

CORPORATIONS ARE NOT PEOPLE: DISSENSUAL DEMOCRACY AND THE
MOVEMENT AGAINST CORPORATE RIGHTS

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ABSTRACT

A. Freya Thimsen: Corporations are Not People:
Dissensual Democracy and the Movement Against Corporate Rights
(Under the direction of Christian Lundberg and Carole Blair)

This dissertation describes the way that the movement against corporate rights employs democratic ideals and media technologies to present itself as “the people” who have a more legitimate claim to sovereignty than corporations. The movement’s use of rhetoric and technology demonstrate that democratic ideals do not necessarily represent actual democratic processes, but enacting them is still an effective way to produce a sense that a democratic event is occurring. Although different branches of the movement advocate different goals and use different rhetorical and technological strategies, they use similar techniques to demonstrate shared participation in the overall movement. These core shared techniques indicate that scholarship on democratic movements and their political issues has the opportunity to increase its effectiveness and relevance by integrating insights about how to produce dissensus based on studying movement techniques. Additionally, the history of the legal theoretical rhetoric of corporate rights relies on a sharp distinction between organic and technological collectives that shapes how the movement is able to selectively critique and enact democratic *doxai*.

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Introduction

Corporations Are Not People: This is a slogan for protest, a phrase to write on signs and banners, a short statement of disagreement and critique. Although the slogan has been around for at least a decade, it has come to be invoked more frequently since the U.S. Supreme Court's 2010 *Citizens United v. FEC* decision, mass underemployment, and international governmental support of financial institutions have contributed to a growing sense that widespread economic, political, and social dysfunction has been caused by corporations and financial institutions. Zuccotti Park aside, however, one won't find this slogan on many placards. Although it is a protest slogan, the protests that it appears in most frequently are not of the type that draws crowds of people into a public space. Like many contemporary protest slogans, *Corporations Are Not People* circulates in books, websites, social media, and speeches. It does not propose the expansion of democratic rights to those who lack them. Instead, it argues that rights should be stripped from entities currently enjoying them.

This difference between claiming rights and revoking rights points toward a defining feature of the slogan: it is a critical proposition whose utterance involves analyzing from a distance rather than explicitly staking a claim to political subjectivity. Unlike "new social movements" that rely on identity categories to flesh out modes of participation and the very transformative goals of the movements themselves, the critique of corporate rights is an attempt to transform the accepted legal definition of joint-stock business corporations by re-describing them as entities that should be excluded from legal personhood. The critique is that corporations have been naturalized as legal entities deserving of certain rights such as freedom of speech, due

process, and equal protection, but that corporations are *not* persons and providing them with legal rights has had destructive social, environmental, and political results. One of the most egregious and frequently cited examples of the destructive effects of corporate personhood is the trajectory of the Fourteenth Amendment to the U.S. Constitution. The amendment was passed in 1868 with the ostensible goal of establishing legal protections for recently freed slaves. Many cases decided under the Fourteenth Amendment, however, have been attempts to leverage the rights, including property rights, of “corporate persons.” As early as 1937 it was noted that “less than one-half of one percent of the cases reaching the Supreme Court under the Fourteenth Amendment had anything to do with blacks or freed slaves, while more than fifty percent of cases reaching the Court were about corporations.”¹ By claiming such rights, corporations continue to avoid paying certain taxes and are freed from many types of government regulation. Corporate claims to Bill of Rights protections have enabled, of course, massively increased spending on elections. Critics also allege that claims to corporate free speech rights have been used to: avoid placing safety warnings on various products (as “compelled” speech), gut disclosure requirements in new securities regulations, defend false advertising, avoid regulations requiring the disclosure of corporate stock positions over \$100 million and payments to foreign governments, defend illegal communications surveillance, and push back against net-neutrality rules.² In other words, it seems that *Citizens United* and corporate election politics are just the tip of a very large corporate-rights iceberg.

Critics of corporate rights claim that the root of these problems lies in the failure of existing law to adequately recognize what corporations actually are, both historically and contemporarily. To that extent, the movement acts on the assumption that the production of better knowledge about corporations can create democratic change. The movement’s modes of

critique reflect the accumulated influence of decades of academic humanistic style influenced by critical theory. In the books, web sites, petitions, resolutions, speeches, and ordinances that enunciate the critique of corporate rights, there is a consistent deployment of unmasking, debunking, historicizing, mapping linguistic effects, and revealing power structures. These gestures, of course, are performed differently than they would be in scholarly writing for an academic audience. I will argue, however, that these modes of critique enact the tension between *doxa* and *epistēmē* also found in scholarship that is critical of *doxa*. Like many rhetorical concepts derived from ancient Greek, *doxa* has sometimes been translated univocally as *opinion*.³ But by its ancient definition, *doxa* is not just opinion formed from subjective perception, it is also the objective appearance, ethos or impression that something gives of itself. This aspect of *doxa* is something like *regard* or *reputation*. As Eric Havelock says, “The noun correspondingly is both the ‘impression’ that may be in my mind and the ‘impression’ held by others of me. [...] It is the ‘seeming show of things’, whether this panorama is thought of as within me or outside of me.”⁴ Within this most basic formulation of *doxa*, the movement against corporate rights could be described as attempting to “change people’s opinions” regarding the “appearance of corporations.” But is it “people’s opinions” that the movement tries to change, or is it “the appearance of corporations”? The indeterminacy of this question opens up several different ways of thinking about what it means to critique *doxai* in an effort to create social and political change. The movement against corporate rights contains a variety of approaches to critiquing the way that democratic *doxai* such as “rights” have been appropriated by corporate entities.

Some of the most incisive and powerful works of contemporary rhetorical scholarship on *doxa* ultimately adopt this perspective that *doxai* are not “mere” appearances, but objectively

existing materials that are highly effective. For these scholars, doxastic material is central to the production and reproduction of collective life, including the production of knowledge. If *doxai* exist objectively outside of the way subjects perceive or believe in them, they can be treated as a type of material to be drawn on, worked with, molded, revived, or transformed.⁵ Rhetorical scholarship by John Muckelbauer, Andreea Deciu Ritivoi, and J. Robert Cox carefully brackets *doxa* from ideology, but assumes the effectivity of both as unexamined material.⁶ They do this largely without performing the critical gesture that implicitly assumes a distinction between *doxa* and the production of critical knowledge *about doxa* that would “undo” or “dispel” it. For these rhetorical scholars, there is no real difference between *doxa* and knowledge, there are only specifically epistemic *doxai*. What these contemporary theorizations of *doxa* deemphasize is any sense of a tension or difference between *doxa* and *epistēmē*. In the rush to describe *doxa* as the material of all collective life, including knowledge, there has been little attention paid to how and why undemocratic *doxai* might be productively transformed by epistemic gestures.

However, in the movement against corporate rights, as with many other movements, there is an assumption that better knowledge can aid in the production of better, more democratic politics. The project of building and seeking knowledge that can contribute to social and political transformation has also been of interest to many critical scholars of epistemology. For instance, some critical, politically minded scholars embrace standpoint epistemologies that take everyday experiences of struggle as privileged knowledge.⁷ Standpoint epistemology often strategically collapses the distinction between *doxa* and *epistēmē* in order to explain more fully how embodied, local practices of everyday life are a type of knowledge with epistemic priority.⁸ Certain rhetorical scholars such as Robert L. Scott have argued similarly that knowledge is fundamentally a function of experiential rhetorical processes involving common beliefs and

understandings.⁹ Although these approaches to the role of common experience in knowledge have contributed interesting and important additions to epistemology and the study of movements, my concern here is a bit different. I agree that common experiences and subjugated knowledges that affirm *doxa* by drawing on common topoi and everyday practices can be important to building transformative knowledge. I am also interested, however, in whether the process of enacting a sharp distinction (rather than claiming a similarity) between *doxa* and *epistēmē* can produce democratic events, especially when the enactment of the distinction between *doxa* and *epistēmē* is done in movement politics and through the techniques of academic scholarship.

This reconsideration of the significance of the tension between *doxa* and knowledge is in some ways in tension with the recent vitalist, immanentist ontological turn in humanities scholarship. Authors such as Jane Bennett and William Connolly have focused their recent work around generating ontological accounts of time, objects, assemblages, animals, affect and other ostensibly political ways of being and becoming.¹⁰ These and related efforts are part of a larger move to avoid making what many take to be increasingly unsupportable and ineffective claims that there is an important difference between reality and representation, language and things, surfaces and depths, or materiality and rhetoric. My study of the movement against corporate rights is sympathetic to these approaches in that I agree that we should not assume a fundamental or ontological distinction between reality and representation, rhetoric and materiality, or *doxa* and *epistēmē*. Some aspects of corporate rights and the movement against them require explanation in terms of technologies and the natural environment. I share, however, some of the hesitations of scholars such as Lawrence Grossberg and Jeremy Gilbert about the political significance of such work.¹¹ As Peter Simonson has pointed out, “Ontology in the human world

plays out in fields of differential power and privilege,” which means, among other things, that ontology has political implications that it may not specifically avow.¹² I also have two further hesitations. First, as this study will demonstrate, I am not yet convinced that there is no important role in democratic politics for critique, even if its various ontological assumptions are “faulty.” Even if there is no meaningful ontological distinction between reality and representation, for instance, that does not mean that enacting such a distinction cannot be extremely effective as part of democratic politics and even contribute to the production of assemblages that involve nonhuman actors, etc. To that extent, this study suggests that critique is a technique or even a mechanism by which democratic collectives appear. Critique is a technique that requires enacting the assumption of a difference between *doxa* and *epistēmē*.

My second hesitation with regard to the post-critical immanentist or vitalist turn in political theorizing is that its epistemic *uses* are likely to cause it to fall short of its ontological aspirations. While it is well and good to offer ontological speculation, such work has yet to translate itself into scholarly *research* except by way of re-establishing a commitment to understanding ontological concepts as part of what Gilles Deleuze might call the dogmatic image of thought.¹³ In other words, the context and institutional imperatives within which such ontologies are disseminated and taken up seem to lead even the lightest and most carefree concepts down a path that pushes them into the laborious service of epistemic tasks. What can be done with a concept such as assemblage except attempt to describe empirically existing instances of such things? This difficulty leads me to conclude, for the time being, that the even the most speculative of ontologies continue to be made relevant through their capacity to operate as part of the performance of epistemic gestures. These epistemic gestures in turn require an *other*, some existing sense of things that they attempt to revise, improve, make more accurate, etc. Vitalist,

immanentist, geological, and materialist ontologies written by creative, eloquent scholars housed in modern research universities seem, in the end, to simply reproduce an epistemic gesture as they attempt to interrupt the inaccurate *doxa* that there is a difference between reality and representation.

Therefore, I take the tension between *doxa* and *epistēmē* as the basis for understanding not just dissensual democratic politics, but also as the basis for understanding the potential of scholarship to contribute to the flourishing of such politics. Substantial research has been done on movement-based rhetorical techniques for critiquing *doxa*.¹⁴ There is an equally large number of attempts to develop scholarly and philosophical methods of transforming *doxai*, some of which I will discuss in the section below on critique. I take up the task of contributing to both of these general projects: first, describing how movements critique *doxai*, and second, developing scholarly techniques, such as genealogy and articulation, by which research can itself critically and dissensually transform *doxai*. Moreover, I attempt to show how, if these two types of critique can be understood through a shared set of concepts, they can be brought into more robust and sustainable dialogue with one another.

Within this broad frame of attempting to bring movement and scholarly techniques for enacting and contesting *doxa* into conversation with one another, I specifically focus on political movements and scholarship based on the principle of democracy. Some types of scholarly critique demonstrate only implicitly the assumption that there is a difference between *doxa* and *epistēmē* by performing a distinction between their own critique and the stable sense of what has come before. I argue that the democratic political potentials of such critiques can be understood and developed more effectively and deliberately to mesh with (and hopefully contribute to) the

critical and performative goals of democracy movements if the commonalities between scholarship and movement contestations of undemocratic *doxai* are more clearly described.

The goal of theorizing the potentials of enacting the tension between *doxa* and *epistēmē* is not to establish the conditions of true or verifiable democratic knowledge. Instead, it is to build a set of techniques by which to perform *dissensual democracy*. Democracy, I will argue, requires the relatively unreflexive enactment of democratic *doxai*. Dissensus, on the other hand, requires enacting the tension between *doxa* and *epistēmē*. Dissensual democracy therefore requires the simultaneous performance of the doxastic subject position of the *demos* and the critique of *doxai* that produce undemocratic relations.

Enacting Democratic *Doxai*

If *doxa* is understood not as opinion, but rather as the stable material that can be drawn on in the process of enacting a sensible position in the world, *democratic doxai* enable that enactment in the terms of the political principle of democracy. There are a number of important approaches to democratic *doxai* that help to explain the political acts of the movement against corporate rights. One of the most influential of these approaches for this study is Jacques Rancière's account of democratic politics.¹⁵ Rancière's approach to democracy is a strong defense of the democratic *doxai* of equality and freedom. Although Rancière has been rightly critiqued by Bruno Bosteels for his too-hasty dismissal of historical materialist approaches to politics, his account of the importance of everyday and longstanding *doxai* as the mode of democratic political performance is quite strong. I also think it is quite hopeful because it does not advocate an exodus from the common, accessible rhetorical resources available for enacting democratic politics.¹⁶ For Rancière, democracy does not require specialized language or critique;

it simply requires taking up the most accessible *doxai* of democratic traditions in the name of the part of the political whole that has no part while making a new world sensible.

Rancière does not dwell on the concept of *doxa*. Most of his discussions of the concept occur in the context of his critiques of Plato's dismissal of *doxa* as mere appearance. There is nonetheless in his work a strong appreciation for the way that the enactment of the common material of democracy enables the appearance of the *demos*. Much like Chantal Mouffe, who argues that consensus is needed on "the ethico-political values that should inform political association," Rancière argues that such values are doxastic, but they are not merely "forms" belied by their contents or 'appearances' made to conceal reality. They are an effective mode of appearance of the people, the minimum of equality that is inscribed in the field of common experience."¹⁷ For both Mouffe and Rancière, the importance of democratic *doxai* such as "equality" and "freedom" are agreed upon so that their meanings can be dissensually contested and enacted.

My primary concern is with a set of democratic *doxai* that are more specific than general ideals like equality or freedom. These *doxai* are the *collective personae*, such as "the people," "the community," or "the movement" that are enacted as the subject position of the *demos* in democratic politics. Any given dissensual democratic critique of *doxa* must be articulated *through doxai* by a collective that refers to itself as a specific collective persona and enacts that persona via specific technologies. Various theorists in rhetorical studies have taken up the project of analyzing the significance of collective personae and their rhetorical effects in support of different conclusions. For instance, Kenneth Burke and Michael Warner each find that "the people" operates as part of a circular and performative logic of sovereign legitimation in the written texts of constitutions; as Warner writes, "By constituting the government, the people's

text literally constitutes the people.”¹⁸ Michael Calvin McGee and Maurice Charland, on the other hand, analyze the persona of “the people” as part of a critical theorization of rhetoric as ideological.¹⁹ Both McGee and Charland take “the people” as a sort of trope that generates effects on the audience of the texts they consider: Hitler’s speeches and books, and white papers produced by *québécois* separatists. Much like Mouffe’s account of agonism and Ernesto Laclau’s account of populism, McGee and Charland argue that collective personae generate *identification* with the collective subject named in the text as that persona.²⁰

These various approaches point to two important dimensions of the rhetorical process that constitutes the specific nature of collective personae, dimensions that are clearly visible in the way that the movement against corporate rights demonstrates such *doxai*. McGee emphasizes how collective personae are imbricated in a dynamic of stability and change in *doxai* that echoes Warner and Burke’s emphasis on the performative dimensions of collective personae. Charland, on the other hand, describes in lucid detail how collective personae such as the *peuple québécois* are articulated against a presumed enemy or other, a facet of constitutional “dialectics” that Burke also emphasizes. Along with Laclau and Mouffe’s conviction that politics requires a “constitutive outside,” this is an important insight about the conditions under which the *demos* appears.²¹ I will argue below that in the case of the movement against corporate rights, its efforts to disarticulate the natural unity of the enemy “corporations” is a strategy that builds on and complicates this account.

I take a more Rancièrian approach than these theorists, however, by steering away from *identification* and toward *demonstration* as the core dynamic that constitutes democratic collectives. Demotic collective personae such as “the people” or “the movement” are the *doxai* through which collectivity is demonstrated; rather than assuming what John Durham Peters

might call a one-to-many “dissemination” structure of such personae, I describe the ways that such doxastic personae are demonstrated by multiple locations in concert with one another.²² Although identification may very well be an element of how individuals come to participate in demonstrations of democratic *doxai*, I am less interested in explaining psychic processes than I am with establishing an account of the techniques and mechanisms by which horizontal demonstrations *appear* and how *doxai* are contested within them. My concern with how collective personae enable the demonstration of collective subjects leads me away from what Jeremy Gilbert would call the “vertical” texts analyzed by McGee, Charland, Burke, and even Warner (speeches and books of fascist leaders, constitutions, white papers) produced by a few for the many — and toward more cooperative, participatory and “horizontal” texts such as petitions, community ordinances, resolutions, and collaborative histories.²³ One of the central dimensions of the democratic rhetoric of the movement against corporate rights is that its collective personae are often simultaneously referred to by both the first persona (the *I* or *we*) and the second persona (what Edwin Black called the *implied auditor* and what many more recent rhetorical theorists call the *subject position* offered by the text) of their enunciations.²⁴ When the first and second personae are presented as *the same entity*, a collective persona is positioned as the author, source, or origin of an enunciation for whom that same collective persona is presumed to be the “audience,” for instance “we the people will not stand for this injustice,” etc. In cases where the first person plural persona (the persona referred to by the *we*) of an enunciation and the second persona of the enunciation’s audience blend seamlessly, there is a unique type of rhetorical event taking place that has a specific role to play in democratic rhetoric. Blending first and second personae in such an enunciation will probably always be itself available as an object of criticism by highlighting some level of difference between author/rhetor

and audience. Increasingly, however, various digital media technologies are allowing for the production of innovative versions of the demonstrative *we* of collective personae. These rapidly changing technologies offer a new set of possibilities for the enactment of collective personae through the demonstrative *we*, and different branches of the movement against corporate rights build on these possibilities with varying results.

The collective personae referred to by many of the *we* statements analyzed in what follows refer to the collective persona of a *movement*. I've adopted this persona to describe the collective entity generated by the texts under consideration for two primary reasons. The first is simply that the movement describes itself as such, and with a few exceptions, nearly all the texts I describe as being part of the "movement" also describe themselves that way at one point or another. There is an additional reason, however, to refer to this collection of texts and events as a "movement," which has been suggested by rhetorical scholarship on movements over the past forty years. Michael Calvin McGee's 1980 re-orientation of rhetorical studies of movements argued effectively that "movements" are not properly social phenomena that exist before they are named as such. A "movement" is constituted by the rhetorical declaration of its existence and ancillary rhetorical events.²⁵ Kevin Deluca's insightful defense of this position in 1999 offers an important roadmap toward establishing the relationship between rhetorical production of a movement and Laclau and Mouffe's theories of articulation and radical democracy.²⁶ Laclau and Mouffe's more recent work indicates additional fruitful avenues for thinking about how movements are rhetorically produced through dissensus, conflict, agonism, and opposition to an enemy or adversary.²⁷ In these accounts, populist democratic politics involve the articulation of common collectivity through *doxai* over and against another rhetorically constituted collectivity. There is a certain overlap between Laclau, Mouffe, and Rancière on the question of whether democratic

movement politics require opposition to another collectivity or instituted power bloc. For Rancière, however, democracy is the movement of those without power against the political ruling order, not simply a competing collective. For all of these theorists, however, democratic political movement is rhetorically constituted in part by opposition to its outside or other.

The movement against corporate rights requires a refinement and expansion of these descriptive approaches. The movement against corporate rights is most certainly a movement against an “other” that constitutes the ruling political order: corporations. But the movement does not simply define itself as being against corporate rule. It also defines itself by questioning the coherence and existence of corporations as they are currently constituted culturally, politically, and legally. This means that the movement against corporate rights doesn’t simply perform a sort of democratic “movement *doxa*” of attempting to reclaim power from an adversary, enemy, or police order. It also offers an epistemic account of what corporations are, how they have come to be, and how they should be defined that cuts against the stable legal sense of corporate personhood that has accreted over the past 150 years. This deliberate use of epistemic (or anti-doxastic) rhetoric by the movement against corporate rights indicates an important role for dissensual critique in the process of performing the democratic *doxai* of self-constitution through opposition. Opposition, it seems, may not simply be to an other, but can consist of establishing a distinction between that other, the way that it is named, and the *doxai* regarding its existence and importance. My argument is that unpacking the significance of this aspect of democratic movement *doxai* is aided by understanding how dissensual techniques of critiquing undemocratic *doxai* contribute to the demonstration of the subject position of the *demos* and acting out the *doxai* of democracy, which is the topic of the next section.

Critiquing *Doxa*: Articulation and Genealogy

Although there are many methods for enacting dissensus through critique, the movement against corporate rights often gravitates toward something like genealogy. This is, perhaps, the result of the movement's consistent focus on United States law as a site of power, politics, and potential transformation. The common law tradition of the U.S. requires perpetual revisiting of past law as a resource for precedent in the name of both stability and change. Some elements of the movement adopt what Larry Kramer has called a "popular constitutionalist" stance by claiming that the most important source of Constitutional interpretation is the will of the people.²⁸ Other elements of the movement see local legal sovereignty as the answer to the excesses of corporate influence at the national level.²⁹ But the common focus on the law in the movement means that telling the history of how that law came to be is an important strategy for changing it.

As a result, the critical method of genealogy resonates with how the movement can and does contest the *doxai* of corporate rights. As one of the most well-traveled methods of critique in the past thirty years, **genealogy** can be briefly characterized as the practice of mapping the past to critique the present. Michel Foucault's development of Friedrich Nietzsche's philosophy has been the primary banner that such attempts to re-articulate *doxa* have marched under.³⁰ Genealogy has the potential to operate as a specific type of dissensual democratic re-articulation of *doxai* such as the ongoing, stable sense of corporations as natural, rights-bearing communities that exist prior to the law and are recognized by the law.

Genealogy is often understood as an alternative to the type of ideology critique that aims to "unmask" discourses that obscure relations of power. For instance, some theorists of *doxa*, such as Pierre Bourdieu and Roland Barthes, rely on a concept of *doxa* that is quite similar to "ideology."³¹ For these theorists and their followers, the task of critique is much like "revealing"

the truth behind appearances. Genealogists position themselves not as revealing what *doxa* hides, but rather as mapping *doxa* and its effects on discourse, power, and institutions. The distinction between “revealing” and genealogically “mapping” is often posed rather starkly.

In practice, however, the distinction between genealogy and ideology critique is fairly fine-grained. The approach of Nancy Fraser and Linda Gordon to the concept of “dependency” in welfare policy is perhaps a typical expression of how genealogy has been practiced as a close companion of ideology critique.³² Fraser and Gordon describe how their own genealogical method results from combining the insights of Foucault and Bourdieu in such a way as to emphasize the critical potential of excavating “broad historical shifts in linguistic usage that can rarely be attributed to specific agents.”³³ The genealogical method is founded on the premise that discussing otherwise undiscussed *doxai* is not a matter of achieving a “new” or more accurate account of the world. Instead, it bypasses the task of definitively theorizing *doxa* itself to operate from the premise that stable, doxastic material can be turned against other *doxai* in the interests of the present moment.

In addition to drawing generally on both Foucault and Bourdieu, Fraser and Gordon also point toward how an effort to unpack the history of a term like “dependency” requires an account of how and why such specific concepts are important sites of genealogical research. For Fraser and Gordon, Raymond Williams’ focus on “keywords” is a significant contribution to the project of accounting for the politics of fluctuating vocabularies. Fraser and Gordon seem to be interested in the *Keywords* project simply because it focuses attention on polysemous words. In Williams’ *Keywords* project, however, we find an approach to describing the articulations of *doxai* that differs substantially from the historicized ideology-critique of “dependency” conducted by Fraser and Gordon.³⁴ Where Fraser and Gordon explicitly state their intention to

“dispel the *doxa* surrounding current U.S. discussions of dependency by reconstructing that term's genealogy,” Williams’ *Keywords* project does not attempt to “dispel” anything.³⁵ Instead, *Keywords* and its updated companion, *New Keywords: A Revised Vocabulary of Culture and Society* attempt to affirm certain definitions of contested terms while simultaneously accounting for the contests, both popular and scholarly, that have shaped those articulations.³⁶ The *Keywords* projects reflect an approach to critique developed out of a Birmingham-style cultural studies invested in the relationship between scholarship and popular culture as well as the institutions of knowledge-production that often receive attention from genealogists. Articulations of “the corporation” have undergone significant transformations in the past 200 years, and the contemporary movement against corporate rights seeks to further rearticulate corporations by critiquing the way that they have been articulated through democratic *doxai* such as “rights” and “community.” To that extent, genealogical and “keywords” approaches to “corporation” offer valuable insights into how dissensual critique is enacted at the level of the concept.

Scholarship in rhetorical studies also offers several ways to approach the enactments and rearticulations of conceptual *doxai*. Edward Schiappa, for instance, approaches defining philosophical and legal concepts as an activity that is part of politics and law and that should be investigated empirically according to the lexical parameters of existing usage.³⁷ Alexander Lefebvre has developed a particularly forceful and generative model of specifically legal concepts and their perpetually transforming rearticulations. Lefebvre draws on Paul Patton and Gilles Deleuze’s accounts of philosophical concepts to clarify how the process of rearticulating concepts is fundamental to the structure of the common law.³⁸ William Connolly similarly theorizes what he calls “essentially contested concepts.”³⁹ One of the central themes of all of these approaches, as well as the technique demonstrated by Erik Doxtader’s virtuoso reading of

the terms “recognition” and “reconciliation” in human rights rhetoric, is the question of how social and political changes are expressed by conflicting articulations of *doxai*.⁴⁰ This question goes far beyond theorizing the “ideological effects” of *doxai* on audiences. Rather, we find a deep and persistent question about *stability* and *change* in the *doxa* of concepts.⁴¹

Underlying these rhetorical approaches, as well as the *Keywords* projects, are various assumptions about why certain versions of concepts stabilize, and why they change. The genealogical answer to this question, if it is faithful to Foucault, is often “because of power.” At the level of political practice, however, this type of answer can be quite thin and unsatisfying. My concern, therefore, is not to compare and evaluate explanations for *why* definitions of concepts change, but rather to ask a question that takes such changes as the result of specific techniques: *How* can the dissensual gesture of establishing knowledge about articulations of *doxai* operate as part of democratic politics? Because my concern is specifically about the mechanisms for producing dissensus, critical approaches to *doxai* are more helpful than broad-based explanations of the underlying causes for changes in articulations. In other words, the argument I pursue in several of the following chapters is that one of the ways to attempt to change *what corporations are* is through dissensual techniques that leverage knowledge against the legal *doxa* of what corporations are.

Cultural studies scholars of articulation following Ernesto Laclau, Chantal Mouffe and Stuart Hall have aspired to account for how knowledge enables various kinds of politics.⁴² While eschewing the most traditional forms of ideology critique, cultural studies theorists of articulation such as Lawrence Grossberg and Jennifer Daryl Slack argue that the concept of articulation bridges the gap between politics and the methods of cultural studies scholarship.⁴³ Chantal Mouffe, on the other hand, locates articulation specifically in relation to democracy

figured as the re-negotiation of hegemonies.⁴⁴ Rather than describe dissensual democracy only as a type of hegemonic politics or only as a cultural studies method, however, I will argue that the dissensus in dissensual democracy is a type of articulation in that it is both a theory of how dissensus works and a method that can be adapted to produce dissensual politics.

While taking up the project of critiquing *doxa* shared by these theories of articulation, in the context of dissensual democracy I ask: *what else* can be demonstrated by efforts to re-articulate reality? As a method, part of democratic articulation's force is in its capacity to demonstrate the existence of the *demos*, the collective subject of democracy. Rhetorical scholars such as Barbara Biesecker, Christian O. Lundberg, and Nathan Stormer offer important insights about how critique and articulation demonstrate certain types of political subjects that are themselves articulated while disarticulating.⁴⁵ When this rhetorical, performative perspective is reintroduced into the more general development of the cultural studies method of articulation, it provokes two important questions about critiquing *doxa*. First, what kind of collective subject position is demonstrated by critiques of the ways corporations have claimed democratic *doxai* such as rights? Secondly, what do scholarly critiques of articulated *doxai* need to *demonstrate* in order to engage in dissensual democracy? Dissensual democracy is not simply a matter of critiquing *doxai*, nor is it a matter of demonstrating a type of performative, sensible subject through *doxai*. It is both, together and simultaneously: critiquing undemocratic articulations of *doxa* while demonstrating the *doxai* of democracy in and as an emergent collective subject.

Building on these insights about the performativity of critique and its capacity to *demonstrate* an entity as it *tells* is how I develop genealogy as a dissensual democratic articulatory method. My overarching argument is that the critical disarticulatory techniques of the movement against corporate rights adopt the posture of attempting to critically disarticulate

democratic *doxai* from corporations in the law. This dissensual democratic critique and posture can be similarly undertaken by anyone who wishes to “join the movement,” including scholarly genealogies.

The chapters that follow describe how democratic *doxai* are both critiqued and performed, first, within the movement against corporate rights and second, in scholarly approaches to the movement. In the process of describing how *doxai* produce dissensual democracy, I will explore the tension between *doxa* and *epistēmē* in several registers of the critique of corporate rights. These registers include democratic theory, scholarly critiques of the movement’s use of democratic *doxai*, the relationship between critique and *doxai* within movement rhetoric, and the role of critique in the founding gesture of constituting new legal collectives.

In order to explain the relation of *doxa* and *epistēmē* in the movement against corporate rights and the methods of related scholarship, Chapter One establishes an account of how critical democratic theorists have approached the problem of democratic *doxa*. Critical theories of democracy, such as those in dialogue with Chantal Mouffe, Wendy Brown, and Jacques Rancière, tend to figure democratic *doxa* as the object of critique and/or as the material through which democracy is enacted. I compare these approaches by framing them in the context of the “paradox of politics” as described by Jean-Jacques Rousseau. This paradox is the problem of how democracy can be democratically established without democracy to bring it into being. Existing approaches to this long-standing political theoretical problem, I argue, can be augmented by considering the role of democratic *doxai* in the emergence of the *demos*, the collective subject of democracy. The emergence of the *demos*, I argue, requires both the critique of the representative failures of undemocratic *doxai* (which often pose as democratic) as well as the enactment of a specific class of democratic *doxai* called *collective personae*. The

combination of critiquing and enacting *doxai* is **dissensual democracy**, which requires that the tension between *doxa* and *epistēmē* be enacted through a collective persona that is itself doxastic. In other words, in order for critiques of undemocratic relations themselves to be democratic, they must come from “the people” or another subject that plausibly enacts the role of the *demos*.

Chapter Two analyzes a series of resolutions against corporate rights passed by local governments during 2012 as well as a timeline of rights and powers produced by the movement to map the history of corporate personhood. This analysis of movement rhetoric asks: what role does enacting the tension between *doxa* and *epistēmē* play in dissensual democratic events? How do enactments of democratic *doxai* demonstrate the *demos*? This chapter takes up the question of how the movement against corporate rights itself enacts critique in the process of demonstrating a collective subject through collective personae. Based on this analysis, I argue that the broad gesture of critiquing democratic *doxai* while enacting democratic *doxai* produces the sense that a democratic event is happening — the event of the appearance of the *demos*. This dissensual event is the collision of *doxai* through the enactment of the assumption that there is a tension between *doxa* and *epistēmē*.

Chapter Three examines the democratic importance of the tension between *doxa* and *epistēmē* in another register: the relationship between scholarly description and critique of democratic *doxai* such as ‘petitions of the people.’ During the 2012 election cycle, the movement against corporate rights circulated many online petitions that enacted several demotic collective personae. Chapter Three describes these petitions and the collective personae that enunciated the petitions as democratic *doxai* and asks whether these particular democratic *doxai* are an expression of democracy or an occlusion of undemocratic relations hidden by the liberal political technique of petitioning. In analyzing the features of various petitioning technologies and the

rhetorical culture they contribute to, this chapter demonstrates the difference between the distinct but interrelated approaches of critiquing and describing democratic *doxai* such as petitions of ‘the people.’ The first approach is to enact a dissensual critique at the level of scholarship about such *doxai*, in this case, pointing out the ways that petitions fail to be actual democracy. The second is to identify and describe the democratic functions of such *doxai*, in this case, how petitions are actually a democratic technique. Each of these approaches, I argue, has something important to contribute to identifying the democratic potential of online petitions against corporate rights. Additionally, this analysis of online petitions against corporate rights illustrates the potentials and limitations of scholarly critique when dissensus is levied against the *demos* rather than in concert with the *demos*.

Chapter Four describes how six books that are part of the movement appeal to and critique specifically *historical* democratic *doxai*. These books demonstrate two important aspects of dissensual democracy. The first is the centrality of the first person plural *we* in the production of dissensual democratic collective subjectivity. The centrality of the *we* in these books demonstrates how collective personae can be performed by book-length written texts as they position themselves in relation to digital collectives. The second aspect of dissensual democracy demonstrated by the books against corporate rights is how they refine an even more specifically epistemic approach to critique. The books discussed in this chapter take on the task of telling the history of corporations as part of an effort to genealogically re-articulate democratic *doxai*. As such, they demonstrate the continuity in dissensual democracy between the protest techniques discussed in earlier chapters and more scholarly methods of research. The juxtaposition of the books’ two approaches to historical material — drawing on it to generate a sense of a transhistorical collective *we* and critiquing it as part of an effort to genealogically disarticulate

undemocratic *doxai* — suggests that scholarly genealogy may be an important critical strategy for co-enunciating democratic dissensus with the movement against corporate rights.

Additionally, the democratic *we* in these books suggests that the critical theory and method of articulation needs a stronger emphasis on the performative elements of articulation and their relationship to making epistemic claims if it hopes to account for dissensual democratic types of articulation.

Chapter Five builds on these insights into dissensual democratic articulation to conduct a genealogy of the legal theory of the corporation. This chapter critiques the doxastic legal concept of the corporation by mapping a key historical moment in the history of the corporation when joint stock business corporations began to be theorized as natural entities that exist prior to the law. This historical event, around the turn of the twentieth century, was constituted by the importation of Otto von Gierke’s German organicist theory of corporation into Anglophone jurisprudence by Fredric Maitland. The genealogy conducted in this chapter reveals how the corporations came to be thought of as “communities” rather than as the legal tools to be used for the public good. The conceptual parameters of the contemporary legal definition of the corporation, demonstrated in the *Citizens United* decision, illustrate the significance of this legal theoretical history for the way that corporations operate through the law. It also suggests the potentials and drawbacks of using these legal theoretical *doxai* as part of democratic politics. In doing so, this chapter models a way of conducting scholarly critique as part of dissensual democracy that contrasts with and supplements the approach that is partially demonstrated in Chapter Three on petitions. One of the tasks this chapter on the genealogy of how corporations have come to claim democratic *doxai* is to demonstrate how dissensual critique may adopt the performative posture of mapping conceptual articulations to produce the rhetorical effect of

common participation in a collective persona – for instance, a “movement.” Instead of critiquing the *doxai* employed by movements (i.e., petitions of “the people”), the genealogy of this chapter takes on the project of attempting to genealogically re-articulate the *same doxai* as the movement (the political theoretical articulations of corporations as they have been codified in the law) by mapping the contingent production of their contemporary instantiations.

Chapter Six uses the genealogical framework of the doxastic legal concept of “the corporation” established in Chapter Five to take up the question of whether law, as an element of State-based governance, is an effective locus for genuinely democratic politics. I argue that describing the institutionalization of democratic *doxai* in the law helps to see the potential of the law as a site for the emergence of the *demos* as the founding event of democratic order. This chapter describes the efforts of the Community Environmental Legal Defense Fund (CELDF) to democratically found the legal authority of local place-based communities over and against the rights of corporations by passing local ordinances that codify the rights of humans and natural entities. CELDF’s community rights ordinances demonstrate two things: first, how the conceptual parameters of corporate legal personality provide *doxai* that are enacted in dissensual democratic politics; and second, how the gesture of claiming to rightfully be the entity that founds the State opens up a new way of thinking about State-oriented democratic politics. Returning to Rousseau’s “paradox of politics” from the first chapter, I argue that CELDF’s efforts show how the event of the emergence of the *demos*, without democracy to guide it, is an act of pure critique that attempts to found a new State through existing *doxai*.

Conclusion

Corporate rights are an important example of how and why dissensual democracy’s attention to both demonstration and critique can be productive. Because many versions of the

critique of corporate rights rely so heavily on the most traditional *doxai* of “American democracy” (the intent of the Founders, the words of the Constitution, the colors of the flag, and the sanctity of the law, for instance), it is difficult to grasp how deeply disruptive to the fabric of economic activity and politics the critique would be if its goals were realized. The most centrist versions of the critique, of course, focus only on *Citizens United* and campaign finance issues. But the bulk of the critique lies far to the left of the campaign finance issue – a leftism that is belied by the nationalist *doxai* it demonstrates. The strength of the theory of dissensual democracy and its techniques of demonstration is that they can account for the dissonance between these liberal nationalist *doxai* and the goal of the critique without dismissing the importance of both.

The critique of corporate rights demonstrates how contesting the *doxai* of corporate legal rights enables the demonstration of other collective personae such as “the people,” “the movement,” or “the community.” Although these demonstrations are sometimes weak in that they don’t articulate a very powerful *demos*, analyzing their specific techniques contributes to a more thorough discussion of how the simultaneous enactment of demonstrating and critiquing *doxai* contributes to dissensual democracy. The result, I hope, is a way of conducting scholarship on democracy that does not reduce democracy to either a question of inclusion/procedure or whether it accurately describes power.

Dissensual democracy, because it relies on demonstrating collectivity through common critique, is a type of politics that can grow along with the techniques that enable demonstration. This is not to say, as overly optimistic scholars like Manuel Castells do, that new technologies offer protest movements “a process of autonomous communication, free from the control of those holding institutional power.”⁴⁶ But as Jeremy Gilbert has argued, new media technologies

have a democratic potential that has yet to be realized.⁴⁷ Part of developing this potential is exploring how the affordances of these technologies relate to the most ancient and productive of critical gestures. As these technologies make questions of membership and participation more complex, critical scholarship will have proliferating opportunities to *join in* with techniques of critique that, as Bruno Latour points out in an unintentionally ironic performative contradiction, are themselves *becoming doxastic*.⁴⁸ The doxasticity of critique is not, as Latour so critically argues, a justification for a scholarly dismissal of critique. As scholars of political *doxa* can see, critique is only just beginning to gather steam.

Chapter 1 Dissensual Democracy: When a Body Politic Just Isn't Itself

Democracy is one of the central political ideals animating the movement against corporate rights. Denying corporations the rights of persons, according to the movement, is a crucial first step toward achieving greater democracy in the United States. Some versions of this critique identify corporate rights as the expression of the fundamentally undemocratic legal apparatus of the United States. As one organization puts it, “The structure of federal and state law – both statutory and constitutional – empowers corporations to override local democratic decision making.”⁴⁹ Other elements of the movement hold out the hope that currently existing state and federal government structures are, at their core, expressions of a healthy set of liberal democratic principles. These more centrist critiques tend to focus on the goal of amending the U.S. Constitution so as to deny corporations rights. But for all variations on the critique, corporate rights violate democratic principles and must be revoked. As one book about the impact of corporate rights asks rhetorically, “Is it possible that what’s *really* incompatible with democracy isn’t socialism or a regulated marketplace but, instead, is the ultimate manifestation of corporate power – *corporate personhood*?”⁵⁰

In order to explain what it means for the movement to position itself as the defender of democracy itself, this chapter attempts to clarify the general logic of ‘democracy’ and its relationship to State institutions. Can democracy inhere in institutions, or is it necessarily the ephemeral event of the appearance of the people? As part of that clarification, I argue that, when *critique* is an element of democratic politics, as it is in the movement against corporate rights,

democracy can be specifically *dissensual*. *Dissensual democracy* is an event that happens when the *demos* enunciates a critique that enacts the tension between *doxa* and *epistēmē*. While corporate rights are themselves the target of anti-doxastic critique, those critiques are almost always themselves enunciated in the name of other doxastic *collective personae*. For instance, the persona of ‘the people’ is often forwarded by the centrist branch of the movement as being the entity that should play the role of the *demos*. As one of the movement’s statements declares, they are “committed to social and economic justice, ending corporate rule, and building a vibrant democracy that is genuinely accountable to the people, not corporate interests.”⁵¹ At the same time, however, there is a tacit recognition within the movement that defining democracy and the identity of the real *demos* might not always be a straightforward endeavor. A book that positions itself as part of the movement begins its critique of corporate rights with an overt acknowledgment that both ‘democracy’ and ‘the people’ are contested terms that must be given shape and weight in the context of the contemporary political controversy: “*Citizens United* confronts us again with the basic question of American democracy – what do we mean when we say, as we do in the opening words of the Constitution, ‘We, the People’?”⁵²

The flexible referentiality of collective personae such as ‘the people’ are what allows them to be theorized as ideological in the works of rhetoricians such as Michael Calvin McGee and Maurice Charland.⁵³ Ernesto Laclau has provided tools for refining this rhetorical perspective by arguing that the function of such rhetorical personae is not so much ideological as part of the populist logic of politics that happens in hegemony.⁵⁴ This is because such personae are empty signifiers that can be linked to an articulated chain of demands that are unmet by the existing political order. Laclau describes the formal logic of such articulations as populist reason.

Unlike “populism” (and certainly unlike “ideology”) however, “democracy” has a more positive or idealistic political valence that shapes its logic. Although “democracy” comes under fire because it lacks a clear and specific referent, its status as what Kenneth Burke might call a god-term means that it is flexibly used to validate a startling array of practices. At the same time the concept is used to critique some of the very same practices and the way they merely *pose* as democratic; online chat rooms, local Occupy insurgencies, military invasions, American Idol, corporate campaign advertisements and full-scale governmental revolutions have all been both valorized as democratic and critiqued for their failure to be genuinely democratic. This tensely ambivalent dual occupation of “democracy” as validator *and* the basis for invalidation has led some critics, like Jodi Dean, to recommend that it be abandoned.⁵⁵ The ambiguity of “democracy,” however, is a deeply productive source of critical political action – not only in opposition to corporate rights, but in a wide variety of contemporary politics that justify themselves in its name.

