

COSMOS + TAXIS

Studies in Emergent Order and Organization



Philosophy, the World,
Life and the Law:
In Honour of Susan Haack

PART II

OUR LIVES AND HOW WE LIVE THEM
THE LAW AND HOW WE USE IT
TESTIMONIALS AND TRIBUTES

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COVER IMAGE

*Susan Haack on being awarded the
Ulysses Medal by University College Dublin*
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PHILOSOPHY, THE WORLD, LIFE AND THE LAW: IN HONOUR OF SUSAN HAACK

PART II

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Haack Among the Feminists: Or, Where are the Women?

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If you've had anything to do with anglophone Departments of Philosophy over the last ten years or so, you've very likely seen on prominent display one of the posters produced by the American Philosophical Association's 'Committee on the Status of Women' (CSW). The one in my school bears the caption 'Philosophy: Where are the Women?', and hangs, rather appropriately perhaps, beside the Ladies' restroom. The poster consists of a collection of 170 portraits of women, from figures of the ancient world through current, and in some cases quite recently hired, academics. There is another version that differs from the former only in the caption—a more pointed, provocative query: 'Philosophy: Got Women?'. The poster is intended, according to the CSW, to be a celebration of women in the discipline; and displaying it, or other CSW posters, is said to be a way to show support for women working in philosophy.¹ I have also heard it described as an aid to recruitment of young women towards a philosophical career. But there is both much more, and much less, to it than that.

It is hard not to see the poster also as a challenge: does your department have women? Does it have *enough* women? If not, why not? And to take it so would be very much in line with the mission of the CSW and associated organisations like the Society for Women in Philosophy (SWIP).² But let's take it at face value: a celebration of women in philosophy. Now, to those among us who don't habitually discriminate philosophers who interest us in terms of their sex, it can take more than a cursory examination of this poster to realise that there are some extraordinary omissions. Take, for instance, the philosopher we are honouring in this *Festschrift*. Susan Haack's absence is striking: undoubtedly one of the greatest living philosophers, any display that aimed at celebrating women philosophers ought, one might have thought, to feature Haack in a position of especial esteem. She was included in a collection of the 100 Best Philosophers of all time in 2004: six women were named in total, Haack one of only two born in the 20th c. (King 2004). The other was G.E.M. Anscombe—and she doesn't make the CSW poster either.

Further inspection shows that Anscombe and Haack are in very good company: also missing from the poster are such important and influential philosophers as Hannah Arendt, Sarah Broadie, Jean Bethke Elshtain, Philippa Foot, Rosalind Hursthouse, Mary Midgely, Iris Murdoch, Susan Stebbing (the first woman to hold a chair of philosophy in the UK), Mary Warnock, and Kathy Wilkes. And that's just off the top of my head. Take a glance at Mary Warnock's 1996 publication *Women Philosophers* (Warnock 1996). Warnock names seventeen women in that book, but of the

nine born in the 20th c., *seven* are not on the poster (that seven includes Haack and many of those just named). Quite remarkable; but we need not stop there. The British newspaper *The Independent* ran a piece on ten great female philosophers in 2005 (Paglia & Levenson 2005). This time, the poster did rather better; half of the *Independent's* women can be found on it—Simone de Beauvoir, Ayn Rand, and historical figures Anne Conway (17th c.), Mary Wollstonecraft (18th c.), and Hypatia of Alexandria (5th c. AD). The half left out are Arendt, Anscombe, Warnock, Margaret Fuller, and, again, Haack. Say what you like about these sorts of surveys, but it is hard to imagine any attempt to celebrate women that have made, or are making, a mark in philosophy that could leave out such figures as Arendt or Anscombe, Stebbing or Foot, Warnock or Midgeley; or Susan Haack.

What's going on? What could possibly explain such glaring omissions? This is a poster that finds space for the fictional Diotima of Plato's *Symposium*,³ for Pericles' paramour Aspasia,⁴ and for a whole gaggle of medieval mystics.⁵ Descartes' correspondent Elizabeth of Bohemia appears twice!⁶ There's room too for a few contemporary women whose claims to be active in philosophy seem dubious; a Professor of Communication, a Buddhist scholar and 'Leader of Faith-Based Health Initiatives', and at least one woman who, since the poster's publication, appears to have moved on to a career outside academia. Now we might be forgiving of blunders in any well-intentioned product of that most cumbersome animal, a committee—never mind an *academic* committee.⁷ And certainly one might allow an oversight or two; to err is human. But this many? Is there something more going on here than the innocent celebration of, and support for, women in philosophy? Let's put this question another way: leaving aside the approximately 40 historical (i.e., pre-20thc.) figures, who—or who else apart from the already named, and rather odd bedfellows, de Beauvoir and Rand—is *on* this poster?

What we find is that the vast majority are feminist philosophers. Now perhaps this might seem like a statement of the obvious—particularly, I imagine, to many of the *men* in philosophy who agreed to the display of this poster in their workplace.⁸ Surely, one might innocently think, if one is a woman, and one does philosophy, then, in all likelihood, one must thereby be a feminist philosopher? After all, women who have succeeded in philosophy, or in other so-called 'non-traditional' professions, might be presumed to believe in equality of opportunities for both sexes; and isn't that pretty much what we mean by 'feminism'? Moreover, doesn't Susan Haack herself say she is a feminist? (Haack 1998, 3; 1998a, 123).

There is a difference, however, between being a philosopher who is also a feminist, and being a feminist philosopher; and this difference corresponds to very different conceptions of 'feminism'. The former does her work in the area of philosophy in which she is interested, be it Metaphysics or Ethics or Epistemology, or in the History of Philosophy, *and* is someone who believes in the principle that women and men ought to have equal rights and opportunities. She may well believe that today, and for some time now, they do (at least in the West). The latter, on the other hand, might very well be active in Metaphysics or Ethics or Epistemology, or in the History of Philosophy, but she consciously pursues her interests through a feminist prism; she does *Feminist* Metaphysics, *Feminist* Ethics, *Feminist* Epistemology, *Feminist* History of Philosophy. No fewer than 110 of the women on the poster—over 85% of the contemporary women featured—self-identify as 'feminist philosophers' in this sense: they specialise, or cite research interests in, feminist philosophy, or 'feminist theory'.

It seems to me that there is something in this. In fact, as we shall see, if we say a little bit more about feminist theory, its assumptions, and its commitments, then the absence from the CSW poster of Haack, Anscombe, and the others ceases to be so puzzling. One simple way to begin is by noting a striking peculiarity of feminist theory, namely that, in the preceding paragraph, when describing the 'philosopher who is also a feminist', I might have written 'the former does her *or his* work...'; but the addition of the masculine pronoun would be impossible with respect to the 'feminist philosopher'. Men can't possibly be feminists of the latter sort—their role can only be that of either enabler, or amanuensis. As Haack writes, "feminist philosophy' in the now more usual sense [is] an enterprise for which being of the appropriate sex, or, as the jargon goes, 'gender', seems usually to be quietly assumed a qualification' (Haack 1998b, 175). This is because at the heart of feminist theory is the conviction that there is a fundamental difference between men's

and women's experiences, and, consequently, between their ways of conceptualising these experiences. The most a wannabe 'male feminist' can do, according to one prominent feminist theorist, is 'teach and write about women's thought, writings, and accomplishments... criticise their male colleagues... move material and resources to women and feminists' (Harding 1991b, 109; quoted in Haack 1998b, 179). (I don't know about you, reader, but to my mind, at least, this unedifying image recalls nothing so much as the self-gelding devotees of Cybele.)

