Between Equal Rights: Rhetorical Discernment in the Era of Climate Conflict

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Sagebrush Rebels and Water Protectors

At first glance, two land occupations that commanded national attention in 2016 could not seem to be more different. In the first, a small group of white armed militiamen claimed dominion over Oregon's Malheur National Wildlife Refuge in a push for the reassignment of public lands to state and, ultimately, private control. Notwithstanding their cowboy hats and claims that federal management of Malheur threatened their way of life, the occupiers' ties to the region and to ranching were tenuous; leader Ammon Bundy, for instance, had most recently run a car service over a thousand miles away in Tempe, Arizona. Despite their calls for "good men and women" to "be part of assisting the people in claiming & using their lands and resources" (Ammon Bundy, "Calling"), their numbers on the reservation did not grow much beyond two dozen (Wiles; Wiles and Thompson). Nevertheless, the militiamen drew daily and even hourly mainstream news coverage, with the *New York Times* filing its first story on the second of the occupation's 41 days and its first page-one story on the third (Stack; Johnson and Healy).

In the second occupation, members of the Standing Rock Sioux Tribe established throughout the Spring and Summer of 2016 what they called spiritual camps along a section of the Missouri River in North Dakota. Their aim was to monitor, then halt the extension of the Dakota Access Pipeline (DAPL) intended to transport crude oil across four states, a pathway that included sites sacred to the Sioux and a water basin critical for the entire region. Mainstream media at first ignored the stand-off between, on the one side, Dakota Access and Energy Transfer Partners and, on the other, Standing Rock's

"water protectors" and what was growing into a mass #NoDAPL movement. The *New York Times*, for example, did not file its first story—on page 9 of the print edition—until late August when pipeline builders filed suit against seven Standing Rock tribal leaders for their continuing peaceful blockade (Healy; see also Archambault). Yet with tribal, social media, and alternative news networks broadcasting the message of "Mni Wiconi—Water Is Life," thousands of Indigenous peoples filled the camps, joined by hundreds of environmental, racial justice, progressive labor, and other activists (Hardin and Askew; Schandort and Karaztogianni). By mid-autumn, pipeline progress had stalled, and arresting images—National Guard troops razing sweat lodges, private security forces unleashing snarling guard dogs, people fired on with rubber bullets and bombarded with water cannons—garnered national attention and brought international censure (see, for instance, Berak). In December, when 2,000 U.S. military veterans arrived at Standing Rock for a "forgiveness ceremony," the Department of the Army announced it would not allow pipeline drilling beneath the Missouri. At the ceremony, standing over kneeling and penitent veterans, Chief Leonard Crow Dog proclaimed, "We do not own the land. The land owns us" (Amatulli).

These two occupations command our attention not just for their points of contrast but also for what they share in common. Both mark chapters in a long-running history of U.S. settler-colonialism, indigenous dispossession, federal land acquisition and management, and contestation over the very ideas of land rights and ownership in the West. Both occupations also take place under contemporary political-economic and ecological conditions. Those conditions include a mounting crisis in neoliberalism and its favored solutions of austerity cuts, privatization, and a scorched-earth approach to resource extraction, all delivered through sharply anti-government and charged racialized frames and also in the nationalist terms of "American jobs" and "U.S. energy independence." In the rhetorical framing of Malheur, political geographer Carolyn Gallaher argues that "the government becomes the province of *takers* (environmentalists, the poor, city dwellers) instead of makers (ranchers)." Such framing, according to Gallaher, reinforces the "often unspoken notion that white America is under siege from minority others" (300-1, emphasis in original). *Makers* versus *takers* or *jobs* versus the *environment* also frames the struggle over oil and gas pipelines, with labor officials and local governments lining up with corporations like Energy Transfer Partners

despite the short-term and dangerous conditions of pipeline employment and the social havoc created by their temporary boomtowns (Kahle; "Rank-and-File"). Both occupations are also linked to larger and ongoing movements: the privatization and extraction-promoting Land Transfer and War on Coal movements that are buoyed by broad support from prominent conservative politicians; Canada's ecology- and human rights-focused Idle No More movement and other globally networked Indigenous peoples' struggles. In sum, the occupations mark opposed responses to the same neoliberal agenda, with climate change and resource scarcity raising the stakes on the question of whether capital accumulation can be sustained without sacrificing the planet (Eisenberg; see also Kahle and "Rank-and-File").

In this essay, we don't take up the tales of these two occupations as movement participants or eye-witnesses but instead as members of the mass audience whose attention both movements hailed and whose support both movements sought to enlist. We also take up these two occupations as teachers of public writing and rhetoric concerned that, as we have considered elsewhere (Scott and Welch), the neo-Aristotelian textual analysis and invitational or conciliatory rhetorics favored by our field don't provide students with sufficient tools for making sense of embodied protest and for tracing their material relations, histories, and consequences. Malheur and Standing Rock were among the topics of interest that emerged in Tony's Spring 2017 undergraduate class in rhetoric and ethics, where some students' skepticism about the relevance of argument-based rhetorical education, the politics of rhetorical listening, and the conventional procedures and even continued viability of liberal democracy in this historical moment led to the question, "What is the value of rhetorical ethics?"