Seyla Benhabib reminds us that this ambivalence is not incidental because democracy, like justice or freedom, is an essentially contested concept.⁵⁶ William Connolly suggests that this means that if we were to settle the meaning of such a normative concept once and for all, “we would be at a loss as to how to clarify or refine its boundaries when new and unforeseen situations arose. We would find eventually that a concept so cleansed would lay idle.”⁵⁷ This is because, Connolly argues, the specific definitional criteria of a normative concept like democracy are precisely what is always in dispute when the concept comes into play. The fact that there are only temporary and partial agreements on the definition of democracy is what allows it to perform the normative function of generating evaluations of new political activities. Endless appearances of the contingent are one of the things politics must be equipped to deal

with, often in the form of evaluative judgments that draw on comparisons with past events. Neologisms such as *deterritorialization* lack the normative force of long-standing concepts like democracy and therefore can't as powerfully enable claims about practices or forms of collectivity. The potential in the normative force of the concept of democracy means that *defining* democracy is a *demonstration* of democracy in the sense that it enacts a vision of democratic politics even as the specific definition attempts to explicitly articulate a relationship between rhetoric and democracy. The movement against corporate rights, for instance, defines democracy often and in direct opposition to undemocratic political conditions. Take, for instance, the definition of democracy articulated in the book *Dollarocracy: How Money and Media Election Complex is Destroying America*: "Dollarocracy is the antithesis of democracy. Whereas democracy has as its purpose the redistribution of power from elites to the great mass of people, Dollarocracy seeks to take the power back for the elites."⁵⁸ Similar definitions, carefully crafted to critique various social and political conditions, proliferate. They depend on the values the critique and collective subject articulate to demonstrate that sense of democracy. This suggests that attention to the relationship between critique and demonstration, especially as it is done through concepts that supplement the concept of democracy itself, may shed light on the technique that unifies democratic prescription and democratic critiques of *doxa*. The concept of democracy requires the perpetual re-posing of the questions of what democracy is and who the *demos* is, which are the questions that enable the enactment of the tension between *doxa* and *epistēmē* as part of attempts to make claims about what practices are "really" democratic and which ones only "appear" to be democratic.

A number of contemporary theorists of democracy take the relationship between democracy and critique seriously, although not all of them agree on a vision of precisely what

critique is or how it relates to democracy. Part of the task of this chapter is to sort out these differences and posit a way forward by defining *dissensual democracy* as a type of democracy that specifically integrates critique by presuming a tension between *doxa* and *epistēmē*. Jacques Rancière's work on dissensus is an important beginning for thinking about dissensual democracy, but, I will argue, his account of dissensus must be supplemented with a fuller consideration of the potential of critiques of undemocratic relations.⁵⁹ While Rancière offers a powerful way to explain the significance of performing democratic *doxai*, other theorists remind us that critiques of undemocratic *doxai* are just as important an element of democratic politics. Although theorists such as Rancière and Laclau emphasize the way that democracy happens in opposition to existing political order, such opposition is often strongly posed in and as a critique of the pretensions of such an order to be democratic and represent the true *demos*. Critique is also commonly used by scholars making arguments about democratic "fantasies" or "ideologies," and can also *demonstrate* a collective subject that is performing the role of the *demos* when the critique is enunciated in concert as a *demotic collective persona*. The movement against corporate rights critiques those rights as it demonstrates its own status as the proper *demos*, and in doing so, it is an example of dissensual democracy.

The first section of this chapter describes how democracy has a fraught relationship to institutionalized political order. After describing Rousseau's formulation of the paradox resulting from understanding democracy as both institution and event, I argue that Rancière's approach to the paradox is an important innovation in the context of existing approaches because it provides a fuller account of the evental elements of democracy and the role of *doxai* in producing such events. After describing what Rancière contributes to this problem in the first section, the second section argues that he misses the mark when it comes to the potential of critique to contribute to

democratic events. Critique is not simply opposed to the democratic *doxai* Rancière favors; in fact, it also relies on such *doxai* and is central to democratic events. Dissensual democracy, I conclude, consists of both the performance of democratic *doxai* in events as well as critiques of the *doxai* that produce undemocratic relations through ossified institutions. The collision of *doxai* in the critique of failed political representation is the event of dissensual democracy.

Democracy: Institution or Event?

The most precise formulation of *democracy* is to say that it is ***the rule of the demos by itself***. This formula, however, begs for additional definitions of “the *demos*” and “rule,” while also suggesting that a difference between “the *demos*” and “itself” can be introduced by “ruling.” Democratic rule, therefore, consists in the techniques for introducing a democratic difference between the *demos* and *itself*. The question that has preoccupied many democratic theorists of late is whether “rule” that differentiates the *demos* and itself is comprised of institutions or events, and whether such articulated difference should be fixed or fluid. My argument in what follows will be that democracy should be primarily understood as an *event* that involves the critique of existing political institutions — in the hope that those institutions can be made more democratic. The result of this critique is that the *demos* appears through the demonstration of democratic *doxai*. Producing a sense that the *demos* is appearing in opposition to existing political order is what therefore constitutes democratic “rule.”

The earliest and most widely read modern philosopher to take up the question of how the *demos* can rule itself was Rousseau, who concerned himself specifically with the difficulties posed by the non-identity of the ruling relation between the *demos* and itself. Rousseau asks how a body politic can act to govern itself when government and the body politic are not *the same thing*. It is at this point that the deep and productive tension in modern democratic theory is born,

as Rousseau struggles with the question of how to theorize the establishment of a collective entity that he simultaneously presumes always already to have existed.⁶⁰ How can a body politic that is natural, essential, and immanent to politics exist before it is *made* through proper forms of rule? Rousseau's own words capture this paradoxical tension, which has preoccupied many political philosophers:⁶¹

For an emerging people to be capable of appreciating the sound maxims of politics and to follow the fundamental rules of statecraft, the effect would have to become the cause. The social spirit which ought to be the work of that institution, would have to preside over the institution itself. And men would be, prior to the advent of laws, what they ought to become by means of laws. Since, therefore, the legislator is incapable of using either force or reasoning, he must of necessity have recourse to an authority of a different order, which can compel without violence and persuade without convincing.⁶²

The difficulty with democracy, in other words, is that it would need democratic procedures to be established as democratic. Another way of putting this would be to say that democracy both presupposes a *demos* and creates it; which comes first, the *demos* or the institution establishing its rule? Rousseau's "legislator," in the above passage, stands in for such processes, procedures, or events and is roughly equivalent to "democratic rule." This means that the figure of the legislator represents the *demos*, not as a governmental institution, but as the way in which representation itself can happen. If democracy is merely a form of state-based governance, it is easiest to interpret the legislator as a literal law-maker – one who writes and interprets the letter of the law. Rousseau appeals to the "authority of a different order," however, leaving open a provocative range of possibilities for understanding the role and nature of what mediates between the body politic and itself as legitimate *rule*.

This central problem of democratic political theory – how properly democratic politics can come into being without properly democratic politics to structure the way politics comes into being – is most easily addressed pragmatically by saying that the ongoing process of politics

should be self-critical according to the regulative democratic ideal, and the ideal itself is the legislator. But this provisionally satisfying answer fails philosophically on two fronts. First, it does not account for how it is precisely the *foundational* identity of the *demos* that is at stake in the development of ruling procedures for a *demos*. The identity of the *demos* cannot be thought of as an “ideal” in order to function as it should in the democratic process; it must be “given” as a real and proper identity. This argument, for instance, is made quite lucidly by Bonnie Honig as she discusses Jacques Derrida’s treatment of declarations of independence: such a foundation may be rhetorical but nonetheless must be enacted as essentially and incontrovertibly given, even if from “an authority of a different order.”⁶³

Second, the pragmatic solution to the paradox does not account for the problems that result from how the democratic ideal can be interpreted in hugely disparate ways. In Rousseau, the persona of the legislator stands in for the entire massive and opaque set of epistemic, ethical, or rhetorical procedures through which democratic ideals might be enacted. The lack of specificity means that the “democratic ideal” is so empty that it would fail to be a productively functioning ideal – a failure that some claim is now upon us. The pragmatic answer is therefore unsatisfying and it begs for a more nuanced explanation of how the “legislator” constitutes the difference between the *demos* and itself.

Several types of democratic theory have taken up the project of describing more specifically what Rousseau’s legislator – the normative ideal of democratic rule – can be. These theories of democracy reject what Chantal Mouffe refers to as the “aggregative” model of democracy that simply presumes to count opinions; for these normative models of democracy, democratic politics must be based on the oscillation between prescribing more democracy and critiquing undemocratic relations.⁶⁴ These theories, such as Jacques Rancière’s description of

democratic demonstration, Chantal Mouffe's agonistic pluralism, Wendy Brown's critique of liberalism, Jürgen Habermas's deliberative democracy and Seyla Benhabib's refinement of it, argue that "real" democratic rule is opposed to the dominant *doxa* of contemporary politics. For these theorists, democratic *doxai* have not already been established in existing institutions. Current doxastic state-based governance, they argue, only *poses* rhetorically as truly democratic and in reality continues to produce inequality and unfreedom.

For these theorists, collective consensus and collective will do not pre-exist politics but rather result (temporarily for Rancière and Brown, longer for Mouffe, or quasi-permanently for Habermas and Benhabib) from political activity. They all, however, oppose defining democracy as the self-expression of a functioning and holistic social body. Instead, democratic rule results from the way political principles like equality and justice structure and justify political actions. To that extent, they agree that the institutionalized democratic *doxai* must be intervened upon and they ostensibly oppose identifying the source of democracy in an existing and specific social collective (such as, for instance, the working class).

Rancière calls a presumed social origin of political order – like wealth, virtue, or identity – an *arkhê* and argues that a consensual collective body founded on such an *arkhê* lends itself to the formation of a functionalist community without democratic politics.⁶⁵ Any presumption of a social origin for the political order is a form of domination, for Rancière, and he argues that "politics exists when the natural order of domination is interrupted by the institution of a part of those who have no part."⁶⁶ This 'part that has no part' in the dominating political order is the *demos*, which appears as it describes itself as not having a part. Jürgen Habermas similarly argues that democratic politics can't simply be a matter of expressing a pre-existing community. He brackets the ethicalization of politics via collective identity expression as "republicanism"

and argues that the legitimacy of deliberative democratic procedures lies in the communicative rationality that governs their form rather than the way they express any particular nature of the social whole.⁶⁷ The State cannot be the pure expression of the people, “constituted either by a sovereign citizenry or by a constitution.”⁶⁸ The social whole, for Habermas, can only be centered apart from the State. Mouffe goes a step further than Habermas and argues that even attempts to constitute a non-State-based consensual whole should be abandoned.⁶⁹ She argues that “circumscribing a domain that would not be subject to the pluralism of values and where a consensus without exclusion could be established” is simply impossible.⁷⁰ All of these theories articulate a fundamental conviction that there can be no unified political whole that functions democratically within itself as a State.

The broad outline of what is shared by these theorists is a conviction that democracy is a normative project that must be exercised against the way that political institutions currently function as presumptive representations of the unified political whole. In this seed of shared commonality lies an important approach to Rousseau’s democratic paradox. Rousseau’s statement of the paradox arises out of assumption that founding a unified democratic people and its institutions happens *ex nihilo*. Democracy, however — both conceptually and historically — has always been a project that involves founding a people and its institutions in *opposition* to already an existing political order. Democracy is at its core *a reaction to its absence* that calls into question the capacities of institutions, processes, and governments to represent the *demos*. Laclau’s theory of populism comes close to describing this dynamic, but Laclau’s apparent conviction that material demands exist prior to their collection in political movements obviates the significance of the political ideal itself as a structuring logic of opposition to existing political

order.⁷¹ The event of the appearance of the *demos* can happen as the call for “rule” itself to be democratic: a correct representation of that *demos*, not just any affectively powerful signifier.

This is a claim that theorists who themselves attempt to create a collective persona of “a *demos*” must make in some version, especially when they reject the State or government institutions as the proper mediator between the *demos* and itself, as critics like Brown do.⁷² Other theorists of democracy, such as Paulina Ochoa Espejo, attempt to recover a vision of a legitimately democratic State by arguing that the *demos* is a “process” that includes state institutions.⁷³ Chantal Mouffe’s recent work on agonism similarly articulates a hope somewhat similar to Espejo’s that state-based institutions can be made flexible and responsive enough to capture the dynamic ongoing contest of agonistic democracy.⁷⁴ Habermas and other proponents of deliberative democracy clearly hope for the establishment of more democratic non-State institutions.⁷⁵ Jacques Rancière, on the other hand, falls closer to Brown while arguing that democratic politics “doesn’t always happen – it actually happens very little or rarely.”⁷⁶ To the extent that democracy is rare, it is an *event* of the self-assertion of the *demos*, rather than the State or other institutions.

When democratic theories critique static, corrupted institutions for their inability to represent the actual *demos*, they turn to describing “democratic rule” as various civil procedures, processes, or events. These attempts to rethink the democratic capacities of both institutions and events often search for replacements for the political concept of *representation*, which as Hannah Pitkin so aptly demonstrated, was never simple to begin with.⁷⁷ Into the vacuum left in the wake of “representation” enter a variety of rhetorical concepts: deliberation, process, agonism, critique, dissent, agency, resistance, discourse, protest, demonstration, etc. These concepts attempt to re-figure “rule” as something that is not wholly determined by problematic and

undemocratic existing mechanisms and that can therefore be a way in which the *demos* can rule itself.

Although all of these theories of democracy agree that democracy cannot and does not inhere in a unified totality corresponding to a single State, they diverge from each other when it comes to the question of the extent to which democratic processes can be institutionalized. Habermas and Benhabib offer the most institutional vision of democratic rule, while Rancière's description of democratic rule as the event of enacting the role of the *demos* is the least institutionalized of the theorists mentioned above. Wendy Brown's democratic critique of liberalism, derived from the work of Sheldon Wolin, echoes Rancière's conviction that democracy is the *event* of a performed action.⁷⁸ Chantal Mouffe's agonistic pluralism, on the other hand, more closely resembles deliberative democracy's search for institutionalized procedures or formalized and consistently repeated practices.⁷⁹ Her vision of agonistic pluralism requires an ongoing commitment to principles of adversarial engagement, much like deliberative democracy. For Habermas, democratic rule requires a-subjective rationality institutionalized in certain argumentative procedures.⁸⁰ The specifics of these procedures are themselves open to rational debate and their mutual acceptance by free and equal participants. Deliberative democratic procedures are semi-permanent techniques of representation that enable the perpetual re-contestation of *doxa* and the identity of the *demos*. Habermas declares: "The "self" of the self-organizing legal community here disappears in the subjectless forms of communication that regulate the flow of deliberations in such a way that their fallible results enjoy the presumption of rationality."⁸¹ This means that while "the *demos*" is present only as a conceptual category, "itself" is assumed to result, quasi-permanently, from the techniques of democratic "rule," producing "the people" or "a/the public."

Mouffe similarly argues that democratic politics are fostered by encouraging practices and forms of life that allow for the passionate expression of democratic principles. While enemies engage through antagonism, which can be violent, adversaries agree on certain ground rules that foster passionate but respectful agonism. Agonistic pluralism's representational "channels" might differ substantially from deliberative democracy's "procedures," but in both theories democracy generally inheres in a set of ongoing, quasi-permanent or habitual practices of political representation. In spite of their shared commitment to a theory of democracy that privileges semi-institutional procedures, both Mouffe and Habermas nonetheless theorize a space for the *event* of democracy within such procedures or institutions. While Habermas's deliberative procedures and Mouffe's agonistic pluralism advocate for more permanent democratic agreements, they also make provisions for the importance of the democratic *event* of the *demos* asserting itself as the proper subject of politics. Various theorists who have revised Habermas' account of deliberative democratic procedures have emphasized how the assertion of exclusion and inclusion in the *demos* must be enabled by the regulative ideals of deliberative democracy. Benhabib, for instance, argues that "There are no *prima facie* rules limiting [...] the identity of the participants, as long as each excluded person or group can justifiably show that they are relevantly affected by the proposed norm under question."⁸² Feminist revisions of deliberative democracy such as those of Nancy Fraser and Iris Marion Young have gone further to argue that deliberative democratic theory requires substantial rethinking in order to deepen its ability to foster the inclusion of those who do not speak according to its norms of rational rule.⁸³ These emphases on the question of *who is included* in procedures demonstrate how deliberative democracy can foster the event of the appearance of the *demos* through the codification and re-negotiation of the doxastic boundaries of the *demos*. Although this "event" is only one element

of deliberative democracy, it is a necessary corrective to the unavoidable partiality of any political institution.

Agonistic pluralism also attempts to recognize that contestation of the identity of the *demos* is central to democratic politics. Mouffe says that democratic politics cannot be entirely institutionalized because, “The moment of rule is indissociable from the very struggle about the definition of the people, about the constitution of its identity.”⁸⁴ For Mouffe, the ultimate undecidability of the identity of the *demos* means that agonism must be codified so that the identity of the *demos* can be perpetually and affectively contested. The event of such struggle is what agonistic pluralism is designed to preserve, albeit within the boundaries of certain agreements about how the event should take place (for instance, without violence).

Both Brown and Rancière assign the event of the self-assertion of the *demos* an even more central role in democracy. Brown takes the position that democracy is the event of the people directly taking up the reins of power rather than a set of institutional procedures. She draws on Sheldon Wolin to argue against a vision of institutionalized liberal democracy in which “Participation depends upon a preexisting political venue or activity that endures whether or not citizens participate in it.”⁸⁵ She goes on to argue that instead, “By contrast, direct experience with power literally brings the democratic potential into being and when this experience subsides, as it inevitably will, democracy vanishes.”⁸⁶ For Brown, democracy does not have the capacity to wholly transform politics or be instituted. Instead it occurs in “episodes.”⁸⁷ Democracy has a “restorative” function such that it is characterized by “occasional eruptions, limited sway, and inability to be a governing form.”⁸⁸

Although Brown clearly understands democracy to be an event rather than institutionalized procedures, she does not provide a thorough elucidation of what democratic events consist of;

this is where Rancière's vision of democracy has the most to contribute. For all of these theories of democracy, the gesture of enacting "the *demos*" through a doxastic collective persona such as "the people" is central to democratic rule – in other words, Rousseau's legislator is the enactment of a *demotic* collective persona. Rancière, however, actually develops a robust account of how such enactment occurs and its stakes in the logic of democracy. He argues that democracy is purely the event of the interruption of domination by the part that has no part. He argues that democracy is

The gap between a place where the *demos* exists and a place where it does not, where there are only populations, individuals, employers and employees, heads of households and spouses, and so on. Politics consists in interpreting this relationship, which means first setting it up as theater, inventing the argument, in the double logical and dramatic sense of the term, connecting the unconnected.⁸⁹

For Rancière, Rousseau's legislator would be world-making poetics that *happen* as democratic action. Deliberative democracy assumes that the boundaries of the *demos* can be institutionalized and agreed upon and that a consensus produced in the form of democratic procedures can continue over time to be democratic once the consensus is no longer the object of deliberation and action. For Habermas and Mouffe, the legislator is a procedural agreement that democracy can reliably represent pluralism. In contrast, for Rancière democracy is a *performative event*, and when its result is institutionally fixed, even in semi-permanent representational procedures, it is no longer properly democratic. Rancièrian democracy is opposition to the unavoidable failure of already-instituted claims to democratic rule that have ossified in the wake of a previous democratic event. For Rancière, Rousseau's legislator is an *instance* of speech that *expressively demonstrates* a new distribution of sense about the *demos*. For Rancière, democracy has an evental quality, where the event is the emergence of a *demos* that seizes power and expresses itself through existing *doxai* as the proper subject of politics opposed to the failure of the

dominant regime to include that *demos*. Although both Mouffe and deliberative democracy advocate for the institutionalization of democratic procedures, they still maintain an important place within such institutional mechanisms for the event of a *demos* asserting itself as the proper subject of politics. Rancière's account of that event helps to flesh out what the role of *doxai* in the eventual demonstration of the *demos* can look like.

Rancière's account of this demonstrative event, however, comes at the expense of explaining how critique plays a role in dissensus. Rancière is quite skeptical of critique, especially when it is based on the assumption that there is a difference between *doxa* and *epistēmē*. In the next section I will explain Rancière's account of the performative democratic event and why dissensual democracy should embrace the performative assumption of critique to act *as if* there is a distinction between *doxa* and *epistēmē*.

Dissensual Democracy and Critique of *Doxa*

Habermas's deliberative ideals, Brown's critique of liberalism, and Mouffe's agonistic pluralism differ in important respects but they demonstrate some common features as a result of their interest in critiquing existing political practices and structures. This legacy posits a central role for *dissensus* in democracy; democracy is not simply the event of "the people" appearing, as it might be in fascism or populism; democracy is *dissensual* in that it is a political principle that fosters a critique of the sense of the world as expressed by existing political norms and representations. Rancière's theory of democracy is also dissensual and positions itself as a partial heir to a marxist political legacy, but it departs significantly from some of the assumptions of Frankfurt School critical theory that strongly shape the theories of Habermas, Brown, and Mouffe. Most simply, Rancière rejects the premise of a division between *doxa* and *epistēmē*, a premise that defines the critical theoretical legacy. He rejects the division between *doxa* and

epistēmē in order to attend more carefully to the aesthetic dimensions of how democratic *doxai* such as the principle of equality are performed in democratic events. After describing Rancière’s approach to *doxa* and dissensus in democratic events, I will argue that the *performative assumption* of a difference between *doxa* and *epistēmē* in critique is an important mechanism that can foster the democratic event of the appearance of the *demos*. If we take Rancière’s account of *doxa* and performance as the frame in which a sort of “*doxa* of critique” operates, we can see how the epistemic assumptions of Brown, Mouffe, and deliberative democrats can facilitate democratic performance — as well as what must be left behind from those accounts. The result will be an account of how ***dissensual democracy*** must encompass and deploy the force of the *critical epistemic techniques* while simultaneously *demonstrating* the event of the appearance of the *demos*. Critiquing *doxa* and demonstrating the *demos* through *doxai* are the elements of the event of dissensual democracy.

One of the problems that concerns Rancière about critical or “metapolitical” approaches to democracy is that they amount to little more than “interpreting the difference between one people and another according to some kind of symptomology.”⁹⁰ Rancière wants to do away with the assumption, shared by critical theorists, that democracy requires leveraging knowledge against *doxa* to describe what it might mean to be free of ideology. Instead, he argues, *doxai* must simply be inhabited and performed for democracy to happen. Performing democratic *doxai* re-distributes the sensible and manifests an alternative world present in the background of any given claim about the nature of a *demos*.⁹¹ For Rancière, this re-distribution does not require a critique of *doxa* based on contrasting it with *epistēmē*. For Rancière, arguments and concepts are primarily expressive.

Rancière explicitly disavows the distinction between information and metaphor; he argues that “political invention operates in acts that are at once argumentative and poetic, shows of strength that open again and again, as often as necessary, worlds in which such acts of community are acts of community. This is why the “poetic” is not opposed here to argument.”⁹² For Rancière, arguments are not the epistemic transmission of information about a world and a *demos* that pre-exists the framing of the argument. The *demos* and its world are made sensible by the *demonstration of a way of arguing* that could and would make sense in a certain type of community, hence creating the community where those arguments obtain. The democratic event of *making an argument* allows the demonstration of a political actor through the theatricalization of the perpetual and unavoidable gap between the *doxa* of *demos* and the event of its appearance, a gap that Jean-Luc Nancy instructively calls the inoperativity of the *demos*.⁹³ Instead of information, there is expression, which involves not the expression of a pre-existing subject, but subjectification through “constituting a kind of community of sense experience that works on the world of assumption, of the *as if* that includes those who are not included by revealing a mode of existence of sense experience that has eluded the allocation of parties and lots.”⁹⁴

For Rancière the *demos* is retroactively defined post-rule by the techniques that generate the event of its appearance, an event that simultaneously interrupts the stable sense that the police order adequately represents a political whole. Rancière defines “the *demos*” as those that have no part in the ruling order until they put equality in dispute. The examples of democratic action that pepper his work suggest provocative possibilities for understanding how the position of the *demos* is demonstrated as *doxa* but against *doxa*. These examples, however, operate primarily as illustrations of the possibilities for enacting the role of “those who have no part” by calling for recognition as such by opposing the ruling order.⁹⁵ This means that for Rancière, the

identity of a democratic actor and the ontological forces such as power or antagonism that bring it into being are ostensibly (although he is inconsistent and occasionally self-contradictory on this issue) irrelevant to the question of whether the *event* is itself democratic.

Rancière argues that epistemic strategies of critiquing *doxa*, especially those that critique subjectivity and ideology, do not and cannot demonstrate the *demos*. This is why Rancière's position on "metapolitical" critical philosophy makes him an uneasy ally of critical and radical democratic theorists, in spite of interest in his work amongst those who see critique as a remedy to the absence of democracy.⁹⁶ Rancière explicitly disavows the intellectual project of "describing power" along with rejecting the distinction between information and metaphor.⁹⁷ He works outward from the assumption that democracy does not require self-reflexive critique of the conditions of determination of the collective entity enunciating the role of the *demos*. For Rancière, actors need not critique or understand their own conditions of subjectification in order to act democratically, and the boundaries of the public need not be determined empirically by tracing the consequences of policy or norms. Instead, democracy "cannot be defined on the basis of any pre-existing subject. The 'difference' specific to politics, that which makes it possible to think its subject, must be sought in the form of its relation."⁹⁸ The form of relation of politics is the form of "rule" or the *doxai*, such as the persona of 'the people,' that enable the acting out of the part that has no part.

Rancière's account of democracy and his skepticism about knowledge-based techniques of critiquing *doxai* suggest a fruitful way of understanding the performative dimensions of the event of democratic demonstration. This is because he offers a very specific and robust account of how democratic *doxai* can be mobilized to produce the event of democracy, which is the appearance

of the *demos*. While other theorists explain why the *demos* does not appear because of ossified institutional *doxai*, Rancière points at the spaces where *doxai* are mobilized and enacted.

While embracing the democratic potential of *doxai*, however, Rancière neglects to recognize the potential of a specific type of *doxai*: those that enable the making of critical epistemic claims. Deliberative theorists influenced by Habermas, for instance, have produced a large body of work about the role of knowledge-production in democracy. While Mouffe and Brown depart significantly from many of Habermas's assumptions about the *rationality* of knowledge, their work also demonstrates the tension between *doxa* and *epistēmē* that animates critique. All of these variations on critical democratic theory pose the question, in one form or another, of how knowledge production (especially as it is opposed to *doxa*) can be a democratic technique; they simply differ on the question of what *knowledge* is. Dissensual democratic critique, because it turns on the contrast between *doxa* and *epistēmē*, requires epistemic techniques to produce that contrast. Such epistemic techniques are themselves built out of *doxai* and accomplish the dissensual task of demonstrating the *demos*. The following account of the role that epistemic techniques play in defining who the *demos* is suggests the potentials and pitfalls of existing approaches to the relationship between *doxa* and *epistēmē* in the demonstration of the *demos*. If we take Rancière at his word that there is no real difference between metaphor and information, *doxa* and *epistēmē*, then we must evaluate and develop the epistemic techniques as effective *doxai* and take seriously the intuition that critique can contribute to fostering democratic events. While Habermas and Benhabib theorize the *demos qua public*, Brown and Mouffe theorize the *demos qua subject*. Both of these approaches fail to live up to the force of Rancière's theory of the *demos* as a position that can be enacted via any

number of doxastic collective personae. Rancière, however, does not provide a theory of knowledge adequate to accounting for the dissensual quality of such demonstrations.

Habermas, and his key advocates such as Benhabib, embrace the democratic potential of knowledge in the most full-throated way. In its classical form, deliberative democracy advocates the establishment of structured institutional procedures that allow rational consideration of information. Because these semi-permanent representational procedures must generate epistemically valid accounts of states of affairs, they can also generate critiques of epistemically *invalid* accounts of “who the *demos* is” by positioning such accounts as mere *doxa*. In other words, they must employ an anti-doxastic critique. Rhetorically nuanced theorists of deliberative democracy like Thomas Farrell and Thomas Goodnight caution us, in concert with Rancière, to remember that any anti-doxastic epistemic claims must themselves also *deploy* other *doxai* and that deliberative rhetorical forms are not *infallibly* epistemic or rational⁹⁹.

Deliberative *doxai* present themselves as rationally epistemic, however, as part of the way they pragmatically obtain rhetorical purchase. Deliberative democrats differ about whether knowledge should be a ‘truth’ claim that imparts information about a state of affairs that encompasses the *demos* and other aspects of the natural world or whether it might also be a Habermasian ‘truthfulness’ claim that involves the *demos* expressing itself about its own inner condition. Even a “truthfulness” claim is about an interior attitude or mood, so the claim is still an effort to knowledgeably represent the attitude or mood about which claims are being made.¹⁰⁰ In either case, however, claims are in an *epistemic* relationship to the inner condition of the subject or state of affairs that precedes them. The epistemic quality of truth claims and truthfulness claims means that those claims embrace doxastic techniques for attempting to accurately represent a subject’s beliefs or a state of affairs. As we saw in the last section, for

Benhabib the epistemic contestation of *who the demos is* must be done by establishing how “each excluded person or group can justifiably show that they are relevantly affected by the proposed norm under question.”¹⁰¹ Claims about a public are epistemic even if the “correctness” of the representation of the public is constituted by a doxastic, contingent set of assumptions and discursive conventions. This sort of pragmatic approach to establishing the consequences of norms and policies requires an empirical account of effects.¹⁰² Deliberative procedures are designed to permanently enable the perpetual re-establishing of the *demos qua affected public*, who it is, and who should be included in it. Techniques of critique, in other words, are built in to the procedures of deliberation in hopes that the procedures will foster the the ongoing reappearance of the *demos* in serial events.

For both Mouffe and Brown, critiquing the discursive powers that produce *subjects*, rather than publics, is deeply important to establishing a democratic account of the *demos*. The theories of *subjectivity* offered by these theorists are themselves the epistemic techniques that are essential to real democracy. Describing “the *demos*” *qua* the persona of “the subject” enables Mouffe and Brown to make recommendations about how properly democratic rule should mediate between “the *demos qua subject*” and “itself.”

Brown argues that subjects exist before democracy and that they have been constituted by discursive *powers* that exclude some parts of the whole from collective self-rule. To that end, she argues that “Encomiums from left philosophers and activists to ‘deepen democracy,’ [...] will only be helpful to the extent that they reckon directly with these powers.”¹⁰³ The important question for Brown’s account of truly democratic politics then becomes what it would be to “reckon with” such powers. It seems that for Brown, democratic reckoning would mean convening and mobilizing social subjects to self-reflexively transform themselves in opposition

to how they have been shaped by the discursively constituted powers of capital and religion.¹⁰⁴

This means, in other words, that for Brown democracy requires *critiques of their own doxai* by specific pre-existing and self-reflexive social subjects. Brown argues that a manifestation of full-fledged democratic action would mean that the *demos qua subject* would have to possess a level of collective knowledge about the processes of its own pre-democratic subjectification that was sufficient to effectively reconstitute itself as a *demos*:

Popular assent to laws and representatives is insufficient to fulfill democracy's promise of self-legislation. Instead, we would have to seek knowledge and control of the multiple forces that construct us as subjects, produce the norms through which we conceive reality and deliberate about the good, and present the choices we face when voting or even legislating. Power understood as making the world and not simply dominating it – or, better, domination understood as fabrication and not only rule or repression of the subject – requires that democrats reach deep into polyvalent orders as powers for the grounds of freedom. [...] And yet the notion of democratically ruling all the powers constructing us is absurd [...] so democracy, to be meaningful, must reach further into the fabrics of power than it ever has.¹⁰⁵

If democratic “rule” requires a specific and knowledgable intervention by “the *demos*” in the pre-existing discursive powers that it is undemocratically constituted by, this means that democratic rule also requires an accurate conceptual account of those powers. Unlike Rancière, for Brown this power is not just a formally defined police order that presents a whole which excludes some of its parts. Unlike Habermas, democratic rule would not just be setting up quasi-permanent procedures to properly describe pre-existing powers, but rather seizing those already-existing powers directly. For Brown, discursive power already exists and can either dominate or be harnessed by the *demos* to create itself rhetorically in a new discursive world. Because this is such a difficult task to achieve, it happens only rarely and is a significant event which is not governance but momentary resistance. When it happens, however, the event seems to have a significant epistemic dimension for Brown; critique is central to the event of the *demos*

appearing. Habermas leaves open the question of what specifically may be deliberated about democratically and Rancière leaves open how democratic action might redistribute the sensible. But for Brown it must be *power* that is deliberated about and described for democracy to occur. So she herself makes conceptual arguments about the modes of existence of discursive power and the ways that power constitutes the *demos* in and as a subject; the persona of *the subject* is a central, even crucial, dimension of much of her critical work and subjectivity is one of the objects of critical knowledge.

Mouffe, like Brown, joins Rancière in eschewing the idea that democracy is undertaken only by certain social subjects like classes, and Mouffe additionally seems to agree with Rancière that specifying the “social objectivity” of such entities is itself “the political.”¹⁰⁶ Mouffe, however, dances along the edge of this position by taking on the task of objectively specifying a great deal about the underlying conditions that constitute collective entities. Mouffe advocates for agonistic pluralism on the grounds that it is different than the antagonism that precedes it. In agonistic pluralism, the “enemies” of antagonistic relations would be transformed into agonistic “adversaries” through mutual acknowledgement of the shared desire to transcend antagonism. In other words, Mouffe argues that a pre-condition for democracy is *consensus on the existence of antagonism as the founding dimension of subjectivity* – so as to then agree on the desirability of moving beyond it. Adversaries are “persons who are friends because they share a common symbolic space but also enemies because they want to organize this common symbolic space in a different way.”¹⁰⁷ This formulation of the structure of agonism indicates that a certain level of *rational consensus* is necessary on the basic epistemic procedures of argument-making, the existence of antagonistic subjectification, and which democratic *doxai* are most important. In *Hegemony and Socialist Strategy*, Laclau and Mouffe argue that democracy requires a common

“terrain upon which there operates a logic of displacement supported by an egalitarian imaginary,” and that this egalitarian imaginary is in part constituted by a shared discursive field.¹⁰⁸ Agonistic pluralism seems to be the elaboration of the specific dimensions of the shared egalitarian imaginary as the consensual mutual refusal of the expression of a pre-democratic antagonism as combat.

Mouffe goes to great lengths to make a distinction between agonistic pluralism and deliberative democracy based on her supposed rejection of “rationality” as the legitimate basis of consensus that should precede democratic engagement. But there is a more substantial difference between agonistic pluralism, or what Robert Ivie has identified as a dissenting vernacular type of rhetoric, and Habermasian deliberative democracy.¹⁰⁹ The deeper difference is Mouffe’s Schmittian commitment to antagonism as the ineradicable, even foundational, basis of all politics, including both democratic and non-democratic politics.¹¹⁰ She locates a threat to democracy in the failure to recognize the existence of antagonism prior to all attempts to describe it: “Alas, it is not enough to eliminate the political in its dimension of antagonism and exclusion from one’s theory to make it vanish from the real world. It does come back, with a vengeance.”¹¹¹ The differences and conflicts that constitute the pre-political field are homologous, for Mouffe, with the differences and conflicts that split the collective subject itself, “an ensemble of subject positions linked through inscription in social relations, hitherto considered as apolitical, have become loci of conflict and antagonism and have led to political mobilization.”¹¹² This means that the subject is the homology and the expression of pre-political antagonism, and the structure of that antagonism is the structure of the total *demos* that all political participants must recognize and agree upon in order to participate in agonistic pluralism.

Mouffe performs elaborate theoretical gymnastics to continue *Hegemony and Socialist Strategy*'s disavowal of a pre-political social as an objective basis for theorizing the political. But her complete dedication to defining the foundation of the political as “antagonistic” slips an epistemic vision of social objectivity in through agonistic pluralism's back door. In Mouffe's democratic philosophy, antagonism is the *foundational logic of the demos*. This means that for Mouffe the antagonistic *demos* is democratically different from its agonistic self only when “rule” epistemically recognizes the real foundations of political identity. Part of the task of democracy is to develop an adequately representational collective persona of the *demos qua* subject constituted by the antagonistic social and to disavow all rhetorical attempts to hide or mask the true nature of that subject. For Mouffe, antagonism is the result of *power* relations being expressed through accounts of the social which rhetorically pose as objective. Power does not happen between pre-constituted identities; it is instead the very process of constituting those identities in opposition to one another through affective attachments. From this assumption about the underlying foundation of the *demos* as constitutive antagonistic power relations, Mouffe concludes that

To acknowledge the existence of relations of power and the need to transform them, while renouncing the illusion that we could free ourselves completely from power – this is what is specific to the project that we have called ‘radical and plural democracy’. Such a project recognizes that the specificity of modern pluralist democracy – even a well-ordered one – does not reside in the absence of domination and of violence but in the establishment of a set of institutions through which they can be limited and contested. To negate the ineradicable character of antagonism and to aim at a universal rational consensus – this is the real threat to democracy.¹¹³

This means that agonistic plural democracy has to *know* the existence of discursively constituted power relations in order to establish the proper common symbolic space for the agonistic sublimation of antagonism. It would seem that, although Mouffe has been at points deeply

critical of deliberative democracy's advocacy of rational procedures for the resolution of difference, she would like to make an exception in the case of a consensus on the existence of antagonism as the foundation of the political and subjects. Because agonistic pluralism requires this consensus as the precondition for democracy, Mouffe's vision of democratic rule requires that the difference between the *demos qua subject* and "its democratic self" have an epistemic dimension; the reality of antagonism must be *known* for agonism to take root. Her epistemology of conversion through the mobilization of political passion relies on the *correct recognition* of the *antagonistic demos* and the illusory *doxa* of political unity. To that extent, critiques of *doxa* are a central dimension of agonistic counter-hegemony: "What is at a given moment accepted as the 'natural' order jointly with the common sense that accompanies it, is the result of sedimented hegemonic practices. [...] Every order is therefore susceptible to being challenged by counter-hegemonic practices that attempt to disarticulate it in an effort to install another form of hegemony."¹⁴

For Mouffe and Brown, differences and power are expressed in and as articulated subjects *prior to* democracy. Although these two theorists differ on a number of key points, they seem to agree that democratic rule must acknowledge doxastic difference and power by describing how subjects are discursively constituted. For these theories, the role of properly democratic "rule" is to critically conceptualize the operations of discursive power in subjects, thus epistemically mediating between the *demos* (structured by antagonistic social differences and discursive power) and itself (the image of that subject accurately described as constituted by discursive power).

The concept of the subject, in these descriptions, implicitly assumes that the task of a *collective persona* like "the subject" would be to accurately represent those pre-existing entities.

The event of democratic “rule” must involve techniques for describing how power functions to constitute subjects, and that process of *describing* is part of an effort to express the perpetually unfinished principle of those subjects ruling themselves rather than being ruled as subjects. This assumption that the task of concepts like “the subject” is to accurately represent pre-existing entities means that radical democratic theorists partake of some of the same epistemic assumptions as Habermas and Benhabib, at least insofar as they demonstrate a conviction that doxastic power and difference can be accurately represented.

Both Brown and Mouffe, working out of a critical tradition shared by Habermas, assume that knowledge of how discursive power constitutes the *demos qua subject* is a precondition for democracy. Explanations such as these tend to assume, or even explicitly argue, that politics cannot be democratic unless it is *anti-doxastic* – in other words, unless it confronts rhetorical forces like biopower,¹¹⁵ myth,¹¹⁶ capitalism,¹¹⁷ alienation,¹¹⁸ neoliberalism,¹¹⁹ fantasy,¹²⁰ or antagonisms that constitute existing practices and subjects *undemocratically*. In sum, these positions seem to assume that democracy requires the critique of powerful discourses so as to reveal the real, material or institutional *doxai* of dominance and inequality that produce and are produced by those discourses. Much of this critical work assumes that the action of mapping how doxastic discourse produces subjects and social relations is important for democratic politics, and some even go so far as to argue that democracy can’t happen without such “deeper” knowledge of *doxa*.

Establishing this anti-doxastic description of subjectivity is much like a deliberative procedure by which knowledge of the proper boundaries of “the public” affected by *doxai* are established. Another way of putting this might be to argue that scholarship about subjects performs its Habermasian convictions all the time. But this call for knowledge about

subjectification does not necessarily translate into prescriptions for deliberative *procedures* for democratically establishing descriptions of subjects. Instead, Brown, Mouffe and the rhetorical scholars mentioned above take on the task of *philosophically* developing an account of “the subject” as what Deleuze and Guattari would call an *antipathetic collective persona* – a collective persona that produces bad feelings and that is the target of the philosopher’s criticisms.¹²¹ Critiques of undemocratic *doxai* often focus on how *doxai* produce antipathetic, dominated subjects – a focus that is common to many types of Bourdieusian, Foucauldian, Althusserian, and psychoanalytic theories of subjectivity.

For Brown and Mouffe, the antipathetic qualities of the collective persona of the *demos qua subject* are linked to the doxastic operations of discursive power. Their conviction is that the epistemic conceptualization of the operations of the doxastic subject-power-discourse cluster will enable the transformation of the *demos qua subject* from an antipathetic to a sympathetic collective persona. This attempt at transforming the affective valence of a collective persona through critique is a demonstration of *a democratic sensibility* as Rancière might describe it. For although Mouffe and Brown assume the representational or epistemic adequacy of their concepts of power, antagonism, and subjectivity, Mouffe and Brown’s demand for accurate descriptions of doxastic power enables the demonstration of a democratic sensibility regardless of whether power, antagonism or subjects exist. The part of the *demos* that is excluded by the ruling order, they argue, must be included, and reconceptualizing the *demos qua subject* enables a redistribution of sensibilities about that subject. Enacting dissensual critique in Brown and Mouffe involves making *critical propositions* about the doxastic powers that constitute the *demos qua subject*, while prescriptively enacting a subjects-knowing-themselves as the “ruling” that makes the democratic difference between the *demos* and itself. Just as when the boundaries

of “the public” are re-established by contesting the existing boundaries as merely doxastic, the theory of subjectivity is re-established by deploying knowledge of power against the existing *doxa* of who political subjects are.

This self-reflexive democratic subject prescribed by theorists of subjectivity, however, has some significant political weaknesses. First, unlike the public, it is often individualistic and thus gives little impression of co-enunciating with other subjects. More important, however, is the difficulty of resolving the deep tension between the warring anti-pathetic and sympathetic components of the collective persona of the *demos qua* subject — as Rancière argues, it is difficult for such a tension to manifest in politics that go beyond a type of “symptomology.”¹²² This deep tension between the subject-of-power and the self-knowing-subject almost always requires co-enunciative efforts to involve simultaneously critiquing other subjects. When democratic theorists attempt to re-conceptualize the *demos qua subject*, however, they are in a sense attempting to include the part of that subject that has no part in the ruling order and re-distribute our sensibilities about the world. Dissensual critiques of doxastic undemocratic rhetorics or ideologies can potentially have important and deeply practical political functions precisely *as poetic demonstrations* of democratic *doxai* and their potential.

Critique need not focus on the manifestations of power in the constitution of subjects; it can be of other elements of the police order and its effects. Rancière assumes that dissensus must be aesthetic to the exclusion of epistemic techniques. As a result, he too easily dismisses the performative, poetic potential of contrasting *doxa* and *epistēmē*. His theory of democracy struggles to account for a movement such as the opposition to corporate rights that is based not simply on demonstrating the subject position of the *demos* (which it does), but that it does so by attempting to establish knowledge of how the legal rights of corporations have effects and have

become institutionalized and doxastic. Embracing dissensual epistemic techniques for turning *doxa* against itself is the only way to understand the dynamic of stability and change that is so central to the concept of *doxa* and to the event of demonstrating the *demos*. When the critical techniques outlined above are not used to diagnose subjects but are instead used to diagnose inequality, for instance, they can easily and clearly contribute to dissensual democracy.

Rancière's account contributes an important insight about how democratic events are produced – they happen through the enactment of doxastic collective personae such as “the people” or “the community.” But Rancière's account of dissensus is limited by his rejection of epistemic forms of dissensus that can accomplish the re-distribution of the sensible. By so thoroughly dismissing the role of critique in democratic action, Rancière may be throwing the baby out with the bathwater. Dissensual democracy is not simply democracy — it also must be dissensual, and the substance of the critique of existing *doxai* is a necessary component of that dissensus. The enunciation of critique is a crucial technique by which the part that has no part is able to dissensually demonstrate its own existence and political priority. Although the collective personae of “the public” and “the subject” may not always be effective personae through which to enunciate such critiques, the core critical gesture of opposing *doxa* with knowledge is precisely what enables the demonstration of the position of the *demos* in dissensual democracy. The dynamic tension between *doxa* and *epistēmē* produces a crucial opportunity for demonstrating the *demos*.

