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Letter to the Editor

I am so deeply shocked by Mr. Mutino’s essay (“The Torture Exception,” Autumn 2007) that I feel I must respond. I understand he is not recommending torture, but he seems to have missed what is so very wrong about it by way of a clear fallacy: comprehending clearly what is so very wrong about torture is vital to ethical understanding.

As I understand Mr. Mutino’s point, he believes it is a “quirk” of American ethical thinking to make an exception of torture when we are willing to conduct war, which inflicts death and suffering far worse than any torture. It is true that war does this. It is, however, not true that war and torture exist on a continuum where if you are willing to conduct one, you should rationally countenance the other.

The use of lethal force and the deliberate infliction of pain, humiliation, and suffering are different things. There is nothing quirky or specifically American about this distinction. It is well established in common and military law: you can order a soldier to his death or disfigurement, but you cannot strike him; you may shoot a bank robber, but you may not torture him to obtain a confession. There is nothing sentimental, hypocritical, or irrational in making this distinction. Deliberate infliction of pain and suffering on an individual makes one a torturer; to make this part of our laws makes us a nation that tortures, no different from that of Saddam Hussein. We may have to kill, but Mr. Mutino and I agree that we do not have to torture. They are separate evils, just as raping and killing someone are two separate crimes. The fact that people might express a clear preference for which they would rather endure does not make it any more permissible or permit one in light of the other. Rather, in making the comparison, we have already compromised our moral sense.

It is not hypocrisy for conservatives to object to torture: this is indeed, above all, something worth conserving. It is hypocrisy not to object to the conditions of American prisons. It must be clear that the victimization of prisoners by prisoners is a crime. It is not a tacit part of the punishment. It is not at all irrelevant who does the abuse or whether it is sanctioned by law: this is the difference between a starving POW camp and an extermination facility. If we follow Mr. Mutino’s logic, there is no such thing as a war crime. The raped, tattooed, and tortured tell us that there must be.

We cannot use the inexcusable to excuse the unthinkable: no one can rationally argue that because of crimes in American prisons, such crimes should have the sanction of law in the conduct of war. One of the worst things about war is the brutalization and coarsening of the moral character and psychology of everyone involved. Fear tempts us to equivocate and the license of war challenges the law and our moral character. Even if we must conduct war, we must do it lawfully and ethically, or we will lose our claim to civilization in the process. “In the grand ethical scheme of things,” this is what matters most of all.

—Van Choojitarom, fourth year in the College
against practicality

by R. Daniel Smith

“Conversation, as I know it, is like juggling: up go the balls and the balloons and the plates, up and over, in and out, spinning and leaping, good solid objects that glitter in the footlights and fall with a bang if you miss them.”

—Evelyn Waugh, Brideshead Revisited

An article that appeared in the previous issue of this magazine, “UChicago: the Life of the Mind (Bowed to the Yoke),” by Adwait Parker and Aaron Greenberg, recently caught my attention. I don't like to think of my mind as “bowed to the yoke.” I began to read with apprehension, afraid to see myself denounced as bland and establishmentarian. To my surprise, the sentiment to which their article gave passionate voice felt distantly familiar, and not for any obvious reason. I too have tried to avoid sticking too narrowly to any particular “college narrative,” but never very hard, since I suspect such things exert less influence at Chicago than elsewhere. The trends they have seen so clearly, I have at least not overlooked, but these have rarely surprised me and never driven me to act. The article’s language often struck me as too harsh, but this is neither assent nor objection. Their attitude and mine seem to have little in common. What connection did I glimpse?

Ours is a chronically malcontented campus. Having something to complain about is for us a point of prestige. We quarrel over whatever we can think of, and most of our topics bear no relation to one another—yet a few, it seems to me, are joined, thematically unified, if not on the surface than somewhere beneath. These are our continual disagreements over the nature, the purpose, the atmosphere, and now the “narrative” of the College of the University of Chicago. Should it seek greater national recognition than it currently enjoys? No, rankings and acceptance rates are irrelevant to the life of the mind. Instead, all undergraduates should have to take History of Western Civilization. But is that really the best way to prepare students for successful careers? Probably not, but the College is only supposed to give us knowledge, not make us marketable. How, then, will it compete with the Ivy League?

I take this as a single spread-out discourse. It has drawn little public attention since its brief eruption into a kerfuffle over the Uncommon Application in late 2006. Sometimes it shows up in disguise, or simply in new guise. I think it has done this in Messrs. Parker and Greenberg’s article, as I will eventually get around to explaining.

Decentralized disagreements like this one, even when they reflect profound division in a community, are characterized by an astonishing lack of progress. This seems to me a pity, since I think the matter at hand is real and momentous. I aim to sort out the terms and stakes of the dispute—and, naturally, to advance my own opinion on it. I hope that even those who disagree with my conclusions will agree as to what we are all arguing about.

I. A complete theory of education (abridged)

I propose to understand each of the diverse opinions on the direction of the College as belonging, at the most general level, to one of two coherent but opposed positions. One holds that the College ought, above all, to prepare its students for a successful life in the practical world; the other, that it ought to stick to a program of liberal learning. The disagreement does not go all the way down: I suspect that everyone involved would agree that education is what we are after. Tempting though it is to react by asking “What is education?”, I do not intend to write a high school commencement
speech, and moreover that question is imprecise and confusing. I will instead ask how a student can learn. Perhaps this will give sense to the many opinions about how a particular group of students should learn.

In an essay entitled “A Place of Learning,” the philosopher Michael Oakeshott offers perhaps the most concise serious assessment of the human condition ever composed: “A man is what he learns to become.” This is a simple observable fact, attested by psychology, apparent to philosophy, and accessible to anyone who has lived beyond childhood. Even the most ardent proponent of ‘nature’ over ‘nurture’ must acknowledge that the human biological endowment is a mere framework without substance. Even if you believe, for instance, that human beings are born with an innate capacity for language in general, you must admit that any particular language must be learned, which is to say that any inborn ‘potential’ only matters if it is in some specific way fulfilled. This holds for all forms of knowledge, including skills, facts, memories, and especially the diverse bundle of ideas known as a ‘culture.’ At any given point in my life, the unique assortment of knowledge I have acquired constitutes everything, other than my genetic material, that I am.

But the word ‘assortment’ is a tad misleading. No man’s knowledge is a hodgepodge. It is all selected and arranged so as to satisfy an enigmatic and uniquely human urge, so hard to characterize that much of behaviorist psychology chose to pretend it was not there—the desire for self-understanding. This is not just a property of a few enlightened souls in prominent universities. When a child notices that he is distinct from the world, he begins to reflect, and slowly to assemble an understanding of the world and himself. All human beings gesture toward making sense of themselves and the world in matters so serious as all forms, and all rejections, of religion, and matters so trivial as the prejudice against double negatives in language, which seem illogical. No man can be truly ignorant of and indifferent to all understanding. I don’t know what such a man would be like, but if he exists, he is something other than human.

Now you might interject, elitist that you are, that some people plainly understand the world and themselves better than others do. I think this is right, though Oakeshott seems to miss it. One man—say, Boris—might be passively satisfied with the understandings he has been given, never looking beyond, for instance, the marrowy dicta of his youth, except as necessary to get by in the world, while his chum—Susie—might prefer to go looking for new understandings to reshape and augment the old. Boris differs profoundly from Susie: he seems somehow impoverished, untextured; his looks like mere received pseudo-understanding, not true human understanding. Some thinkers, such as Richard Mitchell and George Orwell, have grasped at the difference, calling Boris “unconscious,” fearing for his liberty and even his humanity. Keep Boris and Susie in mind. We will return to them in time.

An important feature of knowledge is that, like language, it persists by uninterrupted transmission from the adults of each generation to the youth of the next. Even if you do not believe there is no new thing under the sun, you can’t escape the necessity of learning nearly all you may ever come to know from the generations that have lived before you. Its transmission is not without defect—“we shed as we pick up,” says Tom Stoppard, “like travelers who must carry everything in their arms”; Jonathan Z. Smith observes that “every act of transmission is an act of reinterpretation.” This second remark deserves particular attention. No man can place his knowledge directly into another’s mind. He must reinterpret anything he wishes to communicate when he renders it into words, having already interpreted it once when he first learned it; likewise those who listen to him must interpret his words; and so on, generation to generation.

This fact has two important consequences. First, the knowledge we accumulate, insofar as it has been interpreted for us by those who taught it to us, is inextricably attached to its lineage, which is to say it belongs to a particular culture, and never to ‘culture’ in the abstract. Second, there is no perfect understanding, undistorted by the interpretive funhouse mirror, to be found, but
only many partial understandings, each limited in its own way. They stand, not in hierarchy, but in mutual dependence, each more and less complete than every other. We should not be too concerned over this fact. As modal semantics teaches us, of all possible worlds, this is the one we are stuck in. Let us, therefore, make the best of our circumstances by returning to Oakeshott, who introduced into many realms of philosophy the metaphor of conversation. The truest articulation of human understanding is composed, he writes, of “voices, each the expression of a distinct and conditional understanding of the world…joined in conversation.” Out of dissatisfaction with received pseudo-understanding, men have often seen fit to establish institutions for the development and propagation of, and eventually the conversation among, human understandings: this is education.

II. Strife in the groves of academe

With the help of this rudimentary exposition, I’ll now try to pick apart the debate over the College. First I should explain what I am not doing. I am not describing factions, nor advocating their establishment: the two positions I speak of have, to date at least, neither convenient one-word names nor well-defined orthodoxy. Instead they are dispositions; or, rather, one is a particular disposition and the other is everything aside from that disposition. The descriptions I provide for each are not lists of necessary and sufficient beliefs, but underlying, perhaps unconscious axioms whose incompatibility has generated a prolonged disagreement over what we’re all doing here.

