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# Building a Better Sand Castle: Fantasy, Growth, and the Enchantment of Reason

DEBORAH MARANVILLE\*

## INTRODUCTION

I have been musing about fantasy a lot lately. Or perhaps fantasies. One thread of my reflections has to do with fantasy in the sense of “speaking things into being”—creative fantasy, the vision that helps create a different reality by believing in its possibility, claiming its existence, making it so. Having a new dean will do that. So will starting and ending a romance. Not to mention struggling to birth the next phase of a career, and to move two children across the threshold into adulthood.

But there’s another thread also: fantasy in the sense of escape, temporary or longer-term unwillingness to face reality. There’s the twenty-year-old, who admits that she’s resisting growing up because she doesn’t want to face the responsibilities of adulthood, instead preferring to immerse herself in junk novels. Or the man whose metaphor for life is the movie *Groundhog Day*. Master of the seamless relationship, always having the next woman in place before he leaves, repeating the same pattern over and over, never facing his loneliness, his alcoholism. Or the friend I love, but rarely connect with, as he fills the space around him with words and busy-ness to escape the pain of the lie in the center of his life. Or my own fantasy of reading in the warm sun on the deck overlooking the water of East Sound on Orcas Island. So, faced with the task of writing a paper on Pierre Schlag’s *The Enchantment of Reason*, how could I *not* talk about fantasy, escape, and speaking things into being?

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\* Professor of Law, University of Washington School of Law. Many thanks to Michael and Pam Fischl for their generosity in organizing this symposium, opening their home to the participants, and setting wonderful examples of both “speaking things into being” and an understanding of reason that is not premised on a denial of emotion. Thanks also to my sisters Jan Madill and Nancy Maranville for a lifetime of thoughtful conversation and for reading an earlier draft of this piece, to my colleague Louis Wolcher for a careful reading and erudite comments, and to P.M. whose struggles led me to explore the question of good and bad fantasy. And, of course, special thanks to Pierre Schlag for his provocative and entertaining book.

Pierre Schlag begins his book with the premise that “what unifies the American law school . . . is faith in the power of reason.”<sup>1</sup> He goes on to describe a “rule of reason”<sup>2</sup> in which reason is “authoritative”<sup>3</sup> and “entitled to rule,”<sup>4</sup> and ends it with the suggestion that “we expect everything to be done by reason.”<sup>5</sup> In Pierre’s view this over-reliance on reason is a form of enchantment, one that results in a discourse that is self-important and intellectually stylized,<sup>6</sup> not to mention aesthetically unattractive and distracting from the (never specified) concerns of the left. His adjectives include “not being true,”<sup>7</sup> “pathological,”<sup>8</sup> and “bizarre.”<sup>9</sup>

One might say that Pierre’s claim that legal thinkers engage in “magical thinking”<sup>10</sup> is sufficient to discredit the enterprise, given the apparent incompatibility of magic and reason. And yet, given the dual connotations of both enchantment and magic, perhaps a closer look is in order. For enchant means both “to bewitch; lay under a spell,” or more obscurely “to delude” and “to delight”; similarly, magic means both “sorcery” and “superlatively good.”<sup>11</sup> So, perhaps our task is to decide whether and when the “magical thinking” described by Pierre might be a wonderful and delightful activity, and when it is simply an undesirable attempt to bewitch us all.

In evaluating the role of “magical thinking,” it may be helpful to think about that favorite postmodern claim—the notion that reality is socially constructed, that our understanding of the world is based on the categories and concepts we human beings create.<sup>12</sup> The process is a dialectical one, of course, for just as we construct the world, the world in turn constructs us. (My favorite description of this process is one that I

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1. PIERRE SCHLAG, *THE ENCHANTMENT OF REASON* 19 (1998) [hereinafter SCHLAG, *ENCHANTMENT*].

2. *Id.* at 40.

3. *Id.* at 39.

4. *Id.* at 59.

5. *Id.* at 142.

6. *See, e.g., id.* at 141-42. David Carlson interprets this argument as “a romantic one. Law should abolish itself, so that the concrete subject can act from passion, the child of integrity.” David Carlson, *Duellism in Modern American Jurisprudence*, 99 COLUM. L. REV. 1908, 1910 (1999). I read Schlag not as attacking constraint, but as making a different claim. The claim is not that the absence of rules or constraint is good, or even possible. Rather, it is that within any cultural form, a time arrives when the form is exhausted and activity within the form has become so routine that insufficient opportunity and space are available for creativity and growth, either individually or culturally.

7. SCHLAG, *ENCHANTMENT*, *supra* note 1, at 111.

8. *Id.* at 117-18.

9. *Id.* at 131.

10. *See id.* at 108-09.

11. OXFORD ENGLISH DICTIONARY ONLINE (2002), at <http://dictionary.oed.com>.

12. The standard cite for this proposition is PETER L. BERGER & THOMAS LUCKMANN, *THE SOCIAL CONSTRUCTION OF REALITY: A TREATISE IN THE SOCIOLOGY OF KNOWLEDGE* (1966).

associate with Catharine MacKinnon: an understanding of women as weak and femininity as requiring women to wear high heels and avoid strenuous exercise produces—surprise—women who are weak, because they wear high heels and avoid exercise.<sup>13</sup>)

One potential implication of understanding reality as socially constructed is that to a significant extent reality is something we “speak into being.”<sup>14</sup> We create understandings of the world, we speak them to each other, and they become our reality. Both our cultures and our individual lives, in other words, are, in an important sense, works of imagination, or fantasy.<sup>15</sup> To some extent, life is a consensual game of make-believe. Yet, in the dialectical process described above, the game of fantasy, like all art, is an act of creation that results in a new reality with very tangible real world effects.<sup>16</sup>

If this is so, and I would argue that it is, then the claim that law professors are engaged in consensual make-believe, which seems to be the gist of Pierre’s claim that legal thinkers engage in “magical thinking,”<sup>17</sup> does not in itself invalidate the enterprise, for that will be true of any project. The additional question that must be asked is: do we like the selves, the lives, the worlds that are created by this particular consensual game of make believe? When we create a world (or perhaps, more properly, a subculture of law professors) whose fantasy is that reason rules, that objective answers can be found to both fundamental and concrete legal questions, do we create a world that is good for us as human beings?

Pierre is clear that the answer is “no,” and I agree that we need a better sand castle. But perhaps by exploring the roles of reason and fantasy in our lives, we can get a few hints as we try to build a better sand castle for ourselves. So, this paper will explore four questions,

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13. While I associate it with MacKinnon, I haven’t found the citation.

