandings” that one gains from legal education in order to make sense of legal jargon and you will see the importance of Wittgenstein to a discussion of Introduction to Law.

An understanding of the linguistic framework is significant when one realizes that the way that people live their lives is intertwined with the language they use.<sup>53</sup> Hence, “to imagine a language means to imagine a form of life.”<sup>54</sup> Wittgenstein’s observations have more critical “bite” than a simple reminder that those living in Antarctica have more words for the conception of a “snowflake” than those living in Florida. He shows us that an examination of the language structure can reveal aspects of life that people consider to be doubtful or certain. Our language, our “form of life,” embody the certainties that are admitted by everyone in a given social context.<sup>55</sup> Without any debate, “human beings . . . agree in the language they use. That is not agreement in opinions, but in *form of life*.”<sup>56</sup>

Wittgenstein’s reasoning can be clarified by an example of the hushed muttering that one can usually hear each September outside the lecture halls in which the doctrinal courses are taught to first-year law students.

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an extrapolation of the tension between subjectivism and structuralism found in Wittgenstein’s linguistic theory. I, in turn, apply this extrapolation to local critique. What follows, therefore, is an extrapolation upon an extrapolation. The reader deserves to be warned that I am taking certain liberties with Wittgenstein’s work by describing what he *would have thought* about political action.

50. In a sense, Wittgenstein’s “form of life” in his examination of language parallels Foucault’s notion of “epistemes,” the unexamined social justifications that exist within a given historical context. See M. FOUCAULT, *THE ORDER OF THINGS: AN ARCHEOLOGY OF THE HUMAN SCIENCES* 250–94 (1973); See also Aron, *Wittgenstein’s Impact on Foucault*, in WITTGENSTEIN AND HIS IMPACT ON CONTEMPORARY THOUGHT 58–60 (1977) (discussing similarities in work of Foucault and Wittgenstein); Brainerd, *supra* note 14, at 1251.

51. L. WITTGENSTEIN, *PHILOSOPHICAL INVESTIGATIONS* at 43 (3d ed. 1968).

52. See *id.* at § 30 (“So one might say: the ostensive definition explains the use—the meaning—the word when the overall role of the word in language is clear”).

53. See *id.* at § 23 (“*speaking* of language is part of . . . a form of life”) (emphasis in original).

54. *Id.* at § 19.

55. See *id.* at § 241.

56. *Id.* (emphasis added).



One cannot help but overhear the agonized grumbings about "briefing cases." This phrase, or words to that effect, denote the activity that most of the students have been doing all afternoon in the library and well into the night. In a strange sense, therefore, the briefing of cases constitutes one aspect of a form of life for many first-year students. The clamor, however, generally does not include any discussion of whether this activity is worthwhile (at least for the first part of the semester, unless a student has learned that the second and third years never brief their reading assignments). All the talk about whether one's brief captured the "crucial" issue, rule, or policy argument of the assigned case indicates an implicit and unexamined agreement on the part of the students that briefing cases is a worthwhile way to spend one's evening.

Given Wittgenstein's proposition that everything takes place in the form of life, an all-encompassing structure of interrelated parts, what is the proper object of a philosophical inquiry? Wittgenstein's answer is based upon the premise of this essay; to wit: that there exist no essences or *a priori* truths. His answer is that we should examine the texture of our form of life, "not by giving new information, but by arranging what we have always known."<sup>57</sup> Upon this examination, one does not find an essence running throughout our language, because, as previously noted,<sup>58</sup> any word can be defined by virtue of its relation to the entirety of the linguistic framework.<sup>59</sup> As a result, this examination merely illuminates an interrelated network of "similarities, relationships, and a whole series with them at that."<sup>60</sup> Similarly, the encompassing contextuality of our form of life does not allow us to permit one to look beyond our experiential framework to determine an objective truth,<sup>61</sup> although we incorrectly attempt to do so to order the complexities of our form of life.<sup>62</sup> Any notion of an overarching truth is faulty because it cannot be described by reference to the characteristics of our form of life.

Without having access to an objective criteria from outside the form of life or an essence derived from its constituent parts, we are forced to accept our form of life as a structure that is completely arbitrary. In addition, it follows from Wittgenstein's analysis that one can only judge the truth or falsity of a physical phenomenon or mental construct by comparing it to the arbitrarily constructed background of one's form of

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57. *Id.* at § 109.

58. *See supra* notes 51-52 and accompanying text.

59. *See* Wittgenstein, *supra* note 51, at § 67.

60. *Id.* at § 66.

61. *See id.* at § 109.