Learning may be divided quite neatly into two types. The first results from the human body’s need for basic sustenance, and the human mind’s desire for more than basic sustenance. Much of human ingenuity has always been directed toward the development of tools and the cultivation of skills to satisfy these needs and wants. These enterprises entail a certain mode of understanding, namely of oneself as composed of wants and of the world as a means to satisfy them, and thus clearly qualify as learning. However, this learning is only valuable insofar as someone can translate it into doing; it is practical learning.

It has been alleged that all human activities, presumably including learning, are directed toward practicality, but this theory renders inexplicable mankind’s continued fascination with such thoroughly impractical things as art, music, literature, history, philosophy, mathematics, science, and religion. These must belong to a second, nonpractical form of learning. Perhaps you wish to interrupt me to point out science’s many practical applications. Very well, but the point is that scientists need not have any clear idea of the utility of their work to motivate them to do it. More often than not, I think, scientists are the sort of people who would want to know about, say, the cosmos even if they were sure this knowledge would be strictly useless.

Some of history’s especially learned men have caught sight of their own mortality and, fearing lest their efforts be forgotten, undertaken to teach the things they have learned to those they expect to live longer than themselves. They have set aside places to teach away from distractions: academies, schools, colleges, universities, and so on. Some of these are specifically practical, such as vocational schools, polytechnic institutes, business schools, law schools, and medical schools, whether free-standing or belonging to a university. Others are specifically not practical, and the sort of learning they offer is called ‘liberal.’ Of course these include many ‘liberal arts colleges’ and the undergraduate programs of some universities; I consider that graduate and research programs in the impractical disciplines also belong in this category. I have heard several etymologies, all convincing but none authoritative, for this use of the word ‘liberal’; suffice to point out that in this context it has no more than a distant historical connection to the same word as used in politics.

Everybody knows that University of Chicago students are peculiar. Since the presidency of Robert Maynard Hutchins, the centerpiece of the College has been its Common Core, a set of requirements devoted to liberal learning. The average citizen does not find the Core appealing. A certain kind of person, however, who for many years has been drawn to Chicago, is willing to give himself over absolutely to liberal learning, and set aside any concerns he might have for practical matters, such as job prospects and career skills. He may find himself hooked and decide to stay in the academy forever, but he may just as well have career plans that
he has resolved to forget for a while. In any case, his willingness to accept a four-year spell out of reach of the practical world, though he knows it will damage his prospects for returning to that world, marks him as a bit odd.

I consider that this characteristic and its natural concomitants constitute a particular discernable bent of the mind: a disposition to liberal learning. I doubt there is any ‘practical disposition’ for its counterpart. There is just everyone else: all the students who refuse to disregard their futures in favor of irrational, useless liberal learning, which is a more remarkable thing to do at the University of Chicago than elsewhere. Beyond this, no particular characteristic holds them together. Some dream of success in business or law or consulting, others wish to use their ideas to fix things through politics, and one peculiarly modern form of practicality is willing to forego a large paycheck, for a while at least, in favor of implementing ‘social change’ or some similar abstraction. Perhaps we’re even educating a master criminal or two. This jumble seems unified only in contrast with the alternative: in fact, its members are far more representative of the population at large than their idiosyncratic classmates.

It is precisely this fact that piques Parker and Greenberg. Their economic analysis of conformity in college is a new voice in an argument we know well. In more familiar terms, their collegiate “tourists” have come to college in search of practical learning, and those who value “spontaneity and relationships outside of the official channels” have come for liberal learning. You can probably guess the rest. The former have their eyes fixed on Doing Things; they tend to argue for departure from the College’s tradition of cheerful obscurity, to aid them with their own endeavors. This entails polishing the College’s “brand” and “image,” raising its rank in U.S. News and World Report, and increasing the “value” of its degrees. The latter care not a fig for Doing Things, having found joy enough in Learning Things. These tend to be content with the College’s mediocre rankings and poor name-recognition, and like its quarrelsome, neurotic, outlandishly clad student body just the way it is, thank you very much. The former argue because they wish to implement changes, the latter because they find arguing fun. They all argue cogently. It will not be easy to bring them to reckoning.

III. The juggling act of the mind

Near the end of their article, Parker and Greenberg make a wise and potent remark, in the form of a disclaimer: “every interpretation…comes with a certain kind of neglect.” They could, if they wished, turn it on the “well-prepared tourists” who are the primary object of their criticism, and point out that the shallow materialism that leads them to skim the surface of college, using market data to optimize their utility at each stage of the experience, is an interpretive judgment. It bespeaks the single, limited mode of understanding I have mentioned, in which a human being is composed of wants, and the world is a means to satisfy them.

They could even apply it to Allan Bloom, who seems well matched to their description of “the most popular discourse about higher education…framed by elegy and motivated by nostalgia.” Bloom argued in The Closing of the American Mind that the decline of Western society presented his generation, and especially its universities, with the responsibility to guide the West through a uniquely consequential moment in history, “the one for which we shall be forever judged.” Per their disclaimer, Parker and Greenberg might say: He claims to present the unconditional truth, but he succeeds only in giving a neglectful interpretation. He, too, allows but one understanding, in which a human being is beholden to the words of ‘dead white European males,’ and it is his job to shape his postmodern world
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in the form of their pre-modern world.

In fact, Parker and Greenberg reserve this disclaimer for themselves. It seems a shame to bring out such a versatile weapon for so modest a purpose. I suspect their reluctance follows from their interest in “exhibit[ing] phenomena in such a way that they become amenable to change.” They call for specific action on the basis of their own analysis, so they must believe it deserves some privilege, and is more worth acting on than, say, Bloom’s. If they set forth too many different analyses alongside it, all labeled as mere interpretations, they might inadvertently deprive their own of its privilege. That they include the disclaimer at all is thus a bit of a surprise, but a gesture in the right direction.

How may they overcome their difficulties, without confirming Bloom’s fear of the nihilistic tendencies of relativism? By speaking not of change but of conversation. Change belongs to practicality, and practicality limits itself. It permits a single mode of understanding, a single analysis, which will diagnose a problem and produce a technique to solve it. Much of the world is practical, and it has to be: this is no surprise and usually no handicap. The academy, however, if it wishes, can offer something else. The objects of its inquiry need not bear on Doing, but only on Learning, undertaken in as many different ways as there are learners. With the proper guidance, each of these will search for the boundaries of a succession of interpretive modes—balls and plates, spinning and leaping and glittering in the footlights—and begin at length to discern, and at last to join in with, the voices of a conversation.

I should point out, as a concluding note, that this metaphor need not be attached to any particular politics. Its creator, Oakeshott, is often dropped summarily into the jar labeled ‘conservative,’ but his approach to conflicting modes of understanding is at least broadly analogous to that of Slavoj Žižek, a luminary of the Left, who speaks instead of navigating around a ‘parallax gap,’ “the confrontation of two closely linked perspectives between which no neutral common ground is possible.” You may thus, if you wish, fairly understand both men as critics of ideology. If beyond this point they differ absolutely, very well, but they have one goal in common, and that is not nothing.

* * *

Oh, alright, I’ll allow you one final objection. Actually, I think I can anticipate it. Everything I have said, because mine is but a single voice, is mere limited interpretation, and my own system renders me incapable of moving beyond interpretation on my own, much less explaining to you how to do it. I admit this charge. All language is an exercise in thought-control. With every word I write I struggle to weaken your control over your mind, to bring your thoughts into step with mine, to draw you into my interpretative world, so that it may strike you the way it strikes me. I am a tyrant, and so are all who speak.

Recall Boris and Susie, be-nighed and enlightened. Here is the difference between them. Boris has spent his life in the extreme present, hoping thereby to optimize his future. Susie has ambled down the alleyways of the past, paying little heed to the future, certain in the knowledge that it will emerge in its own time and needs no hurrying. I can change Boris’s mind with no more than handsome reason and seductive words, for he cannot recognize my interpretations as at once more and less apt than many others. But Susie’s mind I cannot touch. It has been many places, heard many stories, accumulated many understandings: it can resist if it likes, or just as easily give in. It is bowed to no yoke. It possesses itself, and no other possesses it.

Liberal learning aims to deliver ownership of the self unto the self, and self-ownership cannot be taught. It can only be found in conversation, and that can only be shown. The College of the University of Chicago will remain a place of conversation for as long as its students are disposed to make it one. Happily, we need no counter-revolution to save us, since no cataclysm is looming. We need not fear for the future, so long as we forget the world for a while, and never stop talking. **
Without exaggeration, the concept of a right is perhaps one of the most philosophically curious elements of popular juridical language in use today. What more, it is a concept as familiar—and acceptable—to a thirteen year old boy as it is to a United States Supreme Court Justice. The concept pervades almost all lay discussions and debates concerning government, its role, function, and source of legitimacy. Human rights (i.e., rights which are inalienable) assume a particular prominence when we discuss foreign regimes and their treatment of persons in distress. In common parlance, these rights confer a special legal status upon every human being, but the authority of that legal status derives not from the legal code of any regime, but rather from the nature of man. However, because the concept of a right (and the special legal status which it confers) is usually taken for granted—when rights conflict, one party may question (a) whether or not a particular right is actually inalienable, or (b) whether or not a given right has priority over another (which is the same thing as (a), just differently expressed). But rarely is it questioned whether natural rights (i.e., those rights which no man can relinquish) are themselves a politically untenable category. This, the oddity of the concept of rights, consists in our generally unconscious failure to identify the source of rights.

For the greater part of the twentieth century, no major political thinker—apart from Robert Nozick and Ronald Dworkin—has made the concept of a right a central theme in his political teaching. But between the 1970s and the late 1980s, both theoretical and lay political discourse has witnessed a remarkable rise in the prominence of rights-talk in discussions of foreign and domestic politics (Waldron, 1, 151–56; cf., Tuck, 1).

