

ŽIŽEK/QUESTIONS/FAILING

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I. INTRODUCTION

The philosopher Slavoj Žižek is known above all for his jokes and his ability to popularize high theory. His much-noted rock star status among graduate students across liberal arts disciplines undoubtedly owes much to his proclivity for explaining difficult theoretical concepts in an accessible and humorous way. This reputation is not at all undeserved. In his hands, French psychoanalyst Jacques Lacan ceases to be an obscure psychoanalytic oracle and becomes a key for unlocking the secrets of innumerable cultural texts.¹

In this article I am primarily concerned with presenting Slavoj Žižek² as a legal theorist. Žižek has been a valuable contributor to critical theory and deserves a place in the pantheon of legal thinkers.

While his diverse writings are often relegated to other disciplines, they also position him as an important contributor to law and public discourse. I seek to illuminate how he mediates and interrogates the law by demonstrating how his scholarship is important to the lives of legal thinkers, questions of success and the law, capitalism, political practice, and terrorism. Because Žižek's work is interdisciplinary and expansive, this article will provide a starting point for further analysis of these subjects with the hope of opening up a broader discursive space where legal scholars might more readily and critically engage Žižek's writings. The article will also be written using Žižekian analysis, showing

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1. Todd McGowan, *Serious Theory*, 1 INT'L J. ŽIŽEK STUD. 58, 58 (2007), available at <http://zizekstudies.org/index.php/ijzs/article/view/23/44>.

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consumed, specialized journals are popping up,¹⁷ law and psychology associations are thriving,¹⁸ and psychology majors are increasingly represented in this country's law schools.¹⁹ Jeremy Blumenthal has called the rush toward law and psychology a "craze,"²⁰ perhaps indicating that legal scholars ought to come to grips with this phenomenon if for no other reason than it is difficult to avoid. Žižek's writing, if we are to compartmentalize it, may best be situated into legal discourse through the study of law and psychology because of Lacan's tremendous influence.

Žižek is not a psychoanalyst, however; nor would it be appropriate to group him with the aforementioned poststructuralists. He has, in fact, distanced himself from at least one of these poststructuralists. In his ongoing debate with Judith Butler,²¹ Žižek has taken her to task for her understanding of Foucaultian poststructuralism, universality, gender identity, and

and a resurgent interest in French continental philosophy. See *infra* note 17.

15. A number of law schools offer law and psychiatry or psychology-related classes. These classes, usually simply titled "Law and Psychology," have been taught recently at law schools at University of Connecticut, Arizona State University, Stanford University, University of Miami, University of Southern California, and University of Nebraska-Lincoln.

Lacan was very much concerned with language and reality, firmly rooted in the French psychoanalytic tradition.³⁰ As he reinterpreted Freud, so too did Lacan create a new path of psychoanalytic theory that ble

articles⁴² and will (un)fortunately be a part of this text. What legal minds can garner from this Deleuzian pursuit is again that the shifting nature of law is not only worthy of study, but instructive in understanding the way the law functions.

In conclusion, this sketch of Lacanian psychoanalysis should help inform an appreciation of Žižek's approach to legal analysis through critiques of capitalism, psychoanalytic criticism, and general investigation of the structures and systems that operate just below the surface of legal reasoning and action. Next, this article will demonstrate the usefulness of Žižek's thought to several pressing legal discussions.

III. ŽIŽEK, FAILURE, NORMATIVITY, AND INCONSISTENCY

Reading Žižek is a stimulating experience. One is simultaneously informed, edified, and entertained. His courage, his willingness to criticize leftist conventions and common sense, is attractive, even when he is wrong, even when his political judgment is questionable, even when his taste is "bad."⁴³

Next, it is important to understand the concept of "the Real," because this concept characterizes not only Žižek's thought, but also the thought of many poststructuralists who have found their way into legal reasoning. "Reality" and "the Real" are buzz words in poststructuralist camps.⁴⁴ But much confusion underlies these words and prevents any careful applications and critiques of these concepts. Parsing out the meanings of each theorist's use of "the Real" and its derivatives is likely best left for a more traditional philosophy or theory text, but at least a cursory node to this discussion can benefit legal minds.