Haack, then, is a feminist, but her feminism, as she herself puts it, is an 'old fashioned' feminism, a 'modest style which stressed the common humanity of women and men, focused on justice and opportunity'; the other sort is a 'new-fangled' feminism, 'an ambitious, imperialist feminism which stresses the 'woman's point of view' and claims revolutionary significance for all areas of philosophy' (Haack 1998, x; 1998a, 123). These two kinds of feminism map well onto the distinction often made between 'equity' and 'gender' feminism.⁹ 'Equity feminism' is very much the 'old-fashioned' feminism to which Haack subscribes, rooted in the tradition of classical liberalism, and is concerned with the equal treatment of men and women before the law, and the removal of prohibitions to women's participation in society. Haack's own early article 'On the Moral Relevance of Sex' is an excellent example of an equity feminist rationally demolishing a contribution to the debate over women's rights that attempted to defend such prohibitions in certain circumstances (Haack 1974). 'Gender feminism', on the other hand, has its roots in the 'radical' feminism of the 70s, has parallels with and indeed is inspired by Marxism, and developed further through interactions with post-modernist theory towards questions of gender identity and sexuality. It is this latter sort of feminism that is the dominant ideology of most contemporary academic feminists—that is, it is the feminism of 'feminist theory'. Returning to the poster, then, we might say that the vast majority of the women featured are 'gender feminists'. And this is something that should not surprise us, if we glance at the CSW's mission statement. For among its goals, the Committee 'seeks to facilitate an understanding of issues of *gender* and of the range of positions represented in *feminist theories*' (my emphasis).¹⁰ The CSW sponsored *Newsletter on Feminism and Philosophy* makes gender the key term in its self-description: 'The *Newsletter* is designed to provide an introduction to recent philosophical work that addresses issues of gender' (Callahan 2001, 2).

Before going further, let's pause to consider an objection. Academic feminists themselves do not draw any such distinction between 'equity' and 'gender' feminism; it is a division made by others—by critics of feminist theory. It might seem unfair, then, to characterise them with a label they have neither adopted nor recognised; moreover, this classification of feminism might appear far too simplistic. Elizabeth Anderson, for instance, insists that it is misleading, irrelevant, and unworthy of attention, as it fails to cater adequately for the plurality and diversity of feminist research: it is not, she writes, 'an intellectually serious way to represent the range of feminist thought' (Anderson 2004). Anderson's point is worth considering; for it is one regularly made by feminists when attempting to present or defend feminism. The CSW itself refers to feminist *theories*, in the plural; and the *Newsletter* states that it does not 'advocate any particular type of feminist philosophy'. Aren't there, then, many kinds of feminism? Isn't 'feminism' a term with so many different meanings? Already in 1986, the editors of *What is Feminism?* were speaking of the 'impossibility... of arriving at a shared feminist definition of feminism ...it now makes more sense to speak of a plurality of feminisms than one... [for instance] radical feminists, socialist feminists, Marxist feminists, lesbian separatists, women of colour...' (Mitchell & Oakley 1986, 8-9; cf. Cudd & Andreasen 2004, 7).

At times it can seem that there is such a bewildering variety of feminisms that one might get the impression that each individual feminist subscribes to her own kind of feminism; rather like St Thomas' angels, each feminist a distinct species unto itself. But this bit of dogma is a sham, an attempt to turn criticising feminism into a game of whack-a-mole: try to hit it, it disappears and turns up elsewhere.¹¹ This 'so many feminisms' move reminds me of Darío Fernández-Morera's remarks about a similar Marxist trope—that 'materialist discourse is so heterogeneous and complex as to be beyond critical scrutiny—unlike the bourgeoisie, Capitalism, 'society', 'the classes', 'the West' ... which are so monolithic and simple as to be routinely bandied about' (Fernández-Morera 1996, 5). Likewise with feminism: how often do we hear feminists bandy about these terms, and others too, e.g., 'masculinity', etc—as if they were simple and mono-

lithic? For this reason the candour of Lorna Finlayson's recent *Introduction to Feminism* is to be welcomed. While insisting as usual that there are 'many and varied 'feminisms'', Finlayson claims that the 'constant amid the differences' is the recognition of 'the fact of patriarchy'. Finlayson explains it thus: "Patriarchy' names a system in which men rule or have power over or oppress women, deriving benefit from doing so, at women's expense. Feminists believe that this system exists... as central, woven into the fabric of social reality' (Finlayson 2016, 6 n. 6, 9).

Ah, the patriarchy: that vast conspiracy of gentlemen, according to which every tool at their disposal is employed to keep women under the heel, such as rape, sexual harassment, and adjusting the air conditioning in offices (Dvorak 2015). Now we have reached the dark heart of feminist theory. Finlayson's is a sweeping claim, but, as far as feminist theory goes, it would seem to be justified (and, interestingly, as we shall see later, it seems consistent with the public perception of feminism). Whatever internecine issues feminist theorists might have, the belief that holds them together as a group is indeed a belief in the patriarchal 'oppression' thesis. The editors of the 2005 anthology *Feminist Theory* make this very clear: 'Feminist theory is the attempt to make intellectual sense of, and then critique, the subordination of women to men... [it is premised on the claim that] women are dominated not only politically and economically but also sexually, physically, and in nearly every field of artistic endeavour and philosophical thought' (Cudd & Andreasen 2004, 1).

Feminist theory, then, involves an interrogation of every sphere of life, and just about every discipline in the academy, for evidence of patriarchal oppression of women—which, unsurprisingly, it invariably finds. Given that feminist theory is marked by its belief in the patriarchy, the dice are loaded from the start. And nothing, no intellectual pursuit or feature of social life, can be spared the feminist inquisition, no matter how far from questions of the equality of the sexes it might seem, at first, to be. Take, for instance, feminist metaphysics. The *Stanford Encyclopaedia of Philosophy* entry for 'Feminist Metaphysics', by Sally Haslanger and Ásta Sveinsdóttir, explains that the field is primarily concerned with uncovering the extent to which the central claims and concepts of (traditional) metaphysics support sexism. The feminist metaphysician asks if our 'frameworks for understanding the world are distorting in ways that privilege men or masculinity' (Haslanger & Sveinsdóttir 2011)—and, again, she generally answers 'yes, yes they are'. And these frameworks include the very distinction between the sexes—or the 'genders'. In fact it is here, in the cradle as it were, that discrimination begins. For, following the patriarchy hypothesis, the next central commitment of feminist theory is to the hypothesis of the social construction of gender.¹²

According to this view, which has the status of an article of faith, gender differences are 'not rooted in biology', but are 'artificial constructs that work to reinforce women's oppression' (Cudd & Andreasen 2004, 8). In other words, behavioural differences between men and women are not manifestations of innate biological differences, but are thoroughly social, or cultural, phenomena; and, as such, they are conventional, arbitrary, and therefore, ultimately, malleable. This promise of malleability fuels the vision of feminist theory of a genderless or androgynous utopia of social equality (Charvet 1982, 4-5, 128-9; Elshtain 1986, 5-6, 11). For, according to feminist theory, only by abandoning or deconstructing gender can there be an end to unfair discrimination. But, as things stand, in our patriarchal society, socially recognised or 'traditional' gender roles display an imbalance, favouring men over women politically, socially, legally and economically. Given the social construction thesis, the assignment of certain gender roles to men, and others to women, must therefore be a sexist exercise of power and domination. Indeed, any numerical inequality in certain occupations¹³ or academic disciplines that displays an 'underrepresentation', as the jargon goes, of women, is typically reckoned to be evidence sufficient to maintain a charge of systemic sexist discrimination or bias in that occupation or discipline. The assumption seems to be that outcomes between men and women in society would be equal, were it not for that pesky patriarchal gender division.