Following in the wake of the United States’ own Declaration of Independence, the French Republic wrote its Declaration of the Rights of Man and Citizen (1789), the manifesto of rights theory whose legacy we seem to inhabit today (Arendt, 290ff). As a manifesto, it asserts; it does not argue. In it consists, I believe, a summary of the contemporary understanding of human rights:

(a) All men are equal in terms of their rights;
(b) The definite boundary of a man’s right is the right of another; one may not infringe on the right of another;
(c) Rights must be assured by legal protections; and
(d) There is a certain category of rights which are imprescriptible (i.e., inalienable) (Articles 1, 4, 12, and 2).

Presently, this fourth characteristic is our primary concern.

In most cases, beneath the legal and juridical right lurks some form of a moral claim. It has been suggested that rights and duties are reciprocal; that rights express little more than an obligation upon a second party. (I.e., If I have a right to walk my dog, then you have a duty to abstain from interfering with my activity.) If this is true, then every rights-claim can, and should, be translated into the language of obligation. However, though it may be possible to give an intelligible account of the reciprocal relationship between rights and law, it does at the same time seem as though rights perform a qualitatively distinct function. They are seen as protections of the individual against forces greater than himself (Arendt, 291, 293). Not only are they qualitatively different in view of their legal expression and function, but they also communicate some sort of moral outlook, as is evidenced by the reaction of individuals when alleged rights are not observed. The people of this country express moral affront when the government ostensibly violates their constitutional rights (e.g., telephone surveillance). Their tone of outrage is not simply one of prudential affront that one might expect were there no moral quality involved in the alleged violation: “I am angry, because I was working under an assumption of privacy (while speaking on
the telephone), which you arbitrarily violated. Had I known that this privacy was not, in fact, guaranteed to me, I would have conducted myself altogether differently.” Instead, we hear moral indignation: “That’s not right.” (It is often observed that in many languages other than English, the term right has both the juridical connotation (which concerns me here) and the sense of “correct” in some unspecified ethical sense. E.g., French’s droit and German’s Recht.)

In certain circles, the rights of man are taken as to be that common denominator of man’s political existence, at which point, and no lower, he participates fully in a state of existence (i.e., humanity) which we recognize as befitting any human, independent of accidents and circumstances (Waldron, 180; Arendt, 297). But this option seems unacceptable, because it implies that man is distinguished from non-man—i.e., that a man participates in this thing called humanity—only to the extent that he enjoys certain political conditions of privilege and that certain expectations of his are met or exceeded. In short, in the course of the argument, it makes use of an unacceptable definition of human. We cannot accept that a man deprived of these conditions suddenly becomes non-man before our eyes. Surely, something else makes for his humanity. On these grounds, at least, rights cannot be wholly predicated upon this conception of humanity or seen as that political principle which confers a baseline dignity or humanity to man, for the very terms employed in the argument implied are themselves questionable.

II

Numerous thinkers (e.g., Jeremy Bentham, Edmund Burke, Karl Marx) and man’s political history to the present day have called into question the validity (and viability) of the final claim of the French Revolution—that there exist some inalienable rights of man; which is to say, we are no longer as confident that we speak well when we talk about “human rights.” This is a serious question, worthy of consideration.

If we are to evaluate or analyze human rights, it is necessary to distinguish them from positive or civic rights (rights which exist as a function of political authority). In the idiom of Hobbes, the relationship between nations is a state of nature—a condition in which no sovereign authority abides (Leviathan, ch. 13, ¶12). So therefore, the only tangible (i.e., non-theoretical) situation in which natural rights (i.e., human rights) can be most clearly distinguished from purely civic rights are those matters pertaining to international relations (especially how it is that governments treat refugees, prisoners of war, and occupied peoples), seeing as this is the only political realm in which there is no sovereign authority to exercise and enforce edicts or law. It is in the conflict between two parties that do not share a common political authority that we see most clearly the problem of rights. In certain circumstances, we discover that to respect the most basic of one party’s collective human rights requires that this party sacrifices a similar such set of the (ostensibly) most basic of human rights. This apparently irreconcilable conflict presents us with what appears to be an insoluble political problem, and calls into question the concept of rights.

From the perspective of international law, international rights-treaties (e.g., the United Nations’ 1948 “Universal Declaration of Human Rights”) appear to be the underlying support which undergirds all rights-claims made in the international political sphere. However, these rights, when codified, were not codified in treaties and international agreements by means of some willy-nilly logic that arbitrarily sought to introduce into the international realm a novel legal status of persons expressed in terms of “rights.” Instead, the codification of rights rests upon the assumption that these qualities inhere in man as man. Rights are codified in law not to introduce new categories of legal status ex nihilo, but in order to give teeth to something presumed to exist unqualifiedly (the rights of the individual independent of his political circumstances). These rights are codified, because it is assumed that in all times and places there will be men in power (or regimes) which fail to heed their intuition and natural reason concerning the right ordering of society, either because they are unable or unwilling to do so. (This much is acknowledged in the “Universal Declaration of Human Rights,” preamble, ¶2.)

According to this account, it is therefore the duty of all enlightened human beings to give a legal, obliging force to rights. I take it to be self-evident, however, that
consensus is insufficient support for human rights; for, at base, they claim to be something which inheres in man independent of agreement, custom, or convention (or what we today call ‘culture’). Moreover, states do not choose to adhere to human rights legislation simply because they are law-abiding members of a cosmopolitan, international community. Rather, when states abide by human rights treaties, they do so only because they believe in the principles underlying their codification.

A contemporary illustration of this problem of rights would be particularly instructive. For this purpose, I have chosen the conflict between the state of Israel and the Hamas-controlled Palestinian territories, focusing on exchanges which began in early March, 2008. For heuristic purposes, I have reduced the following to its basic elements. In this conflict, two substantive rights-claims are made:

(a) A nation (i.e., Israel) has a right to self-defense, and

(b) General welfare is the right of any given people (i.e., Palestine).

To these, a third caveat is added:

(c) An occupying (or surrounding) force is obligated to acknowledge and promote (b) (which is itself a right).

It soon becomes apparent that there is a grave problem here. Let us assume that Israel’s tactical judgment is sound (an admittedly controversial stance). This being the case, Israel’s right to self-defense (right a) manifestly conflicts with the Palestinians’ right to general welfare (right c). The two alleged rights each suggest mutually exclusive courses of action to Israel. She has been asked both, as a matter of right, to protect herself (right a) and to respect the general welfare of an occupied people (right c). Yet, it does not seem as though Israel can satisfy both these conditions. More might be said on these points, but I think it can be left at this.

If we scrutinize the matter even more carefully, we see that the tension actually lies deeper than appears at first glance. Throughout the whole debate, there is an implied expectation that the rights of any two parties need not conflict in any irreconcilable fashion. That is, the reconciliation of conflicting claims of rights can be forged, so long as the government activities of both parties are organized correctly and decisions are made with sufficient gravity for the issues at stake. That this is the expectation of third-party observers is implied by the very fact that there is an attempt at debate at all, for argument tacitly suggests the expectation of a resolution. In this debate, all parties agree to Israel’s alleged right to self-protection (right a). Most of the time, Palestine’s right to general welfare (right b) is treated as a positive right (i.e., a right based only on legal treaty). But, at other times, there is a suggestion of its being an inalienable (hence, non-legal, “natural” and un-relinquishable) right. Significantly, Israel has also made the same claim concerning right a. The right to self-protection is alleged to be inalienable. Therefore, viewed most charitably, these results suggest that we face today some confusion concerning the character of rights.

The conflict of rights is itself not an unknown phenomenon. For example, the “Universal Declaration of Human Rights” does briefly discuss potential conflicts of rights. However, at the very same time it points to the problem, the document (perhaps naïvely) supposes that the resolution is possible; that the difficulty is soluble. However, no overarching principle can be devised which satisfactorily resolves the conflict I have sketched above, especially seeing as the things asserted are “rights,” which, by their very nature, do not wait upon diplomacy or peace talks—whose general impotence in achieving the ends it seeks to effect is well known.

III

We must go further than simply asking—as the jurists do—whether a man has this or that right. We must ask first what it means to have a right. More importantly still, we should ask of ourselves on what grounds we might believe these rights to inhere in men regardless of their many and various political accidents and conditions; essentially, is this oft-invoked article of international-political discourse well-founded? We must ask these questions not because we are partisans of this or that creed (e.g., Marxism, Utilitarianism). We must ask these questions
of ourselves, because we are troubled by the results of a political theory dominant in our day and age.

Clearly frustrated by the consequences of apparently intractable political problems, a distinct set of questions should arise. If we are to claim that rights are anything other than acts of will (i.e., features of a given political community’s positive legal code), then we must locate their grounding in something other than mere artifice; we must locate some set of principles, observation on man, or otherwise (cf., Arendt, 301). Absent this, we would do well to abandon this type of political language. The first question, Do we speak well when we talk about rights? is coterminous with the subsequent question, What is the source of these rights? The rights that we allege to be inalienable must be founded in something. If they are an essential characteristic of a human being, then it must be a quality which we can attribute to any chance man, whether or not he exists as part of a human society. In the idiom of the seventeenth and eighteenth century, then, these political traits must be grounded in the state of nature. If not, then rights are by convention alone; they are only positive law. And all laws can be broken or ignored (with impunity) by actors whom they do not oblige. If we do not take up this challenge, we are faced by the likely conclusion: That there do not exist a category of rights which no man can relinquish; that there are no human rights.
Oliver Wendell Holmes, Jr. wrote over two thousand court opinions as Chief Justice of the U.S. Supreme Court. He wrote of law as an evolving outcome of court decisions and dealt with law as the consequences of cases rather than moral abstractions. Despite his reviled skepticism, his powerful scholarship placed law within a nation's development, and his elegant court opinions demonstrated its close tie to letters.