"The Real" is the structure of power relations in a given environment, legal or otherwise.

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foundational in understanding Žižek as well as critiquing him.

When attempting to indict a theorist it has become almost commonplace to first seek out inconsistencies. The more one writes and the greater the breadth of one's writing, the greater likelihood of the writer producing inconsistencies. Theory and perfection are incompatible. Law and legal community members are likewise no strangers to inconsistency, but accepting inconsistency and even failure is problematic in the legal community.

Žižek's views on inconsistency ought to open up a broader discursive space for action on legal theory and for the acceptance of life's failures and pitfalls. Inconsistency is suffering and suffering is acceptable in prevailing normative logic.⁴⁵ To engage, we must err; to succeed, we must fail; and to realize our progress, we must accept the suffering of life. In error, there is suffering, and according to Søren Kierkegaard,⁴⁶ suffering is the path to God.⁴⁷ This suffering might be c

substantive theory.

This discussion portends the notion that Žižek is criticized as being inconsistent.⁴⁸ Žižek reframes this argument. He suggests that Lacan, again, his biggest influence,⁴⁹ constantly updated his theories and that such a process was important to Lacan and Lacan's work.⁵⁰ Those well-versed in Žižek may raise this question, but we ought not reject Žižek for his desire to constantly revise and often double back on his philosophical agenda. Indeed this seems to be the path of law as decisions are clarified as new cases are decided, overturned on appeal, or modified by regulatory law.

The legal world might argue that inconsistency attaches a negative connotation to the process of change or evolution. If we challenge this connotation we might be able to more constructively engage inconsistency as a process of legal evolution.

Žižek also positions himself not as an answerer of questions,

48. Often times the argument that he is inconsistent is conflated with the argument that he lacks focus or direction. He is so prolific that he is often difficult to tell where he's going or where he's been. But, one clear example of this argument—that Žižek is inconsistent—is relayed in Rebecca Mead's story in *The New Yorker*:

James Miller, of the New School, says of Žižek's lectures, "You would sit through these torrents of verbiage, and you had this post-structuralist and relativist aura on the one hand, and then he would be defending something like democratic socialism. The first time I talked with him, I said, 'But Slavoj, this is inconsistent.' He listened to my criticism and ignored it. When he talks, he has such a good time that he just keeps going."

Rebecca Mead, *The Marx Brother: How a Philosopher from Slovenia Became an International Star*, *THE NEW YORKER*, May 5, 2003, at 38, 46.

49. Christopher Hanlon & Slavoj Žižek, *Psychoanalysis and the Post-Political: An Interview with Slavoj Žižek*, 32 *NEW LITERARY HISTORY* 1, 3–4 (2001) (discussing Žižek's reliance on Lacan).

50. Žižek and the consistency debate is best described by Bowman: "Eclectic" is how Ernesto Laclau characterizes Žižek's approach in general. Laclau uses this term as a criticism, because to his mind, Žižek's lack of fidelity to one rigorously conceived approach produces inconsistencies and incoherence. Given Laclau's famous insistence on the importance of "logic" and "rigour", Žižek's promiscuity would "logically" seem to mean that Žižek's position is incoherent and must fall apart. Judith Butler agrees with Laclau on this. But Ian Parker has suggested that there is no real inconsistency, because Žižek's apparently inconsistent approach to any and every topic is an effect of his strategy of lining up and applying different and discrete paradigms to his subject matter, one at a time and one after another. In other words, Žižek's "position" isn't necessarily incoherent because it isn't 'one' position. Moreover, because Žižek deliberately doesn't look for coherence or consistency, there may be little point expecting him to be coherent or consistent himself.

Paul Bowman, Book Review, *CULTURE MACHINE* (2006) (reviewing SLAVOJ ŽIŽEK, *INTERROGATING THE REAL* (Rex Butler & Scott Stephens eds., Continuum 2005)), <http://www.culturemachine.net/index.php/cm/article/view/175/156> (citations omitted).

