Spring 1-1-2016

Castle: Ideologies of Exclusion in American Domestic Space

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CASTLE:
IDEOLOGIES OF EXCLUSION IN AMERICAN DOMESTIC SPACE

by

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B.A., University of Michigan (English), 2001
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A thesis submitted to the
Faculty of the Graduate School of the
University of Colorado in partial fulfillment
of the requirement for the degree of
Doctor of Philosophy
Department of English
2016
This thesis entitled:
Castle: Ideologies of Exclusion in American Domestic Space
written by Jennifer Colleen Cookson
has been approved for the Department of English

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Julie Carr (Chair)

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Date________________________

The final copy of this thesis has been examined by the signatories, and we find that both the content and the form meet acceptable presentation standards of scholarly work in the above mentioned discipline.
Cookson, Jennifer Colleen (Ph.D., English)

**Castle: Ideologies of Exclusion in American Domestic Space**
Thesis directed by Associate Professor Julie Carr

**ABSTRACT**

Castle addresses the rhetorical and ideological patterns that scaffold American concepts of domestic space, and the legal, literary, and cultural products of those patterns, focusing specifically on patterns related to private property. Following the example of recent experimental critics, my project collapses chronology, juxtaposing manifestations of each pattern to underscore the persistence of their respective ideologies. Also consistent with the emergent field of experimental criticism, I enlist my own experience as evidence of the subjectivity and, thus, culpability, of these foundational ideologies. My first chapter, “Private Property”, addresses this personal culpability most specifically, exploring the literary and philosophical methods we might enlist to confront and rewrite the ways in which concepts of “home” are used to justify structural exclusion. The second chapter, “Election” traces exclusionary concepts of property from the Puritan doctrine of unconditional election (including its legal manifestations) through Nathaniel Hawthorne to T.C. Boyle, and self-defense and domestic violence law. It argues that Stand Your Ground laws’ major legal renovations, no duty to retreat and immunity from prosecution, parallel those of the Puritan
Antinomian ("free grace") Controversy. Even as the specifics of Puritan election fade from common moral vernacular, Stand Your Ground laws simulate the persistence of a still-elect, "original" American community. The third chapter, "Privacy" traces the affective conventions of revolutionary-era sentimental fiction through to legal privacy doctrine (as applied to reproductive rights), the rhetoric of neo-liberal choice, and the rise of the natural-mother imperative. It argues that the absorption of demands for female autonomy into the persistent structure of sex inequality is a pattern that began with the Revolutionary-era privatization of female political participation, and that it repeated itself during both the first wave campaigns for suffrage and the second wave campaigns for reproductive rights, culminating in a contemporary resurgence of essentialist motherhood. That is, women keep asking for equality, and they get maternity and the private sphere. The shapes shift, but the rhetorical patterns persist; my project attempts to disrupt, both critically and formally, the patterns of privilege and exclusion that haunt the experience of American domestic space.
ACKNOWLEDGMENTS

Thank you, first, to Julie Carr—without her, this project would still be an unrealized hope. Thank you, too, to the rest of my committee: John-Michael Rivera, Patricia Sullivan, Joel Swanson, and Maria Windell—their support and receptivity was truly invaluable. Thank you to Finn for keeping me company, Scarlett and Sebastian for both inspiration and levity, and to my friends and family for listening. Finally, thank you to Chris—only you really know how hard this was.
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PRIVATE (SPACE), (PUBLIC) PROPERTY

The specific patterns out of which a building or a town is made may be alive or dead. To the extent they are alive, they let our inner forces loose, and set us free; but when they are dead, they keep us locked in internal conflict.

Christopher Alexander, *The Timeless Way of Building*

The heaviest burden: What if some day or night a demon were to steal after you into your loneliest loneliness and say to you: "This life as you now live it and have lived it, you will have to live once more and innumerable times more...Would you not throw yourself down and gnash your teeth and curse the demon who spoke thus? Or have you once experienced a tremendous moment when you would have answered him: "You are a god and never have I heard anything more divine"? If this thought gained possession of you, it would change you as you are, or perhaps crush you.

Friedrich Nietzsche, *The Gay Science*

Every tradition, even the most recent, becomes the legacy of something that has already run its course in the immemorial night of the ages. Tradition henceforth assumes the character of a phantasmagoria in which primal history enters the scene in ultramodern getup.

Walter Benjamin, *The Arcades Project*

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Before each showing, we dreamed ourselves into the houses, studying the pictures on the listing websites with a forensic level of spatial attention, deciphering floorplans, arranging virtual furniture. We were decoding the clues to our future. But once we arrived for the tour, our vicarious ownership became invasive projection; we felt predatory. Sometimes the owners were in the house, watching us tramp through their living room, peek in the bedrooms and the bathroom cupboards. We wanted a fixer upper, so we could make it our own, but neglected spaces house neglected people. The housing market was prodromal, not terminal, but this felt like an autopsy. We couldn’t imagine ourselves in those houses because we couldn’t imagine ourselves as them. Then he came across a house⁴ that reminded him of his grandmother. It was empty, except for the white wall-to-wall carpeting and the ivory polyester draperies hung from traverse rods. The front of the house supported weathered metal awnings and an AstroTurfed porch. It was tan brick, with white landscape rock and sparse, ancient spirea. He felt

⁴ All images of house plans are sourced from the database at http://www.antiquehome.org/House-Plans/.
like he was back in Swayzee, Indiana, sitting on his grandmother’s front porch. Its emptiness absolved us of voyeurism, and its nod to a generic history entwined its fingers in his childhood memories. This was the house.

The next summer, being, after all, less committed to preservation than to renovation, we gutted the house. One month in, the electrical wiring in the attic burst into flames. It was either pinched by a new ceiling beam, or watered by a hole in the roof, all that was left of a demolished coal chimney; either way, it was the contractor’s oversight. Already barely holding together a poorly managed Ponzi scheme, they declared bankruptcy and left us with a swarm of unpaid subcontractors, who promptly put liens on our house, even though we had already paid the contractor for the work; our careful pre-construction checklist had not included “lien waivers.”

We were told that we wouldn’t be able to come back for, perhaps, months. Finding a hotel, and then a temporary apartment, was difficult: the Democratic National Convention was the following week, and the political class had already started to descend upon Denver. The night of the fire, we ate dinner in the hotel restaurant, the only people not in rumpled, day’s-end suits. We smelled like campfire and ordered penne. Finally, we found a 6-month lease on a loft downtown, an historic hospital ward, converted into an infill project: how fun, we thought—we hadn’t done the loft thing, so…
But once the aesthetic novelty wore off, the old hospital began to feel haunted, our rented furniture scrubbed clean of personality. The loft was a holding cell, and our house an unrealized future. I couldn’t shake the shock of being unhoused. Even if it was only temporary. Or the coincidence of it happening concurrent with the collapse of the housing market, under the weight of much bigger Ponzi schemes, and the flood of articles that screamed, “The American Dream of Homeownership is Dead!” I read Bachelard’s *The Poetics of Space*, and LeFebvre’s *The Production of Space*, books about fire, and histories of suburbia. It was the sudden scrambling of the meaning of space, after all, that had opened up this portal into domestic purgatory. I would think my way out of this airless liminality.

As the house was slowly rebuilt, I agonized over what kinds of decorative finishes would be most authentic—to me, to the architecture, to its history. As if recreating the original mosaic tile bathroom floor would reset the clock on my own history with the house. When we finally moved back in, we had a party. The invitation read: “Please join us for a housewarming party (ahem, not *that* warm again, hopefully!) as we celebrate our phoenix rising from the ashes.” We felt grateful that we hadn’t *actually* lost our house, that our exile was temporary, bureaucratic, instead of
in institutional and interminable. The party was outside, the landscaping was new and shoot-green, and my toes were painted a fiery orange.

But the reinhabitation of the house coincided with the dawning realization that, in my egalitarian marriage, I took care of the house, decorated it, cleaned it—reflected it; my husband paid the mortgage on it. Since I was in graduate school and he had a “real” job, it seemed at first that this was just a practical division of labor. But the process of imagining the space of our future exposed deep, gendered fissures. I was confronted with two equally disorienting realities: my investment in the home as safe had been exposed as a tenuous suspension of disbelief; and my relationship to my house was based on an insidious, parallel investment in gendered domesticity. Which was more disorienting—being unhoused, however provisionally, or being a housewife? It all feels accidental, but I must have fed the fire….

The particular American relationship between home and community is foundational: we are a city on a hill, a house divided, a homefront, a nation of fireside chats and kitchen table diplomacies. But it is not just home—it is home ownership. Walt Whitman, in a callow jeremiad against New York tenements, proclaims, “It is in some sense true that a man is not a whole and complete man unless he owns a house and the ground it stands on […] however the modifications of civilized life have covered this
truth, or changed the present phase of it, it is still indicated by the universal instinctive desire for landed property, and by the fuller sense of independent manhood which comes from the possession of it.”

Catharine Beecher, author of (with her sister, Harriet) *The American Woman’s Home* and tireless promoter of the American home’s capacities for “moral elevation” affirms Whitman: “Implanted in the heart of every true man, is the desire for a home of his own.” (Beecher, who was anti-suffrage, only extended ownership of the home to “true men,” though true womanhood maintained it.) And Andrew Jackson Downing, a landscape designer who was a major influence on suburban development and designed the grounds of the White House, made explicit the connection between citizenship and home:

> The love of country is inseparably connected with love of home. Whatever, therefore, leads men to assemble the comforts and elegancies of life around his habitations, tends to increase local attachments, and render domestic life more delightful; thus not only augmenting his own enjoyment but strengthening his patriotism, and making him a better citizen.

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7 See Chapter 1, “Election,” for a discussion of the legal “True Man Doctrine.”
Frank Lloyd Wright, in some ways an ideological descendant of Downing’s, proclaimed, “It is the individual home that democracy will build first—allowing a freedom and freshness of life from within that no civilization has yet attained or ever had the means to attain until now.”9 Over the years, Presidents from both parties have invoked this concurrence, contributing to what has now become an accepted maxim of American Democracy. Calvin Coolidge declared, “No greater contribution could be made to the stability of the Nation and the achievement of its ideals, than to make it a nation of homeownering families.”10 F.D.R said, “A nation of homeowners, of people who won a real share in their own land, is unconquerable.”11 And George W. Bush, the President who presided over the supposed death of the dream of home ownership, promised, only a few short years before, that

[t]his Administration will constantly strive to promote an ownership society in America. We want more people owning their own home. It is in our national interest that more people own their own home. After all, if you own your own home, you have a vital stake in the future of our country.12

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11 Quoted in Kenneth T. Jackson, *Crabgrass Frontier*, 190.
If homeownership aggrandizes the manhood, patriotism, and social investment of a man then, by logical extension, a man who does not own a home is less stable, less invested—less a man. But the rhetorical pattern implies something by omission that is also deeply connected to citizenship: the historical pattern of tying suffrage to property ownership. So of course “manhood” is aggrandized by homeownership—because, at this country’s inception, ownership was largely restricted to white men, their citizenship vested through enfranchisement. And the disenfranchisement of those who don’t own property is compounded by all of the attendant identities that are legally chained to the head of household, the founding father: wife, servant, slave, child. His private property ensured their coverture.

Here’s what I think is incontrovertible: that the ideological power of the American Dream, and all of the sentiment it engenders, is dependent upon these patterns of exclusion. And the persistence of these patterns is, in turn, contingent upon calling it something else: they are cloaked in the rhetoric of rights and choice, reassigning the blame to those outside the city walls, but the fact remains—only the elect have rights to the dream, and all others are excluded, exiled both politically and spatially.

Popular metonymies of America-as-nation and its built spaces—“city on a hill,” “a house divided,” etc.—only reinforce the self-reflexive relation between self and home, home and nation, center and margin, inside and outside, benevolent and hostile. The spaces we build or destroy, to which we are either admitted or exiled from, are in
ouroboric relation to who we are. As a people, and as individuals. American architect and theorist Christopher Alexander says as much in *The Timeless Way of Building*:

> There is a central quality which is the root criterion of life and spirit in a man, a town, a building, or a wilderness...In order to define this quality in buildings and in towns, we must begin by understanding that every place is given its character by certain patterns of events that keep on happening there...These patterns of events are always interlocked with certain geometric patterns in the space. Indeed, as we shall see, each building and each town is ultimately made out of these patterns in the space, and out of nothing else.\(^\text{13}\)

An event is the experience of a certain place at a certain time. The repetition of a particular kind of event gradually forms a pattern that is, at first, recognizable as such. But, eventually, the awareness of the pattern and, thus, the awareness of its constructedness, is gradually cloaked with air of inevitability. Of fatedness. In America, the experience of space imperceptibly settled into the fatedness of property and privacy – the root criterion of American space is private property, proof of a dream fulfilled. Which, on its face, is merely the possession of, say, a room of one’s own. I sit here in my study with my books on the shelves, my paintings on the wall, my dog at

my feet—alone in my house and grateful for the privacy and solitude and space. But this is not what I mean by private property. Instead, this criterion has its roots in *proprietas*—propriety, ownership—and *privatie*—seclusion, secret. In early America, space was contested and, later, enfranchisement was contested. So the patterns drawn over the space attempted to resolve the questions of the propriety of ownership and the secreting of disenfranchisement. That is, who was properly entrusted with property (white men), and who was protected (white women)—from the improper (non-whites)—within the privacy, the seclusion, of that property. White men walked the boundaries of this property, and it is their experience—and their determined justification of that experience—that defines the central “quality” of American space.

This quality is manifested in rhetoric and institutions as varied and wrenching as Puritan bigotry, slavery, the cult of domesticity, Manifest Destiny, neo-liberalism. Every repetition of the pattern a bit different, claiming agency and innovation, but nonetheless, the acquisition and subsequent protection of private property is there as ideological scaffolding.

Consider again Catharine Beecher’s encomium to the home: “ Implanted in the heart of every true man, is the desire for a home of his own.” Suppose we conduct an experiment in metonymy: “true” could just as easily be “proper” or “white” or “privileged” or “Christian”; “home” could be “woman” or “servant” or “property” or “slave.” But these metonymies are protected by privacy. And privacy becomes his property.
The fire most likely sparked concurrent with the last dive of her career. We had already been treated to an Olympic quality retrospective on her triumphs and challenges, a narrative compellingly spliced with live footage of her stretching, peeling off a warm-up suit, shaking out limbs, smoothing back hair. She ascended the ladder to the diving platform; we tightened our grips on the bedclothes. She walked to the edge and turned her back to the pool, the cloying humidity of the crowd; we sat on the edge of the bed, waiting to see if she would retire in dignity or disappointment. As she raised her arms and lifted her heels, there was the crackle of breaking current, and the television picture snapped off. Not apocalyptic, but when you’ve invested yourself, however briefly, in the architecture of a life, you feel entitled to the conclusion.

It was an electrical fire. It started in the attic. After the smoke cleared, the ceilings had fallen in and the wall plaster crumbled to about shoulder height. The fire chief said that if it had caught fire at night, we wouldn’t have known until the ceilings collapsed on us—smoke detectors aren’t installed in attics because the summer heat would result in daily false alarms. While we waited for a permit to abate the asbestos released by the disintegrated plaster, the house and its contents sat, moldering, for months. I visited every day; the hybrid smell of damp charring invaded, then occupied, the place in my brain where olfaction meets memory. In a papery, disposable hazmat suit and a pink,
child-size respiration mask, I sifted through damp drawers, humid closets, searching for evidence that it was the same house, and not a dark double, fixating on the strange sense that my house had turned on me, her hair exploding like some architectural Bertha.

What does it mean to feel betrayed by a space, especially home? In The Poetics of Space, Gaston Bachelard undertakes a “topoanalysis” of inhabited space. The experience of space, he argues, is “not a question of describing houses, or enumerating their picturesque features and analyzing for which reasons they are comfortable.” Instead, the value of domestic space is in its particular ability to shelter reverie, which in turn generates the poetic image. The poetic image, according to Bachelard, is the “origin of consciousness,” the essential “experience of emerging” from the undifferentiated self, and the house is a sort of garden of Eden, an ur-consciousness pregnant with the promise of actualization. And yet Bachelard excludes an essential component of the human experience when he declares his intention to speak exclusively of “spaces we love;” “hostile space,” he says, “is hardly mentioned in these pages. The space of hatred and combat can only be studied in the context of impassioned subject matter and apocalyptic images.” But perhaps in spite of himself, he acknowledges the scored edge on which his “topophilia” balances:

15 Bachelard, xxvii-xxviii.
[I]t soon becomes clear that to attract and to repulse do not give contradictory experiences. The terms are contradictory. When we study electricity or magnetism, we can speak symmetrically of repulsion and attraction. All that is needed is a change of algebraic signs.¹⁶

If there is a void left by Bachelard’s analysis of space, it is the willful nostalgia for dreamed places, a nostalgia that seduces him into ignoring the ways in which familiar shelter can turn on us, can morph from daydream to nightmare, can use precisely that intimacy to threaten instead of protect. It is a void that leaves the next logical question unanswered: why does the poetic image owe its germination only to felicitous space? As Freud saw, *heimlich* and *unheimlich*, the familiar and the uncanny, literally “homey” and “unhomey,” are two polarities etymologically bent into a complete circle, a cleaved circle: “for this uncanny is nothing new or alien, but something which is familiar and old-established in the mind and which has become alienated from it only through the process of repression.”¹⁷ Violence—or its uncanny shadow—can also facilitate an “emergence.”

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¹⁶ Bachelard, xxxvi.
From the roof, it was easy to imagine that I saw people in the still-lit offices. My new-roommate, my partner in we-have-the-whole-city-in-front-of-us enthusiasms, said, “Look what I have—my Managing Director gave it to me.” She lit the joint and pointed to the towers. “That’ll be me in a month or so—we haven’t been assigned projects yet.” Working late seemed glamorous, even if I still called her a sell-out behind her back. We were living in a luxury retirement community, one of her firm’s investments, until we found an apartment. A studio had been “vacated.” In the lobby, the elevator, the elderly tenants looked at us indulgently: we were candy stripers, Breck girls, ingénues. But on the roofdeck, in view of the symbols our economic future, we were about to jump into the pool. That was Monday.

My new ballet flats, bought just three days before at Century 21, the designer discount store across the street from the towers, prolonged the walk. From Times Square to the East Village back to the Upper West Side is long enough to rub a heel raw, it turns out. Every few blocks, I sat down on a curb to slick chapstick over the blisters; both matched my shoes, shellpink and polished. There was no traffic, other than the pedestrians trudging through the middle of the avenue; dazed commuters sat on curbs like bleacher-crowds at a parade. The scene could have been photographed as a street fair, except for the revelers’ stunned, chalky masks, and the smell—it was between brown and black, and obdurate. It was only the second day of my first real job. I didn’t even have my name on my cube yet.
I saw the first one start to fall on the conference room television, where we’d all silently gathered. A blonde in soft pink sweater was being interviewed, the towers her smoking greenscreen. It seemed that the camera might have tipped, except that the woman remained vertical. She looked behind her and screamed. We ran to the window, a triangular outcropping that hung over Times Square, and looked down the length of Broadway in time to see the cloud billowing up over the sinking top of the building. We looked back at the television, and it was gone, slippery like the last green sliver of a sunset. I thought of Gatsby’s green light.

In considering the spatial in the national, Homi K. Bhaba notes that the transformation of “plural modern space” into a “signifying space that is archaic and mythical, representing the nation’s modern territoriality in the patriotic, atavistic temporality of Traditionalism” is dependent upon a moment of liminality, a moment in which one displaces the other. In this liminal space, though, the displacement is not complete—that is, it is not under the control of any one ideology. Bhaba speculates that the “boundary that secures the cohesive limits of the western nation may imperceptibly turn into a contentious internal liminality that provides a place from which to speak both of, and as, the minority, the exilic, the marginal and emergent.”¹⁸ This boundary is not impermeable, but rather a small fissure that permits an emergence from the

margins. This is, I think, a moment of ideological weakness, a point at which we might be able to alter patterns, emerge differently. Right now, when we speak of American space, we flip back and forth between ideology and effect: from domesticity to domestic violence; from suburbs to homeland security; from community planning to burning houses. It is merely a change in algebraic signs.

American language was created in simultaneity with American space, each dependent upon the other. In order to define American space, we had to create a language commensurate with its capacity for creating borders out of an endless continent. We created a code of individualism, a language that facilitated the reification of privacy. In “The Right to Privacy,” the most widely read law review article in American history, Louis Brandeis and Samuel D. Warren argued that the right of property is the foundation of the right to privacy: “Instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life; and numerous mechanical devices threaten to make good the prediction that ‘what is whispered in the closet shall be proclaimed from the house-tops.’”\(^\text{19}\) As with Bachelard’s algebraic inversion, Brandeis and Warren’s “right to be let alone” becomes, for instance, a suburban school district’s right to “local control,” that rhetorical glamour so often wrapped around segregated spaces: “While boundary lines may be bridged in circumstances where there has been a constitutional violation calling for inter-district

relief, school district lines may not be casually ignored or treated as a mere administrative convenience; substantial local control of public education in this country is a deeply rooted tradition.”

Even the public is private. But we could emerge differently, write from the rhetorical margins, those liminal spaces where the towers would mean something other than homeland, the houses something other than gendered privacy.

If I were a nation, this would be my foundational story: home, fire, reorientation, stasis. Ideology ignites, but it is reforged into the same shape. Space is a reflection self, of nation. I want to know how to do more than perform an endless pattern of inversions, wear a path between denial and combustion.

Alexander sees these inversions as being facilitated by architecture and planning—that is, the structure facilitates, directs, the lived experience of the space. So we see the economic disenfranchisement of women facilitated by the distance between suburb and city; family kitchens and “man caves” facilitate the ways in which the home is a space of gendered labor on the one hand, and gendered leisure on the other; gated neighborhoods impose limited prospect on those excluded; neighborhood schools enforce segregated privilege. He proposes and investigation of the mechanism: “What we want to know is just how the structure of the space supports the patterns of events it

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does, in such a way that if we change the structure of the space, we shall be able to predict what kinds of changes in the patterns of events this change will generate."²¹ But on top of these structures is an ideological metastructure, the reason that these spaces were built in these ways in the first place. It is more than just changing the space, because the spaces were rhetorically created before they bloomed into materiality. The rhetoric that defends privilege—spatial and ideological—is the mechanism that allows these patterns to persist in the face of superficially changing circumstances, that directs their evolution toward reinscription instead of emergence. This is the exercise of rhetoric in a cultural narrative rendered three-dimensional, like a political speech printed on a 3-D printer, suddenly plastic and possessable.

We keep changing the structures that house our collective experiences, even as we simultaneously continue to invoke the rhetoric that created those discarded structures. So the Victorian cult of domesticity becomes suburbia and suburbia becomes the right to privacy, and the only thing that is certain is that male primacy is protected as private property. And the Puritan fixation on spiritual election morphs, with slavery, into a justification of racial election and segregation, which manifests as Stand Your Ground laws’ defense of—again, and always—private property. If we continue to invoke the foundational rhetoric of privacy and property—obliquely, inspirationally, or hatefully, it’s all the same—then we shouldn’t be surprised that women are still saddled with the

²¹ Alexander, *Timeless*, 83.
ideological weight of privacy, or that non-whites are, as ever, excluded from this “City on a Hill.” Though these parallels exist independently, and within their own cultural-historical contexts, they are characterized by the persistent invocation of what Bhaba call the “patriotic, atavistic temporality of Traditionalism.” The rhetorical patterning is perpetual, even if the effects and meanings shift.

If I were a nation, this is what you would find in the fissures of my foundational story: as a white woman, I exist in the liminal space between privilege and oppression. As a white woman, which is a more authentic identity—sympathizer or victim? When I feel watched, preyed upon, is it delusional, appropriative, to feel some sense of kinship with the hunted black man? As a white woman, should I cheer or mourn the destruction, the immolation, of the monuments to private property—the towers, the home-sweet-home? Is this Bhaba’s “contentious internal liminality”? When is the moment of emergence? Jung said that division is creation, the act of self-destruction “the possibility of manifestation in space.”

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(ii)

“if this thought gained possession of you”

History repeats itself anything repeats itself but all this had never happened before. //
So what has there been and what is there and what is there going to be to do about it.
Gertrude Stein, “Narrations: Lecture 1”

In the burned house I am eating breakfast.
You understand: there is no house, there is no breakfast,
yet here I am. // [...] 
I can’t see my own arms and legs or know if this is a trap or blessing, finding myself back here, where everything // in this house has long been over [...] 
Margaret Atwood, “Morning in the Burned House”

He looked out the window to see if the storm had knocked out power to the entire street, or just our house. “I’ll go check the breaker — the porch light across the street is still on.” He walked toward the back of the house. I sat back on the bed, listening to the rain scatter across the window panes. The moment seems suspended in air, like a diver hovering above water, impact imminent but not consummated, but I might have just been looking absentmindedly out the window.

I don’t actually remember leaving the house, nor do I remember if I was already wearing a sweater, or thought to put one on. It was August, so it couldn’t have been
cold. “Grab the dog! Get out of the house! The attic is on FIRE!!” But it was raining. Why a sweater and not a raincoat? Why my laptop and not our wedding album? Did I grab the car keys, or were they already in my pocket? These objects, their emergence, take on talismanic import. Sometime on my way from the bedroom to the front door, I saw the phone, the portable landline phone, and called 9-1-1. I stood on the grass, looking at our quiet house as I told the dispatcher our address. It didn’t look like it was on fire. It looked wet, slick in the afternoon storm. Can a house burn in the rain? The leading cause of maritime deaths is fire. Now I tell my daughter about landlines and she thinks it’s hilarious.

The public and private sections of the house were split into parallel spaces, right and left brains: living room, dining room, and kitchen on the right, bedroom, bathroom, and another bedroom on the left, with a small hallway and stairs to the unfinished basement a rubicon in the center of the house. In the remodel, we made the back bedroom into a family room and opened it to the kitchen, the hallway, and the staircase down to new basement bedrooms. So a house that had been defined by its parallelism now bent into an uneasy circle, cleaved together by the narrow stairs: public sphere on top of private sphere, each room
opening into the next. We change the structure of the space, but we still think in variations on privacy.

It was only half-transformed when it caught fire. The woman who owned the house before us, Vera, died from lung cancer that spread to her brain; she collapsed in the hallway. Her son told us she bought the house right before JFK was assassinated—he remembers watching the newsreels of the presidential motorcade in the living room. Vera used to chain smoke in the bathtub. When we took showers, the steam released rivulets of ambered tar that made meandering roadmaps on the walls. No amount of Kilz would prevent the daily perapatesis—we had to put in a new ceiling. It was the only ceiling to remain affixed to its joists in the fire.

After the fire, I started thinking about, first, what it meant to feel exiled. I felt victimized and incapacitated. It was a familiar feeling, but I couldn’t explain why. I also felt guilty, as though I had started the fire myself. The greatest comfort was a kind of self-flagellation, a burying into critiques of domesticity. Words piled up: “picture window”, “wallpaper”, “privilege”, “false-consciousness”, “haven”, “fresh”, “space”, “reappropriation.” Reading LeFebvre in a rented hospital loft on a rented couch, recently dispossessed of my domestic space, I thought I’d found a way out: “There are two possibilities here: either these words make up an unrecognized code which we can reconstitute and explain by means of thought; alternatively, reflection will enable us, on the basis of the words themselves and the operations that are performed upon them, to
construct a spatial code. In either event, the result of our thinking will be the construction of a system of space.”\(^{23}\) Here was the path: analytical reconstruction, beam by beam, room by room, word by word. But all that really happened was that I mistook decoration for art, appreciation for empowerment. I saw LeFebvre in HGTV, that 20\(^{th}\) century analog for women’s folk art: both confer a patina of creativity on the desert of domestic drudgery.

In 2010, the American Folk Art Museum mounted a show called “Women Only: Folk Art by Female Hands.” I read Karen Rosenberg’s review of the show in the NYTimes.\(^{24}\) Very pregnant at the time, I remember being harrowed by this insight: “And because it hails from a formative period in American history, the art in “Women Only” has social documentary interest that is largely gender blind. The show’s many mourning drawings, for instance, depict men and women weeping at the tombstones of their young offspring (evidence of a high child mortality rate).” At the time, I’d thought obsessively about mourning drawings, about what kind of picture I would make if my baby didn’t live. But what I’d forgotten between then and now was this:

> The show’s title evokes a girls’ club, a parallel and self-contained art world. To some extent that’s true, as in the powerful female-to-female


\(^{24}\) [http://www.nytimes.com/2010/04/16/arts/design/16women.html?_r=0](http://www.nytimes.com/2010/04/16/arts/design/16women.html?_r=0); accessed March 10, 2016.
transfer of religious energy that occurs in some of the Shaker gift drawings on display. But other works were meant to be seen and admired by male family members and visitors. They bestowed taste and status on the men who appreciated them as well as the women who made them.

This is not gender blind. Neither is the title of the review: “Decorative and Functional, Artistry from a Female Viewpoint.” The suggestion that creating art meant to be viewed by men, in an effort to bestow taste and status on other men, somehow empowers women to “show” outside their “girls’ club” is the sort of false consciousness that permits feminism to be absorbed by some less threatening iteration—appreciation, perhaps, or adoration, or reverence, even. But not actual power. It denies women the capacity to be something more than decorative and functional. It flirts with anti-suffragist apologetics and with Phyllis Schafly’s anti-ERA Homemaker’s Equal Rights Association, and is in the same ideological family as the modern imperative of natural motherhood. This is because, like the “anti’s”, it safely pats women on the head and assures them that their domestic work is valued, unpaid or no, even as it politely declines to encourage anything more radical. It is what I was doing when I spent hours picking tile and considering the
relative merits of a variety of decorative cushions. It is not art—it is unpaid work. My husband participated in none of it, but he heaped appreciative praise on the result. But it would take a third fire, and a third combustion of identity, before I understood my complicity in the cult of private property.

Three years later, we moved back to New York for his job, stacking a whole house-worth of furniture into a two-bedroom apartment. I tried to recreate tableaus, no longer separate spaces, but one on top of the other. If some small corner was a facsimile copy of the study, then I wouldn’t be a reluctant, bitter housewife; if the kitchen was the same color, had the same ratio of canisters to countertops, then I wouldn’t see roaches, the city on their spiny feet, scurrying along the backs of the cabinets; if the bedroom had the same space plan, then I wouldn’t dream of being alone. But these alienated tableaus, out of their original context, exposed the rhetorical metastructure that undergirded both the original and the reproductions—gendered domesticity, and I had opted in.

25 This is not to say that it is not valuable. Feminist economist Marilyn Waring, in Counting for Nothing, argues that if unpaid domestic labor were added to the UN’s system of national accounts, global GDP would rise over 30%. But to call it art is to belittle female artistic capacity.
But this was not something I could see, at first. Instead, I blamed the space. Idealized the absent structure. My house, rented out in our absence, became a hope chest. In reverse. I conjured its walls, at the other end of the 1780-mile route we’d mapped—I could follow the cartographic lifeline back to its small happinesses (read: domesticities), its traces of me painted into the corners of every room, every surface skinned over by the finishes I’d chosen to represent myself: White Dove, Alaskan Husky, Dal octagons, Walker Zanger hex, Seashell, Decorator’s White, carrara subway, Merillat, Jeld-Wen Low-E, Smoke Embers. As I scanned this mental list, I recalled why I had picked the quartz counter color—in addition to being a color in the Silestone catalog, “Ariel” is also the Plath collection that includes “Lady Lazarus”: “Out of the ash / I rise with my red hair / And I eat men like air.” I had been teaching the book in an undergraduate literature class at the time, and the image seemed an appropriate analog.

Rereading Ariel in my dioramic apartment, I felt disquieted by Plath’s rapid movement between ironic performance and earnest transformation. And disquieted by my response—whenever she approached metamorphosis, I felt decidedly awash in irony. It was an inversion. In the title poem, the speaker races toward morning: “Something else
// Hauls me through air— / Thighs, hair; / Flakes from my heels. // White / Godiva,

I unpeel— "26 To the extent that I felt myself unraveling, it was not Plath’s auroral
horseback flight, or her projected ascension. I certainly wasn’t stripped down to an
iridescent, essential self. It was more like being subjected to a TV makeover, with the
body exhibited as complicit in its own bad faith—picked, peeled, and awkwardly nailed
back together, false consciousness seeping out of the unsealed fissures. The “something
else” was just a countertop.

Guy Debord, in *The Society of the Spectacle*, says that “[t]he spectacle in general, as the
concrete inversion of life, is the autonomous movement of the non-living.” Counters,
cabinets, paint, pillows—animated by my witness. He might have recognized my
embarrassing efforts at reconstruction as a kind of spectacle:

The worker does not produce himself; he produces an independent
power. The *success* of this production, its abundance, returns over [to] the
producer as an *abundance of dispossession*. All the time and space of his
world become strange to him with the accumulation of his alienated
products. The spectacle is the map of this new world, a map which covers
precisely this territory.27

1:31. Emphasis original.
My apartment *was* an “accumulation of alienated products.” In an effort to “produce” an authentic self, I instead just reproduced the spectacle of consumption. My consumption. And I saw my methods everywhere, not just in my own apartment. Outside my door, I encountered the endlessly replicating artisanal, an army of individuality. This new map, the one that included me and my tableaus, my earnestly artisanal neighbors, covered over old, familiar ideological territory: gendered domesticity, and the products it requires. It is a short walk from small batch essentialism to gendered essentialism, from handcrafted jams to the homemade organic babyfood imperative: produce from Park Slope Food Coop still requires a cook; self-consciously gender-neutral, organic baby clothes are meant for real babies, and they require real caretakers; exclusively breastfeed toddlers are bound to their mothers as surely as if by an apron string. As Rick Mast, the unimpeachably artisanal philosopher behind Mast Brothers Chocolate (handcrafted in Brooklyn!) says, “It’s an old way that is new again, right? It’s an old mentality that is now new, and I think it’s spreading like wildfire, too.”28 Everyone rolls their eyes at Brooklyn twee now, parses their place there

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28 “The Mast Brothers”: [https://www.youtube.com/watch?v=pbDwZm9A](https://www.youtube.com/watch?v=pbDwZm9A)
with self-deprecating irony. But it is a product, earnestly or ironically. And the people who produce it are making the same mistake as Alexander—new pattern, same ideology. Irony masks complicity.

A real show of American women’s art would be rooms full of empty walls. Every few rooms, a gallery-goer might come across a very small portrait mounted near the floor. The floor might be choked with domestic implements, so that the viewer couldn’t get close enough to really see the small portraits. In the very last room, bigger paintings would be displayed on the walls, but hung from the ceiling would be ream after ream of advertisements, obscuring any clear view of the paintings. The floors would still be littered with the detritus of the second shift.

A friend of my husband’s introduced me to a friend of her husband’s, a novelist. He’d written a few things that were mildly successful, she said. I didn’t “have time” to look him up because I’d dissolved into a panic about the dustiness of my possibly-asbestos-plaster-breathing closet up until the moment I had to leave the apartment. He was kind, helpful, solicitous, offering me a multitude of suggestions for what I could do with my skills now that it had become clear that my mediocre career in academia had rendered me over-qualified and un-considerable for my old editorial job. I asked him what sort of fiction he wrote. “Semi-literary,” he said.
On the train home, I repeated his name in my head— it sounded familiar, suddenly.

When I reached my stop and crested the stairs, I googled him on my not-a-landline: Arthur Phillips. He wrote *Prague*, about a group of twenty-somethings who lived in Budapest, longing for Prague. I had it on my bookshelf—it was one of my favorite books the first year I was in New York, the first time. *Pathetic loser*, I accused myself. *Too pathetic to even google beforehand. You don’t do anything except grocery shop and surf diapers.com. Nothing.* In an interview, Phillips explained the title: “The novel is named not for a city, but for an emotional disorder. Milan Kundera wrote a marvelous book called *Life is Elsewhere* (set in Prague, incidentally) that touches on the same idea: if only I were over there, or with her, or doing that, or born fifty years earlier, then I would be where the action is.”

If I were Prague, I would be the product of a self accumulated in the 10 years between New York and New York, and not merely the absence of anything to show for it.

My daughter, Scarlett, calls waiting “chasing the snake’s tail.” The genesis of the phrase is the icon that circles endlessly as she waits for her movie to load on the iPad. I’m saying this in earnest: I do not want to keep constructing dioramas, repeating the same patterns, chasing the snake’s tail.

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In Jungian psychology, the archetype of the eternal return is the Ouroboros, an image of a snake consuming its own tail. Jung noted the ways in which the Ouroboros contributes to its own eternity: “The Ouroboros is a dramatic symbol for the integration and assimilation of the opposite, i.e. of the shadow. This 'feed-back' process is at the same time a symbol of immortality, since it is said of the Ouroboros that he slays himself and brings himself to life, fertilizes himself and gives birth to himself.”30 31 It is self-reflexive, cyclical, and profoundly assimilative. If our spaces are in ouroboric relation to who we are, as Alexander surmises, then a “new” pattern in space is merely the consumption, the assimilation, of an existing pattern. Assimilation is a quiet kind of oppression. It is not new, and it is not emergence. Successful ideology assimilates, convincing those it consumes that they are part of a regeneration.

In August of 1881, Nietzsche took a walk beside a lake in Switzerland. He stopped beside a huge, towering, pyramidal boulder, when “the idea came upon [him] from 6000 feet beyond man and time.” In a letter to his friend Franz Overbeck, Nietzsche elaborates: “The question with everything that you want to do: ‘is it such that I want to do it innumerable times?’ — that is the greatest gravity”.32 This was the genesis of his critical preoccupation with eternal recurrence, which he first figured as the heaviest burden and, later, as “the highest formula of affirmation.”33 This emphasis on affirmation—that is, an assertion of truth—differentiates Nietzsche’s recurrence from Jung’s archetypal ouroboros: instead of understanding consumption as the action that drives the pattern, Nietzsche theorized an emergence.

In *Thus Spake Zarathustra*, Nietzsche invokes the ouroboric serpent, but rejects the act of consumption as being necessary to recurrence. Zarathustra, still struggling with his despair at the prospect of eternal recurrence, comes upon a gateway, its arch inscribed “This Moment”; as he contemplates the way in which the gate seems to change the road from a straight line into a convergence of two different lines, he slips into a reverie, a vision:

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A young shepherd did I see, writhing, choking, quivering, with distorted countenance, and with a heavy black serpent hanging out of his mouth. Had I ever seen so much loathing and pale horror on one countenance? He had perhaps gone to sleep? Then had the serpent crawled into his throat—there had it bitten itself fast. My hand pulled at the serpent, and pulled: — in vain! I failed to pull the serpent out of his throat. Then there cried out of me: “Bite! Bite!” Its head off! “Bite!” — so cried it out of me; my horror, my hatred, my loathing, my pity, all my good and my bad cried with one voice out of me.—

While the image of the ouroboric serpent is self-reflexive—it both destroys and recreates itself—Nietzsche’s vision instantiates the adulteration of recurrence when that reflexivity becomes externalized—when it recollects instead of regenerates, when it consumes instead of creates. So Zarathustra shrieks, “Bite!” even as he wonders, “Who is the shepherd into whose throat the serpent thus crawled? Who is the man into whose throat all the heaviest and blackest will thus crawl?” But the shepherd bites, and “far away did he spit the head of the serpent.” This act arrests the consumption of the other, the Jungian shadow, and instead metamorphizes the shepherd from a man who collects blackness in his throat into a “transfigured being, a light-surrounded being.” Gilles Deleuze understands Nietzsche’s vision, and his eternal return, to be a rebuttal of nihilism:

The eternal return of the mean, small, reactive man not only makes the thought of the eternal return unbearable, it also makes the eternal return itself impossible; it puts contradiction into the eternal return. The snake is an animal of the eternal return; but, insofar as the eternal return is that of reactive forces, the snake uncoils, becomes a "heavy black snake" and hangs out of the mouth which is preparing to speak. For how could the eternal return, the being of becoming, be affirmed of a becoming nihilistic? - In order to affirm the eternal return it is necessary to bite off and spit out the snake's head. Then the shepherd is no longer either man or shepherd, "he was transformed, surrounded with light, he was laughing! Never yet on earth had any man laughed as he laughed."

The shepherd laughs at this elation, and Zarathustra, upon hearing it, is suddenly gnawed by a thirst, an excruciating, unalloyed thirst, for laughter. The transformation of recollection into recurrence requires a sort of combustive projection, an interruption that cleaves—that both “adheres loyally and unwaveringly” and “divide[s] by a cutting blow.” In *The Gay Science*, the book in which he first contemplated the idea of eternal

recurrence, Nietzsche suggests that laughter is the “profound convulsion” that reveals nihilism to be the flip side of tragic morality; laughter is the affirmation that life is, on its own merits, worthwhile.\textsuperscript{37} It is the answer to Zarathustra’s sense of loss, a lightening of recurrence’s burden, the gateway to transformation. On the title page of the 1887 edition, Nietzsche rewrote a passage from Emerson’s “Self-Reliance”:

\begin{center}
On I live in my own place,

have never copied nobody even half,

and at any master who lacks the grace
to laugh at himself — I laugh.

OVER THE DOOR TO MY HOUSE
\end{center}

The question is: how do we bite the head off this snake? It is not enough to say “make new patterns” when the old patterns are themselves a kind of truth — to merely deny their existence and meaning is just insensible assimilation.

They still exist, even if we relate to them as nihilism to belief. If ideology models space in its own image, and space creates patterns of living, and we cannot help but make and

follow patterns, then how do we disrupt...all of it? Biting the head off the snake, simultaneously disrupting the pattern and affirming its meaning, requires not a change to the space itself, but an alteration of its use. Changing the use, and thus the experience, of the space changes the perception of the pattern; changing the perception chips away at the ideologies that depend upon a fixed vantage.

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Ideology is, of course, hard to chip at, even at the level of definition. In *Ideology: An Introduction*, Terry Eagleton notes that the “single most widely accepted definition of ideology” is John B. Thompson’s suggestion that “‘to study ideology is to study the ways in which meaning (or signification) serves to sustain relations of domination.’” Eagleton goes on to propose that this process involves the interaction of several sub-strategies. The American ideology of private property seems particularly consistent with the 6th of these strategies: “the imaginary resolution of real contradictions.” This imaginary is Althusser’s imaginary and, by extension, Lacan’s—that internalized image

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38 Terry Eagleton, *Ideology: An Introduction* (London: Verso, 1991), 5. The sub-strategies proposed by Eagleton are as follows: “A dominant power may legitimate itself by promoting beliefs and values congenial to it; naturalizing and universalizing such beliefs so as to render them self-evident and apparently inevitable; denigrating ideas which might challenge it; excluding rival forms of thought, perhaps by some unspoken but systematic logic; and obscuring social reality in ways convenient to itself. Such ‘mystification’, as it is commonly known, frequently takes the form of masking or suppressing social conflicts, from which arises the conception of ideology as an imaginary resolution of real contradictions. In any actual ideological formation, all six of these strategies are likely to interact in complex ways.”
of an ideal, coherent self, a self that defies fragmentation. The ability of the imaginary to resolve the unresolvable is dependent on the mystification of memory; that is, the belief in memory as truth. And this applies to national memory, too—the political philosopher and economist Paul Treanor argues for a through-line between nationalist ideology and the ideology of memory:

An ideology of memory has emerged from nationalism […] In its most extreme form, the ideology of memory says that human beings exist to remember […] It says that a nation exists to remember its past, and that economy, society, and the state, are no more than the means for this national memory […] A cluster of values is now associated with memory: wholeness, unity, communication, visibility, healing, and sacrality (reinforced by quoting religious authority). In effect, a part of nationalist ideology has taken on a life of its own: it has become a quasi-religion.

When privacy and property are represented as memory, as foundational story, they are inhered with sacrality. But despite the efficacy of this strategy, memory proves to be a slippery foundation on which to build an ideology. In 2012, a paper in The Journal of

39 http://csmt.uchicago.edu/glossary2004/symbolicrealimaginary.htm
Neuroscience\textsuperscript{41} found that memory retrieval was like a game of telephone. When we “remember” something, we actually access the last time we retrieved the memory, not the original neural imprintation of the incident. Every time we access a memory, our brains write over it with “this time” until, eventually, there is nothing left of the original. Other than, perhaps, nostalgia. The study set out to test, neurologically speaking, whether “environmental information in the current spatiotemporal context” could be integrated into memory, and whether retrieval bias could further distort the original memory—that is, could the space-time occupied during retrieval become part of the representation going forward, at the expense of more “accurate,” original information? In an interview, the author of the study, Donna Bridge, said, “When someone tells me they are sure they remember exactly the way something happened, I just laugh.” Nietzsche laughs, too.