The substance of the law and the procedure of the courtroom cannot be separated from narrative. Judicial psychology, legal confessions, and court opinions are never as clear as the force of logic. To accomplish its job of passing judgment, the law needs interpretation and responsibility to be clear, but transparent human motivations are something of a fiction. In the case of such ambiguities, the study of literature might have fascinating implications for law, which cannot help but be rattled by the humanities.

The intersection of law and literature is a compelling one, yet the relationship between the two is unclear; they seem academically incompatible. Though Holmes suggests that the way we think about law is embedded in narrative, and that interpretative practice is close to literature, legal reasoning is nevertheless deeply rooted in the strength of argument. This makes "law and literature," one of the many "law and ——" movements, deeply problematic. As a student I find it captivating to distinguish between literary and legal readings of texts and study legal themes in literature. But the academic discipline of law and literature is not the carefree pondering about the human condition that I might have liked.

"Law and literature" usually means studying law in literature or treating law as literature. It can span the dramatic elements of a trial, the narrative of a testimony, and the analysis of statutes or judicial opinions. There is also a shared history of literature demanding legal change with plenty of legal censorship of literature. The movement is young and its future is indiscernible, with many scholars pulling the field in strange and unrelated directions. Although there is room for a good deal of facile pondering, there remains the question of the legitimacy and purpose of law and literature.

Legal reasoning, the process by which judges decide cases, involves establishing the content of a law, using that content to make a decision, and considering that decision's implications. This is done through interpretation, which is essential to literature. But it is not clear that Kafka, Camus, Dostoevsky, and Dickens have a lesson to teach legal scholars. Law and literature allows us to examine the role of lawyers and legal problems in literary texts and expanding our literary breadth and of law students, but it can't teach lawyering skills.

Benjamin Cardozo, who succeeded Holmes as Associate Justice of the U.S. Supreme Court, argued that novelists could be significant teachers of law:

The judicial process is one of compromise between paradoxes, between certainty and uncertainty, between the literalism that is exaltation of the written word and the nihilism that is destructive of regularity and order.

The law adjudicates, but in doing so deals with the complexity of human behavior. Cardozo suggests that literary thinking can provide insight into legal concepts such as confession, which are troubling for lawyers.

James Boyd White, who taught at the University of Chicago Law School from 1974 to 1983, is crediting with beginning the law and literature movement with his book The Legal Imagination. White instructs his reader to approach legal text as an artist, and not a lawyer:

I am asking you not to follow direction and example but to trust and follow your own curiosity; to work out in your

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imagination various future possibilities for yourself, defined by the real and imagined performances of your mind at its best; and to subject what you discover to criticism and speculation.

White is interested in a literary approach to legal texts, rejecting the Chicago tradition of “law and economics,” which uses economic reasoning to explain how law works.

White writes that a lawyer analyzing legal texts or debating the facts of a case is like a literary-minded author experimenting with narrative. The lawyer-as-artist uncovers potential meanings to challenge existing interpretations of the law. White argues that moot legal questions can be elevated to serious intellectual confrontations through this process. He insists that a process of literary analysis, rather than a legal theory, should come out of the process of reading and writing the law.

Professor Gary Minda of the Brooklyn Law School accuses White of rejecting contemporary jurisprudence along with any cohesive way of thinking about law. He calls White a “literary beatnik" lamenting over a law without the seductive power of literature. He jokes that White is a literary jazz artist yearning to emulate Kerouac:

White seems to whisper to his reader, ‘Can you feel it? Can you feel the potential for art here, Awww! Yes, you too can be a literary artist, but only if you do what I have done and begin to imagine the possibilities of law as literature.’

White’s embrace of literature is so fervent that he dismisses the economics of law, which no doubt offers insight into how law works. If anything, law and economics is another perspective to consider when interrogating a legal concept.

Ronald Dworkin is another scholar who believes that literature has something to offer the practice of law. He argues that certain legal propositions are not descriptions, but are rather the expressions of the law-giving body’s desires. Interpretation then needs to become a more inclusive activity than just uncovering an author’s intent.

Dworkin’s theory of “law as integrity” in *Law’s Empire* affirms that legal interpretation does not take place in a vacuum, but is tied to history. The interpreter of a case must refer to relevant past instances of legal interpretation in order to make the best ruling. Dworkin compares this to writing a chain novel, a work of collective authorship in which each successive chapter is written by a new author. Each new author is constrained by the past, must ensure fluidity, and must aim to writing the best possible novel within those constraints.

Though Dworkin is by no means telling lawyers that they should write literature, he gives hope to the interdisciplinary endeavor by suggesting that taking literature seriously will help an interpreter better deal with the law. It is a serious way of considering law by asserting that legal propositions can form procedural due process only if they accord with the community’s legal practice. The community binds a legal interpreter like the novel binds the literary critic. *Hamlet* is read as the best work that it can be, and not as it might have been written.

Dworkin’s approach is abstract but formal. Community values do not directly impact legal decisions, but cannot be severed from legal interpretation. Traces of these values are embedded in precedent decisions. For Dworkin, law is a product of community principles, and the process of storytelling allows us to determine what those principles are.

When judges interpret the Constitution, they engage in a moral reflection that takes into account the narrative aspects of the law, such as community and context. Dworkin sees literature as capable of revitalizing the ethical aspects of legal decision making, yet his concept of the law as integrity is too indeterminate to be embraced by the legal community.

Judge Richard Posner, professor at the University of Chicago Law School, provides a striking critique of the movement in his 1988 book *Law and Literature: A Misunderstood Relation*. Posner holds authors in high esteem, but attributes no significance to literature in the legal profession. Though legal and literary thinking can overlap, the two remain separate:

Although the writers we value have often put law into their writings, it does not follow that those writings are about law in any interesting way that a lawyer might be able to elucidate.

Lawyers have little to contribute to literary theory, which in turn contributes little to the understanding of legal texts. Posner gives a simple taxonomy of “lit-
erary” and “non-literary” texts. Non-literary texts are read to discern authorial intent, while literary texts are exempt from this reading. Shakespeare’s intentions are irrelevant, while statutes, constitutions, and contracts require readers to “open a channel to the mind of the author.”

Only the judicial opinion is literature. Judicial opinions need not make intention apparent, and are rhetorical tools in the common law. In *Buck v. Bell*, Posner tells us, Oliver Wendell Holmes remarked that an incompetent woman could be sterilized against her will, concluding that “three generations of imbeciles are enough.” Posner calls this elegant, albeit vicious rhetoric. It is certainly dubious legal reasoning, even if Carrie Buck had really been such an imbecile.

Posner argues that Holmes deceptively substitutes assuredness for cogent reasoning. Rhetoric is not a mode of reasoning. Posner concludes that “the interpretive problem is just not very important.”

Judge Posner calls the literary approach to the law the “great false hope” of law and literature. If a court adopted a literary approach to the eighth amendment, for example, assigning a meaning to the words “cruel and unusual punishment” that is “wrenched free from their historical context” would give the courts a free-wheeling power over criminal punishment. Posner says a responsible judge always looks to intent, and not narrative.

Oliver Wendell Holmes did not see narrative so disparagingly. He wrote that the lawyer’s training is undoubtedly “training in logic,” but that courts will often make decisions first with justifications later:

> Behind the logical form lies a judgment as to the relative worth and importance of competing legislative grounds, often an inarticulate and unconscious judgment, it is true, and yet the very root and nerve of the whole proceeding... We do not realize how large a part of our law is open to reconsideration upon a slight change in the habit of the public mind.

The study of literature is a study of narrative, which means examining the relationship between stories and legal arguments, analyzing the way that judges and lawyers use stories, and evaluating what types of stories can be accepted at trials. Treating law through narrative involves looking at facts rather than procedure.

Law begins to reveal a culture, rather than just delimiting its policies. The narrative outlook understands judicial decision-making as an activity with an audience, emphasizing an awareness of the people before the law.

This emphasis is evocative of the work of Robert Cover, professor at Yale Law School until his untimely death in 1986. Though not a proponent of the law and literature movement, Cover affirmed that the words of the court have a significant force, and that narrative has an important place in the culture of legal argument.

Cover’s *Nomos and Narrative*, the foreword of the 1983 Harvard Law Review, explains that law is not only a set of institutions, but a normative world, “a world of right and wrong, of lawful and unlawful, of valid and void.” The law, connected to narrative, constitutes its own world, quite literally: “This *nomos* is as much ‘our world’ as is the physical universe of mass, energy, and momentum.”

Cover argues that narratives draw dramatic energy from the force of the law, and that all legal statutes have normative boundaries. As he famously writes in *Nomos and Narrative*:

> No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live.

By locating our lives within a common discourse or community where they can be shared, legal meaning is created. Even more so, the cultural community generates the law that defines the *nomos* (in Cover’s language, the community engages in “jurisgenesis”). Cover distinguishes between the “paideic,” world-creating normative universe of common narrative, and the “imperial,” world-maintaining universe of enforcement. All communities, he says, embody both types to a certain degree.

Cover demonstrates that narratives are vital for law to have meaning. He points to Jewish law and the Torah as examples of a legal world. The narrative structure of Jewish law provides an understanding of the Jewish
legal world’s community, history and identity. The stories within the community become central to its legal decisions.

Cover sees narrative as a principal way to find legal meaning. Despite Judge Posner’s compelling claim that lawyering is separate from literature in the most crucial aspects, that Kafka’s law degree cannot lend legal significance to *The Trial*, studying the narrative aspects of law nevertheless invites a variety of interesting normative questions.