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Failure is a way out of or away from normative legal reasoning.

truth as object. Winning is the reaffirmation of truth after all in a capitalist system. We must accept truth, again because we do not have the vocabulary for failure. The law teaches us there can be no failure in the quest for truth.

Žižek teaches us that our vocabulary has indeed failed us. Lacan knew this in 1974.⁶⁴ Some 35 years later, this observation has fallen by the wayside. We cannot claim truth in the absolute because language fails us. We must embrace divisions, recognize failures, and move forward with the inefficiencies of life.⁶⁵ This brings us back to a central question: If we fail to fail, how can we claim to succeed?

We can embrace this lack of language for what it is. Žižek tells us to stop teaching, stop lecturing. Be comfortable with nothing.⁶⁶ Oscar Wilde famously quipped, “To do nothing is the most difficult thing in the world.”⁶⁷ Do not let language pass us by, but do not sweep it away. Reject politics. Reject partisan folly. Reject the silver bullet of the New Left,⁶⁸ the notion that a concerned group of supposedly liberal thinkers will solve all. Embrace difference and the crippling failure we have been institutionalized to avoid. Reject the capitalistic jurisprudence of victory for the well-placed failure of life. Ask questions and ignore answers. Žižek can allow us to move beyond this capitalist understanding of society so that we may embrace the inherent success of failure, not as abstract abandoning of the system, but as a radical reconstruction of the system as it crumbles from within.

I am concerned and appalled by our failure to fail because it is a failure to accept a good portion of our life. It is a failure to deal

commodity, it is changed into something transcendent. It not only stands with its feet on the ground, but, in relation to all other commodities, it stands on its head, and evolves out of its wooden brain grotesque ideas

KARL MARX, *COMMODITIES AND MONEY* (1867) *THE NINETEENTH-CENTURY VISUAL CULTURE READER* 42–43 (Vanessa R. Schwartz & Jeannene M. Przyblyski eds., Routledge 2004).

64. See JACQUES LACAN: *LA PSYCHANALYSE* (The Office de Radiodiffusion Television Francaise 1974); see ŽIŽEK! (Zeitgeist Films 2006).

65. Jodi Dean, *Why Žižek for Political Theory?*, 1 *INT’L J. ŽIŽEK STUDIES* 18, 19 (2007), available at <http://zizekstudies.org/index.php/ijzs/article/view/18/41>.

66. See generally SIROJ SORAJAKOOL, *DO NOTHING: INNER PEACE FOR EVERYDAY LIVING* (2009) (discussing embracing nothingness to liberate oneself).

67. JASON MERCHY, *VALUES OF THE WISE: HUMANITY’S HIGHEST ASPIRATIONS* 279 (2004).

68. See Sinnerbrink, *supra* note 43, at 83.

enrich our political position by appreciating change. Politic action is inconsistent as is legal practice. A lack of inconsistency renders the political subject inactive.⁷⁵ To succeed politically and legally we must fail, double back, and adapt.

The tendency to view the law as apolitical is flawed. Law is never apolitical.⁷⁶ The notion that politics must be filled with answers and that legal thought must fill the void of legal understanding is detrimental. Legal reasoning cannot fill the void and be substitute for the positive politics of nothing.⁷⁷ This is what politics and law are missing: the void of answers—the power of nothingness. Questions can fill these spaces; answers will not lead to our liberation, but instead create a deeper void. We can learn from our inconsistencies and failures, and we do a disservice to ourselves, our causes, and our clients, if we do not.

What we need then is a more thorough understanding of “the Real,” which serves as a central focus for Žižek’s thought. “The Real” is a starting point from which we might better be able to understand the law.