This view is captured neatly—if startlingly—in one feminist theorist's assertion that at birth humans are 'bi-sexual infants' that are then 'transformed into male and female gender personalities, the one destined to command, the other to obey' (Bartky 1990, 50). According to feminist theory, then, the gender schema is the deepest and most important socio-political division. And this is why the use of the term 'gen-

der feminist' to describe the feminism of feminist theory is justifiable. It is precisely its emphasis on gender that gives rise to feminist theory's key difference from 'equity feminism', i.e., its insistence that the sort of equality prized and pursued by equity feminists isn't enough for the genuine liberation of women from sexist oppression. Mere equity leaves the fundamental structures of oppression untouched (Charvet 1982, 4). The goal of feminist theory, then, is centred on gender equality, rather than the comparatively superficial level of political or economic equality. Gender feminists thus express impatience with equity feminists. Elizabeth Minnich denounces the 'ordinary feminism'—liberal or equity feminism—which merely 'promises women the same individual rights as men in an otherwise unchanged world' (Minnich 1998, 169). It is not enough, then, for feminism to look to end explicit sex discrimination, and to have equality before the law; only a thorough revolution of culture and society can end sexist oppression.¹⁴ This, then, is the consequence of the rejection of biology and the flight to social constructionism; all differences, other than the reproductive, between men and women are due to conditioning; therefore the only path to equality is the dismantling of the instruments of this conditioning—the social and political structures that oppress women. The patriarchy must be smashed.

Comical though it may be to think of our feminist theorist colleagues manning the barricades like so many modern Mariannes, feminist theory is thus committed to promoting a blatantly revolutionary political agenda. As Haslanger and Sveinsdóttir write, '[t]he aim of feminism is, in the most general terms, to end the oppression of women. The goal of feminist theory is, therefore, to theorize how women are oppressed and *how we can work towards ending it*' (my emphasis, Haslanger & Sveinsdóttir 2011). Again, this pops up in an introductory article on feminist *metaphysics*! The politically activist aspect is also emphasised by Finlayson: 'a central purpose of feminism is that of opposing the system of patriarchy—which means emancipating and improving the lives of women' (Finlayson 2016, 6, 8).

Now it might seem reasonable to ask whether there is, indeed, a patriarchy to be smashed. Finlayson writes '[Y]ou either see patriarchy or you don't... If you do see it, then ...the world convinces you every day, in the form of innumerable 'personal' events and interactions' (Finlayson 2016, 13). That's not very reassuring. What if you don't? (Finlayson has something to say of those who don't see it; we'll have occasion to note her views later.) Likewise, it might seem reasonable to question the hypothesis that gender is entirely socially constructed, and its concomitant rejection of biology. What would gender feminists accept as potential refutation of this theory?¹⁵ But I am not going to investigate either of these questions here. Whether or not it is true that the patriarchy exists, and thus whether or not the goal of feminist theory is a noble one, is beside the point. For what is at issue is not whether the agenda that feminist theory promotes—a change in culture and society culminating in complete equality in a genderless utopia—is agreeable or disagreeable, from a political point of view,¹⁶ but rather the sheer fact that it is political in the first place. For it entails that the feminist theorist is not interested in disinterested research, but seeks to weaponize each discipline and all inquiry—whether it be scientific, philosophical, literary, historical—even geographical!¹⁷—to the political end of opposing the alleged past and present unfair treatment of women. And this means that feminist theorists are not interested in truth.

This is something that gender feminists are on occasion quite happy to state clearly. In an article entitled 'What is Feminist theory?', Elizabeth Grosz states unashamedly that feminist theory is a 'strategy' aimed at power, not at all an attempt to say something true. '[F]eminist theory... is not a true discourse... It could be appropriately seen, rather, as a *strategy*, a local, specific intervention with definite political, even if provisional, aims and goals. ...it seeks effective forms of intervention into systems of power in order to subvert them and replace them with others more preferable' (Grosz 1986, 177). For Grosz, beliefs in truth and objectivity are simply examples of 'patriarchal beliefs' (Grosz 1990, 165–6). Likewise Evelyn Fox Keller says 'the conception of objectivity is a parochial one, influenced by a particular ideology about gender' (Keller, quoted in Levin 1988, 102). Sandra Harding scoffs at the idea of 'the truth—whatever that is!' (Harding 1991a, ix). Instead of truth as a goal, instead of honest disinterested inquiry, Harding explicitly urges the politicisation of science: 'The model for good science should be research programs that have been explicitly directed by liberatory political goals'—liberatory, that is, for gender, race and class (Harding, quoted in

Haack 2007, 334). Anderson, in a piece purporting to defend feminist epistemology from the charge that it is politically motivated, seems unaware that she admits precisely that: ‘doing science as a feminist’ she writes, ‘[means] the pursuit of empirical inquiry... *with the aim of discovering knowledge that is useful to women in liberating them from sexism*’ (my emphasis, Anderson 2004, 9). When James Franklin writes that the ‘unquestioned assumption of Grosz’s work is that everything be evaluated according to whether it is useful to feminism’ (Franklin 2003, 373), he may be referring specifically to Grosz, but he is making a point applicable generally to feminist theory.

An instance of this sort of thinking is the hostile attitude towards any research that might *not* be useful to feminism, for example, research into sex differences. The prominent feminist journalist and public figure Gloria Steinem famously denounced sex differences research as ‘anti-American, crazy thinking... It’s what’s keeping us down, not what’s helping us’ (Young 2013). Academic gender feminists don’t *quite* rise to this level of histrionics (or *herstrionics*?), but their antipathy is evident. Referring to the debate between ‘those proposing innate gender differences (essentialists) and those proposing learned or socially acquired differences (social constructivists)’, a committee member of the Irish branch of SWIP makes it clear that, as far as feminists are concerned, the opposed theories must be judged in terms of the political implications of the research: ‘Given feminist concerns regarding ascriptions of innate gender differences, many feminist philosophers approach such theories with caution’ (Humphreys 2014). ‘With caution’ is an understatement. Camille Paglia remembers a 1970 feminist conference where ‘any appeal to biology was denounced as heresy’ (Paglia 2017, 215). Alice Eagly recalls the audience at an American Psychological Association meeting in 1995 stamping their feet and ‘glowering’ at her during her presentation that questioned the ‘social construction’ thesis; other researchers have stories about their investigations in this area being discouraged or denied funding (see Hoff-Sommers 2000, 89–92; Rhoads 2004, 17–22). Again, why is the feminist theorist cautious about such research? For *political* reasons. What, one might ask, would the feminist say about the huge 2018 study by Greenberg et al that finds that women are on average more empathetic than men, and men on average more systems-oriented than women? (Greenberg et al 2018). The feminist’s first thought, when presented with such research, is: does this further the movement or not? Or, to put it in Harding’s words, is it ‘politically adequate research and scholarship?’ (Harding 1991a, 98). If it is, it enters the lists of required readings.¹⁸ And if not, if it is research that goes against feminist values, it can be dismissed as sexist; it promotes ‘negative’ stereotypes of women. But who makes the judgement that a stereotype is negative? And is it not potentially more harmful to women to reject such research out of hand? Indeed, as its title indicates, the Greenberg study is intended to make a contribution to the study of autism; should this be rejected too, given that it involves research into sex differences? Is that ‘politically *inadequate* scholarship’?