The admissibility of confessions, the confrontation of witnesses, and victim impact statements are several distinct legal scenarios in which narrative plays a role. An entire trial consists of a multitude of narratives, with the law of evidence regulating how stories are to be told. The competing narratives of the adversarial court affirm the high stakes of the combat between stories. Narrative in the courtroom undoubtedly has a direct power over legal decision-making. If the study of literature can expose us to the power of story-telling, then it certainly has an important relation to the law. Even if the law and literature movement is somewhat confusing, narrative is significant and internal to the discipline of the law apart from any interdisciplinary adventures.

Legal narrative, however, has high stakes. Storytelling in the legal culture is meant to persuade, whether it involves a lawyer arguing a case, a judge justifying a decision, or a law professor writing an article. Narrative in the law is worth examining, and will often produce provocative results, but the authority enforcing law cannot be taken lightly. While legal narrative is surely worth studying, Judge Posner’s distinction remains true—law is not literature. **
SCHIP. Who knew that these five letters would develop into a farce full of narcissism and grandstanding? For all the lunacy that happens within the backrooms and on the floor of Congress, once an inane issue is voted on it usually cedes the spotlight for more important matters. Yet after Bush announced his decision to veto, the media’s stage in the political theatre was hijacked by illogic and pomp as the customary, sanctimonious outcries of Soros’s MoveOn.org, Madam Pelosi, Reverend Huckabee, Potato Farmer Grassley, and numerous pundits spewed forth their spin.

What induced all of this was a proposed expansion of the State Children’s Health Insurance Program to $35 billion over five years. The congressional debate over the expansion is finalized, but the issue continues to be flogged. Although Congress failed to overrule the President’s veto in January, the issue still maintains relevancy as campaign ’08 continues (Hillary Clinton, for example, claims she “helped to start” SCHIP when in fact she, along with Bill, worked against the efforts of Senators Ted Kennedy and Orrin Hatch to pass such legislation). More importantly, the political ecstasy surrounding the SCHIP debate, the disregard for SCHIP’s foundational flaws, and the augmented ramifications of such programs demand close scrutiny. No single politician or party maintains full culpability. Minority Leader Boehner’s pseudo–John Wayne demeanor in defense of SCHIP for only the “poor kids” is almost as convincing as Antonin Scalia’s comb over. The wrong questions are being asked and answers reeking of sophistry are being provided. Politicians and special interest groups have slyly manipulated the issue at a base emotional level, and nobody seems to be discussing the critical and fundamental issues surrounding programs like SCHIP. These programs, their stifling, long-term consequences, and their inequitable funding allocations to states demonstrate many of the factors that plague our health policy today and in the future if reform is not instituted. There are five fundamental problems with SCHIP, and while several are endemic to government programs in general, their SCHIP manifestations are particularly pernicious.

First: bureaucratic mishandling. Back in August, the DHS discovered that some states had been dishing out SCHIP funds to families earning at least 350% above the poverty line and were ignoring the neediest. States were not merely expanding coverage above the already SCHIP-insured, low-income earners; states were ignoring the neediest as they allocated funds to cover thousands of adults. Amusingly, the governors of the states that were misusing SCHIP and its matching grants the most were the ones who cried “injustice” the loudest over the veto. In fact, Elliot Spitzer led a group of fellow bottom-feeding governors in suing the president for vetoing the legislation and limiting their unchecked abuse of the program (though one shouldn’t be surprised that Spitzer would be in favor of promiscuous spending). In response to such tomfoolery, the DHHS had to mandate that states could not extend their programs until the state covered at least 95 percent of income earners under 200 percent of the poverty line.

Second: compositional flaws. SCHIP serves as an allotment-and-dependence “entitlement,” a term for an unfair allocation of another’s efforts. Unlike even Medicaid with its dollar-for-dollar matching system to the states, the federal treasury can boast almost a 3:1 payout system to states under SCHIP. The perfect opportunity exists for states to capitalize by gaining greater breadth and power with no consequence or responsibility, since their flightiness is backed by federal tax dollars. Sound familiar? One of the most successful reductions of bureaucratic waste was an effort in the nineties to make welfare programs accountable, when members from both parties successfully dealt with the same problems with another counter-progressive “entitlement” field: welfare to workfare. If Gingrich and his scorched-earth style could bring together a bipartisan effort for sound reform, then so can Pelosi. Some of the solutions for reforming welfare should apply to SCHIP.

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Politicians should strike down the system of matching grants and institute set block grants instead; this very act would levy accountability on state governments to focus solely on those who truly and absolutely qualify for SCHIP instead of citizens capable of purchasing their own insurance. And if a state desires to expand SCHIP, the officials would not be able to capitalize as they do now on the hard-earned tax dollars from citizens in other states. This would also help prevent SCHIP benefits oozing to those who don’t need them; individuals in their respective states remain watchful over such programs like SCHIP as they bear the burden through taxation.

Third: marginal catch-22’s. As states focus on insuring those below a specified income margin, there exists a serious consequence: economic quicksand. Those who experience a marginal rise in personal earnings could easily find themselves substantially poorer than before as their taxes increase, SCHIP benefits dissipate, and exorbitant premiums present themselves. Even a shot of Obama’s “Hope Elixir” could not alleviate this worry over financial insecurity.

Fourth: private sector backlash. As states expand SCHIP and similar programs, families choose such “entitlements” over private insurance; this forces insurance companies to raise rates to recoup lost revenue. This is especially a concern for expanding the SCHIP program to higher-income families, since lower-income families don’t have private insurance programs to choose over public ones. SCHIP attributes to substantially rising private coverage costs immediately above SCHIP’s qualifying income ceiling. The absurdity from SCHIP-expansion supporters reaches its zenith as they defend substantial monetary increases for the program with substantial cigarette tax increases to cover cost. A cigarette tax falls mainly on the lowest income-brackets, since that is the main demographic purchasing cigarettes. If expansion of SCHIP truly focuses on individuals who can’t afford private health insurance, then why would politicians support implementing a regressive tax which will financially punish the poor? Only Congress would condemn the Marlboro Man while banking an unprogressive, unaccountable program on 22,000,000 new smokers.

Fifth: the chains of special interests. Maybe the rationale of politicians advocating for SCHIP expansion rests with the powerful lobbying machines that directly benefit from increases in subsidies for health insurance and care? For true reform to occur we must wisely recognize the greedy hands of the special interest groups and insurance companies in the governmental cookie jar of healthcare subsidization. Part of doing so is recognizing other policies which influence public health; poverty and education reform can make substantial gains for the health of citizens, lessening the pressure on the health care system.

Whether it’s the corporate welfare to employers controlling coverage or it’s the unfair, price-gouging consequences of governmental programs, Americans must fervently advocate for reform of the current system. Presently, political agendas seem bent more on absolutism as the government either subjugates us to its omniscience over the health care market or obligates us to mandatory health insurance—socialism versus fascism. Do we really want to fertilize the root of the problem with its third-party costs? Is this true reform, or are we merely trading one set of chains for another? What ever happened to you, the capable citizen? **
After refusing to endorse divestment from Darfur, the University seems to be continuing its enthusiastic support for sustainable environmental policy. In early February, the Board of Trustees found that divestment violated the Kalven Report, a 1967 document which guides the appropriate response of the University to social and political issues, and later that month, the University hired a part-time sustainability coordinator. Though the University’s support for sustainability is not new, the recent hire demonstrates an increased level of support and visibility for it on campus. This is strange given the divestment decision precedent. Issues surrounding sustainability are clearly unsettled social issues of the day. Some challenge the scientific basis of global warming and even if the science were clearer, its ramifications are still far from determined. It may be important to protect the environment but the price that should be paid to do so is unclear—the University is a small community and cannot change these global forces much anyway. Given sustainable policies’ status as an unsettled social and political question, the University should be prohibited by the Kalven Report from taking a collective stance on it.

The only official analysis of the divestment proposal’s interaction with the Kalven Report was offered by President Zimmer on February 2, 2007. Although President Zimmer does not explicitly state what arguments the Board of Trustees found convincing in its decision not to divest, he does state that some argued that since “divestment is likely to have little or no practical effect, especially when the University’s holdings in targeted companies may on any day be nonexistent or de minimis, the University should not venture onto the slippery slope of taking institutional stands on social or political issues.” He contrasts this argument with the opposition’s view that “divesting is an important moral and symbolic stand, even if it would have limited practical effect on the international crisis.” It is obvious which side carried the day: the Board was persuaded that the University’s mission is not to take symbolic stands on social issues that produce limited practical effects.

In contrast, the University seems willing to take symbolic stands with little practical effect when the considered policy is sustainability. In February 2006, the University agreed to substitute ten percent of all undergraduate housing electricity use with wind power. This decision has little practical effect: it is only a small amount of power and it will not significantly reduce global carbon emissions or global warming. In addressing the decision, Cheryl Gutman, Deputy Dean of Students for Housing and Dining stated, “We made a choice to support green renewable energy sources. We’re making a statement and making a commitment.” The ‘we’ is presumably the University community, or at least the Dean of Students’s office. Gutman continued her characterization of the purchase by stating, “It’s highly symbolic.” She thus showed that this is exactly the kind of action prohibited by the reasoning in the Darfur divestment decision and the Kalven Report.

The Kalven Report explicitly prohibits the University from “expressing opinions on the political and social issues of the day,” and it’s obvious that making symbolic statements about whether alternative energy should be used more frequently falls under this prohibition. Writing on the Law School’s blog, professor Geoffrey Stone concluded that “those who demand divestment want the University to make a statement about what is morally, politically, and socially ‘right.’ And that is precisely what the University should not do.”