62. *See* Gill, *supra* note 15 (describing Wittgenstein's thought as an attempt to prevent the overextension of language by dissuading one's attempt to derive principles from outside the linguistic framework).

life.<sup>63</sup> To proclaim that a proposition is either true or false, therefore, "only means that it must be possible to decide for or against it,"<sup>64</sup> in reference to the form of life. Such an all encompassing context cannot be challenged from outside the framework of the form of life, because everything takes place within it. To Wittgenstein, consequently, "[p]hilosophy only states what everyone admits."<sup>65</sup>

From the above description of the form of life, it appears that the Wittgensteinian approach to constraining structures is demobilizing, because one cannot transcend one's medium. This conclusion is erroneous if one considers, as Wittgenstein did, that the arbitrary framework of beliefs constituting the form of life must contain some assumptions that enable the structure to actually get off the ground.<sup>66</sup> These assumptions are aptly called "enabling propositions."<sup>67</sup> Enabling propositions consist of pre-logical decisions that are as arbitrary as the form of life itself.

The notion of enabling propositions permits one to consider the notion of an autonomous local critique within the structure of the form of life. Wittgenstein never claims that these assumptions cannot be challenged, only that they are conventionally left unexamined. He simply asserts that philosophy cannot rely upon essences or justifications from outside the form of life to challenge the status quo. To challenge enabling propositions by doubting what others normally do not, however, is to challenge the form of life from within.

Wittgenstein's argument can be clarified by referring back to the example of the neophyte law students who were discussing the burdens of case briefing. As noted, their discussions assumed the value of spending their time conducting this activity. After a semester or two of law school, many will probably realize that the assumptions that justified this activity—that briefing cases would help them understand "the law," be prepared for class, or excel on exams—simply were not defensible in their experience. In a sense, the justifications for case briefing can be viewed as enabling propositions. As the previous discussions of students signified that these assumptions were not examined aspects of their form of life, their decision to stop briefing cases reflected their examination of their form of life. Significantly, the experience of the students, not reified essences, exploded the myths that justified the long hours spent writing upon a legal pad.

The implications of the Wittgensteinian brand of structuralism for po-

63. See L. WITGENSTEIN, ON CERTAINTY § 94 (1972).

64. *Id.* at § 200.

65. Wittgenstein, *supra* note 51, at § 599.

66. See Wittgenstein, *supra* note 63, at § 150 (stating "somewhere I must begin with not-doubting; that is not, so to speak, hasty but excusable: it is a part of judging").

67. See Bogen, *Wittgenstein and Skepticism*, 83 PHILOSOPHICAL REV. 364 (1974).

litical action can be clarified by a comparison to the work of Antonio Gramsci.<sup>68</sup> Gramsci's comparative analysis of the cultures of Western Europe and the Soviet Union led him to conclude that "hegemony" allowed the wealthy capitalist classes to remain in power and oppress the unwitting proletariat without resorting to physical force.<sup>69</sup> For the purposes of this essay, the relevant aspect of his theory is the notion of hegemony. Hegemony subtly coerced the lower classes to consent to their low position within the social stratification:

By hegemony Gramsci meant the permeation throughout civil society—including a whole range of structures and activities like trade unions, schools, the churches, and the family—of an entire system of values, attitudes, beliefs, morality, etc. that is in one way or another supportive of the established order and the class interests that dominate it. . . . To the extent that this prevailing consciousness is internalized by the broad masses, it becomes part of "common sense."<sup>70</sup>

This description of hegemony sounds very similar to Wittgenstein's notion of the form of life. Both conceptions embody the values and perceptions that run throughout the social world. In addition, both theorists believe that the existing structures can be changed through political action. The difference between the thought of Wittgenstein and Gramsci is that Gramsci transcends the structure to determine the cause of the topography of the existing structure, a conspiracy of capitalists. In contradistinction, Wittgenstein would find Gramsci's attempt to derive this causal principle from beyond the form of life an overextension of philosophy.

Because a local critique challenges enabling propositions from within the form of life, such an inquiry is not an overextension of philosophy. This type of a challenge must be distinguished from extending our knowledge beyond the form of life to derive an animating principle for change. A realizable challenge against our structure is only made by altering our form of life from within. Thus, Wittgenstein's analysis leads one to conclude that once one has decided to become mobilized, the way to conduct political activity is in the experiential manner of local critique that emphasizes a method that is a variation of the conventional practice. He states: "The sickness of time" is cured only "by an alteration of the

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68. See generally A. GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS (Q. Hore & G. Nowell-Smith eds. 1971); GREER, ANTONIO GRAMSCI AND "LEGAL HEGEMONY" IN THE POLITICS OF LAW, *supra* note 19, at 304.