Jean Curthoys explains the sort of ‘political thinking’—as opposed to honest, critical thinking—that one finds in contemporary academic feminism: ‘it is no longer the content of the ideas which is at issue... It is only necessary to identify this form of ideas as intellectually and politically pernicious and we have at hand an easy means for rejecting and denouncing ideas, one which requires no critical engagement at all’ (Curthoys 1997, 70; cf. Haack 2008a, 32–3). For this reason Curthoys as well as Haack have suggested that feminist theory bears a family resemblance to authoritarian attitudes to science such as were typical of the Nazi or Stalinist regimes. As Haack puts it, the fact that Nazi science, or Stalinist science, was concerned with promoting a political agenda means that it is ‘tainted epistemologically’. And so, *mutatis mutandis*, is feminist theory. ‘Aryan or proletarian or feminist ‘science’ is not inquiry but advocacy’ (Haack 2007, 340, 341).

It might appear hyperbolic to make such a comparison. Feminists, like most people, don’t like being called ‘Nazis’. But let’s be clear about the basis of the comparison. Drucilla Cornell complains that a charge that feminists are ‘totalitarians, hence ‘feminazis’ ... [is] deeply disturbing ethically’, and is moved to refute it by pointing out that there ‘are no feminist death squads, let alone concentration camps’, before pulling the virtue-signalling trump card that those who make the comparison are trivialising ‘the human devastation Nazism left in its wake’ (Cornell 2004, 414). This absurd response utterly misses the point. No one is suggesting that feminists are likely to invade Poland or annex the Sudetenland. Nor is the comparison in-

tended as an endorsement of the use of the ‘feminazi’ soubriquet.¹⁹ The charge Haack and Curthoys are putting forward is based rather on noting the striking similarity between feminism and authoritarian regimes in their conceptualizing of the scientific project, and uses familiar historical examples of the latter to highlight the concerns with the former. As Curthoys writes, in justifying her own comparison between Stalinist science and feminism, the comparison ‘does not imply that all the features of the former are being said to be analogous to all the features of the latter’; rather it is meant to show that ‘a kind of argumentation which is found often in contemporary feminist thought [bears comparison to that] which was characteristic of ‘Lysenkoism’ (Curthoys 1997, 59). As we have seen, feminists manifestly *do* want to make of scientific or philosophical inquiry a tool for promoting their own interests, or the interests of the so-called ‘marginalised’ or ‘oppressed’ groups, into which they rather ridiculously insert themselves.²⁰ By the same token, feminists seek to undermine science or philosophy as it is being done or as it has been done by identifying it as simply the promotion by an oppressing class of its own interests. ‘Male scientific investigations’, writes Harding, ‘were meant to pacify, control, exploit and manipulate women or to glorify males and their domination’ (Harding, unpublished paper, quoted in Levin 1998, 102).

Remarks like these betray feminist theory’s borrowings from Marxism. According to some influential strains of Marxist theory, the idea of pure or disinterested inquiry, whether scientific or metaphysical, is impossible—it is and always has been biased towards the interests of one class, the bourgeoisie, and to the detriment of some other, the proletariat. Feminist philosophers of science like Harding just mimic the Marxist approach: “feminist ‘theory’” Fernández-Morera writes, ‘merely replaces the notion of class with that of sex (or ‘gender’...) ...where Marxism spoke of a ‘proletarian science’ with its own peculiar methods and priorities, feminism unoriginally speaks of a ‘feminist science’’. Both the Marxist and the feminist theorist, then, would dismiss the charge that they seek to politicize inquiry—for they insist that it is always already *inherently* political. Their aim is to align inquiry with ‘the *correct* politics’ (Fernández-Morera 1996, 43f.).

But the business of science and philosophy, as Haack writes, ‘is figuring things out, not promoting social justice’ (Haack 2018, 1). In general, if science or philosophy is appropriated for promoting the interests of any class or group, and demoting the interests of another, this is to open it up to the same epistemological objections that we can make towards Fascist or Communist—whether Soviet or Chinese—politicizations of scientific enquiry. It is dangerous as well as mistaken: it is a live threat to the principle basic to our academic freedom, to pursue the truth wherever it may lead. It is no longer science—or philosophy—but ‘only politics in disguise’ (Haack 2007, 341).

Let’s return to the poster purporting to celebrate women in philosophy. It is notable that approximately 40 of the women featured on the CSW poster have, or, at some point in their career, have had, associations with Women’s Studies, either as affiliates of their university’s Women’s Studies programmes, or holding joint Professorships in Philosophy and Women’s Studies. A significant number boast the rather unwieldy title of ‘Professor of Philosophy and Women’s, Genders, and Sexuality Studies’, indicating the direction that Women’s Studies has undertaken in academia. Such titles are frankly oxymoronic. The notion of a person who is a Professor of Philosophy *and* Women’s etc. Studies betokens a sort of schizophrenia, two horses pulling in different directions. For Women’s Studies is and has been from its beginning an activist discipline, fused with a political agenda (see Paglia 2017, 216; also Patai 2008, 253f., and Patai & Koertge 2003). This is not a controversial point; one need only peruse these department’s websites to see this is the case. Take, e.g., Fordham’s ‘Women, Gender, and Sexuality Studies’ program: it is ‘an interdisciplinary approach to a profound social justice goal’, aiming to ‘reshape old axes of power and cultivate new ones’. The program looks at gender and sexuality as a ‘lens on and a vehicle of social change’; students will be encouraged to ‘use that information to create positive change... to become agents of social change who work for the public good’.²¹ Or UC Davis’ ‘Gender, Sexuality and Women’s Studies’ program, which, among its five learning outcomes, cites ‘Advocate for social justice related to gender and sexuality’; and one of the three specialisations majors can choose from is ‘Social Justice, Gender Politics and Activism’.²² The ‘Centre for Gender, Feminisms and Sexualities’ at my university, UCD, launched in 2017, states that ‘active engagement with ac-

tivists, social movements and civil society organisations and activities to effect social change will be a central principle of the new Centre'.²³

A joint professorship in 'Philosophy and Women's etc Studies', then, is as ridiculous as a 'Professor of Astronomy and Flat Earth Studies', taken in the sense that the 'studies' actually entails not study, at all, but activism. It is a title whose constituent parts on each side of the conjunction have goals and methods that are utterly alien to each other: The first indicates a love of wisdom, a respect for the truth; the second revokes wisdom and truth, and substitutes in their stead an explicit devotion to a shallow, partial, biased ideology that is opposed to the ideals of philosophy. There is here no love of wisdom, but a love of power.

Look again at the philosophers I named earlier whose absence from the poster is so striking. Are we close, now, to understanding why they are absent? Why their faces don't fit? Could it possibly be an utter coincidence that the absentee women are 'philosophers who also happen to be women' (Haack's phrase, 1998b, 176), rather than gender feminists for whom being a woman is inseparable from the content of their work? Philosophers who take the goal of inquiry to be truth rather than a political agenda? Philosophers who do not take every philosophical question as yet another opportunity to uncover and oppose the patriarchy? Philosophers who, in short, are—*philosophers*?

Warnock, in the introduction to her *Women Philosophers*, makes this point bluntly: '[in this] 'feminist' literature written by women...there tends to be too much unexamined dogma... too much ill-concealed proselytizing, too little objective analysis, to allow them to qualify for inclusion among philosophical writing proper'. She insists that 'the truths which philosophers seek must aim to be not merely generally, but objectively, even universally, true. Essentially they must be gender-indifferent' (Warnock 1996, xxxiii-xxxiv). In one of her sharpest quips, Haack has written that a rubric such as 'feminist epistemology', a mainstay of Women's Studies and the foundation-stone of feminist science, is incongruous on its face, like 'Republican epistemology' (Haack 1998, 124). But perhaps we should go further, and say, with Warnock, that a rubric like feminist *philosophy*, in general, is incongruous—that is, feminist philosophy as practised in the academy today (feminist philosophy 'in the now more usual sense', as Haack was putting it as long ago as 1997; Haack 1998b, 175). To the extent that it is feminist, i.e., *gender* feminist, it is not philosophy.