The purchase of wind power is an example of the University “modifying its corporate activities to foster social or political values” which is also prohibited by the Kalven Report. At the time of the purchase, the University was spending $1,990,000 annually on gas, steam and electricity; the purchase of the wind power increased this spending by an additional $160,000 annually, according to Gutman, who concluded that it was not a significant expenditure. An increase in annual...
power costs of over eight percent is not small, however, and represents a modification of the University’s corporate goal of finding an inexpensive power source.

Ted Steck, chair of the environmental studies program at the time, was explicit about his hope that the purchase would foster political and social values. He said that the purchase was about “education, it’s not just a matter of money or energy. Part of the outlook that students will acquire here is how to live an environmental life.” But according to the Kalven Report, the mission of the University is not to instill in students a respect for a particular social policy or to encourage them to lead a certain life; rather, it is to be a forum of open criticism and debate. The $160,000 spent on symbolism and fostering of social values prevents the University from reaching its fullest potential. It’s money unnecessarily diverted from the school’s core mission as the Kalven Report recognizes it: “the limited, albeit great, purposes of teaching and research.”

The Sustainability Council is an official part of the University bureaucracy. It was incorporated into the Office of the Vice-President in 2006 and has faculty and staff members including representatives from Facility Services and the Residence Halls and Commons. According to the Council’s website, it seeks to “promote greater environmental awareness throughout the University” and to “develop sustainability initiatives for faculty, staff and students.”

The Council’s goals sound like fostering a particular social policy in the University community. When an organization like the Council is a part of a University office it should refrain from favoring certain social policy because it creates the appearance that the University is collectively favoring the policy. In May 2006, the Council created a set of “Proposed Sustainability Principles” recommending that “the University should exercise leadership by fostering a culture of active concern for the natural world in which we live.” (emphasis added) The operational principles of the document included prioritizing the purchasing of green products and giving special consideration to companies committed to environmental stewardship. The Principles have not been adopted.

Some may argue that pursuing sustainable policies is a legitimate corporate activity for the University to take. Sourcing power and undertaking new construction are both legitimate activities. But as the divestment case shows, adding a restriction to a legitimate activity, like the sourcing of power or maintenance of property, in order to favor a certain social policy is illegitimate. These actions are as prohibited by the Kalven Report as modifying investment objectives to favor humanitarian investments.

Others may claim that global warming and environmental destruction could have a direct impact on the University whereas the conditions in Darfur have almost no direct impact. Given the small size of the University and our consumption relative to the City of Chicago and the entire world, the benefit we provide by adopting sustainable policies is probably non-existent. We could perhaps have an impact if our decisions encourage others to adopt sustainable practices, but as the Kalven Report states and President Zimmer reiterated in his June 2 letter, the University “should not…permit itself to be diverted from its mission into playing the role of a second-rate political force or influence.” The greatest contribution the University can make in this world is from careful thought and good argument. President Zimmer attributes this contribution in large part to “an institutional culture that promotes and preserves free inquiry and the expression of the fullest range of perspectives.” This culture is not being respected when the University is actively attempting to cultivate a specific perspective on sustainability.

Finally, when Dean Bill Michel was asked about the University’s sustainability efforts and their possible violations of the Kalven Report, he replied that administrators viewed the policies as good business practices and not as taking a social stand. The Administration’s
view is that sustainability helps reduce costs and allows for the University to be a more effective partner with the City of Chicago which has also demonstrated a commitment to sustainability. The titles “Sustainability Council” and “Sustainability Project Manager” imply that they are pursuing policies that go beyond reducing costs or increasing revenues or, else they would be under a traditional facilities management role. Those on the Council probably do not see their mission as saving the University money as demonstrated by their proposal of the “sustainability principles” which would definitely impose additional costs on the University.

Those entrusted with the day-to-day administration of the University cannot interpret the Kalven Report in an objective manner. The incentives facing administrators emphasize producing real-world benefits to the University in the short-term. The Board of Trustees would make a better body to interpret the Kalven Report since they have a long-term mission to improve the University. But since Kalven Report issues are dealt with on a case-by-case basis, there is no clear authority delegated to a specific group.

Being an effective partner with the City of Chicago should not be among the University’s considerations, either. Pursuing a sustainable policy likely increases favor with the City, the value of which cannot be underestimated in Chicago, and in fact in February the City Council denounced the University for its divestment position. If we were concerned with partnering with the City (and decreasing the costs associated with constant protests) we would have reached a different decision on divestment. There is a good reason to avoid cultivating the University’s political ties: when people understand that they can use leverage to turn the University into a political lobby for social policies, they will try to do so more frequently. And though the political benefits may be clear, the costs are harder to estimate. A loss of academic freedom over the University’s life is very hard to compare to the immediate benefits.

To reaffirm its commitment to freedom of inquiry and freedom from political passions and pressures, the University should immediately reverse its course on sustainability policy. It should not promote alternative energy, green design, or other sustainable practices in its facilities unless there are tangible benefits to the University community that outweigh the costs to the community. The only exception should be when an action’s impact on the environment is so substantial that it would endanger the ability of the University to continue functioning.

Symbolic statements and attempts to foster an appreciation for sustainability in the University community have little tangible benefit. The University will have the greatest impact on sustainability not through lobbying or facilities management but through fostering an academic environment that allows for the greatest freedom and debate amongst its members. Following the Kalven Report’s principles, the University should promote the greatest scholarship in studying sustainability in a similar way that it promotes scholarship on genocide, rather than taking direct action on either cause. **
In 2006, Hugh Hefner’s daughter Christie Hefner was ranked by Forbes magazine as the eightieth most powerful woman in the world, below CNN’s Christiane Amanpour but above Queen Rania of Jordan. According to Forbes’s ranking, Hefner’s accomplishments as the new Chairman and Chief Executive of Playboy Enterprises were comparable to Amanpour’s work as Chief International Correspondent for an international news broadcast and Rania’s “vocal advocacy of women and children’s issues in a region where such issues aren’t a given.” Granted, Forbes does not claim to rank women according to their contributions to feminism. Still, juxtaposing Hefner with Rania, who once declared “the best advertisement for empowering women is an empowered woman,” raises questions about what Hefner’s enterprise really does for (and to) women.

The pin-up girl, the centerfold of Hefner’s industry, is nothing new; indeed, as a seminal image of World War II iconography, she is woven into the fabric of Americana. Similarly, men’s magazines—titillating periodicals depicting and describing the nude female form—have a rich history in American culture. Such magazines first appeared around 1900, and have only increased in explicitness and readership since. But increasingly explicit content is neither the most provocative nor most problematic component of the evolution of men’s magazines and other media from MTV to Maxim. In her landmark book Female Chauvinist Pigs, Ariel Levy takes aim at a new brand of misogynists born and bred of this raunch culture: women.

Levy’s “female chauvinist pigs” wear the Playboy Bunny as talismans, proudly bare their breasts for Girls Gone Wild’s cameras, and otherwise contribute—both economically through their consumption and physically through their labor—to the industry that has long viewed them as objects to be commodified and consumed. Even more interestingly, some women, like Hefner, have taken on the role of producer, compelling and compensating women for marketing their sexuality.

Certainly, there are a number of female-friendly pornographic websites, films, and other materials which are created to be pleasurable and safe for the producers, participants, and consumers. Despite these models, there are numerous studios, websites, and publications that are neither pleasurable nor safe for the female performers. Many of these are run by women.

Here, I would like to consider the issue of what is at stake in woman-produced raunch. One fundamental question seems to be whether participating in pornography and other forms of commercial sexuality empowers women or oppresses them. That is to say, does participating in pornography permit or preclude women’s political, social, and economic enfranchisement? Another equally important question is, when it comes to raunch culture, does the gender of the producer matter?

My discussion will focus on the dialogues taking place in the popular press, as opposed to the theoretical discourses that have been articulated in the academic register. Though the analytical and activist work of MacKinnon, Dworkin, and other feminist scholars was instrumental in shaping conceptions of the sexualized female body, it is also interesting and productive to critically engage with non-academic voices. The writings of contemporary cultural critics attest to the pervasiveness of conversations about what’s at stake in the proliferation of raunch.

There are two primary positions in the popular press on whether participation in porn is empowering or oppressive to women. One is championed by The Guardian’s Kate Taylor, who contends that “raunch culture is not about liberation gone wrong; it’s about re-discovering the joy of being loved for your body.” The other is articulated by columnist Meghan Daum of the Los Angeles Times, who—in a piece about the
culture of college spring break—laments the fact that “raunch is re-branded as ‘confidence.’” While I appreciate and commend aspects of both arguments, I ultimately take great issue with both.

In her March 2006 piece, Taylor wrote: “We’re not trying to be empowered. The twentysomething women I know don’t care about old-style feminism. Partly this is because they already see themselves as equal to men: they can work, they can vote, they can bonk on the first date. For younger women, raunch is not about feminism, it’s just about fashion.” Taylor celebrates the fact that in today’s ‘egalitarian’ society, women have already obtained enough respect from men that they can stop striving to be competent and authoritative. I was profoundly disturbed by Taylor’s assertion that “instead of desperately longing for the right to be seen as human beings, today’s girls are playing with the old-fashioned notion of being seen as sex objects.” While I believe that every woman should be encouraged to create and live whatever identity (gender, sexual, or otherwise) she wants, I can’t shake the feeling that encouraging women to revert to embodying “old-fashioned” fantasies is quite a slippery slope. I worry that satirizing the dichotomy between sexual control and oppression might blur the distinction between playfulness and earnest identification with a problematic and subordinate position.

Though Taylor claims that these new female pornographers are not seeking empowerment, she suggests that this is precisely what they obtain. Taylor argues that “true feminism should celebrate femininity, and make you feel wonderful to be born a woman,” and she believes that this can be achieved through posing topless and other “celebrations” of sexuality and womanhood. For Taylor, participating in raunch culture constitutes a reclamation of female sexuality. She contends that raunch culture offers one way for women to subvert oppressive stereotypes by promoting a sexuality that females have historically been socialized to deny.