Dissensual democracy must integrate Rancière's account of demonstration in democracy with Habermas, Mouffe, and Brown's insights about the importance of epistemic critique to dissensus. Rancière's theory of democracy fails to account adequately for the role of critique in democracy, while other versions fail to adequately theorize the role of demonstration in the event

of the *demos* asserting its role in the political order. Dissensual democracy is the event of the appearance of the *demos* through the enunciation of critique based on turning *doxa* against itself through epistemic techniques.

Conclusion

The critique of corporate rights is enunciated through a variety of collective personae. For the most part, however, I refer to the critique's enunciating entity as a *movement*, which is a collective persona that has effectively spanned a variety of different types of discourse, including many types of scholarly and popular discourse. ***Demotic collective personae*** such as "the movement," "the public" or "the community" are the personae that enact the role of the *demos* during the event of democracy. When claims are made that not all of the *demos* is being included in governance, deliberation, power-sharing, or other types of politics, it is a demotic collective persona that is presented as being excluded from political representation. These collective personae are demotic in two senses; first, in the sense that they play a specific role according to the logic of democracy, and second, in the sense that they are common, doxastic terms rather than specialized, innovative language.

The selection and analysis of these personae that follows builds on Rancière's claim, discussed above, that doxastic personae are the material through which democratic politics are enacted.¹²³ One of the weaknesses of "the subject" as a demotic collective personae is its lack of common currency. As a term of scholarly art, the way that "the subject" (individual or collective) is most often theorized is as being split against itself; if a subject must critique itself in order to act democratically, its ability to critique undemocratic actors and institutions may be weakened. Think, for instance of the claim, "We the people must begin to question how we have been constituted as the subjects of corporate rule." Although this gesture is widespread in social

movements, it may not be a call to action so much as a call to inflict a practice of navel-gazing upon oneself and one's allies. In order to demonstrate the *demos*, anti-doxastic critique may be better served by not being weakened as it is enunciated in and through a collective persona antipathetically divided against itself. Critiques of *doxa* need not focus on the constitution of the enunciative subject itself. Instead, re-making collective personae can be divided more clearly between the anti-pathetic and sympathetically demotic collective personae. By using a less divided or ambivalent collective persona than "the subject," the oscillation between dissensual critique and democratic performance can be done by critiquing undemocratic *doxai* rather than fellow members of the *demos*. This would mean that the *demos* could appear by articulating a critique that did not require democratic speech to turn against the very entity that it would ostensibly be in the business of participating in and advocating for.

This leaves the the question of how dissensual democracy – opposing *doxa* with the techniques of knowledge-production while demonstrating the *demos* – can be developed in its *strong* version. The strong version of dissensual democracy recognizes the limitations of techniques of ideology critique while also acknowledging that critiques of undemocratic *doxai* can be quite effective.

The next two chapters take up two different registers in which the tension between *doxa* and *epistēmē* can be relevant to scholarship *about* the movement against corporate rights. In Chapter Two I describe several of the movement's techniques, including passing local resolutions and disseminating historical timelines of corporate rights. These techniques both critique and deploy democratic *doxai* in order to generate a sense of a democratic event. These techniques show how dissensual democracy is the event of the collision of *doxai* as critiques are made and the *demos* is enacted. I argue that Gilles Deleuze's account of sense-events is an

important supplement to Rancière's theory of democratic demonstration and helps to build a concept of sense that can effectively account for the dual doxastic/anti-doxastic character of dissensual democracy, especially as it is enacted through critique. Chapter Three compares two ways of explaining the significance of one of the techniques of the movement against corporate rights — online petitions. Are such petitions simply a way of subjecting individuals to the mechanisms of corporate power, or are they democratic technologies that enable the demonstration of the *demos*? While making this comparison, I demonstrate how critiques of undemocratic subjectivization are important but limited and how the enactment of *doxai* such as petitions of the people retain their democratic potential.

Chapter 2
Dissensual Critique in Demonstrations of Democratic *Doxai*:
Move the Amend and the Event of Democracy

Corporations Are Not People: Not all protest slogans follow the same critical, propositional structure as this slogan. The slogan, which is the core statement endorsed by supporters of the organization Move to Amend, is a critique in miniature that fits clearly into a larger goal: changing the law that enables corporate personhood.¹²⁴ Consider by comparison a slogan popularized on Facebook during the time of the Tahrir Square protests: *We Are All Khaled Said*.¹²⁵ This slogan operates through the image of a specific individual – Khaled Said, a young man who was beaten to death by the Egyptian police. The statement *We Are All Khaled Said* can express a sense of the injustice of being subject to repressive force. The *we* of the Khaled Said slogan is enacted by those who are critical of power and how it is exercised. The immediate message of the Khaled Said slogan, however, is not a message of critique – it is an utterance of solidarity and common identity. *Corporations Are Not People* does not directly and immediately enunciate any *we* or sense of solidarity. Just because there is no *we* in *Corporations Are Not People*, however, does not mean that the *enactment* of a *we* is not crucial to how the slogan enables the demonstration of democratic collectivity. *Corporations Are Not People* is an explicit *critique* as well as a practice of *demonstrating* the collective entity that utters the critique. Enunciating the slogan allows for the expression of a sense of the common position of a critical, unspecific observer pronouncing judgment on the failure of a word, “people,” to adequately represent the entities that lay claim to it. *Corporations Are Not People* identifies

strategic and inaccurate difference between two types of entities and the language used to represent them: joint-stock business companies and flesh and blood humans with rights.

Techniques of critique are employed in the movement against corporate rights in an effort to alter a the way that the liberal democratic *doxa* of personhood has been institutionalized to include corporations. By describing the relatively static set of legal meanings that allow corporations to claim the rights of persons under law, these legal definitions are positioned as the unexamined appearance of things. One of the central claims of the movement against corporate rights is that corporations have claimed such *doxai* undemocratically—and against the common-sense will of the people, who have a “sovereign right to self-governance.”¹²⁶

The doxasticity of “corporate personhood,” I argue, is not a matter of the extent to which it is commonsensical or represents widespread public opinion. Corporate claims to the liberal democratic *doxai* such as personhood and rights have produced a sense of the stability, fixity, and inherence their own claims that have accreted over time. Critiques of such claims to democratic *doxai*, in turn, reinforce the sense that such claims are mere *doxa* and distinct from *epistēmē*. The movement against corporate rights argues that the legal *doxa* of “personhood” needs to be transformed according to democratic principles and uses *critique* to present corporations as not being properly democratic political subjects while demonstrating that the movement itself *is* a properly democratic political subject. The performance of the democratic collective subject is animated by the tension between *doxa* and *epistēmē*—which in this case, flips the assumptions that is typically made about how *doxa* is “common sense” and knowledge is “expert” or specialized. Instead, democratic *doxai* contribute to the static appearance and fixity of the law, while knowledge becomes the people’s technique of critique in the name of transformation.

Corporations Are Not People. This slogan, however, also undeniably *employs doxa*. It exhibits a sedimented, naturalistic conception of “people” drawn in part from the historical and governmental articulations. In the public rhetoric of political activism, “People” quickly becomes “We, The People,” the national subject of the U.S. Constitution.¹²⁷ The liberal *doxa* of constitutional democracy is the basis for the critique of the institutionalized *doxa* of corporate personhood: what does this enable us to coherently say about the role of *doxa* in dissensual democracy?

There are two important approaches to *doxa* in contemporary scholarship relating to democracy and critique. The first is the position that such *doxai* are necessary components of democratic politics. This position, common among rhetoricians and strongly advocated by Jacques Rancière, is that *doxai* are the material that politics, especially democratic politics, draws on to attempt to change the political order. The second position, advocated by critics such as Pierre Bourdieu, Roland Barthes and rhetoricians who take up their work, is that *doxai*, especially when they are complicit with power, should be critiqued in an effort to create change. These two positions on *doxa* and democracy echo the tension in the democratic movement against corporate personhood—on the one hand, it animates and enacts the *doxa* of democracy, and on the other, it critiques the way *doxai* reproduce power and misrepresent what corporations actually are: tools of capitalism rather than persons. This suggests that democratic *doxa* must be both what is critiqued and how it is critiqued as well as suggesting that a slightly broader perspective on “*doxa*” as part of a larger dynamic is required to unpack its role in the democratic movement against corporate personhood. The political activities of Move to Amend demonstrate how these two theoretical approaches to *doxa* are both required to explain the appearance of the *demos*, the collective subject of dissensual democratic politics. After distilling the core elements

of the concept of *doxa* that are foundational to these two positions, I will argue that Move to Amend's opposition to corporate personhood demonstrates why dissensual democracy requires both the demonstration and the critique of *doxa* in the *event* of the appearance of a democratic collective subject. In the final section I will argue that dissensual democratic events are produced through the dynamic tension at the heart of *doxa*, a dynamic that is helpfully clarified by Gilles Deleuze's early work on sense-events.

Doxa: Material of Democracy or Undemocratic Appearance?

Among rhetorical critics and theorists who focus on the democratic potential of *doxa*, there is a shared commitment to the position that *doxai*, including collective personae such as “the people,” are the a-subjective stuff out of which public discourse, utopian imagination, and relations of collective identification are made. J. Robert Cox's 1987 Van Zelst lecture, for instance, argues that critical scholarship should use traditional material as part of an effort to create political change.¹²⁸ Prefiguring decades of memory studies scholarship on how specific groups make political use of the past, Cox suggests that *doxa* is the material of the past—traditions—whether they are currently “widely known” or not.¹²⁹ As Carole Blair, Greg Dickinson, and Brian Ott argue, “understandings of and investments in the past change as our present conditions and needs change.”¹³⁰ Andreea Deciu Ritivoi similarly positions *doxa* in the problematic of tradition and innovation and argues, based on Ricœur's work, that imagination based on past *doxai* is central to transformation.¹³¹ She argues that Ricœur's *doxa*, “the sedimented universe of conventional ideas,”¹³² is similar to ideology but without the pejorative connotations ideology has been given by suspicious hermeneutics. *Doxa*, in this Ricœurian explanation, enables change by allowing for the construction of an imaginative, utopian vision of the possible.

For these theorists and critics, doxastic collective personae such as “the people” are the cultural resources deployed to generate change and conduct democratic politics. As discussed in Chapter One, Jacques Rancière’s account of democracy also treats *doxai* as the material required by democratic politics.¹³³ Rancière draws on Plato’s equation of democracy and *doxa* while joining the rhetorical scholars mentioned above in rejecting Plato’s disdain for appearances.¹³⁴ Rancière, however, even more specifically accounts for the production of collective subjects according to the logic of democracy—a logic that is, as we will see below, central to the rhetoric of Move to Amend. Rancière argues that *doxai* such as the persona of “the people” can be enacted as versions of the subject position of the *demos*, the part that has no part in the ruling order.¹³⁵ As discussed in the last chapter, for Rancière *doxai* such as the people are the material that enables the production of subjects; they are an enunciative position that can be enacted to produce a collective subject. His account of the role of performative language in democracy resonates with ongoing calls from poststructuralist rhetorical theorists to move beyond a representationalist conception of ideology.¹³⁶ Rancière’s approach to theorizing the *demos* as a subject position ostensibly operates on some of the same general assumptions as Michael McGee, Maurice Charland, and other rhetorical theorists working out of a critical or poststructuralist tradition, most notably the general claim that collective subjects are discursively constituted.¹³⁷ More specifically, Rancière’s collective democratic subject is like the individual rhetorical subject Christian Lundberg describes as “a retroactive process that both names and organizes the experience of an individual in discourse in the presence of others; as a result, practices of subjectivization are split between one’s lived experience and external semantic referents....”¹³⁸ Democratic demonstration is an *evental performance* of the *doxa* of political equality. For Rancière, the “torsion or twist” of employing democratic *doxa* to demonstrate the

demos is the theatricalization of the perpetual and unavoidable gap between the *demos* and itself.¹³⁹ Collective democratic speech does not come from a pre-existing collective subject, but instead is subjectification through “constituting a kind of community of sense experience that works on the world of assumption, of the *as if* that includes those who are not included by revealing a mode of existence of sense experience that has eluded the allocation of parties and lots.”¹⁴⁰

The primary strength of Rancière’s democratic theory is in its contribution to accounts of *collective* subject positions rather than models of individual subjectivity. Rancière’s concern is with a specific type of collective entity – one that appears according to the logic of democracy. He argues that *doxai* such as “equality” and “the people” are enacted in such a way as to create subjects “by transforming identities defined in the natural order of the allocation of functions and places into instances of experience of a dispute.”¹⁴¹ As doxastic identities in the political order are enacted, “‘Speaking out’ is not awareness and expression of a self asserting what belongs to it. It is the occupation of space...”¹⁴² Such doxastic spaces are “the inscriptions of equality that figure in the Declaration of the Rights of Man or the preambles to the Codes and Constitutions...”¹⁴³ These doxastic positions “are not ‘forms’ belied by their contests of ‘appearances’ made to conceal reality. They are an effective mode of appearance of the people, the minimum of equality that is inscribed in the field of common experience. The problem is not to accentuate the difference between this existing equality and all that belies it. It is not to contradict appearances but, on the contrary, to confirm them.”¹⁴⁴ Rancière’s position on demonstrating *doxa* is similar to what Robert Ivie has argued about dissent, which is that democracy requires a sort of “challenge [to] conventional wisdom on its own terms.”¹⁴⁵

Rancière adds to the existing rhetorical literature on *doxa* and politics a greater sensitivity to how specifically democratic *doxai* such as ‘the people’ generate a sense of the appearance of a collective subject. What he shares with many of the rhetorical theorists and critics mentioned above is the fundamental position that there is no foundational difference between *doxa* and knowledge. For Ritivoi, the doxastic material of this sedimented universe of convention is “a community-shared background against which arguments are formed,” political arguments that are never properly *epistemic* because they are always rhetorical in the sense that they are about the probable rather than the certain.¹⁴⁶ For Cox, *knowing* involves *remembering*. But for Cox, and other scholars of public memory, this knowing is a collective remembering in order to generate changes in “our” *doxa*, and “arguments must be grounded in cultural interpretations (doxa) that in turn underly current practices.”¹⁴⁷ This position on the indeterminacy between *doxa* and *epistēmē* unites these rhetorical theorists with Rancière, and understandably so. If “*doxa*” encompasses all the rhetorical resources of democracy, it also encompasses knowledge formations and epistemic claims.

The second broad approach to democracy and *doxa* is to *critique doxai* that mask undemocratic relations. The distinction between *enacting* doxastic appearances and *unmasking* what lies behind *doxa* iterates the broader strokes of the difference between Rancière’s approach and strategies of critiquing *doxai*. Rancière explicitly disavows the intellectual project of “describing power” along with rejecting the distinction between *doxa* and knowledge.¹⁴⁸ His position on what he calls ideology critique makes engaging his work complicated for critical rhetoricians and others invested in marxist intellectual traditions, in spite of interest in his work in such quarters.¹⁴⁹ In his justifiably enthusiastic drive to liberate democratic demonstration from

the necessity of accurately accounting for power, he puts aside the role that specific, contextual critiques have played in the dissensual demonstration of democratic subjectivity.

“Critique” is a very general term. Even in the narrower realm of critical intellectual methods that Rancière identifies as “metapolitical,” there are many different techniques for critiquing ideology and power. Nearly all of them, however, involve an attempt to produce an “interruptive” effect by leveraging epistemic or aesthetic novelty against the static, unexamined appearance of things.¹⁵⁰ When these critical techniques are performed epistemically, they often involve establishing an account of the representational failures of *doxai* and how those representational failures obscure a deeper reality. *Doxai*, in many of these formulations, are appearances that cloud the vision of subjects. Rather than being the material that enables the enactment of collective subjects, *doxai* are posited as masking the true realities of how power and social differences are produced.

These accounts often differ most substantially on the question of where doxastic structures end and where subjects begin. The indeterminate zone between objective structures (say, for instance, ideologies) and subjective beliefs in these critical accounts replicates a well-established ambiguity in the classical concept of *doxa*. It is precisely the way “doxa” straddles subjective perception and objective appearance that has enabled the concept to be adapted to critical intellectual methods. One of the most influential adopters is Pierre Bourdieu, who theorizes *doxa* as it relates to objectively existing structures and subjective practices of belief.¹⁵¹ The Bourdieusian concept of *doxa* and its corollary concepts of orthodoxy and heterodoxy have been taken up by rhetoricians such as Dana Cloud to explain the capacities of images to shape the perceptions and beliefs of citizens.¹⁵² Raymie McKerrow, writing about the potentials and procedures of a scholarly practice of “critical rhetoric,” also draws on Bourdieu to argue that

doxa is the realm of the undiscussed — a realm that McKerrow, departing from Bourdieu, presumes can be counter-effectuated through discussion of its content.¹⁵³ For these critical theorists, *doxa* is something close to ideology or myth but is distinct from it in important ways.¹⁵⁴ Although there are key differences between Bourdieu and other contemporary variations on critique, in many of these treatments *doxai* have objective existences that can be described and analyzed as they appear in texts and practices that constitute subjects and their investments.

This focus on *doxa*'s effects on the subject, however, is precisely what the movement against corporate rights avoids in its critiques of corporate rights. Unlike “new social movements” that rely heavily on theories of identity-formation to craft their critiques and tactics, the movement against corporate rights has been more concerned with *changing the law* than with changing what subjects believe.¹⁵⁵ Instead of describing the constitution of individual subjectivity, the movement focuses on what truths are hidden by *doxai* and the institutional formations enabled by corporations' claims to the democratic *doxai* of rights.

This avoidance of questions of *belief* and focus on questions of *truth* points back toward the tension between *doxa* and *epistēmē*. The critical approach exemplified by Bourdieu, for instance, seems to *enact* the tension between *doxa* and *epistēmē* that is so central to the rhetorical tradition. Enacting this tension via critique is a gesture that strives to produce what is variously called novelty, innovation, rupture, change, or becoming. As we can recall from Chapter One, this is the core difference between critique and Rancière's approach to *doxa*: Rancière advocates for *enacting* doxastic personae such as “the people” whereas critique attempts to *interrupt* such *doxai* where they have already established themselves—for instance, in the law of corporate personhood. Clearly, *doxa* is both what democratic politics attempts to change as well as the material it enacts to create those changes; both the Rancièrian and the critical approaches to

doxa help to explain the dual role of doxastic material in Move to Amend's anti-corporate critiques.

The critiques of the legal history and social effects of corporate personhood gain rhetorical traction by relying on a distinction between their own epistemic validity and the illegitimacy of doxastic appearances. As Bruno Bosteels notes, Rancière's dismissal of the democratic potential of critique pays lip service to, but ultimately glosses over, the ways that democratic dissensus may actually be produced in and through complex and mutually implicative "historical" or representational claims about the nature of power, entities, dominance, and other objects.¹⁵⁶ Critiques of undemocratic claims to political equality that attempt to epistemically represent such relations, such as the sedimented institutional *doxa* of corporate legal rights do not declare a distinction between *doxa* and knowledge; instead, they perform it.

If *doxa* can be both the material of democratic traditions and undemocratic illusions that are critiqued, then democracy itself is the event of such *doxai* colliding. The contemporary rhetorical theorist who has perhaps come closest to capturing the dynamics of this type of collision of *doxai* is John Mucklebauer, whose theorization of *doxa* draws heavily on Gilles Deleuze and Felix Guattari's *What is Philosophy?*.¹⁵⁷ Mucklebauer argues that the rhythm of "opinion" is the structure of identification between the individual and the collective.¹⁵⁸ Mucklebauer joins Ritivoi, Cox, and Rancière in positing a fundamental continuity between *doxa* and knowledge, because knowledge is simply *doxa* that is turned against itself in the movement of becoming. *Doxa* is more or less the rhythm of common identification in Mucklebauer's reading of Deleuze and Guattari. The question that remains after Mucklebauer's analysis, however, is this: How can the punctual moments in the rhythm of becoming be accounted for? While there is an extensive Deleuzian vocabulary available to answer this question, it is often

difficult to identify how and where this vocabulary resonates with the vocabulary of critique.¹⁵⁹ Mucklebauer avoids this task while more or less disavowing the project of scholarly critique, which he characterizes as a “commitment to a dialectical image of change and to the movement of negation that engineers it.”¹⁶⁰ Although Mucklebauer’s Deleuzian pursuit of an affirmative model of change is provocative and fruitful, it results in a model of *doxa* that is incomplete. In the final section of this essay I will argue that anti-doxastic critique is a necessary component of the “rhythm of the common” as Mucklebauer describes it. If *doxa* is conceptualized as being in dynamic tension with *epistēmē*, the collision between democratic *doxai* is the event of democratic sense.

Critique is the attempt to produce an event that cannot be reduced to changing what people’s “opinions” are. Within the logic of democracy that Rancière identifies, an event in democratic *doxa* is the inhabiting of one doxastic position in order to interrupt another. Enacting personae such as “the people” allows for critical enunciations against *doxa* to *demonstrate the event of democracy*. To that extent, it is possible for a critique that assumes the representativeness *or* the constitutive effects of discourse to contribute to dissensual democracy— *if* it demonstrates the event of the appearance of a democratic subject of enunciation.

Various ways of critiquing *doxai* would then be techniques for producing the larger event of democratic demonstration. Techniques for critiquing *doxa* are *epistemic* primarily in the sense that they are *anti-doxastic*. The “epistemic” or anti-doxastic gesture in dissensual democracy is less about implementing particular procedures for establishing empirically verifiable knowledge than it is about calling for change in static representations. In the course of acting out the tension between *doxa* and *epistēmē* in the context of the logic of democracy, an emergent collective

subject appears as the event of change in the political order. This is why the relationship between *doxa* and democratic collectivity is not a matter of how subjective opinions interact with discursive structures. Opposing *doxa* with epistemic critique is the only way to cause the collision between *doxai* that enables the sense of the appearance of a democratic collective subject.

The next section describes the operations of such anti-doxastic techniques and provides examples of how they are used by Move to Amend, an organization opposed to corporate personhood rights. I argue that Move to Amend's anti-doxastic critique enables the demonstration of a democratic subject of enunciation, or in Rancière's terms, a *demos*. The subsequent section describes how Deleuze's work on sense-events helps to draw out how the "sense" in "dissensus" is *evental*. I will then conclude that dissensual democratic events such as appearance of Move to Amend happen by enacting *doxai* while critiquing *doxai*.

Critiquing the *Doxa* of Corporate "Personhood"

The scare quotes in the title of this section proceed from a recognition of the contested nature of legal personhood that is centuries-old in trans-Atlantic jurisprudence.¹⁶¹ This long-standing debate over whether corporations should receive rights as legal persons has reached its current level of visibility as a result of the U.S. Supreme Court's 2010 decision in *Citizens United vs. The Federal Election Commission*.¹⁶² The slogan, "Corporations Are Not People, Money Is Not Speech" spread widely in the wake of that decision.¹⁶³ The movement against corporate personhood rights strenuously argues that the word "person" should be reserved for "natural human" persons, not corporations. This claim is made in opposition to the doxastic legal interpretation of "person" as a useful fiction that need not correspond to a set class of existing entities.¹⁶⁴ In Western jurisprudence, legal personhood has been attributed to various entities in

order to accomplish practical goals.¹⁶⁵ As such, it is generally accepted by the legal community as having no necessary correspondence to any qualities of actually existing entities.¹⁶⁶ In other words, the movement leverages an essentialist, or what Edward Schiappa would call a “real definition,” of the word *person* against the doxastic legal term of art “person,” which has admittedly been defined pragmatically according to its contextual articulations.¹⁶⁷

The critique of corporate personhood articulated by the movement does two things: First, it describes how corporations have claimed the democratic *doxai* of rights and personhood. Second, it embraces the doxastic democratic persona of ‘the people’ while enacting the role of the part that has no part against a ruling order. The parts of the movement vary in the extent to which they embrace specific *doxai* of democracy; for instance, some of the more liberal elements of the movement seek to redefine “corporate personhood” in and through an amendment to the United States Constitution.¹⁶⁸ Move To Amend (MtA), an organization that has individual and group members, forwards one of the most extreme anti-corporate versions of the amendment. MtA’s amendment would strip corporations of *all* constitutional rights.¹⁶⁹ Not all amendment proposals are as extensive as this MtA’s; some only propose to deny corporations free speech rights or to increase the authority of Congress to regulate campaign expenditures and contributions.¹⁷⁰

By performing a critique of undemocratic relations wrought by corporate claims to the *doxai* of personhood, MtA performs two of the most popular techniques of critique: revealing the truth behind doxastic illusion and mapping the effects of doxastic discourse. The activists identify the concept of “corporate personhood” as itself being an illusion that masks the interests at stake in competing definitions of the term and argue that through new histories of the corporation “a vital hidden US history has returned to light.”¹⁷¹ Additionally, they map the

negative effects of corporate claims to personhood *doxai* as they have produced a variety of social and political problems, not the least of which is the exclusion of “natural” human beings from politics.¹⁷²

Both of these modes of critique require a certain investment in the gesture of demonstrating the difference between *doxa* and the reality that underlies or results from it. In other words, the critique relies on performing the tension between *doxa* and *epistēmē*, with the assumption that the critique itself is more accurate representation of reality than the *doxai* it targets. Move To Amend’s anti-doxastic techniques provide precisely the opportunity for a *demonstration* of a doxastic democratic subject position. MtA’s critique of corporate personhood generally does not cite or mimic the specific theories of discourse developed in detail by scholarship concerned with the finer points of the relationship between subjects, institutions, and discourse. The critique does, however, enact the general tension between *doxa* and *epistēmē* in order to produce a sense that ‘the people’ are the proper democratic subject, not corporations.

Move To Amend’s critique of *doxa* demonstrates characteristics that are quite similar to what Paul Ricœur describes as being the core features of a critical hermeneutics of suspicion.¹⁷³ First, a doxastic illusion is marked as figurative rather than literal; second, the doxastic illusion is attributed to a causal source; third, secret artifices of the figurative and illusory *doxa* are revealed; and fourth, the subject enunciating the critique of *doxa* reconnects literal reference to the sense-event of its own appearance. The primary slogan of MtA and other activists, *Corporations are Not People, Money is Not Speech*, contains within it the central gesture that critiques of doxastic illusion relies on: distinguishing the literal from the figurative. MtA works in a number of ways that employ the characteristics of suspicious critique, but here I will focus on two rich examples: The first is MtA’s campaign to pass local resolutions against corporate

personhood and the second is a historical Timeline of personhood rights and powers available on the MtA website for reproduction at MtA house parties, convergences, or rallies.¹⁷⁴

As of the summer of 2012, approximately 240 municipal governments, states, city councils, townships, and other small-scale legislative bodies had self-reported on the MtA website that they passed or were attempting to pass ordinances or non-binding resolutions declaring that corporations are not persons.¹⁷⁵ MtA was one of several organizations that campaigned during this time for municipalities and organizations to pass such resolutions.¹⁷⁶ As part of the campaign, MtA offered a model resolution on its website that could be taken and modified freely by those who wish to join their critique of corporate personhood.¹⁷⁷ The model resolution begins by declaring that persons are human beings and then enumerates the fundamental differences between human beings and corporations. Human beings require “clean air, clean water, safe and secure food,” while corporations “can exist in perpetuity, can exist simultaneously in many nations at once, need only profit for survival, exist solely through the legal charter imposed by the government,” and have “great wealth” that “allows them to wield coercive force of law to overpower human beings and communities.”¹⁷⁸ This gesture marks the literal definition of “person” as synonymous with “human being” and distinguishes it from a figurative doxastic definition of “person,” which would include corporations: “corporations are not and have never been human beings.”¹⁷⁹ The model resolution then goes on to identify the source of this misappropriation of democratic *doxa* as the Supreme Court, an unelected entity: “Interpretation of the US Constitution by appointed Supreme Court justices to include corporations in the term ‘persons’ has long denied We The Peoples’ exercise of self-governance by endowing corporations with Constitutional protections intended for We The People.”¹⁸⁰

After marking the distinction between literal and figural language and then attributing the doxastic illusion to an undemocratic, appointed judicial source, the model resolution goes on to refer to its own subject of enunciation as the *demos*. It does this by connecting the enunciation of the critique with a series of democratic collective actors, including MtA. After declaring that tens of thousands have already joined the movement, it offers a script for additional entities to demonstrate their participation in the collective critique of the institutional *doxa* of corporate personhood:

Therefore be it resolved that (the City of, County of, etc. or organization) _____ hereby calls on our (legislators, elected officials, mayor, commissioners, etc.) _____ to join the tens of thousands of citizens, grassroots organizations and local governments across the country in the Move to Amend campaign to call for an Amendment to the Constitution to Abolish Corporate Personhood and the doctrine of Money as Speech and return our democracy, our elections, our communities to America’s human persons and to thus claim our sovereign right to self-governance.¹⁸¹

The self-referential demonstration of a collective subject of enunciation, however, extends beyond the text of the model resolution and its extravagant use of first-person plural shifters. The model resolution appears on the MtA website embedded within a variety of markers of collective enunciation. These include a banner that offers the opportunity to sign an online petition in favor of amending the constitution as well as a counter that tracks the number of signatures.¹⁸² A click on the “MTA Campaign Map” link in the “Get Involved” drop-down menu calls up an embedded Custom Google Map of the continental U.S. that toggled between pins marking Move to Amend Affiliate Groups, Endorsing Organizations, Events, and Resolutions and Ordinances.¹⁸³ The dense array of pins generates a visual demonstration of the collective *we* enunciating the anti-doxastic critique. Under the map is a link to a list of the groups, organizations, or municipalities that correspond to the pins on the map. Each listed name links to a page that contains contact information for that group. The “MTA Coalition” drop-down menu, accessible from all parts of

the site, contains links to additional information about involved parties like the National Leadership Team, a comprehensive list of local affiliates and links to their dates of establishment and a list of endorsing activist organizations and their sites.

The demonstration that constitutes the *we* of Move to Amend is the democratic subject that enunciates a critique of how democratic *doxai* have been misappropriated to produce the legal illusion that corporations have rights. The model resolution's own enactment of the Constitutional *doxa* "We The People" is the entirety of this demonstration, and it is this collective *we* that is critiquing the undemocratic institutionalization of corporate personhood. The resolution enacts democratic *doxa* through its presentation of organizational plurality, a petition, and a visual representation of collectivity that occupies the position of Rancière's democratic subject of enunciation, or 'the people' who are the part that has no part in the ruling order.

Move to Amend also critiques *doxai* by mapping the sense of corporate personhood directly in relation to a sense of the persona of 'the people.' These efforts are more concerned with the *effects* of corporate claims to democratic *doxai* rather than what such *doxai mask*. Mapping the effects of *doxa* is part of what Paul Patton, following Deleuze and Guattari, might call an effort to "counter-effectuate" corporate personhood.¹⁸⁴ This type of critique involves first identifying the sense of a propositional statement *in context* in order to produce *continuous variations* in languages. For instance, the model resolution discussed above incorporates elements of an anti-doxastic critique of effects as it contextualizes the negative economic, social, and environmental impacts of defining corporations as persons.

Other documents produced by Move To Amend engage even more explicitly and thoroughly in this type of critique. Part of Move To Amend's "Action Toolkit," an extensive set

of documents offering instruction in how to translate Move To Amend’s agenda into local activities, is a “Timeline of Personhood Rights and Powers.”¹⁸⁵ This document contextualizes corporate claims to personhood *doxai* with quotations from relevant Supreme Court cases, textual summaries of those cases, quasi-aphoristic commentary, and the dates of major events in U.S. history. These textual nuggets are scattered in graphic blocks along a timeline that stretches from 1772 to 2011. The timeline organizes various events along a horizontally split axis. Above the line are the gains and losses of rights and powers of “Corporations” and below are the gains and losses in rights and powers of “the People.”

On the most basic level, the timeline is an effort to define “corporation” and “the people” as collective personae that are inherently opposed to one another, and to that extent it demonstrates many of the most basic insights offered by theorists of populism about the bifurcated rhetorical field required of such rhetoric.¹⁸⁶ More specifically, however, the Timeline describes claims of “the people” and “corporations” to democratic *doxai* within the context of historical events such as wars and strikes. This means that the timeline identifies the *sense* of such claims to democratic *doxai* by locating the sense of such *doxai* as the boundary, or as Deleuze would say, the *film*, between propositions about claims to *doxai* and the state of affairs that those proposition occurred in and affected.¹⁸⁷ For instance, in its summary of the 1882 case *San Mateo County v. Southern Pacific Railroad*, the timeline states:

It was argued that corporations were persons and that the committee drafting the 14th Amendment had intended the word person to mean corporations as well as natural persons. Senator Roscoe Conklin waved an unknown document in the air and then read from it in an attempt to prove that the intent of the Joint Committee was for corporate personhood.¹⁸⁸

This analysis of the way that the democratic *doxai* of the 14th Amendment—which declares the right of persons to equal protection of the laws—attempts to describe how such *doxai* were

illegitimately claimed for corporations in the *Southern Pacific* case. Additionally, however, in emphasizing the claim as a sort of erratic irruption and the original intent of the 14th Amendment, this description of the sense of the *doxai* in context also attempts to produce its own sense of the Southern Pacific case as the boundary with another state of affairs. The description of this is located close to descriptions of other court cases and floating, a-temporal aphoristic statements such as “Judge made law is not democracy” and “Three words not found in the Constitution: Slavery, Democracy, Corporation.”¹⁸⁹

The Timeline’s effort to critique the way that democratic *doxai* have been attributed to corporations is accompanied by the demonstration of a collective entity that includes the textual and graphic features of the Timeline itself. For instance, the position of “The People” contains blocks of text referencing a variety of rebellions, insurrections, suffrage activists, strikes, and protests. The historical *doxa* of these movements and actions are the material that is drawn on by the Timeline to generate a sense of itself and its position. This graphic subject position of the People “below the line” also contains propositions about the Move to Amend coalition, a series of organizations in the movement, and a list of proper names that approximate authors of the Timeline. The web page that contains the downloadable Timeline PDF explains how the Timeline has been and can be used to demonstrate the context and goals of the movement.¹⁹⁰ This explanation occurs, in part, in the voice of Jan Edwards, who describes exactly what must be done to effectively print the full length of the Timeline at your local print shop. The page also contains two photographs of the full Timeline on display in a living room or informal office space with people gathered around it, smiling, reading and socializing.

This entity enunciating the anti-doxastic critique of the effects of corporate personhood demonstrates what Rancière might describe as the enactment of the *demos* through democratic

doxai. The Timeline and the model resolution generate a critical sense of the *doxai* of corporate personhood by mapping their effects and producing a fresh sense of this mapping activity as an enunciation of the People, those who are excluded from the corporate political order and are speaking in and as an event in the long history of the Timeline. In doing so, the Timeline takes an epistemic position toward corporate claims to the *doxai* of personhood that demonstrates how making sense of *doxai* relies on a gesture of representation to produce a new sense. By establishing historical knowledge of how democratic *doxai* have been institutionalized to favor corporations, the Timeline is able to juxtapose *doxa* and knowledge to produce a sense of itself as the democratic event of the appearance of the people. Both of these examples of how MtA critiques the *doxa* of corporate personhood suggest that dissensual democracy involves the *event* of the appearance of *a subject who enunciates an anti-doxastic critique*.

A Sense of Democracy: The Dissensual Event

Move to Amend’s techniques of critique are ways of enacting dissensual democracy; they critique how “personhood” *doxai* have been undemocratically claimed by corporations while demonstrating a democratic subject of enunciation, “the people.” These critiques produce *the event of a sense of democracy*. Dissensual democracy occurs during the demonstration of the difference in sense between the appearance of the enunciative *we* of “the people” or “the community” and the critique of *doxa* articulated by that entity. It is not enough to critique doxastic rhetoric as illusory or having bad effects — the critique must be enunciated through a doxastic persona that plausibly occupies the role of the *demos*, the part that has no qualification to rule and yet is equal to the whole. This dissensual collision of *doxai* between *anti-doxastic critique* and *demonstrating democratic doxai* is what produces a sense of a democratic event.

As discussed in Chapter One and above, Rancière's account of this dissensual event emphasizes the appearance of the *demos* but neglects the role of critique in dissensus. Although the appearance of a collective subject such as MtA claiming to have no part in the ruling order and yet also claiming to be the totality of the collective subject that should rightfully occupy that position is to a certain extent dissensual in itself, without a specific critique of the ruling order it is difficult for such a claim to gain traction or advocate any specific change in institutional *doxai*. As the rhetorical theorists mentioned above have rightfully argued, and as Rancière certainly assumes, there may be no fundamental difference between *doxa* and *epistēmē*; *epistēmē* may be simply another form of *doxa*. But this insight does not then immediately explain the potential and effects of enacting forms of dissensus that are epistemic.

What is needed in order to explain the dissensual potential of such epistemic critique is an account of dissensus that does justice to the epistemic strategies of critiques like MtA's while acknowledging the fundamental continuity between *doxa* and *epistēmē* posited by rhetorical theorists and Rancière. The concept of sense developed by Gilles Deleuze in *The Logic of Sense* is well-suited to the task; Deleuze's concept of sense emphasizes how sense is part of a dynamic tension that produces events as the sense of states of affairs is described as part of producing a new sense. Mucklebauer, for instance, draws on Deleuze to argue that the distinction between *doxa* and *epistēmē* is itself doxastic; it is *doxa* all the way down.¹⁹¹ The result is that, for Mucklebauer, "doxa simply becomes the singular rhythm that structures the insistent (and quite real) distinction between the appearance of doxa and the reality of *epistēmē*."¹⁹²

This approach to sense offers a way to understand dissensus as the moments of differentiation within *doxa* that do not require recourse to Rancière's exclusion of critique from dissensus. Democratic dissensus acts into and according to the *sense of doxai* (like the *doxai* of

“personhood”). If we retain the larger, more complex version of the concept of *doxa* in which the gesture of its critique is about attempting to change the articulations of *doxai* and not just subjective beliefs, anti-doxastic democratic dissensus produces the event of the appearance of a democratic subject through *doxai* while critiquing *doxai*. In an effort to re-build the concept of “sense” in light of the more complex concept of *doxa* developed above, this section will do two things: First, it will flesh out Deleuze’s notions of sense and event.¹⁹³ Conceptualizing sense as event helps to explain how *doxa* is the material that is enacted in dissensual democracy as well as the material that is critiqued. Second, it will more specifically suggest how this revised definition of sense-event helps to further specify practical anti-doxastic critical techniques for enacting dissensual democracy.

Dissensual critique can be understood as a set of *techniques* that are dissensual based on how they alter or perturb the sense of *doxa*, in this case the legal *doxa* related to “person” or “corporation.” Deleuze’s conceptualization of *sense* offers an important expansion of Rancière’s approach to dissensus because of the way that Deleuze develops the concept in close proximity to the concept of event. If sense is an event that is not dependent on perceptual experience, as in *a sense of the appearance of the people*, the production of a sense-event will depend in part on the effective deployment of critical methods that target the fixed appearance of things that the speaking subject opposes. That would mean that dissensual democracy could be enhanced by the refinement and prescription of techniques such as the anti-doxastic critiques deployed by Move To Amend.

Rather than locating sense in the *perceptions* of a subject, Deleuze describes sense as the counterpart of something like *stasis*.¹⁹⁴ This suggests the possibility of a sense-event in *doxa* without requiring a theory of a subject whose opinions are being perturbed. For Deleuze, sense-

events involve bringing together two discursive series in a *paradox* or *problematic*. I argued above that enunciating the sense of *doxa* in context, as Move to Amend does in the context of the opposition between “the people” and “corporations,” is central to an anti-doxastic critique. Deleuze calls this type of action paradoxically regressive because any given statement about the sense of another statement can never denote its own sense.¹⁹⁵ Jean-Jacques Lecercle’s discussion of the Deleuzian concept of sense and its relation to Deleuze’s concept of the event suggests a way of understanding the regressively paradoxical relation between the sense-event and enunciation.¹⁹⁶ Lecercle argues that a paradox brings together two series, “it operates a distribution, if not of truth and opinion, at least of creative thought and common sense; paradox is the element in which sense *qua* nonsense emerges from common sense.”¹⁹⁷ This means that the sense produced in the way the paradox circulates through the two series is not a Badiouian type of *temporal* event that marks a break in a linear sequence (e.g. Paul’s conversion on the road to Damascus).¹⁹⁸ Instead, it is an event like “the battle” that hovers over a field and retroactively gives it an atemporal sense in multiple directions both inside and outside of linear time. The Deleuzian sense-event, or in the later terms of Deleuze and Guattari’s *A Thousand Plateaus*, the *incorporeal transformation*, is an attribute of bodies as well as the expressed of a proposition. Lecercle and others argue that this means for Deleuze (unlike Badiou), events are everywhere, all the time, impersonal, and infinitive.¹⁹⁹ But even though they are a-subjective and a-temporal they are nonetheless attributed to states of affairs (for instance, to court cases). In the instance of dissensual democratic events this means that a sense-event, or incorporeal event, is also *an attribute of the enunciative act of critique*. Once an event is abstracted from a state of affairs, Deleuze says that it is counter-effectuated.²⁰⁰ This counter-effectuation of the doxastic *sense of corporate personhood* is performed by the speaker of the anti-doxastic critique (for

instance, the movement against corporate rights) who abstracts the event, describes it as a doxastic part of a state of affairs, and identifies its undemocratic sense. In the case of democratic dissensus, this enunciating subject effectuates the event of its own appearance while counter-effectuating undemocratic *doxai*. So in the case of Move To Amend’s “Timeline,” the rights and powers of corporations *qua* the *doxai* of legal personhood are counter-effectuated by the enunciations of “The People,” who are both subject and object of the Timeline’s dissensual effort to generate a sense of the relationship between *doxai* and historical events. The passage of the local resolutions and ordinances, on the other hand, similarly counter-effectuates the rhetoric of personhood through the presentation of a collective subject enunciating the critique of how democratic *doxai* have been claimed by corporations.

In democratic, anti-doxastic critiques, the event of enunciation must be attributed to doxastic personae such as “the people,” “the movement,” or “the community.” The attribution of the enunciation to collective personae happens through techniques such as the first person plural pronoun *we* that Emile Benveniste argues is the signal of the act of enunciation itself and hence the enunciator: “This sign [I] is thus linked to the exercise of language and announces the speaker as speaker.”²⁰¹ If this is the case, the event of the enunciation can be produced as the bringing together of two series or fields — democratic *doxa* (such as “the people”) and the techniques corresponding to the first person plural pronoun *we*. Critical methods are central to producing a sense of *dissensual* democracy because they demonstrate the event of a subject of enunciation that is anti-doxastic. Another way of putting this is to say that because a self-referential enunciation critiques undemocratic *doxai*, it attempts to set its own self up as a democratic event in sense. This demonstration of the subject of enunciation is a way of acting out the part that has no part in the predominant sensible order — it is dissensual democracy. But

because the collective persona demonstrated need not have any pre-existing perceptual capacities or experiences, the demonstration *itself* is the crucial feature of dissensual democracy. Therefore, dissensual democracy requires critiquing *doxai* and the demonstrative event of a doxastic collective persona referring to itself as the enunciator of that critique.