Our concern is that theory and curricula in composition and rhetoric have not substantially acknowledged and addressed such skepticism. Instead, curricular philosophies still presume the existence of forums in which arguments made by people who don't have access and authority within exclusive corridors of political-economic power can nonetheless be consequential—if only they assume an effective form. In a recent *College English* essay, John Duffy touches upon the limits of this presumption, acknowledging that "certain moral and social problems may be beyond the capacities of rational argument to repair" and suggesting that attention might be paid "to genres and mediums that transcend rational argument, whether narrative, poetry,

music, painting, dance, or others" (246). Duffy's recognition of problems beyond the reparative capacities of the essayistic argument is important and also widely shared among environmental scientists and policymakers who recognize that "progressives cannot win this epic struggle [for the planet's future] with facts and figures alone" (Sivas 15). But Duffy's list of possible modes beyond the evidenced-based essay does not account for the modes of collective and mass movements; his formulation further suggests that non-discursive protest forms are *irrational* or at least *extra-rational*. When *rational* and *irrational* rhetoric are categorically cleaved and isolated from the socio-material environments that animate arguments, emotional appeals can easily (if unintentionally) appear subordinate to the rational. When we elide the qualitative conditions of uptake—the complicated ways that people make purposeful meaning of what they see and experience in actual socio-material environments—we miss the rational underpinnings and the clash of competing and irreconcilable rights in key rhetorical events like Malheur and Standing Rock.

Our primary aim for this essay, then, is to explore how an historical materialist approach, such as that exemplified in the depth hermeneutics of John Thompson, can take us beyond neo-Aristotelian formal analysis into far-ranging social and historical investigation to better grasp the "particular circumstances" and "relations of domination" in which a rhetorical event and its (not at all extra-rational) arguments are produced, circulated, and acted upon (Thompson 307). In particular we'll investigate how the arguments of Malheur and Standing Rock arrive, as Thompson would say, *pre-interpreted* as a choice between defending the rights of private property versus defending the rights of "the commons." We'll further consider the *reinterpretation* (Thompson 22, 290) that becomes possible when we engage with decolonial and Marxist critiques of the foundational assumption of U.S. constitutionality, which holds that public lands and public rights must be construed and managed *in relation to* private property and private enterprise: such management often mitigates but never directly challenges the imperative of capital accumulation. Because depth interpretation also brings us to the very kind of seemingly unresolvable moral and social problem that Duffy flags, and because we agree with Duffy that our courses need to do more than provide critical tools to "unmask, interrogate, distance, and destabilize" (244), we also want to turn near the end of this essay to the potential guidance of historical materialist or Marxist ethics.[1] Such an

approach is neither idealist (sermonizing about the world as we would have it) nor determinist (resigned to the world as we find it). It is instead concerned with the *discrepancies* between, on the one hand, the moral ideas in which ethical rhetorical judgments are often grounded and, on the other, the actual conditions in which social-justice struggle takes place.

In a liberal democracy, for instance, we find the foundational discrepancy between the *ideas* of equality and freedom and the *realities* of a class-based society where the social relations and institutions necessary to promote capital accumulation produce oppression and inequality. Faced with this discrepancy, a Marxist approach doesn't eschew the language of "rights" and "injustice" as impossibilities under capitalism. It does recognize, however, that the *freedoms of* private property—"The right to … enjoy one's property and to dispose of it at one's discretion" with no regard for others (Marx, "On the Jewish Question")—conflicts with social and environmental needs, creating a mass need for, as philosopher Sean Sayers puts it, "freedom *from* property" (156, emphasis added). Far from abjuring issues of morality and ethics, physicist and political theorist Wadood Hamad explains that Marxist ethics engages seriously with moral language as a site of struggle: "the means by which human beings articulate and legitimate *either* their struggle to preserve the existing order … *or* overcome the existing order, hence negate and undermine the dominant values, beliefs and sensibilities in culture and society" (130).

A Marxist ethics is thus concerned not only with the depth contextual analysis needed for judgment making; it is further concerned with narrowing the gap between the critical tasks of ethical discernment and the imperative of ethical action-in-the-world. Through depth-hermeneutic analytic tools and materialist ethical perspectives, we and our students might better discern the social, economic, and political orders that participants in a pitched social struggle seek to upend or reinforce, *and* we and our students might evaluate our own commitments and terms of participation. To flesh out this thesis about the clarity a depth-hermeneutic and Marxist ethical approach could bring to discernment and action, we turn first to the cases of Malheur and Standing Rock and then to Tony's class in rhetoric and ethics where he and his students grappled with complexities of judgment and the efficacy of participation.

Constitutional Claims at Malheur

During the Malheur occupation, Ryan Bundy, brother of Ammon Bundy, told a reporter that the occupiers sought to force the government to "relinquish control" and "shut down forever" the wildlife refuge so that "ranchers that have been kicked out of the area" can "reclaim their land." In his formulation, the armed occupation was not lawless or unruly; to the contrary, he cast the militia's aim as a restoration of constitutional law and order: "What we are doing is not rebellious. What we're doing is in accordance with the Constitution, which is the supreme law of the land" (Wolf). In this political narrative, the federal government has stolen land from small freeholders and unconstitutionally usurped states' authority. About the Northern Paiutes' historic claims to the land, both Bundys were dismissive. "… Native Americans had the claim to the land, but they lost that claim," Ryan Bundy told a reporter (Jackson), while in the family blog Ammon Bundy disdained the 1908 designation of a portion of Malheur for the Paiutes as "an 'Indian reservation' (without Indians)" (Ammon Bundy, "Hammond Family").