Taylor chides feminists for arguing that “lad-mags [like Playboy] relentlessly promote the message that women exist solely for the sexual gratification of men and boys.” As evidence to the contrary, she reminds readers that women are generously compensated for their sexual labor. She asks, “[Do feminists] have any idea how much money women make when they take their clothes off? How much freedom and independence these girls can earn in an hour?” I am more than a little troubled by Taylor’s equation of money with freedom. It is true that a few thousand dollars might make a significant economic difference in a woman’s life, and allow her to access and utilize costly necessities like health care. I don’t mean to diminish these important economic benefits; still, economic compensation does not inherently disengage a woman from a larger culture of disenfranchisement. Though I don’t think that liberation must be achieved with a top on, neither do I think that it can be handed over in a handsome check.

Daum, on the other hand, wildly condemns college women on spring break for indulging their sexual appetites in ways that might border on recklessness or irresponsibility. Daum chastises “college women (who, after all, are presumably pursuing higher education because they want to be more than sex objects) [but who] seem so happy to let men lick tequila shots off their body parts.” Implicit in this assertion is the belief that non-objectification and wild, public sexuality are mutually exclusive. While I share in Daum’s disappointment that educated women derive “confidence” simply from meeting the approval of hordes of drunk frat boys, I don’t believe that wanting to be seen as physically attractive inherently demeans or diminishes a woman’s intellectual capacity and other achievements. Though I would certainly hesitate to encourage women to participate in activities like wet t-shirt contests as a means of validating their “self-worth,” I do not think it is fair to assert that women who do necessarily view “sexuality as their only currency.”

Daum is of the opinion that raunch culture is inherently, and without exception, degrading to women. But to argue that a physical (specifically bodily) experience can have such a pronounced effect on the way
Women are perceived simply reinforces the notion that women can be reduced to their physicalities. In arguing that exposing one’s breasts trumps the exercise of one’s brains, Daum implies that there must be a conflict between the two. Like Taylor, Daum contends that raunch culture has a singular, universal affect on the women who participate in it.

In *Intercourse*, feminist theorist Andrea Dworkin critiques sexual relationships conceived and enacted in a culture of dominance. She condemns a sexual culture in which “sex requires dominance in order to register as sensation.” Her highly complex and nuanced theorizing has been grossly reduced to an equation of sex with rape. In fact, Dworkin neither condemns sexual intercourse nor argues that sexual relationships—even ones that integrate dominance into routine sexual activities—cannot be consensual and mutually pleasurable. Instead, she criticizes sexual interactions that are predicated on fundamental inequalities and differences in exercisable agency. Dworkin denounces the eroticization of a social, political, and economic power differential that allows for—and even mandates—“force as a natural and inevitable part of intercourse.” She denounces a broad cultural schema that unquestioningly places men on top and women on the bottom.

I would like to use Dworkin’s idea as a foundation for offering an alternative paradigm for conceptualizing the relationship between women and pornography. Like Dworkin, I believe that abstract ideas like empowerment and oppression are made manifest in contextually dependent ways. It is neither imperative nor fruitful to consider women’s participation in pornography, both in terms of producing it and performing in it, as unequivocally empowering or disempowering. Rather, I would like to propose that these behaviors become empowering or oppressive as a result of the culture around which they are conceived.

Dworkin critiqued a sexual climate in which physical intimacy required dominance in order to register as sensation. I criticize a pornographic culture in which there is an eroticized hierarchy of agency and stratification of power on the basis of gender. I am not inherently opposed to porn, nor do I believe that mass-marketed sexual imagery is intrinsically demeaning to women. I believe that there are, at least theoretically, circumstances under which women baring their breasts for cameras can be both sensually and monetarily fulfilling. Without engaging the myriad complex discourses about consent, I want to propose that there are situations in which a woman’s decision to engage in sexual commerce might not be coercive. But this hypothetical situation is a far cry from the common practice of commercial sexuality.

The *Girls Gone Wild* (GGW) video series, produced by Joe Francis, exemplifies a sexual transaction predicated on dominance and coercion. The leering camera man directs the actions of the (often intoxicated) “girl,” whose incapacitated state necessarily precludes any semblance of uninhibited agency. This differential in agency is one way in which the gendered hierarchy of power is made manifest. The often-bullying verbal directions given by the cameraman and crew also attest to the aims of the target audience. Certainly, the targeted audience is male, heterosexual, and thrives on the idea of somehow controlling or manipulating the sexual behavior of lithe young women. It is precisely for this purpose that the coercive cajoling on the part of the cameraman and crew is included in the mass-marketed tapes: the (male) viewer is able to project himself in the cameraman’s place, as the one observing and instructing the behavior the “performer.”

Recall Taylor’s assertion that feminists critique the adult industries for portraying women as sexual objects for the pleasure of men. Taylor contradicts this claim and contends that, even in “lad-mags” and other media geared towards a specifically-male audience, women are not reduced to objects for male sexual gratifica-
tion. Taylor argues that female participation in raunch culture is the new frontier of liberation, but watching five seconds of a GGW video makes a compelling argument to the contrary. GGW is one such adult media that targets a male demographic. It would be possible to suggest that the girls on film were exercising and expressing their sexuality in a non-objectifying way if it appeared as though they were emotionally and intellectually engaged in—or even aware of—their behaviors, surroundings, and consequences of their actions. This is not the case: the girls frequently stumble, trip, and fall in drunken stupors. Insofar as the compounded effect of their state of utter intoxication and the high level of coercion from belligerent cameramen prevent them from making informed, calculated choices, these women cannot possibly be anything other than objects.

I do not mean to devalue or discredit women’s capacity for reason, rationality, or ability to consent to sexual behaviors. I merely hope to suggest that the question of whether women’s engagement with pornography is empowering or oppressive is a grossly reductive one; it fails to consider the social and cultural constructions that impact the production, reception, and use of mass-produced sexual materials. I believe that under circumstances in which women are coherent, informed, and confident in their decisions and behavior, raunch culture can be a harmless—and perhaps even beneficial—way for women to explore and express their sexuality. Conversely, in situations involving intoxication, lack of information, or lack of consent, raunch culture negates women’s hard-fought-for footing in the discourses of enfranchisement and agency. Decades after the era of “bra-burning feminism,” taking your top off can still be a feminist act—maybe.

As previously mentioned, GGW is produced by a man. Yet the Tour Manager, the person responsible for recruiting the “talent,” is female. This raises the question, does the gender of the producer influence whether the work is oppressive or empowering? Is there something inherently subversive about a female appropriating the historically masculine role of porn producer, or might the pertinent difference lie in the way the featured female is treated, and the way in which she is portrayed?

Christie Hefner is a fascinating case in point. The CEO of Playboy Enterprises is also the founder of numerous charitable foundations, including the Committee of 200, an organization of female executives and business owners who provide mentorship and scholarship opportunities for young girls. Hefner claims that she does not find her contributions to women’s professional advancement to be incompatible with her promotion of women as “decorative inducements to masturbate.” Instead, she considers participation in porn to be an empowering act in a “post-women’s movement” world. She argues that posing for Playboy is a way to articulate “I’m taking control of how I look and the statement I’m making as opposed to I’m embarrassed about it or I’m uncomfortable with it...” In Hefner’s estimation, posing for Playboy is a successful way to articulate self-confidence and healthy, unabashed sexiness. The way Hefner phrases it, Playboy is the only alternative to prudishness. As Levy so pointedly puts it, “raunch culture isn’t an entertainment option, it’s a litmus test of female uprightness.” To opt not to engage in raunch culture is to be branded frigid.

Hefner calls this ideology “a more grown-up, comfortable, natural attitude about sex and sexiness that is more in line with where guys were a couple generations before.” Evolving motives for participating in pornography in no way alters the paradigm for its use. Even if the women participating in it do find porn to be an empowering way of expressing their confidence and contentment with their bodies and sexuality, Playboy’s pages of enhanced cleavage and cellulite-free bodies continue to cater to a culture that scrutinizes the female form. It does nothing to critically engage the dialogue about what constitutes beauty and sexuality; instead, it reinforces (almost) unattainable physical standards and fantasies. While I would add that images of beautiful women can certainly be as fulfilling and stimulating for women as they are for men, I still contend that a more pervasive benefit could be obtained by expanding the category of bodies that are considered beautiful.

Hefner contends that women engaged in the production of pornography foster and sustain a type of modern sisterhood in which “empowering” expressions of sexuality are the uniting bond. But this notion of a community of empowered women is problematic. Associating strong, confident femininity with physical attributes is reductive. First, to argue for bonds of sisterhood is to reduce the array of diverse experiences...
of womanhood to one limited and essentialized definition; it is to contend that there is one female trajectory. To suggest that there is an essential experience of femininity, and one route to female empowerment, discounts the effect of specific experiences and socio-cultural factors in the construction of gender. Second, by contending that there is communion to be found on the basis of commercialization of shared reproductive anatomy, one excludes the experiences of transgender individuals from the discourse of womanhood. That is to say, in addition to propagating the same (potentially malevolent) ideologies espoused by her father’s generation of pornographers, Hefner’s proposed way of achieving empowerment is exclusionary of a whole demographic of women.

It is imperative to note that woman-made raunch is not necessarily woman-friendly. Both women and men have the capacity to influence raunch culture in a positive way, through critically engaging the discourse on sexuality and the body, and renouncing power differentials in the production, distribution, and sale of raunch materials. In addition to these theoretical investigations, this type of raunch would involve tangible medical and economic considerations, as well. Woman-friendly raunch would involve paying for STD and pregnancy tests for all performers, providing them with a clean and professional working environment, and enforcing strict mandates for documented consent.