Conclusion

Although various parts of the movement against corporate personhood rights demonstrate differing levels of engagement with the *doxai* of liberal democracy, there is a strong tendency in the movement to embrace such *doxai*. What is remarkable about this is that it is done in concert with such a trenchant critique of contemporary liberal state capitalism; most such critiques eschew the *doxai* of liberal democracy.²⁰² If Move to Amend realized its ultimate goals, it could mean a significant disassembling of the legal edifice that supports capitalism as we know it. And yet the stars-and-stripes persona of ‘the people’ leveraged against this edifice is just as doxastic as the target of their critique. The difficulty provoked by this tension suggests that it is the event of demonstrating the *demos* itself that is more fundamental to democracy than the specific articulations of democratic *doxai*.

Without the gesture of critical interruption, however, enacting *doxai* can simply be an affirmation of the existing political order. This is the risk of Rancière’s account of democracy; without identifying the role of critique in dissensus, democracy can simply be any fascist articulation of ‘the people.’ For democracy to be dissensual it must generate an alteration in our sense of *doxa*, the appearance of things that are unspoken and taken for granted. If critique is central to dissensus, it means that *dissensual democracy* only occurs when the role of the *demos* is enunciated through a doxastic democratic persona while critiquing undemocratic *doxai*. In other words, doxastic collective personae such as ‘the people’ can and do perform regularizing,

obfuscating, and ideological functions in the ways described by critics. But as *doxai*, collective personae are not simply subjectively held opinions or ideological appearances. They are also material that is available to be enacted in democratic events.

Dissensual democracy requires the collision of *doxai* through the enactment of the tension between *doxa* and epistemic critiques of representations. Anti-doxastic critique derived from strongly critical intellectual traditions can enable the appearance of the *demos*. What is hopeful about anti-doxastic techniques of critique is that they can be adapted to various contexts in concert with plural and shifting democratic subjects of enunciation. Critique, however, can be *of* democratic dissensus just as easily as it can participate *in* democratic dissensus. The next chapter shifts to a different register of critique to begin to establish an account of how scholarly critique can mesh with other registers of dissensual democracy.

Chapter 3
Critiquing Democratic *Doxai*?: Petitions Against Corporate Rights

On January 21, 2010, with its ruling in *Citizens United v. Federal Election Commission*, the Supreme Court ruled that corporations are persons, entitled by the U.S. Constitution to buy elections and run our government. Human beings are people; corporations are legal fictions.

We, the People of the United States of America, reject the U.S. Supreme Court's ruling in *Citizens United* and other related cases, and move to amend our Constitution to firmly establish that money is not speech, and that human beings, not corporations, are persons entitled to constitutional rights.

The Supreme Court is misguided in principle, and wrong on the law. In a democracy, the people rule.

We Move to Amend.

—*Petition of Move to Amend*²⁰³

This text is one of dozens of digital petitions against corporate legal rights that have circulated in the wake of the 2010 *Citizens United* ruling. Although some of the signatures on the Move to Amend petition have been gathered on paper and entered into the online bank, the petition is primarily a digital phenomenon displayed on the Move to Amend website. These petitions against the corporate rights codified in *Citizens United* and other court cases critique the fundamental legal bases of the economic and political dominance of joint-stock business corporations. This critique is presented in the name of ‘the people’ who are sovereign in democracy. But is clicking against capitalism meaningfully democratic or is it simply a consolidation and diversion of political impulses into “slacktivism”? In the terms of the last chapter, are the democratic *doxai* performed in petitions against corporate rights part of an ossified institutional structure that itself needs to be critiqued and transformed, or are petitions against corporate rights part of the demonstration of the *demos* in a democratic event?

This chapter integrates two approaches to building knowledge about petitions. The first approach is to critique petitions as being merely liberal democratic *doxai* that bolster undemocratic relations. According to this argument, petitions shoehorn subjects into politically ineffective “slacktivism” and exploit them through digital surveillance. The second approach is to treat petitions against corporate rights as democratic expressions of ‘the people’ and to build knowledge about how and why they are effective critical contributions to democratic rhetorical culture. In the first approach, critique is enacted by scholarship. In the second, critique is described as an element of democratic movement rhetoric. In addition to describing some of the important variations in petitioning technologies and their potential to contribute to democracy by enacting a tension between *doxa* and *epistēmē*, I hope to demonstrate how the tension between *doxa* and *epistēmē* can be enacted by scholarship that is critical of the liberal *doxa* of petitioning as ‘the people.’ I conclude that scholarly critiques of the *doxa* of petitions against corporate rights are justified if the petitions fail to demonstrate participation in a specific democratic collective.

The ease of participation in digital petitions has led many to conclude that they are a relatively passive and inconsequential way to “express opinions” and reinforce the *doxai* of neoliberal state institutions. Stuart Schulman, for instance, analyzes environmental appeals to U.S. regulatory agencies to argue that mass email campaigns, a form of digital petitioning, are a low-effort, non-deliberative and ineffective way to participate in politics.²⁰⁴ Evgeny Morozov, a reliable skeptic of the political potential of new media technologies, argues that “slacktivist” techniques such as digital petitions may simply steer potential activists away from actually effective forms of political action.²⁰⁵ Underlying these skepticisms seems to be a conviction that petitions are too liberal, too easy, and do not sufficiently call into question the dominant *doxai* of

national politics. According to this perspective, petitions against corporate rights do not, as Wendy Brown would say, “seek knowledge and control of the multiple forces that construct us as subjects, produce the norms through which we conceive reality and deliberate about the good, and present the choices we face when voting or even legislating.”²⁰⁶ Petitions may not go far enough, get real enough, hit the mark enough, question liberalism enough, or smash capitalism enough.

The long history and persistence of petitioning should give us pause before we too quickly conclude that digital petitions simply reproduce powerful undemocratic institutions. Petitions may or may not accomplish narrow short-term goals, but they have the potential to fit into a larger sense of a political culture that facilitates political engagement through democratic *doxai*. Susan Zaeske’s history of abolitionism, for instance, argues that petitioning was the mechanism by which women took on the role of political subjects that eventually led to them attaining the vote for themselves.²⁰⁷ Such history suggests that both physical and digital petitioning, while requiring little time of those who sign and even failing to have immediate measurable results, have a certain kind of democratic potential. Much of this potential remains constant over the transition from quill and parchment to keyboard and app.

Petitioning is not just a matter of aggregating pre-existing opinions and attempting to effectively persuade an audience of the importance of a specific goal. It is also a technology “that enables the reformulation of the political subjectivity of the rhetors themselves.”²⁰⁸ It is, however, very difficult to get a sense of the democratic potential of digital petitions against corporate rights if we restrict our analysis to the level of *individual* behavior and psychology. David Karpf, for instance, argues that digital petitioning is used by advocacy groups because “they believe it to be an effective means of converting the resources they possess (an

attentive/motivated issue public) into power....”²⁰⁹ Petitions are part of larger networks and long-term movement building. Any consideration of the democratic potential of digital petitions needs to take into account how they can *demonstrate* something more than the individual opinions and levels of investment of those who sign them. Their democratic character also can’t quite be reduced to the question of whether they accomplish the specific persuasive intentions of their composers. As Laura Gurak and John Logie have argued, digital petitions can “serve as community-centered documents, in much the same way that paper-based petitions might have grown out of collective discussion.”²¹⁰ The petitions of the movement against corporate rights redirect concern with the role of petitions in *individual* citizenly subjectivity toward investigating how petitions enable the appearance of a democratic *collective* subject; the *demos*.

Concerns about the ease and context of digital petitions, however, are not completely misplaced; along with their doxasticity comes an easy integration into institutional politics. There are, for instance, plenty of indications that digital petitions are little more than a data-gathering technique for political marketing firms. Recent research on “youth engagement” through petitions poses serious questions about the significance of petitions about popular culture and celebrities.²¹¹ Jodi Dean offers a more theoretically elaborate version of Morozov’s core argument that digital forms of low-effort opinion-aggregation distract people from actual, effective political action. The result is what Dean calls “communicative capitalism,” which consists of “a multiplication of resistances and assertions so extensive that it hinders the formation of strong counterhegemonies.”²¹² According to this logic, rebellious forms of opinion-aggregation (such as signing a digital petition) provide just enough of a “safety valve” to keep people from getting more involved in strong political efforts that might make an actual difference and transform political institutions.

Part of the basis for Dean's critique is the observation that "political campaigns are indistinguishable from advertising or marketing campaigns."²¹³ Following this logic, petitions are little more than a sort of doxastic market-research survey or technique for building loyal customer base for institutions that occasionally make requests to purchase/donate/sign. Mark Andrejevic argues, echoing Dean, that "the goal of these strategies is not to become increasingly responsible to the public will, but to find ways of managing it more effectively before it expresses itself in action."²¹⁴ Another way of articulating this critique would be to say that digital petitions are not a vehicle for expressing the will of a pre-existing public or people; they are ways of managing political opinion by gathering data about consumer preferences so as to better sell political positions in exchange for donations. Because petitions are fundamentally marketing strategies, according to this critique, petitions are simply expressions of the general *doxai* of capitalist management techniques underwriting contemporary politics. The passivity and failure of subjects to more deeply engage is read as a symptom of the general dominance of doxastic capitalist communicative practices.

The role of the political consumer in this model is to perform the labor of clicking through petitions and asserting dislike of various phenomena without ever really engaging in substantial collective action. Signing petitions is not just ineffective; for Andrejevic or autonomist Marxist theorists such as Tiziana Terranova, "participatory" self-disclosure through new media technologies should also be understood as *labor*.²¹⁵ Andrejevic argues that the labor of asserting one's opinions generates a certain amount of monetary value for political organizations and campaigns.²¹⁶ Data harvested from entries into digital petitions could, for instance, be bought and sold whether the petitioners donate or not. When conceptualized as *labor*, the simple, repetitive gestures of signing and commenting are merely another way to use new media to extract value.

Petitioners would not be ‘the people,’ the ‘working class’ or any such collective subject of meaningful political transformation. The mode in which petitioners “participate” in politics would not be real democracy; as Andrejevic argues, real “democratic politics, by contrast, promise public participation all the way up, as it were, to the goal-setting process itself.”²¹⁷ The collective laboring population’s real interests and goals could not be expressed through petitions, which ultimately serve other purposes.

Rhetorical scholars of social movements such as Michael McGee and Kevin DeLuca argue that this type of approach misses the mark because it begins with the assumption that collective interests and opinions *pre-exist* political action.²¹⁸ Much like Robert Hariman and other rhetorically nuanced theorists of *doxa*, they work from the assumption that “public opinion” does not necessarily precede its expression and articulation.²¹⁹ Instead, they argue, an acting collective subject is the *result* of doxastic political rhetoric rather than the entity that possesses opinions and interests prior to their expression. This more rhetorical perspective on *doxa* avoids simplifying *doxa* as mere opinion and embraces a more nuanced appreciation of the role of articulations of doxastic material like the form of petitioning in the activities and events of politics. The question is not whether digital petitions correspond to the a “real” movement of the people that is protesting in the streets, building organizational structures or expressing its true will and goals. Instead, the question is whether petitions can *generate* a sense of such a subject and help to create it. McGee argues that in every case, not just certain instances of “good” collective action, “the whole notion of ‘movement’ is mythical, a trick-of-the-mind which must be understood *as an illusion* and not as a fact.”²²⁰ This means, he goes on, that “the rhetorical artifacts which warrant claims of ‘movement’ also give us concrete objects of study, for we can point to changes in patterns of discourse *directly*.”²²¹ Petitions are clearly one of the *doxai* which

help constitute the movement against corporate rights. DeLuca argues even more specifically that this rhetorical creation of new ‘movement’ collectives is made by re-articulating *doxai* to act out antagonisms.²²² The movement against corporate rights certainly describes and presents itself as a people’s movement, and in doing so, it attempts to call itself into being.

‘Movement’ is not the only demotic collective persona that is articulated in the petitions against corporate rights. As I will describe below, the intense rhetoric of democratic ideals in these petitions frequently also articulates the collective persona of ‘the people’ as the petitioning antagonist of corporations. Digital petitions against corporate rights claim to be *precisely* the expression of the will of the people contra the will of corporations. Even more than most types of digital petitions, petitions against corporate rights adopt the rhetoric of democracy as the collective self-assertion of the people against the powers of capital. Additionally, the stated goal of petitions against corporate rights is the dismantling of the most effective linkages between the State and the primary tools of capital accumulation: joint-stock business corporations. This suggests that although the concerns of anti-techno-utopians and critics of liberal *doxai* like Brown are justified in many cases, they may not be accounting fully for the significance and democratic rhetorical potential of the more robust versions of digital petitions. Should a petition that aims to express the support of ‘the people’ for the democratic project of dismantling the core legal basis of capitalist institutions still be dismissed as a mere tool of capitalism? Is the only thing we can say about such petitions that they present a false image of a democratic action that merely conforms to the basic techniques of contemporary capitalist practice?

Answering these questions requires a clearer definition of how ‘the people’ and other collective personae operate specifically as democratic *doxai*. For Jacques Rancière, for instance, democracy does not require a lucid and thorough exposition of capitalist power relations, labor

practices, and communication techniques.²²³ For Rancière, democracy is simply the enactment of the position of those who are excluded from the ruling order. In other words, democracy happens when the collective persona of ‘the people’ (or some similar collective persona) is taken up in the name of righting a wrong and demanding equality or liberty. Rancière explains:

Politics exists wherever the count of parts and parties of society is disturbed by the inscription of a part of those who have no part. It begins when the equality of anyone and everyone is inscribed in the liberty of the people. This liberty of the people is an empty property, an improper property through which those who are nothing purport that their group is identical to the whole of the community.²²⁴

As rhetoricians such as Michael McGee and Maurice Charland have argued, personae such as ‘the people’ that claim to be equal and free are always, in a sense, *masks* that can be enacted in order to stake a disruptive democratic claim against those in power.²²⁵ These personae are “empty” because they don’t belong to any specific social actor (say, for instance the “really committed” activist or leader who attends protests, builds organizations, and creates effective counterhegemonies). In democracy, collective personae are an effective technique for anyone, even slackers, to dissent. Ernesto Laclau makes a similar argument about the nature of ‘the people’ in his account of populist reason, which overlaps significantly with the political logic of democracy.²²⁶ Laclau argues that we should “conceive of the ‘people’ as a *political* category, not as a *datum* of the social structure. This designates not a given group, but an act of institution that creates a new agency out of a plurality of heterogeneous elements.”²²⁷ Laclau goes on to note that “naming is the key moment in the constitution of a ‘people,’ whose boundaries [...] permanently fluctuate.”²²⁸ Part of the fluctuation of the boundaries of ‘the people’ happens when various groups and subjects sign on or affiliate themselves with various demands being made in the name of a collective persona. For both Rancière and Laclau, there is no unified “will of the people” that pre-exists attempts to articulate that will and demonstrate a collective subject

through a persona. In spite of Jodi Dean's deep criticisms of what she sees as pointless and passive resistance through digital media like petitions, she similarly acknowledges that the beginning point for communist politics is also the concept of 'the people,' who are sovereign and *unqualified* to rule — she agrees with Rancière that the people are “the rest of us” or “the part that has no part” in the ruling order.²²⁹ The assertion that 'the people,' as the whole that can never actually be present, constitutes “the necessary absence [that] is the gap of politics.”²³⁰

These theorists suggest that the persona of 'the people' is a mask, a sort of doxastic artifice that is assumed in order to generate a sense of democracy. Rancière and Laclau, however, agree with rhetoricians such as DeLuca and McGee that *all* democratic politics is conducted from behind such masks. There are no “real” people out there waiting in the wings because such a subject does not exist before the event in which it asserts itself. Protests and petitions in which a claim is made that 'the people' want corporations silenced may be conducted through the same doxastic media technologies that enable corporate marketing. In that sense, digital petitions are not so different than the persona of 'the people' itself, which is used by corporations to assert their status as a democratic subject. As such doxastic masks, digital petitions are not necessarily less effective ways of demonstrating the democratic subject position of 'the people.'

If petitions *fail* to accomplish such a demonstration of the position of the *demos*, however, we may want to follow their critics in saying that they are not democratic and that they are politically obfuscating data farms whose primary function is to generate profit for political marketing consultants. The sections that follow describe a number of digital petitions created by various branches of the movement against corporate rights. I will argue that not all anti-corporate petitions are created equal; some of them are more effective expressions of democracy than

others. While many of them fail to go beyond basic data farming, others provide a much stronger sense of expressing the event of democracy.

To illustrate how petitions can function to demonstrate the position of the *demos*, the part that has no part in the ruling order, I will first describe two group petitions (petitions signed by collectives rather than individuals) against corporate rights and then move on to analyzing individual petitions. The group petitions discussed in the first section illustrate some of the core democratic possibilities in digital petitions and the second section develops that analysis through additional comparative examples. The first section will discuss two digital group petitions against corporate rights and the way that they differentially express a democratic subject based on whether they prioritize including a wide range of organizations or prioritize establishing critical knowledge about the depth of the problems of corporate rights. Interesting, the group petition enunciated in the voice of ‘the people’ expresses a much stronger and deeper critique of corporate rights while the petitions that includes more “movement organizations” offers only a shallow critique of the way that corporations have claimed democratic *doxai*.

The second section discusses a number of digital petitions signed by individuals and compares them based on their content and how their features present (or fail to present) a democratic subject that is effectively critiquing corporate rights. I then argue that democratic *doxai* like the petitions of the people must be both critiqued for their failures and lauded for their contributions to fostering a sense of the appearance of the *demos* as the entity that itself is critiquing corporate rights. The tension between *doxa* and *epistēmē* can be productive enacted as dissensual democracy in both of these registers: the rhetoric of democracy movements and the register of scholarship *about* democratic movement rhetoric.

Group Petitions and the Critical Depth of Unified Enunciation

This section describes two different group petitions against corporate rights. Michael Strange helpfully suggests that “group petitions,” in which the signatories of the petitions are organizations rather than individuals, have specific features and potentials for building movement networks.²³¹ At first glance, these types of petitions seem fundamentally different than petitions signed by individuals. But this distance is precisely what allows them to effectively demonstrate the core rhetorical potential of petitioning, a potential that also exists in individual petitions. Because their sole goal is to demonstrate a collective subject, they effectively illustrate how democracy happens through *doxai* like petitions of the people. Because the signatories of these petitions are groups, the democratic potential of petitions can be demonstrated without getting too bogged down in the question of what type of individual subjects (Interpassive? Slacker? Perverse?) sign them and the extent to which the real interests and will of those subjects are expressed in the petitions. The conclusions drawn from analyzing these group petitions will help specify the democratic potentials of individual petitions in the following section.

The two group petitions against corporate rights discussed in this section are hosted under the names “Move to Amend” (MtA) and “United For the People” (UFTP).²³² Both MtA and UFTP critique corporate rights. I will argue that there are two ways in which MtA presents a more strongly democratic version of petitioning. First, MtA’s petition is articulated in the voice of ‘the people’ itself rather than simply in the voice of political leaders attempting to represent the interests of the people. Second, because the MtA petition is articulated in the voice of ‘the people,’ it is able to present a more thorough, unified and deep critique of corporate rights as well as a more trenchant vision for how the US Constitution should be amended to deny corporations rights. UFTP’s group petition is more weakly democratic because it attempts to represent competing perspectives on how the US Constitution should be amended and it cannot articulate the critique of corporate rights by using the “the people” as the referent of the *we* of its own enunciations. Together, these examples demonstrate how analytically prioritizing the role of

collective personae in analysis of petitions helps to unpack the potential of such personae to demonstrate a sense of democracy.

In January of 2012, in conjunction with the second anniversary of the Supreme Court's *Citizens United* decision, the twenty-five year old liberal-progressive Washington, DC lobbying organization People for the American Way initiated a new campaign website called "United for the People."²³³ On its front page the United for the People (UFTP) website declares itself to be "a portal to access current campaigns, upcoming events, and relevant information for activists and institutions who wish to support the efforts to amend the Constitution to rectify our broken democracy."²³⁴ The UFTP front page explains that although the organizations listed below have their differences of opinion, they are united in their conviction that the U.S. Constitution needs to be amended in response to *Citizens United*. Immediately following this self-description is a link to UFTP's Statement of Common Purpose.²³⁵ This carefully worded Statement of Common Purpose avoids taking a stand on one of the most contentious issues within the movement against corporate rights: whether to specifically target corporate spending on election campaigns or critique all corporate constitutional rights and corporate personhood in general. The UFTP Statement of Common Purpose highlights the timeliness and galvanizing force of the *Citizens United* decision while acknowledging that campaign finance and corporate "speech" are not the only concerns of its member organizations. In doing so, however, it deliberately avoids claiming to be the enunciation of 'the people' themselves. Instead, "we the people" is a collective subject *external* to the group of organizations. What unifies these organizations is not that they are 'the people.' Instead they are unified by their shared critique of the legal concept of the corporation. They have some different ideas about how and why that concept should be transformed, but they agree on the urgent need for a change. Because the nature of the change cannot be specified by the group, the Statement of Common Purpose only outlines its most basic parameters: "'We the People' does not mean we the corporations."²³⁶

One of the organizations participating in UFTP is Move to Amend (MtA). Although UFTP has a more encompassing statement of common purpose, MtA's website had more than seven times the average monthly unique visitors than UFTP's site between October 2011 and October 2012.²³⁷ MtA was officially launched the day the *Citizens United* decision was handed down, January 21, 2010.²³⁸ MtA calls for "an amendment to the US Constitution to unequivocally state that inalienable rights belong to human beings only, and that money is not a form of protected free speech under the First Amendment and can be regulated in political campaigns."²³⁹ The organization describes itself as "a coalition of hundreds of organizations and tens of thousands of individuals committed to social and economic justice, ending corporate rule, and building a vibrant democracy that is genuinely accountable to the people, not corporate interests."²⁴⁰ The goal of amending the U.S. Constitution to deny corporations rights is central to MtA's existence. MtA also has a list of undersigned organizations, but unlike UFTP it is not a project housed by a parent organization. MtA is one of the organizations participating in UFTP that advocates strongly for the abolishment of *all* corporate constitutional rights, not just increased regulation of corporate political campaign expenditures.²⁴¹

Both group petitions use the techniques of listing the names of individuals and organizations that affiliate with them. Move to Amend's list of endorsing organizations is placed less prominently on its site than the UFTP list, but its list is twice as long.²⁴² Many organizations (for instance, Code Pink, Backbone Campaign, and Coffee Party USA) appear on both lists. MtA's list includes more small organizations (like Health Care for All Oregon and Mainstreet Moms), churches, and Occupy chapters. Some of the largest national organizations in UFTP that advocate for a more limited constitutional amendment that would only address corporate free speech rights, like Common Cause and Public Citizen, are notably absent from MtA's list.²⁴³ MtA's site also contains a list of nearly 150 affiliate chapters, many of which bear the name "Move to Amend," and many of which are Occupy chapters that affiliate themselves with MtA.²⁴⁴ Additionally, the MtA site contains a list of its 127 "initial signatories" who signed on to

the original “Motion to Amend” that was made public the day the *Citizens United* decision was handed down.²⁴⁵

While the MtA site contains a range of other resources for activists and its members, the UFTP site’s primary purpose is to present a group petition—there is little else that the site seems to attempt. On the UFTP site, ‘the people’ do not enunciate the critique of corporate rights; instead, they are the collective subject that will hopefully benefit by having their interests represented by those groups who have signed on to the group petition. UFTP’s narrow commitment to listing organizations and politicians who support its very general mission binds its statements only to them, which means that it has enunciative collective personae such as “organizations,” “public officials,” and “activists.” MtA, on the other hand, makes frequent use of the nationalist collective persona ‘the people,’ as the entity that is referred to by its enunciative *we*. For instance, the language of the “Motion to Amend” endorsed by its initial signatories reads, “We, the People of the United States of America, reject the U.S. Supreme Court’s ruling in *Citizens United*, and move to amend our Constitution...”²⁴⁶ This means that the *we* enunciating MtA’s petition is the people themselves rather than organizations and leaders attempting to represent them. One way of putting this would be to say that UFTP doesn’t even attempt to adopt the doxastic mask of the democratic ‘people,’ while MtA embraces it completely.

This difference might not seem terribly significant on its own. But the difference between the collective personae referred to by the *we* of these two group petitions accompanies a strong difference in what they specifically advocate. Both sites include links to articles about corporate constitutional rights, *Citizens United*, and campaign finance amendments.²⁴⁷ The argumentative content of the articles, while commonly focused on critiquing corporate rights, diverges based on the question of whether corporate *free speech* rights or *all* corporate rights should be eliminated. The MtA articles range back to 2001 and tend to cover a broad range of background issues in the law and policy, while the UFTP articles begin in 2011 and focus on campaign finance.²⁴⁸

These articles are not the only type of content gathered by these sites, although for the UFTP site there is very little else. The MtA site contains a glut of supporting material, most of which is hosted on the site itself and therefore gives the impression of being co-enunciated by the *we* of the group petition's 'the people.' In addition to the articles mentioned above, which are part of the "Recommended Reading" page, the site has a "Links and Resources" page of books and documentary films.²⁴⁹ It also describes each of the proposed constitutional amendments and makes arguments about why its own amendment is better than the alternatives.²⁵⁰ These materials work together to present a strong sense of establishing a knowledgeable account of how corporations have illegitimately claimed democratic *doxai* and the effects of those claims. While the UFTP "Frequently Asked Questions" page contains little beyond a list of the proposed constitutional amendments,²⁵¹ the MtA FAQ page is more than twice as long and delves into questions such as the difference between a democracy and a republic and how the rights of joint-stock limited liability corporations apply to other organizations like unions and non-profit corporations.²⁵²

MtA offers a larger and more substantial body of material that explicitly critiques the basis for corporate legal rights.²⁵³ The site is devoted to supporting the central mission of amending the US Constitution to eliminate *all* corporate rights, not just mitigating the effects of *Citizens United*. MtA is engaged in a serious, deep-throated effort to question the legal basis of capitalist practice at its core in the voice of 'the people,' while UFTP advocates some adjustments in campaign finance law 'for' the sake of the people. Because UFTP's primary mission is to represent a group of organizations that do not agree on how the US Constitution should be amended, it is able to include less substantive critical material. The result is that as UFTP's petition is decidedly *representational* in a republican mode rather than being a democratic assertion of 'the people' themselves.

The techniques common to both group petitions demonstrate the *doxai* of collective personae while enunciating a specific critique of how corporations have claimed the *doxai* of rights. But because MtA's critique is made in and through the demonstration of 'the people'

itself, it is able to claim a more fundamental and coherent position. In other words, MtA's critical attempt to fundamentally disarticulate corporations from rights enables the re-linking of the *doxai* of rights to the collective persona that is demonstrated by MtA's *we* as 'the people' itself. The difference between MtA and UFP's group petitions indicates that petitions may accomplish a number of things, but they are not dissensually democratic without a substantive, unified critique of existing forms of rule that generates a sense that its enunciative *we* is the assertion of the presence of 'the people.' Without this element, a group petition can't really be democratic; like United For the People, that petition will only be another attempt to represent the interests of others and fail to generate a dissensual democratic event in which the position of 'the *demos*,' the part that has no part or qualification to rule, is asserting itself against the ruling order.

Individual Petitions: Slacktivism or Democracy?

There are dozens of other digital petitions against corporate personhood, *Citizens United*, corporate constitutional rights, and related issues. Most of them are petitions that gather signatures of individuals rather than groups. In this section I will describe the democratic dimensions of approximately fifteen petitions against corporate rights that circulated during the 2012 election cycle. Although some of them are still active, some of these petitions were most certainly functioning as part of a larger data-gathering strategy for party-affiliated political organizations leading up to the election and are no longer active. While the techniques of the petitions vary, I selected them because of their shared critique of corporate legal rights and the way they attempted to contrast such rights with their own demonstration of democracy. These petitions did not just critique corporations but performatively claimed to actually *be an instance of democracy*. In many cases, that claim was supported by the way that petitioning techniques enabled the demonstration of a doxastic collective persona. In other cases, however, the petition failed to produce any sense that it was an instance of 'the *demos*' asserting itself, in spite of what the text of the petition claimed.

There are many variations in digital petitioning technology. For instance, among petitions against corporate rights, petitions are addressed to different entities; the language of the statement can be quite short, long, vague or specific; signatures are appended visibly or not and visibly counted or not; and the text of the petition may be immediately and individually sent to its addressee (much like a letter-writing campaign). This section will first analyze the role of collective personae in the petitions; second, it will argue that some petitions fail to produce a sense of democracy and therefore justify the concerns of critics such as Dean and Andrejevic; and third, I will argue that visibly counting signatures, displaying comments, and publicly listing signatory names generates a greater sense that the petition is a democratic event, enacted through *doxai*, and not just a data farm. Whether or not such petitions are democratic is not based on whether they represent the opinion or “will” of the individuals who sign. It is about the extent to which the petitions succeed in generating a sense that they are part of the emergent event of the appearance of a democratic subject such as ‘the people.’

As the analysis of group petitions above indicates, the extent to which a petition is able to generate a sense that such a persona refers to an emergent subject in turn reinforces the strength of its critique of corporations. This would presumably be the case in any petition—the more signatories, the more forceful the claim of the petition. But in the case of the movement against corporate rights there is an added layer of significance to the presentation of an emergent democratic collective subject. As we saw in the section above on group petitions, because the fundamental critical claim of the petitions is that corporations are not legitimate political subjects, the extent to which a petition presents itself and its collective personae as the *demos* directly supports the content of its critique of corporate legal rights. Much like in the era of abolitionist petitions documented by Zaeske, the core question of the movement against

corporate rights is precisely the question of *who* is entitled to speak as a political subject and *who* is the proper bearer of rights.²⁵⁴ Unlike these historic petitions, however, petitions against corporate rights do not simply attempt to assert the existence and capacities of democratic subjects—they also attempt to *strip* collective subjects of rights they already have. This dynamic requires a more specifically critical strategy than historic petitions. When these political questions come into play, enacting the tension between *doxa* and *epistēmē* contributes to dissensual democratic appearance of the *demos*. No matter how strong the critique of undemocratic *doxai* (like corporate rights) might be, that critique cannot itself be dissensual democracy unless it is enunciated in concert with others through democratic *doxai*.

The petitions discussed below were selected because they advocated a very specific goal: disarticulating the concept of corporation from legal personhood or rights. Many of these petitions funneled their critique of corporate rights through the language of constitutional law. The petitions were often located on the same page as additional text that explained or justified the petition text itself. Some of the petitions and their framing texts declare the need to “overturn” *Citizens United*,²⁵⁵ but most of them stated directly that the Constitution needs to be amended in order to remedy the damage done by *Citizens United*.²⁵⁶ A few of them took other approaches, like democrats.com, which addresses “Rove, the Koch brothers, and the rest of the GOP outside groups” by demanding that they disclose who is donating to support their political action committees.²⁵⁷ But for the most part, by identifying constitutional language as the crucial site of intervention, these groups called for a new definition of the specifically legal concept of the corporation.

There is an important implication of this rhetorical framing. The boundaries of this constitutionalist rhetoric also exclude certain types of collective personae from being the subjects

that are ostensibly emergent in the process of petitioning; it is difficult to imagine a petition appealing to the State signed, for instance, by ‘the multitude.’ ‘The people’ were predictably the persona that most frequently appeared in the petitions, given that they are the persona of the US Constitution itself.²⁵⁸ Other collective personae, however, appeared often as well: eligible voters,²⁵⁹ the public,²⁶⁰ the movement,²⁶¹ the coalition,²⁶² responsible businesses,²⁶³ the nation,²⁶⁴ engaged citizens,²⁶⁵ towns,²⁶⁶ communities,²⁶⁷ and “everyone except Mitt Romney.”²⁶⁸

While the collective personae of the petitions varied, they shared two key dimensions; first, their common position in relation to “corporations”; and second, their status as the democratic subject emerging through the petition itself. A central element of the critical thrust of the petitions and the statements that frame them is dividing out literal and figurative definitions of “corporation.” One of the most common ways of doing so, of course, was to re-state that “corporations are not people,” “people are people,” and variations on that formulation.²⁶⁹ Some of these declarations were accompanied by analysis of the effects of corporate rights on human welfare and politics, most often in the context of *Citizens United* and its implications for corporate campaign expenditures. Corporate constitutional rights help corporations to “buy our political process,”²⁷⁰ hijack our democracy,²⁷¹ generate an “unlimited flow of corrupting money into our elections,”²⁷² cause the “interests of Main Street [to be] subverted in favor of the interests of Wall Street,”²⁷³ and “fundamentally [threaten] the integrity of our democracy.”²⁷⁴ The majority of the effects of corporate rights were thus framed in terms of the damage they do to the political process, which was often understood as democracy itself. The petitions were often embedded in websites (such as the Move to Amend site described above) that contained documents supporting the general claim that corporate rights are bad for society and democracy.

The corollary of the claim that corporations are harmful to whatever collective persona was in the petition (the people, communities, the public, etc.) was that those personae were assumed or argued to be ‘the *demos*’ itself. These collective personae can be understood as *demotic collective personae* in the sense that they are common concepts used to refer to subject acting in the position of the *demos* in democratic politics. The question that is most relevant, then, for addressing the issue of the democratic significance of digital petitions against corporate rights in a sense boils down to the question of whether *doxai* such as demotic collective personae used by the text of the petitions enable actual instances of the emergence of a subject that is the *demos*.

As we saw above, there are two ways to answer that question; one that critiques the democratic *doxai* of petitions and one that affirms the potential of democratic *doxai* to produce collective action. The first would identify the claims of petitions to enunciate the position of ‘the *demos*’ as mere instances of democratic rhetoric masking undemocratic data farming and the exploitation of the labor of the signatories. The other approach is to understand collective subjects of these petitions as emergent democratic events produced in part by the rhetorical technology of the petition itself. Rather than resolving this question definitively, I will argue in the next section that not all digital petitions against corporate rights are created equal; in fact, some are more democratic than others. The question is not whether they employ the *doxai* of liberal democracy. Instead, the question is whether they are able to effectively generate a sense that such *doxai* are being employed by an emergent collective subject that is the *demos*.

Undemocratic Petitions

Certain petitions are little more than ways of gathering data that can be funneled to larger organizations for fundraising purposes. Without the demonstration of the place of the signatures in a collective, these “petitions” fail to accomplish the basic task of demonstrating a democratic subject. For instance, the “petition” on the Public Citizen site did not provide any type of information at all about who had signed the petition, either before or after the act of signing.²⁷⁵ There was no count of the number of people who signed, no list of names, no addresses, and nothing to generate any sense of the petition’s duration. The petition of the Campaign For America’s Future similarly provided no sense of who had signed it; the petition was addressed to the Securities and Exchange Commission and was structured more as a form for a letter-writing campaign.²⁷⁶ Common Cause’s “Amend 2012” petition, which was only available during the 2012 election, similarly claimed that it would be delivered to “state legislators” but did not provide any information about who had signed.²⁷⁷ The Common Cause petition against corporate rights that has since replaced the election petition also provides no information about who has signed.²⁷⁸

These and other petitions I looked at closely operated like a combination of a letter-writing campaign and a membership drive for the hosting organization.²⁷⁹ While these efforts may call themselves “petitions,” the signing information is siphoned off in the opaque data-collection processes Andrejevic describes as being characteristic of so much “participatory” digital media.²⁸⁰ These “petitions” amount to little more than signing up for additional emails and requests for donations from the large, long-standing lobbying organizations that also sell the signatory data to various other political marketing firms. In failing to provide a sense of who has signed (either with names, dates, or even a total count) these petitions abdicate one of the two basic tasks of democratic dissensus, which is the appearance of ‘the *demos*,’ a collective subject

that is opposed to existing forms of rule. But further, these “petitions” are rather clear examples of precisely what Andrejevic and Dean find most problematic about the importation of interactive marketing techniques into ostensibly democratic politics. Even if we bracket the question of what signing such “petitions” indicates about the level of commitment of the individuals who sign them, it is still apparent that such “petitions” do little beyond build the donor/email database of the organization, whose primary mission is perpetuating itself. Such petitions, simply put, do not *demonstrate* any demotic collective persona; they merely claim to. In these cases the *doxai* of liberal democracy occluded the functioning of undemocratic institutional processes with questionable results and connections to any democratic politics.

Democratic Petitions

There were also, however, petitions that actually displayed either a list of signatories and/or a numeric count of how many people had signed.²⁸¹ While data from this second group of petitions is also undoubtedly stored and used by the petitions’ parent organizations, the display of participation in co-enunciating the critical content of the petition accomplishes something more. The petitioning techniques of counting signatories, displaying comments, and publicly naming signatories echoes the practices of the group petitions. These more robust techniques enable the demonstration of a more developed and specific democratic collective subject of enunciation.

Not only do these techniques generate a sense of a collective subject of enunciation, that sense is an important dimension of the *content of the critique* of the way that corporations have appropriated democratic *doxai* like rights. This is because for many of these petitions the enunciative demotic collective persona is a crucial foil for generating the sense that corporations are the static, fixed base of power for the institutionalized political order. The more forcefully the

demotic collective persona is demonstrated, the more effectively it can be leveraged against such institutionalized *doxai* as the rights of corporations. The actions of joining in, signing on, being counted, and ultimately co-enunciating the same critique of corporate rights enhances *the critique itself* by more or less proving the distinction between the literal referent of the demotic collective persona and the falseness of figuring corporations as speakers that enunciate the *we* of democratic politics.

There are two crucial aspects of a petition that enable it to generate the sense of the appearance of the *demos*, a collective democratic subject. The first is that it must generate a sense of its own emergence by noting the dates of signatures. The second is that it must be able to generate a sense of many-ness, a large plurality of signatories together. Rancière argues that the *emergent* quality of the *demos* is central because democratic politics is always about setting up the event of a dispute between the *demos* and the ruling order. This means that a democratic collective subject is itself a process of demonstrating that subjectivity via mechanisms “through which politics comes into existence.”²⁸² For this reason, he argues, “A political demonstration is therefore always of the moment and its subjects are always precarious.”²⁸³ Because the appearance of the *demos* is an event that happens, a petition must find a way to mark its own temporality and the emergence of the *demos* through signing. Although the sum of signatures on a petition produces a sense of a collective subject through what Jacques Derrida has called “a sort of fabulous retroactivity,” the impression that is produced is of an ever-emerging subject that is “having-been present in a past now, which will remain a future now, and therefore in a now in general, in the transcendental form of nowness.”²⁸⁴ The presence of something that asserts itself from the past into the future as an event that is currently now — this is emergence, which is the structure of the democratic subject demonstrated in its continual production through signing.

This emergent collective subject of democracy has the appearance of many-ness so that it can plausibly stand in synecdochally for the whole or the all that can, of course, never be counted. Rancière argues that the relationship between the position of the *demos* and the whole is homonymous; “The *demos* is that many that is identical to the whole, the many as one, the part as the whole, the all in all.”²⁸⁵ The close link between the properties of emergence and many-ness means that they are often found together, with signatures being appended with dates and times. This feature of petitions seems to be increasingly important to the way petitions appear in the movement against corporate rights. During the 2012 election cycle, for instance, the Move to Amend site provided a real-time counter of the number of signatures in the banner for its site, but did not list their names or provide a format in which signatories can leave publicly viewable comments.²⁸⁶ Since then, Move to Amend has transitioned to the NationBuilder platform, which lists signatories and the time that they sign.²⁸⁷ Some petitions note the date on which the petition was started.²⁸⁸ Others that list the names of all signatories, ascribe a date to each signature.²⁸⁹ In both cases, the attribution of a date to the petition generates a sense that the enunciations of the demotic collective personae are occurring or at least relatively current. These dates accomplish something more, however. They suggest that the critique of the corporation that each petition calls for is *itself occurring*. Not only is the *we* of the petition text an event that is an enunciation, referencing the temporality of the enunciations also suggests the event of the collision of democratic *doxai* that is coextensive with the event of the appearance of democratic subject of enunciation in and as the signatories. Because the petitions declare themselves to be the enunciations of the rightful source of democratic law, their enunciations generate the sense of constituting an ongoing transformative critique of corporate claims to the democratic *doxai* of rights.

Conclusion

What the above analysis demonstrates is that digital petitions, like their parchment predecessors, have the potential to help build collective democratic subjects. Democratic *doxai* such as ‘petitions of the people’ are a double-edged sword that cut against *doxai* while reproducing other *doxai*. *Doxai* can occlude and reinforce institutional politics that operate to perpetually consolidate political power in the hands of those who currently hold it. Democratic *doxai* can also, however, be taken up and enacted to leverage a substantial critique of existing institutions of the political order. The crucial difference between democratic petitions and data farming is that democratic petitions demonstrate the many individuals and groups that have signed on as ‘the people,’ ‘the movement,’ or some other collective persona. Without this visual demonstration of the position of ‘the *demos*,’ or the part that has no part in the ruling order, “petitions” are just another way to build a donor base for political marketers. In such cases, critiquing the rhetoric of “democracy” as merely doxastic is an appropriate technique for highlighting the problematic façade of democratic rhetoric.

Rather than evaluate the potential of petitions simply on the basis of whether they are able to accomplish specific goals, it is important to consider the role they play in movement-building and the ongoing processes of demonstrating democratic critiques of capitalist practice. Critics of democratic *doxa* have given us some important reasons to be skeptical of digital media technologies and their broad claims to revolutionize politics. Democratic political rhetoric like petitions, however, requires the masks of technologies and demotic personae in order to enable the emergence of collective subjects who are up to the tasks of the *demos*.

Additionally, however, I hope to have demonstrated in this chapter how the tension between *doxa* and *epistēmē* can play two roles in dissensus. The first, and perhaps clearer, is that

it plays a role within the substance of democratic movement rhetoric. As the movement against corporate rights enacts the *doxai* of ‘petitions of the people,’ it establishes a well-researched epistemic critique of corporate rights. As described in the previous chapter, Move to Amend especially generates a sense of critical epistemic depth as it collects various documents and arranges them on its website. Democratic movement rhetoric is made dissensual through the critique produced by acting out the tension between *doxa* and *epistēmē*.

Additionally, however, this chapter suggests that the tension between *doxa* and *epistēmē* can be enacted at the level of scholarship *about* movement rhetoric. Following the general critical path described in Chapter One as the province of theorists like Wendy Brown, a number of the critics of media technology referenced above see the enactment of democratic *doxai* as an opportunity to describe in greater depth the failures of those *doxai* to generate meaningful or lasting institutional change. This approach captures something important in the case of petitions against corporate rights; many of them seem to be completely irrelevant to the enactment of democratic politics. These failures, however, occur at the level of the political rhetoric and institutional organization rather than at the level of the motivation, will, or opinion-expression of those who sign petitions. Building democratic culture may require critiques of *doxai*, but such *doxai* are not opinions and leveling accusations of inadequate participation at petitioners defeats the broader goal of fostering democratic culture around issues of importance.

Chapter 4 Disarticulating Undemocratic *Doxai* and Rearticulating the Demos in Books

Although the movement inevitably has leaders and strong individual voices, we have seen in the last two chapters that it is deeply and centrally important to its mission that it be able to articulate a strong sense of “speaking together” as the *demos*. Technologies such as digital petitions are able to produce that sense in part through their affordances. This chapter, however, describes the dissensual democratic techniques enacted in a more monovocal medium: books that position themselves as part of the movement against corporate rights. The books necessarily rely more heavily on their ability to evoke a sense of collective speech through the mechanisms of writing itself. The books demonstrate many of the same collective personae discussed in earlier chapters and many of the same critiques of corporate rights. They strive to give a sense of being part of the rest of the movement while engaged in the project of establishing a lengthy non-fiction account of states of affairs grounded in the basic gesture of attempting to build knowledge for democracy. In the process of building such knowledge, they both critique and enact democratic *doxai*. As texts or anthologies of essays with one or two authors, however, these books demonstrate a particular variation on dissensual democracy that is more easily comparable to humanistic scholarly research and writing.