From this immediate "text" of the occupation, we might conclude that the Bundys and their followers stood on shaky legal, social, and rhetorical ground. The occupiers had no clear ties to Harney County (see Chokshi and Marimar; Feuer, Alan) and lacked local support beyond their pre-occupation protests on behalf of two local ranchers, Dwight and Steve Hammond, jailed for setting fires on federal lands. That the occupiers descended on Malheur from elsewhere, using the jailing of the Hammond brothers as an opportunity to challenge the constitutional principle of federal ownership of lands, created a contradiction in, and limited ethos for, their seizure of the refuge on behalf of locals. The occupiers' claims largely lacked warrants from regional historians and geographers, who pointed out that Oregon's high desert country had never offered hospitable conditions needed to sustain small ranches. The occupiers' claims lacked legal backing as well, courts having steadfastly reaffirmed the federal government's authority to acquire and manage land for the public good. The occupiers also failed to garner mass sympathy; they were instead marginalized as "extremists" by the mainstream press and mocked on Twitter From as #VanillaIsis, #Ya'llQueda, and #YokelHaram. From the immediate text, we might conclude that the occupation failed, its arguments rejected, with the shooting death of one militant,

the arrests of five others away from the refuge, and the surrender of remaining occupiers.

It would be a mistake, however, to see the militia's explicit anti-government rhetoric and its white supremacist discourse (denying the Northern Paiute a place among "we the People" and participating in the racialized divide between *makers* and *takers*) as imported from outside the region and finding no local and national traction. Malheur is the most widely publicized in a string of armed occupations by conservative groups who are loosely identified with the patriot movement and who deny any legitimate constitutional basis for federal land ownership and regulations. The movement was born in Oregon with the 1970s formation of Posse Comitatus, its cells spreading in reaction to Civil Rights and environmental regulation and its leaders calling for county over federal rule (Sunshine). The history of Posse Comitatus helps explain why a third brother, Dave Bundy, would open a January 2016 letter to Harlan County's sheriff with "Sheriff, I respect the office that you hold and the awesome responsibilities that are your's [sic]," then implore the sheriff as "sworn protector" to "protect [county residents] from enemies both foreign and domestic" (Dave Bundy). In the tradition of Posse Comitatus, the sheriff holds the highest political office with the federal government, which is positioned as a "foreign" enemy.

Certainly, contemporary patriot movement groups rooted in Posse Comitatus, Christian Identity, and the John Birch Society mark the fringe edge of U.S. conservative politics. Still, we should take seriously Ryan Bundy's claim that they were not being "rebellious"—a claim apparently embraced by the Oregon jury who acquitted the Bundys and five other defendants on federal conspiracy and weapons charges. In fact, the populist states' rights and local control discourse of the Bundys is embedded in the U.S. political mainstream, their constitutional claims and privatizing political aims widely shared among conservative elites. Referencing and building on the arguments of the Malheur occupation, for instance, a recent Cato Institute report calls on the Trump administration to prepare a "detailed inventory of [federal] land and resource holdings and identify those assets that can be moved to state and private ownership," thus "paring back the vast federal estate" (Edwards 32). The 2016 Republican Party platform likewise argues that it is "absurd" that the federal government owns or controls some 640 million acres of land, calling on Congress to "immediately pass universal legislation … requiring the

federal government to convey certain federally controlled public lands to states … for the benefit of the states and the nation as a whole" (Republican Platform).

At stake here is future interpretations of the Fourth Amendment's Property Clause, passed in 1788 to establish the federal government's prerogative to acquire and manage land for the public good. The historical understanding of the "public good" this clause would serve is itself marked by discrepancy in a country founded on the ideals of freedom and equality, on the one hand, and on the institutions, practices, and pursuits of slavery, Indigenous dispossession, and private enterprise, on the other. The Property Clause's early Republican or Jeffersonian aim was to spread small-land ownership as both an incentive for enfranchised white men to "participate in political life as a citizen" and as a brake on the spread of large, slave labor-dependent plantations—an incentive that also required the forcible removal of native people to clear the way for small freeholders who, in turn, were largely unable to eek out a living in the arid regions of the West (Blumm and Jamin, 21-22). With the start of the 20th century, against the ravages of overgrazing by large cattle outfits and as a check on railroad and mining monopolistic control, the Property Clause's uses shifted from privatization to conservation. It provided constitutional authority for the designation of the first national parks, forests, and wildlife areas, including the Malheur National Wildlife Refuge, whose very name inscribes its native inhabitants' encounters with settler-colonialism as early French trappers lamented the *malheur,* or "misfortune" of Paiute people claiming "their" beaver (d'Errico). Through the 20th century, the Property Clause provided constitutional basis for environmental statues such as the Taylor Grazing Act of 1934, intended to ward off another Dust Bowl, and the 1976 Federal Land Policy and Management Act, which directed the Bureau of Land Management (BLM) to manage lands in a way that "protect[s] the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values" (qtd. in Blumm and Jamin 10)[2]. These evolving interpretations of the land management prerogative helped to fuel the anti-environmental and anti-government reaction of the Sagebrush Rebellion (see Blumm and Jamin; Robbins). However, although the Property Clause's discontents have been found in high office—President Ronald Reagan and his Secretary of the Interior James Watts counting themselves among the Sagebrush rebels—fed-

eral courts and the U.S. Supreme Court have largely rejected challenges to the clause and to its conservation-minded, public-good uses (Blumm and Jamin 23-24).