For the study, people were asked to recall the location of objects on a grid in three sessions over three consecutive days. On the first day, participants learned a series of 180 unique object-location associations on a computer screen. The next day, participants were given a recall test in which they viewed a subset of those objects individually in a central location on the grid and were asked to move them to their original location. On the third day, participants returned for a final recall test. The results showed improved recall accuracy on the final test for objects that were tested on day two compared to

\textsuperscript{41} Donna J. Bridge and Ken A. Paller, “Neural Correlates of Reactivation and Retrieval-Induced Distortion” (\textit{The Journal of Neuroscience}, August 29, 2012), 32(35):12144 -12151.
those not tested on day two. But people never recalled exactly the right location. And in session three they tended to place the object closer to the incorrect location they recalled during day two rather than the correct location from day one. Donna Bridge explains:

“Our findings show that incorrect recollection of the object’s location on day two influenced how people remembered the object’s location on day three. Retriving the memory didn’t simply reinforce the original association. Rather, it altered memory storage to reinforce the location that was recalled at session two.”

Location, location, location. But location is unstable, profoundly influenced by a never-replicable context. Thus, memory is spatiotemporally fixed: it is the immobilization of time in space, but it only lasts for that moment, and then necessarily adapts to a subsequent context. The geographer Yi-Fu Tuan understands the difference between space and place to be characterized by precisely this relationship to time:

What begins as undifferentiated space becomes place as we get to know it better and endow it with value. Architects talk about the spatial qualities of place; they can equally well speak of the locational (place) qualities of space. The ideas “space” and “place” require each other for definition. From the security and stability of place we are aware of the openness, freedom, and threat of space, and vice versa. Furthermore, if we think of

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42 http://www.northwestern.edu/newscenter/stories/2012/09/your-memory-is-like-the-telephone-game.html
space as that which allows movement, then place is pause; each pause in
movement makes it possible for location to be transformed into place.43

Neurologically, we place our memories, attempt to root them, give them a history and a
stability. We think they are secure. But they slip out of place, back into undifferentiated
space, suspended until the next temporal emplacement. And our most treasured
memories stand to be the least accurate, as they are the
most frequently accessed, rendering the cornerstones
of our remembered selves the most unstable,
corruptible. If this thought gained possession of you, it
would change you as you are, or perhaps crush you. So the
head of the snake is already severed: the ideology of
memory is built on the proposition that a nation exists
to remember its past, but the past is fundamentally
irretrievable. And the further the distance between the
imaginary (retrieved place) and the real (actual place)
the more entrenched the ideology. That is, the further
from the body the head is flung, the more imagination required to perceive the head as
still attached.

43 Yi-Fu Tuan, Space and Place: The Perspective of Experience (Minneapolis, MN: University
So the thing preventing an emergence from a pattern is not really the perpetual consumption and regurgitation of history—the head is off the body. The real impediment is precisely the contradiction found in the study: the space has changed, but we don’t notice, or acknowledge, the effect of retrieval bias on our national memory. It would change us as we are. In *The Arcades Project*, Benjamin links the moment of acknowledgement, awareness, to the crisis of modernity:

[Nietzsche’s revelation was] manifest at the moment the security of the conditions of life was considerably diminished through an accelerated succession of crises. The idea of eternal recurrence derived its luster from the fact that it was no longer possible, in all circumstances, to expect a recurrence of conditions across any interval of time shorter than that provided by eternity.44

It is an excruciating realization.
Thus the modern spectacle of the new chasing after the obsolete, teeth gnashing in anticipation of its victim, even as these practitioners of the avante garde consume the

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artifacts, the trinkets of nostalgia; as S.D. Chrostowska asserts in her consideration of modern consumerism and nostalgia’s co-dependence, “The logic of nostalgia dictates that nothing can really be recovered, only re-collected […] Such recreated past has little staying power. The gratification it provides is devised as expendable (given up for another past on offer). Commodified nostalgia is (predictably) self-consuming nostalgia.” So in the modern moment—the past lost and the future unknowable—it seems that the thing recollected is an ever-diluted reproduction of nostalgia, at a far remove from both the past itself or any innovation that went beyond what Alexander classifies as embellishment. We consume not the head of the snake itself, but some memory of it, and we don’t taste the difference.

But if we are what we eat, then surely this diet of over-processed memory is sickening. Benjamin invokes Baudelaire’s *spleen et idéal* by way of demonstration:

> The devaluation of the human environment by the commodity economy penetrates deeply into the poet's historical environment. What results is the 'ever-selﬁsame.' Spleen is nothing other than the quintessence of historical experience.

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Spleen is historical experience because it embodies the emotional perception of feeling every moment as the ever-selfsame, even as there is some vague sense that it shouldn’t be, or won’t be, or really isn’t. The secondary French definition of spleen, and the one to which Baudelaire was surely referring, is, after all, “melancholy with no apparent cause, characterised by a disgust with everything.” Spleen is how we (unwittingly) experience the empty core of nostalgia and memory. So then memory, hollow as Judge’s study proved it to be, can only be commodity, infinitely replicable, but also inauthentic. In his poem “Spleen,” Baudelaire describes the experience of the melancholy, the impotence, the disgust, that this engenders:

Nothing is slower than the limping days
when under the heavy weather of the years
Boredom, the fruit of glum indifference,
gains the dimension of eternity . . .
Hereafter, mortal clay, you are no more
than a rock encircled by a nameless dread […]47

Spleen is waiting, eternally, without pleasure, without consummation. It is something like the water-torture of a Midwestern winter: heavy, slow, indifferent to longing or

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46 That is, a “melancholy without cause, a general disgust.” (Le Nouveau Petit Robert 2009).
light. The problem with modernity’s relationship to the past, that Benjaminian phantasmagoria, is not that history repeats itself, but that it recollects itself.

And in both *Le Fleur de Mal* and *Le Spleen de Paris*, Baudelaire attempts to explode the interminability of this “nameless dread” with something, anything, that is not engaging in some version of re-collection. He characterizes his poetics in “The Painter of Modern Life”:

> By ‘modernity’ I mean the ephemeral, the fugitive, the contingent, the half of art whose other half is the eternal and immutable…This transitory, fugitive element, whose metamorphoses are so rapid, must on no account be despised or dispensed with. By neglecting it, you cannot fail to tumble into the abyss of an abstract and indeterminate beauty, like that of the first woman before the fall of man.”

Benjamin understands Baudelaire’s engagement with the “fugitive” to be an engagement with modernity, but also an acknowledgment of its own particular historicity:

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[His] project takes on historical significance only when the experience of the ever-same, which provides the standard for assessing that project, is given its historical signature. This happens in Nietzsche and in Blanqui. Here, the idea of the eternal return is the 'new', which breaks the cycle of the eternal return by confirming it.49

There is an analog here to the memory study: Baudelaire’s project is most significant to an analysis of the present when it is read as a product of a particular historical moment—when we see his spatio-temporal emplacement not as critically static, but as one historical manifestation of a recurring poetics of contingency. So Baudelaire walks the streets of Paris in protean relation to what he sees, each emplacement consuming, and then reconstituting, the one before, every moment enacting a microcosm of eternal recurrence because every moment is both the destruction and emergence of the past in the space of the present. And by invoking spleen, the eternal recurrence, Baudelaire, and Nietzsche, we are also participating in a kind of critical re-emplacement, a writing-over—this is what Benjamin means by asserting that they are significant only when we allow them their historical signature, and simultaneously allow that we are altering their place even as we affirm their significance. Baudelaire and Nietzsche know that this is what is happening, unlike the subjects in the memory study and, I would argue, a sizeable portion of career critics — and this is the crucial difference between recollection

and recurrence, between the imaginary and the real. Recollection is confident in its errors, complacent in its emplacement, while the recurrence, freed by the fluidity of its spatiotemporal identity, creates a space transfigured.

Gilles Deleuze, in his own consideration of Nietzsche’s eternal recurrence, asserts that this “transmutation”\(^{50}\) is, paradoxically, the affirmation of whatever it alters:

In Nietzsche's terminology the reversal of values means the active in place of the reactive (strictly speaking it is the reversal of a reversal, since the reactive began by taking the place of action). But transmutation of values, or transvaluation, means affirmation instead of negation - negation transformed into a power of affirmation, the supreme Dionysian metamorphosis.\(^{51}\)

Active, not reactive. Not a repetition, but a return. What is the difference between arson and combustion? An embellishment or a metamorphosis? What does this really look like? What does it mean to transform the ideology of private property through affirmation? I might just sneak back to my little re-collected house, made whole by insurance, and — like any responsible critic — feel as though I’ve done what I could.

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\(^{50}\) Gilles Deleuze, *Nietzsche and Philosophy*, xii.

\(^{51}\) Deleuze, 71.
wouldn’t be able to tell the difference anyway, if the memory study has my number.

This is why nostalgia is so tempting—it is an answer to an unanswerable question.

But wait: let me try write my way out of this “ever self-same,” this “nameless dread” of
complicit privilege, domestic false consciousness, uncannily aggressive privacies, these
paralyzing patterns of reacting and re-inscribing. Show the process of shifting
emplacement, make it visible, readable. If I was a nation, this is how I would emerge
from my foundational stories…
I am in a crate, 
the crate that was ours, 
full of white shirts and salad greens, 
the icebox knocking at our delectable knocks, 
and I wore movies in my eyes, 
and you wore eggs in your tunnel, 
and we played sheets, sheets, sheets 
all day, even in the bathtub like lunatics. 
But today I set the bed afire 
And smoke is filling the room, 
It is getting hot enough for the walls to melt, 
And the icebox, a gluey white tooth. 
Anne Sexton, 
“Love Letter Written in a Burning Building”

The first fire introduced me to the rhetoric of homeland, of unity, of “We will never forget.” I internalized the vulnerability of the line between safe and hostile space, even as I began to recognize it as the uncanny replication of centuries of exclusionary speech: the brown-black smell of the city was also the smell of homefires and lynch-fires, the smoking firebreaks against the combustion of privilege. But the smoke cleared, and I forgot.

52 Anne Sexton, “Love Letter Written in a Burning Building,” The Complete Poems of Anne Sexton (New York: Mariner, 1990), 613. This poem was written on September 27, 1974, seven days before Sexton died. It was the last poem she finished.
The second fire intensified my sense of vulnerability to patterns in space, but I also became more complicit in their reinscription. I consumed, I embellished, I replicated. I reacted. I submitted: “Decorative and Functional, Artistry from a Female Viewpoint.”

With the third fire, the first met the second, sent racing towards each other by butterfly wings beating at opposite poles of this identity: white woman. Instead of cancelling each other out, they engendered a conflagration. Here is the third fire, the transmutation…

My daughter loves fire trucks. She could hear them coming around Grand Army Plaza, past the entrance to the Park, past the Library, waiting breathlessly for them to round the final turn and roar past our building. She shrieked, a delirious, joyful appreciation for speed and alarms and panicked lights. She couldn’t consider the function; just, immediately, “More?!”

No less than eight fire trucks blocked the intersection, one short block from mine. It was that Havana-esque building, the limestone base washed blue, the cornice a faded algae, iron balconies hanging in weak beauty from the front facade. We dragged her down the street; we had to get to Ikea. She protested, pointing.
DOWNING: The love of country is inseparably connected with love of home. Whatever, therefore, leads men to assemble the comforts and elegancies of life around his habitations, tends to increase local attachments, and render domestic life more delightful; thus not only augmenting his own enjoyment but strengthening his patriotism, and making him a better citizen.

An elderly woman, it turns out, had been immolated in the elevator as the door opened at her floor. She had been at the grocery store, and her former handyman was waiting at the stairwell window, watching for her return. She’d once sheltered him, and he’d helped her clear clutter from her apartment. She tried to help him, but suspected he was stealing from her. She let him go. Neighbors described him as “intelligent, well dressed and well spoken.” He collected cans and bottles; he was called “the recyclist.” If I’d seen him, I wouldn’t have remembered.

NY1 played the security camera footage on a mute loop: the door opens, and a man, disguised as a hazmat-suited exterminator, sprays a liquid, later determined to be accelerant, into the elevator, then follows it with a champagne bottle molotov. A fire explodes in the bottom right corner of the screen. The camera angle spares us the

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exhibition of her body—she is directly below the camera, cut off from view. Of course, we kept watching the incessant spectacle because we knew she was there.

*DEBORD: The spectacle is not a collection of images, rather, it is a social relationship between people that is mediated by images [...] It is the omnipresent affirmation of the choice already made in production and its corollary consumption.*

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From my bedroom window, Prospect Heights and Fort Greene ran together in an indiscriminate landscape of infinitely replicating brownstone roofs; then the bridges, and then the half-built new tower. If the crane on the skeletal top floor was factored in, it was just barely the tallest building in the city. This view was the headliner in the real estate ad; in the foreground, close enough to see spider plants and brackish overhead lights, the building where the woman was lit on fire. I’d seen her, sometime in the fall, having a sidewalk sale. Young mothers, like me, paraded up and down the street in daylight, feeling smug about being in a neighborhood, on a street, that still housed women like her, like her murderer. What I mean is, black. And poor. But I never say that. No one does—they use words like vibrant, instead. At night, I parked my car in a

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monthly garage and waited anxiously for my husband to get home, hoping he had sense enough to keep his iPhone hidden as he walked from the subway stop. People get punched in the face, bludgeoned from behind, for those. I only walked in one direction when I left my building, but at least I could tell people where I lived without seeming like a late arrival to the gentrification party.

**NIETZSCHE:** The heaviest burden: What if some day or night a demon were to steal after you into your loneliest loneliness and say to you: ‘This life as you now live it and have lived it, you will have to live once more and innumerable times more…’

To be complicit is to knowingly help perpetuate a wrong. To be coerced is to do something wrong in response to a personal threat. But both imply acknowledgment of the wrong, whether the action is active or reactive. Spleen is uneasy ignorance of a system of wrongs—it neither identifies nor coerces action. It is separate from identity. It is unhomed.

**DEBORD:** [T] he more [s]he identifies with the dominant images of need, the less [s]he understands [her] own life and [her] own desires. The spectacle’s estrangement from the acting subject is expressed by the fact that the individual’s gestures are no longer [her]
own; they are the gestures of someone else who represents them to [her]. The spectator does not feel at home anywhere, because the spectacle is everywhere.\textsuperscript{55}

I cannot feel at home here because I am not here. I hate young mothers like me. I hate artists like me. I hate the insularity of artists in communities of artists, the young mothers pretending that procreation is art, artists claiming the spent fecundity of procreation. I hate the spectacle of craft and creativity, precisely because I identify with it. I hate Brooklyn, and the fact that I seem to fit here makes me hate it even more. I wouldn’t mind if the whole place burned. Life is Elsewhere.

\textit{BAUDELAIRE: When earth is changed to a damp dungeon, / Where Hope, like a bat, / Flees beating the walls with its timorous wings, / And knocking its head on the rotting ceilings [.]\textsuperscript{56}}

His building was even closer to mine than hers, just across the back alley. I could have watched him: Putting on the hazmat suit, checking the nozzle of his sprayer, he stood in front of the mirror, projecting how he would appear when the elevator door opened. Would his face betray his hate, or would he maintain the untroubled mask of action? He straightened his stance, glancing at the clock reflected behind him. He noticed a woman standing in a window across the alley, watching—he hated being watched, his labor evaluated and belittled. He closed the shades.

\textsuperscript{55} Debord, \textit{The Society of the Spectacle}, 1:30. Pronoun adjustments are mine. 
\textsuperscript{56} Baudelaire, “Spleen.”
Whitman: It is in some sense true that a man is not a whole and complete man unless he owns a house and the ground it stands on […] however the modifications of civilized life have covered this truth, or changed the present phase of it, it is still indicated by the universal instinctive desire for landed property, and by the fuller sense of independent manhood which comes from the possession of it.”

If I looked out my bedroom window, at her building, at the lego-like swell of the tenements beyond it, and felt uneasy, it must have been because she was a familiar neighborhood fixture, and not because it suddenly felt like the waves of something un-bargained-for, something unappeasably hopeless and obliterating, were seeping in under the elevator door.

Lefebvre: Differential space contains potentialities—of works and of reappropriation—existing to begin with in the artistic sphere but responding above all to the demands of a body ‘transported’ outside itself in space, a body which by putting up resistance inaugurates the project of a different space.

He is a black man. National memory alienates him from claiming a “universal instinctive desire for landed property.” His claim is conditional. She is a black woman.

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57 Whitman, “New York Dissected.”
58 Lefebvre, The Production of Space, 349.
She is doubly-alienated. The out-of-frame spectacle of her immolation, the blue flames just visible in the lower-right corner of the screen is also a double alienation, the spectator separated from the spectacle first by the camera angle and then by the image produced by the camera. It is memory bias obscured by repetition. But my assumption of his carefully enacted preparation, his guilt, is a retrieval that acknowledges memory’s inaccessibility, no matter the subjectivity.

At night, when I laid awake in the silent borough, the blue building glowed phosphorescent and, through my open window, I inhaled that brownblack, obdurate smell until it was painted into the crevices of my lungs. Is this what the moment before emergence is—violence, simultaneously hibernant and metamorphic? My hair was on fire.

Here I am, with torn shreds of snakeskin slicked to my tongue. This is the moment when I either see the arc of the decapitated head, see its distance from the bereft body, or fill in the space between. This is the arc I see: when I think about home, I slip into the space between privacy and property, between the oppression of privacy and the privilege of property. These fires are the moments of fissure, the moments of ideological weakness. They are the moments when the path has been burned clear, and safe passage between them is possible. But this passage requires a transportation of the body
“outside itself in space,” a becoming unfamiliar—a disassociation of identity. In this passage, I become another. Let me try:

Her building was even closer to mine than the old woman’s, just across the back alley. I could have watched her: Putting on her shoes, checking the contents of her purse, she stood in front of the mirror, projecting how she would appear when the elevator door opened. Would her face betray her hate, or would she maintain the untroubled mask of action? She straightened her stance, glancing at the clock reflected behind her. She noticed a man standing in a window across the alley, watching—she hated being watched, her labor evaluated and belittled. She closed the shades.

I am in his body, I am in her body; I am the multiple manifestations of private property, of a particular relationship to its compulsions. But in passing, the ideology is exposed as vacant, what’s left of its primordial structure just traces of rhetoric, nostalgia. This is both appalling and promising. She is held hostage by abstract paeans to private choices; he is excluded, then broken, by abstract encomiums to individual election—yes, this is appalling. But the emptiness, the total vacancy, of these rhetorical structures is indeed differential. A body ‘transported’ outside itself in space, a body which by putting up resistance inaugurates the project of a different space. Alexander says we need better patterns. I

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59 Le Febvre, *Production*.
think we need to disassociate the pattern from the person, to proliferate the patterns’
subjectivities.

Fanny Howe understands this as a dimensional conflict. In an early version of her essay
“Bewilderment,” she dramatizes the impossibility of simultaneity existing within
teleological— that is, linear— narrative:

There is literally no way to express actions occurring
simultaneously.

If, I for instance, want to tell you that a man I loved, who died, said
he loved me on a curbstone in the snow, but this occurred in time after he
dies, and before he died, and will occur again in the future, I can’t say it
grammatically.

You would think I was talking about a ghost, or a hallucination, or
a dream, when in fact, I was trying to convey the experience of a certain
event as scattered and non-sequential.60

Instead of submitting to linearity, Howe characterizes her creative process as being
spiralic:

60 Fanny Howe, “Bewilderment” in A Translation of Spaces (HOW2, Vol.1, No. 1: March, 1999);
A dream breaks into parts and contradicts its own will, even as it travels around and around.

For me, bewilderment is like a dream: one continually returning pause on a gyre and in both my stories and my poems it could be the shape of the spiral that imprints itself in my interior before anything emerges on paper.

For to the spiral-walker there is no plain path, no up and down, no inside or outside. But there are strange returns and recognitions and never a conclusion.\(^{61}\)

A line is the ever-selvsame. A circle is recollection. The spiral is a geometric way of tracking movement, both vertically and horizontally. Viewed from the side, the form appears vertical—linear; viewed from the top, it is horizontal—concentric and flat. In the spiral, Howe has identified a spacial form that is capable of encompassing both recurrence and emergence: it is the architectural form that admits both Alexander and Nietzsche, Baudelaire and Howe herself.

BAUDELAIRE: *This transitory, fugitive element, whose metamorphoses are so rapid, must on no account be despised or dispensed with.*

I have a recurring dream about the house. That is, I have dreams in which the house recurs as an entity. It is where I am, or where I have been, or where I will be. It is always there. Sometimes it has never burned, but my daughter is there. This is disorienting, because I know it burned before she was born—but there it is, the original, and there she is. Sometimes I live there with someone else, and Chris lives across the street, but we both know that he also lives in my house, sometimes. I’ve also dreamed that it belonged to someone else, which it now does. But in the dream, I don’t remember selling it, and the new person has painted the front door the wrong color blue. Which they actually have. Or it is in a different city—it is in a bedroom suburb of New York City, and we’ve moved there to escape self-conscious Brooklyn. And I don’t miss Brooklyn, but I miss the apartment that I’d arranged as a simulacra of the house. Some dreams have me still in the house, but trapped in the domesticated, desperate self who watched the immolater’s ablutions. I see him from the kitchen window instead, and he is in the bungalow next door. In others, I sit in the newly remodeled family room and watch the woman in the pink sweater shriek as the towers fall, but when I walk outside I am on 3rd Avenue and the brown-black smell is there. It is as fluid as me. I never dream of the fire—I just know it happened, will happen.

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62 Baudelaire, “The Painter of Modern Life.”
Lefebvre: An existing space may outlive its original purpose and the raison d’être which determines its forms, functions, and structures; it may thus in a sense become vacant, and susceptible of being diverted, reappropriated and put to a purpose quite different from its initial use. 63

Other nights, I dream that we lived in a new house, which we do. It was a pinkish brick, which it is, and Italianate, which it isn’t. It needed a lot of remodeling, which it does. We were standing in a butler’s pantry, and Chris told me that he had bought back the old house. “But where will Sebastian sleep?” I ask. “He hasn’t been born yet,” Chris answered. “Oh.” I walk out the back door, following a long boardwalk that bifurcates the yards of the neighbors on either side. Our yard is down at the end of the dock, ballooning out fifty-ish yards from the house. He follows. “But I don’t want to move.

63 Lefebvre, The Production of Space, 167. In a later article, Lefebvre gives as an example of differential space the alterations made by inhabitants of LeCorbusier’s Pessac development, which was designed as “experimental worker’s housing”: “Instead of installing themselves in their containers, instead of adapting to them and living in them ‘passively,’ they decided that as far as possible they were going to live ‘actively.’ In doing so they showed what living in a house really is: an activity. They took what had been offered to them and worked it, converted it, added to it. What did they add? Their needs. They created distinctions . . . They introduced personal qualities. They built a differentiated social cluster.” (Henri Lefebvre, preface to Phillipe Boudon, Lived-in Architecture: Le Corbusier’s Pessac Revisited, trans. G. Onn (London: Lund Humphries, 1979 [1969]). Quoted in Richard Milgrom, “Design, Difference, and Everyday Life,” Space, Difference, Everyday Life: Reading Henri LeFebvre, eds. Kanishka Goonewardena, Stefan Kipfer, Richard Milgrom, Christian Schmid (New York: Routledge, 2008), 275.)
This house has room for everyone. It proliferates. It is pink. It makes me feel like Edith Wharton’s Halo in *Hudson River Bracketed.*” He suggests that we let our art live in the old house—that way we can have both. I think this sounds reasonable, and walk back into a chandeliered foyer, where Scarlett and Sebastian are putting on their winter coats. I see the old house, gray with a spring green door, across the street. I can still smell the wet blackness under the green. I feel relieved. Everything, all at once. The same and never the same. The man is both there and not there. The house is both the ever-selfsame and never the same. From a certain fractal vantage, it is all simultaneous.

This is how I mean to write these foundational stories. I will keep circling around privacy, property, exclusion, election. I round a turn, and the boundaries marking the idealism of Puritan colonies morph into maps of George Zimmerman’s neighborhood patrols, the outline drawn around Trayvon Martin’s body. Another, and romantic choice in the newly “free” spaces of the American sentimental novel becomes the so-called progressive “natural” parenting movement’s invocation of choice to re-tether us to gendered spaces. Election is the difference between a home-sweet-home and a burned house, but it is also what keeps me from being immolated in an elevator, enables the endless parade of expensive strollers and gentrifying anti-gentrification. Privacy is the difference between pregnancy termination and lactation failure, the distance between a good neighborhood and a bad future. The shapes shift, but the rhetorical patterns persist. I am not writing this way as a challenge to the existence of
critique, but to the experience of it. I can’t critique the persistence of rhetorical patterns if I use persistent rhetorical patterns to describe their persistence. The experience of this would be ouroboric, not emergent. It would merely formally, textually, enact the patterns of privilege and exclusion that haunt the experience of American space. The critical text must also acknowledge its own moments of aporia, of unresolvability, or else it is itself just an ideologically closed form. So the formal enactment of these critical fissures, the moments when personal complicity bumps up against a deconstruction of ideology, are as necessary to the critique as the content that

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64 Aporia is a logical disjunction, a place that prevents passage. Of particular relevance to a discussion of domestic (personal and national) space is Derrida’s consideration of the aporia of hospitality. He understands hospitality to be a “possible-impossible aporia”: in “Of Hospitality” (Stanford University Press, 2000), he contends that hospitality requires one to be the 'master' of the house, country or nation — to be hospitable, one must have the power to host. That is, be the property owner. Hospitality further requires the host to have some kind of control over the people who are being hosted — if the host does not control the space, then he can’t be hospitable. From a nationalist perspective, this justifies the closing of boundaries and the exclusion of particular groups or ethnicities who might challenge the “host’s” ability to be properly hospitable (151-5). Even more relevant is the fact that the form of this text enacts its subject: consisting of consists of two texts on facing pages, "Invitation", by Anne Dufourmantelle, appears on the left, and Derrida’s "response" on the right; the interaction between them textually enacts the "hospitality" under discussion.
is more easily distanced. It is as uncomfortable to write as it is to read, and it isn’t always formally successful—I feel its disjunctions, perhaps more acutely than a reader might. But, as with private property, so it is with criticism: if we continue to invoke rhetoric of linearity and resolveability—obliquely, defensively, or apologetically, it’s all the same—then we shouldn’t be surprised that critical content continues to be suffocated by the ideological weight of its form. Or that, as ever, simultaneity continues to be excluded from this “City on a Hill.”
ELECTION

If it be sinne in us to deny some men place etc. amongst us, then it is because of some right they have to this place etc. for to deny a man that which he hath no right unto, is neither sinne nor injury [...]

If strangers have right to our houses or lands etc., then it is either of justice or of mercy; if of justice let them plead it, and we shall know what to answer: but if it be only in way of mercye, or by the rule of hospitality etc., then I answer 1st a man is not a fit object of mercye except he be in miserye. [...] We are not bound to exercise mercy to others to the ruine of ourselves.

- John Winthrop, Defence of an Order of the Court (1637)

The wrong-doing of one generation lives into the successive ones, and, divesting itself of every temporary advantage, becomes a pure and uncontrollable mischief.

- Nathaniel Hawthorne, The House of the Seven Gables (1851)

Zimmerman claims he initially wanted to keep the gun for his future children and grandchildren but said he came to the decision to sell the gun after praying. “It took me several weeks to think about it,” Zimmerman said. It’s what the forefathers would do, he surmised.

- The Daily Beast, May 17, 2018
Florida’s 2005 Protection of Persons law (Statute 776.013) marked the beginning of a rash of Stand Your Ground laws. In addition to Florida, twenty-two other states have passed laws that remove any “duty to retreat” before using deadly force in self-defense. These laws trace their inheritance to the Castle Doctrine, which was first established by English jurist William Coke in his 1603 Semayne’s Case opinion. In this opinion, Coke lays the basis for what, in American law, became the Fourth Amendment’s “knock and announce” rule, which affirms the homeowner’s right to treat those who do not knock and announce as intruders, and respond accordingly. It is also the origin of the adage “A man’s home is his castle”: “That the house of everyone is to him as his castle and fortress, as well for his defence against injury and violence, as for his repose.” In a web-news post by its Institute for Legislative Action, the National Rifle Association, a key lobbyist for Stand Your Ground laws, places its efforts squarely within this tradition:

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65 As of 2014, Florida, Alabama, Alaska, Arizona, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, and West Virginia have passed so-called “Stand Your Ground” laws.
66 “[I]f thieves come to a man’s house to rob him, or murder, and the owner or his servants kill any of the thieves in defence of himself and his house it is not felony, and he shall lose nothing.” Seymayne’s Case, 5 Co. Rep. 91a, 91b, 77 Eng. Rep. 194, 195 (K. B. 1603). Opinion by: Sir Edward Coke.
Although anti-gun groups, politicians and newspaper editors in 2005 screamed of blood on the tracks in Florida after passage of that state’s Castle Doctrine law, the legislation has proven beneficial to not only Florida’s law-abiding citizens, but also to citizens in other states who have seen the light at the end of the tunnel.

Castle Doctrine, in essence, simply places into law what is a fundamental right: self-defense. If a person is in a place he or she has a right to be – in the front yard, on the road, working in their office, strolling in the park – and is confronted by an armed predator, he or she can respond in force in defense of their lives.

Today, the NRA is feeding the firebox of Castle Doctrine legislation in states throughout the country, conducting a self-defense whistle stop campaign that is turning focus from criminals’ rights to those of the law-abiding who are forced to protect themselves.68

But despite the NRA’s invocation of fundamental(ist) rights, the Castle Doctrine was already firmly embedded in American common law, landing as it did on American soil with the English colonists. And language that includes the phrase “stand your ground” and removes a “duty to retreat” from an assailant has been present in existing self-defense case law since at least 1876 and 1911, respectively.69 In 2005, when the Florida law was passed, only nineteen states still had the “duty to retreat” on the books, and even then only if the victim could have safely avoided the risk of death or serious

69 Long v. State, 52 Miss. 23 (1876); Reiterated in State v. Peo (Del 1889) 9 Houston 488, and in State v. Hatch (1896) 57 Kan 420.
bodily injury by retreating from the perceived threat. In fact, many states that subsequently passed “Stand Your Ground” laws were already “no duty to retreat” states. Redundancy piled upon legal redundancy already protected the “fundamental right” of self-defense, NRA rhetoric notwithstanding.

Nevertheless, these laws do, in fact, represent a substantial revision to existing self-defense case law—just not for the reasons advanced by their proponents’ position memos. The real change made by these new laws is twofold: first, they revise conditional language structure (“force is justified if”) to include a statutory presumption of fear; and second, in cases that are “presumed” to be self-defense, the laws extend immunity from all stages of prosecution. Florida’s law states: “A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using or threatening to

70 http://jonathanturley.org/2013/07/20/the-stand-your-ground-law-and-the-zimmerman-trial/
use defensive force that is intended or likely to cause death or great bodily harm to another if: the person who uses or threatens to use defensive force knew or had reason to believe that an [...] unlawful and forcible act was occurring or had occurred.” The change here is presumption: contingent only a “reason to believe,” that something unlawful was happening, the person is presumed to have had a reasonable fear if he uses force—it is a sort of cart-before-the-horse switch. This opens the door to justifying perpetual fear of immediate threats, as the law starts with a presumption of fear instead of a presumption of safe retreat, no matter the actual circumstances. And then, based on that peremptory presumption of fear, the use of force is cannot be prosecuted: “A person who uses or threatens to use force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in such conduct and is immune from criminal prosecution and civil action.” This is not “plac[ing] into law” the Castle Doctrine’s unimplemented proposition of self-defense—it is quietly, shrewdly, embellishing and adding to its basic components.

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72 Florida Statutes Title XLVI Chapter 776: 013.1
75 Florida Statutes Title XLVI Chapter 776: 032
At the core of this shift is the question of capacity. As Harvard legal scholar Jeannie Suk argues in “The True Woman: Scenes from the Law of Self-Defense”, Florida’s “Stand Your Ground” law threads the needle between the citizen’s license to valiantly defend his “right to be” and the domestic violence victim’s “incapacity to retreat.” In cases of domestic violence, the suspension of the duty to retreat is “based on the revised view of the victim whose autonomy was so severely limited that retreat was not a plausible choice.” According to Suk, this emphasis on incapacity is a new development, and the spate of laws following on the heels of Florida’s law, “against the background of these different constructions of the home and of crime,” represent the most recent major turning point in self-defense law as it evolves away from English Common Law’s Castle Doctrine. The first “innovation” of American case-law was the mid-nineteenth-century introduction of the True Man Doctrine’s “no duty to retreat” from a place that the victim has a “right to be,” thereby extending the “castle” into public space. More than a century later, self-defense law was expanded to include domestic violence victims within the parameters of Castle Doctrine judgments. Suk argues that the Stand Your Ground laws conflate “no duty to retreat” with domestic violence defenses, constructing a new kind of self-defense, one that “leverages the subordinated woman into a general model of self-defense rooted in the imperative to protect the home and family from attack”:

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77 Suk, 254.
The Castle Doctrine laws once again champion and foreground the common law “true man” ideal along with the corresponding picture of the criminal as territorial invader. But the modern Castle Doctrine also bears the unmistakable traces of the subordinated woman, now an indelible presence in the self-defense terrain and in public understandings of crime. A key feature of the new self-defense laws is permission to treat a cohabitant as an intruder if a DV [domestic violence] protection order commands him to stay away from the home. The new Castle Doctrine thereby embeds DV within the home invasion paradigm. The result is a distinctive and perhaps uneasy hybrid of the true man and the subordinated woman, which I call the “true woman.”

This hybrid subject facilitates the extension of the “incapacity” justification used in domestic violence cases to the general population, though the subordinated woman remains the rhetorical flourish, the shiny object, the straw woman—Marion Hammer, former President of the NRA, among others, repeatedly invoked women’s ability to protect themselves as a rationale for the laws. In interview after interview, Hammer waved the flag of the incapacitated woman: “The duty to retreat had been imposed by the system and essentially if someone had tried to drag a woman into an alley to rape

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78 Suk, 240.
her, the women [sic] -- even though she might be licensed to carry concealed and ready
to protect herself, the law would not allow her to do it." So according to Hammer, it is
the duty to retreat that incapacitating, not the structures of gendered power, the duty to
retreat that guarantees sexual assault, not gendered violence. And yet, under the
Florida law, the only instance in which a woman would be immune from prosecution
for killing a violent spouse is if she had previously taken out a DV protection order
against him, the rhetorical invocation of women’s safety notwithstanding. When
pressed on this, even Hammer acknowledged that “the law attempts to say that if in a
domestic violence situation you are being beaten you may use self-defense, but you
can't simply take action against an estranged spouse who breaks into the home if they
own the home. You have to be under attack in those situations [...] that in restoring your
self-defense rights and your right to protect your home.... they did not set up scenarios
where people could murder people they did not like and claim it was lawful self-
defense.” The apologetics of Florida’s law, then, bely the very real restrictions on
immunity for, specifically, domestic violence victims: the True Man’s tights trumps
those of the domestic violence victim. Indeed, the new True Man might more accurately
be called the Incapacitated Man, simultaneously cornered and emboldened by the
permission to feel perpetual fear. Instead of empowering the domestic violence victim,

79 Mary Anne Franks. “Stand Your Ground's Woman Problem: Laws Expanding Self-
Defense Raise Questions About Gender as Well as Race,” The Huffington Post (3/3/2014)
http://www.huffingtonpost.com/mary-anne-franks/stand-your-grounds-woman-
80 Franks, np.
these laws usurp, and thus disable, her last legal weapon: incapacity. And they add insult to injury by granting the Incapacitated Man a privilege that was never offered to her: legal immunity.

So the law’s proponents invoke and codify the fear of incapacity to retreat, even as they place limits on who can claim that incapacity. As legal scholar Mary Anne Franks notes in *Stand Your Ground’s Woman Problem: Laws Expanding Self-Defense Raise Questions About Gender as Well as Race*\(^\text{81}\), the law may only specify the “estranged spouse” exception, but it grants broad discretion to law enforcement agents in determining whether the use of force was justified under the law and, therefore, whether the person should be immune from all prosecution: “the agency may not arrest the person for using or threatening to use force unless it determines that there is probable cause that the force that was used or threatened was unlawful.”\(^\text{82}\) That is, the only test for incapacity to retreat and, therefore, immunity, is probable cause, as determined by a potentially biased law enforcement officer. It is not difficult to extrapolate that, given the discretion granted to the individual investigating officer, these laws will be beneficial to some demographics and have no protective effect for others (read: in extremis, white males vs. minority females).\(^\text{83}\) A man protecting his home and family (his property, all) is more likely to be granted immunity from prosecution than a

\(^\text{81}\) Franks, np.
\(^\text{82}\) Florida Statutes Title XLVI Chapter 776: 032.2
\(^\text{83}\) I provide statistical support for this claim in the final section of this essay.
woman who lashes out against her powerlessness—both under the law and in the court of public opinion.84

And so, in a renovation of the True Man Doctrine and domestic violence case law, Stand Your Grounds laws extend incapacity and immunity to the average man who uses deadly force in response to a “reasonable fear” that his castle has been breached. That is, Stand Your Ground laws appropriate the incapacitation and the justifiable fear of the domestic violence victim and allow someone without that justification to claim the same defense. This is new, at least so far as self-defense legislation and case law is concerned. But this idea of the “incapacity to retreat” is not, despite its recent legal introduction, a new ideological development in American history. The constant sense of fear felt by a domestic violence victim (and, theoretically, those to whom incapacity is extended under recent Stand Your Ground laws) is uncannily akin to the sense of spiritual peril that permeated the Puritan “errand into the wilderness.”85 Rather than following a linear legal and ideological progression, the American conception of self-defense circles around the Puritan fear of the presence of what minister John Cotton referred to as

84 For a comprehensive analysis of the literature, see “Final Report and Recommendations” (September 2015) from The American Bar Association’s National Task Force on Stand Your Ground Laws: http://www.americanbar.org/content/dam/aba/images/diversity/SYG_Report_Book.pdf

85 This phrase originated in a 1670 Massachusetts election sermon given by Samuel Danforth of Roxbury, and was subsequently used as the title for Perry Miller’s seminal book examining the underlying aims of the original Puritan migration.
“intruders upon God.”86 That is, those who were not elected, predestined to receive God’s grace. The Puritans understood election to be most faithfully expressed through a communal covenant, whereby a community of the elect covenanted themselves to each other and pledged to obey the word of God, thereby creating a community in which all members acted in accordance with, and in ferocious defense of, the covenant of individual grace,87 a sort of spiritual-right-to-be. If a member of the community failed to obey God, then the entire community was at risk of breaking their individual covenants with God. This was understood to be an original and essential incapacitation—they were incapacitated both by God’s omnipotence and by their inextricable, salvational dependence on their community. There was no possibility of retreat from either; thus, the single-minded enforcement of Puritan doctrine, and the brutal banishment of those found insufficiently observant.

This communal defense of singular election, and the incapacitation that justifies it, conceptually tethers Stand Your Ground laws to the beginnings of American community. Early laws such as the Act of Exclusion (1637) and the Massachusetts Body of Liberties (1641) contain crucial elements of modern Stand Your Ground laws, all of which distill down to what amounts to “Stand Your Ground”-style self-defense: using force to prevent “intruders” from inflicting harm upon their “castle,” and laying legal

86 Cotton, 7.
claim to both incapacitating fear and grace-conferred immunity. The Puritans had, after all, endured years of persecution at the hands of those with whom they doctrinally disagreed, and the potential presence of theological dissenters in this hard-won utopia was no less a threat than the “armed predator” that figures so prominently in NRA rhetoric. Indeed, this threat was of a greater magnitude even than physical assault—it was ordinal, salvational. If they failed to fulfill their communal covenant, they would be abandoned by God—there was no greater peril. In the face of this vulnerability, the Puritans retreated to the edges of civilization, until they could go no further. They were, in fact, incapable of further retreat; they stood their ground. But, as is always the case, the will to power renders real fear easily appropriated, and righteous immunity handily usurped. So the original fear, the incapacity, becomes a justification for a more generalized method for maintaining power. For the Puritans and the True Men, there was but a small leap between piety and privilege, between existential fear and the fear of losing power.
Moreover I will appoint a place for my people Israel, and I will plant them, that they may dwell in a place of their owne, and move no more.

— 2 Sam. 7.10, quoted in John Cotton’s Gods Promise to His Planatation

The provenance of Stand Your Ground laws is initially spiritual, and subsequently legal. Over the course of the seventeenth century, a pattern emerged: first, the Puritans felt their salvation to be imperiled; then they responded to that peril legally. It is this sense of ceaseless spiritual jeopardy, and the response to it, that we find imbedded in the modern legal understanding of “incapacity to retreat.” So we begin with the last instance in which Puritan retreat was possible—indeed, ordained—and why, after this final exodus, egression became transgression.

The Puritans, like so many minority groups, took their name from what was originally an aspersion: “‘We call you Puritans,’ wrote an English clergyman named Oliver Omerod at the beginning of the seventeenth century, ‘not because you are purer than other men…but because you think yourselves to be purer.’” 88 Unlike the Plymouth

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Pilgrims, who eventually separated from the Church of England, the Puritans of Massachusetts Bay Colony understood their mission to be one of purification, not separatism. Initially, English Puritans wanted to “complete the severance that Henry VIII had begun” when he declared himself head of the Catholic Church in England; that is, they wanted to purify the Church of the last vestiges of catholic hierarchical structure by eliminating Bishops and delegating authority to “councils (presbyteries) of ministers who would ultimately be answerable to their individual congregations.” But when it became clear that “perfect” purification was not looked upon favorably by even the most Presbyterian of Monarchs, James “I will harry them out of the land” the Sixth, the Puritans conceived of a new plan: they would remove to New England and be a model of reform, in hopes that the Church would eventually recognize their success and follow suit. As Early American scholar Deborah Madsen notes in *American Exceptionalism*,

the terms ‘elect nation’ or ‘redeemer nation’ referred to the collective experience of sainthood or salvation through God’s grace […] The Puritans of Massachusetts Bay Colony believed that God intervened in human history to work the salvation not only of individuals, but also entire communities or nations […] The colony at Massachusetts Bay they

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89 Heimert and Delbanco, 1.
90 Heimert and Delbanco, 3.
91 Heimert and Delbanco, 4.
believed had been singled out by God as an entire community of the
saved or the elect […] The experiment in theocracy
in New England, then, was aimed at creating a model church that could
be copied by the imperfectly reformed churches in England.92

This notion of providing a model was invoked by John Winthrop when he spoke to his fellow passengers aboard the Arbella, shortly before landfall in Massachusetts: “He shall make us a praise and glory that men shall say of succeeding plantations, ‘may the Lord make it like that of New England.’ For we must consider that we shall be as a city upon a hill. The eyes of all people are upon us.” [emphasis original]93 The image of the “city on the hill” has, in turn, been invoked by, among others, John F. Kennedy and Ronald Reagan to signal a special destiny, although they dispensed with the spectre of close, theological scrutiny in the original, lest the anachronism prove politically problematic.

Winthrop was not alone in describing this theological errand as rooted in the establishment of a community of the elect. In 1630, Puritan minister John Cotton addressed the Winthrop fleet, the first wave of Massachusetts Bay colonists, as it readied to sail from Southampton, England. Cotton was one of the most influential ministers in early 17th century England, and also one of the most radical. He altered

Anglican liturgy, abolished genuflection and the wearing of surplices, and, in America, introduced a congregational system of worship. Boston, Massachusetts was named after Boston, Lincolnshire, in honor of Cotton’s appointment there at St. Botoph’s. Though he did not sail with the Winthrop fleet, his renown was such that he was assiduously courted by the Massachusetts Bay Colony until he followed in 1633. His sermon to the assembled colonists at Southampton, “Gods Promise to His Plantation,” explicates a verse from the story of David in the Book of Samuel in an effort to settle any doubts emigrants may have had about God’s support of the enterprise:

In this tenth verse is a double blessing promised:

First, the designment of a place for his people.

Secondly, a plantation of them in that place, from whence is promised a threefold blessing.

First, they shall dwell there like Free-holders in a place of their owne.

Secondly, hee promiseth them firme and durable possession, they shall move no more.