69. See Gramsci, *supra* note 68, at 171.

70. C. BOGGS, GRAMSCI'S MARXISM 39-40 (1976).

mode of life of human beings" through alternative methods of "thought and of life, not through the medicine invented by an individual."<sup>71</sup> In terms of local critique, the local project's method that is foreign to the challenged institutional medium, but not our form of life, consists of the requisite variation of existing conventional practices to permit social change without overextending our capabilities of reason.

In a sense, Introduction to Law thematised the "normal" structure of law school as Wittgenstein thematised the conventional usage of words in a language. By conducting a class that was different from conventional law school practice, those involved in Introduction to Law exposed many of the implicit assumptions that support the conventional "themes" of law school—that only a professor teaches the class, that classes are conducted beneath a veneer of political neutrality, that philosophy or emotions do not belong in the discussion, etc. What is more, Introduction to Law did not go outside the form of life to achieve this goal. The voices spoken during the discussion groups existed among first-year law students all the while. In Introduction to Law, however, these voices were not suppressed by the Canute-like method of Socratic "discussion." Similarly, the method of the class, although foreign to the law school setting, was not outside the context of the participant's past experience, but merely a new application of it. It is likely that those involved in the course were enrolled in similar courses in undergraduate school or during graduate study in a discipline other than law. For example, a graduate student in philosophy reacted to Karl and Ann's paper by telling me "I don't know what all the fuss is about. The method of Introduction to Law is not completely new."

An awareness of the structural element of local critique is useful for it takes account of the medium in which the project operates. Local critique makes no naive assumptions about the limiting effects of social convention,<sup>72</sup> even on the local projects that take place on the seemingly extreme fringes of an institutional mechanism. The local project, however, in attempting to transcend established practice by utilizing an unconventional method, is a political project that remains vigilant of the limiting effect of structure. This is true whether the structure is as immediate as an educational institution or as amorphous as language. Moreover, by embracing a method that is foreign to the challenged mechanism, a local

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71. L. WITTGENSTEIN, *REMARKS ON THE FOUNDATIONS OF MATHEMATICS* 132 (1974).

72. The notion that the conventional vision of politics limits possibilities for actual practice is not new. See G. Lukacs, *Reification and the Consciousness of the Proletariat*, in *HISTORY AND CLASS CONSCIOUSNESS: STUDIES IN MARXIST DIALECTICS* 103 (1977) (discussing the obscuring effects of reification on the conventional vision of the contingency of politics); K. MANNHEIM, *IDEOLOGY AND UTOPIA* (L. Wirth & E. Shils eds. 1936) (description of limiting effects of cultural convention on the manner one views the social world).

critique is a working project that actually alters broad, amorphous structures of beliefs in particular areas.

### III. SYNTHESIS OF THE THEORIES IN LOCAL CRITIQUE

We have looked at the phenomenological and existential emphasis on the individual on the one hand and Wittgenstein's and Gramsci's analysis of medium on the other. I think that there is a way of putting these two sets of ideas together. Of course, there is no point of essential balance between, for example, Sartre and Gramsci. There is, however, a way of putting the ideas together in practice, of using them in a manner that seems to fit with the generally iconoclastic method I have been describing.<sup>73</sup>

Local critique does not defer or sublimate the tension between these two sets of ideas, by privileging one tendency over the other. For example, this theory of local critique does not propose that these theories exist harmoniously by asserting that the principles of existentialism provide the animating force of the local project and the arbitrary nature of our structure, as described by Wittgenstein, permits the people involved in the project to act autonomously. Such a postulation, by erroneously deriving the animating principle from beyond the form of life, portrays existentialism as a foundation of our ideas.<sup>74</sup> This is an emphasis that appeals to one's modernist disposition, but only at the cost of ultimately relying on existentialism as an *a priori* truth.

The notion of local critique set forth in this essay, moreover, does not synthesize the characteristics of these theories by taking an aspect of

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73. As already noted, *see supra* note 23, James Boyle has observed that the notion of local critique relates to large-scale and small-scale theories. He bases his analysis on two conflicting tendencies in our discourse, an emphasis on the individual's ability to act autonomously and an emphasis on the constraints that might keep her from doing so. He labels these tendencies the "subjectivist" and the "structuralist" strands respectively. In relation to the themes in this essay, these tendencies correlate roughly with the phenomenological and existential approaches to autonomy that are in tension with Wittgenstein's and Gramsci's approaches to structuralism. For his insightful survey of the subjectivist and structuralist tendencies running throughout critical legal theory and the survey of the "politics of reason" that spawned this antinomy, *see generally id.* For a description of the terms subjectivism and structuralism as well as the tension that exists between them, *see id.* at 740-41.