With neoliberalism has come another shift in how "public good" is to be defined and the creation of new rhetorics through which Property Clause challengers can argue about the good of free markets and the ills of federal overreach. The Malheur occupiers may not themselves be "self-defined neoliberals," notes Carolyn Gallaher, but they are "a manifestation of neoliberalism 'from below'" (305). Amplifying the arguments that big government with too much regulation and too many hand-outs are to blame for lost jobs (in eastern Oregon the 1990s collapse of the timber industry and the Great Recession closure of a major RV manufacturer) and lost social power (including with the advances in LGBT rights and the rise of movements like BlackLivesMatter), patriot movement groups contribute to an ideological climate in which neoliberalism "from above" can score political and tactical victories. Budget cuts to the BLM and to the National Parks Service limit federal management capacity, opening the backdoor to privatization. State legislative initiatives, notably Utah's 2012 Transfer of Public Lands Act, seek aggressive checks on or divestiture of federal ownership and regulation (see Blumm and Jamin 2). Prominent Democrats as well as Republicans have participated in privatizing land transfers: Bill Clinton selling California's Elk Hills to Occidental Petroleum and lifting the ban on Alaska oil exports; Barack Obama approving a deep-water drilling lease in the Alaskan Arctic awarded to Dutch Shell. The election of Donald Trump, his nationalist and protectionist rhetoric notwithstanding, does not spell the end for a neoliberal redefinition of "public good." The federal government's executive and legislative branches have pledged their support for the chief demand of the Malheur militants: the transfer of public land ownership from federal to state governments (see, for instance, Hansman).

This restoration drama, commentators agree, won't return the West to a golden age that never was for small producers. It promises instead to restore largely unfettered extraction rights to oil, gas, timber, mining, and other large-scale corporations who stand ready to lease or purchase public lands from states economically unable and ideologically disinclined to hold onto them (Gallaher 304; Blumm and Jamin 55-56). In this process, patriot movement members serve as foot soldiers—a role that can help explain why no National Guard

was called in to expel them from the refuge, in stark contrast with the tear gas, police dogs, water cannons, and rubber bullets used to suppress Standing Rock's water protectors.

Historicizing the Commons at Standing Rock

The eventual eviction of the Malheur occupiers and the reaffirmation of Malheur as a refuge should, of course, be seen as positive developments. Audiences to the occupation might further take the episode's conclusion as confirmation that the system works and we can make our way toward environmental sustainability within the current U.S. liberal democratic framework, the Property Clause under siege but still judicially intact. The water protectors movement at Standing Rock, however, makes visible that "public good" is ideological. It is not eliminated under neoliberal capitalism, but redefined as the valuing of lands, resources, and people as wealth-producing commodities—a redefinition that also echoes earlier stages of capitalist development where "public good" included expropriating land from native inhabitants, whether for private or federal uses. Likewise, the history of the Property Clause makes clear how much it is subject to ideologically evolving judicial and policy interpretations. Juxtaposed, Malheur and Standing Rock *both* present challenging cases for rhetorical and ethical discernment for those interested in environmental and human rights and whose "commons" we seek to defend and restore.

We'll start with the discrepancies that such a juxtaposition brings to light. Most evidently, the Northern Paiutes' witness to the Malheur takeover and the unfolding water protectors movement at Standing Rock helped expose the sleight of hand on which the patriot movement's "government off our land" rhetoric hinges: the small landholders who were the beneficiaries of the Property Clause's 19th century privatization phase were not the "first" on the land nor did they settle the land without the federal government's active and militarized assistance. Moreover, in the glaring discrepancy between the hands-off official response to the Malheur occupation and the aggressive effort to dismantle the NoDAPL encampments, a further sleight of hand can be identified—not in the rhetoric of the militiamen but in their characterizations as "extremist" and as laughably backwards and isolated. In fact, patriot movement members, far from being isolated, ally in their arguments with pipeline proponents. It is

likewise in the name of private property rights and the neoliberal good of risking publicly shared resources for profit-making productivity that Dakota Access, Energy Transfer Partners, and their private security guards were backed in full by what Marx dubbed "the fraternity of the capitalist class" (*Capital* Vol. 3), including the thirty-five banks who have invested more than $10 billion in the project, the U.S. Army Corps of Engineers, federal court judges, North Dakota's National Guard, and police deployed to Standing Rock from ten states (Miles and MacMillan; Sammon). A shared productivist vision unites Malheur's self-proclaimed ranchers with pipeline corporate capital and further unites officials from the AFL-CIO and other labor unions with corporate capital as well. Shared, too, is the turn to arms to defend the productivist vision—the North Dakota National Guard, for instance, equipping themselves at Standing Rock with two surface-to-air missile launchers (Axe).