14. I am not articulating a radical social constructionist position that would deny the existence of any external reality, but a more moderate position that what we perceive in that external reality and the meaning it has for us are a function of the social world we construct.

15. The term “fantasy” is a challenging one here because of its numerous connotations, both good and bad. OXFORD ENGLISH DICTIONARY ONLINE (2002), at <http://dictionary.oed.com>. Fantasy has many obscure meanings, including “mental apprehension of an object,” and “delusive imagination.” *Id.* Modern definitions have a similar dual nature, including “a mental image,” and “a product of imagination, fiction, figment.” *Id.* I will not attempt to define the term rigorously, but instead note that I am trying to get at the double-edged nature of fantasy, its ability to create reality, and its sometimes extreme disconnection from reality. I will explore different uses of fantasy elsewhere.

16. For a compelling illustration, see ANNE FADIMAN, *THE SPIRIT CATCHES YOU AND YOU FALL DOWN: A HMONG CHILD, HER AMERICAN DOCTORS, AND THE COLLISION OF TWO CULTURES* (1997), a story of conflict between the Western medical interpretation of epilepsy and the Hmong culture’s understanding of the condition.

17. SCHLAG, *ENCHANTMENT*, *supra* note 1, at 108-09.

seeking not answers, but insight. What is the role of fantasy in our individual and social lives? What distinguishes good from destructive fantasy? To the extent that reason operates as a fantasy, by giving us the illusion of control, to what extent is it a useful or a destructive fantasy? How might legal academics build a better sand castle?

Let me explore these questions first in the context of individual lives, before asking whether the lessons we learn as individuals have any relevance to the social, political, or legal realms.<sup>18</sup>

### FANTASY AND INDIVIDUAL HAPPINESS

One obvious entrée into thinking about fantasy is to consider the role it plays in furthering individual happiness. I take this approach with some trepidation, for I do not wish to defend the position that individual happiness is the “be-all and end-all” of human existence, and I understand that the very concept of *individual* happiness can be challenged given the inextricably social nature of human existence.<sup>19</sup> Yet, given a choice between more or less individual happiness, I would choose more, in part because I am inclined to believe both that alternative goals such as social progress and group solidarity are inextricably intertwined with individual happiness and more likely to be furthered when individuals are happy, rather than miserable. So let’s take a fresh look at a Big Question.

### THE ROLE OF INDIVIDUAL GROWTH IN HAPPINESS

How are we to achieve happiness? In recent decades, this question, central to much religious and philosophical investigation, has been elaborated in two related strands of research. In a burgeoning empirical investigation into the quality of life, “the first measures tended to be wholly economic and objective.”<sup>20</sup> Later, “new concepts of *subjective*

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18. Many on the left argue that the American tendency to psychologize problems has powerful depoliticizing tendencies, attributing all problems to the individual and deflecting attention away from underlying social and political arrangements. See, e.g., William H. Simon, *Fear and Loathing of Politics in the Legal Academy*, 51 J. LEGAL EDUC. 175 (2001); *Homo Psychologicus: Notes on a New Legal Formalism*, 32 STAN. L. REV. 487 (1980). I recognize this potential, but argue that attention must be paid to both the individual and the social/political. Perhaps because I am a product of the women’s movement for which the aphorism “the personal is political” has been so central, or perhaps because I have the concrete thinking habits of a history major, my intellectual work habitually begins with personal experience in some fashion. This response to Schlag’s work is consistent with that pattern.

19. My thanks to my colleague Louis Wolcher for comments that encouraged me to clarify my position on this point.

20. See Robert E. Lane, *Quality of Life and Quality of Persons: A New Role for Government?*, 22 POL. THEORY 219, 221 (1994).

*well-being*. . . added an internal dimension.”<sup>21</sup> Recently, Amartya Sen and others have built on the empirical research in an effort to theorize the conditions of human development.<sup>22</sup>

In this tradition, subjective well-being (SWB) is characterized as satisfaction, positive affect, and low levels of negative affect as judged by individuals themselves.<sup>23</sup> This research encompasses efforts to develop valid and reliable measures of subjective well-being and efforts to identify correlates of positive SWB. Despite its limitations,<sup>24</sup> the research arguably is consistent with the wisdom from other traditions.

Much of the empirical research identifies factors over which we have little control, at least in the context of our own lives. These factors include genetics, temperament, and early childhood experience.<sup>25</sup> Other research provides insights more relevant to how we should live our lives. One strand of research suggests, not surprisingly, that progress towards individual goals is a significant contributor towards individual happiness.<sup>26</sup> Much of this research side-steps the question whether the content of those goals matters, but other studies suggest that some goals do in fact lead to happiness more than others. Diener et al.’s review of recent findings suggests that happiness is furthered by goals that lead to individual growth through increased competence, satisfying personal relationships, and service or connection to community:<sup>27</sup> the relative centrality of self-acceptance, affiliation, and community feelings were positively associated with greater well-being, whereas the centrality of financial success, social recognition, and physical attractiveness were associated with negative well-being, such as lack of vitality and more physical symptoms.<sup>28</sup>

21. *Id.*

22. *See, e.g.,* AMARTYA KUMAR SEN, DEVELOPMENT AS FREEDOM (1999).

23. *See generally* Ed Diener et al., *Recent Findings on Subjective Well-Being*, INDIAN J. CLINICAL PSYCHOL., available at <http://www.psych.uiuc.edu/~ediener/hottopic/paper1.html>.

24. *See, for example,* that favorite of the left, Charles Murray:

The main problem with using happiness as a self-defined construct is that it has tended to produce reports of *correlates* without offering much leverage for getting in the black box of explanation. . . . “Happiness” is an example of a construct that may be *informed* by the kinds of data that social scientists are able to obtain from surveys, but cannot very usefully be *defined* by such data.

CHARLES MURRAY, IN PURSUIT OF HAPPINESS AND GOOD GOVERNMENT 21 (1994).

25. *See* Diener et al., *supra* note 23, at 8, 15 (finding that about fifty percent of the variation in subjective well-being apparently stems from genetic factors, and some additional amount from early childhood environment). “Although Tellegen et al. (1988) found that about fifty percent of SWB can be attributed to genetics, Ryan et al. (1996) suggest that child rearing may illuminate some of the unexplained variance.” *Id.*

26. *See id.*

27. *See id.* (addressing in detail all three of these factors).