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Thirdly, they shall have peaceable and quiet resting there, The sonnes of wickednesse shall afflict them no more: which is amplified by their former troubles, as before time.\textsuperscript{95}

Cotton reminds the voyagers that God has promised his people a place in which they may peaceably, and durably, live/worship in freedom from the “sonnes of wickednesse,” i.e. those Anglicans who had a slightly less Presbyterian interpretation of Church structure and observance. This is preceded by, first, God’s “design”, or identification, of the place, and then the plantation of his people in said place. This indicates to Cotton, and therefore his listeners, that a “removeall” — a retreat — is part of the fulfillment of the promise. So the question becomes, as Cotton observes, “Wherin doth this work of God stand in appointing a place for a people”?\textsuperscript{96} That is, how are the faithful to know that God intends a place for them? Cotton answers: He “espies” it for them, and either “gives them to discover it for themselves, or heare of it discovered by others, and fitting them […] After he hath espied it, when he carrieth them along to it so that they plainly see a providence of God leading them from one country to another.” Cotton holds up for comparison the journey taken by Isaac in Genesis: Isaac dug the well called Ezek; the Philistines confiscated it. Isaac dug the well called Sitnah; the Philistines “strove” for it. He “removed thence” and dug Rehobeth. This remove


\textsuperscript{96} Cotton, 3.
requires considerable labor and loss, and much cause for losing faith, though Isaac remains committed, mulishly so. At journey’s end, “he makes room for a people to dwell there […] Now no Esek, no Sitnah, no quarrell or contention, but now he sit downe in Rehobeth, in a peaceable room.”

Each time Isaac dug a well in an attempt at plantation, the Philistines (specifically: those who were uncircumcised; generally, those who did not follow God’s law) prevented the “durable possession” promised by God. Until, finally, he came to Rehobeth, which means “wide places” in Hebrew. In a wide place (read: unoccupied), and after much removal, Isaac sits in a room without contention: his “right to be” in Rehobeth is uncontested and, therefore, he has no “duty to retreat.” In the case of the Puritans, we can retroactively read the language of self-defense law into the particulars of their pilgrimage. First, they had a duty to retreat from England, since an “appointment” from God is tantamount to a commandment. And in case Cotton’s listeners weren’t following, he reiterates: “From the appointment of a place for them, which is the first blessing, you may observe this note: The placing of a people in this or that Country is from the appointment of the Lord.”

Once they fulfilled the duty to retreat to New England, however, duty became incapacity: having removed to the land promised to them, the Puritans were incapable of further retreat because, paradoxically, their duty was now one of plantation, of planting themselves on the ground appointed. Their plantation, then, is the worldly manifestation of their

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97 Cotton, 4.
99 Cotton, 1.
spiritual election, and their incapacity to retreat further a reflection of their helplessness in the face of God’s command. Ultimately, spiritual election is enacted—proved—by standing one’s ground.

This proto-“right to be” was then legally codified in *The Cambridge Agreement* (1629), an insurance against a possible failure to grasp the nature of “appointment” by those of weak(er) faith. *The Cambridge Agreement* was an amendment to the Massachusetts Bay Company charter that stipulated that all members of the Company’s Governing Board must be physically located in the Massachusetts Bay Colony. I quote here at length because the flow of the language differentiates itself by its almost conspiratorial tone—it is legal language turned inward, its face to the like-minded, its back to those not sufficiently faithful to make the voyage:

*Considering withal that this whole adventure grows upon the joint confidence we have in each other’s fidelity and resolution herein, so as no man of us would have adventured it without assurance of the rest; now, for the better encouragement of ourselves and others that shall join with us in this action, and to the end that every man may without scruple dispose of his estate and affairs as may best fit his preparation for this voyage; it is fully and faithfully AGREED amongst us, and every one of us doth hereby freely and sincerely promise and bind himself, in the word of a Christian, and in the presence of God, who is the searcher of all hearts, that we will so really endeavour the prosecution of this work, as by God's assistance, we will be ready in our persons, and with such of our several families as are to go with us, and such*
provision as we are able conveniently to furnish ourselves withal, to embark for the said Plantation by the first of March next, at such port or ports of this land as shall be agreed upon by the Company, to the end to pass the Seas (under God’s protection) to inhabit and continue in New England: Provided always, that before the last of September next, the whole Government, together with the patent for the said Plantation, be first, by an order of Court, legally transferred and established to remain with us and others which shall inhabit upon the said Plantation[.]

This agreement rendered the Massachusetts Bay Company the only English colonizing company without a governing board in England. All stockholders who were unwilling to emigrate sold their shares to those who were. And since the Governing Board members were technically the guardians of the original copy of the charter itself, then it, too, must physically “reside” in the colony, which was also a bit of insurance against the possibility that the King might revoke the charter on a whim. The charter was to be “planted,” as it were, both physically and ideologically in Massachusetts. By taking the charter with them, and limiting investment to only those willing to undertake emigration, the Puritans were the first Americans, though by no means the last, to legally merge property and religion as justification for the settlement of land. John Winthrop was elected the first Governor and the guardian of the charter: “under God’s protection” (Cambridge), “Freeholders in a place of their own” (Plantation). God “espied” the land, the Massachusetts Bay Puritans heard of the land, the Crown

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100 The Cambridge Agreement, (1629).
granted charter to the land, Winthrop was elected—*elected*—to fulfill the charter, and the Massachusetts Bay Company took possession by providence: thus *The Cambridge Agreement* was signed and the Winthrop fleet massed at Southampton.

But still some Puritans in the Winthrop fleet were unsure if they were, in fact, *particularly* appointed for this journey—again, these Puritans were not Separatists, and they were anxious that their leaving would not be interpreted as abandonment of the Church and their faithful brethren who stayed to “fight” on English soil. Indeed, Cotton himself did not sail with Winthrop’s fleet; it was only after he found himself “under warrant from the High Commission” as a result of his opposition to the Bishops’ authority that he “decided for America.”

As in the rest of the sermon, Cotton employs call-and-response, echoing the emigrants’ concerns even as he assuages their guilt:

*But how shall I know whether God hath appointed me such a place, if I be well where I am, what may warrant my removeal?*

In his response, Cotton walks the line between encouragement and objectivity, outlining conditions that may warrant this retreat. According to Cotton, there are “five good things for procurement of which I may remove.” First, for the “gaining of  

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101 Heimert and Delbanco, 27.  
102 Cotton, 8.
knowledge.” Cotton references the “Queene of the South” (the Queen of Sheba) and her pilgrimage to hear “all the wisdom of Solomon, the house that he had built[].” Here, wisdom would be made visible through some communion between the Puritans and the land appointed to them. Planted, they would take in the nourishment of their right place, and bloom as visible signs of God’s wisdom—or, as they referred to the elect, as visible saints. Second, true to the original spirit of European colonization, as well as the Massachusetts Bay Company charter, “for merchandise and gaine-sake.” As Cotton notes, Proverbs 31.14 says, “Daily bread may be sought from farre.” Third, “to plant a colony.” Invoking Acts 16.12, Cotton observes, “Nature teacheth Bees to doe so, when as the hive is too full, they seek abroad for new dwellings: So when the Hive of the Common-wealth is too full, that Tradesmen cannot live one by another, but eate up one another, in this case it is lawfull to remove.” And fourth: “when he may employ his talents and gifts better elsewhere”—presumably, Cotton considered his talents to still be of use in England until, of course, they weren’t. Significantly, the preceding four reasons do not exclude purely practical motivations for making the journey: knowledge, wealth, opportunity, and usefulness. Cotton leaves the door open for many motivations, including economic opportunity, provided that the final condition is met: “For the liberty of the Ordinances.”

103 1st Kings 10:1-5 (KJV)
And this fifth condition is *expressly* theological, striking at the heart of the Puritan anxiety about election. Ordinances were acts of obedience, the kernels of shining faith left after the infidelities of the Catholic sacraments were winnowed into pure observance. For Puritans, there were just two ordinances: baptism and communion. According to the *Westminster Confession of Faith*, a document signed by over one hundred Puritans, many of whom were part of the Great Migration to New England, “There be only two sacraments ordained by Christ our Lord in the Gospel; that is to say, baptism, and the Supper of the Lord: neither of which may be dispensed by any, but by a minister of the Word lawfully ordained.”\(^\text{104}\) Thus, practicing the ordinances (ordained sacraments) could only be fulfilled in Church membership, as no minister would endanger his eternal standing by providing an ordinance to a non-member. So while practicing the ordinances was a testimony of individual faith, an individual’s ability to practice was communal: both ordinances required the sanction and the participation of the community. Ministers were particularly attuned to this reciprocity, as they were ultimately responsible if the ordinances were “impurely administered.” Thomas Hooker, another influential, and unforgiving, minister, addresses the danger of ordinal adulteration in his sermon “The Danger of Desertion”:

> [I]t is God’s ordinances purely administered that brings God’s presence to a people. God forsook Shiloh because his ordinances were not purely kept there.

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When the people left the ark, viz., his pure worship, then God left the people...Hence it was that Cain is said (Gen. 4:14) to be cast out of God’s presence, because he was cast out from the church; he was cast out from God’s ordinances...If Sodom and Gomorrah had but legally repented, they had remained, they had not been destroyed.\\footnote{105 Thomas Hooker, “The Danger of Desertion (1631)” in Heimert and Delbanco, 67.}

The danger, then, of remaining in England and making concessions to an ordinally impure Anglican hierarchy was God’s desertion. Backing out of the anxiety about this danger begins to give a clearer picture of the relationship of the individual Puritan to his community: if an “impure” person was allowed Church membership, then it follows that he would partake of the ordinances, and the ordinal practice of the entire community would, therefore, be rendered impure—and God might desert the whole community, as he had deserted Shiloh and Sodom and Gomorrah. The implication of the individual in the salvational fate of the whole community was known as the ‘federal covenant.’ Again, Deborah Madsen:

Just as a redeemed individual exhibited signs of sainthood through pious behavior, serious demeanor, and the keeping of God’s laws and those of the magistrates, so a redeemed community expected itself to be pious, well regulated, and observant of divine and civil laws. Backsliding, by any
member of the community, would place in jeopardy the salvation of the entire group.\textsuperscript{106}

The individual threat to collective salvation was presumed to be \textit{perpetually imminent} because the Puritans were in perpetual service to God, as Hooker gently reminded them, through the pure administration of His ordinances. Thus, despite the individual nature of free grace, everyone in the community was, according to God’s law, legally liable, and the settlement price was steep: salvation. No wonder that, once removed to New England, the Massachusetts Bay Puritans were anxious to preserve the purity of their Church, and went to great lengths—legal and otherwise—to ensure that no breach was made by those with an “impure” (read: divergent) interpretation of doctrine.

\textsuperscript{106} Madsen, 3-4.
(iii)

ANTI-: AGAINST; -NOMOS: LAW

Anne Hutchinson vs. the Magistrates

*From among your own selves shall men arise, speaking perverse things, to draw away the disciples after them.* (Acts 20:30)

One of the first doctrinal disputes over how to maintain an ordinarily pure community was the Antinomian Crisis, the result of which was the banishment of, among others, Anne Hutchinson. And though modern scholarship has recuperated Hutchinson as a martyr to tolerance, make no mistake: she may have lost her battle with the Magistrates as a result of patriarchal constructions of authority, but the point of contention wasn’t if election should be drawn into the colony’s blueprint, but who could participate in the drafting. She stood on the Puritan promontory of election as surely as her persecutors—she just lost her claim to immunity. So the story of Anne Hutchinson’s banishment is the story of the appropriation of fear by those who surely had no cause more probable than power, and no threat of force more immune from scrutiny than sex. She was a martyr, but not to religious tolerance.
In October of 1637, less than a month before the start of her civil trial for “traduc[ing] the magistrates and ministers of this jurisdiction,” Anne Hutchinson attended, as lay midwife, the labor of her supporter Mary Dyer. As was customary for the time period, Dyer was joined by other female relatives and neighbors, to the exclusion of the men. This group of women helped her prepare, both physically and spiritually, for the suffering, and possibly death, to come. Hutchinson took this responsibility seriously, and was well-respected for her ministrations: when they both still lived in Lincolnshire, England, Cotton noted of Hutchinson,

\[\ldots\text{chiefly for that I heard shee did much good in our town, in womans meeting at Childbirth-Travells, wherein shee was not onley skilfull and helpful, but readily fell into good discourse with the women about their spiritual estates...so as these private conferences did well tend to water the seeds publickly sowen. Whereupon all the faithfull embraced her conference, and blessed God for her fruitfull discourses.}\]"109

\[\text{107 November 1637: “The Examination of Mrs. Anne Hutchinson at the court at Newtown.” Quoted in Heimert and Delbanco, 157.}\]
Within the female-only space of the laying-in chamber, as it was called, Hutchinson was free to step into the role of minister, and privately counseled “the faithfull” in their time of great spiritual need. As Mary Dyer’s labor progressed, it became clear that this counsel would be especially indispensable at this birth:

*The bed whereupon the mother lay did shake, and withal there was such noisome savor as most women were taken with extreme vomiting and purging, so they were forced to depart; and others of them their children were taken with convulsions, (which they never had before nor after,) and so were sent for home, so as by these occasions it came to be concealed.*¹¹⁰

Only Hutchinson and one other midwife remained, as the others had either removed to the antechamber or left altogether, the labor too excruciating to remain in witness. The baby was stillborn and severely misshapen, possibly anencephalic due to what would now be recognized as spina bifida,¹¹¹ a condition largely due to a maternal deficiency of folic acid. (Though 17th-century midwives were familiar with all manner of herbal remedies, the recognition of the importance of folic acid remained several centuries hence.) The explanation for the condition was assumed to be spiritual; Hutchinson sought the counsel of John Cotton, her trusted minister. He advised her to bury the

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¹¹¹ McGregor, 190.
infant without reporting the details of the birth to any authorities or elaborating upon the reactions of attendees. According to John Winthrop’s *History of New England*, Cotton offered the following reasons when later confronted about his advice to conceal the “shape” of the infant:

1. Because he saw a providence of God in it, that the rest of the women, which were coming and going in the time of her travail, should then be absent. 2. He considered, that, if it had been his own case, he should have desired to have had it concealed. 3. He had known other monstrous births, which had been concealed, and that he thought God might intend only the instruction of the parents, and such other to whom it was known, etc.112

The monstrousness of the infant was intended by God as a warning of sorts to the parents, a corporeal sign, or typology, of their perversity in supporting Hutchinson’s doctrinal positions. Cotton interpreted the absence of the customary crowd of women to be evidence of the particularity of God’s instruction: it was only meant for those directly implicated in the creation of the “monster,” and thus reporting it would be, to a certain extent, a challenge to God’s “providence.” And indeed, despite his withdrawal of support from Hutchinson at her trial, he remained faithfully quiet on the subject of Mary Dyer’s baby. So, too, did the women in attendance at the birth remain silent for

the duration of the trial. Though the Dyers were, in Winthrop’s estimation, “both of them notoriously infected with Mrs. Hutchinson’s errors, and very censorious and troublesome,”\textsuperscript{113} the symbolism of the Dyer baby appeared, at least for a time, to be interpreted by those privy to the details as directed at the Dyers themselves, albeit as a warning against submitting to Hutchinson’s “heresies.” And it wasn’t until Hutchinson was found guilty at trial that one woman, followed by Cotton and the others, found her tongue loosed by the verdict: “another woman had a glimpse of it, who, not being able to keep counsel, as the other two did, some rumour began to spread, that the child was a monster.”\textsuperscript{114} Winthrop, the Governor of the colony, the lead magistrate at Anne’s trial, and a most dedicated anti-Hutchinsonian, took a special interest in the event and, “[w]ith the advice of some other of the magistrates and of the elders of Boston, caused the said monster to be taken up”\textsuperscript{115}—that is, exhumed. Upon examination, and in view of over one hundred spectators,\textsuperscript{116}

\textsuperscript{113} Winthrop, History, 266.  
\textsuperscript{114} Winthrop, History, 266.  
\textsuperscript{115} Winthrop, History, 268.  
\textsuperscript{116} McGregor, 187.
Winthrop confirmed that the child, a female, was overlaid by scales, bore talons in place of nails, and was crowned by a quartet of horns.¹¹⁷

Had the “monstrous” births ended with Mary Dyer’s labor, the incident may have remained a catechetical monition to the Dyers. But Anne Hutchinson herself was pregnant for at least part of her own “travaill” in court. Shortly after being banished from Massachusetts Bay Colony, she gave birth to, as Winthrop records in his History, “not one, (as Mistris Dier did), but (which was more strange to amazement) 30. monstrous births or thereabouts, at once; some of them bigger, some lesser, some of one shape, some of another; few of any perfect shape, not at all of them (as farre as I could ever learne) of humane shape.”¹¹⁸ This description was based on an earlier description by Hutchinson’s doctor, John Clarke, who characterized the fetus as resembling a “handful of transparent grapes.”¹¹⁹

Modern medical historians have since hypothesized that Hutchinson, whose supposed pregnancy “fatigue” may have, in fact, been acute symptoms of menopause, likely gave birth to a hydatidiform mole, the result of the fertilization of a blighted—or

¹¹⁷ Winthrop, History, 267-268.
¹¹⁸ John Winthrop, A Short Story of the Rise, Reigne, and Ruine of the Antinomians, Familists, and Libertines (1644) in Heimert and Delbanco, 442.
¹¹⁹ La Plante, 217.
The “embryo” implants in the uterus and develops into an abnormal mass of cysts—a mass that is described in modern medical literature as resembling...a handful of grapes! Given Hutchinson’s age, this was a likely medical—and by no means monstrous—scenario. But Winthrop, apparently burdened with neither medical knowledge nor any sympathy for the accused, went the way of biblical typology, and crowingly so:

*Then God himself was pleased to step in with his casting voice [...] in causing the two fomenting women in the time of the height of the Opinions to produce out of their wombs, as before they had out of their brains, such monstrous births [...]And see now how the wisdom of God fitted this judgment to her sinne every way, for looke as she had vented misshapen opinions, so she must bring forth deformed monsters.”*

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For Winthrop, these “monsters” were evidence of a particular kind of danger: not the threat of the other, the heathen, but of doctrinal mutation co-habitating in their midst. This threat is *presumed* to be *perpetual* because it is “domestic,” as opposed to “foreign.” And it is the mutation of the formerly identical, as opposed to the existence of the

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121 Winthrop, *Short Story*, 442.
always-other, that sparks such a fearful reaction in John Winthrop and the other
magistrates. Like the tumor that is the result of a molar pregnancy, the danger is
embedded deep within the self, and only aggressive excision will insure a return to
health, to purity. There is no retreat from the self, there is only the battle to purify. As
Susan Sontag notes in *Illness as Metaphor*, the language of cancer is the language of
warfare, and Winthrop had indeed declared war on the dangers emerging on the
domestic “front.” Sontag’s assessment of the metaphors used to characterize cancer
reveals an eerie parallel to Winthrop’s language in his characterization of Hutchinson
and other antinomians: “Cancer is now in the service of a simplistic view of the world
that can turn paranoid. The disease is often experienced as a form of demonic
possession — tumors are ‘malignant’ or ‘benign,’ like forces — and many terrified cancer
patients are disposed to seek out faith healers, to be exorcised.” As with victims of
domestic violence, cancer victims and Hutchinsonians alike are rendered perpetually
incapable of resistance by a kind of psychic captivity; the only solution, again, is to
exorcise the cancer, banish the “captivator.” In recording the conclusion of the
Antinomian Crisis, Winthrop sermonizes:

> Here is to be seen the presence of God in his Ordinances, when they are faithfully
> attended according to his holy will, although not free from human infirmities:

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122 Susan Sontag, *Illness as Metaphor* and *AIDS and Its Metaphors* (New York: Picador, 1990), 64.
123 Sontag, 69.
This American Jesabel [emphasis original] kept her strength and reputation, even among the people of God, till the hand of Civill Justice laid hold on her...[though she] kept a back doore open to return to her vomit again [...] yet such was the presence and blessing of God in his own Ordinance, that this subtility of Satan was discovered to her utter shame and confusion, and to the setting at liberty of many godly hearts, that had been captivated by her to that day;”¹²⁴

Winthrop invokes metaphors of the body (Hutchinson’s captives were infirm even as she was strong; she transmitted her opinions as “vomit”) in a move rhetorically similar to the way cancer metaphors invoke possession—both emphasize the interiority of the threats, and the resulting incapacity of their victims. The banishment—excision—of Hutchinson and her “vomit” is a kind of carving away at the communal body, and the retreat enforced is no longer enacted by the victim, but rather through a reactive expulsion of the perpetrator. And the reversal from Puritan retreat to a legal policy of banishment was, according to Winthrop, ordained by God for the protection of his Ordinances. As Hooker insisted, had Sodom and Gomorrah “legally repented” the adulteration of the ordinances—that is, resumed Obedience to God’s Law—they would have been saved; Winthrop and the other magistrates responded to the Antinomian “impurity” accordingly by mobilizing “Civill Justice” against misshapen doctrine.

¹²⁴ Winthrop, Short Story, 442.
The roots of Hutchinson’s doctrinal “mutations” go back to the debate about the covenant of grace vs. the covenant of works. According to Reformed theology, God promised man life in exchange for perfect obedience, and threatened death for disobedience. Adam’s violation of God’s law caused man’s fall and ended his covenant (agreement; promise) of works (obedience) with God. In its place, God made another covenant with man, the covenant of grace. In this new arrangement, certain souls were “elected”—endowed with salvation, but only God knew who they were, and no deeds (works) could earn salvation. That is, grace was freely given, and deeds could change the composition of the community of the elect. While “free grace” was hinted at by theologians as early as Saint Augustine, and the Catholic practice of buying pardons—one of the most reviled species of works—was one of the major points of contention between the medieval Church and the first Reformers, the Westminster Confession of Faith was the first major Reformed document to explicitly set the covenant of works in opposition to the covenant of grace, with Christ’s redemptive death as the fulfillment of God’s half of the second covenant. Its authors, a council of theologians and members of the British Parliament charged with restructuring the Church of England in the prelude to the English Civil War, were closely allied with the Massachusetts Bay

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Puritans—essentially, they were the Puritans who stayed in England instead of emigrating. So on both sides of the ocean, a debate raged about what, precisely, constituted preaching a doctrine of works—that is, could deeds be analyzed as evidence of election, even if they couldn’t in and of themselves earn election? Given the communal investment in individual salvation in Massachusetts Bay colony, some early Puritans (including John Winthrop, who was not himself a minister, but rather a Magistrate) devised a doctrine whereby the condition of election might be “made visible” to the community, so its leaders could ensure justification, or salvation, through obedience of God’s Law—and thereby avoid impure administration of the Ordinances. They reasoned that the already-elect (“visible saints”) ought to be identifiable by their deeds, on the basis of which election could be determined and eligibility for church membership (“sanctification”) confirmed. Other Puritans thought that since obedience to the Law could be simulated, individual revelation was the only incontrovertible proof, and therefore deeds were not admissible evidence. While neither group believed that a person could be saved through works—this would be a contradiction of the covenant of grace—the former contingent thought that deeds could be evidence, if not the cause, of election. This argument was the source of the Antinomian [“anti”: against; “nomos”: law] Controversy126 and is critical to how American community has been imagined and re-imagined. Not surprisingly, the people who had the most to lose if

deeds were not scrutinized for eligibility for Church membership were those with Magisterial and ministerial authority—the scrutinizers themselves.

The Antinomian Controversy was one of the first contests waged over the concept of elected authority and, ultimately, legal control over the colony. And as much as it was about how to prove election, it was also about who can prove election. Anne Hutchinson emerged as one of the scapegoats of this contest largely due to the questions raised by her participation, as a woman, in the Massachusetts Bay Colony’s debate over the issue. In *Banished: Common Law and the Rhetoric of Social Exclusion in Early New England*, Nan Goodman considers the ways in which Hutchinson’s gender challenged magisterial control over the spaces in which the practices of this new community were codified. As was common practice in Puritan settlements, Hutchinson held conventicles in her home to discuss issues raised by each week’s sermon, although her role as unofficial spiritual counselor to the women at laying-in gatherings undoubtedly elevated the status of her interpretation of sermons and scripture, and thus the influence of her conventicles. Among other topics, Hutchinson held forth on the question of the covenant of works, and whether or not sanctification—the process by which a person was admitted to Church membership and, thus, was permitted to practice the Ordinances—amounted to “works.” She sided with those who thought that deeds could not be evidence of election. As Heimert and Delbanco note in their

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introduction to the transcript of her “Examination,” Hutchinson objected that “[e]xternal propriety was taking the place of internal transformation as the sign of God’s favor” and as “the ultimate test for grace.” Hutchinson intensified the communal discord when she began to voice the opinion that some of the Colony’s most eminent ministers were preaching a covenant of works, an accusation tantamount to calling someone a closet Papist (!). Winthrop opened her trial with the following reading of charges:

Mrs. Hutchinson, you are called here as one of those that have troubled the peace of the commonwealth and the churches here; you are known to be a woman that hath had a great share in the promoting and divulging of those opinions that are causes of this [Antinomian] trouble…you have maintained a meeting and an assembly in your house that hath been condemned by the general assembly as a thing not tolerable nor comely in the sight of God nor fitting for your sex […]

Though a religious trial the following March ultimately condemned her as a heretic, the primary charge leveled against her in her civil trial was that she, a woman, was not authorized by civil law to hold meetings for the purpose of speaking on theological matters—discerning, as it were, God’s will. Only ministers—male ministers—could

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128 Heimert and Delbanco, 155.
129 Heimert and Delbanco, 154.
130 “The Examination of Mrs. Anne Hutchinson at the court at Newtown” (November 1637) in Heimert and Delbanco, 156.
claim that liberty. When Hutchinson objected that interpreting her domestic speech as public preaching was “a matter of conscience, Sir,” Winthrop exploded: “[s]he hath traduced the magistrates and ministers of this jurisdiction, that she hath said the ministers preached a covenant of works and Mr. Cotton a covenant of grace, and they were not able ministers of the gospel, and she excuses it that she made it a private conference.” She was on trial for a civil, as opposed to religious, transgression; had she been able to prove that the conventicles at her home were merely private gatherings, and thus didn’t violate any rules about (female, unordained) public speech, Hutchinson may have also escaped the legal censure of banishment and maintained the immunity afforded to the elect. As Goodman notes, her trial raised the question of where and by whom law could be made:

That [Hutchinson’s] home could have become such a public forum did not rise to the level of an official recognition, and yet the expression of the magistrates’ fear about Hutchinson’s “influence” was proof enough that her home had the potential to rival the courts or legislature as a place for the expression and dissemination of power. Among other things, this had the effect of confusing the public and private spheres and making the authority to determine matters of inclusion and exclusion more problematic. Undercover of hospitality, the home became a new and

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131 Goodman, 44.
132 “Examination,” 156.
potentially ungovernable jurisdiction in which affairs of the colony could be concealed as private, domestic matters.\(^{133}\)

The power to make and enforce law, of course, was the crux of the issue: if the law (civil and religious, in this case) did not reach into the home, then neither could the magistrates effectively scrutinize church members for obedience to said law and, therefore, ordinal eligibility. And this would, incidentally, also rather neuter magisterial/ministerial authority to maintain the purity of the community and the integrity of the federal covenant.

After several days of testimony by various ministers and witnesses regarding whether she did or did not “traduce the ministers,” Hutchinson evidently lost her patience and, as Eve LaPlante claims in *American Jezebel*, interrupted the proceedings to relate the revelation through which she claimed to be able to evaluate whether or not a minister was “able.” I quote at length here due to the “logical consequence” structure of her argument:

\[\text{Being much troubled over the falseness of the constitution of the church of England, I had like to have turned Separatist; whereupon I kept a day of solemn humiliation and pondering of the thing; [...] the Lord was pleased to bring this}\]

\(^{133}\) Goodman, 54.
scripture out of the Hebrews. He denies that the testament denies the testator, and in this did upon unto me and give me to see that those who did not teach the new covenant [covenant of grace] had the spirit of the antichrist, and upon this he did discover the ministry unto me and ever since. I bless the Lord, he hath let me see which was the clear ministry and which was the wrong.\textsuperscript{134}

Another magistrate, Mr. Nowell, asked her to clarify how she “knew that it was the spirit” speaking to her; she replied, “So to me by an immediate revelation.” She continued by relating another revelation, this time that she would, according to Isaiah 30.20,\textsuperscript{135} follow her “teachers” (namely, Cotton), though it would bring much affliction. And yet another revelation: that God would deliver her “out of the lion’s den” as he had Daniel. All of which led her to conclude, publicly instead of privately this time, that her prosecutors indeed “had the spirit of the antichrist”:

\begin{quote}
You have power over my body but the Lord Jesus hath power over my body and soul, and assure yourselves thus much, you do as much as in you lies to put the Lord Jesus Christ from you, and if you go on in this course you begin you will bring a curse upon you and your posterity, and in the mouth of the Lord hath spoken it.\textsuperscript{136}
\end{quote}

\textsuperscript{134} “Examination”, 159-60.  
\textsuperscript{135} “Though the Lord give thee bread of adversity and water of affliction yet shall not thy teachers be removed into corners any more, but thine eyes shall see thy teachers.”  
\textsuperscript{136} “Examination”, 160-1.
The magistrate Mr. Stoughton responded, “Behold I turn away from you.” Deputy Governor Dudley exclaimed, “I am fully persuaded that Mrs. Hutchinson is deluded by the devil, because the spirit of God speaks truth in all his servants.” Governor Winthrop intoned, “I am persuaded that the revelation she brings forth is delusion.” The transcript of the proceedings goes on to record, “All the court but some two or three ministers cry out, we all believe it—we all believe it. Mr. Endicot. [:] I suppose all the world may see where the foundation of these troubles among us lies.”

The offense, for the magistrates, was twofold: she had overstepped the bounds of her gendered position (traducing the ministers in public), and then overstepped again (claiming a series of revelations) in standing—instead of retreating from—that ground. The Court responded in kind, and defended its ground by banishing Hutchinson (and subsequent doctrinal dissenters) from the Bay Colony. It further shored its position by swiftly following Hutchinson’s banishment with the Act of Exclusion, which essentially restricted access to the Colony to people who were approved by the Magistrates. This meant that even visitors had to be magisterially approved, and that community members who hosted unapproved persons could be penalized. When the dust settled, the dominant voices in the Bay Colony had succeeded in legally and spatially marginalizing those voices that challenged their authority and their particular imagination (theocratic, ordinally pure) of community. In so doing, they were able to ensure that their interpretation of election became both law and practice, and that
private acts in private spaces were eligible to be used as evidence for inclusion in or exclusion from a given community. A temporary protest of this restriction of traditional hospitality followed the posting of the *Act of Exclusion*, which prompted Winthrop to issue a rejoinder:

_A Declaration of the Intent and Equitye of the Order made at the Last Court, to this Effect, That None Should be Received to Inhabit within This Jurisdiction But Such as Should be Allowed by Some of the Magistrates:_

_The nature of such an incorporation tyes every member thereof to seeke out and entertaine all means that may conduce to the welfare of the bodye, and to keepe off whatsoever doth appeare to tend to theire damage [...]If no man hath right to our lands, our government priviledges etc., but by our consent, then it is reason we should take notice of before we conferre any such upon them [...] If we are bound to keepe off whatsoever appears to tend to our ruine or damage, then we may lawfully refuse to receive such whose dispositions suite not with ours and whose society (we know) will be hurtfull to us, and therefore it is lawfull to take knowledge of all men before we receive them [...]The wellfare of the whole is to be put to apparent hazard for the advantage of any particular members._

Winthrop presents a sort of “duty to act” framework, and exhibits the conditions warranting action. First: “incorporate,” “take knowledge,” “entertaine,” “seeke

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out,” “appeare,” “take notice”; discerne. Then: if the objects of such scrutiny are discovered to have “dispositions [that] suit not with ours,” the magistrates have a duty to “refuse,” “keepe off.” Else: damage, hazard, ruine, hurt. The intruding tumor—monster—will “ruine” the faithful unless the faithful “keepe” the intruder from its incorporated “bodye.” Discernment and scrutiny, then, are a species of self-defense—legally sanctioned and magisterially enforced, just as their 21st-century counterpart, “reason to believe,” amounts to legal probable cause. It may be presumed that a person is a threat until he proves himself to not be a threat, and therefore it is legal to “keepe off” said person until it can be discerned that his “disposition” is suitably consistent with those of the Magistrates. Since the ground of the dispute is literally and figuratively that which was ordained by God for plantation by “his people,” there is no further retreat for the elect; as Cotton saw, “in this case it is lawfull to remove,”[138] but here the “removall” is consummated by those who have not proved their election.

These are the seedlings of the legal incapacity to retreat in cases of self-defense: the elect are justified (and note that “justified” also means “elected” for the Puritans) in standing their ground: they were commanded to protect the liberty of the ordinances in this “land of promise[...] els we are but intruders upon

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There was no greater peril. And the sense of perpetual peril that permeated the Puritan errand into the wilderness is connected to the constant fear felt by a domestic violence victim by the thread of incapacity that laces its way across four centuries: as Suk notes, the domestic violence victim’s “incapacity to retreat” and the suspension of the duty to retreat was, in cases of domestic violence, “based on the revised view of the victim whose autonomy was so severely limited that retreat was not a plausible choice.” Indeed, the Puritans’ autonomy was perpetually limited: initially by the ceaseless cycles of religious violence endured in England, and then *ad infinitum* by their appointment from God in New England. In modern self-defense law, this unremitting wave of assaults becomes the basis for Battered Woman Syndrome. Suk cites State v. Thomas, an Ohio Supreme Court case in which a woman claimed self-defense based on Battered Woman Syndrome:

[I]n the case of domestic violence, [...] the attacks are often repeated over time, and escape from the home is rarely possible without the threat of great personal violence or death. The victims of such attacks have already ‘retreated to the wall’ many times over and therefore should not be required as victims of domestic violence to attempt to flee to safety.141

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140 Suk, 254.
It is the perpetual nature of the assaults that changes the capacity for response. The victim lives in constant fear of a renewal of the danger. She is never safe, and is even more imperiled when in flight. To preserve her place and her life, she must stand her ground. And so it was for the Puritans: to preserve their election, they, too, had no choice but to stand their ground. Thus the *Act of Exclusion* stands as a foundational iteration of the incapacity to retreat in self-defense law, although the “castle” is, according to Winthrop, community:

> A family is a little common wealth, and a common wealth is a greate family. Now as a family is not bound to entertaine all comers, no not every good man (otherwise than by way of hospitality) no more is a common wealth.\(^{142}\)

If there was a suggestion that a “comer” might cause “damage,” then the commonwealth was justified in excluding him from their “family.” And because the damage was existential, and the threat, by virtue of the person’s physical proximity, imminent, the exercise of the *Act of Exclusion* didn’t require a protracted display of probable cause for his rejection. Instead, Winthrop defended a 17th-century version of “shoot first”:

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\(^{142}\) *Winthrop, Defence.*
It is a general received rule, turpius ejicitur quam non admittitur hospes,

*[*143*] it is worse to receive a man whom we must cast out again, than to deny him admittance [...] if any should be rejected that ought to be received, that is not to be imputed to the law, but to those who are betrusted with the execution of it [...] this is according to the rule of the Apostle. Rom. 14. 5. Let every man be fully persuaded in his own mynde. [*144*]

It is safer to “keepe off” the intruder in the first place, rather than having to go through the process of trying him later, after he may have “infect[ed] others with such dangerous tenets.” This “shoot first” principle becomes what Suk calls the “home presumption” in modern self-defense law:

A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using or threatening to use defensive force that is intended or likely to cause death or great bodily harm to another if [...] the person against whom the defensive force was used or threatened was in the process of unlawfully

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[*143*] Literally: “It is more disgraceful to turn out than not to admit one” (Ovid).
[*144*] Winthrop, *Defence.*
and forcefully entering, or had unlawfully and forcibly entered, a
dwelling, residence, or occupied vehicle[].\textsuperscript{145}

That is, the inhabitant of home may presume that an intruder intends commit a violent
act whether or not there is any indication of violence or any real fear. Intrusion IS
violence, from the beginning, and violence may be met with violence. Indeed, the
colony has an eternal duty \textit{not} to retreat, but to stand firmly against this infection, this
cancer:

\begin{quote}
[I]f we finde his opinions such as will cause divisions, and make people looke at
their magistrates, ministers and brethren as enemies to Christ and Antichrists
etc., were it not sinne and unfaithfullness in us, to receive more of those opinions,
which we already finde the evill fruite of.\textsuperscript{146}
\end{quote}

Here the duty to retreat, filtered through a perceived incapacity, becomes, instead, the
“duty to act.” These magistrates had a duty to prevent the imminent commission of
“sinne,” the spread of “evill”—which is rather nakedly acknowledged to be opposition to
these very same magistrates! As the Cobler of Agawam inveighed, “[t]o authorize an
untruth by a toleration of State is to build a sconce against the walls of heaven, to batter

\textsuperscript{145} Florida Statutes Title XLVI Chapter 776: 013.1a:
\textsuperscript{146} Winthrop, \textit{Defence}. 

God out of His chair…” Of course, authorizing an untruth is, for the Cobler, just tolerating difference. Thus, the mere appearance of difference signifies the presence of, as Cotton warned, “intruders upon God,” and justifies defensive aggression. And, even more crucially, the incapacity to retreat is appropriated, as in the Stand Your Ground laws, by those at the top of the social hierarchy as a defense against usurpation: the real threat is to the “title” of the “plantation.”
“See God making roome for us by some lawfull meanes”

Immunity from Prosecution

And the law [...] has so particular and tender a regard to the immunity of a man's house, that it stiles it his castle, and will never suffer it to be violated with impunity: agreeing herein with the sentiments of ancient Rome, as expressed in the words of Tully; " For what is more sacred, what more inviolable, than the house of every citizen?"147


But what of the other half of the renovation that “Stand Your Ground” laws perform on traditional self-defense law: immunity from criminal prosecution and civil action? I would argue that immunity is essentially a metastasis of magisterial bias, and that the only cultural innovation presented by Stand Your Ground immunity is that the exercise of bias and its subsequent shoring up of magisterial, or hierarchical, power has been

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wrapped in rhetoric more palatable to a modern citizenry, and thus its reintroduction to the legal code has been rendered (newly) socially acceptable.

Though Florida’s Stand Your Ground Law purportedly extends immunity to anyone who qualifies under the statute, the evaluation—discernment—of possible immunity begins with the individual law enforcement officer. The statute reads:

(1) A person who uses or threatens to use force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in such conduct and is immune from criminal prosecution and civil action for the use or threatened use of such force by the person, personal representative, or heirs of the person against whom the force was used or threatened [...] As used in this subsection, the term “criminal prosecution” includes arresting, detaining in custody, and charging or prosecuting the defendant.

(2) A law enforcement agency may use standard procedures for investigating the use or threatened use of force as described in subsection (1), but the agency may not arrest the person for using or threatening to use force unless it determines that there is probable cause that the force that was used or threatened was unlawful.148

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148 Florida Statutes Title XLVI Chapter 776: 032
Here the conditions surrounding probable cause are upended: instead of assuming that the act of violence was unlawful, and searching for probable cause that the person of interest committed the act of violence, the law enforcement agent must instead search for probable cause that the act of violence itself was unlawful, even if there is ample evidence about the identity of the perpetrator. This throws scrutiny back on to the victim: Did she provoke the violence? Did the victim look “threatening”? Or, more crudely, “S/he probably deserved it.” And probable cause gives the law enforcement agent fairly wide latitude; a standard definition of probable cause is "a reasonable amount of suspicion, supported by circumstances sufficiently strong to justify a prudent and cautious person's belief that certain facts are probably true". And what law enforcement agent wouldn’t consider himself to be prudent and cautious? Indeed, what community would accept an imprudent deputy? So as to avoid a total upheaval, most communities are content to just presume that its law enforcement agents are, by definition, prudent, in much the same way that the Puritans perversely presumed that those in power were elect by virtue of the fact that they had power. Therefore, the practical result of the Florida law is that since the law enforcement agent is presumed to be prudent, then he has the right to determine that the act of violence was “probably” lawful, and no arrest can be made nor charges brought. Of course, his decision is always subject to review, as in the Trayvon Martin case—but George Zimmerman wasn’t

150 Law Center to Prevent Gun Violence: http://smartgunlaws.org/stand-your-ground-policy-summary/
arrested until, three weeks after the violence, Martin’s family held a press conference and a high profile civil rights attorney agreed to represent them. And in the shooting death of Michael Brown, the perpetrator of the violence was the law enforcement agent, and grand jury declined to recommend trial, trusting the officer’s assessment of “imminent” danger. Bias informs the determination of immunity from the moment authorities become aware of the violence, in much the same way that bias works in narratives of wrongful arrest and conviction—except that in cases that might be classified as “justifiable use of force,” the person responsible for the violence “gets away with murder” without having to argue his case in court. This is, indeed, a substantial revision to existing self-defense law—but it is perfectly consistent with the ways in which immunity has functioned as a fringe benefit of election in American ideology.

As with the incapacity to retreat, immunity from prosecution is not new—it’s just newly codified within the parameters of self-defense law. And as with most violence, power structures inform a community’s reading of said violence. While gender and race are, as is to be expected, the superstructures, the particular American perception of home as a place that is both unassailably “moral” and constantly under threat points again to Puritan notions of election and community. Ultimately, the elect are functionally immune from prosecution because they are presumed to be incapable of transgression—and the un-elect, by extension, are not afforded that presumption. Even as the specifics of Puritan election fade from common moral vernacular, the concept
stays relevant and, indeed, potent: the meaning of force depends on who uses the force. This is how we discern immunity.

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The underlying legal and ideological apparati that ultimately define the category of people who have the right to use force with impunity, as well as those people who are not traditionally afforded that right, have their roots in the Castle Doctrine’s introduction of the legal concept of justified use of force. The grafting of justification on to force began to change the definition of force itself. The range of justifications that ultimately became tacitly embedded in the modern immunity clause extends from marriage (marital rape) to enslavement (master-slave “relations”) to the avengement of damage done to (human: children, wives, servants, slaves) property. Though some of these justifications have gradually been excluded as affirmative defenses in court cases, the persistence of immunity reveals the enduring legacy of the notion of “election” in the most recent iteration of American self-defense law — the elect are still elevated above prosecution.

The Castle Doctrine begins here: in 1603, a Mr. Beresford died in London with unpaid debts. He kept his “goods” in a house that he shared with a Mr. Gresham, who continued to occupy the house after Beresford’s death. Mr. Semayne, a creditor, issued an execution on his judgment against Beresford’s possessions. The sheriff of London
came to the house to serve the execution and appraise the goods, but Gresham shut the
door and refused to allow him access. Semayne sued Gresham for preventing the
execution of the judgment. The resulting opinion, penned by Sir Edward Coke, then the
Attorney General of England, contains the seeds of modern Stand Your Ground laws’
anxiety about being bound to inaction, despite some “reasonable” sense of intrusion:

*But it was resolved that it is not lawful for the sheriff (on request made and
denial) at the suit of a common person to break [into] the defendant's house,
scilicet, to execute any process at the suit of any subject, for thence would follow
great inconvenience that men as well in the night as in the day should have their
houses (which are their castles) broken into, by colour whereof great damage and
mischief might ensue; for by colour thereof, on any feigned suit, the house of any
man at any time might be broken into when the defendant might be arrested
elsewhere, and so men would not be in safety or quiet in their own houses. And
although the sheriff is an officer of great authority and trust, yet it appears by
experience that the King's writs are served by bailiffs, persons of little or no value;
and it is not to be presumed that all the substance a man has in his house, nor that
a man would lose his liberty which is so inestimable, if he has sufficient to satisfy
his debt.¹⁵¹*

A man’s liberty was put at risk because the writs were served by untrustworthy bailiffs, who might cause damage—and this damage is not semantically divorced from the damage referenced by Winthrop in his “Defence” of the Act of Exclusion. And, even more unnerving, the bailiff might intrude upon a man’s domain when he is not there, robbing him of the ability to scrutinize the bailiff’s behavior. This, the opinion seems to say, is unreasonable. The opinion fashions a solution that locates the man of the house in a position parallel to that of the Lord of the Castle—it gives him some measure of legal authority. Thereafter, if the officer did not announce his legal errand (“knock and announce”) before he broke into the house, then the occupant of the house might presume that the intruder was there to commit a felony. And if the intent was felonious, then the occupant could protect his house violently:

That the house of everyone is to him as his castle and fortress, as well for his defence against injury and violence, as for his repose; and [...] if thieves come to a man's house to rob him, or murder, and the owner or his servants kill any of the thieves in defence of himself and his house it is not felony, and he shall lose nothing...everyone may assemble his friends and neighbours to defend his house against violence; but he cannot assemble them to go with him to the market or elsewhere for his safeguard against violence; and the reason of all this is
This judgment, which established the basis for the knock-and-announce rule, is grounded in the English Common Law concept of ‘liberty.’ In Coke’s time, “liberty” was synonymous with “franchise”—a privately held jurisdiction, such as a corporation, a jurisdiction, or a right to collect certain tolls or taxes. A franchise was “a kind of property: an incorporeal hereditament.” Coke equates the “liberty or privilege of a house” to a “weak form of liberty”: this sort of liberty was a right specific to property (which included people), and had to be granted by, first, the manorial lord and, ultimately, the king; alternatively, it could be legally granted by prescription (i.e. imminent domain). According to the decision, the “liberty of the house” automatically attaches to any occupied residence as an “inalienable” prescriptive right. But this right only attaches to the house; if the man is outside of his “franchise,” then there is no right to defend himself violently, as the franchise to public space belonged, instead, to the king—another incorporeal hereditament. According to the judgment, the ownership

153 This is according to cultural theorist Nick Szabo, who is rumored to be the inventor of Bitcoin, under the alias Satoshi Nakamoto. Another manifestation of an incorporeal hereditament. (http://szabo.best.vwh.net/semaynes.html; accessed 9/17/14)
of a franchise justified a man’s exercise of (forceful) authority, and allowed the property holder to, in turn, elect others to assist in the exercise of that authority. This walks self-defense up to the line between public and private, as the community may, if recruited, participate in the defense of the property, but it doesn’t allow private citizens to defend public spaces; the Castle Doctrine permitted the use of force within the home, but in public places—“the market or elsewhere”156—individuals had a “duty to retreat.” The seventeenth century English jurist Matthew Hale, in his consideration of capital offenses against the Crown, outlined the parameters that required flight:

[![Image](image-url)](image-url)

That is, the only place a man does *not* have the duty to retreat is in his home—his castle. The home was a sort of parallel state, and to retreat was cowardice. An intruder was tantamount to a foreign invader, and his offence paralleled treason. All other spaces,

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156 Semayne’s Case.
however, were subject to the king’s capital justice, as private persons could only be trusted to enact justice in their homes.