The deep contextualization of depth hermeneutics urges more than identifying sleights of hand and complicating initial characterizations. It also asks us to investigate their conditioning histories and social relations. There are, for instance, the historical and continuing social relations of U.S. settler-colonialism where, as Potawatomi scholar and activist Kyle Powys Whyte explains, "one society" not only "seeks to move permanently onto the … places lived in by one or more other societies" but also to "*erase* Indigenous peoples" ("The Dakota Access" 158-9, emphasis added). The context of settler-colonialism conditioned the response of Nevada lawmaker and militia supporter Michele Fiore who rolled her eyes at the question of whether Malheur rightly belongs to the Paiute: "Why don't we all just go back to England in that case?" (Sottile).[3] That context plus neoliberalism's benign and power-masking rhetoric of presupposed consensus or "la langue du coton" (Welch; Lecercle) also explains the sidelining of the Standing Rock Sioux in the U.S. Army Corps of Engineers' claims to widespread consultation and in their decision to reroute the pipeline away from Bismarck's majority white population and across Sioux land and water. "DAPL," argues members of the Indigenous Research Center of the Americas at the University of California Davis, "represents a continuation of a 150-year sustained environmental and genocidal war against the Sioux" (Roy et al). Conditioning this war's latest assault are falling profit margins and looming resource scarcity that drive capital to seek system-wide solutions—and to do so *amorally*, without regard for whether the

ready solutions spell a fire-sale, going-out-of-business approach to the planet's resources.

The water protectors' counter-argument of "Water Is Life" can be read as moral, born from long-standing traditions of ecological reciprocity and regard. It should also be read as practical and materially rooted. Entirely practical is the recognition that the region's land and water are "vital for securing human safety and wellness"; of practical use, too, is Indigenous cultural knowledge about environmentally sustainable ways of living (Whyte, "The Dakota Access" 156). Deeply material is the basis of a struggle brought about by a third phase of colonial dispossession—this time defined by the lethal combination of climate change, accelerating resource extraction, and environmental racism—that is faced by Indigenous peoples globally and that has also put Indigenous groups at the lead of environmental movements worldwide (Whyte, "Indigenous Climate"; see also Wildcat; Coulthard; Dunbar). It would thus be a mistake to locate the ethos of the #NoDAPL movement in its localism. The water protectors certainly have historic ties to the land they defend, but they act within a network of global movements, as evidenced by the more than 570 international Indigenous groups whose numbers increased the population of the Oceti Sakowin encampment to as many as 10,000 people (Roy et al). "Indigenous" serves as a political identity marker as it unites—despite geographic distance and historic differences and conflicts—people in shared conditions and struggle. "We must remember that we are part of a larger story," writes Standing Rock's LaDonna Brave Bull Allard, her reference both to a traumatic history and to globalized movements to write a new future.

Would-be supporters of those movements and that future need to contend, however, with past and future constructions of "the commons" and reevaluate arguments that take place within the boundaries and debates of U.S. constitutionality and the Property Clause. Appeals to earlier Property Clause understandings of "public good" fall short of offering social justice enough since, in all of its applications, the Property Clause has been predicated on the good of Native American land expropriation as well as on the necessity of private property and private enterprise against which to demarcate what falls within the realm of public land and civil society. Indeed, federal management and disciplining of the Sioux has included prohibiting them from holding and farming land in common and requiring that land be distributed equally among heirs, creating plots too small for subsistence (Whyte, "The Dakota Access" 162).

Dehistoricized calls to "defend the commons" likewise elide how U.S. capitalist development didn't proceed through expulsion of landed peasants from a commons to be driven into cities and transformed into wage laborers, but instead through the importation of slave labor and the dispossession of Indigenous people—with, as Roxanne Dunbar-Ortiz points out, Europe's dispossessed peasantry lured to North and Latin America on promises of "free land" ("A Sense"). This isn't to say that Indigenous communities are "frozen in place" nor to deny the potential and need for the mass solidarity that joins "masses of citizens in the colonial state" with "the Indigenous peoples and other nationalities that are colonised by that state" ("The Relationship" 89, 82). To the contrary, Dunbar-Ortiz argues, "Returning to the colonial relation as foundational to capitalist accumulation triggers an ecological angle that is crucial to survival, in the short term, of Native peoples" *and* "also, in the longer term, to human survival itself" (78). Therein we find the material basis for the mass solidarity that brought together U.S. and worldwide Indigenous groups, U.S. veterans, and many others to defend Sioux territory and an entire region's water supply against the "black snake" of an advancing pipeline. Spotlighted in the Standing Rock stand-off is an irreconcilable clash between the freedoms of government- and military-backed private property on the one side and a planet-preserving need for freedom from private property on the other.

Keeping Faith with Democracy

A robust education in public rhetoric and writing needs to equip students to uncover the clash of rights—private versus public rights, extraction and accumulation versus environmental and human rights—on display in the struggles at Malheur and Standing Rock. Here, depth interpretation can help us to move forward from the seemingly irresolvable moral and social problem that Marx expressed with his axiom "Between equal rights, force decides" (*Capital* Vol. 1, 416). What Marx references here is the clash, foundational to all forms of liberal or capitalist democracy, between the rights of capitalists—to seek, for instance, the longest humanly possible working day at the lowest wage possible from workers—and the rights of labor to try to reduce the rate of exploitation and secure the conditions needed to sustain life (Canon 176).[4]

But a robust rhetorical education needs to do more than equip students to uncover the clash of rights and evaluate players and in-

terests. Rhetorical education needs also to equip students to consider the possible terms and stakes of their own participation. It seems especially urgent that we do so when we witness our students (not to mention colleagues, family members, friends, and neighbors) responding to the hails of various protests with postmodern ennui, cynicism, or just an aimless frustration, giving up altogether on the idea that there can be any such thing as a virtuous course of action for people and the planet.