I would contend that the problem with raunch is not the gender of the person who creates it, nor the content it contains. Instead, the problem is the culture that conceives and consumes it. The empowering or oppressive possibilities latent in raunch culture manifest themselves not as a result of the gender of the producer, but in accordance with the paradigm of sex, gender, and power which mandates and reinforces its use. **
In response to the release of *Magnolia* in 1999, indie-fresh filmmaker Kevin Smith made the following statement: “I’ll never watch it again, but I will keep it. I’ll keep it right on my desk, as a constant reminder that a bloated sense of self-importance is the most unattractive quality in a person or their work.” Thus the self-appointed representative of the ’90s “working-class” filmmaker has spoken: Paul Thomas Anderson and his film are decidedly “pretentious.”

“Pretentious” is a favorite word of the layman art critic, something we hear tossed around so easily, as if its meaning were perfectly obvious. Does it indicate the intent to titillate the director behind the camera, as opposed to forming a genuine connection with the audience? If so, then it’s easier to argue that this applies to the self-referential Smith better than the hugely expressive works of P. T. Anderson. But I do not think Kevin Smith is simply wrong in making this claim; I think he is downright pathetic. For the accused—Anderson—has, more deeply than any current filmmaker, explored the depths of man’s ego and its many forms.

I think that from only his four major films—*Boogie Nights*, *Magnolia*, *Punch-Drunk Love*, and *There Will Be Blood*—we can come to see that, among his many praiseworthy qualities, Anderson has a special ability to explore man’s burrowed, hidden drives. He is today’s cinematic master of the ego.

By considering three characters in particular—Tom Cruise’s Frank “T. J.” Mackey in *Magnolia*, Adam Sandler’s Barry Egan in *Punch-Drunk Love*, and Daniel Day-Lewis’s Daniel Plainview in *There Will Be Blood*—we can come to see that, among his many praiseworthy qualities, Anderson has a special ability to explore man’s burrowed, hidden drives. He is today’s cinematic master of the ego.

Needless to say, the actors deserve their credit; indeed, each performance can be (and should be, I think) considered the peak role of its actor’s career: Cruise received an Oscar nomination, Sandler a Golden Globe nomination, and Day-Lewis won the most recent Lead Actor Oscar for his performance. These are truly roles that actors—and viewers—can sink their teeth into.

Cruise’s Frank “T. J.” Mackey is a pompous figure for the ages. His first scene in *Magnolia* begins with the rumbling notes of Strauss’s “Also Sprach Zarathustra” (most famously known from *2001: A Space Odyssey*, and self-consciously reminiscent of its grandiosity). His incandescent silhouette appears onstage, arms to the side, biceps flexing. There are cheers and thunderous applause. This is Mackey’s seminar: “Seduce and Destroy,” for which “misogynistic” would be an understatement. He sweeps his hands down to frame his groin and yells, “Respect the cock!” Then, with magician-like arms, he swoops forward as the camera moves in, and yells, “And tame the cunt!” The audience roars, and his expressions are slick and smug.

After a transfixing solo-act in which Cruise guides his testosteroned audience through the art of handling women and having them on command, he is called in for an interview with calm reporter Gwenovier. The half-naked Mackey begins the interview jazzed and pumped, only to shortly undergo a wordless confession in which it becomes clear to all that he has fabricated his given history. Gwenovier’s research reveals that Mackey’s mother fell ill and died when he was a child, and he cared for her through this process. In what is probably the best scene of Cruise’s career, he struggles to maintain his man-of-the-hour pomposity of Frank “T. J.” Mackey as his lies are revealed and his softer past is exposed. The interview ends with a furious, bitter, and silent Mackey. Red-faced, he haughtily explains his silence to Gwenovier with another lie: “I’m quietly judging you.” Mackey returns to the stage totally emasculated, but desperately trying and pretending to be the same “T. J.” he was in the first half. Though reading off the same seminar script, Mackey is now an empty, transparent figure.

*Punch-Drunk Love*’s Barry Egan, too, struggles to preserve his ego. He too has a weak underside, though his

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*Paul Thomas Anderson and the Ego*

by Thomas Manganaro

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is, at the outset, more apparent than Mackey’s. Barry is fragile; he has emotional problems he can’t explain and grew up in what must have been an insufferable family environment with six aggressive and tortuous sisters. In one memorable scene, he arrives nervously at a party his sisters are hosting, and the camera tracks him as he tries to benignly react to each down-putting jibe thrown his way: “Remember when we used to call you Gay Boy and you got all mad? Remember when you put the hammer through the sliding glass door?” He ends up smashing his sister’s glass doors. Later, in a fit of honesty, he tries to speak with one of his brother-in-laws about his emotional problems and asks that this conversation be private. Later his sister asks, “Did you ask Walter for therapy? Are you okay, Barry? What the fuck’s wrong with you?” We sympathize with his fragility.

Unlike Magnolia, Punch-Drunk Love is a comedy. The ending is heart-warming and funny, as Barry grows a fresh strength in his newly-found love. His is a story where we root for the organic rise of a real, justified ego over a debilitating weakness. Mackey is last seen crying at his father’s deathbed, admitting to the world and to himself his concealed emotional tie-ups; his ego is shot. Barry Egan, on the other hand, is last remembered yelling, “I have a love that makes me stronger than anything!” and fighting off a gang of bad guys. While Mackey has cathartically released his inner demons and dissolved his ego, Egan has heroically grown a new one.

Plainview is a terribly complicated product of the ego’s fragilities and compensations. Even his name is a mask—as if he were nothing but a simple mountain man, his motives in plain sight.

There Will Be Blood’s Daniel Plainview does not juxta-pose as easily with this structure. Easily the most enigmatic of the three characters, he must be interpreted in an especially personal way. Plainview is our protagonist, but he is certainly no good guy. He has a destructive ego, but where does it come from? Is it a “real confidence,” like Barry Egan’s? Or is it a compensation, like Frank “T. J.” Mackey’s?

I do not think there are any easy answers about this epic character, so unforgettabley played by Daniel Day-Lewis. But I do want to see past the impression one might get on a first viewing—that Plainview is nothing but a cold-hearted money-driven man, a raw symbol of capitalism. We are horrified by the way he threw away all those who were important to him in his path to success. We are struck by the cruelty necessary to abandon his son (twice), kill the man who claimed to be his brother, and, in the film’s terrorizing final scene, finally kill Eli—his alter-ego (so to speak). But I do not think this is a drive as linear, ruthless, and inexplicable as No Country For Old Men’s Anton Chigurh, for instance. Plainview is more battered, more afraid. This is not to say he is a Frank “T. J.” Mackey, either. For no cathartic experience will unleash the real Plainview—not even his “saving” at the church when he hysterically yells in admission, “I have abandoned my son! I have abandoned my boy!” This too was a way to get ahead, another ploy, another layer.

There is, in fact, fear and sensitivity in Plainview. But these qualities are hard to find; he hides them well. It is no lie when he sees his deaf son again, after sending him away for several months and he holds the boy in the middle of an expansive field, muttering, “This does me good. This does me good.” It is no lie when he caresses the head of the young girl who would be his son’s wife. It is no lie when he speaks in private to a man he takes to be his long-lost brother; these are the most unguarded and self-reflective words of the film. Speaking the ominous words, “I have a competition in me; I want no one else to succeed,” there is nonetheless a hypocritcal longing in these words—a longing for companionship, understanding, and an association with someone who shares his blood. Plainview does seek these connections; these rays of sensitivity are real.

However, they are most often taken over by another

Paul Thomas Anderson and the Ego
drive. What is it? Is it “a competition in me” as he says? Is it fear of defeat? Is it the belief that to be a successful man requires toughness and sacrifice, and a life without sensitivity? Is it embarrassment? We recall Plainview, when confronted by settlers who propose he sell them his land; they mention that he would be able to spend more time with his son. Out of a strange combination of hidden shame about sending his son away and a need to appear authoritative, he blindly, angrily, and incoherently commands, “Don’t tell me how to raise my family!…Or I will come to your house in the night and slit your throat.”

Plainview is a terribly complicated product of the ego’s fragilities and compensations. Even his name, Plainview, is a mask—as if he were nothing but a simple mountain man, his motives in plain sight. One suspects there may have been moments when he regretted his actions, such as when he sends his son away. But then we get a stronger sense that Plainview has no regrets; he is, in the end, incapable of saying “I’m sorry”—that would be a sign of weakness. Instead, Plainview piles on more horrific acts to his name and refuses to rid them from his self-understanding. Unable to justify the figure he has become, Plainview is left sprawled, senseless, in blood and sweat, on the wood of a battered bowling alley. He is not redeemed like Mackey, has certainly not grown afresh like Egan; instead, he is mad, and he is a failure.

Perusing these three characters has, I hope, honored the complexity of Anderson’s psychological world. I hope it has acknowledged not just a deep understanding of people, but also the evocative skill of one of America’s most talented writer-directors. The ego is only one theme we can observe throughout Anderson’s rich films. One could also spend time honoring his originality of vision, keen sense of musical accompaniment, a talent for long intricately-choreographed shots, an interest in family dynamics, frequent strangeness, and, perhaps most relevantly, his huge ambition.

*Boogie Nights,* Magnolia, and *There Will Be Blood* can be called over-the-top project ventures. Even *Punch-Drunk Love,* with its interludes of psychedelic stripes and dissonant organ synthesizer sounds, is an ambitious leap into new modes of cinematic storytelling. But how do we characterize this ambition—this tendency to move into unknown territory, push the boundaries of film expression, and simply expect more from movies? Is it pretentious? Given who we’re dealing with, I would like to suggest that it’s not that simple. **
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The New Pornographers: Women and the Production of Raunch Culture

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