Although the dissensual importance of the basic gesture of critiquing undemocratic relations has been described in previous chapters, in these books we find a much more developed and specifically epistemic variation of critique based on making historical, researched claims. This more developed set of epistemic methods requires a fuller explanation of the potential of

such methods to operate dissensually while still accounting for the way *doxai* are enacted as part of epistemic claim-making. To provide such an explanation, this chapter explains how dissensual democracy is a specific way of dis/re/articulating *doxai* in the context of the logic of democracy. In the context of dissensual democracy, disarticulations and rearticulations of democratic *doxai* demonstrate the political potential of attending to the performative aspects of critique.

On the one hand, the movement's attempt to critically *disarticulate* democratic *doxai* from the way they have been claimed by corporations, an attempt that often includes a critique of excessive capitalism and market logics. In that sense they also attempt to disarticulate collective personae such as "the people" from liberal state economic policies that privilege corporations. On the other hand, the movement also *rearticulates* democratic *doxai* such as the collective personae of "the people" or "the community" by enacting those *doxai* to present a democratic collective subject. Many elements of the movement, including some of the books discussed in this chapter, reference the Founding Fathers, the Constitution, the ideal of freedom, the power of the vote, and the importance of self-governance. The movement's simultaneous deployment and critique of the *doxai* of liberal democracy complicate any claim about the democratic or undemocratic potential of liberal nationalist *doxai in and of themselves*. Instead, the dual critique/performance of such *doxai* points back toward how such democratic *doxai* in specific, and *doxa* in general, are articulated as part of a dynamic performance rather than a structure.

This chapter is in three main sections. The first section describes several ways that articulation has been theorized. These accounts of articulation generally share the perspective that the concept of articulation is a productive way to understand the contingency of discourses and the "struggle to fix meaning and define reality temporarily."²⁹⁰ These varying accounts of the concept of articulation differentially emphasize the *propositional content* of articulations and

the *performative demonstrations* of articulations. Dissensual democratic types of articulation require more attention to the performative demonstrations of rearticulations of *doxai*. In the second section I will argue that demonstrations of the *demos* as *we* in democratic books should prompt greater attention to the ways that rearticulation can draw on *doxai* and generate a sense of collective enunciation. The third section describes how the books attempt to disarticulate corporations from democratic *doxai* and argues that articulation theory should recognize the force and potential of enacting the assumption that there is substantial difference between literal and figurative language. In other words, effective disarticulation may be best accomplished by muting ontological claims about articulation and performing a very different set of assumptions. Additionally, I will argue, enacting the assumption of a sharp divide between figurative and literal language is a strong mechanism for performatively rearticulating the subject position of the *demos* in dissensual democracy.

Dis/Re/Articulation

Articulation is a concept that is often attributed to Ernesto Laclau and Chantal Mouffe's extensive poststructuralist re-working of hegemony theory.²⁹¹ Laclau captures the broad strokes of how the relationship between articulation and the classical concept of *doxa* is often assumed: "Common sense discourse, *doxa*, is presented as a system of misleading articulations in which concepts do not appear linked by inherent logical relations, but are bound together simply by connotative or evocative links which custom and opinion have established between them."²⁹² Following Plato, Laclau argues, Western philosophy has pursued the project of attempting to purify concepts by slicing away or rupturing their doxastic articulations and crystalizing their true, rational, or essential meanings. Laclau and Mouffe respond that articulation is in the end all that there is; there are no concepts that are truly purified of their connotations and in fact,

antagonism expressed as articulation is the substance of politics itself. In this later work, articulation is defined even more clearly as “any practice establishing a relation among elements such that their identity is modified as a result of the articulatory practice.”²⁹³ The “structured totality” that results from arrangements of articulatory practices is a *discourse* much like Foucault’s sense of the term.²⁹⁴ Stuart Hall similarly theorizes articulation as a non-necessary link between social forces and *doxai*, or what he has called popular *ideologies* in a roughly Althusserian sense of the term.²⁹⁵ While these positions on articulation have important differences, they share a commitment to understanding articulation as part of what Lawrence Grossberg calls a “constructionist” account of reality, which is that material reality is built out of such articulations.²⁹⁶

Describing articulation as discursive or ideological *practices* that construct reality has paved the way for understanding articulation as an activity that occurs as part of systemic and historical processes and that may involve but are certainly not determined by individual human actions. Some strongly Deleuzian ways of theorizing articulation come close to assuming that articulation is an element of an ontological process of becoming. For instance, Lawrence Grossberg pushes beyond the post-hegemonic concept of articulation described above to posit that which is articulated as “multiple, overlapping, competing, reinforcing, etc. lines of force and transformation, destabilization and (re-)stabilization, with differing temporalities and spatialities, producing a potentially but never actually chaotic assemblage or articulations of contradictions and contestations.”²⁹⁷ In this formulation, articulation is the joining of forces of change in various ways so as to produce an assemblage or arrangement of relations. This formulation is clearly a departure from understanding articulation as a set of practices, but retains Laclau and

Mouffe's and Hall's interest in hegemony and the way that nonhuman elements contribute to articulation.

One of the most interesting aspects of these post-hegemony and Deleuzian accounts is the way that they embrace articulation not only as a concept that describes the realities of power and politics, but also as a sort of method or strategy for engaging in politics. Cultural studies accounts of articulation emphasize this dimension of the concept most often as part of a commitment to “disarticulating” by critiquing articulations that appear natural and inevitable and describing how they are implicated in power and politics. Jennifer Slack, for instance, argues, “Politically, articulation is a way of foregrounding the structure and play of power that entail in relations of dominance and subordination. Strategically, articulation provides a mechanism for shaping intervention within a particular social formation, conjuncture, or context.”²⁹⁸ Critique *qua* disarticulation does not necessarily depend on a gesture of “unmasking” the reality behind *doxai*, although it sometimes proceeds that way. In contemporary cultural studies, “disarticulating” *doxai* more often proceeds by “mapping” how *doxai* support power relations through the contingent connections that could be otherwise. Much cultural studies scholarship pursues such mapping by describing articulations as “the basic processes of the production of reality, of the production of contexts and power (i.e., determination or effectivity).”²⁹⁹

The way that cultural studies scholarship re-names these forces (as biopower, modernity, hegemonic bloc, or territories, for instance) is precisely the critical attempt to foster their rearticulation. What underlies cultural studies' concept of articulation is a commitment to determining the effects of relations within the larger assumption that those real relations are contingent and could be otherwise.³⁰⁰ In fact, when it comes to *democratic doxai*, cultural studies scholarship has often seemed to be more interested in disarticulating such *doxai* by mapping how

they have supported State-based economic, political, and social inequalities. The result has been an ongoing skeptical position in cultural studies circles toward democratic *doxai* and a *de facto* rejection of the possibility that such *doxai* could or should be rearticulated as part of a radical politics.

The cultural studies concept of articulation also theorizes scholarly production itself as an important element of not just disarticulation but of rearticulation. Slack discusses rearticulation by describing it as a sort of political “method” and says, “Determining when, where and how these circuits [of cultural practices] might be re-articulated is the aim of a cultural theorist’s theoretically-informed political practice.”³⁰¹ Grossberg even more eloquently argues that articulation cannot stop with critical disarticulation, because articulations are

...always rearticulated into other wholes; that is the very being of the relation of life and power. And if cultural studies intellectuals do not enter into this struggle, with all of the work (of analysis and imagination) that it requires, if they do not attempt to think through the realities of articulations and the possibilities of rearticulation, then cultural studies abandons the very sense of political possibility that drives it.³⁰²

The looming question for cultural studies scholarship, as for many other types of politically engaged scholarship, is *how* such rearticulations can be accomplished. What does it mean to think through the political possibilities of rearticulations? Even more to the point, what does it mean to attempt to *enact* such senses of possibility?

For scholars, the most obvious way to answer this question is on the level of propositional description. Describing the world as it should be seen is the end point for too many scholars who draw on articulation theory to express their sense of political possibility. While this is an important place to begin figuring out how to rearticulate with a sense of political possibility, dissensual democracy engages in the activity of rearticulation in a way that goes beyond the level

of propositional description. Dissensual democracy attempts to performatively enact *doxai* such as collective personae to *articulate* self-governing collectives.

This sense of the term articulation — in which a collective articulates itself — plays on a sense of the term articulation that is much closer to a concept like *enunciation* or *speech*. This sense of the term articulation draws attention to the subject or entity *that articulates* rather than presuming that articulations are produced by forces, power, or other immanent relations such as becoming. Rhetorical scholars have developed a line of inquiry on the demonstrative capacities of articulation that promises to provide an effective supplement to articulation theory's over-reliance on the declarative and constative senses of articulation. These scholars, including Barbara Biesecker, Christian Lundberg, and Nathan Stormer, shift the emphasis in “articulation” from “joining” to “the action of putting into words,” an emphasis that then points toward questions about the subject position that is implied by rearticulatory “actions.” Stormer, for instance, draws on Judith Butler, Donna Haraway, and Kenneth Burke to theorize articulation as a set of activities that performatively produce bodies.³⁰³ For Stormer, thinking of articulations as performances “is to study how it is that certain bodies and languages gain centrality, how other connections added later become prosthetic to an otherwise integral entity.”³⁰⁴ In doing so, however, Stormer sidelines the question of how *disarticulation* operates as a way of critiquing *doxa*. Lundberg reintroduces the question of what is demonstrated by critical disarticulation.³⁰⁵ For Lundberg, the act of interpretation carried out in materialist critique, for instance, demonstrates the “practices of enjoyment that representational failure engenders” for subjects.³⁰⁶ He argues that the interpretive act of critiquing articulations is not exempt from the principles that produce psychic and affective drives more generally; critics are not objective, they are acting out the subject-position of the critical hermeneutic reader enjoying the act of interpretation.³⁰⁷

Biesecker, while disavowing hegemonic articulation as a method, still advocates for a type of radical rhetorical agency and subjectivity that “wills the subversion of the very principle that structures the existent regime.”³⁰⁸ Biesecker leaves open the question of precisely how such radical sublimation might be expressed, but she is willing to argue that it must have a “detotalizing and, thus, interruptive effect” that results from the way that such a subject generates the appearance of “a splitting within the order to being together.”³⁰⁹ Although there are significant differences in these rhetorical approaches to articulation, they share a common attention to the *subject that appears* in the action of performing critique. I will argue in the next section that this performative corrective is a necessary supplement to explain how re-articulation operates in dissensual democracy.

In the final section, as I describe the specific disarticulatory critiques of corporate rights made in the democratic books, I will address a more fundamental gap in articulation theory. Articulation theory rests on a general commitment to the assumption that there is no fundamental ontological difference between articulations and their descriptions, between *doxa* and knowledge, between disarticulations and rearticulations. While I have no plan to dispute this assumption, I will argue that there is a certain performative force to enacting the countervailing assumption. The democratic books written against corporate rights demonstrate the political potential of attempting to disarticulate based on the performative assumption that language has literal referents. Critiquing articulations as if there is a meaningful and substantial difference between *doxa* and epistemic representation enables not only disarticulating problematic *doxai* but also enables the production of a sense of the appearance of the *demos* as an interruption in the political order.

Performing an Articulated *We*

The past decade has seen the publication of a number of books that take up the critique of corporate rights in the name of building a democratic movement to transform the laws governing corporate composition and activity.³¹⁰ Because these books strive so intently (and often awkwardly) to generate a sense of a collective subject of enunciation through the use of the first person plural pronoun, they are an excellent place to begin to unpack the performative aspects of how dissensual democracy rearticulates *doxai*. The first of these books, an anthology containing contributions from the members of the Program on Corporations, Law, and Democracy (POCLAD), was published in 2001. Ted Nace's *Gangs of America* was published in 2003, and Lee Drutman and Charlie Cray's book *The People's Business: Controlling Corporations and Restoring Democracy*, was published in 2004. In the wake of *Citizens United* came the second edition of Thom Hartmann's *Unequal Protection* in 2010, Ralph Estes' *Fight the Corpocracy, Take Back Democracy* in 2011, followed by Jeffrey Clements' *Corporations are Not People* in 2012.

All six of these books demonstrate clear connections to the broader democracy movement opposed to corporate rights. The books additionally refer to one another as part of the same movement network. While they vary in the extent to which they take *Citizens United* as a central dimension of the political conditions that make their critique relevant, they are remarkably unified in their efforts to disarticulate corporations from democratic *doxai*. Additionally, these texts all consistently and widely employ the first person plural *we* as the voice of the text. These books are not void of the authorial *I*, but *I* is the decidedly less prominent first person pronoun. These books attempt to rearticulate democratic *doxai* by referring to their own enunciations in and as those *doxai* through the first person plural *we*. The *we* of these books is demonstrated

within the texts through naming, citation, and historical narrative. Ultimately, the *we* is the mechanism by which the rearticulation of democratic *doxai* accomplishes the production of the sense of the appearance of a collective subject that enacts the subject position of the *demos*.

The *we* of these democratic books can be slightly incongruous given how most of the books make no effort to shy away from the attribution of authorship to individuals. The books nonetheless attempt to articulate a collective subject of enunciation that goes far beyond the writerly *we* that might be found internally tracking the flow of a text with the reader (i.e. ‘As we saw in the first chapter...’). What are more significant are the uses of *we* that seem to refer beyond the reader of the text and mark the performance of a demotic collective persona as the voice of a democratic subject of enunciation in and as the argument of the text itself. Part of the way that *doxai* are demonstratively rearticulated while critiquing the *doxai* that enable corporate rights is through the a *we* that enunciates the critique. This *we*, as I argued in previous chapters, indicates what Émile Benveniste would call the *performance* of a collective subject.³¹¹ The use of the pronoun *we* enables the demonstration of a collective personae in ways that are similar to the technological performances discussed in earlier chapters. But the most important dimension of these claims to “*we*-ness” is that they rest on the presumption that the *we* of the text is the voice of the subject referred to by a demotic collective persona. For instance, in *Corporations Are Not People*: “The real people of America must overturn *Citizens United* and corporate rights and must assert the will of the people over the unchecked power of corporations. As in the past, *we* have the means and, I believe, the virtue to do exactly that.”³¹²

The first sentence introduces the demotic collective persona: the (real) people. The second sentence adopts the voice of that demotic collective persona by declaring that *we*, the proper subject of political action declared in the first sentence, does indeed have both the means and the

virtue to act politically. This general formula is repeated intensively through all of these democratic books, sometimes with “citizens” or “communities” replacing “people” as the demotic collective persona. “The people,” however, is the demotic collective persona that appears most commonly, often with the addition of capitalization in the style of the Preamble to the U.S. Constitution, i.e.: “How do We The People take back our democratic institutions like the Congress from their current corporate masters?”³¹³ Even when the interiority of an individual author is indicated by the use of the pronoun *I*, or reference is made to individualistically inflected activities like thought, the formula still manages to suggest that the voice of the *demos* is the voice of the text, as in the Preface to *Defying Corporations, Defining Democracy*: “It makes one think that anything is possible if only ‘We The People’ decide to put ourselves to the task.”³¹⁴ The formula is sometimes used awkwardly in close proximity to a *we* that ambiguously straddles the writerly “we” and the voice of the demotic collective persona, for instance in *The People’s Business* (which lists two authors): “Before we discuss some potential strategies that We The People could adopt, we think it is important first to understand how, over the last three decades, a well-orchestrated corporate legal movement has successfully worked to establish an increasingly corporate-friendly jurisprudence.”³¹⁵ Nonetheless, the *we* of these texts strives to produce the sense that the *doxai* of democracy (the collective personae of “the people,” in these examples) can be rearticulated to support the sense of a popular uprising against corporate political influence.

These texts, however, do not rely solely on the grammatical formulation identified above in order to demonstrate their participation in a democratic subject of enunciation. In addition to enunciating in the voice of such a democratic subject *qua* demotic collective persona, they also attempt to demonstrate their participation in a loosely linked series of specific actors who

together constitute a movement that is more or less synecdochally represented by the demotic collective persona. In effect, what these strategies entail is establishing what Laclau would call an equivalence between a series of names, a demotic collective persona, and the act of enunciation that demonstrates the *we* of the text.³¹⁶ The books do this by specifying the continuity of their movement with a series of historical actors who were themselves instantiations of the same transhistoric demotic collective persona and whose narratives are easily recognizable as part of the *doxa* of American democratic history. This articulation of actors into a collective “movement” or “people” is additionally done by listing other individuals and organizations as allies and affiliates as well as by citing the writing of other individuals and organizations. After first describing how the books reference their contemporaries to articulate the democratic *doxai* of “the people” and a “movement,” I will turn back to how such collectives are in turn articulated as part of a transhistoric sense of democracy.

The articulation of multiple contemporary actors as a movement by listing the names of co-enunciators is done widely in all of the democratic books and strongly recalls the “group petitions” described in Chapter Three. In *Defying Corporations, Defining Democracy*, the form of the anthology itself suggests a certain collective act of enunciation simply as a function of the plurality of authorship. Additionally, the introduction to *Defying Corporations, Defining Democracy* is undersigned by twelve individuals whose biographies appear toward the end of the book.³¹⁷ The authorship of one of the final essays of the book is attributed to “POCLAD” itself, and several essays co-authored by the organizations’ members appear throughout the anthology.³¹⁸ These instances of collective authorship help to generate a sense of the enunciations of the texts as collective projects. Additionally, however, many of the texts position their enunciative acts as extensions of the speech of individuals and groups who are not authors

in the book, including World Trade Organization (WTO) protestors in Seattle,³¹⁹ The Women's International League for Peace and Freedom,³²⁰ William Greider,³²¹ Thomas Linzey,³²² The Alliance for Democracy,³²³ The Community Environmental Legal Defense Fund,³²⁴ Democracy Unlimited,³²⁵ Alexander Micklejohn,³²⁶ and other individuals and groups. Describing the continuity between these subjects and the enunciations of the book help to generate a sense that the enunciations of the text are specific instances of the demonstration of connection and solidarity with other organizations and individuals. For instance, in an essay on the WTO, Richard Grossman writes, "We in the U.S. have a responsibility to support efforts by activists from other lands to neutralize and abolish the WTO. So POCLAD is participating in and supporting efforts to raise hell in Seattle."³²⁷

Fight the Corpocracy, styled primarily as a "how-to" guide to organizing and activism around corporate rights, is perhaps the most explicit attempt to systematically represent the strategies of other activists seeking to disarticulate corporations from legal rights, although this accounting is not done in and through a plural voice.³²⁸ The book in general, however, is framed in the first person plural as the voice of the demotic collective persona of The People; the opening section begins with the declaration that "We need to rein in the corporations. Undo the corpocracy. Restore a real democracy. We are the 99%. It's our country, not theirs."³²⁹ The book additionally contains an add-on "toolkit" document with a list of eighteen organizations, nineteen websites, and fifteen key publications that are listed as "Resources and Allies."³³⁰ The general enunciative frame of the book in the first person plural, along with the technique of listing such allies and co-enunciators, points toward the plurality of activist organizations as those occupying the demotic collective persona of "the people" and "the 99%" that the book speaks somewhat awkwardly both as and to.

Both *The People's Business* and *Corporations are Not People*, which are styled less as “how-to” guides and more as accessible analyses of the history and law of corporations, contain lists of those entities who might be considered to be part of the *we* that is performed in and as the abstract demotic collective personae offered by the text. *Corporations are Not People* contains, toward the end of the book, almost as an appendix, documents entitled “Organizations and Links for Taking Action” and a “Recommended Reading” list that suggests the scope and content of the co-enunciators of the book’s first person plural pronouns and demotic collective personae.³³¹ The name of each organization is accompanied by a URL, followed by a brief disclaimer of the synecdochal nature of the list: “I have provided a sampling of possible resources here. There are many other groups – international, national, regional, and local.”³³² The list is added ostensibly to connect the reader to a framework for involvement and action, but it also demonstrates the co-enunciators of the book’s demotic collective personae and first person plural *we*. *The People's Business* describes itself as a report of The Citizen Works Corporate Reform Commission and offers a list of forty-one Commission members who endorse the report/book.³³³ Additionally, the Notes section of *The People's Business* is followed by a “Resources and Bibliography” section with list of the names of organizations and their street and web addresses and a selected list of books and other publications.³³⁴ These publications are not necessarily cited by the text – but they are also part of the demonstration of the demotic collective personae of the text. Although these lists clearly attempt to articulate a large network, they make little effort to refer to notions of plurality or difference that mark the rhetoric of “new” social movements or those inspired by concepts of the multitude. As part of the way they inhabit and enact the *doxa* of liberalism, these books tend to re-absorb such acknowledgements of plurality into the larger demotic collective persona they enunciate.

This is what marks these efforts as attempts to rearticulate the *doxai* of democracy and not simply disarticulate such *doxai*, as post-operaist theories of Empire and multitude often do.³³⁵ Instead of engaging in what Mouffe calls a politics of exodus that relies extensively or exclusively on disarticulating the doxastic senses of liberal democratic support for corporate involvement in the State, the books attempt to claim such *doxai* to support the movement.³³⁶ The rearticulation of such *doxai* through the grammatical *we*, lists of participants, and mutual citation generate the sense that such a collective is appearing. Although *Unequal Protection* does not contain such a “list document” supplementing and demonstrating the *we* of the text, the book contains regular mentions of other individuals and organizations who are part of the “growing movement” to restore “human personhood to its rightful place.”³³⁷

This sort of co-enunciation through citation and reference is a central dimension of the other books as well. There is nothing unique, especially in a quasi-academic or non-fiction literature, about the general practice of indicating a network of intellectual exchange, knowledge, and co-enunciation through reference and citation. In the case of these democratic books, however, such co-enunciation attempts to generate a sense that it is voiced by a common demotic collective persona that is closely tied to the eventual *we* of the self-referential utterance. The authors of these books are reasonably hesitant to attribute the entire substance of their written argument to others in the network of activism that they are identifying. The unspecific and performative *we*, when referring itself to the demotic collective personae, enables the attribution of the book’s general purpose to an articulated range of co-enunciators, both living and dead, individual and collective, without making them directly responsible for the specific content of the text.

These co-enunciators, especially those who are themselves collective and/or no longer living, are often cited as evidence of the way that the book's critical disarticulatory goals are precisely the goals of a rearticulated "people" or other demotic collective personae. The range of co-enunciators articulated in these books in this role is startling. There are, however, some frequently referenced touchstones who reappear consistently. James Madison,³³⁸ Thomas Jefferson,³³⁹ Theodore Roosevelt,³⁴⁰ Thurgood Marshall,³⁴¹ the Abolitionists,³⁴² and the Women's Rights Movement,³⁴³ for instance, reappear frequently in the pages of these books. Other doxastic democratic figures and movements occur less commonly, but sometimes in a more pronounced way. There are two general ways that these figures and movements are referred to – by describing their actions, ideals, and goals, or by directly citing their written enunciations. In both cases, the books attempt to generate a sense that these other entities are co-enunciating doxastic *exemplars* or *parts* of the demotic collective personae that the *we* of the text also attempts to perform. In other words, both the book and historical entities are both a part of "the people" or "citizens." The articulation of the books with the historical entities is accomplished by describing *doxai* that are shared by all.

When these books describe the actions, ideals, and goals of various co-enunciating entities that are unnamed or not living, they are performing the grammatical *we* of the text in a way that differs from directly listing the co-enunciators of the particular slogans and arguments of the book. Instead, the books attempt to demonstrate the features of their demotic collective personae by articulating the performative *we* of the text to entities that share their actions, ideals or goals in the most general way. For instance, *Corporations are Not People*, a book with strongly bipartisan aspirations (aspirations that are most certainly not shared by all of the books), dwells for quite some time on the first Earth Day in 1970. The book describes the people who showed

up to observe that first day and lauds them as the exemplar of the collective subject of enunciation in which the book participates:

Twenty million Americans of every age and political party came out into the streets and our parks to celebrate the first Earth Day. They demanded a better balance between corporations and people and better stewardship of our land, water, and air. Look at the photos from this first Earth Day and you will see families with children, men in suits and ties and neatly dressed women, working- and middle-class Americans, people of all ages and races. These millions continued a longstanding American principle of guarding against concentrated corporate power that might overwhelm the larger interests of the nation.³⁴⁴

This inclusive, prudent, homogenous group is presented as co-extensive with *Corporations Are Not People's* grammatical *we*. Social difference is gestured at while simultaneously dismissed as subsidiary to a common sense of the larger political project. This section of the book goes on to declare of the environmental reforms in the 1970s: "The market did not do this. We did this by acting as citizens in a republic."³⁴⁵ Setting aside the apparent failure to differentiate between a republic and a democracy, the clear sense of this declaration is that the environmental reforms of the 1970s were achieved by the same general demotic collective persona (in this case, "citizens") that are possessed of the same *doxai* as as the subject that is articulated by the *we* of the book.

Defying Corporations, Defining Democracy generates a more strongly leftist sense of its demotic collective personae. Without the bipartisan aspirations of *Corporations Are Not People*, the many essays of the book are free to refer to a staggering range of historical left-leaning movements as co-enunciators of their grammatical *we*. Although some of the essays enunciate this *we* in and as members of very specific and contemporary activist efforts,³⁴⁶ many of them attempt to co-enunciate with historical movements more generally. These include Populism,³⁴⁷ the Knights of Labor,³⁴⁸ Anti-Federalists,³⁴⁹ the Indian Freedom Movement,³⁵⁰ labor organizing in general,³⁵¹ Abolitionism,³⁵² worker-owned cooperatives,³⁵³ and others. The introduction to the

book's seventh section, an introduction without authorial attribution, is an excellent example of the way that the *we* demonstrated by POCLAD attempts to co-enunciate a demotic collective persona so large and transhistoric that it is capable of articulating a vast range of political projects:

We the People have the responsibility to contest corporate claims to constitutional powers, to challenge judges who enable corporations to annihilate people's fundamental rights including the right to self-governance, to defy legislators and mayors and governors and presidents complicit in corporate rule. Other species and other peoples around the world are waiting for us to do more than resist one corporate assault at a time, or regulate the planet's destruction. We can assume the authority to govern. We can act in the spirit of the democratic colonial revolutionaries, along with Abolitionists, Populists, Suffragists, Wobblies, civil rights and environmental workers, gender and gay liberation activists, Native Peoples, ambassadors of other species and countless others in every generation who believed that all political power must rest in the hands of self-governing people, who struggled for "consent of the governed," who refused to admit to the values, cultures and laws dictated by the propertied few.³⁵⁴

"The People" here is perhaps aptly figured as a *spirit* of the democratic *doxa* of resistance to rule from above. The demotic collective persona of "the people" encompasses all of the listed historical movements. Much like in *Corporations are Not People's* description of Earth Day, the historical movements refer the *we* of the demonstrative enunciation to a highly abstract or general sense of the demotic collective persona rather than confining the *we* to narrowly refer to the more specific named individuals and organizations that are listed. The effect is that the listed and named individuals and organizations are also referentially folded into the same highly abstract transhistorical demotic collective persona as one of many movements. The result is a sense that the specific critique of corporate rights in the books is also the rearticulation of democratic *doxai* in and as the appearance of the *demos*.

Movements and organizations are not, however, the only entities that are referred to by the *we* of these books' enunciations. While organizations and movements tend to be described in

terms of their actions, ideals, and goals, other historical and contemporary entities are often cited as well. These entities, such as scholars, judges, court decisions, legislatures, laws, and municipalities, are often quoted directly. As academic writers know, citational practice can be a type of ventriloquistic co-enunciation when the perspective of the quoted text is being sympathetically adopted as it is reproduced. In the case of many of the quotations in these books, the positions and perspectives of various actors are reproduced in and as the enunciation of the *we* of the book.

For instance, the concluding chapter of *Unequal Protection* cites a passage from Thomas Paine's *The Rights of Man*. After declaring that "Thomas Paine said it best: individual persons should be more powerful than any other institution,"³⁵⁵ *Unequal Protection* goes on to quote a passage from *The Rights of Man* that concludes with this sentence: "The fact therefore must be, that the individuals themselves, each in his own personal and sovereign right, entered into a compact with each other to produce a government: and this is the only mode in which governments have a right to arise, and the only principle on which they have a right to exist."³⁵⁶ The quotation is immediately followed by this sentence, which is part of the text of the chapter itself: "We've figured out that Paine's ideals and dreams, and those of Jefferson and Madison, Washington, and Adams – even allowing for their differences – have been stolen."³⁵⁷ The implication here is that the ideals and dreams of Paine, Jefferson, and the rest are *our* hopes and dreams, timeless *doxai* that are shared by the individual persons who comprise the *we* of the book's enunciative performance.

A less classically liberal (and oddly normalizing and medicalizing) version of this technique for rearticulating democratic *doxai* appears in *The People's Business* as the book references *The Corporation: The Pathological Pursuit of Profit and Power*.³⁵⁸ The quotation,

citing Dr. Robert Hare, an expert on psychopaths, plays ironically on the idea that corporations are persons by listing the ways that corporations are like *psychopathic* persons; they are irresponsible, manipulative, grandiose, un-empathetic, asocial, remorseless, and superficially relational.³⁵⁹ Immediately following the quotation, the text of the book continues, “As a society, we tend to deal with psychopaths by putting them in situations where they can’t harm anybody else and by trying to rehabilitate them. We do not give them all kinds of rights and privileges and let them run rampant.”³⁶⁰ Although the collective persona of the *we* of this sentence is “society” rather than a type of democratic actor, the effect is similar. The text co-enunciates with D. Robert Hare, Joel Bakan, and “society” simultaneously.

All three of these specific techniques for rearticulating democratic *doxai* – listing co-enunciators, identifying *doxai* shared by historical individuals and movements, and quoting concurring enunciations – are variations on the techniques for articulating the *we* of the democratic book. In each of these techniques, the pronoun *we* is extended through a demonstration that expands its potential referentiality beyond the author and the reader to a host of other entities. The goal of this expansive referentiality is to effectively demonstrate that the *we* of the books also refers to the demotic collective personae of the books – “the people,” “citizens,” “the community,” etc. As they critically disarticulate the *doxai* of democracy from the way they have been claimed by corporations, the books attempt to rearticulate such *doxai* as they present a collective subject that enunciates the critique. This set of techniques demonstrates how dissensual democracy requires techniques of rearticulation that do not simply depend on making critical propositional claims about *doxai* and what they refer to. As rhetorical theorists have argued, articulatory practices also demonstrate a subject that appears in and through the articulations. Attending to the subject that is demonstrated by such techniques points toward

productive possibilities for articulation theory more generally to adhere to its own demand that disarticulation be accompanied by rearticulation.

These techniques of articulating collective subjects through democratic *doxai*, however, are significantly bolstered by the disarticulatory critiques of *doxai* that these collected entities enunciate in common. The techniques of anti-doxastic critique used by these books and the way that they underwrite the way that the *we* demonstrates the demotic collective personae is the topic of the next section.

Disarticulating Democratic *Doxai*

The various techniques of presenting a collective *we* through lists, mutual citation, etc, are very important to how these books rearticulate democratic *doxai*. There is, however, a certain extent to which their shared critique of corporations is the fulcrum of their ability to present an articulated collective. As Laclau and Mouffe, among many others, have argued in different ways, the presentation of an *us* is facilitated by opposition to a *them*.³⁶¹ The fulcrum of the way these books attempt to include all of these entities in their demonstrative *we* is by drawing specific parallels between all of the entities' shared critique of the way that corporations have appropriated democratic *doxai* such as "rights" and "personhood."

Techniques for rearticulating *doxai* to present a unified movement are not quite enough to accomplish the presentation of a whole or unified collective enunciation that encompasses all of the listed, described, and quoted entities. Imagine, for instance, that the books were to "list" an entity such as Karl Rove's Crossroads GPS that is widely assumed to *support* corporate rights; the mere act of listing such an entity would fail to demonstrate its participation in the performative *we* of the book. The lines between us and them are not entirely arbitrary, unlike what Laclau sometimes seems to argue.³⁶² The only thing that can complete the unification of

these entities as *us* is their shared critique of how corporations have appropriated democratic *doxai*. This indicates that although the techniques of articulating a *we* are important for dissensual democracy, without sharing the goal of disarticulating specific *doxai*, such articulations would fail to achieve a sense of a dissensual democratic event.

Each of the books sets its own demotic collective personae up against the way that democratic *doxai* such as rights have been claimed by corporations. Corporate claims to the *doxa* of rights and the institutionalization of those rights in the law is the necessary shared object of critique for all the entities (historical and contemporary, individual and collective) associated with the demotic collective personae to gel together in and as a *demos* that enunciates collectively as *we*. In order to do that, however, the movement's claims to *doxai* such as rights must be understood as more legitimate and true than the claims that have been made by corporations to those same rights.

Explaining the basis for such claims poses a problem for articulation theory in nearly all of its variations. Because articulation theory has developed specifically to move beyond an account of language as merely representing reality, articulation theorists generally take a strong position that the concept of articulation avoids making any such vulgar distinction between reality and representation. This is, of course, one of the flexible strengths of the concept of articulation. In the process of carefully questioning the difference between reality and representation, however, articulation theorists don't always account for the articulatory force of performing critiques of articulation as if the distinction between reality and representation were meaningful. Paul Ricœur, an oft cited analyst of the rhetorical operations of suspicious hermeneutics like ideology critique, offers a nuanced perspective on the rhetorical capacities of interpretively dividing literal and figurative reference.³⁶³

The act of interpretation, Ricœur argues, positions language *relationally* as either literal or figurative, and it is this act of distinguishing the literal and the figurative that allows the figurative dimension of discourse full access to its own referential capacities. So Ricœur writes, “If it is true that literal sense and metaphorical sense are distinguished and articulated within an interpretation, so too it is within an interpretation that a second-level reference, which is properly the metaphorical reference, is set free by means of the suspension of the first-level reference.”³⁶⁴ The practice Ricœur refers to here is the *interpretive strategy* in which a given statement or work is described propositionally as containing referential capacities not in clear evidence prior to the interpretive act that splits the reference of the text. These levels of reference need not necessarily be described as literal and figurative. When they are, however, it is precisely the gesture of dividing them up as such which loosens or “sets free” one of the levels of reference and makes it available to be articulated to the logic of a causal origin that is responsible for its artifice. Through this procedure, *the act of critique* becomes more real or literally referential than the world of the metaphorical/fictional text or political discourse.

The critique of corporate rights leveled by these books has several dimensions that demonstrate why articulation theory, in all of its variations, should attend more closely to disarticulatory potential of critiquing *doxai as if* there were a genuine distinction between figurality and literality or *doxa* and *epistēmē*. The critique of corporate rights in these books often involves marking out the difference between literal and metaphorical legal language. It also often involves describing the empirical effects of corporate law and power so as to argue that the current legal and political status of corporations generates a variety of social and political problems, many of which could be ameliorated by disarticulating corporations from rights. These forms of critique proceed as if there is a genuine and important distinction between figurative

doxa and the literally referential knowledge they are producing. This indicates, I will conclude, that specifically dissensual democratic forms of disarticulation require the performative assumption of a difference between *doxa* and *epistēmē*. After illustrating how these anti-doxastic disarticulatory strategies are used in these books, I will return to how they relate to the general task of demonstrating a demotic collective persona by enunciating a critical *we*.

One of the central slogans of the movement, “Corporations are Not People,” is the prototypical disarticulatory critique made by these books as they demonstrate the *we* of various demotic collective personae. The core assumption underlying the slogan is that the terms “people” and “person” do in fact have literal referents that are not corporations. This general pattern of critique, in which the figurative or illusory referent of a term is divided out from its literal or truthful referent, is most often used in *Defying Corporations*, *Defining Democracy*, *Unequal Protection*, and *Corporations are Not People*. In these books, distinctions between entities are made by describing the democratic *doxai* appropriated by corporations as obfuscatory rhetorical artifice. For instance, corporations are referred to as “legal fictions,”³⁶⁵ “artificial creations,”³⁶⁶ fictitious personifications;³⁶⁷ they use “bastardized democratic rhetoric.”³⁶⁸ Corporate power “masquerades” as free speech,³⁶⁹ *Citizens United* is full of “metaphors,”³⁷⁰ and the general practice of equating corporations with persons is a “new metaphor,”³⁷¹ “metaphorical clouds,”³⁷² “false metaphor,”³⁷³ “fantasy,”³⁷⁴ “imprecise metaphor,”³⁷⁵ and generally the result of “the fallacy of excess metaphorical thinking.”³⁷⁶

These critiques go on to extensively describe how *doxai* have been misapplied and misappropriated to support undemocratic relations. Revealing how democratic *doxai* such as corporate “rights” are artificial enables the introduction of a narrative about the empirical effects of such doxastic artifice. Take for instance, this assertion about the effects of false *doxai* that

shape the law governing corporations: “If we accept the false metaphor of corporate money as a ‘voice’ and the fantasy that big corporations are no more of a threat to our political life than big people, you can count on coal and oil corporations prospering and solar, wind, tidal, and geothermal energy corporations struggling.”³⁷⁷ The *doxai* of democratic “voice” that legitimizes corporate involvement in politics is described here as having potential empirical effects on energy production. While the metaphor of “corporate voice” is asserted to be false on its face, it is additionally argued that it should be rejected because of the effect it will have, presumptively, on the environment. In this case, and in many other instances across all of these books, corporate rights and legal standing are articulated with a variety of other social, political, and environmental impacts. These impacts are widely varied and numerous, including global poverty,³⁷⁸ corruption,³⁷⁹ toxic pollution,³⁸⁰ bad food,³⁸¹ income inequality,³⁸² declining employment,³⁸³ lack of health care,³⁸⁴ environmental destruction,³⁸⁵ corroded moral standards,³⁸⁶ public health epidemics,³⁸⁷ and atrophied public education.³⁸⁸ Of course, the most significant impact of corporate legal rights that is described is on democratic participation and popular sovereignty, especially in the books published after *Citizens United*.

But beyond any of these specific descriptions of the problems, what these critiques have in common is the goal of disarticulating “corporation” from “rights” in the law. The assumption of a difference between the misappropriation of “rights” and the empirical knowledge built by the critique itself provides the shape of disarticulation. Although we may agree that the way such a critique functions is ultimately processual or performative (i.e., that it is an articulation and not a representation) it conducts itself *as if* there is a meaningful and important difference between figurative or illusory *doxa* and truthful or knowledgable interpretive *epistēmē*.

One of the central strategies for generating a sense of the urgent need for critical disarticulation is the common turn that each of these books make toward narrativizing the history of corporate claims to democratic *doxai*. Although each book describes a slightly different set of antecedents to the contemporary corporate claims to such *doxai*, they are united in their adherence to the practice of critiquing such claims through quasi-genealogical accounts of the court case in which such claims have been staked. Even *Fight the Corpocracy*, the text that is most styled as a “how-to” guide for activists and that contains the least critical and historical content, provides a narrative genealogy of corporate law. *Fight the Corpocracy* argues in very broad strokes, with references to a handful of large, state-directed corporations like the East India Company, the Jamestown Company, and the Massachusetts Bay Company, that corporations were originally chartered to serve specific public interests.³⁸⁹ That sense of the corporation, however, has been perverted as they have come to be understood increasingly as expressions of private interest. Several of the other books also begin their genealogies with some description of these early companies, noting their close ties with states and their specific, finite, and state-defined purposes.³⁹⁰ The problem, *Fight the Corpocracy* argues, is that liberalized incorporation laws initiated by U.S. states as part of a “race to the bottom” in the mid-1800s, distanced corporations from state oversight.³⁹¹

The liberalization of incorporation laws in the middle of the nineteenth century (which turned the previously complicated and political process of chartering a new corporation into a matter of filing paperwork and having it rubber-stamped) are noted by other democratic books as one of the key historical transformations in the law governing corporations. Both *The People’s Business* and *Defying Corporations, Defining Democracy* also argue that when states stopped carefully reviewing applications for corporate charters and revoking corporate charters, it was

the beginning of significant shift in how corporations were able to claim rights.³⁹² According to this genealogical narrative, a more *original* and *literal* legal concept of corporation is the definition of corporations that preceded this change: as an instrument of the common good closely supervised by a State guided by a sense of that common good. This shift in the legal concept of the corporation from an *instrument* of the people to a *natural* expression of private interest in the 1800s was fed by several other incidents that are commonly noted by democratic books as part of their genealogies: The *Board of Trustees of Dartmouth College v. Woodward* decision, the historical rise of the joint-stock railroad corporations, and the *Santa Clara County v. Southern Pacific Railroad* decision. Each of these decisions depended on the misuse of democratic *doxai* to protect corporations.

Several of the democratic books argue that the 1819 *Dartmouth v. Woodward* decision was a significant landmark in the process of corporations appropriating the *doxa* of rights to protect their interests.³⁹³ When the state of New Hampshire attempted to take over the private college and turn it into a public university, the court decided that the college's charter was governed by the Contract Clause of the Constitution and was thus an entity of private contract and not subject to state take-over. But even more than the *Dartmouth* decision, the democratic books tend to dwell on the *Santa Clara* decision of 1886. *Unequal Protection* devotes the entire first chapter to it, and *Defying Corporations* discusses it in at least seven of its essays.³⁹⁴ *Corporations Are Not People* addresses it with a substantial discussion, *The People's Business* mentions it as the source of corporations' Fourteenth Amendment protections, and *Gangs of America* also devotes a chapter to it.³⁹⁵ The story of the case, in which the court reporter declared that corporations are persons in a note that was subsequently cited as though it were an official decision, makes for excellent "debunking drama" in the sense that it reveals the extent of the contingency and

illegitimacy of corporate appropriations of *doxai* — how falsely such *doxai* represent the nature of corporations. It is clear that the *Santa Clara* decision had a significant impact on the extent to which democratic *doxai* have been codified in the law governing corporations and that Fourteenth Amendment protections have had significant effects on the flourishing of joint-stock corporations. These critical accounts of the *Santa Clara* case critique its effects by identifying the moments when democratic *doxai* were appropriated by corporations. By revealing the contingent circumstances of such appropriations, these historical accounts strive to disarticulate corporations and such *doxai*.

In the twentieth century, the democratic books most often argue that Lewis Powell and the *First National Bank of Boston v. Bellotti* decision have been key sources of corporate claims to the *doxai* of rights. Lewis Powell, a lawyer for the Chamber of Commerce who joined the Supreme Court in 1972, wrote a memorandum to the Chamber in 1971 entitled “Attack on American Free Enterprise System” two months before his appointment to the Court.³⁹⁶ This memorandum, which outlines a set of strategies by which the Chamber could expand the power of businesses in response to leftist attacks (for instance, the memo says, from marxist scholars like Herbert Marcuse) is described in four of the six democratic books.³⁹⁷ The significance of the memorandum is generally framed in terms of Powell’s significant role in the Supreme Court’s *Bellotti* decision.³⁹⁸ The *Bellotti* decision was one of the first in which the Court argued strongly for the free speech rights of corporations, and it is the primary precedent for the corporate free speech rights strengthened by *Citizens United*. Lewis Powell and the *Bellotti* decision he wrote are described by these books as among the most influential twentieth century sources of corporate claims to democratic *doxai* of rights.