For example, Tony's upper-level undergraduate class in rhetoric and ethics had its first meeting just two days before the presidential inauguration of Donald Trump, and discussions in the course reflected the energy, tensions, passions, and dissonances of a deeply troubling and disorienting election process as well as months of intense protests centering on racial, economic and environmental justice, including those at Malheur and Standing Rock. This survey course required for writing majors included discussions of texts likely standard to many rhetorical ethics courses—e.g. Plato's *Gorgias*, selections from Aristotle's *Nichomachean Ethics*, and Krista Ratcliffe's *Rhetorical Listening: Identification, Gender, Whiteness*. It also touched on specific topics in visual rhetoric, and the ethics of representation, language, embodied rhetoric and protest rhetorics.[5]

Throughout the semester, though, the course framing was at times inadequate to answer students' concerns about ethics and public rhetoric *within our specific historical moment*. Designed to help students think though questions of rhetorical ethics from a variety of angles, the course was also haunted by an essential underlying question phrased in various ways by a number of students: "Why be ethical?" As the course proceeded, it became apparent that the question did not derive from students' moral or political apathy: most were deeply concerned about public, political issues. Rather, it was rooted in frustration and a lack of faith in the effectiveness and fairness of existing public institutions. Elaborated, the question concerned whether ethical rhetoric can be effective in a "post-truth" era in which even the basic facts that could constitute a foundation for informed debate are constantly being muddied and in which political leaders use misinformation, confusion, and continually evoked crises to pursue political ends that mainly serve the short-term interests of an economic elite.

Texts like Ratcliffe's *Rhetorical Listening* were effective with helping the class tease through issues of positionality, mutual accountability,

and cultural differences and logics in examples like Malheur and Standing Rock. Rhetorical listening provides a useful means to understand more deeply how we are relating and responding to these events and the different values at play among the actors. More difficult however was moving beyond individual positionality and *personal* understanding and accountability to get to the problem of taking ethical *political* action—the problem students expressed feeling at a loss to approach. The course needed ways to acknowledge and address the demoralizing effects of decades of neoliberalization on people's perceptions of their own political agency and link ethical discernment to the possibility of responding in positive, effective ways to urgent imperatives like climate change, vast and growing socio-economic and racial inequality, and unsustainable energy policies and practices—all of which are part of the historical background of Malheur and Standing Rock.

Much recent work from a variety of perspectives documents a fundamental shift in people's perceptions of—or loss of faith in—the political economic possibilities of liberal democracies. For instance, in a *New York Times* bestseller, George Packer offers case studies that illustrate what he calls a pervasive sense of alienation in an America in which many people feel unmoored and have diminished faith in the institutions that defined governmental and civic spheres in the twentieth century. In *The Unwinding: An Inner History of the New America*, a disillusioned Washington lobbyist who has lost his sense of purpose, the son of a tobacco farmer who has become an advocate for the "new south" economy, and a factory worker in an economically declining city are all going it alone in a country that adheres only through "the default force in American life, organized money" (3). Anthropologist Anna Lowenhaupt Tsing depicts the devastations of global capitalism in an emergent post-enlightenment era in her most recent ethnography, *The Mushroom at the End of the World: On the Possibility of Life in Capitalist Ruins*. Working through how global market activity around the cherished matsutake mushroom relates to economic and ecological crisis in the Anthropocene, Tsing describes scenes in which people are continually compelled to find creative ways to achieve short-term stability within conditions that promise only precarity. Tsing depicts people in often temporary relations that respond to the opportunities and demands of local economies in continual flux while capitalism's systematic inequalities, shattered ecologies, and ruthlessly acquired and consumed resources are ac-

cepted as inevitable. Although it is an ethnography, many passages in the study read more like a dystopian novel. Tacitly eschewing the notion that there is a political answer to the growing global catastrophe she describes, Tsing concludes:

> Without stories of progress, the world has become a terrifying place. The ruin glares at us with the horror of its abandonment. It's not easy to know how to make a life, much less avert planetary destruction. Luckily there is still company, human and not human. We can still explore the overgrown verges of our blasted landscapes—the edges of capitalist discipline, scalability and abandoned resource plantations. We can still catch the scent of latent commons—and the elusive autumn aroma. (282)

What is notable about these accounts is not just that people are describing a time of crisis: it is the emergent assumption that the pillars of Western modernity—continual progress, science, technology and liberal democratic governance—are incapable of responding. In the Anthropocene, neoliberal capitalism is perceived as unsustainable and yet also so immutable that it is inextricably embedded in the very ecologies it devastates.

Wendy Brown observes in *Undoing the Demos* that disappointments in the actual outcomes of democracies are nothing new: what's new is this widespread loss of faith in democracy itself, engendered by its constraining marriage to a failing economic liberalism and potentially eliminating a commonly held set of ideals that enable people to envision a more positive, more emancipated future (206-207). A hidden danger in this, Brown warns, is that the promise of liberal democracy has historically served to create a collective imaginary space that enables people to envision a more positive, more emancipated future. Democracy is not just a practice: it is an aspiration and a durable, mobile trope. While democracies have not lived up to their highest promise, the imagined ideal of democracy has served as an important means for putting restraints on power. Absent this common ideal, the door has opened to the rise of even more oppressive forms of governance. Disillusionment with economics and liberal democracy are resulting in a precipitous rise in nationalism and authoritarianism in the West.