IV. ŽIŽEK, THE REAL, AND ORIGINS OF LAW

Kambiz Behi describes “the Real” as “that which is the traumatic kernel at the core of subjectivity.”⁷⁸ Žižek describes a different type of reality when describing, for example, the media:

The problem of the contemporary media does not reside in its enticing us to confound fiction with reality, but rather in its “hyperrealist” character, by means of which it saturates the void that occupies the space for symbolic fiction. The symbolic order

75. Politics is by its very nature an evolving, changing practice. Inconsistency is the byproduct of change, evolution, evaluation, and progress. This stems from people’s consistent inconsistency in what they value. See Kent Koppelman and Robert Richardson, *What’s in It for Me?: Persuading Nonminority Teacher Education Students to Become Advocates for Multicultural Education*, in PRACTICING WHAT WE TEACH 146 (Renée J. Martin ed., 1995). Because our values change, or perhaps more accurately, the way we articulate our values changes, inconsistency is much more the norm than might be assumed.

76. This is because so many lawyers and professors are so politically active. It’s why many government affairs professionals are law school graduates. This is also why Supreme Court confirmation hearings are viciously partisan.

77. “Nothing” is not nihilistic, but is a positive political choice to not engage, to refrain from action. When we talk about “doing nothing,” we fail to recognize the value of the verb “to do.” “Nothing” is the subject of our “doing.” To do “nothing” is to do “something.”

78. Kambiz Behi, *The “Real” in Resistance: Transgression of Law as Ethical Act*, 4 UNBOUND 30, 31 (2008).

can only function by maintaining a minimum distance from reality, on account of which it ultimately gains fictional status.⁷⁹

Here we see that reality does in fact evolve, in small part due to the media's representation of reality. This is "the Real" being spawned by simulation. The void is the hollow knowledge of the law's power apparatus. It is the self-reaffirming nature of law, the need for more, better, and stronger language, motions, appeals, and revisions. If this saturating-of-the-void analogy is loosely applied to legal practice, what can be said of the attorney who files motions just to file them? What about the judge that orders countless pre-trial meetings and settlement talks despite the fact that both sides have been adamant about their desire to see the matter through? How many legal dramas grace network television? How many "reality" shows on law and order flood the airwaves? The void is often filled in legal practice and this has an altogether unfortunate eroding effect on the value of the law. As saturation increases so does fiction and the law becomes fictional in its hyperrealist folly. Understanding "the Real" is then an exercise in understanding the power relations in a legal environment.

Poststructuralists of all shapes and sizes articulate methods of resistance to and investigation of "the Real." Žižek is no different. Žižek argues, rather persuasively, that performative acts are not enough to displace "the Real" because these strategies accept the terrain of "the Real."⁸⁰ Legal performative acts are everything from speaking at trial or in the chambers of government to writing law review articles and exams to positioning oneself as an advocate or judge. Performative acts need not be spoken nor do they need to comply with pedestrian notions of theater. "Since the very field of such 'transgressions' is already taken into account, even engendered, by the hegemonic form,"⁸¹ mere performative resistance is not enough to actually change "the Real." It is therefore impossible to do away with "the Real" while implicitly accepting the ideological foundations upon which it rests.⁸² I conceive of linguistic and performative resistance as a necessary

79. SLAVOJ ŽIŽEK, *Law in the Postmodern Mind: Superego by Default*, 16 CARDOZO L. REV. 925, 938 (1995).

80. See SLAVOJ ŽIŽEK, *THE TICKLISH SUBJECT* 264 (Verso 1999).

81. *Id.*

82. *Id.*

step to disrupt the foundation of “the Real.”

Legal minds can disrupt this foundation through critical legal thought and political practice. Without performativity, “the Real’s” foundation will continue to accumulate silt. Unless we can continue to dredge “the Real,” we are relegated to dig through the same sedimentary layers at every critical junction as it constantly erodes toward our critical point of departure from “the Real.” Through law we can engage in this metaphorical dredging if we are informed by a critical ethic of questioning as Žižek posits. Understanding this notion of “the Real,” it is then possible to more thoroughly consider Žižek’s views on law.

Žižek does not reject the law wholesale however. He is critical of law, but also embraces it as a tool for change.⁸³ This ought to encourage scholars, students, and activists who have shied away from critical theory and the law to re-evaluate their stance.

Žižek also does something which is unusual to many legal scholars: he embraces the law in its fluidity. He thinks of law as a sociological construct and not as a self-generating legal construct.⁸⁴ Understanding law as fluid can help legal scholars to develop a more nuanced view of the law and legal change.