Haack and Warnock's scepticism towards their very *raison d'être* naturally doesn't go down well with the 'Professors of Philosophy and Women's Studies' (see, e.g., Tyson 2019). Could that explain their absence from the poster? 'But', one might object, 'not all of the absentee women have been so explicitly critical of feminist theory.' True—their very silence is sufficient for the opprobrium of the opponents of patriarchy. Consider Hannah Arendt. The case of Arendt is arresting; a towering intellectual of the 20th c., taken very seriously by philosophers and political scientists, yet even a decade after her death it was still true to say that Arendt's thought was 'almost totally ignored by feminists' (Markus 1987, 76-87). Why? Arendt makes no direct attack on feminism, although there is evidence that she did not consider herself a feminist, and indeed that she bore an antipathy to the women's movement, which in any case might have been inferred from her distaste for single-issue politics and the totalitarian consequences of utopian ideologies (Young-Bruehl 1982, 96; see also Young-Bruehl 1998, 123, and Elshtain 1986, 24-5). But beyond that, feminist neglect of Arendt is evidently because she offered nothing to the feminist cause. Her famous 'private/public' distinction 'seemed to have no liberation potential whatsoever'; in fact it could be taken to be supportive of 'sexism and political conservatism' (Young-Bruehl, 1998, 128). It certainly didn't synch with the feminist slogan 'the personal is political'. A jibe that would be repeated again and again in feminist circles was Adrienne Rich's dismissal of *The Human Condition*: '[it] embodies the tragedy of a female mind nourished on male ideology' (quoted in Young-Bruehl 1998, 128). Since the 1980s, however, there have been attempts to appropriate Arendt for feminism—on which, see below—but perhaps these have not yet been sufficiently convincing to admit her into the feminist canon alongside contemporaries like, e.g., de Beauvoir or Weil. Nor, yet, evidently, onto the CSW's poster.

Were the poster's purpose to applaud accomplished women philosophers, Arendt's absence would be even *more* inexplicable when one notices that her erstwhile student and teaching assistant, Elizabeth Minnich, an incomparably lesser figure, *is* there. But Minnich is, of course, as we have already noted, a feminist

theorist. Maria Markus makes a salient point, originally in relation to Arendt, but which has more a general applicability, about the importance to feminist philosophers of ‘loyalty to the cause’: ‘There is a disturbing tendency in contemporary feminist theory’, she writes, in that ‘[it] persistently ignores the existence of women thinkers unless they declare openly their interest in feminism’. Women are dismissed by feminists if ‘they have ‘next to nothing’ to say on woman’, that is, little that is specifically relevant to the cause of feminism; or, if they do say something that is not grist to the feminist mill, they are traitors, accused of ‘sneaking into the men’s club’ (Markus 1987, 76). Consider, in this light, Andrea Nye’s comments about Anscombe, Foot, and Murdoch. Nye recalls having as a student to read these philosophers, but, rather than this evidence that women were not, in the late 60s and 70s, being excluded from philosophy syllabi offering Nye any satisfaction, she complains that ‘none of this work was feminist, nor did it diverge far from establishment parameters’ (Nye 1995, ix). Now this might seem a rather anodyne reflection—if you are unaware of Nye’s view of the establishment. For Nye is known, if at all, for her ‘feminist’ criticism of logic as reflecting male modes of thought—and for her advocacy of ‘feminist’ thinking, or ‘reading’, which will be radically different from the male mainstream, or the establishment (Nye 1990, 184).²⁴ To be accused of remaining within the establishment, then, is effectively to be accused of being in league with the patriarchy (see Curthoys 1997, 73, and 175, n. 22).

This is a familiar accusation in feminist circles— if you’re not with us, you’re against us. Of women who dare to criticise gender feminism, Minnich says that they are traitors, collaborators: ‘they have chosen to walk in step with a patriarchy that knows how to reward those who... attack their more agitating sisters’ (Minnich 1998, 175). At least she credits such women with choice; more typical is the view that equity feminists are too duped to be granted the moral agency to make the choice. Paglia, for instance, notes how, at a conference in 1973, the academic feminists in attendance ‘unanimously declared that I had been ‘brainwashed’ and hoodwinked by generations of sexist male scientists’—for saying that there is a hormonal element in sex differences (Paglia 2017, 215). Women like Paglia are said to ‘suffer from false consciousness’: again, Finlayson is quite candid about this. As we saw above, Finlayson defines feminism in terms of the patriarchy: feminists are ‘united by their *opposition* to the system of patriarchy’, adding emphatically ‘if it doesn’t oppose patriarchy, it’s not feminism’ (Finlayson 2016, 8, 9). Before you can ask, ‘what about equity feminists?’, Finlayson admits that this strict definition of feminism is a ‘political claim’ on her part. ‘There are, of course, people who label themselves ‘feminists’ but do not believe the patriarchy exists (any longer)’, she writes. ‘They can call themselves what they like, but we do not have to follow suit’ (Finlayson 2016, 6, n. 7). How inclusive. It gets worse.

If a woman doesn’t agree with the patriarchy hypothesis, Finlayson continues, not merely can she not call herself a feminist, but she evidently suffers from ‘fairly crude distortions of reality, or simple obliviousness to certain phenomena’. In fact, *that there are women* that deny the patriarchy is itself proof of the patriarchy—it shows how pervasive and insidious it is. For this is what systems of oppression, like the patriarchy, do—they ‘have a way of making themselves invisible... engendering certain ‘blind spots’ or self-undermining patterns of thought—that is to say, false consciousness—in those who suffer from the oppression’ (Finlayson 2016, 22). Invisible to ordinary women, perhaps, but not brave souls like Finlayson—she and her gender feminist friends are the anointed ones who have seen through the Matrix. The woman who believes in and opposes the patriarchy knows herself, and her social situation, better than other women. Those hapless women, like Haack, who oppose feminist theory, do so because they have been effectively hoodwinked.

Just think for a moment about what gender feminists are actually suggesting here. What it entails, ultimately, is that it is not just Haack and other (unfortunately few) equity feminists in academia that have been brainwashed by the patriarchy; it is at bottom a claim that the vast majority of women, in general, have been brainwashed. This view goes back to gender feminist icon Simone de Beauvoir who, in conversation with another icon, Betty Friedan, urged that women not be ‘authorized to stay at home and raise [their] children. Society should be totally different. Women should not have that choice, precisely because if there is such a choice, too many women will make that one’ (de Beauvoir 1975, 18). Alison Jaggar, one of the founders of SWIP, wrote in a similar vein that women who choose marriage and ‘traditional’ gender roles do not realise

that they are thereby internalising patriarchal values and thus contributing to the oppression of women (Jaggar 1986, 115).

Consider also the well-known ‘feminist paradox’—the fact that while most women support equal rights and opportunities, only a minority identify themselves as ‘feminists’. In a 2016 survey in the UK, for instance, only 7% said they considered themselves ‘feminist’. Yet more than two thirds were supportive of equality between the sexes (Sanghani 2016). This is a result frequently repeated (see, for instance McCabe 2005, 480–505; Abowitz 2008, 43–63; Scharff 2012). For the gender feminist, the solution to the paradox is obvious; these women are sleepwalking with the patriarchy. They don’t know how oppressed they really are. Indeed, one academic seriously suggests that feminist ‘consciousness raising’ is necessary on campuses to make young women realise that, and how, they are oppressed (Airaksinen 2017). But there really is no paradox; or at least there wouldn’t be if we retained the term ‘equity feminism’, for this *is*, after all, what the majority of women are subscribing to in these surveys. The survey result shows two things; the first, that Finlayson is right, in a way, when she defines ‘feminism’ as opposition to the patriarchy—and the radical views of gender that this entails. For it seems that this is in fact how most women, how most people, see feminism too: people associate the term ‘feminism’ with ‘gender feminism’. The second is that most women want nothing to do with gender feminism.