This brief description of how genealogies of the concept of the corporation are conducted by these democratic books is not comprehensive. It does, however, demonstrate their general strategy of critiquing contemporary legal *doxa* by building historical knowledge about how democratic *doxai* came to be claimed by corporations. The general thrust of this critical history is that corporate rights, whereby corporations are afforded Bill of Rights protections, are the result of deliberate, concerted, *masked*, and *effective* actions on the part of corporations and their supporters to illegitimately claim democratic *doxai* as their own. These deliberate, concerted actions have resulted in the creation of a vast network of rhetorical lies, operationalized through the law, that perpetuate a system of political and economic inequality and environmental devastation. Critical histories told by the books emphasize the contingency and historical variability of how democratic *doxai* have been articulated by corporations. The critical histories, however assume that such contingent articulations are not simply contingent — they are *false* representations of what corporations are.

The books strive to disarticulate by revealing the undemocratic origins of corporate claims to democratic *doxai* in the enunciations of privileged entities who are explicitly differentiated from the *we* enunciating the genealogical critique. It is this *we* that attempts to transform the doxastic legal concept of the corporation. This returns us to one of the central functions of the critical strategy of dividing references of democratic *doxai* such as rights as “figurative” or “literal.” One of the most significant and often-cited negative effects of the doxastic legal concept of the corporation is the way it disempowers “the people” or democracy itself. This critique is shared by all six of the democratic books. As Ricœur argues about the act of interpreting figurality cited above, by arguing that legal concepts have literal referents and positioning a set of them as merely figurative, these books enable the attribution of literal

referentiality *to their own enunciations*, including their efforts to articulate their own *we* through demotic collective personae. Corporations are not people; *we* are people. The books' genealogical attribution of the origins of false attributions of rights to corporations to undemocratic entities such as Lewis Powell, Dartmouth College, or a Supreme Court clerk underlines the differentiation between truthful and false referents of democratic *doxai* and consolidates the genealogical critics as part of the enunciating *we* of the demotic collective personae. The various techniques of presenting a demotic collective persona referred to by the *we* of the enunciations of the movement show very clearly that this *we* need have no unified or previously existing referent in order to perform an attempt to disarticulate democratic *doxai* from corporations. These articulatory techniques are dissensual in the sense that they incorporate a collective critique of *doxai* supporting undemocratic relations that are simultaneously enunciated as a *we* that refers to a doxastic collective persona. The enunciating subject is not necessarily produced through procedures that are in themselves democratic, nor is it the result of a shared identity or common quality. Instead, the *doxai* that are targeted for critical rearticulation unify the movement and generate the opportunity for the demonstration of democracy.

The distinction between literal and figurative articulations of *doxai* marks out the difference between corporations and the *we* that refers to demotic collective personae as the more legitimate *demos*. The political field can then be developed in terms of oppositions that are iterations of the opposition between *doxa* and *epistēmē*: literal/figurative, truth/falsity, *we*/corporations. In other words, the assumption of a distinction between *doxa* and *epistēmē* is central to both the critical disarticulation *and* the rearticulation of democratic *doxai*.

Conclusion

The concept of articulation has allowed important advances in describing the ways that discourses are assembled and become effective. As cultural scholars are fond of pointing out, however, there is a much stronger tendency in articulation scholarship toward *disarticulating* problematic discourses than toward figuring out how such discourses should be *rearticulated*. The movement against corporate rights points toward the importance of understanding dissensual democratic articulation and rearticulation as practices or even actions that contribute to the assemblage of collective political subjects.

What the books against corporate rights demonstrate, however, is that dissensual disarticulations and rearticulations of democratic *doxai* happen as iterations of the tension between *doxa* and *epistēmē*. Disarticulation is widely understood to be a variation on critique that presumes that articulated discourses underpin the social construction of reality rather than being in a representational relationship to that reality. This general rejection of ideology critique, wherein ideology is understood as *doxai* that misrepresent the real relations of power they mask, has moved beyond fashionability in critical scholarship and is now banal. The ontological explanations of reality, including articulations, that have replaced such types of critique therefore struggle to account for the ongoing political effectivity of enacting the assumption that there is an important difference between doxastic illusions and the reality behind them. Performing the assumption that democratic *doxai* misrepresent reality does not only play a role in the way that these books attempt to disarticulate the *doxai* of rights from corporations. It also is central to how they rearticulate such *doxai* to the political collectives they enact and attempt to argue for a political order that is legible within the *doxa* of democracy.

Theorists who discuss the need for scholarship to rearticulate *doxai* in hopeful ways often find it easier to describe, as I have done in this chapter, how activists rearticulate *doxai* rather than attempting to do it themselves. One of my goals in discussing these books as examples of dissensual democratic dis/re/articulation is to establish a point of commonality between the articulatory techniques of these books, which often resemble scholarly works, and a scholarly approach to dissensual democratic articulation. The books discussed in this chapter conduct genealogies of corporate rights as part of a larger effort to reveal the contingency and artificiality of corporate claims to democratic *doxai*. The next chapter takes the genealogical disarticulatory approach of the books as an entry point for establishing a parallel genealogy of legal theories of the corporation.

Chapter 5

Demonstrating Techniques of Critique: The Genealogy of the Legal Concept of “Corporation”

One of the central critical strategies of the movement against corporate rights is to describe how legal and political events in the past influence contemporary corporate claims to rights and other democratic *doxai*. The last chapter identified several key historical events that the movement often brings up in order to reveal the contingency of the doxastic articulations of “corporation” and how it has been produced undemocratically. These events include the shift from understanding corporations as public entities to private ones in the middle of the nineteenth century, facilitated by the 1819 *Dartmouth College v. Woodward* decision, the 1886 *Santa Clara* decision and its mistaken attribution of the rights granted by the Fourteenth Amendment to corporations, and the 1978 *Bellotti* decision, engineered by Louis Powell, which granted free speech rights to corporations. One of the central arguments that the movement makes to bolster its position, an argument that is also made by Wendy Brown (as well as Tea Party activists and proponents of the Defense of Marriage Act), is that law made by the Supreme Court is undemocratic in the sense that it is not made by officials who are elected and does not represent the will of the people.³⁹⁹ In the process of making this argument, the movement against corporate rights stakes a claim to be the true *demos* whose speech is the legitimate and democratic source of law.

While narratives of the historical court decisions listed above are often retold by the movement against corporate rights, the movement less often pays attention to a transformation in the legal concept of the corporation that happened around the turn of the twentieth century. This

change in how corporations were conceptualized in legal theory resulted not from specific court cases but from a change in how corporations were conceptualized in legal theory. The legal-theoretical *concept* of the corporation changed as the result of the importation of a German philosophy of group life filtered through a historical account of the battle between authentic German law and Roman imperial law. Although many parts of the contemporary movement against corporate rights, as well as scholars of the law, have focused intently on “personhood” as the key democratic *doxa* articulated with “corporation,” attention to the legal-theoretical history suggests another important articulation of the historical concept of the corporation. In turn-of-the-century legal theoretical approaches to the nature of corporate “personality,” what was at stake was the extent to which corporations are *communities* – because communities, as variations on “the *demos*,” are fully deserving of what are sometimes called personhood rights. Recent attention to the genealogy of the legal concept of *person* demonstrates precisely how flexible and, as Peter Goodrich puts it, “emblematic” the *doxa* of personhood is.⁴⁰⁰ There is little question that legal “personhood” has always been a sort of mask or artifice that is adopted for strategic ends. But the theoretical gesture by which that mask was claimed for corporations was one that required the assertion of their rightful claim to the mask, and to do that, they had to be understood as natural communities that existed prior to their use of the mask.

When the movement against corporate rights declares that corporations are not persons, the painfully clear response is a simple yes. No one is a legal person; legal personhood is a tool, a mask, *doxa* that accurately describes no one. Instead of critiquing *doxa* that is already admitted to be deliberately, patently, and obviously false, the movement against corporate rights should take aim at the more fundamental *doxai* that underwrite the corporate claim to rights. This is the

claim of joint-stock business corporations to be *natural entities* that exist prior to the law and that deserve the rights of any other community.

To make the case that the contemporary sense of the corporation is the product of its articulation with the concept of community, this chapter will begin by outlining the doxastic articulation of “corporation” as evidenced by the way the concept is used in the Supreme Court’s 2010 *Citizens United* decision and legal commentary on that decision. The *doxa* articulated with the concept of corporation produces the contemporary *sense* of the concept, which includes how it is articulated to other concepts and how it tends to be brought to bear on questions and problems that arise. I will argue that the doxastic articulation of the legal concept of the corporation currently involves equating “corporation” with something very much like what Roberto Esposito and Jean-Luc Nancy describe as the dominant definition of “community”: a naturally existing entity that is ontologically prior to politics.⁴⁰¹ This doxastic sense of corporation as *community* has resulted from an incorporeal event in the concept of corporation that happened around the turn of the twentieth century. This event, the importation of a German organicist concept of “corporation” into Anglophone legal literature and United States law, occurred in and through the institutions of legal knowledge, including universities, technologies of legal publication, and the courts. The event of this importation carried along with it certain articulated senses that persist in the contemporary doxastic concept of the corporation, including the sense that corporations are natural communities. For the movement against corporate rights, nothing could be more obvious than the fact that corporations are not communities. Take, for instance, the work of the Community Environmental Legal Defense Fund, which gives legal aid to small municipalities on the premise that they are precisely the “communities” that are the more legitimate bearers of rights than the corporations attempting to extract resources from

them.⁴⁰² From this sort of perspective, the claim that corporations are “communities” could only be the expression of a deeply rooted ideology of capitalist economy as natural and immanent to social life.

The legal definition of corporations that was developed around the turn of the twentieth century was what Edward Schiappa identifies as a “real definition,” meaning that it that presumes to identify the essence of the thing named by the definition.⁴⁰³ In this way, it differs from most legal definitions. Schiappa points out that “legal definitions generally are self-consciously lexical and prescriptive. That is, when a legal definition of X is set forth, there is no pretense that this is what X really is (a fact of essence).”⁴⁰⁴ *Personhood*, as mentioned above, is an excellent example of the flexibility and contingency of a legal definition that operates quite effectively in the absence of a “real” definition. Legal definitions, however, have not always been considered to be primarily or self-consciously lexical by those who develop them; in fact the distinction between natural law and legal realism could be marked by their differing approaches to the definitions of legal terms. For proponents of natural law, legal definitions must be “real” definitions that express the essence of the thing they name.

As Schiappa notes, the quest for a “real” definition inevitably wanders down a philosophical path.⁴⁰⁵ While this path does not necessarily lead, as Schiappa fears, toward a metaphysics of Ideal Forms, it does generally lead toward treating defined terms as *concepts* rather than simply as words with various definitions that are used differently.⁴⁰⁶ In the context of the law, it is even more self-apparently the case that “real” definitions are forceful and practical ways to achieve desired effects. This insight is the basis for the recent development of a Deleuzian approach to legal concepts that draws on Gilles Deleuze and Felix Guattari’s *What is Philosophy?* to argue that legal concepts are creative, expressive, and performative.⁴⁰⁷ For

instance, Alexandre Lefebvre and Edward Mussawir argue that legal concepts are created in context to accomplish certain effects, and as such they are “ways to engage creatively with the texture and medium of the law.”⁴⁰⁸ This work resonates with Jean-Jacques Lecercle and Paul Patton’s analysis of Deleuze and Guattari’s own philosophical vocabulary as *conceptual*, rather than *metaphorical*, while emphasizing that concepts are *crafted* rather than *discovered*. The relationship of such concepts to the world is not a representational relationship (wherein real definitions would attempt to refer accurately to Ideal Forms, as Schiappa fears), but a performative and creative empirical mapping.

This appropriation of Deleuze and Guattari’s work in order to develop the potential of legal concepts charts a middle ground between Schiappa’s strict binary between “real” and “lexical” definitions of terms and between the presumption of a deep divide between the theories of law as natural and as realist. Legal definitions are created and vary according to historical context, certainly, but the act creating them is an expressive one that relies on generating the sense that the definition is real. Generating that sense may, on occasion, depend on identifying the sense of the contingent events or “lexical” definitions of past usage and dissociating those usages from the real definition through the techniques of critique. The new Deleuzian jurisprudence recognizes the lexicality of legal concepts and how they are redefined as necessary in light of new events and problems. Lefebvre calls this process creative, while Mussawir calls it expressive and dramatic.⁴⁰⁹ They both, however, argue that legal concepts are not representational and do not refer to a reality that is external to themselves. This gesture of opposing a dogmatic, real or representational theory of legal concepts to a creative, expressive, constructive, or lexical theory of legal concepts suggests a fundamental confirmation of Schiappa’s general point that legal definitions are lexical in the sense that they are always self-consciously drawing on competing

past variations in usage rather than asserting their ability to “really” capture the essence of a thing external to them.

Deleuzian jurisprudence, however, suggests a dynamic in concept-creation that disturbs Schiappa’s tidy binary, as well as their frame of comparison between “representational” and “creative” concepts. If we extend Deleuze’s insights on sense beyond the process of adjudication to jurisprudence itself, as Nathan Moore suggests we should, the question of whether definitions of concepts are about recognition or creation slips away and a larger dynamic of stability and change comes into focus.⁴¹⁰ As Moore argues, “the condition of thought that a creative thinking must transform [is] the conditioned engendering of its own condition.”⁴¹¹ In the terms of Deleuze’s work in *Logic of Sense*, this would mean identifying the lexical senses of a concept in context on the way to generating the event of a sense of the concept.⁴¹² Generating the event of the sense of the concept, however, is more or less akin to offering a “real” definition of that concept; and so perhaps the real and the lexical definitions are not quite so strictly opposed.

This chapter attempts to generate the sense that corporations are not communities by mapping some of the definitions of the legal concept of the corporation as they have been articulated with democratic *doxai*. Generating such a sense of a concept through critiquing definitions is the method of conducting a genealogy of how a concept is articulated with various *doxai*. The goal of the specific genealogy of this chapter is to dissociate the legal concept of “corporation” from the doxastic persona of “community” by describing the contingent historical usages that led to the conflation of the two concepts in the first place. The assumption underwriting this genealogy is that the concept of the corporation does not transmit ideology by attempting to represent the reality of corporations; it is a sensible definition that can be

rearticulated, or recreated, by enacting the tension between stability and change at the heart of the concept of *doxa* and Deleuze's concept of sense.

The goal of this critical account of the genealogy of the concept is to produce what Deleuze would call a new *sense* of how the legal concept of the corporation has been articulated with democratic *doxai*.⁴¹³ The technique for producing this sense is to map the way that the contemporary concept of the corporation, in which corporations appear as whole, natural entities that have always existed, is the product of what cultural studies theorists call specific institutional and discursive articulations.⁴¹⁴ Genealogies of concepts often (explicitly or implicitly) follow Michel Foucault's famous adaptation of Nietzsche's dismembering of morals.⁴¹⁵ In its post-Foucauldian instantiation, genealogy attempts to write the history of the present by describing the role of institutions and discourses in producing doxastic knowledge and power. For instance, Talal Asad's genealogy of the concept of "ritual" takes up the question of how that concept came to be understood in the context of anthropological disciplinary commitments and institutional structures.⁴¹⁶ Genealogies also often position themselves, like Cornell West's genealogy of American pragmatism, as being "explicitly political, without [...] being pejoratively ideological."⁴¹⁷ This genealogy of concept of the corporation maps the way that it results from an expressive event in a specific turn-of-the-century usage of the concept that included continental philosophy, freshly minted law reviews, the increasing emphasis on research in American universities, increasingly sociological approaches to jurisprudence, and the liberalization of incorporation laws. In the context of this state of affairs occurred an incorporeal event in the concept of the corporation, performed by Fredric Maitland, of calling corporations communities.⁴¹⁸

This chapter has five sections. The first section establishes two central parameters of the legal concept of the corporation: a distinction between the “real entity” and “concession” theories of the corporation and the personification of the corporation. This section concludes that the legal concept of the corporation roughly equates corporation with the concept of “community.” The second and third sections argue that the initial conflation of corporation with community occurred in the importation of a German organicist concept of the corporation around the turn of the twentieth century, and that this event of importation introduced, among other factors, not only a powerful variation in the concept of the corporation but also a framework for contesting the definition of the concept that relies on the distinction between literal and figurative definitions. The fourth section describes how the sense of the “community” concept of the corporation was produced not just in the content of the philosophy itself, but by legal publishing, universities, and the courts. The fifth section describes the political stakes of various concepts of the corporation and how the “real definition” of corporations imported by Maitland contains within itself an admission of its lexicality that can foster its own disarticulations.

The Real Entity Theory of the Corporation

Since the 2010 *Citizens United* decision, United States legal periodicals have been bristling with articles on campaign finance, free speech, and corporate theory.⁴¹⁹ Much like during the wave of controversial hostile take-overs and mergers in the 1980s, the glare of the popular spotlight on corporate actions has translated into increased legal scholarship on theories of the corporation.⁴²⁰ Neither the majority nor the minority opinions in *Citizens United* explicitly cited any justifying conceptual theory of the corporation, so law review articles have taken up the task of reading theories of the corporation into those opinions, even against the dissenting opinion’s explicit disavowal of the relevance of corporate theory to its claims.⁴²¹ This legal scholarship

attempts to locate *Citizens United* within a three-part typology of corporate theory: the concession/fiction theory of the corporation, the real entity theory of the corporation, and the aggregate/nexus-of-contracts theory of the corporation. Each of these three theories of the corporation contain variations, but the general three-part schema has consistently been revived as a way of classifying speculative accounts of the essential nature of American limited liability corporations.⁴²² Because the politics of the schema itself is precisely what I will be exploring in this chapter, I will only briefly explain these three at the outset. These theories of the corporation often attempt to define the collective persona of “the corporation” *in contrast* to the other definitions, and to the extent that they define by contrast, they are usually lexical.

The *concession/fiction* theory of the corporation assumes that corporations are the result of legal privileges like limited liability and perpetual life that are granted by the state; corporations are concessions of the state. The corporation is *persona ficta*, a fictitious person that conducts business and exercises limited rights as it is deemed by the state convenient or useful for it to do so. The *real entity* theory of the corporation contrasts most starkly with the concession theory. It assumes that corporations exist logically and temporally prior to their legal recognition. It is this pre-legal existence and the qualities they share with individual human beings that justify their natural claim to legal rights and standing. The *aggregate/nexus-of-contracts* theory assumes that corporations are collections of individuals who deserve the rights that those individuals also possess. In the contemporarily popular “nexus-of-contracts” variation, these individuals are specifically bound together by a series of smaller contracts.

This three-part typology is frequently repeated by legal scholars to justify and describe the practical implications of various judicial assumptions and long-term legislative and political trends in corporate law. Some scholars, however, have argued that the *aggregate* theory is

essentially just a variation on the *real entity* theory.⁴²³ While the real entity theory ascribes natural rights to corporate entities based on the way the totality exhibits certain characteristics prior to its legal recognition, the aggregate theory simply derives the same conclusion from considering the lump effect of the collected natures of the individuals who participate in the group prior to legal recognition. Another way of making this argument would be to say that while the real entity theory of the corporation attributes existence and rights to the corporate entity metaphorically, the aggregate theory does it synecdochally, and synecdoche is just a species of metaphor. In both the real entity and the aggregate theories, the law merely recognizes what exists before it: a unified or collected entity. The concession theory, in contrast, describes corporations as entities that are created by the law as it transmits a generative structure that allows them to take on existence through a governmentally defined form – most notably, a form that involves limited liability and perpetual life.

To a theorist who is accustomed to thinking about the political stakes of speculative definitions, the implications of these contrasting definitions of the U.S. business corporation might seem immediately apparent. There has been, however, some debate among legal scholars about how and whether any given theory of the corporation can be correlated with particular political positions on corporate rights and responsibilities.⁴²⁴ In the context of campaign finance law, scholars often argue for a strong correlation between the real entity and aggregate theories and an anti-regulation approach to corporations.⁴²⁵ This leads to an intense re-politicization of *the concepts themselves* that is increasingly apparent as it meshes with or fails to mesh with activist propositions about the nature of the corporation.⁴²⁶

As scholars argue for the political stakes of theoretical accounts of the corporation, the majority opinion in *Citizens United*, of course, gets most of the attention. Some legal scholars

have either argued or assumed that the majority decision demonstrates the “aggregate” or “nexus-of-contracts” concept of the corporation⁴²⁷. Others argue that the majority decision is implicitly underwritten by a variation of the “real entity” concept of the corporation.⁴²⁸ None of them, however, argues that the majority decision implies a “fiction” or “concession” concept of the corporation. The politics of this division in the concepts of the corporation – with the real entity concept supporting the expansion of corporate rights and the concession concept justifying limits on corporate action in the name of public interest – does not quite match up with the claims of the movement against corporate rights discussed in Chapter Three. Susanna Ripkin nicely summarizes the confusion when she argues that the movement’s attention to corporate claims to the *doxai* of “personhood” is misguided because it fails to recognize that legal personhood is always just a convenient fiction into which entities are placed by lawyers and judges in order to accomplish practical goals.⁴²⁹ According to the concession theory of the corporation, in which corporations result from the fictitious creation by the state of a generative structure for their action, “personhood” is wholly fabricated and should be granted based on whether it serves the public interest. Ripkin’s critique of the movement’s strategies, however, ultimately begs the question of how decisions are made as to what sorts of entities are placed in the empty container “personhood.” The movement argues that corporations are literally not persons and they trace the effects of giving them personhood rights and argue that those effects are bad enough to dictate a practical decision not to place corporations in the container *persona ficta*. The movement’s critical unmasking and mapping gestures happen in and through the development of “real” definitions of the corporation and its relation to the *doxa* of personhood.

The strength of the movement’s approach to critiquing the “personhood” of corporations, in spite of how personhood is generally acknowledged in the legal community to have no

necessary relation to a given set of qualities or characteristics,⁴³⁰ starts to become clearer once we take a closer look at how the pro-corporate “real entity” concept of the corporation actually operates in the *Citizen’s United* majority decision. Legal scholars have attributed the real entity theory of the corporation to *Citizens United* in two primary ways. First, they focus on the way the Court generally posits the existence of corporations prior to the law. According to this argument, the Court (in the majority opinion, concurring opinion, and dissent) describes corporations as real entities when it asserts that they exist as the result of a “natural tendency toward business association.”⁴³¹ This, however, is a necessary but not sufficient condition of the real entity concept of the business corporation; after all, many entities (trees, other nation-states, dolphins, genetic material) exist prior to U.S. law but do not have free speech rights. The majority opinion also demonstrates its adherence to the real entity concept of the corporation by refusing to account for the genesis of corporations in a source that is external to them, i.e., the state (as in the concession concept) or individual shareholders (as in the aggregate concept). The real entity concept is reflected, as Reuven Avi-Yonah summarizes, in the claim that “Corporations stand on their own, independent of both the state that created them and the shareholders that own them.”⁴³²

The second way scholars find the real entity concept in *Citizens United* is when the majority opinion rejects the claim that corporations should be treated differently than any other class of speaker, or as one scholar put it, “the Court’s rejection of disparate treatment on the basis of juridical status clearly indicates a real entity perspective.”⁴³³ By this reasoning, the *Citizens United* majority employed a real entity concept because it used the assumption that corporations were *capable* of being “treated disparately” and thus *have* a juridical status. In other words, because the Court was willing to figure corporations as a class of entities that has a

juridical standing in the eyes of the law, they must exist as entities prior to that recognition or its failures.

Steven Winter argues that the hinge of this argument is the Court's use of the democratic *doxa* of *speech* and *speaker*: "The systematic conflation of speaker and speech is a rhetorical device that allows the Court and its defenders to have their cake and eat it too."⁴³⁴ I would push this analysis a bit further to argue that it is not precisely the conflation of speech and speaker, but more specifically the majority's myopic focus on the *doxa* of *speech* that is at the heart of why the decision generates a sense of corporations as "real entities." In the Court's effort to disavow the very question of what a corporation is and does, it focuses intently on how the Constitution protects speech itself, the production of all discourse about politics, regardless of "who" produces it. In so doing, the Court elides any possibility that the activity/object in question might be something other than speech. Calling it speech (rather than, say, money or buying) obviously puts it immediately into the category of a constitutionally protected act. But more significantly, calling it "speech" *implies that there is a "speaker."* "Money" needn't have a subject that produces it or causes it to circulate. The democratic *doxa* of "speech," on the other hand, immediately suggests that there is a political subject who is the source, cause, and subject of it – a real entity that exists prior to the law and who has rights that must be recognized.

This articulation of corporations with *speech* is the core of why the Supreme Court's majority decision seems to reflect the real entity theory: the decision says that corporations produce speech, which is not something they could do if they were merely a collection of contracts or a state-sponsored generative structure of law. In order to "speak" they must be unified, exist prior to the law, and retain some attributes of individuality that are important precursors to the human act of speaking – for example, will or interests. There is, of course, a

general recognition that corporations are collective entities and not individuals, but the attribution of the characteristics of individual human beings suggests that corporations are highly unified, singular entities that are capable of having a certain level of consistency of motive, quality, identity, or intention. Although the *Citizens United* majority opinion does not explicitly argue that the unity of the corporation is based on any one of these specific attributes, it is not necessary to select one of them (motive, identity, quality, intention) in order to see that the assumption of the majority of the Court is that the doxastic legal collective persona of *corporation* is roughly equivalent to the concept of *community*.

Community is a collective persona that has a number of different variations. In the political-philosophical lexicon community often appears as an entity (rather than a process, relation or obligation). Robert Esposito critically summarizes this object/entity concept of community as “that of the individual *and* totality; of identity *and* the particular; of the origin *and* the end; of more simply of the *subject* with its most unassailable metaphysical connotations of unity, absoluteness, and interiority.”⁴³⁵ The Supreme Court’s presentation of the doxastic collective persona of “corporation” as having the internally undivided identity of “speaker” is a version of this collective persona of *community*.⁴³⁶ By presenting corporations as speakers, and nothing more, the Court presents corporate community as a unity that expresses a human essence. This essence is “speaker,” which operates just as well as other versions of human essence, like will, competition, love, or strength, that have served as the basis for presenting other visions of the essence of human community. When such a vision of the essence of humanness is presented as the core of a community, Jean-Luc Nancy argues, all other processes are then described as being merely subsidiary to this supposed core essence of the community:

Economic ties, technological operations, and political fusion (into a *body* or under a *leader*) represent or rather present, expose, and realize this essence necessarily in themselves. Essence is set to work in them; through them, it becomes its own work. This is what [...] might be [...] named “immanentism,” [...] encompassing both democracies and their fragile juridical parapets.⁴³⁷

By avoiding any discussion of the composition and activities that go into campaign finance and intra-corporate relations, the Supreme Court’s majority opinion suggests that there is an essence to the concept of the corporation that explains all other dimensions of the community: speaking. It seems possible that an elucidation of what “speech” actually is, beyond the condition of the protection of the subject engaged in it, is likely to have severely complicated the presentation of a unified corporate communal whole in the *Citizens United* decision. But such a discussion was also lacking in the majority opinion. Presenting corporations as essentially “speakers,” without any discussion of what speech might be, figures them as *communities* of essence rather than process. As “speakers,” corporations are more or less organic social groups, undivided and constituted by their common essence, subjects before the law.

This conflation of “corporation” and “community” was no accident of rhetorical flourish resulting from the imprecise use of “speaker” and “speech.” The articulation of corporations with the demotic collective persona of “community” is the result of an event in the concept of the corporation that occurred around the turn of the twentieth century. The real entity, or community, concept of the corporation was articulated out of a deeply organicist, immanentist account of communal life rooted in the fertile soil of German nationalism and transplanted into Anglophone legal literature at a moment that was ripe for its flourishing.

Fredric William Maitland and Otto von Gierke

In the second half of the twentieth century, several notable works of scholarship have attempted to tell the story of how the “real entity theory” found its footing in the world of

Anglophone legal scholarship.⁴³⁸ All of these assign a central role to Fredric Maitland's translation of Otto von Gierke's *Political Theories of the Middle Age*.⁴³⁹ The translated text was one fifth of Volume Three of Gierke's unfinished *Das deutsche Genossenschaftsrecht*.⁴⁴⁰ The English language book begins with a thirty-nine page "Translator's Introduction," written by Maitland.⁴⁴¹ The introduction is accompanied by twelve pages of analytical summary of Gierke's text and twenty-five pages of Maitland's notes and references on the introduction. The rest of the book consists of 101 pages of Gierke's text accompanied by 95 pages of notes from Gierke. This means that Maitland's introduction was nearly half the length of Gierke's text itself, and the book as a whole gives the impression of being composed of two monographs, one of which happens to be about the other. In fact, Maitland's introduction is often gratefully cited and referenced along with or even apart from Gierke's text. While some Anglophone scholars were inclined to read Gierke in the original German, many seemed to adopt the attitude of Arthur W. Machen, who avoided tangling himself too deeply in the "mass of foreign lore" that Maitland had conveniently streamlined for him in the translation and further simplified in his introduction.⁴⁴²

The depth of Maitland's involvement in the importation of Gierke and the subsequent development of the "real entity theory" of the corporation is significant for two primary reasons: The first, as Anthony Black points out, is that Gierke's multi-volume history of the law of *Genossenschaft* (a term that could have been translated as *cooperative*, *fellowship*, *association*, or *community*) contained only two short chapters on the joint-stock corporation. Gierke, who was generally a committed socialist, was more interested in worker's cooperatives, rural peasant groups, and guild-like associations than he was in the status and well being of joint-stock corporations.⁴⁴³ Maitland, unlike Gierke, was significantly interested in the relevance of Gierke's

Genossenschaftstheorie for the development of a realist legal theory of the joint-stock business corporation, which in Maitland's view was coming into dominance. In his introduction to *Political Theories of the Middle Age*, Maitland acknowledges that his framing analysis of the corporation is something of a departure from the content of the translated text (which said nothing of joint-stock business corporations specifically) and Gierke's intent in that "much as has been said in this Introduction touching Corporation Law and German Fellowships has been intended to explain rather the context than the text of an excerpted chapter."⁴⁴⁴

Although Maitland can hardly be faulted for wanting to insist on the contemporary relevance of his translation, the result of his strategy was to legally re-conceptualize the joint-stock corporation as a type of "community," which was the term that Maitland used liberally to translate a variety of Gierke's German terms for groups. In Gierke's original German, the law of *Genossenschaft*, or fellowship, took its place in relation to towns, guilds, associations, polities, churches, the general public, and a host of other collective entities. In Maitland's translation and introduction, the political *doxai* of "community" rights and the sovereignty of the people came to stand in for the general force of all these types of groups in opposition to the principle of lordship, monarchical authority associated with imperial Roman law and the antique-modern legal associational form of *universitas*. Maitland's significant claim was that contemporary joint-stock business corporations were part of the *demos*: communities enacting the *doxa* of the people's sovereignty.

This move to articulate corporation with community did not only occur at the level of the framing carried out in Maitland's introduction. It was also carried out at the level of the translation of Gierke's text itself. In the body of the translation, Maitland consolidated a version of "community" by using that one term to translate a wide variety of Gierke's German terms.

Under Maitland's pen, groups ranging from a type of village group to the broad medieval notion of the All Men were translated as *communities*. The use of the term across this range of collectives suggested that "community" was the term that signals precisely those entities that are temporally and logically prior to the law. Consider, for instance, the passage below from *Political Theories of the Middle Age*, translated by Maitland. This passage occurs several pages before the end of the book, as Gierke is attempting to summarize how medieval German conceptions of the popular basis of sovereignty persisted in jurisprudence below the surface and in the cracks of the consolidation of the Latin principle of lordship that provided the basis of the modern nation-state. Following each instance of "community" in Maitland's translation are brackets that contain the original German term used by Gierke and an obvious term that could have been used to translate it:

The Romano-Canonical Theory of Corporations, although it decomposed and radically transmuted the German notion of the autonomous life of communities [*Gemeinwesend*/communities] and fellowships, always insured to the non-sovereign community [*Verbänden*/associations] a certain independent life of its own, a sphere of rights within the domain of Public Law, a sphere that belonged to it merely because it was a community, and lastly, an organic interposition between the Individual and the Community of All [*Allgemeinheit*/Public at Large].⁴⁴⁵

By "Romano-Canonical Theory of Corporations," Gierke is referring to the practice of describing the legal status of groups as being derived from state power via a concession of legal right. The term "corporation" in this formulation encompasses a wide range of legal organizations, of which the joint-stock business corporation is only one. The English term "community" is used by Maitland four times in this passage to translate four different German terms. The first usage of community is to translate *Gemeinwesend*, which may be the German term that is best translated by the English "communities."⁴⁴⁶ *Gemeinwesend* has connotations of physical presence, such as the hive life of bees or ants. The second usage of "community"

translates *Verbänden*, which could be translated as *association, corporation, organization, society, federation, unit, or troop*, but which has a connotation of collectivity that is organized around some common purpose and that is established deliberately as the result of shared goals rather than common substance. Maitland's third usage of "community" does not translate any specific word used by Gierke; it is a way for Maitland to convey Gierke's emphasis on the properness of the legal concept of *Genossenschaft* to the thing itself that it denotes; this may be the most notably interventionist use of "community" in this passage. The fourth usage of "community," Community of All, is a translation of *Allgemeinheit*, a term that more easily could be rendered as *general public, public at large, or everyone*.

My goal in pointing out these instances in which "community" is used by Maitland instead of other possible English terms is not to take issue with the *accuracy* of his translation.⁴⁴⁷ In fact, there is a strong argument to be made that Maitland's artful simplification of Gierke's vocabulary is actually more in keeping with Gierke's core argument than the greater diversity of terms used by Gierke himself. The level of generality and unity in the English translation's concept of "community," however, almost certainly makes it much easier for "community" to unproblematically encompass the joint-stock corporation. The high level of generality and unity in the translation's use of "community" additionally lends itself to the articulation of a concept of community as an absolute subject that embodies the essence of humanity and is therefore the just and legitimate ground of both sovereignty and law. By allowing the term "community" to encompass so many types of entities, it is almost inevitable that the term would take on a certain metaphysical sense born out of its apparent ability to unify all such entities. The existence of the joint-stock corporation then also takes on the sense of being a metaphysical community.

Gierke's metaphysics of community, however, were organicist. Gierke's historical account of the laws derived from organic, embodied fellowships was part of a deeper nationalist project not just in his work but also in Germany more broadly during the late nineteenth century. Peter Caldwell argues that Gierke's organicist theory of law was a significant influence on Rudolf Smend, a German legal theorist who strongly advocated for fascist forms of the state in the early twentieth century.⁴⁴⁸ Tropes of the body, life, vitality, purity, unity, and growth were central to both Gierke's account of German fellowship and the more general German cultural milieu, so much so that, as Charles Turner notes, Gierke's "emanationist account of social wholes is sometimes seen as anticipatory support for national socialism."⁴⁴⁹ This evaluation of the relationship between Gierke's advocacy for a natural German law and the position of the Nazi Party is echoed by James Whitman, who points out that the Nazis shared Gierke's opposition to imperial Roman law.⁴⁵⁰ Gierke's primary goal in writing the lengthy four volumes of *Das deutsche Gennossenschaftrecht* was to establish the historical basis of a native German community law that developed out of the medieval social groups. He argued that imperial Roman law had subverted this native law in many cases, and his general strategy was to mark out the distinctions between the German law of fellowship and the Roman law of *universitas* as they had intersected over time. The historical context for Gierke's effort was the mid- to late-nineteenth century push to establish a new German Civil Code. Gierke actively participated in these efforts as an advocate for what he considered to be a Germanistic legal structure governing groups. Gierke wanted the Code to reflect as much as possible what he considered to be authentically German law.⁴⁵¹

This means that much of Gierke's discussion of German community law happened by way of contrasting it with the Roman law governing collective entities, both public and private.

Gierke identifies the origin of fiction/concession theory of the corporation in the Roman concept of the *persona ficta*, a fiction of legal personhood and its rights that was originally developed by Pope Innocent IV to describe the standing of collegiate or cathedral churches.⁴⁵² In his “Introduction,” Maitland included an extensive discussion of the *persona ficta* concept of the corporation as it was derived from Roman law.

Maitland explained that the emphasis of German corporate law had been on the Romanist device of the *persona ficta*, but then “the joint-stock company, a new power in the theoretic as in the economic world, began to give trouble.”⁴⁵³ In other words, Maitland claimed that the appearance of real and powerful entities, joint-stock corporations, was the provocation for a new theory of how the law related to groups. The champion of the revival of fellowship law in Germany, according to Maitland, was Gierke and his Germanist colleagues, who struggled valiantly in the name of the “community” account of the Corporation: “The theory gradually took shape, especially in Dr. Gierke’s hands, and a great deal of thought, learning and controversy collected round it. Battles had to be fought in many fields. The new theory was philosophically true, scientifically sound, morally righteous, legally implicit in codes and decisions, practically convenient, historically destined, genuinely German, and perhaps exclusively Germanistic.”⁴⁵⁴

The significance of this *embattled* frame for the theory itself, as an expression of the political conflict over the essential character of the German state, cannot be overstated, although it has been frequently overlooked by legal scholars who implicitly adopt its frame without noting that the competition between concepts of the corporation was itself produced by Gierke’s framing of the dialectical conflict between Romanism and Germanism.⁴⁵⁵ Because of his involvement in the construction of the German Civil Code, Gierke had a strong sense of the

political articulations of various theories of collective life and their very practical implications.⁴⁵⁶

But beyond his attention to the ways that legal concepts related to his own specific political context, Gierke also had a strongly Hegelian sense of the way that dialectical struggle between the principals of fellowship and lordship, the common and the hierarchical, the German and the Roman, played out within the realm of ideas.⁴⁵⁷ For Gierke, and also in Maitland's "Introduction" to *Political Theories of the Middle Age*, concepts and theories are themselves personified and engaged in warfare and organic development.

In other words, Gierke's real entity concept of corporation was both naturalistic and completely reliant on its opposition to a foreign, Roman, fictitious theory of corporation. Not only were the fellowships he was tracing back to the Middle Age themselves part of the organic development of the German people, his *own concept* of fellowship, given that it was, as Maitland said, "philosophically true," "scientifically sound," and "genuinely German" was *itself* the organic expression of German law itself.⁴⁵⁸ This proclivity to see concepts as the expression of political conflict would play an important role in the way that the "community" concept of the corporation was taken up as the "real entity theory" in Anglophone legal literature.

Gierke Among the Anglos: The Species of the Corporate Community

This section will map the transformations in Maitland's Gierkean concept of corporate community as it traveled through the Anglophone legal literature. The community concept of the corporation, or the "real entity" theory, relied heavily on the way it was historically framed by Maitland and Gierke as being the result of the epic conflict between authentic medieval German community law and the convenient legal fictions of Roman imperialism. With a push from Maitland, Gierke's concept of community mutated in several directions, two of which are important for the legal concept of the corporation today. It was in the Anglophone reception of

the community concept of corporation that “community” became equated with the literal reality of what corporations are, and that the concession theory was sidelined as being a theory of the corporation that took figuration too seriously. In other words, in the Anglophone struggle to work within the dialectical frame provided by Maitland’s translation and introduction of Gierke, theories of the corporation were reduced to the *literal* and the *figurative*. From a contemporary vantage point we might argue that both concepts of the corporation, as well as the frame that divides them, are lexical, but the creative process of differentiating them relies on the assumption that one concept is more literally representative of actual entities than the other – in other words, the action of differentiation is based on the presumption that one definition is “real” while the other is merely “lexical.” The result, of course, are articulations of the concept of corporation with a variety of *doxai* that happen through the activity of enunciating real definitions but that vary considerably in their usages. As the Deleuzian legal theorists mentioned above argue, the legal concepts themselves shift and change in the process of enacting definitions.

The opposition between “reality/fiction” or “literality/figuration” was adapted, however, as the distinction between “nature/artifice.” Part of this adaptation of the reality/fiction conceptual dyad to the nature/artifice dyad was the integration of concepts of the corporation with a *taxonomic* idiom based on biologicistic, psychologistic and structural functionalist explanations of social life. As Anglophone legal theorists took up the community concept of the corporation, the dominant way of describing the joint-stock business corporation, which was entirely consistent with Gierke’s analysis, became as a species of the genus “social group.” This taxonomic pattern of describing a corporation as a *species* deepened the metaphysical implications of the community concept of the corporation. After describing how Gierke’s dialectic between Roman and German law morphed into a discussion of the relationship between reality, fiction, literality,

figurality, I will describe how a taxonomic logic re-made the distinction in terms of “nature/artifice.”

Maitland hedged around Gierke’s organicism in his introduction to *Political Theories of the Middle Age*; subsequent references to Gierke in Anglophone legal theory reflected Maitland’s hesitation to endorse an unequivocally organic vision of breathing, eating, corporate entities with limbs, organs, parents and offspring.⁴⁵⁹ Even Maitland, however, tentatively suggested that the organic realism of Gierke and the Germanists was quite a powerful concept; “Those therefore who have been striving for the 'organic idea' have not been fighting for a mere phrase; and now the term 'Organ' stands in the Civil Code of Germany. That is no small triumph of Realism.”⁴⁶⁰ His hesitation to fully embrace organicism as a doctrine, however, did not prevent Maitland from extrapolating various essences of humanity as the animating principles of corporate/community life. Maitland and many of his readers in Anglophone legal circles were ready to entertain the proposition that corporations possessed a variety of human attributes like will, bodies, guilt, and life.⁴⁶¹ The post-Gierke concept of corporation/community produced a sense of the corporation as a *natural* political actor through the ongoing use of tropes of individuality in theoretical discourses about the corporation. Maitland suggested, for instance, that the possession of a group *will* was precisely the characteristic that separated a mere business partnership from a business corporation:

For example, we are obliged to ask precise questions concerning the inferior limit of group-life. Where does it disappear? That is no easy question, for the German Partnership goes near to disengaging a group-will from the several wills of the several partners; but on the whole we hold, and can give detailed reasons for holding, that in this quarter the line falls between our partnership and our joint-stock company.⁴⁶²

While some might call the attribution of “will” to a collective entity a merely rhetorical gesture, Maitland presented the “Realist” defense of such attributions as part of an effort to:

Give scientific precision and legal operation to thoughts which are in all modern minds and which are always displaying themselves especially in the political field. We might be told to read the leading article in to-day's paper and observe the ideas with which the writer 'operates': the will of the nation, the mind of the legislature, the settled policy of one State, the ambitious designs of another: the praise and blame that are awarded to group-units of all sorts and kinds.⁴⁶³

The tendency to describe corporations using organicist and personified language was not unique to Gierke, but it was certainly entrenched by the adoption of his work.⁴⁶⁴ Much of the rhetorical force of Gierke's organicism dropped out of legal theory under pragmatic American lawyerly pens that were unaccustomed to writing of Spirit, destiny, origins, and organisms. But enough of it was preserved to generate a healthy, vital, willful concept of the joint-stock business corporation that was on the same moral, scientific and legal ground as other entities with group personalities. Maitland's reading of Gierke validated, with a few reservations, an organic, personified and nationalist concept for theorizing the nature of joint-stock corporations, a concept that expressed all the pathos and nostalgia of swelling late-nineteenth century Romantic German nationalism. The community concept of the corporation figured the battle for this conceptually personified identity as co-extensive with the battle for the recognition of the *Volk* itself; the "community" concept of the corporation was given all the rhetorical resources of The People and the philosophical battle over the definition of the concept "corporation" was itself given a political stake as an extension of that dialectical battle in the realm of ideas.