28. *Id.*

[I]ndividuals high in intimacy motives exhibited higher overall psychological adjustment . . . individuals pursuing personal strivings related to power experienced negative emotions significantly more frequently than those pursuing academic goals . . . the degree of success in domains related to autonomy and competence was significantly correlated with the evaluation of how good a day was . . . needs for financial success, social recognition, and physical attractiveness were predicted by having controlling, cold, and uninvolved parents.<sup>29</sup>

While progress towards individual goals need not imply significant personal growth, in many cases the two will go hand-in-hand. Mihaly Csikszentmihaly has summarized his extensive academic research on the conditions of optimal experience, or flow, and individual satisfaction for the popular press.<sup>30</sup> He argues that “following a flow experience, the organization of the self is more *complex* than it had been before. It is by becoming increasingly complex that the self might be said to grow.”<sup>31</sup> Csikszentmihaly views growth as involving two processes: “*differentiation* and *integration*. Differentiation implies a movement toward uniqueness, toward separating oneself from others. Integration refers to its opposite: a union with other people, with ideas and entities beyond the self.”<sup>32</sup> Csikszentmihaly’s claim that growth is critical to optimal experience is consistent with familiar psychological theories such as Maslow’s hierarchy of needs and much parenting advice. His further claim that “more than anything else, the quality of life depends on two factors: how we experience work, and our relations with other people”<sup>33</sup> seems equally unexceptional.

### *Growth Through Individuation: Competence*

The idea that happiness comes in part from growth through individuation—the development of competence—is a familiar one.<sup>34</sup> We have all been children, delighting in mastering new challenges successfully or wilting in the face of seemingly insuperable ones, and many of us have witnessed the process in our children. Csikszentmihaly’s contribution has been to identify typical conditions for optimal experience involving the development of competence: engaging in challenging activities that present a good match for the individual’s skill level and that provide

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29. *Id.*

30. See MIHALY CSIKSZENTMIHALY, *FLOW: THE PSYCHOLOGY OF OPTIMAL EXPERIENCE* (1990) (citing extensively to Csikszentmihaly’s academic research).

31. *Id.* at 41.

32. *Id.*

33. *Id.* at 164.

34. Emphasis on the “in part.” We all have incredibly competent, and incredibly miserable, colleagues and friends.

immediate feedback, thus allowing continued skill growth.<sup>35</sup> As he notes, these conditions may be found in a wide range of activities—reading, competitive games, physical activities—and are often created by the participants even when the conditions are not initially present.

*Growth Through Connection:  
Personal Relationships, and Service or Connection  
to Community*

Czikszenmihaly's second path to individual growth is growth through connection to other individuals and the community.<sup>36</sup> The sense that connection to other individuals is crucial to happiness finds concrete expression all around us, despite severe pressures on the traditional forms for that path. Participation in either a traditional nuclear or extended family is no longer critical to economic survival in industrialized nations. That fact arguably has made possible many changes in modern life, including the development of gay and lesbian identity,<sup>37</sup> a significantly delayed average age of marriage, and a high rate of divorce. Yet despite these changes, we continue to seek the personal connection made possible by long-term romantic relationships, and, yes, even marriage. Despite controversy within the gay and lesbian communities and vociferous opposition outside it, many gays and lesbians push for the opportunity to marry. The newspapers and cyberspace are filled with personal ads, many of them seeking personal connection, not simply sex of all flavors.

Traditional outlets for the need for community face similar pressures.<sup>38</sup> Participation in the union movement and in traditional political parties has declined significantly in the United States in the last half-century. Also on the decline is participation in civic organizations that are less focused on the common good in a broad sense. Yet the need for community is widely acknowledged. Many argue that service to others is a reliable path to happiness. This is, of course, an underlying theme in many religions and spiritual traditions, and it finds expression in the recent popularity of service requirements for high school students.

In addition, it finds support in the form of empirical research suggesting that concrete health benefits result from service and volunteering, especially efforts that involve personal contact with strangers and using skills within a supportive organization.<sup>39</sup> The underpinnings for

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35. See CSIKSZENTMIHALY, *supra* note 30, at 49-58.

36. *Id.* at 175-91.

37. See, e.g., John D'Emilio, *Capitalism and Gay Identity*, in POWERS OF DESIRE: THE POLITICS OF SEXUALITY 100 (Ann Snitow et al. eds., 1983).

38. See, e.g., ROBERT B. PUTNAM, *BOWLING ALONE* (2000).

39. ALLAN LUKS & PEGGY PAYNE, *THE HEALING POWER OF DOING GOOD: THE HEALTH AND*



this claim are bodies of research on the relationship between stress and the immune system, and on the production and effects of endorphins. The immune system research demonstrates that stress negatively impacts the immune system and that “affiliative connections”—friendship and other social bonds—reduce stress and improve the functioning of the immune system.<sup>40</sup> The endorphin research suggests that bonding and helping behaviors may trigger the release of powerful endorphins, the neurotransmitters that can “muffle[] pain” and create a “druglike high.”<sup>41</sup>

### *The Challenge of Creating Meaning*

The challenges of individual growth take place within a larger project of creating meaning for our lives.<sup>42</sup> This is, of course, both an individual and a social project. Just as individual growth involves differentiation and integration, finding meaning involves making sense of one’s individual life and connecting it to a larger meaning, whether located in a family or other subculture, a religious or intellectual tradition, or a political community or nation. The recent emphasis on narrative in law, as well as a range of efforts aimed at humanizing legal education and law practice, acknowledge the power of this quest for meaning within the legal subculture.<sup>43</sup>

### THE ROLE OF FANTASY IN INDIVIDUAL LIVES

How do we distinguish good fantasy from bad? On the level of the individual, the preceding discussion suggests that good fantasy will perform one of three tasks: facilitate individual growth by helping the individual develop competence in connection with intrinsic goals; further affiliation and service by creating personal connection or connection to the larger community; or assist with the task of creating meaning for our lives.

By contrast, we can expect that fantasy becomes harmful when it interferes with any of these three tasks. These insights, however, may operate at too high a level of abstraction to provide much assistance in

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SPIRITUAL BENEFITS OF HELPING OTHERS 83-87 (1992) (summarizing the medical research); see also John Wilson & Marc Musick, *The Effects of Volunteering on the Volunteer*, 62 LAW & CONTEMP. PROBS. 141-68 (1999).