The ‘brainwashing’ jibe is a last resort that gender feminists rush to first. Any person’s values can be so dismissed as due to being brainwashed; as such the charge is ‘operationally meaningless’, as Murray Rothbard writes. To appeal to such a charge is itself evidence that gender feminists ‘refuse to accept any evidence, logical or empirical, of whatever kind, that might prove their contentions to be wrong. Show them a woman who loves domesticity, and they dismiss this as ‘brainwashing’; show them a militant, and they claim that this proves that women are yearning for ‘liberation’ (Rothbard 1974, 162). Who strikes you as the one that has been brainwashed, indoctrinated: the woman who believes sincerely in a vast conspiracy that distorts everything in life, and, by its very nature, cannot be disproven? Or the woman who doesn’t?

Back to the Poster. There would no doubt be deep irony if a Committee formed ostensibly to assess the state of women in the profession of philosophy and to promote women’s work, and is premised on the claim that women have been and continue to be historically silenced and marginalised, should itself marginalise women for political reasons. But perhaps this might still seem too far a step to take, that is, to think the omission of Haack and others from the CSW poster is a deliberate, indeed, politically motivated decision. It is, after all, only a poster! Is it really credible that the CSW deliberately populated the poster only with those philosophers whose feminist credentials checked out? Am I not, with this lengthy and possibly unhealthy obsession over portraits of women (oh dear!), setting off on a conspiracy theory of my own? Besides, look here! Isn’t Ayn Rand—hardly a feminist of any sort!—on the poster? And isn’t it possible that future versions might include those now excluded? Furthermore—and surely this is a killer, to be delivered with supercilious cross-armed smugness—what of the simple fact that, on the release of this poster in 2012, then CSW Chair Peggy Des Autels invited *anyone* who was missing to simply send a head shot for inclusion in future posters—for which the only qualification was a Phd in philosophy—oh, and being a woman, presumably?²⁵

Whoops. Ok, let’s start with Rand. Admittedly, she does seem an outlier. And as for emendations to the poster, certainly this is possible; moreover, these won’t necessarily be unexpected. For it seems even clear antipathy towards the aims of gender feminism doesn’t mean that gender feminists won’t seek to appropriate and colonise—and distort—other women for the cause, whether Rand or anyone else—*when these women are no longer in any position to object to such use*. This seems already to have happened to Rand.²⁶ It is the very process by which historical women philosophers and writers have been co-opted by feminist theorists for use in contemporary socio-political agendas. Such feminist history of philosophy does not have the laudable aim of adding to our store of knowledge of the thought of the past; its function is to keep the sex—or the ‘gender’—dominant in the mind of the reader.

Consider Arendt again. She would seem a particularly resistant subject of feminist appropriation, as noted above. As her biographer puts it, ‘Feminists have said clearly *‘she was not one of us’* (Young-Bruehl

1998, 137). But—against her will, one might say—we also noted that there have been feminist reassessments of Arendt’s work (see, e.g., Honig 1995). Let’s be clear what that means; it means attempts by feminists to excavate Arendt’s work for anything that will further feminist purposes. For Arendt was a woman, so her work will be infused with women’s ways of knowing: this is a basic principle of feminist theory. Thus Minnich attacked Arendt’s biographer Elisabeth Young-Bruehl for Young-Bruehl’s lack of feminist analysis of Arendt as a woman-philosopher ‘informed by an understanding of the all-pervasiveness of the patriarchy’ (Minnich 1985, 301-2). That Arendt herself said that all thinking is genderless in her *Life of the Mind* is simply ignored, indeed, contradicted. Her thought can and should be understood precisely as gendered, as framed by her experience as a woman. Markus stresses this point: ‘if being a woman is an experience of the importance ascribed to it (and I think justly so) by feminism, then it has to have an impact upon theoretical investigations produced by women, even if they are not related directly to feminist issues’. Failing to realise this will ‘impoverish... the ‘ways of seeing’ of feminist theory’ (Markus 1987, 76). In other words, forcing the gendered, patriarchal heuristic onto readings of women like Arendt is not for the purpose of understanding their thought, or how their thought is important to the discipline of philosophy, but for the ideological purpose of promoting gender feminism.²⁷

Another example of this feminist repurposing is the British Academy project that treats Murdoch, Anscombe, Midgely and Foot as a ‘Female Philosophical School’. A stated aim of this ‘case study’ is, indeed, ‘to examine the barriers women face in philosophy’ (MacCumhail & Wiseman 2019). It’s not hard to imagine the disdain with which these four philosophers would greet this project. Anscombe’s lack of patience with this kind of feminism hardly needs stating: feminists ‘received no aid or comfort’ from Anscombe; she ‘never thought of herself as a woman philosopher’ (McInerney 2001). Midgely states in her memoir that, while the demand for equal opportunities was perfectly understandable, she was ‘puzzled’ by the feminist sisterhood’s excited expressions of ‘male chauvinism and female frustration’, and ‘mystified’ by their ‘frenzy of exasperation towards men’ (Midgely 2007, 37). Murdoch, more than the others, has been getting increased attention from gender feminists (see, e.g., Wylie 2011), but it is doubtful she would be any more appreciative. She is on record lamenting ‘cults’ such as ‘Women’s Studies’ that lead young women to waste their time reading ‘all the latest books on feminism... mediocre or peripheral books by women rather than the great books... of humanity in general’, and dismisses the ‘dead end’ of feminist attempts to separate women ‘from the mainstream thinking of the human race’ by claiming space for ‘female ethics, female criticism, female knowledge’ (quote from Hoff-Sommers 1994, 78). Or, indeed, for ‘female philosophy’ (cf. Sayers 1938, with Haack 2001, 12-14).

The very obvious problem with this sort of approach is precisely the insistence that women who happen to be philosophers—or, rather, philosophers who happen to be women—are always, in the first instance, to be identified as women; and any judgement of their philosophy must keep this in mind. They are philosophising—but *as women*. As a response, I cannot improve upon Young-Bruehl’s own exemplary response to Minnich’s criticism: ‘[Minnich’s demand] is narrow, almost sectarian, because to me it seems to prescribe that biographers [or researchers in general] should fit their subject’s lives to a feminist agenda rather than respecting the way a woman lived her life and understood herself’ (Young-Bruehl 1998, 259, n. 8).

Nevertheless, this sort of approach is endemic in current academic philosophy, and we won’t be rid of it any time soon. Another species of this approach, in so far as it insists on the sex of the author as a relevant factor in the work of philosophy, is evident in the demand of the obnoxious gender feminist BPA/SWIP Good Practice Guide, adopted by Schools of Philosophy throughout the UK, to ensure that a specified minimum number of publications by women appear on all course reading lists. At the University of Oxford, for instance, 40% of recommended works must be by women; moreover, it must be made clear to students which publications are by women, by spelling out first names rather than using initials (Fish 2018). As Oxford Professor of Philosophy Edward Harcourt explained, ‘one of the greatest philosophers of the post-war period, Elizabeth Anscombe, published as ‘G.E.M. Anscombe’. If that’s what goes on the reading list, understandably students won’t know she was female.’ Perhaps she could be listed as ‘Miss Anscombe’, the way

she was professionally addressed throughout her career—even by her husband! (McInerny 2001)—but today, of course, that would be deemed sexist. Not at all sexist, however, to insist on her sex in the syllabus.