Underlying these defenses of the new "realist" theory of "corporate personality" was the persistent call to defend group personality and group will as something more than or other than a positive *fiction*. The community concept of corporation and its roots in the medieval law of *Genossenschaft* was developed by Gierke in a way that was so tightly bound up with its opposition to the Romanist concession/fiction theory that Anglophone adherents of the

community concept tended to express their loyalty to the new theory through the same dialectical frame. In one of the few accounts of Gierke's importation, Ron Harris points out that this *frame* of the conflict between the real community entity and the fiction/concession concepts of the corporation was a frame that did not exist in the Anglophone legal theory prior to its derivation from Gierke's work: "What was transplanted was also the clash between real entity theory and grant theory. It was not only a single theory that was transplanted but also the notion of bipolar discourse."⁴⁶⁵ While theoretical accounts of the corporation certainly existed in the Anglophone legal literature prior to the importation of Gierke, they were not understood according to a typology, much less the typology of "reality theory" and "fiction theory" that developed out of the importation of Gierke.

The post-importation Anglophone literature was consumed by the question of the distinction between reality and fiction and the many permutations and definitions of both terms. A comment by Arthur Machen is highly representative of the central gesture made by the initial Anglophone proponents of the community concept of the corporation:

A corporation is an entity – not imaginary or fictitious, but real, not artificial, but natural. Its existence is as real as that of an army or of the Church. This is the element of truth in the reality theory of corporate personality which, originating in Germany, has commanded wide acceptance not only in that country but also in France and Italy.⁴⁶⁶

This statement demonstrates the common articulation between *general literary or rhetorical fiction* and the specific *fiction or concession concept of the corporation* that was the necessary Romanist foe of the Gierke/Maitland community concept of corporation. The question was muddled, however, by the fact that any supposed fiction/concession theory of the corporation would basically posit that corporations were entities that were really created by legal grants from the state, and therefore also assume that the entities resulting from the State's concession were

real and not *false*. Acknowledging such nuance while maintaining the distinction between the competing concepts of the corporation through the terms “real entity theory” and “fiction theory” was challenging to say the least. Consider the vigorous and yet obscure efforts of George F. Deiser, which I quote at length for the reader’s entertainment as much as for the way it supports my argument:

The law has been playing with such a fiction for centuries, in the course of which, the fiction, instead of disappearing, as it so conveniently does for the mathematician, has increased in girth and height, and has maintained its ghostly existence, in the face of the anathema of the philosopher and the fiat of the judicial decree. In an evil day the law, like the hospitable Arab, who permitted his camel to shelter his head within the domestic tent, gave shelter to an imaginary person – the *persona ficta*, – then an infant, seemingly of little promise and of precarious tenure of life. It has repaid the hospitality of the law, even as the camel rewarded his master – by making the legal household permanently uncomfortable. The law, awakening to the peril of housing so sturdy an unreality, has smiled uneasily, and said, "You are but a fiction – you do not exist, really," and then, apparently on the principle of Christian Science, has tried to ignore its existence. But the *persona ficta* will not be ignored. He is a corporation, a collective person, a legal fiction, a convenient factor in legal reasoning, but, real or fictitious, he emerges uncannily from every fiat of extinction, much after the fashion of Antaeus who, cast to earth, renewed his vitality.⁴⁶⁷

Deiser, while attempting to capture the strength and persistence of the legal fiction of corporate personhood, generates a strong sense that it is the corporation itself that is persistently *real* apart from and even prior to the law that supposedly generated it. The result is that it is entirely unclear what the difference between “the law” and the “legal fiction of corporate personhood” might be. When combined with a floridly metaphorical defense of organicist language in legal theory, the confusion over what the distinction between the “reality” and the “fiction” actually was provided endless grist for enterprising early nineteenth century legal theorists like Deiser who wanted to try their hand at unravelling the post-Gierke puzzle of “corporate personality.”

The result was that attempts to define “corporation” actually began to also require definitions of “reality,” “fiction,” and iterations of those concepts that were also opposed to one

another in the process: most notably the literal and the figurative or the natural and the artificial.⁴⁶⁸ What remained consistent was that these terms were used to suggest the *differential opposition* between the concepts of the corporation as well as the relation between the law and what was external to it.

The result of efforts to define “reality” and “fiction” in the context of “corporate personality” led to the admission that fictions can be real, but it also had another important effect. This effect was that the “reality” of corporate personality, which was argued to exist prior to the law, also required *recognition* or accurate representation by the law. In this way, early twentieth century discussions over the nature of corporate personality were enmeshed in a broader jurisprudential debate between natural law and positive law.⁴⁶⁹ Adherents to the Maitland/Gierke community concept of the corporation often argued that corporations were not just real but *natural*, and that the task of the law was to literally or accurately represent them rather than artificially fictionalize them.⁴⁷⁰ But this was not an argument that was made expressly in favor of a course of legislative action; it was framed in ontological terms as a statement about the very nature of the law in relation to corporate entities. As a result, the law was increasingly treated as itself a mid-level sociological theory.

This pattern was deepened by the way Maitland and others drew connections between Gierke’s metaphysical organicism and popular scientific theory. Maitland’s introduction to Gierke’s text suggested that Darwin’s investigation into variations in organisms over time was an appropriate model of historical inquiry into the law and its species of group-entity:

For, when all is said, there seems to be a genus of which State and Corporation are species. They seem to be permanently organized groups of men; they seem to be group-I units; we seem to attribute acts and intents, rights and wrongs to these groups, to these units. Let it be allowed that the State is a highly peculiar group-unit; still it may be asked whether we ourselves are not the slaves of a jurist's theory and a little behind the age of

Darwin if between the State and all other groups we fix an immeasurable gulf and ask ourselves no questions about the origin of species.⁴⁷¹

The origins of the genus “community,” of course, are precisely what Gierke’s text sought to describe, although the attribution of a scientific typology was Maitland’s. The classificatory schema for explaining and describing “group-units” or communities was contagious. Much of the Anglophone interest in the community concept of corporation followed this taxonomic logic by identifying joint-stock corporations as one of a set of social groups that the law might or might not recognize. Some of these followers of Maitland, like George Wharton Pepper, restrained themselves to commenting on the need for the law of corporations to take greater heed of economic science’s taxonomy of economic entities.⁴⁷² Others, such as Machen, broadly compared corporations to armies, churches, or schools.⁴⁷³ These encompassing claims about the very nature of human social life were often expressed with a great deal of relish in the philosophical task. One can almost picture a bespectacled Jethro Brown, an early adopter of the Gierkean concept of the corporation in 1905, reclining in his leather wing-backed chair and ponderously pronouncing, “The inquiry is one which leads us on from the subject of corporations to the wider subject of human association in general. Of this wider subject it is necessary to speak for a moment.”⁴⁷⁴ Harold Laski, a legal theorist with one foot in political philosophy, went so far as to boldly assert a link between the nature of joint-stock corporations and the very nature of society itself, writing that: “Men are social beings in the sense that no undertaking can be carried out to any large extent without some kind of social cooperation. Societies in which individuals would act singly do not exist; all societies are based on the fact that their members act together.”⁴⁷⁵ Laski, drawing heavily on Maitland and Gierke, argued that it was crucial that the law embrace sociological perspectives on associative life if it hoped to effectively legislate for joint-stock corporations:

Certainly no lawyer dare neglect the phenomena of group life, even if on occasion he denies a little angrily the need for him to theorize about them. For man is so essentially an associative animal that his nature is largely determined by the relationships thus formed. The churches express his feeling that he has need of religion. His desire for conversation and the newspapers results in the establishment of clubs. The necessity of social organization gave birth to the state. As his commercial enterprise began to annihilate distance, the trading company came into being. It would not, one urges, be over-emphasis to assert that in every sphere of human activity associations of some kind are to be found. They are the very life-breath of the community.⁴⁷⁶

This passage demonstrates the fine line that was walked by pragmatic Anglophone legal theorists as they attempted to embrace organicism by way of the scientific taxonomy of group life. Laski enumerates the various types of human association: churches, clubs, the state, trading company. All of these associations, however, are rooted in man's essential nature as an associative animal; this animal nature essence is the *life-breath* (very near to the *spirit*) of community. The reality of the community concept of corporation is expressed by associating it with what is natural in man's essence, a nature that enables the movement guiding the development of the community concept of corporation.

Describing the corporation as a naturally existing entity was further accomplished by some theorists through explicit calls for a close integration of the law with the burgeoning social sciences. William Martin Geldart, for instance, argued like many others that corporations should be considered within the "the scale of social organisms below the State" such as churches, universities, social clubs, and cities.⁴⁷⁷ For Geldart, however, this consideration was and should be an important result of the responsibility that the law had to take into account a range of disciplinary perspectives, some of which were quite new: "The question is at bottom not one on which law and legal conceptions have the only or the final voice: it is one which law shares with other sciences, political sciences, ethics, psychology, and metaphysics."⁴⁷⁸ This type of reference to interdisciplinary perspectives on the question of the nature of corporation was a gesture to the

newly forming social sciences and a rash of interest during that time-period in theories of group life. While legal theorists rarely cited them directly, many of the post-Gierke “real entity” legal perspectives on the nature of group-life, collective will, and group mentality or personality were deeply resonant with works then circulating by theorists like Herbert Spencer, Sigmund Freud, Max Weber, Émile Durkheim, Gustav Lebon, Gabriel Tarde, and Charles Horton Cooley. There was even a tendency amongst post-Gierke legal theorists (as there is, perhaps, today among some legal scholars) to express a certain level of discomfort with what they saw as the failures of the law to match the more rigorous insights of social science when it came to the complexities of group life. Paul Vinogradoff, for instance, lamented that “attempts to subject matters of conviction and collective mentality to rigid rules of legal continuity are bound to result in irrational compromises.”⁴⁷⁹ Vinogradoff, struggling valiantly against such irrational compromises, drafted taxonomic lists and attempted to mark out criteria for differentiating types of corporate entities.⁴⁸⁰

The result of treating corporations as properly the object of social scientific knowledge allowed the community concept of the corporation to be understood primarily as a *theoretical* concept or “real definition” that accurately represented an existing class of entities. The result was that while pragmatic Anglo legal theorists carefully avoided conceptualizing joint stock limited liability corporations as being “natural” in the sense of being biological organisms, they were still “natural” communities in which popular sovereignty resided prior to its expression in the law. This perspective on community/corporation and popular sovereignty was only possible after the transition from the reality/fiction framing of concepts of the corporation through the literal/figurative dyad and into the natural/artificial dyad. After tracing out the problems with the reality/fiction frame and moving themselves into the natural/artificial frame, most of the

adherents of the Gierkean concept of corporation admitted that artificial state concessions played some role in the development of joint-stock business corporations, but that ultimately these corporations were “natural” phenomena. Jethro Brown, for instance, concluded that this was so because of the way that joint-stock corporations fundamentally “grew” instead of being “made”: “The question then arises, since both 'natural persons' and corporate persons are real, what epithet we should employ to distinguish them. The term 'artificial' is less objectionable than the term 'fictitious,' but it must be rejected because the development of normal group personality is essentially growth not manufacture.”⁴⁸¹ In Brown’s case, as in the case of many others, the dialectical frame set forth by Gierke and Maitland was somewhat unsatisfying but nonetheless highly productive in all of its iterations.

What this genealogy of the importation of the concept of the corporation demonstrates is first, that defining joint-stock business corporations as communities was done by a “real definition” of corporations to articulate them with organicist political *doxai* such as community and will. Second, however, those articulations were expounded upon by contrasting them with purportedly “lexical” or artificial definitions of the corporation. In many ways, this history of the “real” definition of the corporation enacts Schiappa’s worst fears about the potential of real definitions to move toward metaphysical claims. But this is only half the story. The other half is that the “real definition” could be created only by including a sort of “lexical” supplement that it was dissociated against. The result has been the preservation of both the “real” and the “lexical” concepts of the corporation and the narrative of dialectical competition between them that plays out in the most contemporary legal scholarship on “theories of the corporation.” The organicist definition could only be articulated along with its dialectical frame.

What Deleuzian legal theorists such as Lefebvre and Mussawir help to clarify however, is that the articulated sense of the concept of the corporation was produced not just in the content of the definitions but also in the expressive performance of those definitions as part of institutions. The next section explores how the sense of the “real entity” or “community” concept of the corporation was produced through its expression in such institutions as an eventual change.

Legal Periodicals and Gierke’s Importation

The initial importation and development of the community concept of the corporation into Anglo jurisprudence was coterminous with important developments in legal publishing technologies and universities’ understanding of their own missions. These two factors, combined with the general impetus to define corporations as naturally occurring entities, allowed the community concept of the corporation to take on the *sense* that it was part of building scientific knowledge about the world, and that the law was in many ways a branch of such an endeavor. As American universities moved further toward a German model that increasingly prioritized the production of knowledge over pedagogy,⁴⁸² a quasi-sociological theory like the community concept of the corporation was increasingly attractive.

The quasi-sociological sense of corporations discussed in the last section occurred largely through the medium of new legal periodicals like the *Harvard Law Review*, the *American Law Register*, the *Yale Law Review*, the *Columbia Law Review*, and the *English Law Quarterly Review*. Periodicals like this had their genesis in the late nineteenth and early twentieth century during precisely the period during which the community concept of the corporation was coming into focus.⁴⁸³ These periodicals were the current “new media” of the legal profession and the discussion of corporate personality that centrally featured Maitland and Gierke’s variation on the concept of the corporation was one of the hottest topics in their pages. The popularity of

“corporate personality” was fueled by the more frequent circulation of legal periodicals and added to the sense that the Maitland/Gierke community concept of the corporation was the cutting edge of a new breed of “scientific” legal research. The sense was so strong that one scholar asserted: “it is difficult indeed for an American lawyer writing upon the subject of corporations to avoid declaring himself” for or against the community concept of the corporation.⁴⁸⁴

The initial formulations of the real entity concept of the corporation did not take place in such periodicals, but as these periodicals published articles on the topic, part of the sense of the importation resulted from the way it crossed into the new publishing medium. Maitland’s 1900 translation of Gierke was a slim volume published by Cambridge University Press. It was preceded by the less-often cited 1897 treatise on *The Legal Nature of Corporations* by Ernst Freund, published by the University of Chicago Press, a treatise that also drew on Gierke but that provided a more practical and doctrinal approach to the nature of the corporation than Maitland’s legal historical framing.⁴⁸⁵ Both of these texts were books, however. The uptake of the community concept of the corporation occurred as these books were cited in the new circulation paths of law reviews that were freshly enabled by both increasingly inexpensive printing technology and the sponsorship of universities that were fashionably interested in demonstrating the capacities of their faculty to produce knowledge and not just teach students.⁴⁸⁶ Academic journals in general were a central feature of the broader movement to envision the new knowledge-production role of the university and so “universities and learned societies created numerous journals to contain the new scholarship, which could not be absorbed (and in many instances would not have been accepted) by then-existing commercial or learned periodicals.”⁴⁸⁷ The result was that the sense of the real entity concept of the corporation derived from Gierke’s

conservative history of the German metaphysics of community took on the air of a groundbreaking scientific discovery, hot off the presses.

Law reviews strove to appeal not only to scholars but to the harried practitioner of the law attempting to keep up with broad collections of new developments in their area of practice.⁴⁸⁸ A less academic type of periodical called a law report had previously served this purpose, but with the rapid dispersion of the U.S. population resulting from the railroad and the telegraph, the law reports were no longer able to sufficiently condense the piles of detailed news on changes in the law into coherent summaries that were useful.⁴⁸⁹ What was needed was a form of legal writing that was both current and conceptual, up-to-date and of the moment while also summarizing and systematizing. The academic law review helped to fill that niche.

The sense of newness, innovation, and discovery of law reviews was augmented by their editorial policies, their writing styles, and the way they were being taken up by legal communities in the early twentieth century. First, law reviews sponsored by universities were frequently, as now, edited by students rather than faculty.⁴⁹⁰ At the time of their inception, it lent law reviews a sense of being vaguely controversial or edgy; even the faculty at Harvard were not universally in support of what is now thought of as their history-making, path-breaking law review.⁴⁹¹ Part of law reviews' specific association with youth and innovation at the beginning of the twentieth century, was a new concise and conversational style of legal writing that was a significant departure from the more arcane, elaborate and stuffy style of legal treatises.⁴⁹² Very few of the early law review articles on the community concept of the corporation contained substantial case summaries or analysis, especially by today's standards of legal research. They nonetheless benefited from the general impression of *currency* provided by the medium in which they circulated.

All of these factors – the movement of American universities toward a stronger focus on research, the newness in the technology and writing style of law reviews, and the ease with which Gierke’s account of community translated into a sociological theory of the corporation – contributed to the incorporeal event in the legal concept of the corporation. This sense was greatly enhanced by the central, indispensable feature of the new community concept of the corporation discussed above: it was almost always described as being in a struggle with the “fiction/concession” theory of the corporation. It was this conviction that the concepts themselves were part of a dialectical, historical struggle that generated a strong sense that the new theory of the corporation mattered, that it was politically and historically significant, and that the effects of the “debate” between the two versions of the concept of the corporation was itself the expression of a vital encounter between the law and the contemporary state of affairs wrought by burgeoning corporate influence.

The Community Concept of the Corporation: Political Articulations

Over the past century, there has been substantial discussion amongst legal scholars about whether the community concept of the corporation has any consistent or necessary political implications. Recent legal scholarship, as discussed above, has attributed the expansion of corporate rights to the “real entity” or community concept of the corporation, especially in the context of *Citizens United*. But not all legal scholars have been equally confident that any given concept of the corporation has necessary effects on corporate power and politics. In 1925, toward the end of the furor over Gierke’s work, John Dewey famously argued that any given concept of the corporation could be used to various political ends when given the proper spin.⁴⁹³ In 1989, one legal historian even argued that during the early twentieth century the progressive and scientific “real entity theory” of the corporation was propounded by legal theorists who were

sympathetic to efforts to prosecute corporations for torts and crimes, meaning that it facilitated putting limits on the powers of joint-stock corporations.⁴⁹⁴ This perspective, however, is an outlier; most scholars seem to agree that the community concept of the corporation has greatly enhanced corporate power and rights.⁴⁹⁵ Including corporations in the class of entities that can be legally prosecuted also involved describing them in such a way that they could also be granted rights – like the right to buy and sell property, equal protection, due process, and, eventually, free speech. The post-Gierke “real entity theory” of the corporation in turn-of-the-century Anglophone legal theory had important features that organized and validated arguments in favor of the expansion of corporate power and rights.⁴⁹⁶ As discussed above, the two most common and essential characteristics of the articulation of corporation with community are first, that it describes corporations as unified wholes that exhibit characteristics of individual human beings like embodiment and will; and second, that it describes corporations as entities that exist prior to their recognition by the law. There is agreement among many legal scholars that the ascription of these characteristics to corporate entities has substantially facilitated their acquisition of constitutional rights historically reserved for natural human beings⁴⁹⁷. For instance, the landmark 1977 campaign finance case *First National Bank of Boston v. Bellotti* that served as the primary source of precedent in *Citizens United* also describes corporations as “speakers.”⁴⁹⁸ Legal scholars have explored the positive and structuring influence of the community or real entity concept of the corporation in a litany of other cases that expanded corporate rights and powers.⁴⁹⁹

On what basis do these scholars claim that the articulation of corporation with community facilitates the attribution of rights and powers to corporations? There is, of course, a relevant larger question about the relationship between legal theory and the determinations of the courts – but the question is relevant to all discussions about the relationship between jurisprudence and

the exercise of the law. In more specific discussions about corporate rights, there seem to be three general ways of positioning the relationship between the conceptual account of the corporation and its political effects. The first, and perhaps the strongest, is most effectively propounded by Horwitz, who argues that the community concept of the corporation *legitimated* developments in corporate law and power around the turn of the twentieth century.⁵⁰⁰ In this account, legal theory was able to describe what was happening in the common law as a sort of metaphysical necessity, *ex post facto*. For Horwitz and others who understand legal theory as justifying transformations in the common law of corporations, the articulation of corporations with the political *doxai* of community is something very much like what marxists would call an *ideological expression* of changing forms of production and property ownership.

The second way that legal scholars explain the relationship between the community concept of the corporation and the expansion of corporate rights and powers is as a type of *rhetorical correlation*. In this type of explanation, the *doxai* of personification and naturalization are uncovered in cases that expanded corporate rights, but neither is necessarily caused by the other. The rhetorical devices simply accompanied the rights of human beings to the abstract entities, which in turn had political implications for the powers of corporations.

I would like to argue, however, that the community concept of the corporation has political implications because it had been imported within a ready-made oppositional framework that facilitates the expression and simplification of political conflict. Very few of the historians of the legal concept of the corporation attend to the way that the thematic frame of dialectical opposition between the various theories of the corporation was itself the result of the importation of Gierke's community concept of the corporation.⁵⁰¹ One of the few who has noted it, Ron Harris, argues that while there had been theories of the corporation, both implicit and explicit, at

work in Anglophone legal literature and judicial decisions prior to Gierke's importation, explaining them according to a typology and, even more importantly, as being in oppositional struggle with one another, was an important innovation in the sense of the concept of the corporation. Although for Gierke, the central historico-political conflict was between Roman imperial law and the natural German community law of the medieval period, this historical specificity of that conflict largely dropped out in the United States. What remained, as John Dewey noted, was the sense that concepts of the corporation were in competition, and that the conceptual competition had political stakes.⁵⁰²

In other words, the political implications of articulating corporations as a natural community are given by the fact that it is understood dialectically and as part of a framework of *competing* articulations of the nature of corporations. The concept may have little or no determinate political significance, but it has historical and rhetorical political significance that has accrued as it has been opposed to the pro-regulation fiction/artificial concept of the corporation. The political force of the articulation of corporation with the *doxa* of community is only produced by understanding the that articulation as being contingent and embattled. Gierke's organicist *Gennossenschaftstheorie* used a reality/fiction thematic frame for contesting the theory of the corporation, so that frame can be re-introduced to map out the political implications of either articulation of the corporation.

Conclusion

The importation and articulation of Otto von Gierke's "community" concept of the corporation into the Anglophone legal literature around the turn of the twentieth century was important for several reasons: First, it generated a variation in the collective persona of the corporation wherein corporations were conflated with communities and given rights based on

that conflation. Second, the importation consolidated the position that corporations were natural entities that exist prior to the law and that the role of the law was simply to recognize their rights-bearing existence. Third, the importation of the community concept of the corporation introduced an embattled, dialectical frame for interpreting the political significance of theories and concepts of the corporation, which encouraged the practice of understanding these theories as closely related to political issues that corporations were involved in.

This genealogy of how the corporation was articulated with the political *doxai* of community suggests that the specific interplay between conceptual dyads of fiction/reality, figurative/literal, and artificial/natural played an important role in that articulation. These dyads are still present in the contemporary efforts to define the nature of corporations and can provide important rhetorical resources for political actors attempting to disarticulate corporations from their legal rights. Even though the “real entity” definition of the corporation persists, retaining Gierke’s sense of the concept as divided against a “fiction” concept of the corporation enables the continued emphasis on the political stakes of jurisprudential concepts that underwrite the law. The rhetorical gestures that constitute the various concepts of the corporation are not uniquely suited to jurisprudence; they are articulated in political claims that corporations are “tools” of the public good, etc. Additionally, the branch of the movement discussed in the next chapter indicates, *community* is a demotic collective persona that is quite effectively demonstrated by distinguishing the “natural” and the “artificial.” The ongoing conflation of corporation and community that occurs in the legal concept of the corporation means that an effective critical strategy may be to further attempt to disarticulate the corporation from the democratic *doxai* of community.

The “real definition” of the corporation as a naturally existing entity ontologically and logically prior to the law *seems* to be a concept that operates according to a logic of representation. Mapping the contingency of the articulations of the concept, however, suggests that the claim that corporations are natural or real before the law requires the simultaneous introduction of the position that they are not. Similarly, the goal of the genealogy of the articulation of the concept of the corporation presented in this chapter is to produce a sense that the concept of the corporation is really not the same as community. This points toward the regressive demonstration of epistemic sense-making as a technique of critiquing articulations of *doxai*.

Chapter 6

Founding Democratic Law: Community Rights and the Critique of the Corporate State

When branches of the movement against corporate rights enact collective personae as the subject position of the *demos*, their actions are often underwritten by the assumption that the State is an institution that can more fully represent the true *demos*, which is composed of natural human beings. This sense of the democratic potential of the State is quite essential to the more liberal branches of the movement that seek an amendment to the U.S. Constitution. Not all branches of the movement against corporate rights take amending the U.S. Constitution as their goal however. This chapter discusses how the Community Environmental Legal Defense Fund (CELDF) opposes corporate rights as part of a rejection of the possibility that state and national government can ever be as democratic as local politics.

CELDF is “a non-profit, public interest law firm providing free and affordable legal services to communities facing threats to their local environment, local agriculture, the local economy, and quality of life.”⁵⁰³ CELDF is involved with critiquing corporate rights and attempting to block the activities of for-profit corporations in small townships and municipalities. They argue that state and federal level regulatory systems are flawed and can only foster the legitimization of the infliction of corporate harm on local communities. Because of the failures of regulatory systems such as the Environmental Protection Agency, they argue, communities need to re-assert their right to self-govern and legislate against various corporate actions.⁵⁰⁴

CELDF has uneasy ties to other branches of the movement against corporate rights. CELDF has declared that it does not endorse activism that focuses narrowly on “overturning” *Citizens United* or amending the U.S. Constitution.⁵⁰⁵ There are two primary reasons for their refusal to support the strategy of amending the Constitution. The first, they point out, is that corporate influence on politics was a deep and persistent problem prior to *Citizens United*. And second, they argue, amending the Constitution would still do little to foster the practices of community self-governance that are vital to sustain actual democracy. In other words, CELDF takes the general position that processes of national representative governance are not and can never be truly democratic. So, says CELDF, “*we must become revolutionaries, not reformers.*”⁵⁰⁶ Instead of attempting to restore a democratic system that never existed, they argue, we should be trying to build one from the ground up by creating a “*new community civil rights movement*” that does not involve “*asking for permission*” from authorities.⁵⁰⁷ Building such a movement, of course, is precisely what CELDF is claiming to do by facilitating “grassroots organizing that will grow community by community, lawsuit by lawsuit, local law by local law; pressing outwards to eventually change state law and then federal law.”⁵⁰⁸ Rather than amend the U.S. Constitution by invoking the rights of “the people” to do so through their elected representatives, CELDF argues, communities should assert their sovereign right to create the laws that govern their places, activities, and natural environment.

CELDF’s rejection of state and national government as a viable forum for democratic politics, even constitutional politics, mirrors a divide in critical theories of democracy that was discussed in Chapter One. Jacques Rancière, for instance, sees constitutional *language* as providing the *doxai* that enable the enactment of the democratic subject position, but also seems to assume that democracy must act against the modern national state “police order.”⁵⁰⁹ Wendy

Brown draws on Sheldon Wolin to take a similar stance on the relationship between democratic subjects and state institutions.⁵¹⁰ Giorgio Agamben perhaps goes a step further by arguing that ideal political collectivity — which he variously characterizes through the personae of community, singularity, humanity, and others — would involve nothing whatsoever like a State because such politics, “will no longer be a struggle to conquer or to control the state on the part of either new or old social subjects, but rather a struggle between the state and the nonstate (humanity), that is, an irresolvable disjunction between whatever singularities and the state organization.”⁵¹¹ Antonio Negri and Michael Hardt have also spent a great deal of energy forwarding the position that imperial State institutions cannot and should not be the target of political transformation because the modern State can never be fully democratic.⁵¹² Negri and Hardt forward this position in part through a critique of “the people” as the sovereign subject whose authority provides the foundation of the modern State. Instead, they famously argue, the multitude is the collective subject that will generate the events of a new, unruly non-state politics. There are elements of the anti-corporate movement that embrace this perspective in that they seem relatively uninterested in attempting to reform national State institutions, especially the United States federal government. Occupy protestors, for instance, have on occasion voiced a strong critique of corporations and their rights while simultaneously refusing the option of fielding candidates for elected office or making specific legal and policy demands, arguing that demands confer legitimacy on authorities.⁵¹³ The stance of “pure critique,” without demand, has made Occupy an attractive and supportable movement for intellectuals who similarly disavow the democratic potential of State institutions, especially as they are currently configured. As a result, Occupy’s refusal to put faith in current forms of representative government and its alternative aesthetic techniques of demonstration have been well-described.⁵¹⁴

From these perspectives, democracy is an *event* that occurs against or apart from the State. I have argued in previous chapters that such events can be produced through democratic politics that oppose the State *as it is currently configured* by corporate influence without rejecting the modern State form *tout court*. CELDF, however, does turn away from national State politics almost completely as it broadly assumes that amending the U.S. Constitution to deny corporations rights, no matter how many rights, could not plausibly result in a meaningfully more democratic state.

CELDf, however, also works through *the law* and attempts to institutionalize democracy at the level of local politics while codifying a critique of larger and more powerful state institutions that have been corrupted by corporations. This hope that the institution of the law might be an effective tool of democracy seems to be something of a departure from the general rejection of the state articulated by theorists such as Agamben or Hardt and Negri. In fact, the hope that institutionalizing democratic *doxai* in the law could be more democratic suggests a sympathy between CELDF's methods and some of the other theories of democracy discussed in Chapter One. Although proponents of deliberative democracy, for instance, agree that democracy inheres in civil society rather than in the State, for such theorists of the public, democracy can be established in semi-permanent institutions that enable the development and expression of opinion, debate, and identification. Chantal Mouffe holds out a similar hope for semi-permanent democratic institutions, although she theorizes a stronger role for affective relations in the processes of agonistic engagement than deliberative theorists typically posit.⁵¹⁵ Mouffe even goes so far as to criticize post-operaismo theorists such as Hardt and Negri for their willingness to advocate a politics of "exodus" from the State and other ostensibly representative

institutions.⁵¹⁶ Advocates of deliberative democracy and agonism see an important role for the State as a site of reform and change.

CELDF charts a unique democratic path that both rejects the State and attempts to use its tools to found more democratic political collectivity. They seem to chase the possibility that institutions may foster and facilitate the event of democracy, understood as the appearance of the *demos* through doxastic collective personae. The local resolutions, movement genealogies, digital petitions, and critiques of democratic *doxai* discussed in previous chapters strive for a reform and revival of the democratic potential of the national State and other institutions. The hope that political representation can be democratic if it is less corrupted by corporate power and greed animates the goal of amending the Constitution for groups like Move to Amend. The assumption behind such hope is that representative institutions such as universal suffrage and the free press are able to accomplish the task of accurate political representation by clarifying public opinion and enabling meaningful elections.

CELDF's approach to corporate rights, however, is to help local municipalities draft ordinances that deny corporations all legal rights within the town limits while simultaneously asserting the sovereign right of the community to make law within those borders. In what remains of this chapter, I will argue that CELDF's community rights ordinances demonstrate how dissensual democracy, which is both a critique of undemocratic representation and the event of the appearance of the *demos*, might be institutionalized and even codified. CELDF rejects existing federal and state institutions and the way that democratic *doxai* such as "rights" support undemocratic relations through the State. They also, however, attempt to codify direct democratic self-rule by instituting new law based on the rights of communities rather than individuals. CELDF understands democracy as a critical, anti-institutional event while

simultaneously attempting to build democratic institutions. CELDF pursues this goal by simultaneously critiquing and enacting democratic *doxai* such as “rights” and collective personae while attempting to codify their version of those *doxai and* the critique as law.

It is this final element of CELDF’s ordinances that departs profoundly from the approach of other branches of the movement against corporate rights such as Move to Amend: attempting to codify an ongoing critique of corporate rights in the law itself. Amending the U.S. Constitution to deny corporations rights would make codifying such a critique irrelevant; corporations would no longer have such rights. At the local level that CELDF works at, however, the continued presence of corporate rights in state and federal law makes the codification of *critique* also necessary.

This chapter will develop a two-part account of how CELDF’s understanding of democracy incorporates both dissensual critiques of the State and the founding of democratic law. In the first section I will describe how CELDF’s community rights ordinances codify a critique of how the *doxa* of rights has been claimed by corporations through State institutions. In the second section I will describe how CELDF attempts to ground a new democratic law based on the *doxai* of community rights. These two aspects of CELDF’s community rights ordinances ultimately demonstrate the possibility the *doxa* of rights and community can institutionalize dissensual democracy through founding political collectivity. CELDF’s ordinances strive to codify dissensual democracy in a way that enables the perpetual reappearance of the *demos* that critiques corporate rights. This involves codifying democratic *doxai* in ways that position such *doxai* as the ontological ground of political collectivity — but not *as doxai*, instead as true and tangibly existing natural and biological “community.” At the same time, the ordinances *also*

codify the gesture of critiquing the undemocratic way that those same *doxai* protect and consolidate the power of corporations through State institutions.

Community Rights Ordinances: Institutionalizing *Doxai* to Produce Democratic Events

CELDF's primary strategy for enabling stronger democratic self-governance is to help draft and pass rights-based local ordinances.⁵¹⁷ These ordinances are different from the local resolutions discussed in Chapter Two in that the ordinances carry the force of law, while the local resolutions discussed earlier amount to a mode of demonstration or protest carried out in the space of a local government meeting or referendum. The ordinances are laws facilitated by CELDF that assert the rights of local government bodies, including the right to self-govern, right to water, rights of natural communities, rights of ecosystems, civil and political rights, etc. These ordinances are often pursued by local governments as responses to specific problems. Most recently, the primary issue has been the removal of natural gas through hydraulic fracturing techniques (also known as fracking).⁵¹⁸ Additionally, however, CELDF has helped to draft and pass similar ordinances in response to a variety of other issues, including factory farming, toxic waste disposal, oil drilling, hard rock mining, water use, development policy and clean elections.⁵¹⁹ Many of these community rights ordinances have yet to be tested in actual legal battles. They are also expanding their work into the law of other countries — for instance they participated in drafting Ecuador's 2008 constitution, which codifies the rights of nature, the right to food, and the right to “Free, intercultural, inclusive, diverse and participatory communication in all spheres of social interaction” and the right of access to airwaves and information technologies, among other rights. CELDF has also been working with the Australian Earth Laws Alliance to explore different strategies for protecting community rights and the rights of nature in Australian communities. Their approach to “rights” speaks to broader concerns about the

relationship between community citizenship and national citizenship in the context of environmental and ethnic international porousness and seems likely to be increasingly relevant for the ongoing development of legal approaches to environmental protection.

In the US, CELDF has been facilitating the passage of local ordinances asserting communities' rights since 1998.⁵²⁰ Because of the failures of state and national regulatory systems, CELDF argues, communities need to re-assert their right to self-govern and legislate against corporate actions on the local level.⁵²¹ Their move to begin assisting communities to “draft legally binding laws in which they asserted their right to self-govern” came after years of fruitlessly attempting to enforce inadequate state and federal environmental regulations that were too permissive to corporations.⁵²² One of the central problems with existing environmental regulations, they argue, is that they generate a shield whereby corporations cannot be held liable for the damages they inflict on local communities as long as their actions adhere to the letter of the regulatory laws.⁵²³ Additionally, CELDF argues, longstanding corporate constitutional rights guarantee Commerce Clause protections as well as protections based on the First, Fourth, Fifth, Sixth, and Fourteenth Amendments.⁵²⁴ Because of these legal protections, they argue, any successful efforts to more effectively regulate the actions of corporations should bypass state and federal regulatory frameworks and directly confront corporate claims to rights with the sovereignty of local governance. In other words, critiquing corporate rights is central to CELDF's strategies for preventing and abating damage to humans and ecosystems.

In the United States, about 160 of CELDF's community rights ordinances have been passed, primarily in small towns in rural areas, although a few larger municipalities and counties have also passed them, the largest being the City of Pittsburgh.⁵²⁵ Although many of these ordinances have been effective at preventing corporate activities they are designed to stop, some

of the community rights ordinances have yet to be tested in actual legal battles, and some have been overturned in litigation. Others simply fail to pass in popular votes. One of CELDF's opponents called the ordinances "misleading, legally meaningless language,"⁵²⁶ while an industry blog calls CELDF and its allies, "old-time pool hall hustlers, operating without consciences and taking in naive local officials who are led to believe they have previously unimagined powers to overrule every law standing in their way."⁵²⁷

These ordinances do is provide a legal structure that facilitates the event of the appearance of the *demos*, understood expansively as a "community" that includes natural entities as well as the residents of the town. The ordinances institutionalize a sort of foundational claim to an essential political collective that possesses rights, but in such a way that claiming those rights involves critiquing corporate influence on state and federal law. The ordinances, in other words, are democratic mechanism that offers what Rancière would call the subject position of the *demos* through the collective persona of "community" that can be enacted only through a critique of existing power relations.

CELDf provides open online access to its archive of forty to fifty model local ordinances.⁵²⁸ To formulate this analysis, I closely read sixteen of the model ordinances. I selected ordinances from different time periods to get a sense of how they have changed and remained consistent as well as ordinances addressing a variety of public issues. Language that consistently appears in some of the older ordinances is replaced by other types of consistencies in the later documents. In spite of these variations, however, there are certain types of clauses that re-appear in nearly every document. These clauses demonstrate how the performances and critiques of democratic *doxai* in the ordinances enable dissensual democracy and organize an effective relation between democratic events and democratic institutions. There are two types of clauses that reoccur consistently and are significant in how they demonstrate the potential of

democratic *doxai* to operate both as the object of critique and the operational foundation of political collectivity. The first type of clause critiques corporate rights. The second type of clause contains what I call a “statement of sovereignty” that declares the rights of the collective entity passing the ordinance. Together, these two types of clauses illustrate how the *doxai* of rights and the persona of community can be institutionalized in such a way as to enable the performative event of democratic collective subjectivity through critiques of broader and more established state institutions.

Codifying Critiques of Corporations

The critique of corporate rights is a persistent and central feature of the text of the community rights ordinances drafted by CELDF for local governments. This critique is articulated in the ordinances in part through a type of clause that re-appears almost without fail in every ordinance. The clause contains a very explicit critique of the nature, rights, and roles of corporations in the municipality that is passing the ordinance. This type of clause both critiques the doxastic legal concept of the corporation and asserts, as the fundamental law of the community, a new definition of the legal concept of the corporation. To set up this definition, the ordinances often begin with a statement that frames the necessity of revoking or altering corporate legal rights by describing the effects of the doxastic legal concept of the corporation. For instance, an ordinance passed in 2011 by Mountain Lake Park, Maryland, which was designed to effectively regulate the extraction of natural gas through fracking, states:

Meaningful regulatory limitations and prohibitions concerning Marcellus Shale natural gas extraction, along with zoning and land use provisions, are barred because they conflict with certain legal powers claimed by resource extraction corporations. The Mayor and Town Council recognizes that environmental and economic sustainability cannot be achieved if the rights of municipal majorities are routinely overridden by corporate minorities claiming certain legal powers. The Mayor and Town Council also recognizes that sustainability cannot be achieved within a system of preemption which

enables those corporations to use state governments to override local self-government, and which restricts municipalities to only that lawmaking specifically authorized by state government.⁵²⁹

This statement, and others like it in all of the ordinances, specifically critiques the impact of defining corporations as rights-bearing entities and argues that corporate rights are one of the central causes of the town's failure to achieve "environmental and economic sustainability." By describing rights and legal powers as being merely "claimed" by corporations, the statement highlights the contingency and artificiality of such claims as mere *doxa* that has been institutionalized at the level of state and federal government.

Some of the substance of these failures is described in the passage of the ordinance immediately preceding this one, which describes how fracking "violates the rights of residents and neighborhoods" and endangers "their health, safety, and welfare by allowing the deposit of toxins into the air, soil, water, environment, and the bodies of residents within our Town."⁵³⁰ These negative effects of the doxastic legal concept of the corporation, which allows corporations to "claim certain legal powers," are the source of these negative effects.

To that extent, the ordinance goes on in the third section of the "Findings and Intent," the ordinance must be written and enacted such that it "removes certain legal powers from gas extraction corporations operating within Town of Mountain Lake Park, and nullifies state laws, permits, and other authorizations which interfere with the rights secured by this ordinance."⁵³¹ In this way, the route to counter-effectuating the negative effects of the doxastic legal concept of the corporation is to remove the legal powers given to corporate entities by state and federal regulatory and permitting processes.

But how is this counter-effectuating accomplished? In a nutshell, it is accomplished by the fiat of the ordinance itself, which proceeds to re-define the legal collective persona of the

corporation as a matter of law. To begin with, the “Definitions” Article of the ordinance describes several terms, including natural gas, extraction, and town. Included among these is “corporations,” which are defined broadly to include a range of business entities.⁵³² Additionally, the ordinance states “‘Person’ shall mean any natural person.”⁵³³ After declaring the extraction of natural gas to be unlawful, the ordinance then goes on to make statements of prohibition “necessary to secure bill of rights’ protections.”⁵³⁴ There are three full sections, the bulk of the prohibitions, dedicated to critiquing how the *doxa* of rights has been undemocratically appropriated by corporations and redefining corporations as non-rights-bearing entities. These sections declare that,

Corporations engaged in the extraction of natural gas shall not possess the authority or power to enforce State or federal preemptive law against the people of Town of Mountain Lake Park [...]. No permit, license, privilege or charter issued by any State or federal agency, or Board to any person or any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, which would violate the prohibitions of this Ordinance or deprive any Town resident(s), natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the Maryland Constitution, the United States Constitution, or other laws, shall be deemed valid within The Town of Mountain Lake Park.⁵³⁵

In effect, these sections declaratively strip corporations who engage in natural gas extraction of their rights, authority, permits, and licenses. The rights of the community, including the ecosystem, are asserted against the rights of any “limited partnership, limited liability partnership, business trust, or limited liability company” and their representatives.⁵³⁶ Severing “rights” from “corporations” and other legal business entities constitutes a significant shift in the legal definition of the corporation as well as a profound critique of state and federal governmental authority, as I will describe below.

This ordinance, like many others that CELDF has facilitated, attempts to go far beyond merely severing the rights granted to corporate business entities by state and federal judicial

precedent. It additionally attempts to invalidate the very basis for the legal organization of any given corporation itself if that entity engages in natural gas extraction as prohibited by the ordinance. While this type of ordinance has yet to face a rigorous test in state or federal court, its goal is unmistakable: by declaring that “no permit, license, privilege or charter” of anyone who violates the rights of the community in Mountain Lake Park “shall be deemed valid,” the ordinance declares any and all corporate charters themselves to be facially invalid according to the law of the town.⁵³⁷

The implications of such a declaration are not immediately apparent from reading the text of the Mountain Lake Park ordinance. Older ordinances available in CELDF’s archive, however, often spelled out in detail exactly what elements of a corporate charter were objectionable and therefore invalid. The primary target of the critique of the doxastic legal concept of the corporation levied by CELDF and the towns that adopt its ordinances is a critique of corporate limited liability. The difference between a business partnership and a limited liability corporation is that the owners and investors of a limited liability corporation (the type of corporation that is typically referred to by the word “corporation”) cannot be held personally liable for the damages inflicted by the corporation or for the corporation’s debts. This corporate legal form insulates all of the owners and employees of the legal entity from prosecution for wrongs committed by “the corporation.” If the corporate charter and the authority that grants it (for instance, the State of Maryland) are effectively deemed invalid, then such employees and owners would be suddenly liable for the actions of the entity.