40. LUKS & PAYNE, *supra* note 39, at 83-87.

41. *Id.* at 52; see also generally *id.* at 50-59.

42. Cf. RACHEL NAOMI REMEN, *MY GRANDFATHER’S BLESSINGS: STORIES OF STRENGTH, REFUGE, AND BELONGING* 28-30 (2000).

43. See, e.g., Kim Lane Schepple, *Legal Storytelling*, 87 MICH. L. REV. 2073 (1989); STEVEN KEEVA, *TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE* (1999).

living our lives. Thus, it may be helpful to think more about fantasy's different uses.

### *Uses of Fantasy*

We use fantasy in at least three distinct ways.<sup>44</sup> First, we engage in fantasy as preparation for the tasks of our daily life. We are all familiar with the children's game of make-believe, and contemporary American culture views childhood fantasy games as necessary preparation for adulthood. We fantasize about the encounters we expect to have with others, and by doing so attempt to prepare ourselves for their responses. In the law school world, we find an institutionalized version of this use in the role-playing exercises that comprise the entire oeuvre of moot court programs and simulation-based lawyering skills classes, and in the "moots" used in clinical courses to help students prepare to represent real clients. In a more rarified milieu, Olympic athletes use fantasy in the form of guided visualization to help turn their aspirations into reality.

Second, we engage in fantasy as an act of creation, to bring into being the world that we would like to exist. This is the "speaking it into being" that I described earlier. As teachers and as parents, we know, or learn, that in significant part we create good students and good children by seeing their potential—hidden though it may be to themselves and to others—challenging them, helping them develop their skills to meet the challenges, and encouraging them to believe in themselves. My now eighteen-year-old daughter struggled with learning issues from the time she required speech therapy to learn to talk. Her speech therapist observed that expressive aphasia was often accompanied by a "high need to control her environment," a polite way of saying that she was bossy. I still remember fondly the special education teacher who could see the spark of potential in this bossiness and said, "I would work with her on leadership skills. I think of a leader as someone who sees what needs to be done and is willing to do it."

Similarly, good leaders spend much of their time building esprit, in part by telling their people how [special, brave, brilliant, talented, all of the above] they are. Lovers speak their undying love and all too occasionally succeed in creating it. We build strong friendships by encouraging and complimenting our friends, supporting their dreams, helping

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44. Arguably, we are engaged in a degree of fantasy simply by participating in our (sub)cultures and attempting to make sense of our lives. The subcultures that we speak into being continue to exist because we are willing to participate. Our lives have meaning to the extent that we construct our narratives of purpose. Hence, I could include this paper as a use of fantasy, but I won't.

them feel that when we are around them they are better people.<sup>45</sup>

Finally, we can use fantasy as a way of escaping from the problems and pain of the world around us, either temporarily or on a more ongoing basis. The use of fantasy for escape encompasses a range of behaviors. Temporary escapist fantasy can be constructive by providing us with a respite from the pressures of everyday life, allowing us to recharge and return to the fray with renewed energy. Taken to extreme, by contrast, individuals may retreat into fantasy to an extent that prevents them from engaging fully with the world.

### *Positive Uses of Fantasy*

Fantasy is both necessary and inevitable for us as individuals. Many forms of fantasy have positive consequences for individual growth, facilitating achievement and/or connection. Using fantasy to prepare for real activities can have both effects, allowing us to learn skills in a more controlled, less threatening environment before we take on greater challenges, or giving us the confidence to reach out to other people. Our fantasies may not always need to be "realistic" in nature to be useful as preparation. Tantalizing psychology research suggests that children may learn better skills for coping with real life from fantasy-oriented television than from more realistic programming.<sup>46</sup> (Perhaps there's hope for law and literature teachers who claim practical benefits for their activity.) As long as we do not remain stuck in a simulated world, never making the transition to the next stage, preparative fantasy has the potential to be useful.

In describing the creative, speak-it-into-being aspects of fantasy, I noted the ways in which teachers, parents, and other leaders can build on the spark of potential. Such positive efforts not only encourage individual growth, they can also facilitate connection by building a sense of special obligation to the community.

### *Negative Uses of Fantasy*

Escapist fantasy raises three barriers to individual growth and connection to community. The first barrier is the risk of arrested development and stunted growth through lack of experience. Individuals who have experienced drug problems as adolescents typically show signs of delayed maturity and often come across as interpersonally immature

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45. In my younger years, I referred to this behavior, somewhat disparagingly, as "gushing," viewing it as insincere. With the wisdom of age I see it differently, and proudly recount my successful efforts to be more openly enthusiastic and complimentary, viewing it as an important technique for creating connection.

46. JAY HALEY, *LEAVING HOME: THE THERAPY OF DISTURBED YOUNG PEOPLE* (1980).

because they missed out on many of the activities of growing up. Rather than differentiating through complexity by taking on ever-increasing challenges, as recommended by Csikszentmihaly, such individuals stagnate.

A second, related risk is that the individual will use escapist fantasy as an excuse to avoid facing interpersonal and other life problems.<sup>47</sup> This risk is illustrated by a common criterion for diagnosing an addiction: the addiction interferes with the addict's work or family obligations. Living with even a relatively functional addict can be difficult simply because the addict is not "present" to devote attention to working through problems. Similarly, extreme forms of mental illness, such as schizophrenia, can be characterized by hallucinations that result in the individual losing all connection with the surrounding world.

The third risk is that immersion in a fantasy world will draw the individual inward and lead to a retreat from opportunities to develop skills or connect with other individuals and the community. Csikszentmihaly argues that watching television and spectator sports "involve processing very little new information and thus require little concentration"<sup>48</sup> and thereby function as a type of fantasy and withdrawal from the world.<sup>49</sup> Marx, of course, famously characterized religion as "the opiate of the people"<sup>50</sup> and modern critics of the mass consumer culture argue that the incessant pursuit of "things" operates similarly.

Though our use of fantasy for creation, to help speak worlds into being, has the potential to further individual growth and connection, it need not. Teachers can build on negative sparks by expecting failure or scapegoating. Moreover, leaders, such as the Hitlers and Milosoviches of the world, can exploit their people's fears in order to seize power and build worlds of terror and pain.

### *Reason's Fantasy of Perfect Control*

Security, safety, perfect control over our environment. Ah, the fantasy of the cocoon, the womb, the gated community. A powerful fantasy, but an impossible, and yes, an undesirable one. Reason lures us in part because it seems to offer us the safety and security that we anticipate would result from perfect control. The impossibility of perfect control, however, can be summarized in four words: nature, people,

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47. See, e.g., CSIKSZENTMIHALY, *supra* note 30.