Zizek’s views on the law are complex. He views it as a traumatic mash-up of violence and order. The creation of law is itself a crime against the old order—the old law.⁸⁵ Creating new law, which overthrows existing law, is an act of violence and criminality against the old law, masquerading as original law.

“[F]or Žižek, the rule of law conceals an inherent unruliness which is precisely the violence by which it established itself as law in the first place. . . .”⁸⁶ The original law presupposes that transgressions are criminality. Because law is founded on criminality and in criminality the demand for laws greater in number and strength increases, transgressions are assumed to foster a strengthening of the law. The violent act of the criminal is to debase law’s power, to challenge its authority, but often law’s power is simply reinforced. Criminality becomes legal in this example. Because criminality is at the basis of law, there is a

83. Jodi Dean, *Žižek on Law* 4 (Nov. 11, 2002) available at http://jdeanicite.typepad.com/i_cite/files/zizek_on_law_2.doc (unpublished manuscript).

84. TONY MYERS, *SLAVOJ ŽIŽEK* 53-54 (Routledge 2003)..

85. See Dean, *supra* note 84, at 7.

86. See Myers, *supra* note 85, at 53.

disjuncture between law and what might be differentiated as legality.⁸⁷ Jodi Dean calls this law's "traumatic identity."⁸⁸ Put more simply, "[F]or Žižek, the rule of law conceals an inherent unruliness which is precisely the violence by which it established itself as law in the first place . . ."⁸⁹

Law has its origins in criminality. This "founding crime," which need not be a specific act of criminality, has set every law and every system of order into being; without the founding crime there would be no system of law or order anywhere.⁹⁰ A law against murder does not arise unless society has seen murder and condemned it. To outlaw theft makes no sense unless society has experienced theft and abhors it. Žižek describes the lurking presence of criminality in law: It "haunts the public legal order as its spectral supplement."⁹¹ Understanding law in this way, it is easy to see how "the Real" becomes saturated with law.

Joining this with Žižek's reading of Badiou regarding the Event, we come to a significant analytical thread that may help us better understand law. Žižek writes:

An Event is thus circular in the sense that its identification is possible only from the standpoint of what Badiou calls "an interpreting intervention," if, that is, one speaks from a subjectively engaged position, or—to put it more formally—if one includes in the designated situation the act of naming itself: the chaotic events in France at

Law, from this perspective, occupies a much less stable space than most in the legal academy would be willing to concede. But it also means that, as interveners in legal situations, intellectuals and activists have a unique ability to create the Event by originating the standpoint from which the Event is evaluated. To traverse the “field of knowledge” is to understand the law—to appreciate and to take a stand in the law’s production. Applied more directly to legal settings, being able to offer a standpoint from which to view an event can create new perceptions about the law and its effects.

Law may then be conceived not as a response to some ephemeral claim to justice, but as being born of itself.⁹³ This is an important rift in legal theory, which often imagines some grand narrative of law heroically redressing some perceived injustice. People do not decide to break the law; rather, as Žižek puts it, such action is always mediated by a desire to transgress the law.⁹⁴ If viewed as a mediator of desire, law then becomes a much more interesting creation. Law demands enjoyment, makes it so the ability or freedom to enjoy becomes the obligation to enjoy.⁹⁵ An obligation to enjoy is no joy. Law then, while claiming to better our lives, takes away the very notion of enjoyment.

Furthermore, Žižek argues that transference is the process by which we push truth into the law, so we believe that truth somehow resides in the law.⁹⁶ It then becomes more difficult to transgress the law because such an action would transgress truth. This is the law’s dirty little trick. Žižek writes:

[T]ransference is this supposition of a Truth, of a Meaning behind the stupid, traumatic, inconsistent fact of the Law. In other words, ‘transference’ names the vicious circle of belief: the reasons why we should believe are persuasive only to those who already believe.⁹⁷

Law and law-abiding behavior become an infectious malady. We believe in truth; we are taught to do so by parents, elders,

93. See Behi, *supra* note 79, at 54.

94. MARCUS POUND, ŽIŽEK: A (VERY) CRITICAL INTRODUCTION 131 (Wm. B. Eerdmans 2008).

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friends. We must therefore believe in law because the reason law is valuable to society is because it protects truth.⁹⁸ We then desire law and law-abiding behavior solely because of the transference of truth into the law, without thought about how that truth value came to be.⁹⁹ Žižek affords us ways to critique the law while not assuming that the law is necessarily indicative of truth, understanding fully that the law is not sacrosanct.