The inversion that allowed a private person to defend himself in a public space was ultimately legally codified in the mid-nineteenth-century with the introduction of the True Man Doctrine, through which American case law diverged from English common law by, in many states, doing away with the duty to retreat in public spaces:

*Flight is a mode of escaping danger to which a party is not bound to resort, so long as he is in a place where he has a right to be, and is neither engaged in an unlawful enterprise, nor the provoker of, nor the aggressor in, the combat. In such case he may stand his ground and resist force by force.*

Since American independence had functionally transferred the franchise on public space from the King to the American citizen, the True Man Doctrine opened the door to questions of competing rights: what of a place where both the victim and the aggressor had a “right to be”? The decision in an 1884 case in Alabama attempted to resolve the issue with the recognition of cohabitation:

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158 Long v. State, 52 Miss. 23 (1876)
Why . . . should one retreat from his own house, when assailed by a partner or co-tenant, any more than when assailed by a stranger who is lawfully upon the premises? Whither shall he flee, and how far, and when may he be permitted to return? He has a lawful right to be and remain there, and the legal nature and value of this right is not abrogated by its enjoyment in connection with another. The law only exacts of each that he shall enjoy his property and possession so as not to injure the other . . . [and each are] equally entitled to possession of the house or premises where the attack [was] made.\footnote{Jones v. State, 76 Ala. 8, 16 (1884)}

Whither shall he flee, and how far? Each believes in the truth of his position. The boundaries between home and public space are, in effect, blurred, because multiple parties have an equal “right to be” there, and therefore the home is no longer an exclusive refuge. If we follow the notion of the parallel kingdom, then a cohabitated realm has multiple “kings,” and each has the authority to determine whether the other(s) have the means or intent to cause him as Winthrop has it, “damage” or “ruine.” The space becomes defined not by its privacy, but rather its communality. Thus American law responded, perhaps, to American conditions—the Puritan errand into the wilderness, the frontier, the hot endlessness of unfamiliar terrain. Perhaps there was a recognition that the running, once begun, would be interminable. Too few boundaries or too few havens—just an unreachable statutory horizon. At the edge of town was a
vast legal nothingness, with no princely *vindices injurarium*, no firmly sowed jurisdictions. Just prospect. To stand one’s ground was not, then, Old West lawlessness, but rather an act of plantation. Community.

So what seems to be a frontier ethos is, in fact, born across the centuries by an internalized sense of plantation. Creating an end-around to the King’s franchise on public space results in a uniquely American commitment to community, albeit one that is defined, first and foremost, by exclusivity. And so it is even more important that this new community define the terms of this cohabitation, and the (sometimes competing) rights thereby conferred. In his “Defence,” Winthrop describes the relationship of individual to his community as consensual:

> For clearing of such scruples as have arisen about this order, it is to be considered,
> first, what is the essentiaall forme of a common weale or body politic such as this is,
> which I conceive to be this – The consent of a certaine companie of people, to cohabite together, under one government for their mutual safety and welfare.\(^{160}\)

As in a marital relationship of the time, the individual is essentially consenting to the paternalism of governmental authority. And lest it isn’t clear what he means by cohabitation and consent, Winthrop draws a direct line between public and private space in his

\(^{160}\) *Winthrop, Defence.*
analogy between the commonwealth and the family. If the commonwealth is a family, then, in a reverse of the home-castle parallel, the rules of the family apply to the commonwealth, and public space becomes some extension of domestic space. And, therefore, the head of the household, the Magistrates, held ultimate responsibility for the exercise of force against a presumed intruder. This is particularly relevant to the manner in which both the rhetoric of Puritan exclusion and the ideology of an elect Puritan community are superimposed on the introduction of incapacity and immunity to self-defense law.

In order to cement the legal primacy of the Magistrates in a franchise defined by its political cohabitation, the Puritan authorities set out to once again revise Edward Coke, the author of the Castle Doctrine. Coke went on to author and put forth the *Petition of Right* (1628), a major English Constitutional document that sets forth the rights of the English subject. There is a direct genealogy between the *Petition of Right* and the *Massachusetts Body of Liberties* (1641), the first code of laws established in New England, which in turn was a direct influence on the *Bill of Rights*. The *Massachusetts Body of Liberties* diverges from the *Petition of Right*, however, in its inclusion of “Capitall Laws.” The laws in this section are unique in their focus on punishment: they do not bear “libertie” as appellation, but rather are introduced by the quotation of the Mosaic verse

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161 http://www.constitution.org/eng/petrighth.htm
162 See the extensive cross-referencing done by Steve Bachmann in "Starting again with the Mayflower...England's Civil War and America's Bill of Rights" (*Quinnipiak Law Review* (Quinnipiak law school)), 2000.
from which each law was sourced. This comingling of English Common Law and Mosaic Law gestures toward the boundaries of the *Body of Liberties*: according to Levite interpretation, the laws of Moses must be privileged over the laws of a king. God’s Law, then, includes, but is not limited to, civil law. Mosaic Law, especially Deuteronomy, is viewed as a sort of “constitution given by Moses in anticipation to the people’s inheriting the land.” The inclusion of Mosaic Law in the *Body of Liberties*, especially in light of its absence in the *Petition of Right*, makes clear that, in Massachusetts, civil “liberties” are guaranteed only within the confines of adherence to Mosaic Law. Indeed, even the “civil” section of the document makes clear its limitations: “No custom or prescription shall ever prevail amongst us in any moral cause; our meaning is (there shall not be a custom which will) maintain anything that can be proved to be morally sinful by the word of God.” The cohabitation of Mosaic Law and Common Law had the effect of blurring the distinction between the liberty of a franchise or jurisdiction—Coke’s “liberty [...] of the house”—and Cotton’s “liberty of the Ordinances.” Coke’s notion of liberty was related to a defense of property; for Cotton, the liberty of the Ordinances was dependent upon the ability to “discerne” whether or not people or places were appointed by God:

*When God wrappes us in with his Ordinances, and warmes us with the life and power of them as with wings, there is a land of promise.*

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This may teach us all where wee doe now dwell, or where after wee may
dwell, be sure you looke at every place appointed to you, from the hand of God:
wee may not rush into any place, and never say to God, By your leave; but we
must discern how God appoints us to this place[…]

This we must discern, or els we are but intruders upon God. And when we
do withal discern, that God giveth us these outward blessings from his love in
Christ, and makesth comfortable provision as well for our soule as for our bodies,
by the means of grace. Then do we enjoy our present possession as well by
gracious promise[…]

This grafts the notion of preemptive scrutiny on to the liberty to defend the “castle” by
transmogrifying the concrete possession of a house into the abstract possession of grace.
So the Puritan revision of the Petition of Right involves an understanding of liberty that
grants the individual the right to discern God’s will. (This entitlement persists: I feel like
it was all God's plan," Zimmerman told Sean Hannity in his first interview after the
shooting.)

Restricting the ability to practice the Ordinances according to Puritan doctrine, as the
Church of England was accused of doing, also restricted the ability to scrutinize

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members for evidence of election. If a community could not scrutinize its members, then there was no way to protect against a “bad seed.” As Cotton warns,

> Have special care that you have the Ordinances planted amongst you, or else never looke for security. As soone as Gods ordinances cease, your security ceaseth likewise[…]Whilst they continued God’s plantation, they were a noble Vine, a right seede, but if Israel will destroy themselves, the fault is in themselves.\(^{165}\)

This is the danger that justifies the scrutiny. The Puritans needed the liberty to scrutinize, and to make law accordingly: the liberty of a house, the liberty to practice the Ordinances, the Body of Liberties—incorporeal franchises, all.

Significantly, it was Cotton himself who created the theo-legal hybrid that is the *Body of Liberties*; along with Nathaniel Ward, Cotton authored the Massachusetts Bay Colony’s first major legal document. Ward, in turn, also authored *The Simple Cobler of Agawam in America* (1647), a short tract that endorsed, among other practices, legal and social intolerance:

> God does nowhere in His word tolerate Christian States to give toleration to such adversaries of His truth, if they have power in their hands to suppress them . . .

\(^{165}\) Cotton, Plantation, 16-17.
To authorize an untruth by a toleration of State is to build a sconce against the
walls of heaven, to batter God out of His chair… I dare take upon me to be the
herald of New England so far as to proclaim to the world in the name of our
colony, that all Familists, Antinomians, Anabaptists, and other enthusiasts, shall
have free liberty to keep away from us, and such as will come to be gone as fast as
they can, the sooner the better….  

As Anne Hutchinson found, the only liberty left to those who challenged magisterial
interpretation of doctrine was the liberty to keep away, “as fast as they can, the sooner
the better.” This is embedded in the etymology of the word “discerne”:

Discern (v.): late 14c., from Old French discerner (13c.); "distinguish
(between), separate" (by sifting), and directly from Latin discernere, "to
separate, set apart, divide, distribute; distinguish, perceive," from dis- "off,
away" (see dis-) + cernere "distinguish, separate, sift" (see crisis).  

The “crisis” of liberty that led to the Puritans’ “errand into the wilderness” was a crisis
of discernment: only the liberty to “distinguish” and “separate” would ensure the
liberty of the Ordinances. And it is no rhetorical accident that the legal synonym for the

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166 William P. Trent and Benjamin W. Wells, eds. Colonial Prose and Poetry (New York:
[accessed July 21, 2014]
act of discerning is, in fact, scrutiny, which itself has a religious derivation: scrutiny is variously the examination of a candidate’s morals, faith, and doctrine before the promotion to orders, the process of ecclesiastical election, and the examination of catechumens before baptism. Its etymology provides a clear link between its religious and legal incarnations:

**scrutiny (n.)** early 15c., "a vote to choose someone to decide a question," from late Latin scrutinium, "a search, inquiry" (in Medieval Latin, "a mode of election by ballot"), from Latin scrutari, "to examine, investigate, search," from PIE root *skreu-* "to cut; cutting tool" (see shred (n.)). Meaning "close examination," it was first recorded c.1600. Perhaps the original notion of the Latin word is "to search through trash," via scrutum (plural) "trash, rags" ("shreds"); or the original sense might be "to cut into, scratch."  

Distinguish. Separate. Elect. Examine. Sift through trash. Distinguish the (men of the) cloth from the rags. The Puritans had to discern the place, the people, or else be, as Cotton warned, “intruders upon God.” No less than their eternal salvation was at risk. The act of scrutinizing is the evidence of God’s appointment. Election.

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The mirror image of exclusion through scrutiny is immunity through inclusion—that is, once it was determined, through scrutiny, that a person was doctrinally pure and, by extension, included among the elect, the assumption of righteousness provided a sort of presumptive immunity. In practical terms, this immunity was most often extended, at the risk of stating the obvious, to powerful white men—and the lower the status of the victim, the less likely was the perpetrator to face legal scrutiny. In Puritan times, the types of immunity that most often made their way into the written record (which is, of course, only a partial record) are conferred as a result of socio-economic status and contractual authority, which were, in turn, observed to be bestowed by God’s “providence”—that is, election begat providence, providence justified status, and status conferred immunity. This is not to say that the courts admitted to extending immunity, but rather that the record reflects a bias in favor of the perpetrator that resulted in practical immunity.

In Goodwives: Image and Reality in the Lives of Women in Northern New England, 1650-1750, Early-American scholar Laurel Thatcher Ulrich posits that violence in the Puritan colonies could be broken down into four categories of social (as opposed to anti-social) violence: authoritarian, defensive, disorderly, demonstrative violence. In all cases, “each incident was defined by the social position of the assailant and the victim in a hierarchy
of social relations.”

Authoritarian and defensive violence can be read as violence that maintained or defended the status of the perpetrator, whereas disorderly and demonstrative violence were acts of protest (petty or otherwise) against the social position of the perpetrator. We can extend Ulrich’s categorization of violence to correspond with categories of immunity: the acts of violence deployed to maintain social status were also highly likely to correspond with varying degrees of immunity, which was subsequently justified based on a contractual relationship between the perpetrator and the victim (marriage, servitude, etc.), or the assumed moral superiority of the perpetrator (magistrate, minister, wealthy merchant). As Ulrich notes,

[Colonial Americans accepted authoritarian violence as essential to social order. The most extreme forms of violence were monopolized by the state, which had the power to kill as well as to whip, but masters, mistresses, schoolmasters, and parents had not only the right but the obligation to administer physical correction if needed…Though wife-beating was technically illegal, it too was at least tacitly condoned by society. In litigation, the issue was not the right of the superior to use force, but the appropriateness of its administration. Presented with evidence of a bruised limb or a broken head, the court tended to ask: Did the citizen

resist the constable? Was the child or servant incorrigible? Did the wife provoke the husband?\textsuperscript{171}

The most legally defensible violence occurred within relationships that were already defined by a recognizable authoritarian contract (again, marriage and servitude) or legal authority (Magistrate vs. citizen). Harder to justify (though not necessarily harder to socially excuse) were those offenses that occurred outside of a contractual relationship or legal hierarchy, but still within the reach of social hierarchy. Both categories, however, resulted in scrutiny being redirected toward the victim and away from the perpetrator.

In relationships defined by a legal hierarchy or contract, the exercise of discipline was, as Ulrich points out, not just the right, but the obligation, of the person in authority. In colonial New England, the male head of the household was legally responsible (under threat of fine) for the education, catechization, and subsequent behavior of his household subordinates.\textsuperscript{172} In her study of children’s rights in America, Mary Ann Mason outlines the hierarchy of the household, in descending order: father, master,
putative father, guardian, stepfather, married mother, mistress, widow, stepmother, unwed mother, and slave mother. According to Mason,

[c]hildren could be sons or daughters, apprentices or servants, orphans, bastards, or slaves […] Children were obliged to be obedient and to provide labor as fit their age and legal status. The labor of a child, even a non-slave, was a commodity that could be sold or hired out by fathers and assigned by masters […] All children were looked upon as current or potential economic producers; in the labor-hungry colonies, small hands could not be idle.  

Thus, the labor of his subordinates (his legal “children”) was the father’s property, and any curtailment of that labor—disobedience, laziness, injury, etc.—was a contractual offense that he might correct with physical violence. While he could be charged with “cruel and excessive beating,”  

the operative word is “excessive” in decoding the extent of his authority: he was permitted, indeed expected, to physically correct his wife, children, and servants. In cases where there was a question about whether or not the degree of force was consistent with the offense, then the determination of justification rested on an analysis of intent by the Magistrates—not unlike the hearing at which a petition for “Stand Your Ground” immunity might be reviewed in cases where

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173 Mason, 1-10.
174 Ulrich, 197.
probable cause is equivocal. But even in cases where justification was under review, the
judgment couldn’t help but be inherently biased in favor of the authority because of the
obligatory nature of discipline—that is, an accident within the regular exercise of duty
carries the immunity of authority. Massachusetts colonial law was further refined to
include the Magistrates in the hierarchy that condoned the exercise of violence upon
household subordinates. In 1646, the General Court of Massachusetts Bay enacted the
first of the so-called “stubborn children” laws:

If a man have a stubborn or rebellious son, of sufficient years and understanding
(viz.) sixteen years of age, which will not obey the voice of his Father, or the voice
of his Mother, and that when they have chastened him will not harkened unto
them: then shall his Father and Mother being his natural parents, lay hold on
him, and bring him to the Magistrates assembled in Court and testify unto them,
that their son is stubborn and rebellious and will not obey their voice and
chastisement, but lives in sundry notorious crimes, such a son shall be put to
death.\textsuperscript{175}

If the parents have attempted to “chasten” said stubborn child, and he remains
rebellious, they might enlist the Magistrates to hand down the ultimate “chastisement”:

\textsuperscript{175} The Laws and Liberties of Massachusetts (1646-48), quoted in John R. Sutton, “Stubborn
Children: Law and the Socialization of Deviance in the Puritan Colonies,” \textit{Family Law
Quarterly} Vol. 15, No. 1 (Spring 1981), pp. 31-64: 31. Published by the American Bar
Association (http://www.jstor.org/stable/25739276)
capital punishment. Any use of violence up to capital punishment (a.k.a “chastening”) by the parents might be justified, depending on the degree of rebelliousness exhibited by the child. I bring this statute into the discussion of immunity not to accuse Puritan parents of regularly “turning in” their children (in actuality, this statute was rarely utilized), but rather to illustrate the broad latitude given to the head of household and, by extension, to the exercise of violence within the bounds of authoritative hierarchy. While the head of household could not drag a wayward servant in for capital punishment, not being a “natural parent” of the offender, he could still “correct” the servant’s behavior, so long as the violence was a “justifiable use of force” in relationship to the offense.

Neither was sexual violence exempt from this hierarchical exercise of justified violence. In addition to being “justified” in beating their wives, 17th-century men were immune from prosecution for marital rape. The English jurist Sir Matthew Hale, in his influential *Historia Placitorum Coronæ* or *The History of the Pleas of the Crown*, certified that “the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract.”176 This is an immunity that is inviolable: once the marriage contract is executed, then consent is considered perpetual.

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176 Sir Matthew Hale, *Historia Placitorum Coronæ* or *The History of the Pleas of the Crown* (New York: Robert H. Small, 1847), 629. Though written over the course of Hale’s 17th-century judicial career (1628-1676), it wasn’t published until 1736; Hale was an avowed Puritan.
and therefore so is immunity. (Note, too, the phasing “mutual consent” — no doubt
Winthrop, a lawyer himself, was familiar with the legal ramifications of such phrasing
when he, too, employed it in reference to the common weal.) And while servants were
not bound to engage in a sexual relationship with their master, they were often faced
with what Sharon Block, in Rape and Sexual Power in Early America, contends was
economic coercion:

Rather than directly order his dependent to have sexual relations with
him, each master took advantage of the woman’s status to create a
situation in which her ability to consent or refuse was whittled away. By
translating authority over a woman’s labor into opportunities for sexual
coercion, economic mastery created sexual mastery, allowing masters to
manipulate forced sexual encounters into a mimicry of consensual ones.
Servants and slaves could not only be forced to consent, but this force was
also refigured as consent.¹⁷⁷

Thus, the authority invested in the colonial head of household left room for all manner
of excesses to go unpunished. Even incest was often defended as consensual: “Lawyers
could play on the fact that a father did not look like the early American image of a
rapist—a man who forced a woman to have sex with him under sudden threat of death.

¹⁷⁷ Sharon Block, Rape and Sexual Power in Early America (Chapel Hill: The University of
North Carolina Press, 2006), 68.
The social obedience to a father that was expected of early American daughters could alternatively read as consent to sexual relations.” In those situations, the daughter was punished in equal measure as the father for the crime of incest, but the father remained immune from the charge of rape. Position in the legal hierarchy is therefore the sort of “hall pass” that allows the abuse of authority to be refigured as immunity because of authority. And I would argue that this domestic legal hierarchy is essentially reinscribed by the restraining order clause in modern Stand Your Ground laws—a wife may not use defensive violence against her husband unless the “magistrates” have determined that his behavior was characterized as “excessive”; in all other cases, she was bound by her contract to bear his “chastening” without returning force. And he, in turn, benefits from the immunity represented by this clause and its clear distrust of women’s ability to determine just how “excessive” her enraged husband’s threat might be. This clause extends to all cohabitants who are not “owner, lessee, or titleholder” to the property—that is, all those residents of the “dwelling” whose rights are legally subordinate to the owner of the castle.

(Slightly) harder to defend legally (though not necessarily harder to secure social exoneration from) were those offenses that occurred outside of a contractual relationship or legal hierarchy, but still within the reach of social hierarchy. In these cases, immunity was guaranteed by the silence of the victim or the community’s

178 Block, 77.
179 Florida Statutes Title XLVI Chapter 776: 013.2a
assessment of the relationship between the aggressor and the victim. As Sharon Block notes,

Long before an alleged attacker faced a court’s judgment on a rape charge, his accuser faced the verdict of her community, and before anyone might face the institutionalized prejudices of the courtroom, beliefs about who would and would not rape influenced the categorization of the sexual act. Hierarchies of race, age, gender, and kinship limited and guided the reception and redress of the attack.\(^{180}\)

In prosecuting a claim of rape, the female victim had to overcome the persistence of a double standard that held her responsible for all sexual activity. Her position was further complicated by the tendency of communal opinion to find elite males incapable of “real” rape—the refinement of their manners extended only as far as “pressure.” And if the meaning of force depended on who used the force, then race created a virtually failsafe “believability” rubicon. White women were always assumed to have resisted a black rapist, and black women were incapable of socially recognized resistance.

Largely excluding of women of color from the category of rape victim created an almost impermeable immunity for white male aggressors and, Block argues, was crucial to the

\(^{180}\) Block, 89.
construction of race consciousness—and a racially segregated social hierarchy—in early America. But even in the relatively murkier waters of white social hierarchy, the result of communal—as opposed to legal—scrutiny of believability is that the preponderance of the historical records are in reference to cases where the aggressor was not in a position that guaranteed immunity and the victim was not forced to maintain her silence. Thus, we have to read immunity into the interstices of Court records. This is made clear in Laurel Thatcher Ulrich’s relation of the story of Mary Rolfe, a young and “merily disposed” young wife who was left alone during her husband’s 1663 fishing expedition. While he was away, Mr. Greenland, a “libertine” young gentleman from England, arrived in Newbery, and took a liking to Mary. After several instances of “uncivell” flirtations, Greenland paid a late-night visit to Mary’s house, taking off his clothes and hopping into bed with her while the servant girl turned to stoke the fire. Another passing servant prompted Greenland to order Mary to “Lye still, for now there are two witnesses, and we shall be tried for our lives,” as the statutory punishment for adultery was death. The servant, still suspicious, discovered Greenland in the bed, but advised Mary that “becas he was a stranger and a great man it was best not to make up Rore but let him go in a private manner.” When Mary’s mother, Goody Bishop, was alerted that Mary had been crying in church, she extracted the story from her daughter, asking, “Will you venture to lay under these temptations & concealed wickedness? You

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181 Ulrich, 89-99.
may Provoak God to Leave you & then you will come under Great Blame.” Mary responded,

_I know not what to doe. He is in Credit in town, some take him to be godly & say he hath grace in his face, he have an honest loke, he have such a carriage that he deceive many: it is said the Governor\textsuperscript{182} sent him a letter Counting it a mercy such an Instrument was in the Country, and what shall such a pore young woman as I doe in such a case, my husband being not at home?\textsuperscript{183}

But Mary had a few things going for her: she had witnesses to her resistance, and Greenland was a “stranger” while her mother was a pious Goodwife. After asking for “God’s direction,” Goody Bishop revealed all to one of His “wise” men, who directed her to refer Greenland to the Magistrates for a jury trial. The community, as Ulrich notes, “supported the pious mother against the dazzling stranger,” convicting him of attempted adultery. While the contributing factors are certainly more complicated than the reduction of the outcome to a triumph of Puritanism, it is also clear that reputation was the fulcrum upon which rested the outcome of the incident. Intimated by Greenland’s reputation and insecure in her own, Mary Rolfe thought silence the safest

\textsuperscript{182} Incidentally, the Governor to whom Mary Rolfe refers was none other than the “Mr. Endicot” — John Endecott — who figures so prominently, and aggressively, in the transcripts of Anne Hutchinson’s trial: “I suppose all the world may see where the foundation of these troubles among us lies.”

\textsuperscript{183} Quoted in Ulrich, 91.
response. Her mother, confident in both her own reputation for “godliness” and Greenland’s status as a libertine and a stranger, understood that Puritan insider trumped gentleman outsider in this case. Thus, despite Greenland’s social position, he was denied immunity for lack of religious “justification” — and the fact that justification was, in Puritan theology, a synonym for election is not an etymological coincidence. Had his election been discerned, his immunity would have been more secure and Mary would have been forced, in all likelihood, to maintain her silence in the face certain public scrutiny. Thus, the mantle of theological election is assumed by secular authority, which, in turn, confers legal immunity, doctrinally earned or not, on the actions of those at the top of the social hierarchy. Logically collapsing this process results in any acts committed by the elect being presumed justified; the burden of proof, then, is presumed to be upon the un- or less-elect — those people whose position in the social hierarchy hasn’t been sanctified by authority.
Laurel Thatcher Ulrich argues that Mary Rolfe’s behavior, as well as the behavior of the others involved in the resolution of the incident, was the result of “the co-existence in one rural village” of a hierarchical social order, a conservative religious tradition, and sex-linked patterns of sociability.\(^{184}\) And while all of these factors contributed to the outcome, it was the argument made on behalf of religion that ultimately proved most authoritative. This is not to say, however, that religious authority was a forgone conclusion; rather, it was the co-habitation of Puritan doctrine with other competing behavioral standards that ultimately allowed election, as the source of community authority, to essentially incorporate its competitors into its own rationale, and in a way that is strikingly similar to the ways in which Stand Your Ground laws have appropriated both the domestic violence victim’s incapacity to retreat and the immunity provided by social hierarchy into what we might well call the Incapacitated Man doctrine in self-defense law.

The power dynamics engendered by ideological co-habitation and defensive appropriation are nowhere more evident than in the work of Nathaniel Hawthorne,

\(^{184}\) Ulrich, 93.
particularly in *The Scarlet Letter* and *The House of the Seven Gables*. The two texts approach incapacity and immunity from different temporal vantage points: *The Scarlet Letter*, set the mid-1600s\(^{185}\), focuses on the conditions that engendered the concepts in an American context, whereas *The House of the Seven Gables* tracks the legacy of incapacity and immunity from the late 1660s through the middle of the nineteenth century. Thus, *The House of the Seven Gables* is perhaps a clearer rebuke of the abuses of Magisterial authority and, thus, election’s invocation of the incapacity to retreat and the immunity subsequently granted, because it portrays the ways in which established authority appropriates the language of faith to maintain secular power. *The Scarlet Letter*, by contrast, presents the cohabitation of incapacity and immunity as a more fraught proposition: it grants immunity to a character whose sins are more ambiguously measured, and for whom the sense of incapacity before God is authentic. In both texts, however, the authenticity of the incapacity is rendered irrelevant by Hawthorne’s tenacious dismantling of his character’s assumed immunity.

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\(^{185}\) Despite various sources giving 1642 as the year that opens *The Scarlet Letter*, largely based on references to Gov. Bellingham, it was more likely sometime after 1665. Though Richard Bellingham was indeed Governor in 1642, he only served for one year, losing re-election to John Winthrop. He was elected again in 1656, but only for another one-year term. His string of re-elections didn’t commence until 1665, after which he served as Governor until his death in 1672. Since he is Governor both at the time of Hester’s conviction (he attends the scene at the scaffold), as well as in the scene at his house, when Pearl is three, then the story must begin after 1665, when his consecutive terms began.
Hawthorne categorized both texts as “Romances”; in the preface to *The House of the Seven Gables*, he defines the genre as, particularly, one that is better suited than the novel to the examination of the relationship between past and present:

"The point of view in which this Tale comes under the Romantic definition, lies in the attempt to connect a by-gone time with the very Present that is flitting away from us. It is a legend, prolonging itself from an epoch now gray in the distance, down into our own broad daylight, and bringing along with it some of its legendary mist, which the Reader, according to his pleasure, may either disregard, or allow it to float almost imperceptibly about the characters and event, for the sake of picturesque effect."^{186}

Of course, no amount of self-deprecation will convince us that Hawthorne means for the reader to view the past as mere picturesque ornament. Instead, the “legendary mist” of the past is the medium through which is transported Hawthorne’s quite contemporary “moral purpose”:

"The truth, namely, that the wrong-doing of one generation lives into the successive ones, and, divesting itself of every temporary advantage, becomes a pure and uncontrollable mischief; – and he would feel it a singular gratification, if"

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this Romance might effectually convince mankind (or, indeed, any one man) of the folly of tumbling down an avalanche of ill-gotten gold, or real estate, on the heads of unfortunate posterity, thereby to maim and crush them until the accumulated mass shall be scattered abroad in its original atoms. In good faith, however, he is not sufficiently imaginative to flatter himself with the slightest hope of this kind.¹⁸⁷

Indeed, no ornament but rather the foundations of moral destruction! As Gaston Bachelard suggests in The Poetics of Space, the most successful translations of the past are those that engender “transsubjectivity”; that is, a “truth” that moves from one subjectivity to another without being diluted into objectivity or mere history.¹⁸⁸ Time collapses into space, and a subjective experience is no longer limited by the particular historical moment in which it first occurred—it is translated from one subjectivity to another, a sort of experiential posterity. Hawthorne’s romances predict the appropriative strategy of Stand Your Ground laws not because he was prescient, but because the transsubjectivity of his form allowed for the appropriation of past by present, legend by realism, fear by aggression, incapacity by immunity. In a word, his romances “reverberate”—identified by Bachelard as a spacial movement that encompasses past, present, and future—with the “pure and uncontrollable mischief”

¹⁸⁷ Hawthorne, House, Preface, 3-4.
that is election’s posterity, thus anticipating the appropriative mechanism through which incapacity and immunity cohabitate in twenty-first-century self-defense law.

We might begin with the original, historical “wrong-doings” that Hawthorne’s work sought to “bring into our own broad daylight.” In his July 13, 1838 notebook entry, Hawthorne recorded an idea for a novel:

A political or other satire might be made by describing a show of wax-figures of the prominent public men; and by the remarks of the showman and the spectators, their characters and public standing might be expressed. And the incident of Judge Tyler as related by E---- might be introduced […] A series of strange, mysterious, dreadful events to occur, wholly destructive of a person’s happiness. He to impute them to various persons and causes, but ultimately finds that he is himself the sole agent. Moral, that our welfare depends on ourselves.  

“E----” is, according to family historians, Nathaniel Hawthorne’s mother-in-law, Elizabeth Palmer Peabody, called Eliza. In conducting research for a family history, Hawthorne’s brother-in-law, Nathaniel Peabody, came across an anonymous article, entitled “Seduction,” published by the Christian Examiner in 1833:

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We hope we deserve to be called pure, in some good degree; but to us it did not seem to be pure for a polished man of literary eminence, to enter the sanctuary of sleeping innocence, of absolute childhood, for the basest purpose. We did see it, however, and though more than forty years have since passed by, we recollect with almost incredible vividness the shudder of terror and disgust which then shook our infant frame. We have traced the career of that man. He seduced the woman, whose children he would have corrupted, caused the self-murder of a wife and mother, and afterwards married the daughter of that victim. He is dead, and the horrors of his mind, during a lingering disease, were the dreadful fruits of sin; but not of disgrace, for this man had a good standing in society [emphasis original].

When Nathaniel Peabody realized that the article had been penned by his mother, it also became clear who this polished man was: Royall Tyler, a Chief Justice of the Vermont Supreme Court, and author of, among other texts, The Contrast, the first

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American comedy to be performed by professional actors.\textsuperscript{191} He was a respected judge, an erstwhile politician, and a minor literary celebrity. Peabody deduced that his grandmother, Elizabeth Hunt Palmer, had, while her husband was absent, been “seduced” (read: raped) by Royall Tyler, a boarder in her house, and had been bribed to silence by emergency financial assistance during Mr. Palmer’s absence. Moreover, Tyler romanced Elizabeth’s adolescent daughter, Mary, while she was still a child, and then forced her into a secret marriage when she became pregnant. And, most importantly for Hawthorne’s purposes, he died “not of disgrace” but from a facial cancer that ate through first his nose, then his jaw, and finally his eye before he succumbed to it in 1826.\textsuperscript{192} Despite his crimes, his legacy is marked (still) by encomiums to his literary gifts and to his patriotism. Though it is not clear when Hawthorne first heard about the “tragedy”\textsuperscript{193} in his wife’s family, by 1838 he was clearly considering Tyler as the basis for a character in an as-yet-unwritten romance. Ultimately, it was Judge Pyncheon in \textit{The House of the Seven Gables} who garnered this distinction, and who was one of the inheritors of both Tyler’s legal immunity and his moral “cancer.”

\textsuperscript{192} Ronda, 23-24.
\textsuperscript{193} Ronda, 24.
Several other men have also been considered to be prototypes for both Judge Pyncheon in *The House of the Seven Gables* and the various Magistrates in *The Scarlet Letter*:

Hawthorne’s own ancestors, the Puritans William Hathorne, persecutor of Quakers, and his son John Hathorne, witch trial judge. In “The Custom-House,” the Introduction to *The Scarlet Letter*, Hawthorne begins the catalog of his own inherited guilt with a reference to William Hathorne, “that first ancestor,” a “steeple-crowned progenitor” who came with “his Bible and his sword” as part of the Winthrop fleet:

He was a soldier, a legislator, a judge; he was a ruler in the Church; he had all the Puritanic traits, both good and evil. He was likewise a bitter persecutor; as witness the Quakers, who have remembered him in their histories, and relate an incident of his hard severity towards a woman in their sect. His son, too, inherited the persecuting spirit, and made himself so conspicuous in the martyrdom of the witches, that their blood may fairly be said to have left a stain upon him.”

The incident to which Hawthorne refers is the exercise of the Cart and Whip Act upon Ann Coleman, a Quaker; the Quaker history invoked is George Bishop’s *The England Judged By the Spirit of the Lord*, a tract published in England in an effort to convince the King to stem the Puritan persecution of Quakers. Up until 1661, Massachusetts had been executing Quakers for their mere presence in the Colony. Among those executed

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was Mary Dyer, that “monstrous” mother and friend of Anne Hutchinson, who had since become a Quaker in the ensuing years after Antinomian Crisis. And, as Timothy L. Hall has pointed out, the concept of election was once again at the heart of the issue:

The core of Quaker belief was the insistence that true worship centered in the experience of the “inward Christ” or the “inner” light of Christ, rather than in conformity to external norms of conduct and belief. Furthermore, Quakers maintained that this inner light was available to every person, not just a privileged group of elect. Both propositions alarmed the Puritans […] Quaker pursuit of an inward Christ available to all people […] threatened the Reformed doctrine that only the elect are saved.¹⁹⁵

These Quakers were no less dangerous than the Antinomians; indeed, their wholesale rejection of election made them even more of an ordinal threat to religious and magisterial authority in Massachusetts Bay Colony. When the King Charles II outlawed the outright execution of Quakers in 1661, the Massachusetts Magistrates responded with the Cart and Whip Act, which provided for tying Quakers...
to the tail of a cart and whipping them over the border of the colony. Ann Coleman, along with several others, was stripped to the waist and tied to a cart, with the following results, according to Bishop:

I shall now give an account of some others, on whom your cruelty lighted at Salem by the hand of the said wicked Hathorn, whose cruelty is farther drawn forth in what follows [...] Not long after Edward Wharton's executions as aforesaid, Joseph Nicholson, John Liddal, Jane Millard, and Ann Coleman were, by the said Hathorn's warrant, apprehended, and so cruelly whipped through Salem, Boston, and Dedham, that one of them, viz., Ann Coleman, was near death, being well-nigh murdered. She was a little woman, and her back, as hath been said, was crooked, and your executioner had her fast in a cart at Dedham, [Gov.] Bellingham, your deputy, having seen Hathorn's warrant, bidding them "Go on," and saying, "The warrant was firm;" and so encouraging the matter, he so unmercifully laid her on with the rest, that, with the knots of the whip, he split the nipple of her breast, which so tortured her, that it had almost cost her life, which she sometimes thinking might have been the consequence, was willing, if she should have died, that her body should have been brought and laid before Bellingham, with a charge from her mouth, "That he was guilty of her blood."¹⁹⁶

While much has been made over Nathaniel Hawthorne’s horror at having been descended from a prominent judge at the Salem Witch Trials (he even added the ‘w’ to the spelling of his name in an effort to separate himself from this obvious marker of inheritance), it is William Hathorne’s persecution of the Quakers in general, and the story of Ann Coleman, in particular, that provides the hereditary link to the language of the curse in *The House of the Seven Gables* (“God will give you blood to drink”), as well as to the “mark” on the “bosom” in *The Scarlet Letter*. Coupled with Judge Royall Tyler, the Hathornes provide the prototypes, in various permutations, for the characters of Colonel Pyncheon and his descendant, Judge Jaffrey Pyncheon, as well for the Governor and the Magistrates in *The Scarlet Letter*. In these characters, we see the embodiment of the ways in which the concept of election led the Puritans to, first, take possession of the land appointed; second, claim an incapacity to retreat from challenges to that possession and, instead, remove the challengers via legal persecution; and third, continue to invoke both incapacity and immunity as the inheritance of election. And yet, unlike their real-life counterparts, Hawthorne doesn’t allow the sins of his characters to go unpunished; wrangling the supernatural devices afforded by the romance genre, these characters are treated to immortal sentences far worse than any degradation of the mortal body that the Magistrates might devise. In so doing, Hawthorne decouples the incapacity to retreat appropriated by the “elect” from their
claims to immunity, thereby mounting a rhetorical challenge to the validity of
election.197

In *The Scarlet Letter*, Hawthorne allows for more ambiguity of motive, if not absolution
of guilt, in his portrait of the Reverend Arthur Dimmesdale. Dimmesdale more
convincingly exemplifies the ways in which the truly faithful might feel incapacitated in
the face of God’s grace than, certainly, the Pyncheons; nevertheless, he bears a moral
punishment hardly less gruesome than the Colonel and Judge. At the beginning of the
romance, Hawthorne sketches the decidedly saintly aspect Dimmesdale radiates to his
congregation:

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197 In *Gothic Subjects: The Transformation of Individualism in American Fiction, 1790-1861*
(Philadelphia: University of Philadelphia Press, 2014), Siân Silyn Roberts argues that the
Civil War-era gothic novel, which she contends includes *The Scarlet Letter*, represented
“the human beings who are part of a nation but are excluded from membership within
it on the grounds that they lack the requisite properties of self-sovereignty […]
conventionally find[ing]expression as slaves (*Uncle Tom’s Cabin*, 1852), children (*The
Wide Wide World*, 1850), women (*The Scarlet Letter*, 1850), and even political prisoners
(*Israel Potter*, 1855). These characters represent just those forms of life that the paternal
household is supposed to protect” (115-116). Thus *The Scarlet Letter*, among other
coterminous novels, marks a point at which the concept of election pushes further along
the path to secularization, eventually resulting in SYG. Frank Obenland, in *Providential
Fictions: Nathaniel Hawthorne’s Secular Ethics* (Paderborn: Schöningh, 2011), proposes his
Hawthorne’s romances as a “neutral territory” between the universal moral law of the
Puritans and the “creative expressivist powers of the self,” (264) an individualism that
distrusts “governmental intrusion into the natural rights of the individual” (271). As
with Roberts reading, Obenland’s argument points to Hawthorne’s texts as
representations of ideological recapitulation.
The young divine, whose scholar-like renown still lived in Oxford, was considered by his more fervent admirers as little less than a heaven-ordained apostle, destined, should he live and labor for the ordinary term of life, to do as great deeds for the now feeble New England Church, as the early Fathers had achieved for the infancy of the Christian faith.\footnote{Hawthorne, \textit{The Scarlet Letter}, 105.}

His election thus firmly established, his ensuing physical decline was interpreted by all but the Reverend himself and the “diabolical”\footnote{Hawthorne, \textit{The Scarlet Letter}, 112.} Roger Chillingworth as a result of “the fasts and vigils of which he made a frequent practice, in order to keep the grossness of this earthly state from clogging and obscuring his spiritual lamp.”\footnote{Hawthorne, \textit{The Scarlet Letter}, 106.} Thus, the establishment of spiritual election leads to the bestowing of legal immunity — for in addition to his parishioners, who believe him to be above suspicion, Hester, too, believes her fellow “criminal” to be elect, and she refuses to name him. No matter that Dimmesdale begs her to not “add hypocrisy to sin”\footnote{Hawthorne, \textit{The Scarlet Letter}, 62.} — his immunity is secure. Of course, Dimmesdale himself is caught between a fundamental sense that “it would always be essential to his peace to feel the pressure of a faith about him” and the “tremulous enjoyment […] and] occasional relief of looking at the universe through the medium of another kind of intellect than those with which he habitually held
Dimmesdale’s incapacity, then, is not a result of election but, rather, a protracted crisis of faith, and the territory claimed and re-claimed is internal. As such, his “defense” is truly self-defense in that it is directed at the self—he fasts, he flogs himself, he deprives his body of sleep in the exercise of interminable midnight vigils. And yet, for all his self-doubt, his self-flagellations, his legal immunity is ensured, for it is granted based on the community’s perception of faithful purity. Through Dimmesdale, Hawthorne uncouples election from incapacity, revealing that the perception of election, as opposed to the actual condition, is the practical barometer for the extension of immunity. A person must merely claim incapacity in order to then be granted immunity. And so basic doctrinal assumptions about the cohabitation of incapacity and immunity under the mantle of election are unraveled with every new welt on Dimmesdale’s back, every tortured inner acknowledgment of sin.

This is not to say that, at least in The Scarlet Letter (The House of the Seven Gables is another story), Hawthorne presents the immunity extended to Dimmesdale or the sentence imposed upon Hester to be born of malice—they are simply evidence of the impossibility of discerning the election of another. As Hester Prynne mounts the scaffold, Hawthorne turns the reader’s attention to the balcony overlooking it, and the men gathered in official observation of her ignominy: “Governor Bellingham himself” was joined by “other eminent characters” who were

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distinguished by a dignity of mien, belonging to a period when the forms of authority were felt to possess the sacredness of divine institutions. They were, doubtless, good men, just, and sage. But, out of the whole of the human family, it would not have been easy to select the same number of wise and virtuous persons, who should be less capable of sitting in judgment on an erring woman’s heart, and disentangling its mesh of good and evil, than the sages of rigid aspect towards whom Hester Prynne now turned her face.203

According to Hawthorne, these men were acting in good faith, however erroneously. Thus, their inability to judge Hester is a doctrinal, rather than personal, failing. It is, again, the conflict between the doctrine of congregational sanctification and the Antinomian and Quaker doctrines of individual revelation. Indeed, Hester is identified as being Hutchinson’s spiritual descendant by the presence of the rose bush that adorned the door to Hester’s imprisonment: “there is fair authority for believing, it had sprung up under the footsteps of the sainted Ann [sic] Hutchinson, as she entered the prison door […] Finding it so directly on the threshold of our narrative, which is now about to issue from that inauspicious portal, we could hardly do otherwise than pluck one of its flowers and present it to the reader” as a symbol of the “sweet moral

blossom” that might be found in the “darkening close” of Puritan doctrine.  

Particularly significant is the fact that Hester begins to experience revelations similar to those claimed by Anne Hutchinson only after she has been condemned. And just as Hutchinson claimed that God “hath let me see which was the clear ministry and which was the wrong,” so did Hester begin to feel that “the scarlet letter had endowed her with some new sense,” whereby she was given

a sympathetic knowledge of the hidden sin in other hearts. She was terror-stricken by the revelations that we thus made. Could they be other than the insidious whispers of the bad angel, who would fain have persuaded the struggling women, as yet only have his victim, that the outward guise of purity was but a lie, and that, if truth were everywhere to be shown, a scarlet letter would blaze forth on many a bosom besides Hester Prynne’s? Or, must she receive these intimations — so obscure, yet so distinct — as truth?  