48. *Id.* at 30.

49. See *id.* at 162. I am translating his argument into my terms, but fairly, I believe.

50. Actually, according to JOHN BARLETT, *FAMILIAR QUOTATIONS* 481, Item 5 (16th ed. 1982), the correct wording is: "Religion . . . is the opium of the people."

unintended consequences. Nature's power (think volcano, flood, avalanche, hurricane, and global warming), complexity (think butterfly effect and, again, global warming), mystery, and unpredictability (think genetic mutations) have so far stymied Mao, supercomputers, and the United States Army Corps of Engineers. Men and women continue to surprise and infuriate each other (divorce rate) and politicians (Osama bin Laden and Al Gore), and the unintended consequences threaten to overwhelm us (campaign finance reform and global warming, again).

Not only is the fantasy of perfect control impossible, it's also a bad idea. Why? Think about the number of times that you've grown from tragedy, disappointment, or loss. If we could control our environment perfectly, we could eliminate many of those "I'll only go there kicking and screaming," mandatory growth opportunities. Our likely prize for this elimination: stagnation, not happiness.

I have suggested that perfect control is an illusion, a fantasy. Nevertheless, perhaps we can still have less-than-perfect control. So let's turn our attention to the question of when reason's offer of control functions as a good fantasy, and when it functions as a destructive one.

*Influence → Letting Go = Good, Reason → Control = Fantasy*

The ability to reason is fundamental to an individual's ability to function effectively in the world, and within significant Western philosophical traditions rational action is viewed as an important means to happiness.<sup>51</sup> At the most basic level the ability to engage in means-ends reasoning—to understand that if I plant potato seeds in the spring, I will reap an edible crop of potatoes in three months,<sup>52</sup> or that if I leave a fire burning in the woods during a summer drought, the resulting forest fire may kill me—is crucial to meeting one's basic needs for food and safety. Perhaps because our ability to engage in ends-means reasoning is critical to continued life, we invest considerable energy in trying to use our reasoning ability to predict events and to control our environment, both our material environment and the people around us. Indeed many of our most significant cultural artifacts can be seen as just such attempts: agricultural methods, astronomy, and religion.

Yet many would argue that seeking to dominate nature, to achieve perfect control over it, is always a doomed act of hubris. One need not be a radical environmentalist, nor a Native American traditionalist, to recognize that the history of humanity is a record both of our successful attempts to control our environment and our recurrent failures. Thus, successful human functioning requires some level of modesty about our

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51. See generally J.O. URMSON, *ARISTOTLE'S ETHICS* (1988).

52. Don't take my word for it. I don't grow potatoes.

attempts at control, recognizing that influence is more likely than control. In addition, it requires that we be able to function adequately at those times when we face compelling evidence that we cannot control.

Psychology has, of course, grappled with the way individuals respond to both of these challenges. Unsurprisingly, psychologists have invested considerable time in expounding theories of developmental psychology that address the growth in children's ability to reason, especially to reason instrumentally.<sup>53</sup> In addition to this focus on the development of reasoning ability, a second major theme in developmental psychology is the critical importance for children to develop an understanding that their actions can control their environment.<sup>54</sup> At the most basic level, if the child cries and the caretaker responds, the child learns this crucial lesson.

Evidence suggests that in many settings we human beings function best when we believe that the world operates according to reason and that we have the ability to control our environment.<sup>55</sup> An entire research subspecialty within psychology has developed to investigate the "locus of control of reinforcement."<sup>56</sup> The initial research suggested that individuals with an "internal locus of control"—people who believe external reinforcement is contingent on their efforts—are most successful and happy.<sup>57</sup> Such a hypothesis seems consistent with Czikszentmihaly's research: when we believe that the world is rational and that we can control our environment, we are most likely to act in ways that will allow us to control what we can. That, in turn, will often lead us to develop our individual capabilities and relationships in a way that will lead toward subjective happiness.

Later, more detailed investigations, however, have suggested that an external locus of control characterized by a belief that powerful others control reinforcements can actually be *more* consistent with achievement, happiness, and willingness to initiate social change in some circumstances. This is probably so, where the environment is in fact one that is significantly controlled by others, a condition that, of course, obtains for subordinated groups, such as women and racial minorities in many cultures.<sup>58</sup> A plausible interpretation of this research

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53. Richard Kitchener, *PIAGET'S THEORY OF KNOWLEDGE: GENETIC EPISTEMOLOGY AND SCIENTIFIC REASON* (1986).

54. ERIK H. ERIKSON, *CHILDHOOD AND SOCIETY* (1985).

55. See *RESEARCH WITH THE LOCUS OF CONTROL CONSTRUCT*, vol. 1-3 (Herbert M. Lefcourt ed., 1983).

56. *Id.*

57. See Irwin Sandler et al., *Person x Environment Interaction and Locus of Control: Laboratory, Therapy, and Classroom Studies*, in 2 *RESEARCH WITH THE LOCUS OF CONTROL CONSTRUCT* 187 (Herbert M. Lefcourt ed., 1983).

58. *Id.*

is that people function best when their efforts are congruent with their surroundings, i.e., they are “in touch with reality.”

Many philosophical and religious traditions, academic approaches to psychology and psychotherapy, as well as much of the popular literature emphasizing self-help and spirituality, emphasize the partial role of reason and control. This limited role is premised variously on the importance of feelings to human satisfaction and interaction, the role of the irrational, the conditions of optimal experience,<sup>59</sup> and limits on our ability to control other people and our environment.