V. ŽIŽEK AND CRITIQUES OF IDENTITY POLITICS

Although I am a proponent of Žižek's work on legal theory, I am not completely sold on his discussion of identity politics as problematic. What concerns me most about Žižek is that he concludes that postmodern identity politics entails an abandonment of class politics.¹⁰⁰ I do not intend to blindly support nor violently excoriate Žižek, but what we must do is appreciate the nuances of his arguments. Even where he may misstep in his approach to identity politics, he still offers important considerations for scholars of race, class, and gender issues as well as less established identity politics pursuits. Furthermore, the acceptance of some of Žižek's thought with a rejection of other aspects may be a fulfillment of the appreciation for his inconsistency. It seems that many postmodern identity politics scholars are acutely aware of the intersections between class and race. Žižek argues:

[C]ertain questions—like those concerning the nature of relationships of production, whether political democracy.

priori, more so than class, but I argue that a Marxist framework ought to appreciate the interconnectedness of race and class and that recognizing class does not divert attention from macro-socio-political problems.¹⁰² When we talk about class though, have we just completed a project of identity politics? Are not the poor—urban or rural—a creation of identity politics? Do not unions create a class of workers that bond together because of similar identity markers? Have we failed to question the actual politics of production? I think not. While not explicitly critiquing the oppressive tradition of the capitalist machine, identity politics does make inroads to a larger Marxist critical project. Keep in mind that the oppression of the proletariat and of racial and ethnic minorities often shares similarities. Žižek would seem to argue, however, that shifting our critical gaze from capitalism to identity politics allows capitalism to pursue “its triumphant march.”¹⁰³

The question is not how we recognize, tolerate,¹⁰⁴ or revere

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Capitalism can be rejected while still interrogating the deleterious impacts of racism, classism, and sexism.¹⁰⁸ This is not a situation where critical projects are mutually exclusive. Might

Intelligence Surveillance Act (FISA).¹¹⁷ We are at once safe from terror and more full of terror because our safety is couched in a regime of greater terror. Terror has been so perverted that we are now present in a time of continual terror as opposed to continual peace.¹¹⁸ Terror is all the more likely in a world where the United States acts as trigger-happy overlord of the world. Žižek notes:

In a similar way, Saddam Hussein's regime was an abominable authoritarian state, guilty of many crimes, mostly toward its own people. However, one should note the strange but key fact that, when the United States representatives and the Iraqi prosecutors were enumerating his evil deeds, they systematically omitted what was undoubtedly his greatest crime in terms of hum[an] suffering and of violating international justice: his invasion of Iran. Why? Because the United States and the majority of foreign states were actively helping Iraq in this aggression.

And now the United States is continuing, through other means, this greatest crime of Saddam Hussein: his never-ending attempt to topple the Iranian government. This is the price you have to pay when the struggle against the enemies is the struggle against the evil ghosts in your own closet: you don't even control yourself.¹¹⁹

By now conflating Iraq and Iran, the United States continues this politics of terror as it addresses the specter of an unstable Iran. The War on Terror and the Invasion of Iraq became one. Now the pursuit of nuclear disarmament or deterring Iran from producing nuclear materials is conflated with the War in Iraq. Soon will we see an invasion in Iran which becomes conflated with an invasion of North Korea? International politics do not happen in a vacuum and Žižek is not suggesting that they do (nor am I). But in order to properly understand policy options and effectively reflect upon

YALE L.J. POCKET PART 21, 33-35 (2007) (offering a more positive perspective on prisoner treatment at Guantanamo Bay).