And yet here, the revelation is not for the purposes discerning who was elect, but rather the reverse — it was a sort of sympathetic community of the spiritually banished that Hester incorporated into her own mark, creating a corporeal palimpsest of shame. More

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204 Hawthorne, The Scarlet Letter, 46.  
205 “Examination”, 159-60.  
206 Hawthorne, The Scarlet Letter, 78.
than anything, this points to Hawthorne’s sense that it isn’t revelation that illuminates election, but sympathy—and that, in fact, election is antithetical to sympathy’s “sweet moral blossom.” If this is the case, then he has misinterpreted Hutchinson: she was committed to the covenant of grace, and had no sympathy for those who were not similarly faithful—recall her assertion that her prosecutors “‘had the spirit of the antichrist’” and her subsequent warning to them: “if you go on in this course you begin you will bring a curse upon you and your posterity.” The “course” is not her own banishment, but the flirtation with the covenant of works. Hutchinson argues for the primacy of revelation in determining election, but she is by no means ambivalent on the concept of free grace—it is the cornerstone of her faith. What this means for the building of an elect community, however, is perhaps more ambiguous. If grace is freely given, and sin is absolved by grace, would Hutchinson’s community include Hester Prynne, who was ultimately redeemed in the eyes of the community by her good works? Arthur Dimmesdale? The only surety is the exclusion of those who appropriate grace in the procurement of “works,” incapacity in the procurement of immunity—in both The Scarlet Letter and The House of the Seven Gables, it is the “wax” likenesses of Judge Royall Tyler and the Hathorne patriarchs who are guilty of this spiritual crime. And though

207 “Examination,” 160-1.
208 Michael J. Colacurcio has suggested that not only is Hester Prynne an analog of Ann Hutchinson but that Dimmesdale is Hawthorne’s reading of John Cotton: “Except for the rather too delicate question of who first lit the strange fires, both Mrs. Hutchinson's treatment by Cotton and Hester’s by Dimmesdale might almost be subtitled "Seduced and Abandoned in Old Boston. (“Footsteps of Ann Hutchinson: The Context of the Scarlet Letter,” ELH, Vol. 39, No. 3 (Sep., 1972), pp. 459-494
Hawthorne may not cast Governor Bellingham and Reverend Wilson as “antichrists,” they, too, surely appropriate the notion of an incapacity to retreat from God’s ordinances in the service of their own secular authority, however doctrinally justified they may believe that authority to be.

Hawthorne is not so forgiving of Colonel Pyncheon and his posterity in *The House of the Seven Gables*. He gives no possibility of religious justification for the Pyncheons’ transgressions—they are atrocious acts of cruelty motivated solely by self-interested greed. The first transgression involved the actual ground upon which eventually stood the house of the seven gables itself; before Colonel Pyncheon erected his family seat, this “same spot of ground” hosted the “original occupant of the soil […] though an obscure man, [Maule] was stubborn in what he considered his right” to the land that, “with his own toil, he had hewn out of the primeval forest, to be his garden-ground and homestead.” As the town expanded and Maule’s land grew more valuable, the “prominent and powerful” Colonel Pyncheon “asserted plausible claims” to the plot “on the strength of a grant from the legislature.”

Though perhaps we might relegate this to the pile of property disputes that no doubt arose in a colony in the midst of drawing and redrawing its cartographic boundaries, Hawthorne makes clear that this particular dispute was resolved not by the invocation property rights, but of the “right to be” in an elect community, when Pyncheon accuses Maule of witchcraft:

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It was remembered how loudly Colonel Pyncheon had joined in the
general cry to purge the land from witchcraft; nor did it fail to be
whispered, that there was an invidious acrimony in the zeal with which
he had sought the condemnation of Matthew Maule. It was well known,
that the victim had recognized the bitterness of personal enmity in his
persecutor’s conduct towards him, and that he had declared himself
hunted to death for his spoil.210

Indeed, recent scholarship of the Salem witchcraft trials211 has suggested that the
collapse of frontier land speculation played a major role in triggering the hysteria.
Speculators, who suffered a major economic blow during King William’s War (also
known as the Second Indian War), flooded back into the towns of eastern
Massachusetts to escape the wars on the frontier. This rush of refugees triggered
subsequent land scarcity in towns like Salem, and resulted increased demand for land
that had a less volatile value. As Baker and Kences note, “In addition to being an
economic necessity, property also had an important psychological value[,] landed

210 Hawthorne, House, 7.
211 Emerson W. Baker and James Kences, “Maine, Indian Land Speculation, and the
Essex County Witchcraft Outbreak of 1692,” (Maine History, volume 40, number 3, Fall
2001), 159-189; http://www.hawthorneinsalem.org/ScholarsForum/MMD1705.html
(accessed 12.23.14). The connection between land speculation and the witchcraft trials
was first suggested by Richard Slotkin in Regeneration Through Violence, and Baker and
Kences later expanded upon it in a number of publications; the article cited above
synthesizes the history.
wealth was still the key to power, prominence, and legitimacy.” Prominent families in Massachusetts Bay were often given large tracts of land in compensation for service to the government, thereby buttressing their power with property. Inevitable conflict, and sometimes outright animosity, ensued when the rapacious acquisitiveness of large landowners put pressure on modest yeoman within the limits of established towns.²¹² It is precisely this sort of conflict that led to Pyncheon’s scapegoating of Maule:

It appears to have been at least a matter of doubt, whether Colonel Pyncheon’s claim were not unduly stretched, in order to make it cover the small metes and bounds of Matthew Maule. What greatly strengthens such a suspicion is the fact, that this controversy between two ill-matched antagonists[…] came to a close only with the death of the party occupying the disputed soil […] it was a death that blasted with a strange horror the humble name of the dweller in the cottage, and made it seem almost a religious act to drive the plough over the little area of his habitation, and obliterate his place and memory from among men.²¹³

In this case, Maule (whose historical namesake was Salem Quaker) is accused of witchcraft, and religious rhetoric is appropriated to achieve an entirely secular expulsion: secular election appropriated the spiritual incapacity to retreat (from, here,

²¹² Baker and Kences.
²¹³ Hawthorne, House, 7.
Maule’s “witchcraft”) in order to claim immunity from prosecution for, essentially, stealing property.

But, unlike many of the Salem Witch Trial accusers and judges (all but one of whom had significantly family land holdings, including John Hathorne), Colonel Pyncheon is not immune from all forms of punishment: perhaps in an echo of the Quaker Ann Coleman’s warning to Governor Bellingham and William Hathorne, Maule addresses Pyncheon from the scaffold: “‘God,’ said the dying man, pointing his finger with a ghastly look at the undismayed countenance of his enemy, ‘God will give him blood to drink.’” And indeed, Colonel Pyncheon is found dead in his house, the mansion built over the top of Maule’s modest dwelling, on the very day that the whole town was invited to celebrate the edifice’s inauguration—his mouth, beard, and elaborately wrought ruff “saturated” with blood.214 He may have been immune from legal recourse, but he was not spared God’s judgment.

Hawthorne’s point, however, is not made by Colonel Pyncheon’s “just desserts,” for Hawthorne is primarily concerned with “posterity”—that is, the guilt that remains unacknowledged by the inheritors of immune entitlement. Thus, his target is not Colonel Jaffrey Pyncheon, but his descendant, Judge Jaffrey Pyncheon. The Judge is introduced into the narrative in a scene in which he meets Phoebe Pyncheon, a relation

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who has come to stay with her elderly cousin, Hepzibah Pyncheon; the Judge, having come to the ancestral home on an errand of intimidation, nevertheless seems quite benevolent, at least at first. When Phoebe instinctively avoids his welcoming kiss, she notes that his aspect of “broad sunshine” shifts suddenly to “cold, hard, immitigable.” Phoebe is struck by the revelation that this other version of the Judge is the exact likeness of the picture of the Colonel she had seen the day before, and contemplates the possibility that this severity was “no momentary mood, but, however skillfully concealed, the settled temper of his life […] transmitted down as a precious heirloom.”

The narrator continues:

A deeper philosopher than Phoebe might have found something very terrible about this idea. It implied that the weaknesses and defects, the bad passions, the mean tendencies, and the moral diseases which lead to crime, are handed down from one generation to another, by a far surer process of transmission than human law has been able to establish, in respect to the riches and honors which it seeks to entail upon posterity. 215

And, if we are to judge by the character sketch of the Judge at the end of the novel, after he has expired in a fashion identical to his progenitor, this transmission is also an accretion— the weaknesses and defects become more pronounced. The Colonel was

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“relentless” in his pursuit of property, but also reliably Puritanical. His descendant, however, was, in his youth, “wild,” “dissipated,” and “recklessly expensive”; he frames his gentle cousin Clifford for their Uncle’s murder and changes the will to his sole benefit; he assumes an aspect of benevolent authority as he climbs the ladder of political power; when Clifford is released from jail, after serving thirty unjust years, the Judge threatens to have him committed to an asylum if he doesn’t reveal the location of a long-lost map of Colonel Pyncheon’s own speculative “dukedom.” Even as the evil accretes, so does the ability to cloak it in “sunshine.” Election transmutes from spiritual to secular to some simulacra of itself, the absence of its origins—and yet its benefits are inherited even as its theological sincerity is not. Speaking through Maule’s (closeted) descendant, Holgrave, Hawthorne reiterates the position on posterity that he initially takes in the Preface:

‘But we shall live to see the day, I trust’ went on the artist, ‘when no man shall build his house for posterity […] if each generation were expected and allowed to build its own houses, comparatively unimportant in itself, would imply almost every reform which society is now suffering for. I doubt whether even our public edifices—our capitol, state-houses, court-houses, city halls, and churches—ought to be built of such permanent materials as brick and stone. It were better that they should crumble to
ruin, once in twenty years, or thereabouts, as a hint to the people to
examine into and reform the institutions which they symbolize.’

That is, were it not for the impetus to protect the spoils accreted from an inherited
immunity, society would be in a constant state of reformation, as opposed to
reinscription. And the perpetual instrument of this reinscription is the appropriation of
the incapacity to retreat, and its reward immunity.

Certainly, Judge Pyncheon and his inspiration, Judge Royall Tyler, managed to refract
the blame for their sins back on to their victims: they had no choice but to act as they
did. As Judge Pyncheon asserts to Hepzibah, as he attempts to gain access to the ailing
Clifford’s chambers, “[I]s it possible that you do not perceive how unjust, how unkind,
how unchristian, is this constant, this long-continued bitterness against me, for a part
which I was constrained by duty and conscience, by the force of law, at my own peril, to
act?” Indeed, he seems to have convinced not only “the extensive sphere of those who
knew him” that he was “a man of imminent respectability,” but also to have persuaded
himself of his own blamelessness: “his conscience bore an accordant testimony with the
world’s laudatory voice” and the general perception that “his enviable reputation
 accorded with his desserts.” The narrator ruminates on the mechanics of this
transformation:

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[M]en to whom forms are of paramount importance [...] are very capable of falling into mistakes of this kind [...] They possess a vast ability in grasping, arranging, and appropriating to themselves, the big, heavy, solid unrealities, such as gold, landed estate, offices of trust and emolument, and public honors. With these materials, and with deeds of goodly aspect, done in the public eye, an individual of this class builds up, as it were, a tall and stately edifice, which, in the view of other people, and ultimately his own view, is no other than the man’s character, or the man himself. Behold, therefore, a palace!\textsuperscript{218} [emphases mine]

A palace, a castle, the man himself! Thus, the construction of this castle of “goodly aspect” justifies, eventually, its defense—and, therefore, any intruder upon the sanctity of this identity justifies “appropriating to themselves” the “solid unrealit[y]” of the incapacity to retreat. Once “an individual of this class” passes the scrutiny of the community, this incapacity is presumed, just as justification is presumed and immunity extended in Stand Your Ground cases. And, accordingly, the Judge was forced, at his own “peril, to act” in response to Clifford’s “mental disease,” his “insanity,” lest he pose a danger to the community.\textsuperscript{219}

\textsuperscript{218} Hawthorne, \textit{House}, 162.
\textsuperscript{219} Hawthorne, \textit{House}, 167.
Judge Tyler, too, deflected blame back on to his victims, in his case within the context of gender relations in sentimental fiction. His most famous play, *The Contrast*, is most often read as a commentary on the contrast between American and European values, but its characters represent the contrasts between classic sentimental prototypes—and are treated accordingly. Charlotte, the “libertine,” holds forth on the necessity of flirtation:

Man! for whom we dress, walk, dance, talk, lisp, languish, and smile.

Does not the grave Spectator assure us that even our much bepraised diffidence, modesty, and blushes are all directed to make ourselves good wives and mothers as fast as we can? Why, I'll undertake with one flirt of this hoop to bring more beaux to my feet in one week than the grave Maria, and her sentimental circle, can do, by sighing sentiment till their hairs are grey.  

And yet Charlotte is made to pay for her “libertine” airs when Dimple, the dissipated imitator of European manners, attempts to “devote the present hour to happiness,” lunging for her as he exclaims, “Let me lull the demon [Charlotte’s honor] to sleep again with kisses”; Charlotte is only saved from dishonor by the interruption of her brother. Even Elizabeth Palmer has doubts about her mother’s martyrdom to Tyler. According

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220 Royall Tyler, *The Contrast*, Act I, Scene i. The play was first performed in April, 1787. [http://www.gutenberg.org/cache/epub/554/pg554.html](http://www.gutenberg.org/cache/epub/554/pg554.html) (accessed 2/15/15)
to Peabody biographer Megan Marshall, Palmer “could recall, too, long-ago days in wartime when her mother had spent hours dressing for the French soldiers who sometimes visited Friendship Hall when her father was away”²²² If her mother had been a “libertine,” then certainly Royall Tyler could have invoked his inability “retreat” from her flirtations. Similarly, his financial support of the family while their patriarch, Joseph Pearse Palmer, was away, was reframed as benevolent generosity, a “goodly deed” that earned him the love of one of its daughters, his bride, Mary. In Mary Tyler’s memoir, she appears to have known nothing of her mother’s affair, as she was living with relatives at the time; she knew only that this “beautiful” boarder paid her family’s debts, and she was grateful. As with Judge Pyncheon, Tyler’s “reputation accorded with his desserts.” Even more tellingly, when the affair ended, the Palmers, unable to stay financially afloat in Boston, moved to a family farm in Framington; according to Marshall, Framington had a “long history as a refuge for undesireables,” beginning when the families of convicted Salem witches Sarah Clayes and Rebecca Nurse “settled on the west side of Framington in a neighborhood still known in the Palmers’ time as ‘Salem End.’”²²³ Libertine, witch, and antinomian alike will their descendants a banishment both geographic and social, even as their persecutors literally move into their houses, appropriating both their incapacity and their small plot of ground. Thus, election transmutes from spiritual to secular to some simulacra of itself, the absence of

²²³ Marshall, “Seductions.”
its origins, and yet its benefits accrete, each generation more justified in its immunity than the last. As Hawthorne notes, it is not spiritual “eminence” but “moral disease” that is “handed down from one generation to another, by a far surer process of transmission than human law has been able to establish, in respect to the riches and honors which it seeks to entail upon posterity.”224

224 Hawthorne, House, 85-6.
(vi)

Posterity

“If you go on in this course you begin you will bring a curse upon you and your posterity.”

— Anne Hutchinson

And then they were outside the gate and Jack was pulling over in the turn-around they’d constructed to those denied admission to the sacrosanct streets of the development... It had been defaced with graffiti on both sides of the entrance gate...

Jack had gone right up to the wall, tracing the jagged hieroglyphs with his finger. “That’s what they use, right? [...] Is this what they wrote on that house you were selling, Kyra? I mean, can you read it?”

“They wrote in Spanish—pinche puta, fucking whore. They had it in for me because I chased them off the property—the same idiots that started the fire, the ones they let off because we might be infringing on their rights or something, as if we don’t have any rights, as if anybody can just come in here and burn our houses down and we have to grin and bear it. But no, this is different. This is like what you see all over the valley—it’s like their own code.”

Jack turned to Delaney. A light misting rain had begun to fall, barely a breath of moisture, but it was a start. “What do you think?”

There it was again, the hate. It came up on him so fast it choked him. There was no escape, no refuge—they were everywhere. All he could do was shrug.

“I just don’t understand it,” Jack said, his voice soft and pensive. “It’s like an animal reflex, isn’t it?—marking their territory?”

“Only this is our territory,” Kyra said.

— T.C. Boyle, The Tortilla Curtain

“Examination,” 160-1.

In T.C. Boyle’s *The Tortilla Curtain*, self-defense law’s ideological scaffolding—and the illusion of progressing past some Puritanical exercise of exclusion—comes crashing down against the clean backdrop of a gated community in Los Angeles. The main character, Delaney Mossbacher, is an environmental writer who prides himself on his liberalism, his sensitivity, his humanism. He writes a column called “Pilgrim at Topanga Creek”:

*Pilgrim:* I’m a pilgrim, that’s all, a seer, a worshipper at the shrine […] Tonight – this evening – I am off on an adventure, a jaunt, a peregrination beneath the thin skin of the visible to breathe in the world around me as intensely as Wordsworth’s leech-gatherer and his kin […] From the moment my wife drops me off at the Trippet Ranch trailhead with a kiss and a promise to come for me at nine the next morning, I feel a primeval sense of liberation, of release, and as I wend my way upward through the stands of undiscouraged shrubs, I can’t help singing out their names in a sort of mantra.227

Delaney lives in subdivision called Arroyo Blanco. His wife, Kyra, is the primary bread-winner, a luxury real estate agent.

*Hawthorne:* What we call real-estate – the solid ground to build a house on – is the broad foundation on which nearly all the guilt of the world rests. A man will commit almost any

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227 Boyle. “Pilgrim,” 77. This is an excerpt from “Pilgrim at Topanga Creek,” which is embedded throughout the novel.
wrong—he will heap up an immense pile of wickedness, as hard as granite, and which will weight as heavily upon his soul to eternal ages—only to build a great, gloomy, dark-chambered mansion […]\textsuperscript{228}

When Delaney’s HOA proposes building a wall—ostensibly to keep out the coyotes—he is initially adamantly against it: “the gate was an absurdity, intimidating and exclusionary, antidemocratic even[…] His neighbors were overwhelmingly for it, whipped into a reactionary frenzy.”\textsuperscript{229} As a committed environmentalist, his position is that it is the humans who are causing the coyote problem: they leave food out for the coyotes, they aren’t careful with their garbage—

“You can’t be heedless of your environment,” he’d warned his neighbors. Besides, he knew they were really worried about human interlopers: “The Salvadorans, the Mexicans, the blacks, the gangbangers and taggers and carjackers they read about in the Metro section over their bran toast and coffee. That’s why they’d all abandoned the flatlands of the valley and the hills of the Westside to live up here, outside the city limits, in the midst of all this splendor.”\textsuperscript{230}

\textsuperscript{228} Hawthorne, \textit{House}, 185.
\textsuperscript{229} Boyle, 41.
\textsuperscript{230} Boyle, 39.
Of course, Delaney maintains that his reason for living in the hills is proximity to nature. He seems willfully unaware of his participation in the construct of this community. He can write about nature precisely because he has shelter from it. He can enjoy it as an aesthetic object or philosophical concept because he doesn’t feel the threat of the wilderness beyond the boundary. His wife is going to pick him up at the trailhead.

_HAWTHORNE:_ Nor would it have been singular, had [Maule’s descendants] ceased to remember that the House of the Seven Gables was resting its heavy framework on a foundation that was rightfully their own. There is something so massive, so stable, and almost irresistibly imposing, in the exterior presentment of established rank and great possessions, that their very existence seems to give them a right to exist.²³¹

Even without a wall, Delaney still has confidence in the structure of protection that his place—social, economic—affects him. And this “outside” is, as even he can see, not limited to wild animals—it includes the human “other.” Kyra, sarcastically, pointedly, defines the real purpose and the prospect of their “commonweale”:

> What do you think this is? Some kind of nature preserve? This is a community, for your information, a place to raise kids and grow old—in

²³¹ _Hawthorne, House_, 20.
an exclusive private highly desirable location. And what do you think’s going to happen to property values if your filthy coyotes start attacking children—that’s next, isn’t it?” 232

So here election is assessed according to property value, instead of ordinal observance, but there is no less of a drive to defend both the condition of being elect, and the evidence of that condition. Property values communicate a kind of obedience to the standards of the community. Delaney may deny that this obedience has a role in his protection from the “wilderness,” but he is shielded from charges of modern-day antimanism by the sort of ironic denial that characterizes modern xenophobia. The obligation to scrutinize has not been lifted; the reaction to what is seen has become mediated by a repression, or a redirection, of the fundamental offense—“[b]eneath the thin skin of the visible.” 233 It recalls the rabid opposition to, say, a proposed Walmart in certain neighborhoods: maybe part of the opposition is motivated by a genuine critique of Walmart’s policies, but another, often larger portion of the opposition is to the “kind of people” who shop at Walmart. Walmart sells guns, flame-retardant-doused children’s pajamas, processed food and…it is “Always Low Prices.” Keep them out, and keep property values up. It is the retail equivalent of NIMBY.

232 Boyle, 221.
233 Boyle, 76.
**DEFENCE:** The rule of the Apostle, John 2. 10. [2 John 10] is, that such as come and bring not the true doctrine with them should not be received to house, and by the same reason not into the common weale.\(^\text{234}\)

Delaney’s tolerant, inclusive façade begins to crumble as a result of the increasing presence of “illegals” in Topanga Canyon. As he drives his Acura (license plate: PILGRIM) up the canyon road, a man steps into traffic; Delaney, unable to avoid him, sends the man flying into the brush. Seeing that the man is not dead, he gives him twenty dollars and continues his drive home. But then, afterward, it begins to haunt him; unable to face the inhumanity with which he’s acted, his guilt morphs into suspicion. The man “staged” the incident for money; he is insane, drunk; he is dangerous; and, finally, he’s an illegal Mexican. Delaney becomes—or is revealed to have always been—precisely the sort of American he’d believed himself to have evolved beyond.

**DEFENCE:** If it be sinne in us to deny some men place etc. amongst us, then it is because of some right they have to this place etc. for to deny a man that which he hath no right unto, is neither sinne nor injury […]

If strangers have right to our houses or lands etc., then it is either of justice or of mercye; if of justice let them plead it, and we shall know what to answer: but if it be only in way of

\(^{234}\) Winthrop, *Defence*. 

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mercye, or by the rule of hospitality etc., then I answer 1st a man is not a fit object of mercye except he be in miserye. [...] We are not bound to exercise mercye to others to the ruine of ourselves.  

The commencement of the wall construction also seems to challenge Delaney’s “tolerance.” Instead of fortifying his perception of safety, the wall seems to highlight the existence of an outside, an existence he had until then been able to repress. The use of the term coyote as an analog for foreigner ties his “errand in the wilderness” as surely to his xenophobia as the Puritan belief in God “making roome” was tied to self-interest:

*PILGRIM*: The urban coyote is larger than his wild cousin, he is more aggressive and less afraid of the humans who coddle and encourage him, who are so blissfully unaware of the workings of nature that they actually donate their kitchen scraps to his well-being. The disastrous results can be seen in the high mortality among small pets in the foothills and even the as yet rare but increasingly inevitable attacks on humans.  

He defends the wild coyotes even as he gradually comes to fear, even hate, the “others” in his midst — “There it was again, the hate. It came up on him so fast it choked him. There was no escape, no refuge—they were everywhere.” The more he is forced to

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235 Winthrop, *Defence.*

236 Boyle, “Pilgrim,” 213. This is an excerpt from “Pilgrim at Topanga Creek, which is embedded throughout the novel.
acknowledge and tolerate their presence, the more ungovernable his responses become.

Finally, in a fear and rage driven frenzy, Delaney, in expensive outdoor gear, takes a gun to the wilderness behind his house, in search of a human “coyote”:

> All that mattered was this, was finding him, rooting him out of his burrow and counting his teeth and his toes and the hairs on his head and noting it all down for the record. Delaney had been here before, been here a hundred times stalking a hundred different creatures—he was a pilgrim, after all. His senses were keen. There was no escaping him.”237

In this last passage, we’re reminded that, all notions of progress aside, we are still subject to the same sense of incapacitation that prompted the Act of Exclusion; indeed, Delaney reveals the ferocious, inevitable dogmatism behind the American interpretation of the Castle Doctrine, now and then. Delaney’s behavior unequivocally announces the belief that his socio-spatial position is evidence of election, and justification for his immunity.

**FLORIDA STATUTE:** A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using or threatening to use defensive force that is intended or likely to cause death or great bodily harm to another if: [...] The

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237 Boyle, 347.
person who uses or threatens to use defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.\(^{238}\)

We are not bound to exercise mercy to others to the ruin of ourselves. NIMBY.

Exclusive private community. Elect society. Immunity. Structures of protection. Acts of exclusion. Duty to Act. Incapacity. Discerne. See-ers, Seers. The question posed: will the reader, liberal and well-intentioned though s/he may be, be immune from a similar spiral? As Delaney says in his column, “I’m a pilgrim, that’s all, a seer, a worshipper at the shrine. No different from you, really.”\(^{239}\) We are pilgrims, all.

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To be a Puritan is to be in doubt. A Puritan has Faith, but he is never sure of the purity of his faith. Is he performing or believing? Every action is ordinal transgression or testimony of grace. And the most harrowing part is that it is preordained — the saved have already been saved, the damned damned, no matter the line toed. So then every action is also evidence, signification of grace.

To be a Puritan is to be under exhaustive scrutiny. Every action scrutinized as evidence of election or damnation. Most exhausting of all, of course, is personal scrutiny, some

\(^{238}\) Florida Statutes Title XLVI Chapter 776:013.1b
\(^{239}\) Boyle, 77.
hellfire precursor to low self-esteem. Most personally destructive is communal scrutiny. The line walked is that which divides a person’s faith from a community’s faith in a person’s salvation. Inside on the Outside. Private in Public.

To be a Puritan is to be either in communion or out of community.

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DEFENCE: For clearing of such scruples as have arisen about this order, it is to be considered, first, what is the essentiall forme of a common weale or body politic such as this is, which I conceive to be this – The consent of a certaine companie of people, to cohabite together, under one government for their mutual safety and welfare.240

One of George Zimmerman’s neighbors, a black woman who declined to be identified, said, "Let's talk about the elephant in the room. I'm black, OK? There were black boys robbing houses in this neighborhood. That's why George was suspicious of Trayvon Martin."241

Zimmerman’s beloved maternal grandmother, herself of Afro-Peruvian descent, lived with Zimmerman’s family during his childhood, and for years cared for two African-
American girls at the Zimmerman home. They ate all of their meals with the
Zimmerman’s, and walked to school with the Zimmerman children.

**DEFENCE:** *A family is a little common wealth, and a common wealth is a greate family. Now as a family is not bound to entertaine all comers, no not every good man (otherwise than by way of hospitality) no more is a common wealth.*

In the 911 tape of the call George Zimmerman made on the night he fatally shot
Trayvon Martin, Zimmerman said “These assholes, they always get away.”242 After a
series of brazen break-ins in The Retreat at Twin Lakes, Zimmerman’s townhome
complex, Zimmerman was appointed Captain of the Neighborhood Watch. He also
bought a gun and a Rottweiler.

**DEFENCE:** *If we heere be a corporation established by free consent, if the place of our cohabitation be our owne, then no man hath right to come into us etc. without our consent.*

Sean Hannity claimed, "Stand Your Ground laws, interestingly, benefited black
Floridians more than anybody else."243 In a Senate hearing entitled “Civil Rights and
Public Safety Implications of the Expanded Use of Deadly Force,” Ted Cruz seconded

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243 Fox News, *Hannity, 8/20/13*]
the motion: “This is not about politicking, this is not about inflaming racial tensions, although some might try to use it to do that, this is about the right of everyone to protect themselves and protect their family.”

A report from the Congressional Research Service on inter-racial shootings nationwide (SYG states and duty-to-retreat states alike) found an increase in cases of justifiable white-on-black homicides after 2005, when states began enacting Stand Your Ground laws. According to the report, white-on-black homicides were considered justified far more often than black-on-white shootings. From 2001-2005, 1.7% of black-on-white homicides were considered justified; that numbered barely moved to 1.8% from 2006-2010, after SYG laws were enacted. In contrast, from 2001-2005, 16.7% of white-on-black homicides were considered justified; that number jumped by 4 percentage points to 20.7% from 2005-2010. Rather than “benefitting” blacks more than whites, SYG states had an outsized impact on the national statistics, amplifying instead of ameliorating existing disparities.

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244 Senate Judiciary Subcommittee hearing, 10/29/13.
This amplifying impact has been confirmed by other studies. A Texas A&M study found that the rates of murder and non-negligent manslaughter increased by 8 percent in states with Stand Your Ground laws; in those cases with black or Hispanic victims, the killings were found justified by the Stand Your Ground law 78 percent of the time, compared to 56 percent in cases with white victims. The study, entitled “Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from Expansions to Castle Doctrine,” concluded:

From 2000 to 2010, more than 20 states passed so-called “castle doctrine” or “stand your ground” laws. These laws expand the legal justification for the use of lethal force in self-defense, thereby lowering the expected cost of using lethal force and increasing the expected cost of committing violent crime. This paper exploits the within-state variation in self-defense law to examine their effect on homicides and violent crime. Results indicate the laws do not deter burglary, robbery, or aggravated assault. In contrast, they lead to a statistically significant 8 percent net increase in the number of reported murders and non-negligent manslaughters.247

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A study conducted by John Roman, a senior fellow at the Urban Institute's Justice Policy Center, found that, nationwide, "the killings of black people by whites were more likely to be considered justified than the killings of white people by blacks." The study concluded that in non-Stand Your Ground states, whites are 250 percent more likely to be found justified in killing a black person than a white person who kills another white person; in Stand Your Ground states, that number jumps to 354 percent.\(^{248}\)

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Sarah Childress, “Is There Racial Bias in ‘Stand Your Ground Laws?” PBS, 7/31/12 (http://www.pbs.org/wgbh/frontline/article/is-there-racial-bias-in-stand-your-ground-laws/)
opinions such as will cause divisions, and make people looke at their magistrates, ministers and brethren as enemies to Christ and Antichrists etc., were it not sinne and unfaithfullness in us, to receive more of those opinions, which we already finde the evill fruite of [.]

Before retiring to Florida, George Zimmerman’s father, Robert Zimmerman, served as a magistrate in Fairfax County, Virginia’s 19th Judicial District.

George Zimmerman was not arrested for three weeks after Trayvon Martin’s death; the city of Sanford released a statement of explanation: “Zimmerman provided a statement claiming he acted in self-defense, which at the time was supported by physical evidence and testimony.” The letter, signed by Sanford City Manager Norton Bonaparte Jr., says. “By Florida Statute, law enforcement was PROHIBITED from making an arrest based on the facts and circumstances they had at the time.” [caps original] 249 Simply by claiming self-defense, Zimmerman also laid claim to immunity; supported by the “probable cause” rendered by the physical evidence and testimony invoked by the Sanford City Manager, immunity was granted.250

DEFENCE: I hope no man will say, that not to receive such an one were to reject Christ; for such opinions (though being maintained in simple ignorance, they might stand with a state of grace yet) they may be so dangerous to the publick weale in many respects, as it would be our sinne and unfaithfullness to receive such among us.

George Zimmerman was acquitted of 2nd Degree murder in State of Florida vs. George Zimmerman. Claims that the outcome of Zimmerman’s trial owed no debt of gratitude to the Stand Your Ground law misunderstand the law’s breadth. Before Florida’s Stand Your Ground law was enacted, the jury instructions would have read this way:

"The defendant cannot justify the use of force likely to cause death or great bodily harm unless he used every reasonable means within his power and consistent with his own safety to avoid the danger before resorting to that force. The fact that the defendant was wrongfully attacked cannot justify his use of force likely to cause death or great bodily harm if by retreating he could have avoided the need to use that force."\textsuperscript{251}

Jury Instructions in the Zimmerman trial included the following, under “Justifiable Use of Deadly Force:

\textsuperscript{251} Former State Senator Dan Gelber, an outspoken opponent of the law, parsed the changes to the “Justifiable Use of Force” section of the Florida Statute on his blog: http://www.dangelber.com/blog/view_blog.php?ID=268 (accessed 2/9/15)
The killing of a human being is justifiable and lawful if necessarily done while resisting an attempt to murder or commit a felony upon George Zimmerman, or to commit a felony in any dwelling house in which George Zimmerman was at the time of the attempted killing […] If George Zimmerman was not engaged in an unlawful activity and was attacked in any place where he had a right to be, he had no duty to retreat and had the right to stand his ground and meet force with force, including deadly force if he reasonably believed that it was necessary to do so to prevent death or great bodily harm to himself or another or to prevent the commission of a forcible felony.

The widespread misconception about the law’s applicability in the Zimmerman trial is the result of an equally widespread, modern-day “Defence of an order of the Court”: in immediate post-verdict discussion of the case, CNN, Bloomberg Businessweek, Politico, National Review Online, and Fox News, among others, all featured segments contending that Zimmerman’s lawyers had forgone invoking Stand Your Ground, instead mounting a traditional “self-defense” defense. While Zimmerman’s lawyers did indeed waive a pre-trial Stand Your Ground immunity hearing, for what they admitted were largely political reasons, there is no capacity, under Florida law, to claim the use of deadly force for

[252 http://mediamatters.org/research/2013/07/16/media-neglect-that-stand-your-ground-is-centerp/194916 (accessed 2/19/15)
protection without incorporating the language introduced into the statute by the SYG revisions. Waiving the right to a pre-trial immunity hearing does not eliminate the application of SYG immunity at trial. There is only one self-defense statute, and it is SYG.253

DEFENCE: As in tryall of an offender by jury; the twelve men are satisfied in their consciences, upon the evidence given, that the party deserves death: but there are 20 or 40 standers by, who conceive otherwise, yet is the jury bound to condemn him according to their owne consciences, and not to acquit him upon the different opinion of other men, except theire reasons can convince them of the errour of their consciences, and this is according to the rule of the Apostle. Rom. 14. 5. Let every man be fully persuaded in his own mynde.

"I feel like it was all God's plan," Zimmerman told Sean Hannity in his first interview after the shooting. Toward the end of the hour-long interview, however, Zimmerman backpedalled: "I do wish there was something, anything I could have done that wouldn't have put me in a position where I would have had to take a life," he said. "I do want to tell everyone I'm sorry that this happened. I hate to think that because of this incident, because of my actions, it has polarized, divided America. I'm truly sorry." As with Judge Pyncheon, Zimmerman is sorry, simply, that he “was constrained by duty

and conscience, by the force of law, at my own peril, to act,”— that is, he is sorry that he was incapacitated by “this incident” in the first place, and that the incident had wide-ranging effects. He is not sorry that he acted as he did, that he stood his ground. And as with Dimmesdale, “it would always be essential to his peace to feel the pressure of a faith about him.”255 This is faith in the incapacity of the elect, secular or not, faith in posterity, faith in his right-to-be immune from prosecution and moral ambiguity alike. It is God’s plan—He appointed the place, making “roome by some lawfull means.”

In the midst of the protests against Florida’s Stand Your Ground law, Marion Hammer, the driving force behind the bill, dismissed calls to review the “unforeseen” consequences of the law: "So for law enforcement to rush to judgment just because they are being stampeded by emotionalism would be a violation of law. This law is not about one incident. It's about protecting the right of law-abiding people to protect themselves when they are attacked. There is absolutely nothing wrong with the law. And if the governor wants to waste time looking at it he can knock himself out.”256

254 Hawthorne, House, 161.
DEFENCE: [I]f any should be rejected that ought to be received, that is not to be imputed to the law, but to those who are betrusted with the execution of it.

In the five years before the law's passage, Florida prosecutors declared "justifiable" an average of 12 killings by private citizens each year. (Most justifiable killings are committed by police officers; those cases, which have also tripled, are not included in these statistics.) But in the five years after the law passed, that number spiked to an average of 36 justifiable killings per year. Neither the state nor Florida's association of prosecutors have attributed the jump in justifiable homicides to be a direct result of the new law, but the state public defender's association does draw that connection, as have advocacy groups opposed to Stand Your Ground laws.257

According to the Tampa Bay Times database of 237 Stand Your Ground cases, beginning with the passage of the law in 2005 and extending through August 2013: 70% of the victims were unarmed; 9% of the defendants were unarmed; 72% of victims were not committing a crime when the conflict began; 70% of the incidents occurred somewhere other than the defendant’s property; in only 15% of cases was it clear that the defendant could NOT have safely retreated to avoid further conflict. A total of 68% of defendants

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who invoked Stand Your Ground self-defense at some point after the commission of the violence were not disciplined for the use of deadly force. Of those cases, 23% of cases were granted immunity at a pre-trial hearing; 10% were acquitted at trial; 35% were dismissed before a hearing, or were never charged.²⁵⁸

DEFENCE: And herein is to be considered, what the intent of the law is, and by consequence, by what rule they are to walke, who are betrusted with the keeping of it. The intent of the law is to preserve the wellfare of the body: and for this ende to have none received into any fellowship with it who are likely to disturbe the same, and this intent (I am sure) is lawful and good.

In Puritan times, public shaming took place in the town square, with offenders displayed in the stocks for the other townspeople to observe and mock. Often, the Magistrates looked on from an elevated position. In the aftermath of Trayvon Martin’s death, an internet meme gained traction with a disturbing rapidity. It featured photos of young, almost exclusively white men lying face down on the ground, with Skittles in one hand, and a bottle of iced tea in the other. The meme is called “Trayvoning.” A kind of internet-era exercise in shaming, these images encapsulate the process by which the elect appropriate the incapacity of the victim and subsequently convert immunity from the spoils of “works” to a “right” (rite) of grace. This is election’s posterity, this

“infinitely defractable, multipliable”\textsuperscript{259} deflection of culpability. The appropriation of the image of Trayvon Martin’s vulnerability works, first, to caricature the act of violence engendered by that vulnerability, thereby separating the body itself from the discourse about the body, from the debate about the parameters of self-defense. Then the erasure of race from the image works to neutralize any discussion of racial disparity and, indeed, shifts the image from “black victim” to “white victim.” Which is, of course, the same tactic used by those who claim “reverse racism” and “race-baiting.” A post in response to a BreitbartTV segment on “Trayvoning” underscores the larger strategy: “Isn't "Trayvonning" beating someone's head against a concrete sidewalk in an attempt to murder someone?” asks “zmrcleanz,” referencing Zimmerman’s account of the incident; “★FALCON★” contends that “Trayvon and [sic] Martin got what they deserved. The whole skittles and Ice Tea story is nothing but cover for a marauding blax youth tearing through a neighbor [sic] looking for trouble and he found it. Thank goodness he won't be another blax career criminal. There will be no future victims for Trayvon, the menace.”\textsuperscript{260} Instead of debating racial disparities in the application of self-

\textsuperscript{259} Jean Baudrillard, from “The Precession of Simulacra” in \textit{The Norton Anthology of Theory and Criticism} (Boston: W.W. Norton, 2001), 1738.

\textsuperscript{260} http://www.breitbart.com/video/2013/07/13/trayvonning-trend-hits-social-media/ (accessed 2/22/15)
defense law, the images leave us with vulnerable white victims, incapacitated by the depravity of their attackers. Reinstated as victims of those who would “tend to [their] ruin or damage,” the “Trayvoners” and their advocates retain the immunity of privilege by reimagining — re-imaging — “election” as the “right to be.”

**DEFENCE:** If no man hath right to our lands, our government priviledges etc., but by our consent, then it is reason we should take notice of before we conferre any such upon them.

Indeed, this repositioning goes beyond mere appropriation — they are not just taking (notice of) something for their own use, but rather participating in something on Baudrillard’s spectrum of simulation. According to Baudrillard, “to dissimulate is to feign not to have what one has. To simulate is to feign to have what one hasn’t.”

Cases like George Zimmerman’s straddle the line between feigning presence and feigning absence. On the one hand, they feign the absence of privilege; on the other, they feign the presence of incapacity. As the Antinomians recognized, Puritanism betrayed itself, reached the limit of its promise “[i]n a setting where saintly effects were feigned widely and well, [and] simulation has so overtaken reality that both the prestige and the evidential power of behavior were ebbing away, and deductions of a safe estate [election] from sanctified behavior seemed as fleeting as ‘songs in the Night’ or ‘Castles

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261 Winthrop, *Defence.*
262 Baudrillard, 1733.
Successful simulation is the death of “real” election, and the emergence of election as hyperreal image—cue the infinitely multiplying images of “Trayvoners.” Baudrillard notes: “Thus perhaps at stake has always been the murderous capacity of images, murderers of the real, murderers of their own model as the Byzantine icons could murder the divine identity.” These “Trayvoning” images mask the absence of theological election, even as they dissimulate the presence of incapacity in the secular elect. And in much the same way that Disneyland, according to Baudrillard, creates a nostalgia for the “real America,” or that “prisons are there to conceal the fact that it is the social in its entirety, its banal omnipresence, that is carceral,” so do Stand Your Ground laws participate in the simulation of theological election and its attendant incapacity to retreat: by simulating the persistence of a still-elect, “original” American community, they conceal the fact that the promise of the redeemer nation, the community of the elect, was always false. In the very attempt to make “real” that which was categorically immaterial, the Puritans “inaugurate[d] an age of simulacra and simulation, in which there is no longer any God to recognize his own, nor any last judgment to separate true from false, the real from its artificial resurrection, since everything is already dead and risen in advance.”

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264 Baudrillard, 1735.
265 Baudrillard, 1741.
266 Baudrillard, 1736.
A Peroration for Posterity

She was just a baby when the ground offered its first apple: a smooth pebble. I didn’t notice until her eyes widened with the feel of her tongue, her body stilled by speculation. Full-throated panic justifies my violent response, but her unruffled election to fish the pebble out of her mouth, and artfully plant it back in its gnomish community, planted me between fear and execution, not soothed but run aground. Some inbred, triune Puritan saw election in the overlap of possibility and outcome, as though strict notice were bulwark against damage. I understood — the ends justify the means, or, the peeling away of risk protects the body:

industry an embodiment,
of the people it supplants,
the text’s blank rivers justify
the towers in the ground,
commuters taking notice
of faces vanished not elect.

While this psephocracy counts its pebbles, the billeted forces of election rest listlessly in well-furnished headquarters, draped like Daisy’s body, vaporous against cheerful brick. A pebble choked is not worth notice. But in the chinks of mortar, a pregnant chad might seed a dogged plant. Try to remember: it’s the fire of September that fertilized fallow ground. I can’t summon the faith required to carve a city out of a hill, to justify the remove to an unknown that borders nothingness: “nothing” won’t justify bail, no matter how keenly felt. And then to be trapped in airless election — there is no way back or out once you’ve staffed, stabbed, stood your ground. There’s the essence of posterity: her body privileged over everybody, because it is mine, or reminds me of the indignities mine has suffered. Plant an alternative, but it is still the same theological strain. Will she notice?
No: we are on notice.
It is difficult to justify,
but we still water the houseplant.
I devour coverage of the election:
this small vanity, my body.
We’re all in communion with this ground:

the plantation elect,
the body justified,
the ground notices.
PRIVACY

A right to privacy looks like an insult got up as a gift [...] Preclude the alternatives, then call the sole remaining option ‘her choice.’

Catherine A. MacKinnon, “Privacy v. Equality”\textsuperscript{267}

Do and made are not voices. The language is never genuine choices.

Ron Silliman, “2197”\textsuperscript{268}

This book is dedicated to my mother, who as a young woman fought to preserve her independence in the face of her own era’s “feminine-mystique” backlash. And it is written in the hopes that the next generation of women might not have to fight another round.