This, anyway, seems to be the goal of CELDF and the towns that adopt ordinances based on its models and advice. The goal is illustrated by the ordinance passed by the Tamaqua Borough in Pennsylvania in response to problems cause by the disposal of toxic sewage sludge

within the town limits. The “Findings and Purpose” section of the ordinance explicitly states that part of the problem it seeks to address is that “It is also recognized that limited liability shields prevent financial recovery (and accountability) for damages caused by business entities because limited liability insulates the persons managing the corporation from harms caused by their decisions.”⁵³⁸ In addition to defining the corporation as the Mountain Lake Park ordinance (and nearly all of the others) does, the Tamaqua Borough ordinance contains the following passage in its “Civil Rights Enforcement” section:

Section 12.1: *Any person acting under the authority of a permit issued by the Department of Environmental Protection, any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, who deprives any Borough resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the Pennsylvania Constitution, the United States Constitution, or other laws, shall be liable to the party injured and shall be responsible for payment of compensatory and punitive damages and all costs of litigation, including, without limitation, expert and attorney’s fees. Compensatory and punitive damages paid to remedy the violation of the rights of natural communities and ecosystems shall be paid to Tamaqua Borough for restoration of those natural communities and ecosystems.*⁵³⁹

This section in effect states, like the Mountain Lake Park ordinance described above and nearly all the CELDF ordinances, that permits and charters granted from authorities (such as state and federal governments) that are not the Tamaqua Borough have no legal standing if the persons using those legal tools violate the rights of the Tamaqua community. It goes on, as emphasized in the italicized fragments above, to state clearly and unequivocally that the implication of invalidating those permits and charters is that the persons typically protected by the grant of limited liability that comes with the corporate legal form will instead be personally liable for those damages.

Needless to say, this is an almost a flat-out dissolution on the local level of the authority of state government to charter corporations. Some of the ordinances in CELDF’s archive even go so

far as to declare that those persons who grant permits for environmentally devastating corporate activities can be held liable for the damages resulting from the permitted activities. For instance, the ordinance passed by the Town of Barnstead, New Hampshire declares

Any employee, agent or representative of any State or federal Regulatory Agency, Commission or Board who issues a permit, license, privilege or charter to any person or any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, which would violate the provisions of this Warrant Article or deprive any resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Warrant Article, the New Hampshire Constitution, the United States Constitution, or other laws, shall be liable to the party injured and shall be responsible for payment of compensatory and punitive damages and all costs of litigation, including, without limitation, expert and attorney's fees.⁵⁴⁰

According to this passage, persons employed by the state agency responsible for granting permits to corporate entities for business activities could be sued for damages to ecosystems. This declaration goes far beyond critiquing the attribution of rights to corporations and drives toward questioning the authority and legitimacy of the State itself. Not only does it declare that employees and owners are liable, but agents of the State are not protected from liability for corporate actions. The Barnstead ordinance additionally attempts to undo the rationale for certain types of retaliatory legal action that corporations might take against the town by declaring that “Within the Town of Barnstead, corporate claims to ‘future lost profits’ shall not be considered property interests under the law, and thus, shall not be recoverable by corporations seeking those damages.”⁵⁴¹ The ordinance simultaneously attempts to undo the basis for corporations to bring suit against the town while laying a new legal framework for the extraction of benefits from a variety of actors responsible for environmental, economic, and health effects of the doxastic legal concept of the corporation.

The CELDF ordinances argue that the democratic *doxai* of rights cannot be attributed to corporations; instead, rights are more legitimately held by entities like “communities,” “human beings,” and “nature.” Additionally, the ordinances map how corporate claims to rights-based *doxai* have been codified in state institutions to produce undemocratic relations. These efforts codify a substantive critique within the law itself. This critique extends well past corporations themselves into the processes of governmental regulatory agencies. In doing so, the ordinances critique *doxai* specifically as their institutionalization fails to accurately represent the true, natural subjects of rights while calling into question the legitimacy of the State. Both the CELDF ordinances share the critique levied by the books, petitions, and resolutions in favor of amending the U.S. Constitution in that they all agree that “rights” are democratic *doxa* that has been improperly applied to corporations.

Like political theorists such as Agamben or Hardt and Negri, CELDF differs from the more liberal and national branch of the movement in that it generally rejects the premise that political *doxa* such as rights can *ever* be genuinely democratic at the level of state and national government. But the rejection of this premise does not simply lead CELDF to focus its efforts on local politics. Nor does it lead to a rejection of the *doxa* of rights in general, as it might for post-operaism. As the clauses describe above demonstrate, the rejection of the possibility that state and federal government can ever be democratic leads CELDF to *codify critiques of joint-stock business corporations and the State itself in the law* as the perpetual other of community rights. These critiques of institutionalized democratic *doxai* must be enunciated by communities themselves *as their own law*.

One does not need to claim in rhetorical theoretical terms that institutionalized *doxai* such as “rights” are actually and finally inaccurately applied to corporations or that some *doxai* have

more proper referents than others in order to grasp the rhetorical force and political potential of such a claim. A democratic *performance* of the critique of *doxa* that operates *as if* such a distinction were true enables the production of the event of dissensual democracy. When *doxai* are codified in State institutions, critiques of the representative failures of *doxai* enable the production of a sense that the State itself fails to represent the true and legitimate totality of its subjects. Although these ordinances themselves attempt to codify the same *doxa* of rights with reference to a new class of subjects — communities and natural entities — the ordinances contain a critical mechanism whereby claiming rights must always be *against* established state and corporate entities. A critique of state-based democratic *doxa* is *built into* the codification of democratic self-governance.

Founding Political Community With Rights

CELDF's ordinances are not simply statements of protest (although they are that). They are also *the law itself* in the towns where they are passed. As part of establishing new law that attempts to delegitimize existing State authority, they demonstrate how democratic *doxai* such as rights and collective personae can be institutionalized as part of *founding* a sovereign political entity. The gesture of founding is similar to the *demos* appearing through protest and demonstrations, but rather than being the event of the appearance of the *demos*, the ordinances also an attempt to create a foundational mechanism that will enable the perpetual reappearance of the *demos*. This section will describe how the *doxai* of rights and collective personae operate in the clauses of CELDF's ordinances that assert and enact this foundational political collective.

Personae such as “community” and “the people” have been critiqued by theorists such as Jean-Luc Nancy, Antonio Negri, and Michael Hardt or in rhetorical studies by Maurice Charland as conveying an overly unified and seamless vision of political totality that does not sufficiently

account for difference within political collectives.⁵⁴² As we have seen previously, however, Rancière has a good argument about how such personae, as *doxai*, can be enacted as part of democratic events rather than simply being institutionalized to support undemocratic relations. Rancière argues, along with rhetorical scholars of movements, that collective personae are roles or masks that can be inventionally adopted to produce democratic events and stake collective claims to self-governance.⁵⁴³ Referring to “the community” or “the people” as a unified totality is part of how the ordinances create a mechanism for the diverse constituents specifically included in that totality to stake claims to rights in instances of democratic events.

These ordinances, however, enact such personae in a slightly different way than the civil organizations or protests assumed by Rancière and rhetorical scholars of movements might. Because these ordinances claim to act in and as the law itself that is grounded in sovereign authority, they are not only protests but also enact a sort of “founding claim” to political community. As such, they must negotiate a variation on what I discussed in Chapter One as Rousseau’s paradox of politics — which comes first, a democratic people or the laws that codify democracy?

Bonnie Honig, drawing on Jacques Derrida, approaches Rousseau’s paradox of politics in a way that attends to both the performative and constative dimensions of “founding claims” of political collectives in a way that suggest fruitful ways of thinking about the role of doxastic collective personae in such claims.⁵⁴⁴ She argues that foundational or essentialist political claims (for instance, that sovereignty is rooted in a unified, total, and natural “people”) are not as problematic as they might appear to be on face. For Honig, the foundations of political collectivity are *necessarily* secured by a constative claim about an absolute that grounds that collective.⁵⁴⁵ At the same time she acknowledges that such “founding constatives” are made

powerful and operational by their performative elements, which can always be critically revealed as contingent occlusions of historical processes. To that extent, Honig's argument about the importance of essential or even ontological claims to political collectivity and their performative qualities suggests that even at the level of the law that founds the modern State, such constative claims to unified sovereign political collectivity operate according to the dissensual dynamic of *doxa* discussed in Chapter Four.

Some of CELDF's promotional materials, model ordinances, and educational seminars claim to speak as and for the people. However, *communities* are the entities that CELDF claims to be assisting much of the time. The use of the collective persona of community facilitates one of the central goals of CELDF, which is to legally establish the rights of nature. The collective persona of *community*, unlike *the people*, is flexible enough to encompass a range of living entities beyond human beings. In the CELDF ordinances, the persona of community establishes a synecdochic equivalence between the concept, the names of its instantiations, and a series of additional entities. The ordinances further establish a specific relationship between the Town of X that enunciates the ordinance, the people of the Town of X, and the *community*, which is not co-extensive with the Town of X or the people in it.

The cornerstone of the relationship between these entities is a short passage I call a "statement of sovereignty" that can be found in many of the ordinances, especially the ones that address environmental problems. This passage, which changes remarkable little from ordinance to ordinance, reads as follows⁵⁴⁶:

The Borough of North Plainfield shall be the governing authority responsible to and governed by the residents of the Borough. Use of the "Borough of North Plainfield" municipal corporation by the sovereign people within the Borough's boundaries to make law shall not be construed to limit or surrender the sovereign authority or immunities of the people to a municipal corporation that is subordinate to them in all respects at all

times. The people at all times enjoy and retain an inalienable and inalienable right to self-governance in the community where they reside.

This passage begins by marking out the distinction between the *municipal government* of North Plainfield and the *residents* of North Plainfield – a sensible and unmysterious distinction that is usually understood based on the assumption that the government should synecdochally represent the residents. The next sentence, however, abandons “residents” and takes up “the sovereign people” within “the Borough’s boundaries” and a contradiction begins to take shape along the outlines of Rousseau’s paradox of politics. In the CELDF ordinances, however, the paradox is expressed in terms of territory and place – the “boundaries” of the Borough define the people who are sovereign. This version of the paradox sets up an oscillation between the people and the place as the two entities that mutually define each other and the municipal corporation called “Borough of North Plainfield.” The boundaries of the legal entity “The Borough of North Plainfield” delineate who the sovereign people are, just as the “sovereign people” are the founding source of the legal entity that defines the boundaries. The people and the bounded territory are the two entities that mutually define each other and the municipal corporation also called “Borough of North Plainfield.” The final sentence of the passage resolves the question of which entity is the Borough (the people or the territory?) by conflating people and place in and as *community*. The rights of the people are not located in their status as individual persons, residents, or citizens. The rights are derived from “the community where they reside,” an ontological entity that encompasses both people and bounded territory. By positing an ontological political collective, the community, the ordinances enact a doxastic collective persona to resolve the paradoxical tension at the heart of political founding.

Not only does the turn to the collective persona of “community” resolve the paradox of politics in this instance, the statement of sovereign authority enables the perpetual reassertion of the written law’s protections and rights as being from and for a range of entities that might

potentially be included in “the community” that grounds any given municipality. The ordinances rarely limit themselves to this relatively brief statement of sovereignty. Most of the ordinances include additional, more descriptive statements of the specific rights of entities. For instance, in addition to making statements about the inalienable and fundamental rights of human residents, many of the ordinances outline a series of rights held by other entities as well, including the right to water, the right to exist and flourish, and the right to a sustainable energy future. For instance, in addition to making statements about the inalienable and fundamental rights of residents, the Borough of Wilkesburg ordinance outlines a series of rights held by other entities as well:

(a) *Right to Water*. All residents, natural communities and ecosystems in Wilkesburg possess a fundamental and inalienable right to sustainably access, use, consume, and preserve water drawn from natural water cycles that provide water necessary to sustain life within the Borough.

(b) *Rights of Natural Communities*. Natural communities and ecosystems, including, but not limited to, wetlands, streams, rivers, aquifers, and other water systems, possess inalienable and fundamental rights to exist and flourish within the Borough of Wilkesburg. Residents of the Borough shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems.

(c) *Right to a Sustainable Energy Future*. All residents, natural communities, and ecosystems in Wilkesburg possess a right to a sustainable energy future, comprised of the production and use of energy from renewable fuel sources.⁵⁴⁷

While the wording of the statements of the rights of nature varies somewhat between ordinances, the phrase “natural communities and ecosystems” is found in all of them that assert such civil rights. Some of the ordinances explicitly define “natural communities” as “wildlife, flora, fauna, soil-dwelling and aquatic organisms, as well as humans and human communities that have established sustainable interdependencies within a proliferating and diverse matrix of organisms, within a natural ecosystem.”⁵⁴⁸ While we can imagine that “ecosystem” has a technical definition that could be brought into play, it is almost certain that the term “natural communities” (like the

term “person”) is broad enough to perpetually be re-litigated to include additional entities. This means, in effect, that the ordinances extend the right to “exist and flourish” to a large and undefined class of entities.

The word “natural” modifies “community” in the statements of rights above, but it seems hasty to make too much of this modification in light of the position of “community” in the statements of sovereignty. “Community” is clearly something that residents reside *in* as well as being the *ground* of the enunciation of the rights of a variety of entities. As members of a community, these entities possess fundamental and inalienable rights. By posing *community* as the resolution of the paradox of sovereignty as well as a bearer of rights, the ordinances set up a framework for the indefinite inclusion of a variety of entities in the *we* of the community.

The enactment of the doxastic collective persona of community, however, is still deeply and fundamentally dependent on the critique of the doxastic legal concept of the corporation at the heart of the CELDF ordinances. Most of the ordinances contain a provision whereby the rights enunciated by the ordinance are “self-executing and these rights shall be enforceable against corporations and governmental entities.”⁵⁴⁹ The ordinances presume that the rights they enunciate are enforceable only against certain entities that would violate them, i.e., corporations and their supporters in government. This means that the critiques of how “rights” *doxai* have been institutionalized at the state and federal levels is the inextricable core of the demonstration of community. Much like the demonstrative techniques of the more liberal and national branch of the movement, the CELDF ordinances cannot demonstrate the *demos* without the critique of the institutionalization of democratic *doxai*. The critique of such *doxai* enables the demonstration of other *doxai*, including collective personae, by generating a framework within which such *doxai* can be enacted.

Conclusion

While these ordinances attempt to create mechanisms for the production of democratic events by enacting *doxai* such as rights and collective personae, they also are attempting to substantially and permanently change how those *doxai* are institutionalized in law. There is an acknowledgement in CELDF's approach that democracy requires the event of the appearance of the *demos* through doxastic inventional resources like rights discourse and collective personae. But there is also an awareness in this approach to democracy that it is important to critique undemocratic institutionalizations of *doxai* in the State. The institutions that CELDF would like to see established, however, would not be equally open to all types of entities. At the core of their understanding of democracy is the assumption that democratic rights must be exercised against corporations and larger State entities. Their critique of democratic *doxai* as they are institutionalized at these levels is inextricable from their assertion of the rights of communities, which are inevitably local, place-based entities that are almost romantic expressions of the land. While the ordinances' critique of corporations links them to the rest of the movement against corporate rights, defining the the *demos* as inclusive of natural entities and tied to the immediacy of locality sets CELDF apart from other branches of the movement that continue to hope for the possibility of amending the US national constitution to better represent the people. The full practical environmental consequences of CELDF's community rights ordinances remain to be seen. There are two important conclusions, however, that can be drawn from this analysis.

The first is that *doxa* should be persistently and rigorously conceptualized not simply as a set of inventional resources for democracy OR as the material that hides and produces undemocratic institutions like existing state and federal governments. As with other branches of

the movement against corporate rights, CELDF's ordinances demonstrate how the political *doxa* of rights is both the object of critique as well as an inventional resource for democratic action.

The second conclusion flows from the first. CELDF's ordinances suggest that democratic *doxai* have the potential to be institutionalized or even legally codified in ways that facilitate the ongoing production of dissensual democratic events. CELDF's work demonstrates how democratic *doxai* have dissensual potential not only as part of protest politics and building civic organizations. Collective personae and *doxai* such as rights also have the potential, as Honig argues, to facilitate dissensus at the level of founding claims to institute legitimately democratic law. Although CELDF shares many of the deep critiques of the basis of the modern State that have been developed by theorists such as Agamben and Hardt and Negri, they also envision the potential of the law to found new institutions capable of including a diverse range of entities. Democratic *doxai*, they hope, can be codified in ways that enable the ongoing production of the event of democracy within such institutions. The goal of institutionalizing dissensus echoes Mouffe's hope that continued engagement with the State, rather than a politics of pure exodus, might foster meaningful democracy.

Conclusion

The core question I have addressed in previous chapters is the question of the role of *doxa* in democracy. Democratic *doxai*, including the notions that the people are sovereign, citizens have the right to free speech, and political community exists prior to and justifies the law, are the material that stitches together political discourses and actions into sensible wholes and make them appear natural. For critics of existing power relations, these sensible wholes can be deeply problematic and in need of interruption. Attempts to interrupt the appearance of such *doxai* by making propositional claims about where they come from, what they do, and even what they hide are what I have called *critique*. Such critiques are not exclusive to the realm of intellectual work. They are also found in a variety of types of political activism that attempt to debunk and demythologize taken-for-granted assumptions.

The past decade has seen a shift away from critique in many academic quarters that were previously sympathetic to the project of critical discourse analysis. Bruno Latour's 2004 essay which asks "Has Critique Run Out Of Steam?" captures some factors that have led to the decline of critique as an intellectual method. Critique, Latour argues, needs to pass out of fashion—after all, even his uneducated neighbors are doing it now. At the core of Latour's critique of critique lies a pattern that is shared by many other trend-setting refusals to continue "unmasking" and "debunking" *doxai* such as corporate claims to rights and citizenship. These refusals, like Latour's newest and most improved models of how science really functions, rely on the gesture of opposing *doxai* (in Latour's case, the way critique has become so *common*) with its other, whether that other is epistemic— or perhaps even ontological. Many think it is no longer

necessary or desirable to pick apart *doxai*, their effects, origins, and misrepresentations. Nonetheless, the projects of providing newer, more accurate, more poetic, more truthful, more object-oriented, more vitalist, more relational, and more materially focused research proceeds apace. This research, some of which is quite interesting and important, cannot help but reproduce the gesture that is fundamentally at the heart of the modern scholarly endeavor: it presumes that there is fault with certain *doxai* and performs the gesture of interrupting those *doxai* with its own account.

Given that this is the case, even scholarly projects that seem to disavow gestures of critique seem to attempt to undo *doxai* as part of making their own claims relevant. The gesture of counteracting *doxai* with knowledge is simply the foundation of what modern research is and does. Although I have not attempted the Sisyphean task of developing the parameters of this problem in its full scope, a recognition of what I take to be these *circumstances* of modern research has led me to more specific considerations of how it is relevant to the way democratic *doxai* operate as part of political action and what it means to critique such *doxai*.

This study, of course, is limited specifically to the way that critique can and does operate in the context of democratic politics opposed to corporate legal rights. Although the dynamics of critique may operate in other ways in other contexts, this study can only claim to describe the way that critique operates as part of dissensual democracy in this particular movement. In that specific context, the core problem is that political representation based on the principle of popular sovereignty is always partial, incomplete, and able to be critiqued as being such because of the claims it must make to represent the *demos* fully. Democratic political representation is always a failed attempt to depict the *demos*, a political whole, in all of its variety and internal difference. The only way that depicting the *demos* and the foundations of politics can be

accomplished is incidentally, in and through democratic *doxai* like collective personae. This means that there is always room to critique how such *doxai* fail to establish democratic politics; “rights” for instance, can never be perfectly realized, “the people” can never be fully and perfectly represented, and “equality” can never be achieved. And yet such political *doxai* are enacted as through they were deeply meaningful and capable of structuring political relations and actions. Democratic *doxai* are both used and abused persistently and with great effect; unpacking their failures to support democratic relations and enacting their hopeful political potential are both approaches that structure ongoing political and scholarly projects.

In the more specific terms of corporate influence, there is a divide in politics and scholarship between two projects. First, there is the project of advocating against corporate involvement in politics, against the way that institutionalized democratic *doxai* continue to support corporate power in the State, against the ways that corporations claim the *doxai* of responsible citizenship, against the ways that media are dominated by corporate interests, and against the forms of life that are produced by corporate claims to democratic *doxai*. The second project claims that the *doxai* of citizenship, rights, democratic representation and democratic protest still contain the potential to counteract the worst abuses of corporate power. For this project, democratic *doxai* are thought to have been used positively by social justice movements to enact real and meaningful change and continue to contain the potential to do so.

The efforts of both CELDF and Move to Amend seem to be motivated by the hope that it is possible to create a democratic State — that the *doxai* of democracy could be institutionalized in such a way as to provide for ongoing democratic governance without the need for anti-State protest. Both CELDF and Move to Amend, however, are themselves more akin to protest movements than they are to such an actual institutionalization. In the case of Move to Amend,

the goal of amending the constitution is fairly distant; in the case of CELDF, it is because the local political ordinances they enact are similarly far from having an impact on state and federal government. In this distance between their forms of political protest and the State institutions that are not changed by their efforts lies an important question about what democracy is. Is democracy something that can be established as a government, or is democracy something that necessarily happens in response to the failure of any existing State to be fully democratic? The position that I have generally taken in this study is that democracy is the event of protest against undemocratic relations that have ossified in the State or other undemocratic institutions.

Although this position seems to me to be the most consistently defensible definition of democracy, it does suggest several additional questions that are quite important. If democracy is the act or event of protest against undemocratic institutions such as the State, then it is difficult to advocate for any particular substantive vision of democracy. As I argued in my initial analysis of Rousseau's paradox of politics in Chapter One, without such a substantive vision of the democratic State, the critique of undemocratic relations becomes hollow—contingent and difficult to sustain over any amount of time. Is this, however, a problem? It is my contention that it is not. Democracy has more force and potential as a mechanism of renewal and change than it does as a system of governance. Those who reject the political potential of working through the State miss out on the possibility that various governments could function better than they do (for instance, the State could more effectively curtail the abuses of corporations rather than enabling them). But having a vision of a democratic State operates first and foremost as a formal mechanism for critiquing the way that government always fails to represent those who it claims to represent: the people, the community, the *demos*.

Granted, my definition of democracy is more formal than substantive. By discussing *dissensual* democracy, however, I hope to offer a particular formal version of democracy that is always necessarily engaged with some substantive issue in political and governmental institutions. While democracy may simply be the assertion that the people should rule itself, engaging in epistemic, critical dissent against an existing ruling order requires a specific substantive critique on the policy level. In this work I have offered a formal definition of democracy, but I hope to have made a substantive, critical contribution to providing a sense of what is actually required for greater democracy to occur— a serious reconsideration of the relationship between for-profit corporations and the State.

There are those, of course, who will argue that one or the other of these positions on the *doxai* of democracy provides a better model for ongoing processes of political action and power. Rhetorical studies, with its ecumenical stance toward the manifold processes of persuasion and their historical manifestations, probably tends overall toward embracing more formal positions on democracy defined primarily by whether democratic *doxai* are involved in any given political action. Critical cultural studies, with its attachments to Frankfurt School attitudes, historical materialist explanations, and highly conceptual aesthetic approaches to politics, probably tends overall toward critiquing undemocratic relations based on a vision of democratic collectivity that is presumably realize-able. The problem of my study of political opposition to corporate rights has been that both of these approaches seem compelling and they both seem to capture something vital about the role of democratic *doxai* in politics. Democratic *doxai* justify and occlude undemocratic relations, but they also enable the enactment of genuinely democratic action and collectivity. The “rights” that are claimed by corporations are democratic *doxai* that enable capital to influence and even control the shape of the modern State. Other *doxai*, however,

enable a range of critical, even radical political actions that strive to undo that influence and take back politics and even government for more open and emergent forms of democratic action and collectivity.

One approach to this problem would be to state that the significance and potential of democratic *doxai* depends on the processes and powers that they support and that such evaluations must always be made in specific instances. Democratic *doxai*, we could say, are simply rhetorical mechanisms among others that have little normative significance in themselves. The position that I have offered is not strictly at odds with this basically Sophistic evaluation. I agree that dissensual democracy is more or less a *technē*, a sort of democratic political art that can be effective as part of a larger set of techniques.

One of the great difficulties with Rancière's approach to democracy is that he seems to want to have his cake and eat it too when it comes to the question of whether democracy is formal or substantive. On the one hand, he offers a robust formal definition of democracy as the part that appears as having no part in the ruling order. On the other hand, all of his examples of such a part appearing are drawn from the classes of pre-existing subjects that he clearly thinks have been misrepresented by the ruling order: workers, the poor, etc. Can *anyone* claim the position of the demos, regardless of their qualifications? Can corporations?

This internal inconsistency in Rancière's work may mean that he ultimately must fall by the wayside for dissensual democracy to more fully develop. Dissensus, I have argued, requires *critiques of doxai* as part of a dynamic tension that also centrally involves making epistemic claims. The very act of identifying any particular bit of sense, whether it be good or common, is the epistemic gesture that produces the event of making sense of the doxasticity of some previously solidified sense. *Doxai*, in other words, are only identifiable as such in the context of

a juxtaposition with their others. Although Aristotle may have pioneered the art of building knowledge about *doxai* based on the pretext of discerning the available means of persuasion, the neo-Aristotelian art of rhetorical criticism is itself a performance of the epistemic gesture that contrasts itself with such *doxai*.

My approach to the problem of democratic *doxai* (should they be critiqued or should we appreciate how they enable political action?) has been to describe them as two sides of the same dissensual coin. But beyond that, the gamble of this analysis has been that understanding the substance of that coin as the performed tension between *doxa* and *epistēmē* will help to unpack the way that dissensual democracy can happen across a spectrum of political strategies and discursive norms to unify a movement. Dissensual democracy, as an approach to the problem of the role of *doxai* in democracy, does two things.

First, dissensual democracy advances techniques for both explaining and producing (i.e. articulating) political collectivity. Describing political collectives as events that involve specific techniques for critiquing and demonstrating *doxai* suggests that it is possible to produce such events as well as identify them and describe their parameters. While rhetoricians inclined toward political theory have demonstrated a significant interest in various theories and concepts of political collectivity, many of their descriptions halt at the step of explaining the theoretical rhetoricity of such concepts. Alternatively, some of them elect to explain the sociological processes involved in already existing collectives. Theorizing political collectivity as an event produced by a set of techniques avoids simplifying rhetoric as merely emphasizing the textuality of theory or turning it into a small component of a larger sociology. Dissensual democracy is a *technē*, a practical art that can be both learned and taught as well as explain collective political action. This emphasis is also an important corrective for the way that scholarly theorizations of

“articulation” disregard techniques and methods of articulation as a result of their interest in explaining articulations on an ontological plane.

Second, dissensual democracy approaches the problem of *doxai* in democracy by offering specific prescriptions for how critiques of *doxai* can contribute to the production of democratic political collectivity. By providing interpretive tools for identifying the tension between *doxa* and *epistēmē* in movement critiques, dissensual democracy enables scholarship to more effectively develop critical research projects that contribute to such efforts. If scholarly critique targets the same *doxai* as movements (albeit with different epistemic approaches and even different motivations), it may prevent some of the worst instances of critical scholarship spinning out into the obscure irrelevance of political exodus. Dissensual democratic scholarship, I hope to have shown, need not fully embrace all enactments of democratic *doxai* in order to contribute to substantive political goals set by those outside of academic circles.

APPENDIX: GLOSSARY

Anti-doxastic: The critique of existing relations, entities, meanings, definitions or other structures that are positioned as being fixed, stable, or common. A central dimension of doxasticity that is assumed by anti-doxastic critique is that it defines relations, entities, meanings, etc., as *being stable doxa*.

Articulation: Enunciative act of joining through saying. Articulative joining through saying happens both performatively and propositionally.

Collective Persona(e): Concepts that refers to collective entities, such as “group,” “the government,” “church,” “community,” “working class,” “corporation,” or “the masses.”

Critique: The enactment of the tension between *doxa* and *epistēmē*.

Democracy: The rule of the *demos* by itself.

Demonstration: That which is shown in a saying. Democratic demonstration is the performative event of the appearance of the *demos*.

Demotic Collective Persona(e): Concept(s) such as “the people,” “the community,” or “the movement” referred to by the *we* of an enunciation. For instance, “the people” is the collective persona that refers to the first person plural entity enunciating the preamble to the Constitution of the United States.

Dissensual Democracy: Democratic action that both enacts and critiques democratic doxai. The *demos* is demonstrated by enunciating a critique of democratic doxai through a *we* that refers to a demotic collective persona.

Doxa: Common material available to be enacted while being propositionally or performatively opposed to *epistēmē*. Also, the sense of things produced by such an enactment.

Democratic Doxai: Specific democratic commonplaces, topoi, values, personae, and assumptions that, when enacted, generate a sense that democracy is happening.

Doxastic: Adjectival form of *doxa*.

Epistēmē: Anti-doxastic proposition about the state of affairs that generates a sense of being a valid representation of that state of affairs.

Technique: The boundary between knowledge of an art and executing that art; knowledge that is not of an *object*, but is rather of a *way of doing something* or a *practice* that enables a probable outcome.

ENDNOTES

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⁸¹Habermas, “Three Normative Models of Democracy,” 9.

⁸²Benhabib, “Deliberative Rationality,” 31.

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⁸⁷Brown, “Bad Dreams,” #7.

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⁹²Rancière, *Disagreement*, 59.

⁹³Jean-Luc Nancy, *The Inoperative Community* (Minneapolis: University of Minnesota Press, 1991).

⁹⁴Rancière, *Disagreement*, 58. Original emphasis.

⁹⁵In this way, Rancière's theory of dissensual democracy is much like Ernesto Laclau's theory of populism. *On Populist Reason* (New York: Verso, 2005).

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⁹⁷Rancière, *Dissensus*, 27.

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¹⁰²John Dewey, *The Public and Its Problems* (Chicago: Swallow Press, 1954).

¹⁰³Brown, "We Are All Democrats Now..." 56-7.

¹⁰⁴Wendy Brown isolates religion and capital as the most crucial social forces that stymie popular sovereignty in *Walled States, Waning Sovereignty* (New York: Zone Books, 2010).

¹⁰⁵Brown, "We Are All Democrats Now..." 53.

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¹⁰⁷Mouffe, *The Democratic Paradox*, 13.

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- ¹¹³Mouffe, *The Democratic Paradox*, 22.
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- ¹¹⁵Megan Foley, "Voicing Terri Schiavo: Prosopopeic Citizenship in the Democratic Aporia Between Sovereignty and Biopower," *Communication and Critical/Cultural Studies* 7, no. 4 (2010): 381-400.
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¹³⁸Christian O. Lundberg, *Lacan in Public: Psychoanalysis and the Science of Rhetoric* (Tuscaloosa: University of Alabama Press, 2012), 105-6.

¹³⁹Rancière, *Disagreement*, 18.

¹⁴⁰Rancière, *Disagreement*, 58. Original emphasis.

¹⁴¹Rancière, *Disagreement*, 36.

¹⁴²Rancière, *Disagreement*, 37.

¹⁴³Rancière, *Disagreement*, 87.

¹⁴⁴Rancière, *Disagreement*, 87-8.

¹⁴⁵Ivie, “Democratic Dissent,” 277.

¹⁴⁶Ritivoi, 50.

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¹⁴⁸Rancière, *Dissensus*, 27.

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¹⁵⁰The relationship between epistemic and aesthetic novelty in doxa is a complicated one with a long history that is dramatized quite vividly by differences within the Frankfurt School on the relationship between ideology, reason and art. The question in Rancière’s work is a difficult one that I address more fully in Chapter Four where I specifically consider Rancière’s concept of “sense” and its relationship to knowledge.

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¹⁵⁶Bosteels, "Archipolitics, Parapolitics, Metapolitics."

¹⁵⁷Mucklebauer, *The Future of Invention*; Gilles Deleuze and Felix Guattari, *What is Philosophy?*, trans. Hugh Tomlinson and Graham Burchell (New York: Columbia University Press, 1994).

¹⁵⁸Mucklebauer, *The Future of Invention*.

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³⁰⁹Biesecker, “Whither Ideology,” 448.

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³¹⁷POCLAD, *Defying Corporations, Defining Democracy: A Book of History and Strategy*, ed. Dean Ritz (New York: Apex, 2001), 5, 308.

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³¹⁹Richard L. Grossman, “The WTO, The U.S. Constitution, and Self-Government,” *Defying Corporations, Defining Democracy: A Book of History and Strategy*, ed. Dean Ritz (New York: Apex, 2001), 149.

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- ³²⁹Estes, *Fight the Corpocracy*, Section I.
- ³³⁰Estes, *Fight the Corpocracy*, T-16.
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- ³³²Clements, *Corporations Are Not People*, 181.
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- ³³⁴Drutman and Cray, *The People’s Business*, 318-27.

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³³⁶Mouffe, *Agonistics*.

³³⁷Hartmann, *Unequal Protection*, 317, 292.

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⁴⁵⁹George Wharton Pepper, "A Brief Introduction to the Study of the Law of Association," *The American Law Register* 49 (May 1901): 255-69; Bryant Smith, "Legal Personality," *Yale Law Journal* 37, no. 3 (Jan. 1928): 283-99; George F. Deiser, "The Juristic Person I," *University of Pennsylvania Law Review and American Law Register* 57 (1908-9): 131-42; George F. Deiser, "The Juristic Person II," *University of Pennsylvania Law Review and American Law Register* 57 (1908-9): 216-35; George F. Deiser, "The Juristic Person III," *University of Pennsylvania Law Review and American Law Register* 57 (1908-9): 300-14.

⁴⁶⁰Maitland, "Translator's Introduction," xl.

⁴⁶¹W. M. Geldart, "Legal Personality," *Law Quarterly Review* 27 (1911): 90-108; Harold J. Laski, "The Personality of Associations," *Harvard Law Review* 29 (1915-6): 404-26; Frederick Pollock, "Has the Common Law Received the Fiction Theory of Corporations?" *Law Quarterly Review* 27 (1911): 219-35; Paul Vinogradoff, "Juridical Persons," *Columbia Law Review* 24 (1924): 594-604.

⁴⁶²Maitland, "Translator's Introduction," Xli.

⁴⁶³Maitland, "Translator's Introduction," XI.

⁴⁶⁴Harris, "The Transplantation of the Legal Discourse on Corporate Personality Theories."

⁴⁶⁵Maitland, "Translator's Introduction," 8.

⁴⁶⁶Machen, "Corporate Personality," 262.

⁴⁶⁷Deiser, "The Juristic Person I," 131-2.

⁴⁶⁸George F. Canfield, "The Scope and Limits of the Corporate Entity Theory," *Columbia Law Review* 17 (1917): 128-43; John P. Davis, "The Nature of Corporations," *Political Science Quarterly* 12, no. 2 (Jun. 1897): 273-94; Bryant Smith, "Legal Personality," *Yale Law Journal* 37, no. 3 (Jan. 1928): 283-99; Dwight Arven Jones, "A Corporation as 'A Distinct Entity'." *Counsellor* 2 (1892-3): 78-81; Deiser, "The Juristic Person I"; Machen, "Corporate Personality"; Vinogradoff, "Juridical Persons"; Geldart, "Legal Personality"; Pollock, "Has the Common Law Received the Fiction Theory"; Pepper, "A Brief Introduction."

⁴⁶⁹Barker, "Translator's Introduction."

⁴⁷⁰For instance, Laski, "The Personality of Associations."

⁴⁷¹Maitland, "Translator's Introduction," ix.

⁴⁷²Pepper, "A Brief Introduction."

⁴⁷³Machen, "Corporate Personality."

⁴⁷⁴W. Jethro Brown, "The Personality of the Corporation and the State." *Law Quarterly Review* 21 (1905): 368.

⁴⁷⁵Laski, "The Personality of Associations," 594.

⁴⁷⁶Laski, "The Personality of Associations," 404.

⁴⁷⁷Geldart, "Legal Personality," 98.

⁴⁷⁸Geldart, "Legal Personality," 94.

⁴⁷⁹Vinogradoff, "Juridical Persons," 599.

⁴⁸⁰Vinogradoff, "Juridical Persons," 604.

⁴⁸¹Brown, "The Personality of the Corporation," 374.

⁴⁸²Bernard J. Hibbits, "Last Writes? Reassessing the Law Review in the Age of Cyberspace," *New York University Law Review* 71 (1996): 615-88.

⁴⁸³Michael I. Swygert and Jon W. Bruce, "The Historical Origins, Founding, and Early Development of Student-Edited Law Reviews," *Hastings Law Journal* 36 (1984-5): 739-91.

⁴⁸⁴Machen, "Corporate Personality," 253.

⁴⁸⁵Ernst Freund, *The Legal Nature of Corporations* (Chicago: University of Chicago Press, 1897). Ron Harris argues quite persuasively that because Freund was so much Maitland's junior, the child of immigrants, and not centrally ensconced in the field of corporate legal history, his reading of Gierke was not nearly as influential as Maitland's.

⁴⁸⁶Hibbits, "Last Writes?"

⁴⁸⁷Hibbits, "Last Writes?" 1.11.

⁴⁸⁸Swygert and Bruce, "The Historical Origins."

⁴⁸⁹Swygert and Bruce, "The Historical Origins."

⁴⁹⁰Swygert and Bruce, "The Historical Origins."

⁴⁹¹Swygert and Bruce, "The Historical Origins."

⁴⁹²Swygert and Bruce, "The Historical Origins."

⁴⁹³Dewey, "The Historic Background of Corporate Legal Personality."

⁴⁹⁴Hager, "Bodies Politic."

⁴⁹⁵Horwitz, "Santa Clara Revisited."

⁴⁹⁶Horwitz, "Santa Clara Revisited," Coates, "The Scope and Limits of Corporate Entity Theory."

⁴⁹⁷For instance, Horwitz, "Santa Clara Revisited," Schane, "The Corporation is a Person," Graver, "Personal Bodies: A Corporeal Theory of Corporate Personhood," Phillips, "Reappraising the Real Entity Theory of the Corporation," William Quigley, "Catholic Social Thought and the Amoralism of Large Corporations: Time to Abolish Corporate Personhood," *Loyola Journal of Public and International Law* 5 (2003-4) 109-34.

⁴⁹⁸*First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978).

⁴⁹⁹Daniel J.H. Greenwood, "Essential Speech: Why Corporate Speech is Not Free," *Iowa Law Review* 83 (1997-8): 995-1070. Quigley, "Catholic Social Thought and the Amorality of Large Corporations," Graver, "Personal Bodies: A Corporeal Theory of Corporate Personhood," Coates, "State Takeover Statutes and Corporate Theory," William M. Varias, "Property or Social Entity: Revisiting the Business Corporation," *Philippine Law Journal* 84 (2009): 369-420; Gregory A. Mark, "The Personification of the Business Corporation in American Law," *Chicago Law Review* 54 (1987): 1441-83.

⁵⁰⁰Horwitz, "Santa Clara Revisited."

⁵⁰¹Harris, "The Transplantation."

⁵⁰²Dewey, "The Historic Background of Corporate Legal Personality."

⁵⁰³"About Us," *Community Environmental Legal Defense Fund*, accessed Jan. 8, 2013, <http://www.celdf.org/about-us>.

⁵⁰⁴CELDF, "About Us."

⁵⁰⁵"Citizens United," *Community Environmental Legal Defense Fund*, accessed Jan. 8, 2013, <http://www.celdf.org/citizens-united>.

⁵⁰⁶"Statement on Efforts to Amend the U.S. Constitution following *Citizens United*," *Community Environmental Legal Defense Fund*, Jan. 1012, accessed Dec. 17, 2012, <http://www.celdf.org/downloads/CELDF%20CITIZENS%20UNITED%20STATEMENT%20JANUARY%2017%202012.pdf>. Italics original.

⁵⁰⁷CELDF, "Statement on Efforts to Amend." Italics original.

⁵⁰⁸CELDF, "Statement on Efforts to Amend."

⁵⁰⁹Jacques Rancière, *Disagreement: Politics and Philosophy*, trans. Julie Rose (Minneapolis: University of Minnesota Press, 1999).

⁵¹⁰Wendy Brown, "We Are All Democrats Now..." *Democracy in What State?* (New York: Columbia University Press, 2011), 44-57; Wendy Brown, "Democracy and Bad Dreams," *Theory & Event* 10, no. 1 (2007).

⁵¹¹Giorgio Agamben, *Means Without Ends: Notes on Politics*, trans. Vincenzo Binetti and Cesare Casarino (Minneapolis: University of Minnesota Press, 2000), 87.

⁵¹²Michael Hardt and Antonio Negri, *Multitude: War and Democracy in the Age of Empire* (New York: The Penguin Press, 2004).

⁵¹³Todd Gitlin, *Occupy Nation: The Roots, The Spirit, and the Promise of Occupy Wall Street* (New York: Harper Collins, 2012), 110.

⁵¹⁴See, for instance Gitlin, *Occupy Nation*; Manuel Castells, *Networks of Outrage and Hope: Social Movements in the Internet Age* (New Jersey: John Wiley and Sons, 2012); Kevin M. DeLuca, Sean Lawson, and Ye Sun, "Occupy Wall Street on the Public Screens of Social Media: The Many Framings of the Birth of a Protest Movement," *Communication, Culture, and Critique* 5 (2012): 483–509.

⁵¹⁵Chantal Mouffe, *Agonistics: Thinking the World Politically* (New York: Verso, 2013).

⁵¹⁶Mouffe, *Agonistics*, 69.

⁵¹⁷"Ordinances," *Community Environmental Legal Defense Fund*, accessed Jan. 8, 2013, <http://www.celdf.org/section.php?id=39>.

⁵¹⁸CELDF, "Ordinances."

⁵¹⁹"Ordinance Archive," *Community Environmental Legal Defense Fund*, accessed Jan. 8, 2013, <http://www.celdf.org/ordinance-archive?preview=1&cache=0>.

⁵²⁰"History," *Community Environmental Legal Defense Fund*, accessed Dec. 17, 2012, <http://www.celdf.org/section.php?id=146>.

⁵²¹CELDF, "History."

⁵²²CELDF, "History."

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⁵²⁴"Corporate Rights," *Community Environmental Legal Defense Fund*, accessed Dec. 17, 2012, <http://www.celdf.org/section.php?id=41>.

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⁵²⁸“Ordinances,” *CELDF*, accessed Dec. 19, 2012, <http://www.celdf.org/section.php?id=39>.

⁵²⁹Town of Mountain Lake Park, “Natural Gas Extraction Ordinance, Ordinance No. 2011-01,” *Community Environmental Legal Defense Fund*, accessed Dec. 19, 2012, http://www.celdf.org/downloads/Ordinance-Mt_1.pdf, 2.

⁵³⁰Mountain Lake Park, 2.

⁵³¹Mountain Lake Park, 2.

⁵³²Mountain Lake Park, 3.

⁵³³Mountain Lake Park, 3.

⁵³⁴Mountain Lake Park, 4.

⁵³⁵Mountain Lake Park, 4-5.

⁵³⁶Mountain Lake Park, 3.

⁵³⁷Mountain Lake Park, 5.

⁵³⁸Tamaqua Borough, “Tamaqua Borough Sewage Sludge Ordinance,” *Community Environmental Legal Defense Fund*, accessed Dec. 19, 2012, <http://www.celdf.org/article.php?id=440>.

⁵³⁹Tamaqua Borough, italics added.

⁵⁴⁰Town of Barnstead, “Barnstead Water Rights and Local Self-Government Ordinance,” *Community Environmental Legal Defense Fund*, accessed Dec. 19, 2012, <http://www.celdf.org/article.php?id=542>, italics added.

⁵⁴¹Town of Barnstead.

⁵⁴²Jean-Luc Nancy, *The Inoperative Community*. Minneapolis: University of Minnesota Press, 1991; Hardt and Negri, *Multitude*; Maurice Charland, “Constitutive Rhetoric: The Case of the *Peuple Québécois*,” *Quarterly Journal of Speech* 73, no. 2 (1987): 133-50.

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