In fact, James Boyle takes on a much more ambitious endeavor than the description of local political action. He sets forth how the tension between the two strands is useful in "doing" social theory. *See generally, id.*; *see also* Gabel, *Intention and Structure in Contractual Conditions: Outline of a Method for Legal Theory*, 61 MINN. L. REV. 601, 602 (1977) (describing a similar tension as being central to critical legal theory).

I am deeply indebted to him for the insights that he has provided in his article. They were formative influences upon my essay.

74. For an example of a theory that synthesizes subjectivism and structuralism by giving the former a position of ascendancy over the latter, *see* GORDEN, *NEW DEVELOPMENTS IN LEGAL THEORY, IN POLITICS OF LAW, supra* note 11, at 281, 287 (while noting the effect of structure, asserting "'social reality' is something that we ourselves are constantly constructing"); *see also Boyle, supra* note 6, at 724-25, 763-64, 773.

social life and reifying it in such a manner that the conflicting theories are frozen during a conceptual moment of harmony. James Boyle points out that Roberto Unger's insightful critique of liberalism, *Knowledge and Politics*,<sup>75</sup> reifies the "deep structure" of liberalism in order to freeze it so as to reveal the incoherency of its structure.<sup>76</sup> Although not all reifications foreclose alternatives of action, the realm of an essentialized theory of state is distant from the full and fine texture of social interaction where the members of a local critique experience moral dilemma.<sup>77</sup>

In contrast, the notion of local critique described in this essay is that of a project that takes place in the context of very concrete moral dilemma, personal interaction, and political struggle. This is a medium that is at once intense and tedious, sometimes elating and frequently dismal. Consequently, the local critique, having no opportunity to defer or reify the existing tension, *must* confront it. This confrontation is narrow in scope, existing within the direct experience of those engaged in the project. This characteristic of local critique makes for its efficacy at changing the form of life. Where the project takes place, its effects are cogent. Because the scope of a local critique is limited to the immediate group effort, the project need not contend with as many epistemological worries about prioritizing subjective theories as a large scale project or a global theory. Consequently, it is less likely that those involved in the project will be forced to privilege one subjective vision over another.

The four theories that I have discussed intersect in the daily workings of a local critique. By experimenting with elements of the structure, the local project cultivates the autonomy of the members of the project. In so doing, the project develops a practice which harmonizes theory about constraint and about transcendence. The ideas work symbiotically. The result of the project's working experimentation with the assumptions of the form of life is a vision of autonomy that in turn cultivates more interest in challenging other assumptions of the structure. If the experiment proves to be a failure, new avenues for additional trial and error may be exposed. If not, the individuals taking part in the local critique have not learned the futility of their project, but merely the adamancy of the beliefs that buttress conventional practice notwithstanding its groundlessness.<sup>78</sup>

## CONCLUSION

In this essay, I intended to shed some light on an infrequently discussed and much misunderstood genre of political action. I argued that there are

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75. See R. UNGER, *KNOWLEDGE AND POLITICS* (1971).

76. See Boyle, *supra* note 6, at 713-15, 757-60.

77. *Id.* at 756-60.

78. An analysis of local theory along these lines is found at Boyle, *supra* note 6, at 746-48, 760; Brainerd, *supra* note 37 at 1261.

many more forms of politics than are contained in our large-scale philosophies. Courses like Introduction to Law can be seen as examples of "local critique." They are marginal, but effective. They are as much process as substance, and those involved in the local project do not spend their time agonizing over co-optation, scientific theories, or neutral principles. I am not saying that we should spend all of our moral energy reshaping the accepted conception of "the political arena." I am saying that law schools are another setting for struggle and community, and that local critique is one way of thinking about struggle and community in and outside of law school.

A theory of local critique is eminently liberating. It provides a method for the realization of a plethora of political actions that "common sense" might dictate as being nonsensical. It exposes alternatives in a massive and alienating society for political action so that subjugated voices might be heard or an intolerable lifestyle eased. Throughout the course of this essay, I surveyed richly dense and deeply constructive visions of the social world. Accordingly, I hoped to render inapposite, if not absurd, a recent commentator's assertion that "the law school graduate who sets up shop in the real world on Critical Legal principles will not only find himself unable to practice much law; he will find himself unable—for good or ill—to practice much politics either."<sup>79</sup> Thus, the embodiment of these theories in the form of local critique, makes this brand of activity a worthwhile form of action.

In short, local critique fulfills what has been claimed to be the task of all philosophy: "liberate us from illusions about [our] conceptual system, from fragments of earlier philosophers [that have] become empty slogans of interpretation, from evasions and hypocracies, from distortions and misunderstandings."<sup>80</sup>

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79. Menand, *supra* note 8, at 23.

80. H. Pitkin, *supra* note 35, at 298 (1972).