Similarly, much individual and group therapy, whether facilitated by professionals or taking place within the self-help context, struggles with these themes of reason and control. Within the therapeutic environment, excessive reliance on reason is often viewed as an impediment to psychological growth. Here, the suggestion that a person “lives in his head” is not a compliment. Rather, it implies that the individual is engaging in escapist fantasy, using intellectual activity as rationalization to avoid feeling and moving through the pain that we inevitably experience in our lives.<sup>60</sup>

As a result of this tension between reason’s control fantasy and the intractability of our human and physical environment, effective psychological therapy often requires grappling successfully with the limits on our ability to control other people and events in the external world. For this reason, step one of the ubiquitous twelve step programs spawned by Alcoholics Anonymous is, “We admitted we were powerless over alcohol and our lives had become unmanageable.”<sup>61</sup> This tension is similarly reflected in those philosophical and religious traditions, such as the stoicism of the ancient Greeks and Buddhism, that emphasize emotional detachment. An important theme in Buddhism is that we cannot control the world, we can only control our reaction to it.<sup>62</sup> This is illustrated in the Zen koan, “Before Enlightenment, chop wood, carry water. After Enlightenment, chop wood, carry water.”<sup>63</sup>

This effort to relinquish control is often controversial, perhaps because human beings so often see the world in “either-or” terms and seek easy answers, resisting the notion of “both-and,” the insight that two somewhat contradictory things may be true at the same time. Thus,

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59. See generally CSIKSZENTMIHALY, *supra* note 30.

60. See, e.g., REMEN, *supra* note 42, at 144-45.

61. See Alcoholics Anonymous website, at <http://www.aa.org>.

62. PEMA CHADRON, *THE PLACES THAT SCARE YOU: A GUIDE TO FEARLESSNESS IN DIFFICULT TIMES* (2001); PEMA CHADRON, *WHEN THINGS FALL APART: HEART ADVICE FOR DIFFICULT TIMES* (1997).

63. See J.P. TARCHER, *CHOP WOOD, CARRY WATER: A GUIDE TO FINDING SPIRITUAL FULFILLMENT IN EVERYDAY LIFE* (1984).

a willingness to give up control can easily be interpreted as promoting quiescence in the face of injustice,<sup>64</sup> rather than a willingness to trade control for influence by opening up oneself to uncertainty and whatever the world may bring.<sup>65</sup> As the wording of Alcoholics Anonymous's Serenity Prayer suggests, however, giving up control need not imply giving up influence: "God grant me the serenity to accept the things I cannot change, the courage to change the things I can, and the wisdom to know the difference."<sup>66</sup> Thich Nhat Han's version of engaged Buddhism arguably represents a contemporary effort to find this balance between control and influence.<sup>67</sup>

### *The MBTI and Differing Orientations Toward Reason and Control*

In considering the positive or negative valence of reason's control fantasy, it may also be useful to recognize that the lures of reason and control are felt more strongly by some than by others. If personal experience does not convince you of this, consider Jung's psychological type theory, and the Myers-Briggs Type Inventory (MBTI), which is based on Jung's theory. Jung's theory posits that individuals vary in their characteristic orientations towards consciousness and towards the world. The orientations towards consciousness include two kinds of judgment ("approaches toward bringing life events into harmony with the laws of reason"): Thinking, in which judgment is based on "making logical connections," "rel[ying] on principles of cause and effect," "objectivity" and "criticality," and Feeling, in "which one comes to decisions by weighing relative values and merits of the issues."<sup>68</sup> In addition, Myers made explicit two orientations to the outer world, either Perceptive, "attuned to incoming information," "open, curious, and interested," or Judging,

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64. But see, for example, the Dalai Lama. This discomfort may be related to the discomfort of historians and lawyers with historical indeterminacy that Morton J. Horwitz alludes to in Mark Tushnet, *Legal Historian*, 90 GEO. L.J. 131, 135-139 (2001).

65. As the mother of a now almost grown daughter who in her younger years was prone to say, "I don't want to, I don't have to, you can't make me," one of my important life lessons continues to be about the difference between control and influence. Short of force and terror, I had no hope of controlling my daughter, in the sense of forcing her to do anything, but I had (and have) considerable influence, if I can avoid the power struggles that are generated by the illusion that control is possible.

66. According to JOHN BARTLETT, *FAMILIAR QUOTATIONS: A COLLECTION OF PASSAGES, PHRASES, AND PROVERBS TRACED TO THEIR SOURCES IN ANCIENT AND MODERN LITERATURE* 823 (1980), the author of the Serenity Prayer, phrased somewhat differently from the version in the text and continuing at some length, was Reinhold Niebuhr and the prayer was "[o]riginally part of a sermon in 1943 and later used by Alcoholics Anonymous."

67. See, e.g., ROBERT HARLEN KING, THOMAS MERTON AND THICH NHAT HAN: *ENGAGED SPIRITUALITY IN AN AGE OF GLOBALIZATION* (2001). Thanks to Jan Madill for this observation.

68. ISABEL BRIGGS MYERS & MARY H. McCAULLEY, *MANUAL: A GUIDE TO THE DEVELOPMENT AND USE OF THE MYERS-BRIGGS TYPE INDICATOR* 12 (1985).



“concerned with making decisions, seeking closure, planning operations, or organization activities.”<sup>69</sup>

Now, as it happens, there is some reason to believe that the vast majority of lawyers<sup>70</sup> and, one presumes, even more law professors, are drawn towards the use of judgment by Thinking. In addition, three-fourths of judges,<sup>71</sup> (and we might guess a similar proportion of Schlag’s judge-wanna-be normativos) prefer the decision-oriented judging orientation to the world. It may not be too much of a leap to suggest that such an orientation towards judging the world by thinking, especially when accompanied by a tendency towards deciding, might incline normativos to ask reason to do to all the work, leaving none for feelings and values.<sup>72</sup>

The MBTI folks offer two insights that might help us evaluate the usefulness of the fantasy suggesting that with reason we can control the world. First, they suggest that we all use each one of the functions and orientations measured by the MBTI test daily,<sup>73</sup> and that good “type development” over a lifetime requires “striving for excellence in those functions that hold the greatest interest and . . . becoming at least passable in the other less interesting, but essential functions.” What might this mean in thinking about fantasy and reason? Well, one implication, of course, is that we will not all have the same orientation towards reason (surprise!), and that is okay. A corollary is that any given fantasy might interfere with the individual growth of some more than others. Nevertheless, because we are talking about law professors, who tend to share the orientation towards Thinking, we might predict that the release of the fantasy of reason and control will be necessary for full development of the personality, and perhaps by extension, good understanding of the world.

Second, they suggest that

The place to use judgment is in monitoring one’s behavior and in choosing a course of action given everything that has been perceived. . . . Judgment is *not* best used to impose standards on others. The terms *judgmental* and *authoritarian* describe the misplacement of

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69. *Id.* at 14.

70. Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1393 n.349 (1997).

71. At least according to the relatively small sample cited in MYERS & McCAULLEY, *supra* note 68, at 251.

72. Perhaps we could even say that: 1) when law professors feel that the The Force is strong within them, they are feeling the enchantment of reason; and 2) *some* of our colleagues (surely not us) have, as we say in my family, “control issues.”