Susan Faludi, \textit{Backlash}\textsuperscript{269}

\textsuperscript{268} Ron Silliman, “2197”, \textit{Age of Huts} (Berkeley: University of California Press, 2007), 193.
\textsuperscript{269} Susan Faludi, \textit{Backlash: The Undeclared War Against American Women} (New York: Crown, 1991), 564.
“Intimate Public”

The first new century since women’s “liberation” has, indeed, produced a steady flow of post-feminist celebratory laps—Hanna Rosin’s *The End of Men* and Maureen Dowd’s *Are Men Necessary?* each topped the bestseller lists—as well as a not-insubstantial number of hand-wringers about how men have been left behind, the crisis in masculinity, and so on. And yet none of my friends seemed to feel particularly liberated: one survived a violent stalker, another was boxed out of her financial services job during her difficult pregnancy and prolonged bedrest, and yet another went through a difficult divorce after realizing that her new husband expected to wield total authority over her. All of these women have graduate degrees, boundless energy and ambition, and consider themselves feminists. But the thing that really knocked all of us sideways was pregnancy and motherhood. Some of them steadied themselves by following the “rules” to the last crossed T; others, like me, could only see the oppression of sexual difference in every recommendation from the American Association of Pediatrics, the advice about how to eat during pregnancy, the debates about home or hospital birth, and the near universal insistence on exclusive breastfeeding, etc. Despite our different choices and viewpoints, differences that sometimes led to long periods of “not talking about it,” it was the only thing we could talk about. (I personally devoured and passed along the advice in posts on the Berkeley Parent’s Network and Park Slope
Parents, and despite the hopeful, gender-neutral names, most of the posters were moms. And judging from the proliferation of mommy blogs, lactation support groups, media coverage of the mommy wars, and parent advice networks, we weren’t the only ones. These outlets became both a location of conversation and, perhaps inevitably, an extremely effective vehicle for product placements—even the parent’s networks, which eschewed sponsorship, were filled with individual posts advising this product over another. Instead of writing my book or nurturing non-mommy-group friendships, I spent an insane amount of time researching the most “natural” bottle nipples, even as I railed against the imposition of a biologically-determined “women’s work” (yes—breastfeeding). What was the matter with me? And what was this sub-culture that suddenly seemed to consume...time, money, emotional energy, self-esteem, all of it? Because though all of these conversations purported to be supportive, they almost inevitably left me feeling alone.

So I did what any self-respecting pseudo-academic does in the midst of an identity crisis—I researched. I spent years combing through studies concluding that the benefits of breastfeeding had been exaggerated (why would “feminists” do that?), critiques of the cult of domesticity (were we still in that?), encomiums to the reproductive female body (I rejected essentialist feminism, but I appreciated the appreciation), before I found Lauren Berlant’s theorization of intimate publics:
An intimate public operate when a market opens up to a bloc of consumers, claiming to circulate texts and things that express those people’s particular core interests and desires. When this kind of “culture of circulation” takes hold, participants in the intimate public feel as though it expresses what is common among them, a subjective likeness that seems to emanate from their history and their ongoing attachments and actions.²⁷⁰

Berlant goes on to explain that the intimate public of “women’s culture” proposes identification “via modes of sentimental realism that span fantasy and experience and claim a certain emotional generality among women,” even as the participants and their stories “demonstrate diverse historical locations of the readers and the audience, especially of class and race.” It was clear to me, after being submerged in new motherhood, that this was both a sort of intimate public within an intimate public, and that it was also the core of 21st-century “women’s culture”—women might have cracked the glass ceiling, but we were still burdened with gendered baggage, the weight of which was obscured by the essentializing model of white, middle-class, stay-at-home motherhood. And this intimate public functioned exactly the way Berlant theorized: it “cultivate[d] fantasies of vague belonging as an alleviation of what is hard to manage in the lived real—social antagonisms, exploitation, compromised intimacies, the attrition

of life.” Commiserating about breast pumps veiled over the difference between pumping in an executive office and pumping in a bathroom stall or a janitorial closet; complaining about clueless fathers took the place of confronting the fact that maternity leave, however much we hold it up as a panacea, results in a sometimes intractable gendering of household duties. The realities of second shifts and mommy penalties were layered over by questions about the best stroller attachments, or advice for airplane travel with toddlers. BabyCenter.com, another online forum, is rife with posts that end with variations on “You got this, mama!” (I’ll save an analysis of the overuse of “mama” as a way to indicate a hip competence for another exasperated rant). And all of this girlfriend relatability doubly obscures the total absence of poor women in this intimate public—motherhood is universal, and so, then, are its imperatives, imperatives rendered almost non-negotiable by their paternalistic peddling by the “authorities”: the American Association of Pediatrics, the American Congress of Obstetricians and Gynecologists, the WHO’s “Baby-Friendly” Hospital Initiative (in my experience, “baby-friendly” translated to a higher likelihood of being harassed by a lactation consultant), the Maternal and Child Health Division of the U.S. Department of Health and Human Services, etc. To varying degrees, these institutions propagate ideals without acknowledging their costs and their burdens, and the disproportionate pressure they put on women across social spectrums. This is an intimate public in service of the hegemonic status quo.

271 Berlant, Complaint, 5.
The top-page results of Googling “intimate public motherhood” are primarily idealized breastfeeding photos, some unexpectedly sexualized (center), given breastfeeding advocates’ insistence that it is not sexual.

But what was it about “modes of sentimental realism” that allowed these fantasies of motherhood to persist? What I started to notice was that, in the midst of a fairly polemical diatribe about the irreplaceable bonding conferred by breastfeeding or the terrible cruelty of sleep-training, most posts backpedaled with some half-hearted acknowledgment of choice: “it’s your choice, but...,” “but you have to choose what’s right for you,” and “even if that means choosing ‘good-enough.’” What is implicit in these comments is that choices are moral, and that we belong to a community that supports the reification of choice, even as it judges the purity of those choices. And that morality doesn’t validate difference—economic, racial, biological—it just feels sympathy for it, as though it were something to be suffered through on the way to “an
aspirational site of rest and recognition in and by a social world.”272 If men are supposed to be irrelevant and the patriarchy is dead, then why are we still skulking around in private forums, that vehicle of public intimacy? If choice was supposed to be our liberation, then why are we bludgeoning each other with it? Or, worse, why hasn’t choice actually liberated us from motherhood’s inherently essentializing ideologies?

Here’s the explanation I’ve come up with: our sentimental Republican Mother married founding patriot Neoliberal Choice, and they live in Home-Sweet-Privacy. Or, since allegory can be annoying, I’ll try out an historic approach: it is political, systemic, and deeply internalized.

Second wave feminism introduced women’s health as a political issue and, for some, natural motherhood represented a way to reclaim the maternal body from a largely male medical establishment. But by the beginning of the 21st century, it became a widespread imperative—and one that the medical establishment embraced, both as a good faith response to, and as a more market driven co-opting of, the dissent voiced a generation before. As we near the 20-year watermark of the new century, this imperative has started to crack: many new mothers question the gendering of labor that natural motherhood demands, the moral weight that it imposes, and the supposed “scientific consensus” that drives its widespread enforcement. But the larger question is

272 Berlant, Complaint, 5.
how a movement that started with earnest feminist dissent morphed into what many women feel to be an “undue burden.” This essay argues that this absorption of demands for female autonomy into the persistent structure of sex inequality is a pattern that began with the Revolutionary-era privatization of female political participation, a pattern that repeated itself during both the first wave campaign for suffrage and the second wave campaign for reproductive rights. That is, we keep asking for equality, and we get maternity and the private sphere.

In lieu of the enfranchised female citizen, the Revolutionary era’s Republican Mother became the model of the ideal American woman, and sympathy her regulatory mechanism. This privatized her political influence; thus, privacy and maternity, from the revolutionary generation on, were the dominant characteristics of her civic profile. And whether or not a woman was a mother, the private, sympathetic influence granted to the Republican Mother established the boundaries of female political participation. But these characteristics weren’t constitutionally enshrined—continued disenfranchisement obviated the need. It does not seem an accident that just as campaigns for suffrage began to gain real momentum, the right to privacy was

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273 This term makes its most significant appearance in abortion case law, beginning with Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992).

274 Though “sympathy” and “sentiment” are sometimes used interchangeably in analyses of this mode, we might understand the difference to be aesthetic vs. affective; thus, sentimental texts were intended to evoke sympathy. Glenn Hendler provides a good introduction to the distinction in Public Sentiments: Structures of Feeling in Nineteenth Century American Literature (Raleigh, NC: University of North Carolina Press, 2001).
proposed, by Brandeis and Warren, as being located at the intersections of the First, Third, Fourth, Fifth, and Ninth Amendments, as read through the 14th Amendment, thereby providing legal protection for the traditional public/private binary in the face of increased pressure by the suffrage movement. And, significantly, suffrage was only achieved when proponents pivoted back to maternity as the central argument—as mothers, women had particular moral capacities and responsibilities that were not shared with men, and they could not fulfill these responsibilities without an ability to directly influence political decisions. So, under the mantle of motherhood, women got the vote.

Fifty years later, second wave feminism was handed the same compromise: not autonomy and equality, but a more limited control over maternity. Woman’s rights were constitutionally protected, via Griswold and Roe,275 not through the 19th amendment or an equal rights amendment, but through the right to privacy—a pivot that pioneering feminist legal scholar Catherine MacKinnon has famously called “an insult got up as a gift.” The metastasis of the natural motherhood imperative in the 21st century only underscores the extent to which women’s rights have been tied ever more securely to the founding values of Republican Motherhood: the sanctity of the private sphere (maternity leave and home birth), the mother-child bond (breastfeeding and attachment parenting), and the exercise of communal sympathy in place of public

political action (mommy blogs, lactation consultants, homebirth “communities,”
pediatric advice). Continuing to understand pregnancy, childbirth, and maternity as the
underpinning of sex equality, with privacy as its legal guarantee and sympathy as the
apogee of its expression, represents an iteration of—not a departure from—the
founding inequalities of a patriarchal republic.

What I’m saying is that natural motherhood is a bait and switch in the fight for
economic equality. We keep asking for equality, and we keep getting motherhood. And
we self-regulate, setting loose our sympathy on our sisters like a pack of police dogs. Or
at least strict chaperones. It may be the end of men, but the ideology of traditional
motherhood doesn’t appear to have noticed.
In March 1776, Abigail Adams wrote a letter to her husband, John, enjoining him to “Remember the Ladies” at the Constitutional Convention, to which he was Massachusetts’ representative. The subject under consideration was, of course, enfranchisement. English Common Law, on which both colonial law and these new American laws were based, addressed the question of women’s legal rights with the doctrine of coverture:

By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and cover, she performs every thing; and is therefore called in our law-French a feme-covert; is said to be covert-baron, or under the protection and influence of her husband, her baron, or lord; and her condition during her marriage is called her coverture.\(^{276}\)

Not surprisingly, Abigail entreated her husband to “be more generous and favourable to them than your ancestors. Do not put such unlimited power into the hands of the Husbands. Remember all men would be tyrants if they could. […] Why then, not put it out of the power of the vicious and the Lawless to use us with cruelty and indignity with impunity.”277 Men, she thought, could not be trusted with disinterested coverture, legal or otherwise.

Her husband responded with something less than serious consideration:

As to your extraordinary Code of Laws, I cannot but laugh. We have been told that our Struggle has loosened the bands of Government everywhere. That Children and Apprentices were disobedient—that schools and Colledges were grown turbulent—that Indians slighted their Guardians and Negroes grew insolent to their Masters. But your Letter was the first Intimation that another Tribe more numerous and powerfull than all the rest were grown discontented.-This is rather too coarse a Compliment but you are so saucy, I wont blot it out.

Depend upon it, We know better than to repeal our Masculine systems. Altho they are in full Force, you know they are little more than Theory.

We dare not exert our Power in its full Latitude. We are obliged to go fair, and softly, and in Practice you know We are the subjects. We have only the Name of Masters, and rather than give up this, which would compleatly subject Us to the Despotism of the Peticot, I hope General Washington, and all our brave Heroes would fight.278

Just tyrannical in theory, the real despot being the petticoat! Frustrated, and definitively not placated by his attempt to convince her of women’s tacit authority, Abigail relayed the contents of John’s letter to her friend Mercy Otis Warren, one of the most influential (if often uncredited) political writers of the Revolutionary era:

So I have helped the Sex abundantly, but I will tell him I have only been making trial of the Disinterestedness of his Virtue, and when weigh'd in the balance have found it wanting.

It would be bad policy to grant us greater power say they since under all the disadvantages we Labour we have the ascendency over their Hearts.279

278 Letter from John Adams to Abigail Adams, April 14th, 1776 (https://www.masshist.org/digitaladams/archive/e/letters_1774_1777.php)
279 Letter to from Abigail Adams to Mercy Otis Warren, April 27, 1776 (http://wps.prenhall.com/wps/media/objects/171/175199/06_abagai.HTM)
Sentiment, offered up as consolation prize, is met by sarcasm—Abigail is as saucy as ever. Warren’s response has been lost, but the subject did not die there. John Adams also addressed the issue of voting rights in a letter to James Sullivan, a fellow Massachusetts delegate to the Continental Congress. Sullivan, it seems, had raised the question of whether liberty demanded that all men, propertied or no, should be granted the vote. Adams acknowledges to Sullivan that “your idea, that those laws, which affect the lives and personal liberty of all, or which inflict corporal punishment, affect those, who are not qualified to vote, as well as those who are, is just.” But Adams, who in the same month laughed off his wife’s “insolent” suggestion, sees fit to respond with considerably less flippancy to Sullivan’s inquiry. The reason for women’s disqualification from enfranchisement, as Adams makes clear, is indeed a matter of legal property rights:

The same reasoning, which will induce you to admit all men, who have no property, to vote, with those who have, for those laws, which affect the person will prove that you ought to admit women and children: for generally speaking, women and children, have as good judgment, and as independent minds as those men who are wholly destitute of property: these last being to all intents and purposes as much dependent upon

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others, who will please to feed, clothe, and employ them, as women are upon their husbands, or children on their parents…

His paternalism earns him the title of Founding Father, indeed: he seems to be arguing that dependence and good judgement are mutually exclusive. And this, Adams asserts, has to do with the suggestibility of those whose independence is not buttressed by property:

Is it not equally true, that Men in general in every Society, who are wholly destitute of Property, are also too little acquainted with public Affairs to form a Right Judgment, and too dependent upon other Men to have a Will of their own? If this is a Fact, if you give to every Man, who has no Property, a Vote, will you not make a fine encouraging Provision for Corruption by your fundamental Law? Such is the Frailty of the human Heart, that very few Men, who have no Property, have any Judgment of their own. They talk and vote as they are directed by Some Man of Property, who has attached their Minds to his Interest.281

The dependent lack judgment completely – unmotivated by personal property, they have not the faculty, it seems, to discern between their own interests and the interests of

those upon whom they are dependent. What he is describing is a version of false consciousness, insofar as he understands “dependents” to be largely unaware of the influence exerted by their “masters.”

But though Adams may have articulated a sort of ur-notion of false-consciousness, his response was not a critique of (what we now call) hegemony, but rather a disarmingly avuncular apologetics of it. The danger is not the influence of women and children and the poor, for they haven’t enough judgement to exert real influence; it is, rather, the undue influence of any individual man. If the vote is extended to dependents, then there is no way to track or restrict influence, for the number of dependents is variable; if the vote is restricted to just these men, then “one man one vote” moderates power. His particular anxiety of political influence is directed at the aristocracy’s relationship to the bourgeois—in his imagined scenario, the very rich will have undue influence over the middle class by virtue of their greater


283 Though the first references to undue influence didn’t appear in case law until the 19th century, (Robert J. Scalise, Jr., “Undue Influence and the Law of Wills: A Comparative Analysis”, Duke Journal of Comparative & International Law [vol 19:41, 2008], 41-106) we see the beginnings of the anxiety that led to the legal concept in American law in Adams’ concern that elections could be victim to undue influence. The 1872 edition of California Civil Code § 1575 defines undue influence in a way that is consistent with Adams’ anxieties: “1. The use, by one in whom a confidence is reposed by another, or who holds real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him; 2. In taking an unfair advantage of another’s weakness of mind; and 3. In taking a grossly oppressive and unfair advantage of another’ necessities or distress” (http://www.americanbar.org/publications/bifocal/vol_35/issue_3_feb2014/defining_undue_influence.html).
accumulations of dependents, who all think they are acting in their own interests, even as they further those of their master.

So at the founding of American democracy, the argument over the vote was not about equality, but over influence, and the moderation and control of influence. This is the subtext of how we understand enfranchisement. With every step toward political enfranchisement of these “dependents,” the resolution always includes a compromise of influence, vicariously rendered. Black men finally won the right to vote under the sponsorship of white Christians, and were thus expected to “deserve” that patronage by adhering to white Christian behavioral norms; women won the right to vote under the guise of the moral superiority of the domestic sphere, not through any acceptance of their participation in public affairs; the working class get a shot at a bourgeois lifestyle by participating in capitalist consumption and literally buying into their further socioeconomic disenfranchisement; women are granted the right to control their own bodies not via the equal rights, but via privacy law. As Adams said, “Depend upon it, We know better than to repeal our Masculine systems […] rather than give up this, which would compleatly subject Us to the Despotism of the Peticoat, I hope General Washington, and all our brave Heroes would fight.” And fight they have. But again, Adams shows his hand, detailing a strategy as deceptive as any used by Washington against the British: “We dare not exert our Power in its full Latitude. We are obliged to go fair, and softly, and in Practice you know We are the subjects. We have only the Name of Masters.” In a deft rhetorical maneuver, Adams insists that the appearance of
power is in fact evidence of the opposite: men are masters in name only, in actuality subjects of the sentimental sex, the “better” half. How could one so “inferior” hold all of the power? And how could a Republican nation founded in liberty justify the disenfranchisement of women in a construct more sustainable than Adams’ theory of influence?

The political answer to this philosophical aporia is, in fact, the elevation of another sort of influence: maternal influence. In “American Feminine Ideals in Transition: The Rise of the Moral Mother, 1785-1815,” Ruth Bloch pinpoints the Revolutionary period as the point at which the American woman transitioned from Puritan “helpmeet,” a role primarily characterized in relation to a husband, to “Moral Mother,” a role that was understood to wield expanded moral and political influence. The helpmeet, that sturdy, pious “Goodwife,” was subsumed under the more hierarchal structure of paternal authority. Literary characterizations of colonial women “dwelt primarily on woman's relationships to God and man as Christian, wife, and social companion.” Motherhood “rarely drew literary attention,” largely because, as Bloch notes, “behavior for the most part evidently remained ascriptively controlled, dictated by custom passed down from

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one generation to the next without any felt need for written scrutiny. Inasmuch as mothering became a matter for literary treatment at all, it was far from idealized.\textsuperscript{286}

But as industrialization precipitated the “gradual physical removal of the father’s place of work from the home, […] childrearing responsibilities slowly became less diffused, more exclusively focused on mothers.\textsuperscript{287} And the reverse was true as well: “[t]hose whose husbands worked away from home could less directly assist their labor”\textsuperscript{288} and, thus, women’s labor became increasingly less connected to the economics of production. Thus, according to Bloch, “as women were relieved of much of their former economic role and at the same time left in primary care of children, motherhood understandably came to be a more salient feature of adult female life.”\textsuperscript{289} This economic shift led to a social shift: the woman’s role shifted from subordinate to parallel, and distribution of labor shifted from communal to public/private. And as women began to become more and more defined by motherhood, there appeared, for the first time, a substantial body of literature purporting to advise women on how to best execute their responsibility:

These works urged mothers to tend closely to their small children-not just to nurse them competently when sick, but to clothe them loosely rather than swaddle them, to keep them meticulously clean, to exercise them

\textsuperscript{286} Bloch, “Moral Mother,” 104.
\textsuperscript{287} Bloch, “Moral Mother,” 114.
\textsuperscript{288} Bloch, “Moral Mother,” 115.
\textsuperscript{289} Bloch, “Moral Mother,” 115.
regularly outdoors, to keep them on a special diet for years, and (some texts said) to feed them on demand rather than on schedule. Although we know next to nothing about actual childrearing practices, most of these admonitions seem aimed toward increasing the amount of attention paid by mothers to small children. Infant care came to be viewed as an exacting occupation, one requiring not only heightened concentration, but also special expertise. Tasks that had earlier been regulated by unwritten custom now began to be matters for extended analysis and deliberate, rational manipulation.290

Though Bloch doesn’t explicitly say this, it seems clear that removal of the husband from the home left a sort of vacuum of authority, a vacuum that was filled by these texts. While the texts certainly point to an intimation of inadequacy—women couldn’t be trusted on their own—they also open the door to a sort of separate, parallel sovereignty. And this sovereignty came to be increasingly justified by “nature.” While the Puritans had always inveighed against the use of wet-nurses, their reasoning stemmed from the belief that to avoid that particular duty was an offence not against the child, but against God.291 The Moral Mother, on the other hand, was encouraged to breastfeed as an expression of the superiority of maternal nature:

290 Bloch, “Moral Mother,” 111.
Now several writers contended that those who nursed babies wielded determining psychological influence, not so much through the milk itself (although the metaphor was on occasion employed) but, more significantly, through their personal interaction. Wet nurses, they argued, could not be trusted to implant desirable characters because they felt less affection for babies than natural mothers and because they might be mentally or morally deficient.292

Notwithstanding the obvious racial and class implications of this statement, this is the bridge to (white, affluent) influence—not only were mothers endowed by God with the appropriate physiognomy, but they were uniquely obligated to create character, direct moral development. And indeed, their natural temperament—virtuous, sensitive, benevolent—also uniquely suited them to this task.293 Women were increasingly characterized as not only personally virtuous, but also as the "conservators of morals" society-wide, due to their salutary influence on both men and children.294 Over the course of a generation, the moral superiority, and its attendant measure of influence,

that had previously been invested in men was given over to women, but under the mantle of motherhood. And this influence was understood to have far-reaching importance. William Buchan, the author of the manual *Advice to Mothers*, characterized the Moral Mother’s fingerprints as practically omnipresent:

> Everything great or good in future life, must be the effect of early impressions; and by whom are those impressions to be made but by mothers, who are most interested in the consequences? Their instructions and example will have a lasting influence and of course, will go farther to form the morals, than all the eloquence of the pulpit, the efforts of schoolmasters, or the corrective power of the civil magistrate, who may, indeed, punish crimes, but cannot implant the seeds of virtue.\(^{295}\)

It is hard to say whether this shift was a result of Republican ideology — in particular, Locke’s conception of women’s role in a Republic\(^ {296}\) — or in answer to the concrete failures of the American Republic to live up to this ideology, but the result is the same:


\(^{296}\) Linda Kerber understands Locke to have gone further than most other Enlightenment philosophers in defining a political role for women: “He [phrased] his most significant generalizations in the Second Treatise in terms of persons: the legislative body is composed of persons, the supreme power is placed in them by the people, ‘using Force upon the People without Authority ... is a state of War with the People.’ Women were included, presumably, among ‘the people,’ but they had no clear mechanism for expressing their own wills. Locke obviously assumed that women contributed in some way to the civic culture, but he was not very clear about what they might do were they to find themselves under a king who had forfeited their confidence.
as the Reverend William Lyman intoned, "Mothers do, in a sense, hold the reins of
government and sway the ensigns of national prosperity and glory, yea, they give
direction to the moral sentiments of our rising hopes, and contribute to form their moral
state."\(^{297}\)

This moral elevation of maternal duties justified, again, the subsequent theorization of a
kind of parallel citizenship—the political influence inherent in the vote was understood
to be equal to the vicarious influence rendered through the mother’s role as guardian of
moral sentiment. Founding Father Benjamin Rush put it this way:

> [Women] should not only be instructed in the usual branches of female
> education, but they should be taught the principles of liberty and
government; the obligations of patriotism should be inculcated upon
> them. The opinions and conduct of men are often regulated by the women
> in the most arduous enterprises of life; and their approbation is frequently
> the principal reward of the hero's dangers, and the patriot's toils. Besides,
> the first impressions upon the minds of children are generally derived
> from the women. Of how much consequence, therefore, is it in a republic,

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\(^{297}\) William Lyman, *A Virtuous Woman the Bond of Domestic Union* (New London: S. Green, 1802), 22; quoted in Bloch, Moral Mothers, 115.
that they should think justly upon the great subjects of liberty and
government!298

That is, the education of women would advance the virtues of male citizenship. We might understand this civic profile to be that of the “Republican Mother,”299 a term coined by historian Linda Kerber. Kerber argues that though “the great treatises of the Enlightenment […] provided so changed a framework for attitudes toward the state,” and wielded such influence over Revolutionary America, they largely reserved their contemplations for “mankind”; the philosophers of freedom offered no guidance on how women might think about their own relationship to liberty or civic virtue.300 Thus, it was left to “postrevolutionary ideology in America” to theorize and implement a “political role for women, accomplishing what the English and French Enlightenment had not.” And as John Adams made clear, the Founders were not “induced” to enfranchise women. Instead, equality was reconciled with coverture through the invocation of the same logic first put forth by John Adams in his letter to Sullivan: female influence was still safely presided over by the husband, the one with “judgment.” Rush, Judith Sargent Murray, and Susana Rowson,301 among others,

300 Kerber, “Republican Mother,” 196.
301 See especially Judith Sargeant Murray, The Gleaner (Boston: I. Thomas, 1798), III, 188-224, 260-65; Benjamin Rush, Thoughts upon Female Education, Accommodated to the Present State of Society, Manners and Government in the United States of America (Philadelphia: Prichard and Hall, 1787), reprinted in Frederick Rudolph, ed., Essays on Education in the
posited a model republican woman who was competent, literate, and temperate. But, as Kerber notes, her competence was “exercised within the confines of her family. The model republican woman was a mother.” Her service to “civic virtue” was rendered through personal influence—“she educated her sons for it; she condemned and corrected her husband’s lapses from it.” Thus her political participation was privatized. If influence is power, as Adams claimed, then this role was an improvement upon that of a woman subjected to monarchical tyranny—it justified a woman’s attention to politics by granting her a sort of “equality” of influence, if not of action. But when a maternal relationship is necessary for the exercise of that influence, then it is necessarily limited by the bounds of the maternal body itself. And it is measured by the maternal citizen’s ability to impart and embody virtue, a private virtue that was only translated into the public sphere through

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302 Copley also painted Paul Revere, among other famous patriots. Note the way in which the two men, the very picture of patriotic stoicism, look out past the family, their profiles pointing to something external; the woman, the mother, looks at the children. The imaging of parallel citizenship is striking.
maternity. Thus, female citizenship, whether or not the woman is actually a mother, is informed by the ideology of maternal influence.

We see an incarnation of the Moral/Republican Mother in other “respectable” female roles—teachers, charity workers, and ladies’ magazine writers, among others, were culturally understood as extensions of motherhood, temperamentally defined as nurturing, sympathetic, and morally virtuous. This is a condition that, despite enfranchisement and generally improving opportunities for women, continues to be imposed on the exercise of female influence: the virtues of the Moral/Republican Mother pervade contemporary debates about issues as varied as welfare, educational policy, and reproductive rights. The female citizen is, still, the embodiment of an uneasy compromise between the privatized virtues and values of the private sphere and the autonomies of the public sphere. Its persistence is simultaneously impressive and discouraging—a sort of leaded gloss, impervious to any attack more delicate than acid.

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303 Catharine Beecher, for example, exemplifies the ways in which the characteristics of the Moral Mother continued to be held up as the ideal for all women, whether they were mothers or not—Beecher was neither wife nor mother, but she both wrote about and lived by the precepts laid out by the Revolutionary generation. See Kathryn Kish Sklar, Catherine Beecher (New Haven: Yale University Press, 1973); Ann Douglas, The Feminization of American Culture (New York: Knopf, 1977); Sara Levitt, From Catharine Beecher to Martha Stewart: A Cultural History of Domestic Advice (Chapel Hill, NC: Duke University Press, 2002).
So what precipitated and continues to maintain this uneasy compromise? In *Revolutionary Backlash: Women and Politics in the Early American Republic*, Rosemarie Zagarri argues against the narrative of linear, if incremental, progress on women’s rights; instead, she demonstrates that, in fact, a small but powerful group of elite women were active (if not enfranchised) participants in the political process for the first two-score years of the Republic, but that by 1830, a ferocious backlash foreclosed upon both their continued influence and any possibility of sex equality. The pattern, then, is not linear but spiralic. Zagarri argues that this backlash was a result of both deliberate exclusion and the incidental consequences of political and social conditions, although all might be reduced to three major categories: party consolidation and the increasing conflict between parties; the ascendancy of a scientific (and pseudo-scientific) paradigm that emphasized biological essentialism over humanism, resulting in “scientific” support for the structural subordination of women and people of color; and the relentless activism of the print media in characterizing female political participation as inherently destabilizing to the fragile nation. Though Zagarri doesn’t reference Susan Faludi’s *Backlash*, it seems unlikely that Faludi’s characterization of the backlash against second wave feminism didn’t inform Zagarri’s contention that backlash is, in fact, a historical pattern — that we keep submitting to the same concessions, forgetting the same indignities, forgiving the same offenses. Faludi’s description of the most recent

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backlash might as well be applied to the resolution of women’s rights in the Revolutionary era:

But what has made women unhappy in the last decade is not their “equality” — which they don’t yet have — but the rising pressure to halt, and even reverse, women’s quest for that equality. The “man shortage” and the “infertility epidemic” are not the price of liberation; in fact, they do not even exist. But these chimeras are the chisels of a society-wide backlash. They are part of a relentless whittling down process — much of it amounting to outright propaganda — that has served to stir women’s private anxieties and break their political wills. Identifying feminism as women’s enemy only furthers the ends of a backlash against women’s equality, simultaneously deflecting attention from the backlash’s central role and recruiting women to attack their own cause.305

Substitute early 19th century notions of biological difference — “[there is] a natural and original difference between the mind of a woman and [that of] a man, as certainly as there is between their bodies”306 — for “infertility epidemic,” and the late 20th century backlash layers perfectly over the Revolutionary backlash. Of

306 Benjamin Rush, quoted in Zagarri, Backlash, 168.
course, it is hard to parse what constitutes “women attack[ing] their own cause.” Is aggression required, or just concession, resignation? I wonder what Abigail Adams thought the first time she saw John after his epistolary pat-pat on the head. Did she want to stab him with his own letter opener, or did she, disappointed, continue to love him, excuse his oversight? Did she, in a word, resign herself to the limitations of maternal influence, because it was better than nothing? And how many layers of concession does it take before it is a regression, a backlash? Her next letter to her husband begins with frustration (“I can not say that I think you very generous to the Ladies”), continues on to accuse him of hypocrisy (“whilst you are proclaiming peace and good will to Men, Emancipating all Nations, you insist upon retaining an absolute power over Wives”), hints at insurrection (“notwithstanding all your wise Laws and Maxims we have it in our power not only to free ourselves but to subdue our Masters, and without violence throw both your natural and legal authority at our feet”), but concludes the matter with a resigned couplet from Alexander Pope’s “Epistle to a Lady”:

"Charm by accepting, by submitting sway
Yet have our Humour most when we obey."
Within the context of the longer poem, it seems clear that Abigail resigned herself to being affective counterpart to her husband. The poem is a “portrait” of Pope’s friend, Martha Blount, looking at portraits of women in a portrait gallery. In comparison to these women—“Yet mark the fate of a whole Sex of Queens! / […] Worn out in public, weary ev’ry eye, / Nor leave one sigh behind them when they die”—Martha, and her likenesses, live on by virtue of their ability to merge with another: “She, who ne'er answers till a Husband cools, / Or, if she rules him, never shows she rules; / Charms by accepting, by submitting sways, / Yet has her humour most, when she obeys”. Indeed, Abigail closes her letter with a turn to the domestic and the filial:

> Our Little ones whom you so often recommend to my care and instruction shall not be deficient in virtue or probity if the precepts of a Mother have their desired Effect, but they would be doubly inforced could they be indulged with the example of a Father constantly before them; I often point them to their Sire

"engaged in a corrupted State

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See Ellen Pollak, “Pope and Sexual Difference: Woman as Part and Counterpart in the ‘Epistle to a Lady’, *Studies in English Literature, 1500-1900*, Vol. 24, No. 3, “Restoration and Eighteenth Century” (Summer, 1984), 461-481: “For all her variability, woman in Pope’s text invariably functions as at once a sign of her own lack and an alibi for the primacy of a masculine presence. She may usurp fictitious identities, may even pretend—like Atossa—to the tyrannical force of masculinity and burn herself out in the very passion by which she resists annihilation; or she may disappear "ladylike" inside the contours of another subjectivity; but identity is finally conferred on her only within the terms of a hegemonic coupling in which she is both a part and mirror, or counterpart, of a presence not her own.”
Wrestling with vice and faction.\textsuperscript{308}

Though she hints that his presence would render its own kind of desirable effect, it is in the realm of the State that he stands as example. Quoting Addison’s \textit{Cato} to a Republican could hardly fail to moderate any impression that she might be demanding an autonomy analogical to Pope’s “Queens.” She must have been disappointed that liberty was not equally meted, but she did not, in the end, overthrow male authority; insofar as she had any choice, she elected to mirror her husband’s public patriotism through private “virtue [and] probity”. Ultimately, it is harder for a wife to protest the injustices of a husband, the private inequalities of a marriage, than to protest a more abstract political inequality. And the genius of backlash is that it manages to characterize the objections as personal, an account that is harder to sustain within the walls of an intimate relationship. So the mechanism of backlash is affective—something that instigates guilt and recommends reconciliation with a kind, if occasionally thoughtless and supercilious, man. It could be worse—according to Samuel L. Mitchill, “under the mild influence of Christianity and the easy subsistence to be procured in our republican states, the condition of women is undoubtedly preferable to that of their sex

\textsuperscript{308} This quotation is from Joseph Addison’s \textit{Cato} (Act IV, Scene i)(1712), a play based on the events of the last days of Marcus Porcius Cato Uticensis, a Stoic whose resistance to the tyranny of Julius Caesar made him an icon of republicanism, virtue, and liberty. Addison’s play deals with such themes as individual liberty versus government tyranny, Republicanism versus Monarchism, logic versus emotion. It was a great favorite of American Revolutionaries—Patrick Henry’s “Give me liberty or give me death” (among other patriotic expressions) are attributed to the play. The prologue was written by…Alexander Pope!
in any part of the globe. They ought to know that Fredonia [the United States] is a woman's terrestrial Paradise. Here they are the rational companions of men, not their playthings or slaves.  

Why would an American woman need enfranchisement when she lived in a "terrestrial Paradise"? Or: why would she want equality when she has chivalry, maternity, influence? legal equality when she has the right to privacy? The demand for equality is always presented as a risk to personal happiness, the consequences of which might be overreaching and losing it all, like a fallen woman.

I’d like to suggest that the affective mechanism that figures freedom as a risk instead of a right is sympathy, that predominant literary mode of the Revolutionary era. Sympathy, and its literary vehicle, the sentimental novel, played a major role in the relatively sudden foreclosure of, and continued resistance to, full equality because it sited virtue in the private sphere. Though she doesn’t address sympathetic affect in *Revolutionary Backlash*, Zagarri suggests elsewhere that Scottish Enlightenment conceptions of the family, and Adam Smith’s ideas in particular, emphasized that sympathy, the “force holding society together,” was learned in the family. In his *Theory of Moral Sentiments*, Smith argued that the affection family members felt for one another was, "in reality, nothing but habitual sympathy." This sympathetic orientation was also,

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310 Rosemarie Zagarri, “Manners.”
according to Zagarri’s reading of Smith, where individuals practiced patriotism: “not
the selfless emotion of legend, but the product of habituated attachments to existing
social institutions, an appreciation of the interests extending beyond one's self.” Thus,
sympathy’s orientation was conservative, regulatory—a backlash.

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Zagarri, “Manners,” 196.
Sympathy

This regulatory affect finds its most compelling manifestation in the revolutionary era sentimental novel. For most of the 19th and 20th centuries, scholars held their noses at the melodrama and “feeling” that seemed to erupt—unchecked by either “reason” or “modesty”—from these novels, acknowledging them only as rather primitive, feminized historical artifacts of the Federalist period. But more recent scholarship has suggested that sentimental fiction was the affective mirror of political discourse in the new Republic. Winfried Fluck characterizes these various critical readings of the sentimental novel as passing through three major stages:

In the age of formalism, it was considered artistically inferior and illustrates an infant stage of American culture; in feminist criticism, it articulates disenfranchised voices and thus gains a subversive political potential; in recent political criticism, it is either a manifestation of Republican values of participatory democracy or of a nascent ideology of
liberal capitalism (including a particular gender politics) that subjects the reader to a hegemonial disciplinary regime.\textsuperscript{312}

Sparked by Cathy Davidson's classic study, \textit{Revolution and the Word}, the "first wave" (as it were) of sentimental literature's critical revision was part of the larger reclamation of women's literature. Davidson argues for the sentimental novel as a subversion of, in particular, the Federalist disenfranchisement of the American woman:

A number of novelists of the early national period turned the essentially conservative subgenre of the sentimental novel (with its fetishization of female virginity) to a subversive purpose by valorizing precisely those women whom the society had either overtly condemned (the fallen woman) or implicitly rendered invisible (woman as \textit{feme covert}).\textsuperscript{313}

But what Davidson read as a sort of empowerment, others read as depoliticizing: "A potential discourse of political perception and power became depoliticized as it was translated into a literary discourse of imaginative, privatized communication".\textsuperscript{314} Just as

\begin{itemize}
\item \textsuperscript{312} Winfried Fluck, "Reading Early American Fiction," \textit{A Companion to the Literatures of Colonial America}, eds. Susan Castillo and Ivy Schweitzer (Oxford: Blackwell Publishing Ltd, 2005), 568.
\end{itemize}
in Abigail Adams’s letters, and theorizations of maternal influence in general, these novels turn the politics of the nation inward; they are indeed a subversion, but one that transforms political discourse into epistles addressed to domestic virtue. Thus the characters—and readers—might be virtuous, but they were limited to private, rather than political, expressions. Politics subverted by morals. So any empowerment through virtue—or sympathy for fallen virtue—could only lead to political disenfranchisement, as the public to which women were rhetorically admitted wasn’t "a public in the rigorous sense of republicanism, and membership in it no longer connoted civil action".\textsuperscript{315} Instead of the public sphere, the characters in the early American sentimental novel inhabit an intimate public.\textsuperscript{316} Rather than subverting disenfranchisement through a discourse of dissent, the early American sentimental novel instantiates what happens to dissent in the American “republic.” So we can say that the recent turn toward political criticism has taken two divergent, though often intersecting tracks: the sentimental novel is either literary materialization of the Anti-Federalist case for individual liberty; or, exactly the reverse sentimental fiction as mirror of conservative Federalist values, in which a virtuous elite defends against an emergent ideology of individualism.


\textsuperscript{316} Indeed, Berlant notes that "women’s culture” was the first American intimate public (Berlant, \textit{Complaint}, 5.)
But these historicized readings of the early American novel’s politics often gloss over the ways in which both Federalists and Anti-Federalists, despite their egalitarian rhetoric— and the Anti-Federalists’ electoral success in the so-called “Revolution of 1800”— failed to address the institutionalization of disenfranchisement. Subsequent feminist critiques have built on Davidson’s theory of subversion by addressing the legacy— literary and political— of this silencing. What happens when the public is made private, intimate, when subversion is limited to domestic dissent and power becomes depoliticized? Elizabeth Barnes, in States of Sympathy, argues that the “feeling” so much in evidence in the sentimental novel becomes “sympathy,” a faculty which “allow[s] readers to imagine themselves both represented by and representing others, encouraging readers to participate in a fantasy of democracy that would fulfill its promise of equality by negating diversity in the cause of union.”

By inculcating the reader in the apprehension of the other through vicarious identification, the harnessing of sympathy ultimately collapsed the other into the self, thereby “reinforcing homogeneity.” And this emphasis on individual identification also had a sort of panoptic effect: it reduced the scope of feeling to the self, rendering sympathy a mechanism through which the reader was constantly gauging her own performance of the appropriate sentiment. Barnes argues that this is, essentially, an affective manifestation of the “uneasy relation between coercion and consent”:

318 Barnes, 4.
319 Barnes, 9.
[The] burgeoning number of novels written by, about, and ostensibly for women signals in part a growing interest in affective forms of disciplinary control. Liberal constructions of feminine sensibility play a key role in establishing both the methods and the motivations for these controls.\textsuperscript{320}

Drawing on Jay Fliegelman’s argument\textsuperscript{321} that the Founding was influenced by the replacement of “parental,” monarchical forms with a new Republican ethos of “familial” relations (they were “Founding Fathers” and “Republican Mothers,” after all), an argument that itself invokes Smith’s conception of sympathy as learned through family relations, Barnes pulls on the thread of sympathy, exposing its knitting together of patriarchal authority and sentimental coercion. And this gendered structure of political delimitation underscores “sympathy’s dangerous capacity to undermine the democratic principles it ostensibly means to reinforce”\textsuperscript{322} by creating a “democratic disciplinary agenda”\textsuperscript{323}. Thus sympathy, the defining affective mode of the post-Revolutionary era, generated a foundational pattern in which political ideals are invested in an abstracted male body even as political anxieties are negotiated through

\footnotesize{\textsuperscript{320} Barnes, 8.\
\textsuperscript{322} Barnes, 4.\
\textsuperscript{323} Barnes, 11.}
women’s material bodies: as with John and Abigail Adams, when the nation “Wrestl[es] with vice and faction”, she “Yet has her humour most, when she obeys”.

Recasting sympathy as an act of control instead of compassion is allied with another recent rereading—of the revolutionary “age of passion” as, instead, an age of intense grief. This distinction is, of course, more a mirroring than a difference, but the former is contained safely behind the glass of patriotism, while the latter is embodied; like sympathy, passion is idealistic, while grief is material, and often uncontrollable. Both the violence of the revolution itself, and the violent emotional force of the Founder’s betrayal of real equality provoked a grief unacknowledged by the dominant political discourses. Julia A. Stern, in *The Plight of Feeling*, argues that the early American sentimental novel is, essentially, a form of elegy:

Translating restrictive conceptions of political enfranchisement into the intimate grammar of domestic life, deploying courtship and marriage and seduction and abandonment as figures for lawful establishment and unrighteous usurpation, early American fiction registers the elaborate cost of the Framer’s vision. Such literature suggests that the foundation of the republic is in fact a crypt, that the nation’s noncitizens—women, the poor, Native Americans, African Americans, and aliens—lie socially dead and inadequately buried, the casualties of post-Revolutionary political foreclosure. These invisible Americans, prematurely interred beneath the
great national edifice whose erection they actually enable, provide an unquiet platform for the construction of Republican privilege[.]

So the dream of equality, violently foreshortened, becomes a constituent member of the walking dead. In turn, the grief engendered by the loss of enfranchisement, the domestication of dissent, is abstracted into “fellow feeling,” and “passion,” just as these spectral bodies are abstracted into fictional lessons in Republican virtue. Thus, sympathy transforms the "homicidal" quality of Republican sentiment into the early American novel’s fetishization of *appropriate* sentiment. And the legacy of these novels still shadows contemporary discourses of disenfranchisement. The complicated process of substitution that began with legal coverture, and then morphed into political disenfranchisement, sympathy, and the Moral/Republican Mother is, in the modern era, perpetuated in the updated rhetoric of privacy and natural motherhood. I’ll not wander away from sympathy in the early American novel here, but their haunting of contemporary America deserves, for the moment, a bookmark: the modern legal deployment of the right to privacy and the backlash constituted in the natural motherhood imperative are but palimpsests of these Republican-era substitutions.

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325 Stern, 20.
But — back to their Republican Mothers. *The Coquette*, a sentimental novel first published in 1797, is based on the true story of Elizabeth Whitman. It chronicles the courtship(s), seduction, and ultimate ruination of its heroine, Eliza Wharton. The novel is, like many other sentimental works of the era, epistolary. The collected correspondence alternates between three conversations: letters between the heroine, Eliza Wharton, and her female “chorus”\(^{326}\); letters between the Reverend Boyer, one of Eliza’s suitors, and his male confidant; and letters between Peter Sanford, another of Eliza’s suitors and a libertine, and his respective male confidante. Though both the conventions of courtship and the legal and political interpretations of coverture understand the choice to be which *man*, the rhetorical patterns in the letters chronicle a different deliberation. The concept that appears with the greatest regularity in Eliza’s letters is “freedom”; in the letters of her correspondents, as well as in the Reverend Boyer’s correspondence, the preoccupation is with “virtue.” Freedom is, again and again, rhetorically coupled with dissipation, loss, and death. The choice, then is between freedom and the loss of virtue.