In this historical context, the emphasis in composition and rhetoric on practices of argumentative writing that cultivate "comity" and "spaciousness" (Enos), "rhetorical listening" (Ratcliffe), and "rhetorical friendship" (Duffy) can be read as a bulwark against such loss of

faith and a check on cynical manipulations of language for self-serving ends. The cultivation of comity and friendship, for example, seems to describe the collaborative and deliberative process among Harney County ranchers, federal officials, tribal leaders, and environmentalists that had created agreement, disregarded by the Bundys and their followers, about the uses of and protections for the Malheur National Wildlife Refuge (Eisenberg 128). Daily living among thousands of people in the Standing Rock encampments and linked-armed opposition to approaching bulldozers were likewise only possible through sustained cross-cultural rhetorical listening and dedication to the conditions for solidarity. Yet the deliberative process at Malheur that had created some agreement about the refuge's uses and management did not extend to the question of full redress for the original expropriation of Paiute land, nor did the limited corporate and government consultation that determined the Dakota pipeline route provide any kind of equal place at the table for the Standing Rock Sioux. Brought into stark relief by the standoffs at Malheur and at Standing Rock is the fundamental conflict between private and public good that rhetorics of friendship, mediation, and conciliation cannot resolve.

These are the consequential "Which side are you on?" moments that especially call for a materialist conception of morality as participants and the audiences they hail reflect on movement means and ends. Such a conception understands moral norms and official precepts about ethical conduct and civil speech—what Leon Trotsky called "official" or "bourgeois morality"—as "human conventional attempts to regulate social practices." Those regulatory practices serve not only to facilitate the pursuit of what can be considered just, good, and possible but also to "*set the boundaries*" for what can be said, done, and imagined because they are set "*in accordance with the requirements of a specific system of production*" (Hamad 124, emphasis added). At the same time, a materialist conception of morality also proceeds from recognition that the precepts and regulatory practices of capitalist morality are shot through with discrepancy and contradiction—including capitalism's bedrock moral conundrum, that it provides "conditions of abundance" *and* "maldistribution of abundance" (131). Boundaries and limits plus the interests and system they serve can thus be identified and also contested "not in an abstract philosophic way but rather a concrete practical way" (124).

The possibility of such consequential public engagement is a fundamental assumption of the study of rhetoric and ethics, and the

readings in Tony's course did offer some frames for at least initially addressing the relationship between ethics, politics, and engagement. In *The Nichomachean Ethics*, for instance, Aristotle argues that a primary goal of politics is to create societies in which virtue is fostered and enabled to flourish. The relationship is symbiotic: healthy societal relations and governance create the conditions for virtuous development and practice, and virtuous people nurture healthy societal relations and govern virtuously. Martin Luther King likewise connects morality with governance.[6] Grounding his means and ends argument in a universal conception of *agape*, or an unconditional love of all people, King collapses distinctions between ethics, political hope, and engagement. His explanation of means and ends demands that ethics not be treated as abstract ideals or critical discernments for their own sake—to be realized, ethics must manifest through the material pursuit of justice for everyone. As with Aristotle, societal relations are interrelated with moral development and possibility. In conditions of injustice, King argues, we risk falling into a diminished moral state—settling for an "old, negative peace" that leads to "stagnant passivity and deadening complacency" (50). To find our moral footing we must seek a "positive peace" of "true brotherhood," "true integration," "true person-to-person relationships," which can only be brought about through working for authentically inclusive governance (King 50-52). King's ethical means and ends requires a hopeful political imagination, but absent King's faith in a Judeo-Christian conception of *agape*, on what other basis can a collectively galvanizing sense of hope be based?

Here a text absent from Tony's course list, Leon Trotsky's *Their Morals and Ours: The Class Foundations of Moral Practice*, might be called upon. In this slim volume, written in an attempt to persuade liberal public intellectuals like John Dewey to step off the sidelines and voice support for the Spanish proletariat's armed struggle against fascism, Trotsky rejects any notion of universal morality such as a moral proscription against taking life. He argues instead for moralities to be materially and historically situated with prime attention to the social relations of production that official morality would strive to reinforce. Trying to derive universal criteria for ethical discernment in a class society is, for Trotsky, inevitably circular, as capitalism produces its own self-justifying ethics to maintain and reproduce relations of domination. Rather than inquiring into what is the greater good on which we are to base our ethical decisions—which presumes that a greater good can ever arrive pre-interpreted—Trotsky compels us to

instead engage in the re-interpretive work of discerning what values—and *whose* values—shape what the greater good will look like. This moral framework isn't simply relativist. For Trotsky, a class-conscious approach to moral questions would proceed from a moral foundation that aims not to naturalize and reproduce inequality and oppression but instead end the "domination of man over man" (48). In Trotsky's conception of moral practice, we should unapologetically acknowledge that decisions made in specific circumstances must inevitably still serve some interested notions of where we want to go, how we should get there, and who will be most favored. A Marxist ethics, Hamad writes, must come about *through* "coping in the world," not conforming to prescribed liberal notions of the good (117).[7]