It is hard to chart a sure way out of this morass. It appears pointless, for instance, to point out that Anscombe would not want attention drawn to her status as a ‘woman philosopher’; or, for instance, to point out that someone like Susan Stebbing wished to be referred to ‘by the bare surname without academic title or *sex denomination*’ (my emphasis, Barth 1992, 1). For this move is not at all to do with Anscombe or Stebbing or anyone else as a *philosopher*; it has no respect for the individuality and independence of women like Anscombe; it is, like the British Academy project, putting her purely at the service of a political feminist agenda for which she herself would have had no time. It enacts the ultimate insult—inclusion on a reading list *because* she was a woman. And this from Oxford, where she taught for the greater part of her career. And when you think of all this, the only response one can muster won’t be far from that of Susan Haack’s: ‘Oh, good grief! Oxford, yet! What’s *wrong* with them?’.²⁸

To the last objection: anyone can send in a head shot to the CSW to be included on the next version of the poster! The CSW, thus, is not excluding anyone! Well, firstly, this invitation is of no use to absentee women who have passed away, such as Stebbing or Anscombe; it remains the case that they were either excluded, or—somehow—forgotten. Secondly, what sort of philosopher would want to be on this poster? From what we’ve just said, Stebbing or Anscombe would surely decline; I’d wager Arendt, Murdoch and Warnock refusing too. And Susan Haack? Would Susan Haack *want* to be featured on it? Considering Haack’s attitude to all-women conferences (invitations to which she refuses, on the grounds that they are (a) a terrible idea, and (b) sexist²⁹), and her dim view of the agenda of the CSW and SWIP to get more women into philosophy, I’m quite confident she would say ‘no’ (see especially her answer to the fifth question in Haack (2012); on the general issue of preferential hiring of women, see Haack 1998b, 168–179). Evidently the people who would seek inclusion on the poster are precisely the sort who are already most represented on the poster—gender feminists; in other words, the CSW’s target demographic. Moreover, there is undoubtedly, as Margarita Levin has noted, a marked ‘penchant of many feminists to praise themselves most fulsomely’ (Levin 1998, 106). Minnich, for example, makes the extraordinary claim that the work of gender feminists like herself is ‘as fundamental, as dangerous, as exciting’ as the Copernican or Darwinian revolutions; Nye, in a review of Women’s Studies books, gushingly compares their world shaking insights to those of Socrates and Descartes (Minnich 1979, 7, quoted in Hoff-Sommers 1994, 280, n. 3; Nye 1998, 107–115). And all of this without a hint of embarrassment. The poster is a simply another element of this—they are, frankly, celebrating their own damn selves.

In general, it is not necessary to invoke conspiracies of exclusion to make sense of the CSW’s choices for the poster. The fact is, even if the exclusions were (somehow!) unintentional, and even if these exclusions were later to be rectified, as it stands they do, for the most part, match up well with the stated agenda of the CSW, as is evident from its *Newsletter* and the other materials on its website. The thing is, it is not so much that an association such as the CSW ought to be clearer about what it is really about (for it is really quite clear), but that the philosophy community and academics in general ought to be better informed as to what the CSW is about. During the heated debates after the poster appeared, overnight, without any consultation, in my school, I remember well the incredulity with which some of my male colleagues met the simple objection to the display of the poster, namely, that it was a thoroughly partisan, ideological and political statement, and as such inappropriate in the workplace.

One CSW poster asks, ‘Where are the Women?’, the other asks ‘Got Women?’. But ‘Got *feminists*?’ is the question it is really asking; and what’s more, feminists of a particular stripe. The fact is that the CSW, and SWIP too, are neither about philosophy, nor about women. They are interested in *feminist* philosophers, whose claim to be philosophers is, as we have seen, dubious. So while these organisations declare their deep concern about the ‘under-representation’ of women in philosophy, they don’t actually represent *women* in *philosophy*. Recalling the feminist paradox, we might say indeed that there are low numbers of women in philosophy, but that feminist philosophers are in fact greatly *over-represented* in philosophy; and the sort of lobbying pressure these organisations place on departments of philosophy is indeed more likely

to lead to the appointment of *more* feminist philosophers (see Haack 1998b, 176). So let's return to the poster the very same question it asks. Where *are* the women? Too busy doing philosophy, I'd imagine.³⁰

NOTES

1. <https://blog.apaonline.org/2018/02/12/celebrate-women-in-philosophy/>
2. See, for instance, <http://www.apaonlinecs.org/mission>; <http://www.apaonlinecs.org/data-on-women-in-philosophy>; <http://swipuk.org/notices/2011-09-08/>; <http://women-in-philosophy.org/about.php>. The CSW and SWIP share their birth in the slew of resolutions presented by Nancy Hartsock and Alison Jaggar to the APA in 1970. See Love 2006, 220-21.
3. The fictional status of Diotima of Mantinea (not 'Diotima Mantinea', as the rather error strewn poster puts it) ought not to be controversial, but there has been a concerted recent effort to make it so, starting with the tendentious arguments in Waithe 1987, 83 (but note that even Waithe waives judgement on Diotima's historicity, xiv-xv). Cf. the entry on Diotima in Nails 2002, 137. Note that d'Angour 2019 revives the case that Diotima is to be identified with Aspasia, on whom see following note.
4. Henry's study of Aspasia concedes that we know very little about her (Henry 1995, 3, 127, 128). While sexism is regularly invoked as the reason why she has been denied major cultural and intellectual influence (Henry 127; Stadter 1991, 123), sober reflection on the evidence indicates that the claims in, for instance, Plato's *Menexenus* that Aspasia taught rhetoric to Pericles—and Socrates—are not to be taken seriously: as M. Schofield notes drily 'what she was expert in, no doubt, was the giving of pleasure', Schofield 2010, 119 n. 8; cf. also xix-xx. See review of Henry by R. Wallace 1996. Cf. also the entry on Aspasia in Nails 2002, 58f. Even someone as sympathetic to the subject of rehabilitating historical women philosophers as Peter Adamson remarks that one could include Diotima and Aspasia among women philosophers 'only if you are willing to treat Plato's dialogues as records of historical fact (which you shouldn't be)' (Adamson 2016).
5. Or is this unfair (and sexist)? 'The category 'mystic' allows us to throw someone in that container, shut the lid, and assume that that person isn't a thoroughgoing philosopher,' Christa Mercer remarks, adding: 'It so happens that a lot of women have been put in that category' (Goldhill 2017). One man's mysticism is another man's, or woman's, philosophy, perhaps.
6. Elizabeth's different titles confused the poster's compilers; she appears as Princess Elizabeth of Bohemia at no. 66, and as Elizabeth Princess Palatine at no. 154 (different portraits are used). Descartes' other famous female correspondent, Queen Christina of Sweden, is notably absent.
7. Another blunder is the garbling of the name of the last woman on the poster, Hipparchia; she is listed as 'Hipparchia of Marceloneia Villa Farnesina'—the corruption of Maroneia into Marceloneia we might pass over in silence, but the addition of 'Villa Farnesina' is presumably because the editor(s) simply cut and pasted the file name of the image of Hipparchia in her Wikipedia entry, the image being a detail of a wall painting from the garden of the Villa Farnesina, Museo delle Terme, Rome—an inauspicious conclusion to the poster.
8. Assuming, that is, that they were given the opportunity to express an opinion on it—which is not a particularly safe assumption.
9. The 'equity' versus 'gender' feminism distinction was first introduced by Hoff Sommers, 1994, 22f. See also Pinker's presentation of this distinction, 2002, 341f., to which much of the summary of gender feminism in what follows is indebted.
10. <http://www.apaonlinecs.org/mission>
11. Academic feminists' disingenuous adoption of a high-functioning autism approach to figures of speech perhaps behooves me to say that I am not advocating whacking a feminist—no more than I want to actually hit a mole; cf. Gross & Levitt 1998, 116, 121, on feminist 'metaphor mongering'.
12. Butler 1990 goes even further, asserting that sex too is constructed; for a shorter and mercifully clearer exposition of her views, see her 2019.
13. Certainly not every occupation, but the well paid, comfortable, office-environment occupations.