But Eliza does not understand the terms, at least at first. Newly “extricated” from the “shackles” of an engagement “which parental authority had imposed”, Eliza is eager to “enjoy that freedom which [she] so highly prize [s].” “Let me have opportunity,” she begs her friend Mrs. Richman, “unbiassed by opinion, to gratify my natural

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\(^{326}\) This characterization of Eliza’s correspondents was first introduced by Cathy Davidson, but it has now become a critical commonality.
disposition”\textsuperscript{327}. When Reverend Boyer, a man “esteemed” by her friends, professes his ardor for Eliza, she responds unequivocally:

I have just launched into society. My heart beats high in expectation of its fancied joys. My sanguine imagination paints, in alluring colors, the charms of youth and freedom […] I recoil at the thought of immediately forming a connection, which must confine me to the duties of domestic life, and make me dependent for happiness, perhaps too, for subsistence, upon a class of people, who will claim the right of scrutinising every part of my conduct; and by censuring those foibles, which I am conscious of not having prudence to avoid, may render me completely miserable. While, therefore, I receive your visits, and cultivate towards you sentiments of friendship and esteem, I would not have you consider me as confined to your society, or obligated to a future connection […] You must either quit the subject, or leave me to the exercise of my free will.\textsuperscript{328}

In opposition to confinement, freedom. Instead of dependence, free will. And she imagines—fancies—herself to be in a position to enjoy this independence, to “gratify” the promises of freedom. Eliza’s language limns that of another Revolutionary woman:

\begin{flushright}
\textsuperscript{327}Hannah Webster Foster, \textit{The Coquette} (1797), Letter V, ed. Cathy N. Davidson (Oxford: Oxford University Press, 1987). \\
\textsuperscript{328}Foster, Letter XIV.
\end{flushright}
freed from the shackles of British Common Law and coverture; Abigail Adams, too, hoped that the new Republic would “Remember the Ladies.” Eliza even invokes the possibility of remaining a *feme sole* when she tells her friend Lucy Freeman that until she finds the “man of her choice” — that is, one who embodies the ideals of an egalitarian partnership — she will “continue to subscribe my name / ELIZA WHARTON”. But just as Abigail Adams’s hopes for enfranchisement were dashed, so are Eliza’s expectations of freedom gradually circumscribed by the ever-narrowing boundaries of her sphere. Under the guise of sympathy, her “friends” clamor more and more insistently for her to conform to the expectations of virtue, rather than continuing to claim free will; nevertheless, she continues to pursue autonomy and, as they warned, in the end she has only her grief. Though *The Coquette* might be read as a more progressive novel than many of the era because of its clear characterization of Eliza’s options as circumscribed, and its empathy for her efforts to remain unencumbered, the sympathetic orientation of her friends pull it back into the orbit of regulatory sentiment. They feel sympathy for her situational grief, a grief precipitated by the loss of virtue, in order to deny empathy for the pain of her disenfranchisement.

Indeed, Eliza’s friends never seem to share the narrator’s empathy — from the beginning, it is clear that they understand freedom and dissipation to be coterminous.

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329 Foster, Letter X.
330 See, for example S.S.D. K. Wood’s *Amelia* and even Susana Rowson’s *Charlotte Temple*. 
In only the second letter, Eliza, writing to Lucy Freeman,\(^{331}\) notes that she is feeling invigorated by her new freedom to “mix in the active scene and busy pleasure of life,” but then acknowledges Lucy’s previous letter, or “your moral lecture, rather; and be assured my dear, your monitorial lessons and advice shall be attended to.” But Eliza\(^{332}\) pushes back against Lucy’s apparent warning against coquettishness, saying that she thinks “those airs […] deserve a softer appellation; as they proceed from an innocent heart, and are the effusions of a youthful, and cheerful mind.”\(^{333}\) But the “monitory lessons” are not themselves dissipated, but rather multiplied — Mrs. Richman, Eliza’s hostess, replies to Eliza’s plea to “let me have the freedom which I so highly prize” with another monition:

> Of such pleasures, no one, my dear, would wish to deprive you. But beware, Eliza!—Through strowed with flowers, when contemplated by

\(^{331}\) Lucy’s maiden name, Freeman, seems especially significant when compared to her eventual married name: Sumner. The symbolism of “Freeman” is obvious; Sumner derives from an occupational surname for an official who was given the responsibility of ensuring that witnesses appeared in court when required to do so, a "summoner". The name derives from the Middle English "sumner, sumnor", itself derived from the Latin verb "submonere", to remind discreetly.

\(^{332}\) “Coquette to Suffragette” anti-suffrage poster: http://womansuffragememorabilia.com/wp-content/uploads/2012/08/P1010015.jpg

\(^{333}\) Foster, Letter II.
your lively imagination, it is, after all, a slippery, thorny path. The round of fashionable dissipation is dangerous. A phantom is often pursued, which leaves its deluded votary the real form of wretchedness.

Mrs. Richman’s sympathy, as well as Lucy’s, functions as a behavior corrective for both its subject and object—when she says that “no one would wish to deprive” Eliza of innocent freedoms, she is also reinforcing the appropriate limits she has applied to her own decisions. These limits are not, in this formulation, a deprivation. But real equality is “a phantom often pursued,” a pursuit that leads inevitably to “the real form of wretchedness”: dissipation. This regulatory logic permits the substitution of one for the other, and thus a sympathy for innocent freedoms is also a warning against equality, figuring it as too great a risk. Eliza, relaying this scene in a letter to Lucy Freeman, responds:

Something seemingly prophetic in her looks and expressions, cast a momentary gloom upon my mind! But I despise those contracted ideas which confine virtue to a cell. I have no notion of becoming a recluse. Mrs. Richman has ever been a beloved friend of mine; yet I always thought her rather prudish.\textsuperscript{334}

\textsuperscript{334} Foster, Letter V.
For a moment, Eliza feels a premonition of the grief she will feel when both her freedom and her virtue become the property of her friends’ sympathy. But she quickly brushes it aside, believing, instead, that avoiding confinement—the contractions of domesticity—might still be possible. Prudish or not, however, Mrs. Richman is repeatedly presented as an alternative embodiment of Republicanism—the Republican Mother. Mr. Boyer’s friend, Mr. Selby, relates an incident in which Mrs. Richman appropriately expressed her interest in the “affairs” of the nation:

We think ourselves interested in the welfare and prosperity of our country; and, consequently, claim the right of inquiring into those affairs, which may conduce to, or interfere with the common weal. We shall not be called to the senate or the field to assert its privileges, and defend its rights, but we shall feel for the honor and safety of our friends and connections, who are thus employed. If the community flourish and enjoy health and freedom, shall we not share in the happy effects? if it be oppressed and disturbed, shall we not endure our proportion of the evil? Why then should the love of our country be a masculine passion only? Why should government, which involves the peace and order of the
society, of which we are a part, be wholly excluded from our observation?

Mrs. Laurence made some slight reply and waved the subject. The gentlemen applauded Mrs. Richman's sentiments as truly Roman; and what was more, they said, truly republican.\footnote{Foster, Letter XXIII.}

Women will not assert any privileges, nor will they defend their rights, but they will observe and feel, share, enjoy and love along with their male counterparts. They might admit to a passion for their country, even as they only claim the right to inquire, not participate—this is sympathy, too, inasmuch as sympathy is vicarious experience.

Sympathy allows for participation \textit{and} regulation: women could simultaneously “feel” the privileges of freedom, be “truly republican,” even as their behavior was regulated through the sympathetic experience of the “wretchedness” and “dissipation” engendered by “mix[ing] in the active scene” of freedom’s construction. And after such a convincing oration of influence, Mrs. Richman appropriately locates its purest expression in the domestic:

How natural, and how easy the transition from one stage of life to another! Not long since I was a gay, volatile girl; seeking satisfaction in fashionable circles and amusements; but now I am thoroughly domesticated. All my happiness is centered within the limits of my own
walls; and I grudge every moment that calls me from the pleasing scenes of domestic life. Not that I am so selfish as to exclude my friends from my affection or society. I feel interested in their concerns, and enjoy their company. I must own, however, that conjugal and parental love are the main springs of my life.336

Like a good Republican Mother, Mrs. Richman turns from the public to the private to express her “love of country.” But for Eliza, as she told Mr. Boyer, domesticity is dependence, subsistence, and misery, and she remains equivocal about “forming a connection.” Nevertheless, Mr. Boyer, the Reverend, and Mr. Sanford, the libertine, emerge as her most persistent suitors, though only the former avows his ambition to marry her. Despite Eliza’s wariness, her friends are firmly in support of Mr. Boyer. When Mrs. Richman inquires as to the progress of their courtship, Eliza relates the conversation in a letter to Lucy:

I related to her the conversation, and the encouragement which I had given to Mr. Boyer. She was pleased; but insisted that I should own myself somewhat engaged to him. This, I told her I should never do to any man, before the indissoluble knot is tied. That, said I, will be time enough to

336 Foster, Letter XLIII.
resign my freedom. She replied that I had wrong ideas of freedom, and matrimony; but she hoped that Mr. Boyer would happily rectify them.337

Boyer, it turns out, was only too happy to “rectify” Eliza’s misconceptions. In a letter to his friend, T. Selby, Boyer relates that he “then attempted to convince her of her mistaken ideas of pleasure; that the scenes of dissipation, of which she was so passionately fond, afforded no true enjoyment.”338 Eliza remembers his intrusion differently:

He appeared a little concerned at my taste for dissipation, as he once termed it. He even took the liberty to converse seriously on the subject. // I was displeased with his freedom; and reminded him that I had the disposal of my own time, as yet; and that while I escaped the censure of my own heart, I hoped that no one else would presume to arraign it.339

It is worth noting that, of the many times the word “liberty” is used in the text, the preponderance of them are in reference to either Mr. Boyer or Mr. Sanford taking or having liberty in relation to women, mostly Eliza. Nevertheless, Eliza still presumes herself autonomous. This proves to be more than Mr. Boyer can square with his notions

337 Foster, Letter XIV
338 Foster, Letter XXXIX,
339 Foster, Letter XXXVIII,
of virtue, and he addresses a missive to her in which he “dissolve[s]” their “connection,” while also taking the “liberty” to, once again, address her misconceptions:

I address you as a friend; a friend to your happiness, to your reputation, to your temporal and eternal welfare. I will not rehearse the innumerable instances of your imprudence and misconduct, which have fallen under my observation. Your own heart must be your monitor! Suffice it for me to warn you against the dangerous tendency of so dissipated a life.\textsuperscript{340}

Eliza, finally, appears subdued, though we don’t hear this from her. For concomitant with her dawning realization that her freedom is but a “phantom” is her gradual epistolary “coverture” by her sympathetic friends. As has been noted by numerous Foster scholars, Eliza’s volubility in the first half of the novel gives way to silence in the second half, an absence for which her friends compensate with much sentiment and sympathy. Writing to Lucy Sumner, Mrs. Richman is the one to convey Eliza’s chastening:

I observed to Eliza, as we rode, that with her natural and acquired abilities, with her advantages of education, with her opportunities of

\textsuperscript{340} Foster, Letter XL,
knowing the world, and of tracing the virtues and vices of mankind to
their origin, I was surprised at her becoming the prey of an insidious
libertine […] Your surprise is very natural, said she. The same will
doubtless be felt and expressed by every one to whom my sad story is
related. But the cause may be found in that unrestrained levity of
disposition, that fondness for dissipation and coquetry which alienated
the affections of Mr. Boyer from me. This event fatally depressed, and
enfeebled my mind. I embraced with avidity the consoling power of
friendship, ensnaringly offered by my seducer[.]³⁴¹

Preyed upon, unrestrained, alienated, depressed, enfeebled, ensnared—this is not the
Eliza who asserted her freedom. But then, it isn’t Eliza—her friends are speaking for
her, and this is their sympathetic rendering of her choices. In their telling, Eliza is indeed
aggrieved by loss, but of virtue—not freedom. And it is not just Lucy Sumner to whom
this chastening is addressed—her “sad story” is to be related to an expansive
“everyone.” Eliza’s transition from autonomous individual to sympathetic object has
commenced. Even her grief is eventually experienced vicariously. In a letter to Lucy
Sumner, Julia Granby, Eliza’s childhood friend, relates the response of Eliza’s mother to
her daughter’s distress:

³⁴¹ Foster, Letter LXVI.
My dear child, let me, by sharing, alleviate your affliction! Ask me not, madam, said she; O my mother, I conjure you not to insist on my divulging to night, the fatal secret which engrosses and distracts my mind! To morrow I will hide nothing from you. I will press you no further, rejoined her mamma. Chuse your own time, my dear; but remember, I must participate in your grief, though I know not the cause.  

What a choice—all that is left to Eliza is to choose when to consign her grief to someone else’s curation. The culmination of this scene underscores the appropriate response, by both her intimates and her readers, to Eliza’s grief:

Oh madam! can you forgive a wretch, who has forfeited your love, your kindness, and your compassion? Surely, Eliza, said she, you are not that being! No, it is impossible! But however great your transgression, be assured of my forgiveness, my compassion, and my continued love! Saying this, she threw her arms about her daughter’s neck, and affectionately kissed her. Eliza struggled from her embrace, and looking at her with wild despair, exclaimed, this is too much! Oh, this unmerited goodness is more than I can bear! She then rushed precipitately out of the room, and left us overwhelmed in sympathy and astonishment!

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342 Foster, Letter LXVII.
343 Foster, Letter LXVII.
Sympathy and astonishment: astonishment that Eliza could be “a wretch,” and sympathy for her forfeiture. These are, as Elizabeth Barnes notes “affective forms of disciplinary control,” and they are the only appropriate response to the grief of disenfranchisement. And because of the transsubjective nature of sympathy, the reader, too, is inculcated in the substitutive process: hope, disenfranchisement, grief, sympathy.

Elizabeth Whitman is said to have given the name “Eliza Wharton” when securing a room at the roadside tavern where she fled. Her seduction paralleled the drafting and ratification of the United States Constitution throughout 1787 and 1788; it was declared fully ratified on September 13, 1788. Whitman’s ordeal ended with her death in childbirth on July 25, 1788, after delivering a stillborn child. By September 11, 1788, the last word, registered in the (Boston) Independent Chronicle, was that her demise was “a good moral lecture to young ladies.”344 No doubt the fictionalization of her story was largely read within that context. But, in a subtle subversion that, perhaps, bears out Davidson’s reading of the text, Eliza makes one final attempt to control the narrative, an attempt that we can assume Foster meant to be layered over Whitman’s story as well. In her last letters, pseudo-posthumous epistles addressed to Julia Granby and Mrs. Wharton, to be opened after her flight into anonymity, Eliza asserts that she flees “not to conceal her guilt,” but to “escape the heart-rending sight of a parent’s grief,” and to

344 Quoted in Cathy N. Davidson, “Introduction” Coquette, viii.
avoid “becom[ing] a reproach and a disgrace for my friends.” Eliza, even in the midst of her despair, understands her responsibility to her friends, to their sympathy: she must be tragic in order to be sympathetic. Indeed, in a letter informing Lucy Sumner of Eliza’s death, Julia Granby proves out Eliza’s insight: “The drama is now closed! A tragical one indeed it has proved! // How sincerely, my dear Mrs. Sumner, must the friends of our departed Eliza, sympathize with each other; and with her afflicted, bereaved parent!” Nevertheless, she denies them the role of witness, denies them ownership over the details of her end: “I have no resolution to encounter the tears of my friends; and therefore seek shelter among strangers; where none knows, or is interested in my melancholy story. The place of my seclusion I studiously conceal; yet I shall take measures that you may be apprized [sic] of my fate.”345 Though she allowed her friends to sympathize with her in absentia, she tried to maintain control over the final account her stillborn hopes, of her grief. In the end, she remained autonomous, but it was death, not freedom, that secured her release from the confines of domesticity. Of course, they were too overwhelmed by sympathy to understand her last act as one of dissent.

345 Foster, Letter LXIX.
Dissipation is the process of becoming less, of slowly disappearing. Confinement, too, is a disappearance. For women of the new Republic, the “choice” was between erasure, as Eliza endured, or privatized influence, to which Abigail Adams resigned herself. Not freedom. And the enforcement of this disappearance was delegated to women themselves: first through a privatized discourse of virtue and, second, through the deployment of sympathy as a method of social control. It is easier, I think, to read persecution and dissent into a text from the distance of many centuries, and easier to castigate the perpetrators, too. It is also more edifying to recuperate a text than it is to admit that critical blind spots persist, and that we may not be much different—either as individuals or as representatives of liberal criticism in general—from John Adams or Lucy Sumner. Nevertheless, this surveillance of the domestic sphere, this enforcement of virtue, this public appropriation of grief under the auspices of personal sympathy doesn’t feel alien, but rather like looking at a picture of oneself ten years ago: the blush of youth is slightly more in evidence, but the basic physiognomy endures. Sentimental citizenship is still the dominant affective mode of our own era and, as Lauren Berlant argues, it continues to “traffic” in the notion that “a nation can be built across fields of
social difference through channels of affective identification.” She describes a process of identification that begins with the recognition of pain and ends with the reinforcement of “the hegemony of the national identity form”:

Sentimentality has long been the means by which mass subaltern pain is advanced, in the dominant public sphere, as the true core of national collectivity. It operates when the pain of intimate others burns into the conscience of classically privileged national subjects, such that they feel the pain of flawed or denied citizenship as their pain. Theoretically, to eradicate the pain those with power will do whatever is necessary to return the nation once more to its legitimately utopian odor.

[Sentimentality insists that] identification with pain, a universal true feeling, then leads to structural social change.

Except, Berlant argues, it doesn’t actually precipitate structural social change. (How galvanized was John Adams, for example, by his wife’s grief? Or the slave master by the pain of his “mulatta” child?) Instead, these “important transpersonal linkages and intimacies all too frequently serve as proleptic shields, as ethically uncontestable

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347 Berlant, “True Feeling,” 53. Note that “subaltern,” in Berlant’s construction, invokes Gramsci’s more general, as opposed to a specifically colonial, definition: someone who is underrepresented by hegemonic power structures.
legitimating devices for sustaining the hegemonic field.” 348 In this construction, pain is legitimated as a “true” feeling by those in power, whereby this ratification actually disempowers opposition within disenfranchised groups, because simple alleviation or recognition of individual pain (through media coverage, civil suits, or even simple acts of affection and support) is understood, via sympathetic identification, as collective “reparation.” Because if an individual recognizes and sympathizes with the pain of another, “feels their pain” as it were, they are recused from structural responsibility—this is the “proleptic shield” of sympathy. For Berlant, feelings, and painful feelings in particular, have become the “measure of structural injustice,” 349 a scale invoked by both the disenfranchised (in identity politics, for example) and by proponents of variations on patriarchal citizenship—its universal application is the mechanism of its durability. But while its deployment in counter-hegemonic identity politics might be, at best, unreliably effective, an exercise in structural stasis, modern sentimentalism’s adoption by advocates of “traditional family values” is regressive and, therefore, more directly comparable with post-Revolutionary sentimentalism:

The nation imagined in this reactive rhetoric is dedicated not to the survival or emancipation of traumatized marginal subjects but, rather, to

freedom for the American innocent: the adult without sin, the abducted and neglected child, and, above all, and most effectively, the fetus.\textsuperscript{350}

Berlant understands the fetus to be a “supernatural sign of national iconicity,” an “American to identify with” because “it organized a kind of beautiful citizenship, a politics of good intentions and virtuous fantasy.” This is a version of the virtuous fantasy that was projected—and protected—so sympathetically by Eliza Wharton’s friends. Indeed, their image of the new nation maps almost perfectly on to the pro-life movement’s representation of the fetus, (as related by Berlant): “an American […] not yet bruised by history: not yet caught up in the excitement of mass consumption or ethnic, racial, or social mixing, not yet tainted by knowledge, by money, or by war…[an American] that could not be said to be dirty, or whose dirt was[n’t] attribute[able] to the sexually or politically immoral.” Once again, the nation’s anxieties are mapped on to women’s material bodies: the challenge to patriarchal hegemony gets subsumed by questions of maternal influence, with the tension between freedom and dissipation manifested in the woman’s “right to choose” vs. a fetus’s “right to life.” And the sympathetic engagement with, and appropriation of, the physical pain of the American woman’s “undue burden”\textsuperscript{351}, via encomiums to painful choices, is accepted as political reparation enough. The proleptic shield of sentimentality is utilized by proponents of

\textsuperscript{350} Berlant, “True Feeling,” 55.

\textsuperscript{351} The Supreme Court’s decision in \textit{Pennsylvania v. Casey} used this phrase to cede control over when and how a woman could obtain an abortion back to the states, which resulted in the proliferation of legislative abortion restrictions in conservative states.
both rights, because the tension between autonomy and maternity is reduced to one painful experience. Instead of understanding the experience to be the final result of comprehensive structural inequalities, inequalities that compound over the course of a female life, this debate collapses the argument into one bounded by motherhood. Be free, or be a mother, but not both. 

Thus the maternal body is the point of transition from autonomy to influence, a space that is both physiologically liminal and institutionally symbolic. The feminist philosopher Rebecca Kukla contends, in keeping with my argument here, that the fetishization of the maternal body has its roots in precisely the same philosophy as Republican sympathy:

The Fetish Mother is capable of fulfilling what Foucault calls one of the “dreams” of the Revolutionary and post-Revolutionary era, namely that society can be reordered by the proper care of the bodies of its citizens and thereby ‘restored to original health.’ This is the work cut out for her body by Rousseau [...] As long as artificial forces don’t interrupt its perfect

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352 While the pro-choice movement certainly comes the closest to articulating a way in which woman can be free, be a mother, or both, it is not the pro-choice movement that informs the ideology of motherhood in practice. Once the choice to be a mother has been made, the natural motherhood imperative assumes primacy, and this is decidedly not oriented toward maternal autonomy, as I will show.
natural order, the body will produce well-ordered nature. Thus it must be protected from ‘unnatural’ penetrations and interventions.\(^{353}\)

Kukla’s Fetish Mother is *The Coquette’s* Mrs. Richman: unlike Eliza, she prevented ‘unnatural’ passions from penetrating her body, and thus from penetrating the body politic. She is “a regulative ideal,” “a guiding image of appropriate motherhood,” the “essence of ‘true’ maternity.” In contrast to the Fetish Mother is what Kukla calls the Unruly Mother: “easily penetrated,” she is a “volatile, fragile, contingent, appetitive being, with little resistance against temptation, craving, and the extremities of passion.”\(^{354}\) And far from being relics of the Republican past, Kukla argues that these same archetypes continue to inform our contemporary understanding of maternal bodies—we draw the line between “so-called ‘natural’ childbirth and its complement (‘unnatural’ childbirth? ‘artificial’ childbirth?) as we did two centuries ago, on the basis of whether the skin of the maternal body is penetrated or punctured by an alien instrument.”\(^{355}\) An unpentrated body is a virtuous body, still. A body that can resist the easy, feel-good temptations of an “alien instrument” — whether it is the “body” of a libertine or the penetration of the epidural needle, the dissipations of freedom or the freedom of formula—demonstrates a virtue worthy of representing (and perpetuating) a society reordered around “natural” citizenship. The fetishization of natural

\(^{353}\) Rebecca Kukla, *Mass Hysteria: Medicine, Culture, and Mother’s Bodies* (Lanham, MD: Rowman and Littlefield, 2005), 83.

\(^{354}\) Kukla, 83.

\(^{355}\) Kukla, 219.
motherhood that has taken hold of entities as varied as (essentialist) feminism and the American Association of Pediatrics is grounded, as Kukla argues, “not in postmodern feminism but in late Enlightenment Rousseauian sentimentalism.”

Like Mrs. Richman, the contemporary ‘natural’ mother, the space of whose fetishized body “includes her infant, which begins inside of her and is then sutured to her naturally through her breast and its milk, [...] is a public spectacle symbolizing the possibility of well-ordered human nature free from hysterical incoherence, artificial hybrids, or deformed monstrosity.”

Indeed, La Leche League—the primary shaper of the modern breastfeeding imperative—provides an illuminating example of how effectively the sentimentalized Fetish Mother co-opts dissent. Founded in 1956 by seven Catholic housewives from suburban Illinois, La Leche League was originally conceived of at a Christian Family Movement picnic. The founders named their new organization after a statue in St. Augustine, FL, called Nuestra Señora de La Leche y Buen Parto—Our Lady of Plentiful Milk and Good Delivery. The original Fetish Mother. Though the League’s core mission was breastfeeding advocacy, its emphasis on “mothers helping mothers,” seemed consistent with feminism’s emerging opposition to “scientific motherhood,” which was primarily characterized by a gendered power differential—male doctor advising (controlling) an inexpert mother. In Lactivism: How Feminists and Fundamentalists, Hippies

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356 Kukla, 218
and Yuppies, and Physicians and Politicians Made Breastfeeding Big Business and Bad Policy,\textsuperscript{357} Courtney Jung interrogates how feminist opposition to a paternalistic medical establishment became subsumed by a “natural motherhood” imperative that, instead of empowering women, reduced them to a fetish of maternal production. Jung notes that

[historians have argued that La Leche League caught on because it embraced many of the principles that galvanized a newly resurgent feminist movement. The League’s focus on what was natural, along with its general suspicion of the medical establishment, resonated with the era’s countercultural zeitgeist. In 1971, when the feminist Boston Women’s Health Collective […] published Women and Their Bodies [which was later republished as the canonical Our Bodies, Ourselves], one of the most influential and comprehensive critiques of the medical establishment to date, it seemed that La Leche League and modern feminism were roughly on the same page.\textsuperscript{358}

But other than their opposition to “scientific motherhood,” there was nothing countercultural about La Leche League:

\textsuperscript{358} Jung, 31.
They believed that women should have lots of children [...] and that a woman’s place was in the home, taking care of her family. They also believed that the well-being of babies depended first and foremost on maternal attachment and attention. Mothers were not only warned against relying on bottles, they were also advised to avoid other modern conveniences that could be used as “mother substitutes,” such as pacifiers, high chairs, baby carriages, and playpens. From the League’s perspective, good mothering was a full-time occupation.359

Indeed, the 1981 edition of The Womanly Art of Breastfeeding summed up the group’s opposition to working motherhood: “Our plea to any mother who is thinking about taking an outside job is, ‘if at all possible, don’t.’”360 In contrast, the only reference to breastfeeding in a coterminous edition of Our Bodies, Ourselves is in an aside, briefly recommending that women “call La Leche League if ‘your doctor is not helpful with nursing problems.’”361 This is because regaining control of our bodies is not the same thing as understanding their highest function as being in the service of something—someone—else. And it seems that the Boston Women’s Health Collective, at least, understood the distinction. But given the legacy of sympathetic disenfranchisement, it was perhaps inevitable—indeed natural—that “Remember the Ladies” got subsumed by

359 Jung, 32.
361 Jung, 32.
“remember the babies.” This is a powerful, and familiar, invocation, and it engendered an intimate public—which, in Berlant’s construction, is a whole market of consumers, for a whole range of products: scientific studies “proving” the benefits of breastfeeding; the lactation support industry (workshops, individual consultations, etc.), breastfeeding support merchandise (creams, soothing compresses, body pillows, teas and other herbs “known” to stimulate milk production), and even a range of products, like breast pumps and “natural” bottle nipples, meant to facilitate the infant’s consumption of breastmilk even in the event that (!!!) the mother returned to work. Though more recent studies have called the supposed benefits of breastfeeding into question, the ideology has metastasized into industry, and it is nearly as entrenched as Republican Motherhood itself.

So while second wave feminism’s focus on women’s health began as a rejection of paternalism, it became a vehicle for the fetishization of natural motherhood. Instead of registering dissent and enabling structural change, sentimental narratives co-opt the female “chorus” — early American and contemporary — by transforming the grief of disenfranchisement into a passionate defense of maternal influence, with each new iteration cloaking itself in virtue, passion, and — sometimes — even feminism. Sympathy is even more necessary to this process when the group you are regulating is also a group to which you belong. Because to feel for a subaltern group that is “other” requires a dramatically reduced capacity for dissociation than does the justification of your own group’s marginalization. This is, I think, why enfranchisement is consistently replaced with motherhood — what “good” mother could put her own hopes over her hopes for her child? This is autonomy figured in opposition to maternal responsibility, the regulation of the self disguised as selflessness.

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When I was pregnant, a friend gave me a copy of a book called *Home/Birth: A Poemic*.363 It is a collaboration between two poets, Arielle Greenberg and Rachel Zucker. Since I

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am also a poet, and I professed progressivism, and I was also about to give birth, she thought I would like it. Aside from a brief consideration of the slash in the title—did it indicate mutual exclusivity, like Y/N but not both? or was it inclusive, like s/he?—I didn’t actually read it until six months after/birth. By that point, I suppose, I had a perspective: I did not want to be a mother. Shouldn’t it be my choice?

Of course, I have given birth—twice, to two healthy children—so I am rather too late. But what I mean is that I didn’t want to be a Mother. I didn’t want all choices to be morally existential, and I didn’t want my body be freighted with moral choice, now that I was a mother. But these poets—these mothers, these advocates for mothers—seemed to disagree: “One woman I know says, “Having my baby at home was as important a decision as deciding to have a baby at all.” This is moral hyperbole, a statement divorced from actual tragedy—as though a conscious decision to create and be responsible for another human being could possibly be commensurate with the finite occasion of birth, however politicized. But the worst, or the most disorienting, part of this book was me: it was like looking in a mirror. Sanctimonious, truculent, sure, assuring. Though I hadn’t been so progressive as to plan a homebirth, I had—before my reeducation by the realities of birth, bodies, breasts, babies—looked down on women who weren’t “going natural” as either too selfish or too stupid (read: too privileged or too poor), too complacent or too timid (read: conservative or just politically ambivalent)

to make the “right” choice. My body was strong, I was strong. Birth was a feminist issue. Greenberg and Zucker agreed: “As a feminist, I believe that if women had real information, many more would choose homebirth.”

Yes: I have given birth. Twice. The most natural thing in the world, by all accounts. Indeed, proponents of natural birth invoke the whole history of human reproduction as justification for their position: childbirth is “a process as old as our species,” spiritual, magical, and even painless. But natural, too, is maternal and neonatal mortality: one study estimates that historical maternal death rates were in the neighborhood of 2.5 percent; perinatal mortality was 2.5 percent. Compounded, each individual birth carried a 7 percent chance of mortality for one of the two people involved; the lifetime

365 Greenberg and Zucker, 149-50.


367 “Unassisted childbirth” advocates make claims that labor, given the right choices, the right attitude, should be painless: “The fact is, many women don’t find birth to be painful or difficult. Call them lucky if you wish, but I tend to believe it has more to do with the attitude of the woman giving birth, and the people she has chosen [my emphasis] to surround her. If you interview a woman who has had an easy birth you may find she has a very relaxed attitude about her body and her sexuality. Perhaps she has always been this way, or maybe she has consciously worked at overcoming her fears and learning to trust her body. Either way, her babies are born with grace and ease.” (http://www.unassistedchildbirth.com/laborless-labors-painless-births/)


risk is 7 times the number of labors any individual woman underwent. But never mind—my mother did it naturally and so could I. And all evidence seemed to suggest that we’d evolved out of that period of mortal danger. This was a milestone, a ritual, not a risk. I just needed to be prepared, make informed choices. It was my first test as a mother.

H/B: Of course it affects the way you feel about your child. About your body. About motherhood. (117)

Before the birth, I’d bought books. Lots of them: What to Expect When You’re Expecting; Dr. Sear’s The Pregnancy Book; The Doula’s Guide to Pregnancy and Childbirth; The Well-Rounded Pregnancy Cookbook; BabyCenter Pregnancy; The Mayo Clinic Guide to a Healthy Pregnancy; The Natural Pregnancy Book; Gentle Birth Choices; Eating Expectantly…The list is actually excruciatingly more comprehensive, but there’s a representative sampling. And what I took away from this thesis-length reading list was that all of these “experts” purported to support women making “informed choices,” even as they inveighed against any particular practice that didn’t dovetail neatly into their program: “Whatever choices you do make for childbirth, reading this book will enable you to make them with your eyes wide open. You will discover that a hospital birth is far riskier than you thought and that a midwife-attended birth at home and in freestanding birth centers is
far safer than you thought, and so your range of options will increase.”

“Choice” obscured the polemics, as well as the implied judgment: if you make a bad choice, you will be alone with your risk. Nevertheless, I internalized the promise of volition, and ignored the veiled threat of reckoning: I had choices, and the choices I made would be a deeply significant projection of who I was. Of the identity I had chosen. Of my moral virtue.

Homebirth is the most committed version of natural childbirth, second only to unassisted birth—“freebirthing.” Freebirthing, too, is in the home, the home being the only place understood to be “free” from the oppressive paternalism of medicalized birth. As a feminist, this made intuitive sense. But either I wasn’t scared enough of the medical establishment—cold, tyrannical doctors, Nurse Ratcheds—or too scared of the unknown; either way, I compromised my commitment to birth-based dissent and just made sure that the hospital was certified as “baby-friendly,” respected birth plans, supported breastfeeding, and welcomed doulas.

H/B: I don’t want to scare you. (Fear has no good place in labor.) But the truth is, hospitals are not good places for women in labor and not good places for babies. I believe this. I believe this more than I’ve ever believed in anything other than my own children. (98)

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The identity I chose, however, was as disingenuous and contradictory as the books’ profession of impartiality. My pregnancy would be totally organic and healthy—“Remember, everything that you eat, your baby eats, too!” Except for the wine. And the sushi. I was going to give birth in a hospital, but with a doula. I worried about the baby, but it felt like worrying about a fish, nevertheless. I would exclusively breastfeed, except it seemed unfairly gendered. I wanted a baby, but pregnancy felt like a gross imposition on my singularity. I couldn’t decide between what seemed right, and what seemed real. Three days before my daughter was born, I sat in curtained room, bouncing on a birthing ball because I could no longer walk. The rhythm of the movement, the darkened periphery, and an embarrassingly emotional response to One Republic’s “Good Life,” gifted via iTunes by my sister the day before, set me into a sort of pacific trance. Little Scarlett was almost here, and I would be the most perfectly natural mother, and she would enter the world in a gentle, empowering corona. But somewhere in the middle of it, a flutter of self-awareness hovered peripherally: I was surprised that it was even possible that someplace in me was lodged a kernel of sentimentality, of naturally-induced maternal feelings, despite the utter resentment with which I’d endured morning sickness, migraines, good-natured strangers, and mild incapacitation. Normally politically skeptical, I was nevertheless in thrall to the rhetoric

What to expect (I think)
of natural birth, and I’d devoted an entire pregnancy to claiming its promises. Labor exposed the difference between true volition and circumscribed experience.

My copy of Home/Birth is tagged and tagged with marginalia, the indignation of personal betrayal: it said everything that I knew to be untrue about my own experience, and it was all the more enraging because I had believed most of the arguments until they revealed themselves, Oz-like, to be more polemic, as it were, than fact.

H/B: When a woman tells you that her baby would have died without the hospital interventions she had, how can she know that? No self-respecting modern woman wants to believe she was duped. (59)

The form of Home/Birth, as with so many sentimental novels, is epistolary, emails traded back and forth, although the email-shaped pinging has been stripped away, edited, so the voices integrate, become a chorus. It feels relentless. When I was twenty, I read The Coquette for the first time, and it felt relentless, too. I have a note in the Home/Birth margins to that effect—that the phenomenogy of both texts was the same. Or similar. Except that in Home/Birth virtue is maternal instead of sexual, and there is polemic instead of “discourse.” Poemic. That’s their new word—I liked it. Polemic comes from the Greek polemos: war. I wrote in the margins, wrote into the war. But it was still in private. I finished the book, except for the afterward. I couldn’t read any more, but I talked about it all the time, made them into monsters. The shaming. The essentializing.
Birth was a total of thirty-seven hours. Out of a life. I don’t want sympathy. I just don’t want my whole experience of motherhood to be reduced to an essentialized body—no self-respecting modern woman wants to believe she was duped. “I don’t want to scare you, but…”

H/B: You have your baby and you are a goddess full of power. You are tired but not scared, not alone, not cut open and tied down. You have a strong body and good breasts. (85)

KUKLA: The Fetish Mother is capable of fulfilling what Foucault calls one of the “dreams” of the Revolutionary and post-Revolutionary era, namely that society can be reordered by the proper care of the bodies of its citizens and thereby ‘restored to original health.’

If the sentimental novel was the absorption of the grief of political disenfranchisement by an empassioned advocacy for the virtues of the private sphere, then Home/Birth is a sentimental fiction—a remove to the private (home) protects against further disappointment, but it doesn’t change the structure of the public (hospital). And, like the sentimental novel, it is a cautionary tale about predators (doctors and nurses) and the consequences of lost virtue (medical intervention). It uses sympathy for “fallen” women to regulate the behavior of the readers. It insists that the maternal body is the site of virtue protected or forfeited. Though it specifically focuses on one “event,” it is an event that figures as the fulcrum on which the virtue of the mother balances.
In contrast to pure volition, there is the susceptible body. Like virginity in the sentimental novel, *Home/Birth* idealizes purity and demonizes penetration:

H/B: A good homebirth is the one where no one puts anything inside your vagina. This is how you avoid infection. (115)

They think they can do it better than God. There are strangers coming down the hall and putting their fingers and strange instruments in her vagina. They think they can improve on nature [...] // Now, writing it, it makes me cry. (109)

There is the implication here that medical “penetration” is more than just a “birth choice” — it is a gross impiety. Infected, stripped of street clothes and virtue, the mother who births in a hospital represents an offense against God. And the perpetrators, these “strangers,” are practically figured as rapists. The excess of passion here is as palpable as Eliza’s friends’ expressions of horror at Eliza’s unchaperoned turn around the garden with Major Sanford, and also as hyperbolic. And while the foreclosure of Eliza’s autonomy was indeed something to grieve, this is not where they directed their sympathy. The grief and sympathy expressed in *Home/Birth* is similarly misdirected:

H/B: When I think of all these women with their new incisions shuffling down the halls of the hospital, dragging their IV poles, wearing those terrible hospital
gowns that never really close in the back and going to try to nurse their babies—
it’s like a horror movie. (37)

Of course, “these women” were seduced, by the surgeons, by the epidural, and even by
the space itself—and look what’s left of their bodies: public exposure, shame. They
made bad choices. Watch their horror, sympathize with them, but don’t be there for
them.

Do you think you’ll ever be a hospital doula again, or would you feel like a
traitor to the cause? (45)

The expression of sympathy is not meant to effect any real change, but rather to provide
a narrative structure for assertions of benevolent superiority. It is like wringing our
hands about segregated schools, but refusing to send our children to schools with “low
test scores.” And as Berlant notes, sympathy “operates when the pain of intimate others
burns into the conscience of classically privileged national subjects, such that they feel
the pain of flawed or denied citizenship as their pain.” Telling stories about the anguish
of others has the effect of aggrandizing an image of compassion while simultaneously
distancing oneself from the actual experience of pain.
COQUETTE: Oh, my friend! I have a tale to unfold; a tale which will rend every nerve of sympathizing pity, which will rack the breast of sensibility, and unspeakably distress your benevolent heart. (Letter LXVI)

H/B: Sometimes I think I can’t bear it. Not the labor but the stories about bad births. (79)

Not their own pain, but “hers.” They’ve figured their own labor as something else—an example for “these women,” regulating their own possible future behavior by telling stories about the pain of others. This is where sympathy begins to neutralize dissent:

H/B: Did I tell you… (165)

BERLANT: “important transpersonal linkages”

Tell me again… (35)

BERLANT: “intimacies all too frequently”

Diana’s story: First she went to an OB… (166)

BERLANT: “ethically uncontestable legitimating devices”

I could listen to birthing stories all day… (166)

BERLANT: “proleptic shields”

Tell me again… (72)

BERLANT: “sustaining the hegemonic field”
As Julia Barnes notes, this sentimental storytelling is not merely an exercise in female comraderie: “The burgeoning number of novels written by, about, and ostensibly for women signals in part a growing interest in affective forms of disciplinary control. Liberal constructions of feminine sensibility play a key role in establishing both the methods and the motivations for these controls.” In both the sentimental novel and in *Home/Birth*, storytelling is a way of broadcasting narratives of both “virtue rewarded” and cautionary tales, the intended result of which is regulatory.

H/B: There are bad stories and then there are bad stories. / This is the worst. / She is an undercover agent in scar tissue. // Meanwhile, in twilight, break her, pit her. /She is strapped down. Won’t she drown? (95)

This comparison of the hospitalized pregnant woman with the victim of water torture is, at first, compelling—except that then, in rereading, the emphasis shifts: (why) won’t she drown? And the imperative—who is the subject? Mostly, sympathy needs a victim. It is easy to feel pity, and pity facilitates judgement:

*COQUETTE:* Happy would it have been, had she exerted an equal degree of fortitude in repelling the first attacks upon her virtue! But she is no more; and heaven forbid that I should accuse or reproach her! (Letter LXXIII)

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372 Á la Richardson’s *Pamela; or, Virtue Rewarded*, the founding mother, as it were, of sentimental novels.
H/B: And I don’t want to judge but eight women I know recently ended up with c-sections. Only one managed to breastfeed for more than a few weeks, and they all wanted to. / Who are the villains here? (43)

They don’t want to “reproach” or “judge” but…it is actually the whole point. Judgment is inseparable from sympathy—in order to feel for her, you have to control yourself, be too horrified by the horror of her experience to countenance being her. But this isn’t particularly supportive or communal, so the judgment of other women is often disguised as a condemnation of the villains—the doctors, the libertines—who force these women into public spaces, who tempted these poor women to relinquish their virtue:

H/B: Have you heard of tokophobia, the fear of giving birth? Tokophobia has only been in the psychiatry books for the last few years. And before that, for hundreds of thousands of years… / Fuck the doctors. Fuck the hospital. (71)

COQUETTE: Yet, in what language shall I express my abhorrence of the monster, whose detestable arts have blasted one of the fairest flowers in creation? I leave him to God, and his own conscience! Already is he exposed in his true colors! Vengeance already begins to overtake him! His sordid mind must now suffer the deprivation of those sensual gratifications, beyond which he is incapable of enjoyment! (Letter LXXIII)
But despite the passionate denunciations of these fearful “monsters,” sympathy does not return lost virtue, nor does it justify or reframe “bad” choices as autonomous choice. Fallen is fallen, whether an intimate public weeps over her laboring body or not.

The alternative to this grief and shame is, of course, motherhood. But not compromised, penetrated motherhood:

H/B: Of course a woman who had a cesarean birth can love her baby. But to say it makes no difference how the baby is born: I won’t say that. (10)

COQUETTE: Soon shall I be insensible to censure and reproach! Soon shall I be sequestered in that mansion, "where the wicked cease from troubling, and where the weary are at rest!" […] The little innocent I bear, will quickly disclose its mother’s shame! (Letter LXVI)

No—virtuous motherhood:

COQUETTE: How natural, and how easy the transition from one stage of life to another! Not long since I was a gay, volatile girl; seeking satisfaction in fashionable circles and amusements; but now I am thoroughly domesticated. All my happiness is centered within the limits of my own walls; and I grudge every moment that calls me from the pleasing scenes of domestic life. Not that I am so selfish as to exclude my friends from my affection or society. I feel interested in their
concerns, and enjoy their company. I must own, however, that conjugal and parental love are the main springs of my life. (Letter XLIII)

H/B: I keep thinking about the Loretta Lynn song “One’s on the Way.” One needs a cookie and one needs a huggin’ and one’s on the way. Then I feel like a farm wife and think of my birth in a little house with a woodstove overlooking the harbor and it feels like one simple thing in my life, one easy decision, and I get so happy. (85)

“Remember the babies” means “erase yourself,” at least in sympathetic constructions of motherhood. Public autonomy is the price of virtue, and back they go into the private sphere. What happens is what has always happened: dissent becomes sympathy, sympathy judges virtue, virtue has influence, and influence is naturalized as motherhood “in a little house.” What is left of activism at this point? Just the commodified feedback loop of the intimate public. Indeed, one of the refrains that cycles through Home/Birth is a catalog of proselytizing merchandise:

After my homebirth I bought a bunch of pro-homebirth bumper stickers and a sweatshirt for my baby[…] (3)

Women’s v-neck t-shirt: Support choice. Support homebirth midwives[…] (21)
Bumper sticker: Don’t let your baby do drugs—have a homebirth! […] (67)

Women’s tank top: epidurals are for sissies[…] (68)

Infant bodysuit: The first touch I ever felt was my mama’s hands. Have a gentle birth—birth at home […] (100)

Women’s cap sleeve t-shirt: Homebirth rocks! […] (106)


Bumper sticker feminism is not activism. It dovetails into sympathetic storytelling by proclaiming a superiority without actually doing anything. It is, as Berlant might say, another proleptic shield. Whether or not the beginnings of the natural motherhood movement were born out of feminism, and The Womanly Art of Breastfeeding casts that into doubt, this way of understanding pregnancy, birth, and motherhood—essentialized, sympathetic, private, commodified—is directed towards an intimate public that is not, and never was, feminist, at least insofar as feminism advocates for volition. Instead, this intimate public is, largely, concerned with its own perpetuation:

H/B: We haven’t even begun to talk about all the homebirth conferences, the activist groups, the Meetups. (157)
But while commodification drives the perpetuation of the intimate public, the real foundation of its durability is, as with the intimate public accessed by the sentimental novel, fear:

H/B: I didn’t want to scare my clients who were too afraid to have their babies at home. I don’t want to scare you. What I’ve seen in the hospital should scare everyone. (52)

When I started think about fear, about its rhetorical architecture, safe space, safe space beat like a drum. Maybe this is because my house burned down, and the fetish of home as safe, as shelter, evaporated into the damp embers. Shelter is tenuous. But “safe” is also intimate, and this is the way in which it is invoked in Home/Birth:

H/B: I want to be clear about this: I believe that for most people the safest place to birth a baby is at home. (162)

It is safe not because death doesn’t happen in homebirths, because it does, and at higher rates than in hospitals, but because it is domestic, familiar—and because it is easy to

373 See, for example: https://olis.leg.state.or.us/liz/2013R1/Downloads/CommitteeMeetingDocument/8585; http://www.skepticalob.com/2014/01/homebirth-midwives-reveal-death-rate-450-
“believe” in the familiar. As though the experience of being at home, the belief in its safety as a space, could somehow guarantee the safety of birth. They are, in fact, ontologically separate. But if we disavow the statistical dangers of pregnancy and childbirth by conflating them with the sentimental symbolism of “home,” then homebirth does indeed feel like shelter, naturalized in a way that is not possible for “hospital.” Because hospital is not home. And the hospital is undoubtedly also a place where people go to die—this does not feel safe, despite the intimacy of death’s inevitability. And home, in contrast to the public, male space of the hospital, is embodied—by the mother. Or by the idea of mother, the comfort of mother.