73. The MBTI evaluates four functions—thinking, feeling, sensing, and intuition—and four orientations—extraversion, introversion, judgment, and perception. In the text I have described only two of each.

judgment from one's own goals to those of others.<sup>74</sup>

This one is pretty scary. If we are not to impose standards on others, who will attain tenure?? Perhaps the implications are more modest. Perhaps we readers should stop telling Schlag that it is his obligation to propose a solution, to go normative.<sup>75</sup> That is not what he does. Schlag claims to be engaged in a descriptive project in the hope that a better understanding of what we do in law will, in my words, help us "build a better sand castle." Time will tell whether he is correct. In the end, perhaps we should stop trying to find a solution for what "we" *all* should do, in the abstract. We have different gifts, and different interests. So choose your favorite possibility, invite some friends, and give it a try.

#### FANTASY, LAW, AND SOCIETY

Now comes the hard part. My discussion of fantasy and individual happiness was, like Schlag's book, primarily oriented toward law professors and their over-reliance on reason. Yet the world of law professors is a small, limited one. Do these speculations on the role of fantasy have any significance for our thinking about the effects of law on individuals or the operation of law in the world? In Susan Silbey's wonderful contribution to this symposium describing her study of the stories ordinary people tell about the law, we find hints that these speculations do indeed affect our thinking.<sup>76</sup>

Silbey describes three stories that people tell about the law: the "formal rationality" of "before the law" that constitutes the "sacred face of legality," the law "played as a game" in "with the law," and finally, "law as a product of unequal power" in which "people often 'act against the law' employing ruses, tricks, and subterfuges to evade or appropriate law's power." These alternative stories suggest that ordinary people<sup>77</sup> are only too aware of the limits of reason in the law.

One plausible reading of Silbey's study is that to the extent that formal rationality is unable to satisfy our societal aspirations for justice and fairness, to the extent that it is a fantasy without grounding in people's lived experience, it is a bad fantasy. For the powerful, it is escapist, allowing them to avoid addressing the injustices perpetuated by their rule. As for the powerless, it may distract them from other solutions to their problems.<sup>78</sup> Nor will the fantasy ultimately protect law's purported

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74. MYERS & McCAULLEY, *supra* note 68, at 67. Serenity prayer, anyone?

75. Yes, I know. I am engaging in the process of judging others. But I carefully included myself in an admittedly lame attempt to avoid my own critique.

76. Susan S. Silbey & Patricia Ewick, *The Double Life of Reason and Law*, 57 U. MIAMI L. REV. 497 (2003).

77. I suggest that this also includes many ordinary lawyers.

78. Cf. GERALD LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE*

rationality, for its effectiveness will inevitably be undermined as those subject to its power institute evasive strategies.

### BUILDING A BETTER SAND CASTLE

Let me close with a few words on the problem of building a better sand castle, or, as Jack Schlegel puts it, “But Pierre, if we can’t think normatively, what are we to do?”<sup>79</sup> The legal academy is not ready to sign up *en masse* for Schlag’s program. Even if he had a program. The hold of reason and normativity, the desire for control, the investment in that form of discourse, remain too powerful. Yet just as the fantasy of perfect control appeals to some more than others, the spells of reason and normativity do not enchant everyone equally.

### THE SPELL OF REASON

A common response to Schlag’s book, one that surfaced even among participants in this symposium otherwise disposed to be sympathetic, is that he is attacking reason *tout court*, in its entirety.<sup>80</sup> This is, not surprisingly, just a bit threatening for law professors, for we purport to teach reasoning and our scholarship is typically based on analytical and other forms of, yes, “reasoning.” Indeed, Schlag’s attack can seem both mystifying and in rather bad faith, given that he continues to produce books and law review articles at a prodigious rate and that his work seems to exemplify reason, understood as abstract thinking, at its best. Yet, my sense is that this (mis?)reading of the book is more typical among white men, and, if I am correct, might shed some light on the gender dynamics of the conference itself.

Both Schlag’s argument and his actions make much more sense if we read *The Enchantment of Reason* not as an attack on reason per se, but as a much more narrowly focused attack on SuperReason—reason asked to perform all the work of saving the world. As Tamara Piety argues elsewhere in this symposium, this is “Reason with a capital R,”<sup>81</sup> reason as defined according to Descartes, in opposition to emotion. Yet, even if we are prepared to let go of Reason’s fantasy of perfect control, this more modest attack can make sense to us only if we have available to us compelling alternative understandings of reason.

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LAW PRACTICE (1992) (discussing the ongoing debates about whether legal remedies distract subordinated peoples from community organizing and political solutions).

79. John Henry Schlegel, *But Pierre, If We Can’t Think Normatively, What Are We to Do?*, 57 U. MIAMI L. REV. 955 (2003).

80. See, e.g., C.J. Summers, *Distorting Reason*, 11 YALE J. LAW & HUMAN. 529 (1999) (book review).

81. Tamara Piety, *Smoking in Bed*, 57 U. MIAMI L. REV. 827 (2003).

In a variety of fields, from feminist theory to neuropsychology, the Enlightenment conception of reason is under attack and alternative conceptions are beginning to be sketched.<sup>82</sup> Multiple strands of feminist theory are an important part of this project. The argument that Descartes' dichotomy between reason and emotion is wrong and seriously misleading pervades much feminist theory.<sup>83</sup> For almost two decades, feminist standpoint theorists have developed the argument that the questions a researcher will be motivated to ask and the information available for answering those questions will often depend on the social location of the researcher.<sup>84</sup> Related and overlapping critiques of the history of science argue that a different conception of reason is necessary in order to effectuate the ideals of good science.<sup>85</sup> Additionally, feminist epistemologists argue for a naturalized epistemology that builds on cognitive science.<sup>86</sup>

One example of the challenge cognitive science poses to traditional conceptions of reason can be found in the work of Antonio Damasio, an internationally recognized neurologist. Damasio has hypothesized on the basis of extensive investigation of neurological disorders that the reasoning activities of our brain are interconnected with the emotional activities throughout the physiology of the brain. He argues that without "somatic markers" that code experiences with emotional states, we are unable to focus our attention, make choices, or attend to the future as we engage in "reasoning."<sup>87</sup> Thus, the familiar idealized vision of the rational as detached and unemotional is fundamentally misleading. Damasio's work has found its way into legal thought through such theo-

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82. In her contribution to this symposium, Joanne Conaghan critiques Schlag, in part, for choosing not to acknowledge these connections. Joanne Conaghan, *Schlag in Wonderland*, 57 U. MIAMI L. REV. 543 (2003). For a recent example of some of this work and an excellent bibliography on the epistemology strand, see *ENGENDERING RATIONALITIES* (Nancy Tuana & Sandra Morgen eds., 2001).