This historical, materialist, and also class struggle approach tips the question "Why be rhetorically ethical?" toward "Why act in a way that is intended to help create the world that we want to see?" The next iteration of Tony's course, then, will aim to link the various frames for studying rhetorical ethics to situations calling for ethics-in-action and make central, rather than peripheral, the study of rhetorical ethics as potentially creative and transformative. A near-future revision of the course might add to Aristotle, Ratcliffe, and King not only Trotsky's *Their Morals and Ours* but also Naomi Klein's *No Is Not Enough: Resisting Trump's Shock Politics and Winning the World We Need*, which could serve as a case study. In this book, Klein enacts an ethical orientation that is continually reflective *and* situationally responsive. For instance, as she chronicles her experiences with nearly ten thousand fellow protestors in the camps at Standing Rock, she details both the violence against the water protectors and the encampments' potential for robust societal transformation. Here and in her description of her work on "The Leap Manifesto" (a political platform that draws on the Indigenous protest slogan *Our Dreams Don't Fit on Your Ballot* to create a politically imaginative space beyond an entrenched and disenfranchising electoral process), Klein presents an ethics-based politics that is participatory, creative, accountable to others, and potentially transformative. Such a text directly acknowledges and addresses the urgency of the political moment and widespread disenchantment with liberal democratic politics. It also moves beyond cloistered textual analysis to embodied, cross-cultural ways of understanding and a call to join the interpretive with the participatory.

Indeed, much of the news and commentary that has come out of Standing Rock underscores that such a movement provides a different way of keeping the faith with democracy while recognizing

and doing battle with the discrepancies and dispossessions of actually existing liberal or capitalist democracy. We can regard the encampments and the committed work of cooperative relations among #NoDAPL participants as suggestive of, to paraphrase Glen Coulthard, a *prefigurative* morality, providing a glimpse into "a way of life, another form of community" (179) otherwise denied by everyday capitalist social relations. At the same time, we cannot overlook that the "resounding 'yes'" (Coulthard 169) to this other way of living and being took place on contested ground and against the formidable and militarized "no" of corporate and state power. The lines of linked-armed protestors and protectors facing down bulldozers at Standing Rock speak both of the potential for mass solidarity *and* the necessity of mass opposition and sustained struggle. The lines of linked-armed protestors and protectors also speaks of the potential—and, if what we do is to have any social justice use, the necessity—for a rhetorical education that does not valorize and fetish one set of means over another but instead asks what ends are being served and for whom.

Notes

As such ecosocialists as John Bellamy Foster and Michael Löwy as well as Marxist decolonial scholar Roxanne Dunbar-Ortiz explain, an historical materialist approach to ethics is not at all at odds with the aims and ethics of environmentalism. In its Stalinist distortions, Marxism is "productivist" and "extractavist," promising human liberation through ever-expanding production regardless of the environmental costs. Yet, Foster points out in his magisterial *Marx's Ecology*, Marx's own writing on agriculture and soil health under capitalism underscores his concern that capitalist society was fundamentally changing the relationship of human beings to nature. Though his writings were suppressed under Stalin, Russian revolutionary Nikolai Bukharin argued that "[T]he environment of human society is nature" and "If human society is not adapted to its environment, it is not meant for this world" (89, 75). More recently, ecosocialists—rejecting both the unfettered industrial development model of Stalinism and the greenwashing of capitalist social democracies—came together in the 2009 World Social Forum to declare that the end to environmental destruction and the end to capitalist production for profit and accumulation must proceed hand in hand: "("[A] person cannot serve two masters—the integrity of the earth and the profitability of capitalism" ("Belém Declaration," qtd. in Löwy 87).

[2] Found in 000043 USC 1701: Congressional declaration of policy: http://uscode.house.gov/view.xhtml?req=(title:43%20section:1701%20edition:prelim)#referenceintext-note)

[3] The press conference video featuring this exchange was posted on *The Oregonian*'s website with the story "Nevada Lawmaker Michele Fiore Thrust into Role as Oregon Standoff Negotiator" but is no longer available.

[4] To be sure, this clash isn't not always openly expressed, the very rhetoric of *makers versus takers* veiling how capitalism takes goods and services from those who produce them and seizes upon land and resources for their exchange rather than their use values, including the use, in the slogan of contemporary climate defenders, of leaving the oil and gas in the ground. And when the clash does come into the open, it is not always acknowledged as such with liberal and conservative commentators and politicians alike decrying the "violence" and "incivility" on both sides.

[5] The course also included texts by Patricia Williams, Jacqueline Royster, John Duffy, Lois Agnew, Judith Butler, Nancy Welch, and Martin Luther King.

[6] See, for instance, "Love, Law and Civil Disobedience."

[7] This doesn't mean that "The ends justify the means," a distortion that is attributed to Trotsky. In fact, Trotsky's fuller statement in *Their Morals and Ours* includes a crucial dialectical caveat: "A means can be justified only by its end. But the end in its turn needs to be justified" (48). In the urgent moral test of the Spanish Civil War, Trotsky argued for taking the side of Spain's workers not only to prevent the Franco dictatorship from assuming power but because the ends sought by Spain's revolutionary and imperiled proletariat through mass participatory means were the "abolition of the power of man over man" (48).

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