COQUETTE: I shall soon return to the bosom of domestic tranquillity, to the arms of maternal tenderness, where I can deliberate and advise at leisure, about this important matter.374

Home becomes an extension of the mother’s body. So Home/Mother. (This is an undue burden.) Understanding domestic space as safe is part of the ideology of the private sphere—home is safe because it is private. But privacy—legal, social—hides all manner of gendered violence—after all, Eliza surrendered her virtue in her mother’s home. Home is not necessarily safe for women, but it is safe for patriarchy, because it

higher-than-hospital-birth-announce-that-it-shows-homebirth-is-safe.html; https://www.sciencedaily.com/releases/2014/02/140203084527.htm
374 Foster, Letter XXXVIII.
privatizes dissent, makes invisible the ways in which “home” means “not public.”

Home is unequivocally safe for privacy, not because of privacy.
The legal rationale for right to privacy was introduced in an 1890 *Harvard Law Review* article authored by Louis Brandeis and Samuel Warren. The article was specifically addressed to the problem of a fin de siècle press corps newly emboldened by “modern device[s] for recording or reproducing scenes and sounds.” These devices, and the publication of their products, intruded, they argued, upon the individual’s right to determine the extent to which his “private life, habits, acts, and relations” were “communicated to others.” Of course, one can only preserve autonomy if one has it in the first place, so its applicability to women was limited by a still extant coverture. Though Brandeis and Warren’s argument was enormously influential during the Cold War era, it wasn’t until *Griswold v. Connecticut* (1965) that the right to privacy was specifically applied to reproductive rights, and that privacy was given Constitutional status. In this case, Estelle Griswold, the Planned Parenthood state director, along with Dr. C. Lee Buxton, the Planned Parenthood Connecticut medical director and a professor at Yale School of Medicine, began providing contraception to married couples in an effort to challenge the state’s Comstock Law, which prohibited contraception.

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375 Louis Brandeis and Samuel Warren, “Right to Privacy”
They were convicted and fined $100 each. Griswold appealed the conviction, which was upheld by numerous courts until it was overturned by the Supreme Court. Justice William O. Douglas, writing for the majority, found that the right to privacy was contained in “penumbras” and “emanations” from the "spirit" of the Amendment (free speech), Third Amendment (prohibition on the forced quartering of troops), Fourth Amendment (freedom from searches and seizures), Fifth Amendment (freedom from self-incrimination), and Ninth Amendment (other unenumerated rights), as applied through the Fourteenth Amendment (due process and equal protection), creates a general "right to privacy" that cannot be unduly infringed. Douglas argued that, specifically, this right to privacy, and therefore contraception, is "fundamental" when it concerns the actions of married couples. As such, the State of Connecticut had to adhere to substantive due process—that is, it had to prove that its interest was "compelling" and "absolutely necessary" in order to overcome the right to privacy. Because Connecticut failed to prove this, the law was struck down as applied. *Eisenstadt v. Baird* (1972) extended the right to contraception to unmarried couples under the Fourteenth Amendment’s Equal Protection Clause and, most famously, *Roe v. Wade* (1973) found the right to an abortion guaranteed by the right to privacy.

While the right to contraception and abortion was a crucial advance in women’s rights, and one that must be tenaciously defended, the constitutional basis of these guarantees is still rooted in what I think is a privatization of autonomy, and resigning ourselves to these limiting parameters is to “Charm by accepting, by submitting sway,” lest we get
accused of being shrill, too-public “Queens,” like Pope’s objects of derision. Because privacy, as a legal doctrine and as a social value, still assumes the superiority of the former archetype over the latter, an assumption not addressed by the poetry of Justice Douglas’s paean to the private spaces of marriage:

We deal with a right of privacy older than the Bill of Rights -- older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.377

But sanctity and intimacy have nothing to do with equality. As Yale Law Professor Reva B. Siegel has argued, locating these rights under the general Equal Protection clause obscures, renders peripheral, the ways in which that very quality, intimacy, makes sex discrimination not analogous to race discrimination or other kinds of discrimination addressed by the Fourteenth Amendment:

Americans debated questions of women's citizenship for over a half century before adopting the Nineteenth Amendment, but neither the Amendment nor its history now plays any role in modern interpretations of the Constitution. Instead, the Supreme Court addresses questions of women's citizenship under the Fourteenth Amendment, reasoning about problems of sex discrimination by analogy to problems of race discrimination. This framework denies sex discrimination law a foundation in constitutional history, and in so doing, weakens its apprehension of issues affecting women's status and its authority to address them.378

This weakened apprehension is in large part due, Siegel contends, to the fact that the Nineteenth Amendment specifically repudiates the founding belief that “women did not need the vote because they were represented in the state through male heads of household”379—that is, it repudiates coverture. Other than slavery, there is no analogous institution of race discrimination. Excluding the Nineteenth Amendment from the Constitutional canon, and replacing it with the Fourteenth Amendment in sex discrimination cases, enacts an erasure of the legacy of coverture, denies its contemporary reach. Not surprisingly, attempts to invoke the Nineteenth Amendment,

379 Siegel, 948.
instead of a general right to privacy, including in the ACLU’s *Griswold* amicus brief, have proven to be almost universally ignored in majority opinions. Siegel suggests that “recovering this lost chapter of our constitutional history” would allow for a more “critical approach to claims that the family is a local institution, beyond the reach of the national government.” Read in the inverse, continuing to exclude the Nineteenth Amendment will also perpetuate the “penumbra” of inequity that still “emanates” from privatizing enfranchisement. How do we recover a history that has already been rendered constitutionally irrelevant, a mere “women’s issue”?

Of course, contemporary liberal feminism can’t actively work to dismantle the right to privacy without risking a fissure in an already tenuously held barricade—but this is precisely what points to privacy’s collusion in the continued institutionalization of coverture, as well as to sympathy’s mainlining between the two. It seems, at least from my vantage, an obvious legal capitulation—but then, sometimes incrementalism acts like a termite, as Justice Ruth Bader Ginsberg has suggested, saying that *Roe v. Wade* went “too far, too fast.” Even so, in her dissent of *Gonzalez v. Carhart*, Ginsburg

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381 Siegel, 948.

382 Justice Ginsburg has consistently defended a woman’s right to have an abortion, but she has also suggested that *Roe v. Wade* went “too far, too fast,” thus inviting a more vehement backlash from abortion opponents when the momentum of public opinion, at the time, was on the side of abortion rights. (http://takingnote.blogs.nytimes.com/2013/05/13/ginsburgs-roev-wade-blindspot/)
suggests that “too far” might have been in relation not to abortion, but to the invocation of the right to privacy:

“There was a time, not so long ago,” when women were “regarded as the center of home and family life, with attendant special responsibilities that precluded full and independent legal status under the Constitution.” Id., at 896-97 (quoting Hoyt v. Florida, 368 U.S. 57, 62 (1961)). Those views, this Court made clear in Casey, “are no longer consistent with our understanding of the family, the individual, or the Constitution.” 505 U. S., at 897. […] Thus, legal challenges to undue restrictions on abortion procedures do not seek to vindicate some generalized notion of privacy; rather, they center on a woman’s autonomy to determine her life’s course, and thus to enjoy equal citizenship stature.383

This “generalized notion of privacy” is, Ginsburg suggests, too diffuse to defend against what she understands to be, essentially, challenges to a woman’s autonomous citizenship. And challenges to undue burdens should not be understood as arguments under the aegis of the right to privacy but, rather, as assertions of the right to equal citizenship, whether or not Roe used privacy. Ginsburg goes on to point out that, in the majority opinion, “the Court admits that ‘moral concerns’ are at work, concerns that

could yield prohibitions on any abortion.” These concerns were articulated by Justice Kennedy as being manifest in the likelihood that, should she have a partial birth abortion, she would come to regret “[her] choice to abort the life that [she] once created and sustained,” and thus suffer “severe depression and loss of esteem.”

This regret, Kennedy muses, is rooted in the platitude that “[r]espect for human life finds an ultimate expression in the bond of love the mother has for her child.” This bond, of course, a private and moral bond, precludes women from claiming the same autonomy as men. In characterizing abortion as a “difficult and painful moral decision,” Kennedy institutionalizes this bond as a moral distinction between female and male citizens, thereby “depriv[ing] women of the right to make an autonomous choice.”

Claiming concern for women’s emotional well-being, Kennedy offers them two choices: virtue or dissipation, resignation or regret. And mounted like a crucifix on the site of that choice is the fetus, Berlant’s “supernatural sign of national iconicity,” that “virtuous fantasy” of a nation that bridges difference with sympathy.

The limitations of relying on the right to privacy as a defense against challenges to female autonomy are enumerated by feminist legal scholar Catherine MacKinnon in

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384 Kennedy, Gonzalez, majority opinion.
385 Ginsburg, Gonzalez, dissent.
“Privacy vs. Equality,” a skewering of the use of privacy doctrine in *Roe v. Wade*. She registers three specific objections to the “doctrinal choice to pursue the abortion right under the law of privacy.”386 First, that “abortion policy has never been explicitly approached in the context of how women get pregnant, that is, as a consequence of intercourse under conditions of gender inequality.” Arguing that “abortion is inextricable from sexuality,” MacKinnon reviews the feminist consensus on the sexual double standard, as it relates to expressions of both desire and consent:

Feminism has found that women feel compelled to preserve the appearance—which, acted upon, becomes the reality—of male direction of sexual expression, as if male initiative were what we want, as if it were that which turns us on. […] I wonder if a woman can be presumed to control access to her sexuality if she feels unable to interrupt intercourse to insert a diaphragm, or worse, cannot even want to, aware that she risks a pregnancy she knows she does not want. Do you think she would stop the man for any other reason, such as, for instance, the real taboo—lack of desire? If she would not, how is sex, hence its consequences, meaningfully voluntary for women?387

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387 MacKinnon, 95.
This objection speaks directly to the throughline between privacy and choice: if privacy cannot protect the right to choose the conditions under which a woman might have sex, then neither can it be reasonably understood to protect what Ginsburg calls “a woman’s autonomy to […] to enjoy equal citizenship stature.” This was as true for Eliza as it is for women today. And so long as sex, abortion, and, I contend, maternity are evaluated (legally and culturally) under the rubric of “moral concerns,” which feminist ethics has shown to privilege the moral experience of men, then choice is a meaningless ethical construct. Because even if we remove the controversial questions raised by MacKinnon and others (e.g. Andrea Dworkin, MacKinnon’s frequent collaborator) about whether heterosexual sex can ever be consensual under conditions of inequality, the results of that sex are indisputably distributed unequally. The burdens of pregnancy, childbirth, and childcare are disproportionately born by women, but so is the “choice” to have an abortion. Thus, women’s right to privacy is, according to Kennedy, the right to choose between sentimental false-choices: between virtue or dissipation, resignation or regret. This is one way in which we might understand privacy doctrine to be the lingering ideology of Republican motherhood rendered “legal.”

MacKinnon’s second objection to the doctrine of privacy is that “the political and ideological meaning of privacy as a legal doctrine is connected with the concrete consequences of the public/private split for the lives of women.” She argues that “privacy,” as a legal construct, embodies a tension between the law’s ability to provide protections against government intrusion, in contradistinction to the law’s role in facilitating governmental protection of personal autonomy. This tension is resolved, MacKinnon contends, by ensuring what has been called “autonomy or control over the intimacies of personal identity.” The state does this by centering its self-restraint on body and home, especially bedroom. By staying out of marriage and the family, prominently meaning sexuality—that is to say, heterosexuality—from contraception through pornography to the abortion decision, the law of privacy proposes to guarantee individual bodily integrity, personal exercise of moral intelligence, and freedom of intimacy.\(^{389}\)

But the legacy of sexual difference also guarantees that the fulcrum on which this tension is balanced is not the same for both sexes—Abigail Adams could have used a bit more (a lot more) protection of her personal autonomy, even as her husband fought to

\(^{389}\) MacKinnon, 96-7.
guarantee *protections against* governmental intrusions. Even in the most sentimental domestic scenes, scenes where difference is rendered in shades of helpmeets and chivalry, mutuality and fulfilment, private space cannot support the same symbolic meaning for both sexes. And these scenes are as much an unconsummated ideal as the Fetish Mother—fetishized domesticity has its converse in the “unruly” privacies that shelter—hide—everything from bored housewives to domestic violence victims. This prompts McKinnon’s third objection, that this disavowal of difference proves so durable: in a subsequent case, *Harris v. McRae*, the Court found that despite a guarantee that a woman had a “right to choose,” the government did not have a duty, via Medicaid funding, to support that choice—that is, it would medically support the pregnancy, but not the abortion, thereby signifying one choice as more virtuous than the other.\(^{390}\) This is a manifestation of institutional difference. And the fact that Kennedy’s sympathy for the women’s inevitable regret over having an abortion did not extend past just that—sympathy, and perhaps some version of sympathy’s panopticism—only serves to underscore the disavowal of institutional difference through sentimental paeans to maternal virtue and the rhetoric of moral choice.

MacKinnon infers that, far from advancing women’s autonomy,

> the law of privacy works to translate traditional social values into the rhetoric of individual rights as a means of subordinating those rights to

\(^{390}\) MacKinnon, 96.
specific social imperatives. In feminist terms, I am arguing that the logic of
Roe consummated in Harris translates the ideology of the private sphere
into the individual woman’s legal right to privacy as a means of
subordinating women’s collective needs to the imperatives of male
supremacy.\textsuperscript{391}

Privacy, then, is institutionalized sympathy. Two hundred years after Abigail Adams
ventured “Remember the Ladies,” years that included the long fight for suffrage, untold
indignities, unprosecuted violence, unaddressed degradations, and, worst,
unrecognized collusions, and women get equality as a “private privilege, not as a public
right.”\textsuperscript{392}

Where is the grief? Why are we grateful for this little bauble, privacy? Why are women
still placated by sympathy for difficult choices? Instead of acknowledging our
submission to privacy’s temptations one libertine—or, ok, pretty nice guy—at a time,
we just keep updating our garments: virtue, choice, sympathy, maternity, domesticity.
And never mind the women whose “nice guys” left them without sympathy for their
“choices.” This is why:

\textsuperscript{391} MacKinnon, 97.
\textsuperscript{392} MacKinnon, 100.
This right to privacy is a right of men ‘to be let alone’ to oppress women one at a time. It embodies and reflects the private sphere’s existing definition of womanhood. This is an instance of liberalism called feminism, liberalism applied to women as if we are persons, gender neutral. It reinforces the division between public and private that is not gender neutral. It is at once an ideological division that lies about women’s shared experience and that mystifies the unity among the spheres of women’s violation. It is a very material division that keeps the private beyond public redress and depoliticizes women’s subjection within it.”

Women’s shared experience is the experience of institutional disenfranchisement — not the particulars of any individual pain, but the pain of only acknowledging individual, instead of structural, culpability. Because sympathy is not really feeling someone else’s pain, but trying to make them feel “better” about it, of moving it into the realm of the private, beyond public redress. Because private doesn’t mean hidden — it is, as Hannah Arendt saw, privation, the deprivation of the public. Because mystification, fetishization, makes privacy feel like community. Focus on the libertine, and the choice is sympathetic; focus on the spheres of women’s violation, and sympathy for the pain of

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394 MacKinnon, 100-1.
any individual body is exposed as insubstantial reparation. The same obfuscation is at work in the shift from equality to motherhood that has been perpetuated from Republican motherhood, through the suffrage movement’s pivot to maternal influence, STOP-ERA’s Housewife’s Bill of Rights, and the institutionalization of natural motherhood: protecting equality with privacy is like protecting freedom with sympathy — both “depoliticize women’s subjection within” an unequal system.

MacKinnon’s objections to privacy have not been met with universal feminist support, although it is worth noting that, in the case of this article at least, debate tends to cluster around the edges, as opposed to center, of her argument. For example, in “Must Privacy and Sexual Equality Conflict?” Annabelle Lever argues that contrasting Majority and Minority decisions in Harris v. McRae (1981) shows that, in a challenge to MacKinnon’s notion of the incompatibility between privacy and equality, the law can distinguish interpretations of the right to privacy that are consistent with sexual equality from those that are not. This is not simply because the two differ in their consequences – though they do - but because the former, unlike the latter, rely on empirical and normative assumptions that would justify sexual inequality whatever right they were used to interpret. So while I agree with MacKinnon that the Majority’s interpretation of the right to privacy in Harris is inconsistent with the equality of men and women, I show that there is no inherent inconsistency
in valuing both privacy and equality, and no reason why we must choose
to protect the one, rather than the other. \(396\)

But what Lever doesn’t seem to consider is that arguing that privacy rights may have
some legitimate place in sex equality cases, and that recognizing the right to privacy is,
in general, a positive constitutional development, doesn’t negate MacKinnon’s
contention that basing the legal defense of sex equality solely on the right to privacy will
usually result in readings like the Majority opinion in Harris. Many of the critiques of
MacKinnon’s argument seem dependent upon disclaimers that are generally figured as
conditional statements: if the state were to apply privacy equally, then privacy would
be consistent with equality. \(397\) The limitations and temptations of the right to privacy
enumerated by MacKinnon always loom as possibilities, depending on the case, the
argument, and the judge(s). This hardly seems like a failsafe basis of protections for
reproductive rights.

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\(396\) Annabelle Lever, Must Privacy and Sexual Equality Conflict? A Philosophical
Examination of Some Legal Evidence, *Social Research: An International Quarterly of the

\(397\) See also G.L. Francione, “Abortion and Animal Rights: Are they Comparable Issues,”
in *Animals and Women: Feminist Theoretical Explorations*, eds. Carol J. Adams and
Josephine Donovan (Raleigh, NC: Duke University Press, 1995), 149-160; and Judith
Wagner DeCew, “The Feminist Critique of Privacy: past arguments and new social
understandings,” in *Social Dimensions of Privacy: Interdisciplinary Perspectives*, eds. Beate
Philosopher Martha Nussbaum seems to understand that distinction. In an essay that compares the American right to privacy, as it pertains to cases of sex equality, and the Indian legal invocation of that right, Nussbaum defamiliarizes the American context in an effort to see the limitations of privacy more clearly, noting that privacy is a sort of catch-all doctrine that fills in the gaps of unenumerated rights; instead of relying on this “messy” solution, Nussbaum suggests that we adopt John Stuart Mill’s distinction between “self-regarding” and “other regarding” acts:

that is, between acts that impact the interests of non-consenting third parties, and those that do not. If an act is other-regarding, it should get no special protection by being placed in a home rather than elsewhere. If harm is done to a person, that harm is the business of law, no matter where the harm occurs.

Since the thing at stake in abortion law is actually autonomy and liberty, she argues that “such an orientation would help us see the relative uselessness of the right to privacy” in protecting either reproductive rights or, more broadly, personal autonomy, and Nussbaum contends that a self-regarding act does not deserve less protection — if it

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really remains self-regarding—by being in some space denominated "public." Thus, privacy is irrelevant. Indeed, she notes,

Privacy is an odd way of protecting the right to obtain contraception, given that contraceptive products are publicly sold […] Only a confusion of contraception with sex acts could make us think of contraception as a private act in the sense of it being secluded and shielded from view. Abortion, similarly, is not a private act. It usually takes place in a clinic or doctor’s office, with a number of parties present. It has nothing to do with privacy as seclusion and modesty (or at least no more so than other medical procedures), and nothing to do with confidentiality of information (or at least not more so than other medical procedures).

Thus, privacy, as a concept, is often antithetical to the rights it claims to protect, especially in the case of reproductive rights—as she points out, neither contraception nor abortion are procured in “private.” And in addition to this logical disconnect, privacy, as a legal doctrine, it is “so extremely amorphous that judgments of what falls under it are likely to be arbitrary and willful. This is a feminist issue, because arbitrary judgments are especially likely to express the current arrangement of power.” Instead of using privacy to fill in the constitutional gaps, given its ambiguous value to issues of sex equality, we should “get the rights from the place they really reside, in the notion of liberty.” Depending on privacy for equality is, essentially, a capitulation to arguments
that put too much faith in the “current arrangement of power”—and, as, Nussbaum concludes,

[t]he human liberties at stake in this debate are too important to leave them in trust to privacy, that most untrustworthy and compromised of concepts. Certainly in matters of sex equality, to turn to privacy is indeed, as Catharine MacKinnon says, to dress up an injury and call it a gift.

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We might say that privacy is not incompatible with inequality, but that neither is privacy an adequate substitute for equality, and therefore it can’t remedy the inequalities inherent in conceptions of sex, motherhood, and female autonomy. But if privacy is simultaneously a smokescreen and the only window with a fire ladder propped against the sill, what option does feminism have? As MacKinnon notes: “preclude the alternative, and then call the sole remaining option ‘her choice.’” And this is not, as I’ve shown, a new development in the long campaign for sex equality—privacy, that ideological (and eventually, legal) defense of separate spheres, has functioned as a sort of consolation prize for equality. Beginning with Revolutionary era calls for female enfranchisement, private influence was substituted for political
influence. Republican Motherhood’s elevation of maternal influence was certainly a better option than the moral inferiority of coverture but, as Rosemarie Zagarri points out in Revolutionary Backlash, it was itself a backlash against a brief moment in which enfranchisement seemed possible. Once that window closed, it was another “four score” years before women ventured a new claim to the franchise.

But even the achievement of suffrage didn’t preclude a parallel backlash, largely because the success of the suffragists was also dependent upon their argumentative pivot from equality to influence—that is, from citizen to mother. A 1915 flyer distributed by the New York State Woman Suffrage Association noted that, as “the place for women is in the HOME,” “she is a “failure” if she does not “make the home minister, as far as her means allow, to the health and welfare, moral as well as physical, of her family, and especially of her children.” The flyer goes on to note that though she may be responsible for the outcome, she does not have a say in the components that contribute to it, namely “unwholesome food, bad plumbing, unwholesome food, danger of fire, risk of tuberculosis and other diseases, [and] immoral influences of the street.” In fact, the flyer notes, “MEN are responsible for the conditions under which the children live, but we hold WOMEN responsible for the results of these conditions.” It then implores the reader to acknowledge women’s natural superiority in these matters.

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and to “give them the means” to ensure their proper execution: “Women are, by nature and training, housekeepers. Let them have a hand in the city’s housekeeping, even if they introduce an occasional housecleaning.” This amounts to a privatization of citizenship, and it provided the connection between the “by submitting, sway” patriotism of the Federalist era and the pro-family (i.e. anti-equality) arguments that have held sway ever since.

Not surprisingly, a realization of woman’s suffrage built on maternal influence backslid into the “feminine mystique”\(^\text{400}\) of the mid-century, an ideological orientation that made a major contribution to the defeat of the Equal Rights Amendment. This was in large part due to Phyllis Schafly’s characterization of the ERA as anti-woman and anti-wife. The ERA would, Schafly argued, lead to enforced conscription of “our daughters,” the elimination of Social Security benefits for widows, the rolling back of sex-based labor “protections,” and drastic changes to the of laws

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\(^{400}\) In *The Feminine Mystique* (1963) (Boston: W.W. Norton, 2001), Betty Friedan points out the continued “naturalization” of the private sphere: “Anatomy is woman’s destiny, say the theorists of femininity; the identity of woman is determined by her biology.”
governing everything from sexual assault prosecution to alimony.\textsuperscript{401} Schafly’s Stop-ERA advocates baked apple pies for the Illinois legislature while they debated the amendment. They hung "Don't draft me" signs on baby girls. The ERA, the propaganda argued, would “deliver a crushing blow to American families”; picket signs proclaimed “Preserve the Family: Our Heritage” – invoke the ladies, but tie them to the babies. The babies are a fetish, a cover for the continued absence of equality.

Most recently, the protection of reproductive rights in \textit{Roe} and other cases has resulted in a backlash defined by, I’ve argued, the natural motherhood imperative. I’ve noted the regulatory function of sympathy in maintaining the affective momentum of these regressive waves of privatization, but MacKinnon’s characterization of privacy as a construct that obscures the \textit{lack} of choice points out the way in which sympathy confers the appearance of volition on a “choice” that is, essentially, the only option. Choice,

when hitched to narratives of privacy and motherhood, is moral, regulated by a sympathetic—and often panoptic—intimate public.

Though choices made about childbirth and infancy are freighted with more moral weight than most choices, the rhetoric of choice is built into our cultural landscape: consumer choice, pro-choice, informed choice, individual choice, etc. The distance between choice and volition is in direct proportion to political and cultural disenfranchisement; choice is held up to the disempowered (whether by nature or by hegemony) as consolation for a lack of political influence. Instead of power, we have “choices.” Instead of equality, we have “choices.” We are an entire culture in thrall to what economists Yiannis Gabriel and Tim Lang have called the “fetishization of choice.” While most consumer choice evangelists are associated with the Reagan-style free-market, even so-called progressive movements, the natural birth and parenting movements being prime examples, have failed to heed (or hear) the critiques of neo-liberal choice that expose it as, essentially, the hegemony of bad options. Invoking J.K. Galbraith, Gabriel and Lang point out that the ideology of choice is often “highly convenient to those in power,” as it shifts the responsibility for the outcome from the

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403 As I have argued, and as French philosopher Elisabeth Badinter has also argued in *The Conflict*, natural motherhood is teetering on the edge of anti-feminism. In less diplomatic moods, I loud proclaim to anyone who will listen that natural motherhood is basically an anti-feminist swan dive into an empty pool.
producer to the consumer. Feminist critic Rahila Gupta makes a similar point about what she calls the fake feminism of late 20th-century “girl power” culture:

If the culture of neoliberalism had something to offer women, it was the idea of agency, of choice freely exercised, free even of patriarchal restraints. It emphasised self-sufficiency of the individual while at the same time undermining those collective struggles or institutions which make self-sufficiency possible. The world was your oyster – all you needed to do was compete successfully in the marketplace. The flexible worker, in order to make herself acceptable to the world of work, may even go so far as to remodel herself through cosmetic surgery, all the while under the illusion that she was in control of her life.404

This is, I think, the root of the seduction, and the root of its power: the illusion of choice absolves structural culpability. The problem with privacy is that it obscures the ways in which “virtuous” choices, both for the Republican Mother and the contemporary mother, are not really choices at all, but cultural imperatives. And the contemporary invocation of choice is complicated by the fact that the rhetoric of natural motherhood

has coopted the pro-choice movement’s advocacy for a real choice in service of a set of false choices, choices that are themselves insults got up as “gifts” of motherhood.

Stranded in the middle of the dangerous intersection of neo-liberal choice and privacy—or, I should say, at the intersection of their limitations—are the women who are disenfranchised by more than one layer of structural inequality: poor women, minority women, gender non-conforming women, victims of domestic violence, disabled women…the permutations are horrifyingly endless. When race, economics, sexuality, etc. etc. etc., complicate the already compromised ability of private choice to protect women’s equality, the admittedly narrow opening provided by privacy closes to what amounts to a veritable shaft of light shining through a still-locked door. The notion that anyone other than the most privileged women have the ability to “choose” a homebirth or “choose” to breastfeed or attachment-parent or homeschool or make organic baby food is also an insult. But the moral imperative—the imposition of this particular ideology despite its narrow applicability or attainability—the imperative persists. For instance, The Shephard Consortium, an anti-poverty organization, advocates for breastfeeding as a “moral obligation” across the socio-economic spectrum.

“This paper focuses on the implications of the previous data for low-income women and their infants. It provides an overview of the science behind breastfeeding—including the physical and psychological benefits
for both mother and child—and explores the various causes of lower breastfeeding rates among low-income women. It concludes by explaining what moral obligation we have to increase breastfeeding rates among low-income women and the policy implications of this obligation.”

These are still moral choices, despite not being allowed any actual volition or room for dissent. Sure—this paper takes a bit of the weight of the moral obligation off the shoulders of poor women, but the lifting is done by the rhetorical muscle of paternalism—“we” have an obligation to help “low-income women.” Them. We help Them. By doing what? Even if “we” make it more economically feasible for “them” to breastfeed, we are still unloading centuries worth of gendered essentialism on to their backs. But it will probably make us feel more justified in our own choices. Less resentful and more sanctimonious. Look how we’re “helping” the under-privileged!


406 In an aside directed toward the majority opinion in Harris, which contends that the government is not responsible for rectifying the “undue burden” of poverty because it is only responsible for conditions of its own making, I would like to ask what or whom, if not the founding government, is responsible for the inequalities that resulted from a century-and-a-half of female disenfranchisement? This is like contemporary white men claiming that they bear no legislative, or even personal, obligation to alleviate the cycle of black poverty because they weren’t themselves slave owners.
The Surgeon General’s “Call to Action to Support Breastfeeding”\textsuperscript{407} is equally patronizing, citing a “lack of knowledge” about the benefits of breastfeeding as the primary reason low-income women might not breastfeed, followed by “poor family and social support,” “social norms,” and “embarrassment.” These are all, essentially, a punt to sympathetic cluck-clucking about backward influences on “choice.” These poor women make “bad choices” either because they don’t know enough, or don’t have sufficient strength of character, to make “good choices.” (“Our poor friend Eliza!!")

Other articles also chime in to this chorus of sympathy: breastfeeding rates in “poor states” are troublingly low,“ says \textit{The Daily Beast}, despite breastfeeding being “magic […] if the mother is able”\textsuperscript{408}; \textit{ThinkProgress} frets that “once these moms leave the hospital, continuing support programs are almost non-existent, leaving poor mothers to their own devices.”\textsuperscript{409} This is not progressive, nor does it leave any room for actual difference or dissent. As always, female citizens are reduced to good mothers or bad mothers, the reliability of their judgment as suspect as John Adams supposed it to be when he wrung his hands about the judgment of the un-propertied:

\footnotesize{\begin{align*}
\textsuperscript{407} & \text{Office of the Surgeon General (US); Centers for Disease Control and Prevention (US); Office on Women's Health (US).} \\
\textsuperscript{408} & \text{Brandy Zadrozny, “Why Poor Mothers Don’t Breastfeed,” \textit{The Daily Beast}, 7.31.14 (http://www.thedailybeast.com/articles/2014/07/31/why-poor-mothers-don-t-breastfeed.html). This particular article even acknowledged the changing science on the issue, but the author justifies her case for “magic” with a reference to “the boob” being a time-honored way to comfort a “cranky” child. Useful, yes; magic, no.} \\
\textsuperscript{409} & \text{Sy Mukherjee, “For Low-Income and Minority Women, Breastfeeding is Often Easier Said Than Done,” \textit{ThinkProgress}, 8.1.13 (http://thinkprogress.org/health/2013/08/01/2396961/breastfeeding-low-income-minority-women/)}
\end{align*}}
for generally speaking, women and children, have as good judgment, and
as independent minds as those men who are wholly destitute of property:
these last being to all intents and purposes as much dependent upon
others, who will please to feed, clothe, and employ them, as women are
upon their husbands, or children on their parents…

As MacKinnon notes, “women are guaranteed by the public no more than what we can get in private— that is, what we can extract through our intimate associations with men. Women with privileges get rights.” And, it seems, all women without privileges get is sympathy.

410 MacKinnon, 100.
Epilogue

*Topography displays no favorites; North’s as near as West.*

*More delicate than the historians’ are the map makers’ colors.*

Elizabeth Bishop, “The Map,” *North & South*\(^{411}\)

A project that is technically in fulfillment of a Doctor of Philosophy in English Literature is bound to be subjected to a certain degree of skepticism if it doesn’t look or behave as the conventions of the field expect—that is, if it doesn’t choose a period, choose major authors, or choose a specific topic. And, as you have waded this far, you will have noticed that this project is in that sense an unruly pupil. But it is precisely the deep engagement with the conventions of the field required by a doctorate that has revealed a structural aporia—literary criticism often limns the conventions of its respective historical moment, but in ways that don’t always acknowledge its sitedness, or its relationship to other spatio-temporal moments. This is also true for the texts we submit to critique. They, too, are analyzed under the microscope of historical period, but less often is there an adequate counter-motion, a panning out that captures the relationships—and distances—between sites.

Critic Rita Felski has suggested that critics usually follow one of two dominant methods: “digging down” and “standing back.” In the former, “the critic engages in an arduous labor of retrieval and recovery, wresting from the text what it seeks to disavow.” The latter “repudiates the topology of depth, with its distinction between the true and the false, reality and its concealment,” instead siting the object of analysis “on a flat plane, disencumbered of dualistic distinctions and hierarchical rankings.” Both methods, Felski argues, prioritize suspicion as the informing critical affect—the difference is that “standing back” thinks that “digging down” is “not yet suspicious enough.” But what both methods miss, I think, is the recognition of the critic herself as being suspect. In other words, the critic rarely admits to the depth of her own complicity in the act of flattening out the surfaces of critique—because that is itself not an act that can exist independent of personal animus. The perpetuation or disruption of any ideological pattern is dependent upon the degree to which its critics recognize themselves in its effects; I can’t critique, for instance, Stand Your Ground Laws, without also admitting to, via enactment, the ways in which a white female might both benefit from and be oppressed by the historical assumptions of these laws. Thus, in my first chapter, “Private (Space), (Public) Property,” I have experimented with what it might mean to implicate myself by inserting my experience as a literary object, thus foregrounding my relationship to other literary and historical objects. This enacts a

413 Felski, 20.
phenomenology of the tension between depth (historical truth) and surface (disinterested surveillance), thereby including in the panorama an admission of critical complicity—in this case, a complicity in the exclusionary rhetoric of private property.

This is not to say, however, that critique should become wholly occupied or preoccupied by the critic-self. Instead, the inclusion of self should function as a kind of marker, a cartographical key—this is where we are, and this is the measure of distance on this particular map. In an essay on Gerard Manley Hopkins, Elizabeth Bishop quotes an essay by Morris Croll, “The Baroque Style in Prose,” in her characterization of Hopkins’ method: [the baroque writer’s] purpose was to portray, not a thought, but the mind thinking […] the moment in which the truth is still imagined.”\textsuperscript{414} This is a way to articulate balance between critique and critic that understands critique as a process that is, first, located in an individual mind. Though Bishop never explicitly tied her poetics to her characterization of the baroque, her poetry enacts this balance through what appears to be a practice of (de)lamination—that is, a layering and un-layering that is not necessarily ordered from surface to depth, but something that is rather more refractory. This layering, laminating, is perhaps one of the reasons that critics, including Robert Lowell, called her poetry “cool,” although I think that the refraction of emotional engagement is not the excision of emotion all together, but rather a siting of herself in a way that neither overtakes nor disavows.

In *North & South*, her first published collection, Bishop creates a sort of cartographical record of her relationship to place. She announces this rather unmistakably—her collection is, after all, cardinally titled, and the first poem is itself titled “The Map.” But in the company of *imagistes* and other practitioners of phanopoeia, I think it is significant that Bishop does more than “image” her subjects (“In a Station of the Metro”), or direct the reader in how to see; instead, she gives instructions for how to build. But they are not two-dimensional—they are elevations, topography. They instruct proliferative dimension and distance. “The Monument” is itself a monument to the technique. The poem begins,

Now can you see the monument? It is of wood
built somewhat like a box. No. Built
like several boxes in descending sizes
one above the other.
Each is turned half-way round so that
its corners point toward the sides
of the one below and the angles alternate.415 (ll. 1-7)

415 Bishop, 25.
If an image merely requires response, then a blueprint requires engagement, or even participation, in the poem. There is no way to read this without also going through the mental or, indeed, tactile process of building the object Bishop drafts on the page: too see, reader, one must build, turn, point, alternate. “Now can you see the monument?” And artistic ineptitude does nothing to deter the impulse (to which my marginal scratchings attest). Later, the reader sets, whittles, springs, and lays parallel and horizontal the various components of the monument. As Bishop notes in the poem, the materials spec’d in these constructions “give [them] away as having life, and wishing; / wanting to be a monument, to cherish something.” They are “the beginning of a painting, / a piece of sculpture, or poem, or monument, and all of wood. Watch [them] closely.” So then the poem gets layered over by the blueprint, the blueprint by the built object, the object by the idea, the idea by the poem. There is a loss, perhaps, of the kind of “truth” promised by “digging deep,” but it is replaced by something else: the “sitedness” of an ongoing conversation between the speaker and an unannounced “you” about the monument.

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416 It should be noted that this conversation is marked in the poem by quotations marks around the queries interjected by this conversational “other.”
As the speaker goes through the process of blueprinting this monument, she simultaneously effects its delamination though these asides:

“Why did you bring me here to see it?
A temple of crates in cramped and crated scenery,
What can it prove?
I am tired of breathing this eroded air,
this dryness in which the monument is cracking.” (ll. 54-58)

The speaker builds, the “other” deconstructs, and the reader, then, becomes aware of the processes of structural delamination and emotional refraction. Thus, the poem underscores the complicity of the speaker, even as it is sympathetic to the object’s claims to being something monumental. It is not thought, but the mind thinking. The interjections of these selves mark the distance between the poem, the monument itself, the “reading” of the monument, and the critique of the monument.

I’ve tried to similarly site myself in my critiques of the rhetorical monuments to private property in order to map the ways in which these monuments are not static, but perpetually delaminating, refracting, and rebuilding. My first chapter, “Private (Space), (Public) Property,” enacts the tension between critic and critique most explicitly. The physical experience of my home burning ignited a sort of parallel immolation of the idea of home: I see the idea of home in flames, and turn to face the burning. This is
where the project began for me personally, so it is the site of greatest potential and
greatest risk—holding a mirror up to my face without the protections of critical distance
reveals an uncomfortable collusion with these patterns of exclusion, but it also, I think,
creates openings, opportunities, that conventional criticism does not. I’ve invoked
Nietzsche’s notion of the eternal recurrence to investigate the ways in which the
recognition of personal complicity could simultaneously locate points of critical
complicity—and thus theorize a way to emerge from their repetition.

The second chapter, “Election,” connects exclusionary concepts of property from the
Puritan doctrine of unconditional election to twenty-first century Stand Your Ground
Laws. It argues that Stand Your Ground laws’ major legal renovations, the incapacity to
retreat and immunity from prosecution, parallel those of the Puritan Antinomian (“free
grace”) Controversy. Locating the origins of these concepts in such early sermons as
John Cotton’s “God’s Promise to His Plantation” (1630), and colonial legal texts such as
the court record of Anne Hutchinson’s “banishment” trial and the resulting Act of
Exclusion (1637), I trace (subsequent) parallel literary interpretations of a “community of
the elect” in Nathaniel Hawthorne’s The House of the Seven Gables and T.C. Boyle’s The
Tortilla Curtain. This chapter is in direct response to a tension uncovered in the first
chapter: the ways in which my gender and my race inform a conflicted sense of
incapacity and immunity. By limning the presence of these concepts in asynchronous
representations of American community, I have worked to delaminate exclusionary
ideology from its rhetorical justifications.
The third chapter, “Privacy” traces the affective conventions of revolutionary-era sentimental fiction through to legal privacy doctrine (as applied to reproductive rights), the rhetoric of neo-liberal choice, and the rise of the natural-mother imperative. It argues that the absorption of demands for female autonomy into the persistent structure of sex inequality is a pattern that began with the Revolutionary-era privatization of female political participation, and that it repeated itself during both the first wave campaigns for suffrage and the second wave campaigns for reproductive rights, culminating in a contemporary resurgence of essentialist motherhood. That is, women keep asking for equality, and they get maternity and the private sphere. I trace this pattern from Abigail Adams’ letters and the sentimental novel *The Coquette* (1797) through to *Home/Birth*, a contemporary hybrid text co-authored by poets Arielle Greenberg and Rachel Zucker. My analysis ends with a consideration of privacy law and the degree to which its assumptions are rooted in original sins of female disenfranchisement and the sympathetic disavowal of that exclusion. This chapter also responds to a complicity unearthed in the first chapter, but in this case it is turned inward—my focus here is on the ways in which sex inequality is dependent (not wholly, but significantly) upon women’s participation in the structures of our own subjection.

Though this project blatantly steals from the many philosophers and poets I’ve cited as model and/or justification for my proposed methods of critique, it is also more
generally indebted to the emerging genre of experimental criticism. Practitioners who have particularly influenced this project include Susan Howe, Susan Stewart, and Eula Biss. Susan Howe’s *The Birth-mark: unsettling the wilderness in American literary history* was the plantation, as it were, of my own interest in legacies of Early-American thought in contemporary imaginations of American community. And, perhaps more significant to this attempt to “site” myself in a genre, Howe’s text was my first real example of literary criticism that invoked personal experience as literary object. Howe identified the banishment of Anne Hutchinson as the beginning of a pattern of marginalizing antinomianism in American public space. She connects “editorial interference” with this pattern:

The issue of editorial control is directly connected to the attempted erasure of antinomianism in our culture. Lawlessness seen as negligence is at first feminized and then restricted or banished. For me the manuscripts of Emily Dickinson represent a contradiction to canonical social power, whose predominant purpose seems to have been to render isolate voices devoted to writing as a physical event of immediate revelation.417

Howe’s text itself enacts an inversion similar to Dickinson’s in that she summons banished voices\(^4\) and allows them to “meet” their “edited” counterpart.\(^5\) Howe’s own “older” self is forced to acknowledge her beloved father’s sexism via a juxtaposition of childhood memories with analyses of the editorial interference to which Hutchinson and Dickinson were subjected. Though I have worked to theorize and enact a poetics that suits my particular critical preoccupations, Howe’s example of formal experimentation and personal implication was formative and continues to be extremely influential.

As I’ve said, the critical text must also acknowledge its own moments of contradiction, of unresolvability, or else it is itself just an ideologically closed form. So the formal enactment of these critical fissures, the moments when personal complicity bumps up against a deconstruction of ideology, are as necessary to the critique as the content that is more easily distanced. I know that all I can do is write from the site of my own collusion, but I will defend it as a small act of antinomianism:

\(^4\) Given the primacy Howe affords to marginalia, I would be remiss if I didn’t mention that my used copy of The Birth-mark still retains a previous reader’s marginal notations; significantly, this reader appears to resist Howe’s “revisions” and expresses a more conventional expectation of a history. Her criticisms range from “rhetoric-laden” to “this is not evidence”; however, as the text progresses, so too, it seems, does this ghost-reader’s patience for Howe’s project, and she ceases the interrogation.

\(^5\) Also: Thomas Shepard’s diaries contradict his public condemnation of Hutchinson (“I have seen a God by reason and never been amazed at God”; ‘the greatest part of a Christian’s grace lies in mourning for the want of it”\(^6\)); F.O. Matthiessen’s correspondence with Russell Cheney reveals a homosexuality “banished from his public and intellectual life as a professor and a critic” and, spatially, banished from Cambridge to Kittery, Maine (56, 13, 126).
Purest virgin churches and professors, they took their lamps. What can we do? Prevail again? Against what do we watch?

Fiery law and tabernacles I beat the air.

Therefore as her and distancing.\textsuperscript{420}

Again: I turn to face the burning.

\textsuperscript{420} Howe, 70.
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