83. See Frances Olsen, *The Sex of Law*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 691 (David Kairys ed., 3d ed. 1998), for such an argument in the legal context.

84. Leading standpoint theorists include Patricia Hill Collins, Sandra Harding, Donna Haraway, and Nancy Hartsock. A recent exchange on standpoint theory, including Harding's relatively accessible analysis of typical misreadings of standpoint theory, can be found in 26 *SIGNS: J. WOMEN CULTURE & SOC'Y* 485-540 (2001).

85. Sandra Harding argues this point explicitly in *Comment on Walby's "Against Epistemological Chasms: The Science Question in Feminism Revisited": Can Democratic Values and Interests Ever Play a Rationally Justifiable Role in the Evaluation of Scientific Work?*, 26 *SIGNS: J. WOMEN CULTURE & SOC'Y* 512, 518 (2001). JANE DURAN, *TOWARD A FEMINIST EPISTEMOLOGY* 73-102 (1991), contains an interesting chapter summarizing the work of Sandra Harding, Evelyn Fox Keller, and Susan Bordo.

86. See, e.g., DURAN, *supra* note 85.

87. ANTONIO R. DAMASIO, *DESCARTES' ERROR: EMOTION, REASON, AND THE HUMAN BRAIN* (1994).

rists as Steven Winter.<sup>88</sup>

I will not try here to elaborate further on these conceptions of reason, or to defend them. For my purpose it is sufficient to note that: 1) they are out there; 2) they are supported by considerable research and theorizing; and 3) the widespread tendency to misread them as fundamentally irrationalist in nature or relativistic in import is premised on precisely the understanding of reason that these new conceptions challenge. Though many of the thinkers leading the attack on reason are male, my own sense is that the alternative conceptions of reason tend to seem more compelling to women than to men.<sup>89</sup> This seems plausible to me for two reasons.<sup>90</sup> First, because women in North American societies are typically permitted, encouraged, and expected to do the emotional work—the care work in families and elsewhere—we pay more attention to our emotions and more readily recognize their role in our reasoning processes. Second, as we engage in emotional work, we often use reason to work through our emotions, searching for intellectual frameworks and understandings that will both help us make sense of our emotions and, at times, trigger the feeling of the emotions.<sup>91</sup> In the same societies, men are often taught that to betray emotion is unmanly. They tend to be discouraged from showing their feelings and are thereby inclined to repress and shy away from experiencing them. Thus, I suspect a greater number of men than women would find unfamiliar and discomforting a conception of reason that is integrated with emotions.

#### THE SPELL OF NORMATIVITY

Just as the spell of reason holds sway in different degrees with different people, the spell of normativity casts its net unevenly. I have never qualified as one of Schlag's "normativos,"<sup>92</sup> law professors giving advice to judges as though they were listening. Too much proto-crit influence in my legal training, too much feminism in my politics, too little "Judging" tendency in my personality. So I have never felt threatened by attacks on normativity (and I do not think that is just

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88. STEVEN WINTER, *A CLEARING IN THE FOREST: LAW, LIFE, AND MIND* (2001).

89. One need only read Suzanna Sherry's work to recognize that this is a tendency not an absolute. See Suzanna Sherry, *The Sleep of Reason*, 84 GEO. L.J. 453 (1996). On the other hand, many men have well-developed emotional intelligence and comfort with an alternative conception of reason.

90. Though I draw in part on personal experience here, I am also drawing on a scholarly tradition large enough that I no longer recall specific influences.

91. Well, I do, anyway. When the task at hand is grieving, for instance, reading about typical stages and experiences of grief is a useful trigger for *doing*, that is, *feeling* the grief. But I do not think that I am alone. Surely these uses help explain the much greater popularity of self-help books among women than men.

92. See Pierre Schlag, *Normative and Nowhere to Go*, 43 STAN. L. REV. 167 (1990).

because Schlag and I were baby law professors and carpooling buddies together). My first law review article<sup>93</sup> was criticized by Langdellian colleagues for not proposing a solution to the problem I addressed, and normativity has fared no better in my scholarship as I have aged. My articles addressed to advocates and legal educators place me outside the dominant discourse.

Many of the participants in this symposium have, likewise, shied away from normativity, focusing their efforts on work of other types: feminist or critical race theory work that is too explicitly political to fit easily within the normative label,<sup>94</sup> descriptive work in the best sense,<sup>95</sup> history,<sup>96</sup> empirical work.<sup>97</sup> And though this work has not transformed legal thought, or the legal enterprise on any large scale, I am enough of an optimist to think<sup>98</sup> that the seeds are being planted for a more bounteous harvest eventually.

#### FINAL OBSERVATIONS

If we want a better sand castle, we have no choice but to make use of fantasy and speak it into being. But let us aspire to constructive fantasies, not escapist ones, fantasies that are linked to an inchoate reality—the aspirations and capabilities of both speaker and audience, the circumstances of our external world. Let us not forget that speaking (writing) things into being will not alone create a new reality. We must act. Act, according to who we are, through our teaching, our political work, our lawyering. We must act knowing that reason will fail us. We can only engage with possibility, make hard choices in the absence of certainty, and learn the lessons that life presents us. Trite, perhaps, but still true.

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93. Deborah Maranville, *Administrative Agency Nonacquiescence: Outlaw Agencies, Imperial Courts, and the Perils of Pluralism*, 39 VAND. L. REV. 471 (1986).

94. How many participants in this symposium can I offend by citing only a few of them here?

95. Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685 (1976); RICHARD MICHAEL FISCHL & JEREMY PAUL, *GETTING TO MAYBE: HOW TO SUCCEED ON LAW SCHOOL EXAMS* (1999).

96. JOHN HENRY SCHLEGEL, *AMERICAN LEGAL REALISM AND EMPIRICAL SOCIAL SCIENCE* (1995).

97. PATRICIA EWICK & SUSAN S. SILBEY, *THE COMMON PLACE OF LAW: STORIES FROM EVERYDAY LIFE* (1998).

98. Read: "believe."