117. Foreign Intelligence Surveillance Act of 1978, Pub. L. No. 95-511, 92 Stat. 1783 (codified as amended at 50 U.S.C. §§ 1801-11 (2000)); *see generally* Peter P. Swire, *The System of Foreign Intelligence Surveillance Law*, 72 GEO. WASH. L. REV. 1306 (2004) (reviewing the nature of U.S. foreign surveillance law).

118. Cf. Žižek, *supra* note 104, at 1532.

119. Slavoj Žižek, Op-Ed., *Denying the Facts, Finding the Truth*, N. Y. TIMES, Jan. 5, 2007, at A17, available at <http://www.nytimes.com/2007/01/05/opinion/05zizek.html>.

policy outcomes, we must view distinct policy actions *as distinct* or we risk the proliferation of aggression.

Furthermore, the tragedy of 9/11 has served as a distracting force from the politics of the developing world. Whereas the United States was at least partially focused on providing aid to developing nations (and that is not to say that aid has not been and is not riddled with colonial dominance), the United States now plays the victim on the world stage, effectively ignoring the systemic violence that has decimated, destroyed, and murdered populations across the developing world. Žižek continues:

After 9/11, the United States was given the opportunity to realize what kind of world it was part of. It might have used the opportunity—but it did not, instead opting to reassert its traditional ideological commitments: out with the responsibility and guilt with respect to the impoverished third world—we are the victims now!¹²⁰

Such willful blindness to world affairs and such focus on personal (nationalistic) concerns is dangerously myopic. Myopic vision by nation-states or activist groups is quite often destructive. The United States has failed to reassert itself by submitting to the terror that brought this country tragically down. Here, Žižek is indispensable to political theory because he argues for a radical rethinking of the Left, of neoliberalism, or both.¹²¹ These currents run deep in the legal academy and Žižek's critique of these ideologies may provide answers to myopic worldviews.

As a result of this rise to popularity and in response to, what I believe was a particularly productive time for Žižek, criticism mounted. Normally, I would be disinclined to differentiate poststructuralism and postmodernism because such distinctions often entail antagonism and obscure the critical gaze.¹²² But A.C. Grayling's recent criticism of Žižek, dealing with Žižek's views on violence, makes clear why a distinction is necessary in order to answer the sophomoric blanket rejections of postmodern theory. Grayling states:

120. *Id.*

121. *See generally* Hanlon, *supra* note 50.

122. *See* SORAJJAKOOL\$

WHO [sic] are the most contented people on earth? . . . And finally, I am morally certain, the cultural critics, as they are called, the self-selected radical quasi-philosophers (usually trained as sociologists or literary theorists) who enjoy the unaccountable, responsibility-free luxury of being able to criticise everything and everyone, to sneer and accuse, to blame and complain, to analyse, anatomise, judge and condemn, without fear of being asked to do better themselves.¹²³

This analysis sounds angry, more vitriolic than virtuous. What is meant by “quasi-philosopher” and why are “sociologists” or “literary theorists” unable to engage in criticism? If this was true, much legal criticism would be in question. This failure to engage occurs in the legal academy as well, as some more traditional thinkers seek to root our critical theories important influence.

Grayling finds particular fault with what he alleges is Žižek’s call to do nothing in the face of violence.¹²⁴ I do not know how Grayling interprets Kierkegaard’s nothing, or more appropriately, his acceptance of suffering,¹²⁵ but I would venture that he would not regard Kierkegaard highly. Although there is no crime in disagreeing with Kierkegaard or with Žižek, it is problematic to resist the power of reflection and acceptance as a way to embrace the possibility of one’s present, which moves people beyond static understandings of death, violence, and despair.

To be sure, Žižek abhors the non-acting academic Left—”pseudo-radical academic Leftists who adopt an attitude of utter disdain towards the Third Way, while their own radicalism ultimately amounts to an empty gesture which obliges no one to do anything definite.”¹²⁶ But, Grayling’s criticism seems to deny Žižek’s important analysis of violence on the basis of *ad hominem* attack.

Grayling acknowledges that, “[y]ou can, and should, complain

123. A.C. Grayling, *The Wild Man of Pomo*, THE AUSTRALIAN, June 28, 2008, .

public discourse. Why, however, do so many legal scholars seem to avoid civic engagement? Much of this stems from the lack of critical engagement with the world beyond academia's ivory tower. Sure there's campaign work and conference organizing, but why not more public criers and activists? Legal scholars are too often disengaged from politics—tacit accepters of the way and the truth of the status quo.¹³³ Our ability to engage in discourse has been limited not only by rigid rules we endured as students and educators, not only by fear of reprisal and apathy, but by the sudden turn of public discourse from the intellectually enriching to the vulgar and void.¹³⁴ Public discourse in its disuse has atrophied, has become banal.

In order to address the banality of our discourse we must engage it directly. We must embrace Žižek's ethic of questioning to invigorate our own critical drive. In order to sustain the public sphere we must sustain public discourse. We must act out and against the mass media news clips, streaming feeds, simulated stories, and pop discourse to develop a larger political project of active resistance. This requires a movement beyond the university or office walls.¹³⁵

As intellectual thought has been commodified, intellectuals find themselves increasingly limited in the ability to pursue their interests.¹³⁶ The rise in university managerialism and corporatized media has worked to commodify intellectualism.¹³⁷ The commodification of intellectual expression has disastrous consequences. It relegates activism to passively articulated and abrasively scrubbed sound bites and computer bytes.¹³⁸ It replaces inquisitiveness with complacency and hinders intellectual growth, all the while being portrayed as an effort to increase critical engagement.

133. See, e.g., SLAVOJ ŽIŽEK, *ORGANS WITHOUT BODIES: ON DELEUZE AND CONSEQUENCE* 132, n.23 (2004) (describing Francis Fukuyama as “a fully pledged apologist for the existing order”).

134. Richard D. Parker, *Taking Politics Personally*, 12 *CARDOZO STUD. L. & LITERATURE* 103, 103 (2000).

135. See generally Paul A. Taylor, *Why Žižek? Why Now?*, 1 *INT'L J. ŽIŽEK STUD.* 4, 4–5 (2007), available at <http://zizekstudies.org/index/php/ijzs/article/view/33/93>.

136. *Id.*

137. *Id.*

138. See Parker, *supra* note 135, at 103 (“Packaged in sound bites and images, it is superficial.”).

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The public debates we need in order to see justice are lacking.

normalizes the lack of the Other so that the Other begins to exist inside the shroud of democracy.¹⁵⁶ It becomes acceptable to otherize. This ideological position is true to Žižek's spirit. Ideas and events do not warrant blanket acceptance or rejection. Instead democracy, or any other idea, must be critiqued, reevaluated, and pursued anew. The process of critical investigation must be ongoing so that we do not tacitly accept democracy or any other idea.

Democratic dreaming is both beneficial and dangerous. To idealize a utopia is dangerous, but to appreciate the journey toward utopia is a productive endeavor because it demands the participation of the subject. Achieving democracy and striving toward democracy are dramatically different creatures. Žižek appreciates this distinction when he condemns the abstraction of democracy.¹⁵⁷ I argue similarly that confusing the abstract ideal of democracy with the rhetoric of democracy wraps an insidious cloak around a most distressing enemy.¹⁵⁸ Public discourse may encourage great things, but we cannot let ideals blind us to our present.

the premise of democracy is that no political agent is *a priori* legitimized to hold power, that the place of power is empty, open to competition. However, by institutionalizing the lack, democracy neutralizes—normalizes—it, so that the big Other is again here in the guise of the democratic legitimization of our acts—in a democracy, my acts are “covered” as the legitimate acts which carry out the will of the majority.

Id.

156. *Id.*

157. SLAVOJ ŽIŽEK, LOOKING AWRY: AN INTRODUCTION TO JACQUES LACAN THROUGH P

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VIII. CONCLUSION

Why do I resort so often to examples from popular culture? The simple answer is to avoid a kind of jargon, and to achieve the greatest possible clarity, not only for my readers but also for myself. That is to say, the idiot for whom I endeavor to formulate a theoretical point as clearly as possible is ultimately myself.