14. Thus the frequent calls to change the culture: see e.g., Haslanger, 2008. For comment, see Elshtain 1986, 7-14.
15. There is a great and growing number of studies documenting the origin of behavioural sex differences in human biology. See, e.g., Beltz et al, 2011, 313-7, Cohen-Bendahan et al, 2005, 353-384; Hines 2010, 448-456. This is not, of course, to rush to the other extreme and claim the differences between men and women are totally a matter of biology.
16. Although de Beauvoir's vision of such is, to put it mildly, very concerning: 'A world where men and women would be equal is easy to visualize,' de Beauvoir writes in *The Second Sex*, 'for that precisely is what the Soviet Revolution promised'; de Beauvoir 1952, 806.
17. Yes, feminist geography is a thing, with its own dedicated journals. See, for instance, Richardson 2017.
18. See, e.g., the 'Recommended Reading' at the Leverhulme Trust funded *Implicit Bias and Philosophy Research Project* site, upon which SWIP relies for the claim that implicit sexism is rife in Philosophy and the cause of women's 'under-representation'. The 'Psychological' literature omits *all* of the many articles sceptical of the effects of implicit bias. Talk about bias, eh? <https://www.biasproject.org/2018/11/27/psychology-literature/>
19. The meaning of 'feminazi' is in any case somewhat ambiguous, having been originally used by Rush Limbaugh with specific reference to extreme feminists that enthusiastically promote abortion, but now often extended to feminists in general. See OED, s.v. 'feminazi'; Rudman 2012.
20. Haack 1998a, 126 remarks on the incongruity of these 'affluent, well-educated Western women' identifying with the marginalized and oppressed.
21. https://www.fordham.edu/info/20526/majors_and_minors/1900/women_gender_and_sexuality_studies
22. <https://www.ucdavis.edu/majors/gender-sexuality-and-womens-studies>;
<https://gsws.ucdavis.edu/program-information>
23. <https://cgfs.ie/>
24. Joan Weiner describes Nye's 'readings' as 'products, not of scholarship, but of fantasy', Weiner 1994, 681. Even worse, Haack finds in Nye's thesis a 'disquieting' revival of sexist stereotypes of women as illogical, Haack 1998a, 125; Nye is indeed reviving very much the same sort of stereotype of women for which Haack took John Lucas to task, that is, as 'so woolly-minded and emotional' that they are not able to understand abstract subjects like mathematics or logic; see Haack 1974, 91.
25. <https://feministphilosophers.wordpress.com/2012/05/16/got-women-poster-now-available/>
26. 'Rand's radical individualism has much to offer to modern feminism... it is "radically empowering" for many women', Michalson 2001, 161.
27. Honig 1995, 2-3, on one reading, might seem to dispute this point; but, be that as it may, she still ends up identifying as the key question in feminist approaches to Arendt, 'How does reading Arendt change the way we think about feminist theory?'.
28. Haack's reaction, in an e-mail of 13:06 [EST], 19th March 2018; on file with author.
29. In the email cited in note 28, Haack refers to an invitation to such a conference: 'they seemed amazed when I said sorry, no, (1) this is a terrible idea, and (2) I don't accept sexist invitations'.
30. Many thanks to Mark Migotti for his patience, his valuable comments on the penultimate version of this paper, and, of course, for inviting me to contribute to this *Festschrift*.

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William James on the Meaningful Life

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Following Susan Haack's philosophical work through the years has taught me much about feminist theory, epistemology, philosophy of science, philosophy of language, and pragmatism. Haack's pragmatism seems to be mostly influenced by that of Charles Sanders Peirce. In this article I focus on another pragmatist, William James, and his views on meaning in life as they appear in his short paper "What Makes a Life Significant" (1983 [1899]).¹ My discussion touches on points discussed by Haack in "Worthwhile Lives" (2008) and "The Differences that Make a Difference: William James on the Importance of Individuals" (2010).

1.

In his discussion of William James's "What Makes a Life Significant," Todd Lekan (2016) argues that James holds in this essay that meaningful lives must combine, on the one hand, ideals that are sensed as novel with, on the other hand, strenuous activity. I should like to add to Lekan's account that James also seems to relate meaningfulness to non-alienation.

James approvingly cites Phillips Brooks, who claims that "No life like poverty could so get one to the heart of things and make men know their meaning, could so let us feel life and the world with all the soft cushions stripped off and thrown away" (WML 162). According to this claim, one of the advantages of poverty is that it forces people to experience reality directly, without the "soft cushions" that, in more affluent and convenient lifestyles, separate people from the world. Anticipating Camus (1991 [1942]: 12–13, 14–15, 17–21) many years later, James takes alienation to militate against meaningfulness.² The notion "alienation" is not easy to explain. It is not loneliness, since one can be alienated even in the close company of friends or family, and one can be alienated from oneself and from objects in the world although one is of course not lonely for oneself nor for objects in the world. One way of describing the feeling metaphorically talks about experiencing the world, other people, or even ourselves as through a transparent film that partly separates us from what we want to "touch." When alienated, we are not quite connecting with or "getting" what is around us and we are not completely present. James also seems to be alluding to this feeling when he says, again citing Brooks, that for the poor, "poverty is a *true* region" (WML 162; emphasis added). Likewise, towards the end of his essay, James approvingly quotes the jurist Fitzjames Stephen, who compares modern life to the huge modern ships that allow passengers to cross the sea so safely and conveniently that they

do not even feel “that they have left the firm land” (WML 166). This is a metaphor for the voyage of life from cradle to grave, in which “progress and science may, perhaps, enable untold millions to live and die without a care, without a pang, without an anxiety. They will have a pleasant passage, and plenty of brilliant conversation” (WML 166–167). However, passengers traveling so safely and comfortably may thereby lose something very important:

It seems unlikely that they will have such a *knowledge* of the great ocean on which they sail, with its storms and wrecks, its currents and icebergs, its huge waves and mighty winds, as those who battled with it for years together in the little craft, which, if they had few other merits, brought those who navigated them *full into the presence* of time and eternity, their Maker and themselves, and forced them to have some definite views of their relations to them and to each other. (WML 167; emphasis added)

Although James’s discussion of alienation is condensed and lacks the detailed elaborations of some later discussions of the meaning (or meaninglessness) of life, he can be seen as an important anticipator of these discussions.

Another interesting feature of James’s account is that he seems to believe that meaningfulness must have to do with endurance, coping with difficulties, or effort. He writes, for example, that “the solid meaning of life is always the same eternal thing, the marriage, namely, of some unhabitual ideal, however special, with some fidelity, courage, and endurance; with some man’s or woman’s pains” (WML 166).³ This is in keeping with Stephen’s sea-voyage metaphor cited above, in which he explains how progress and science may enable millions “to live and die without a care, without a pang, without an anxiety. They will have a pleasant passage...” (WML 166–167). The mention of pangs and anxiety, which are presented as opposed to pleasantness, also suggests that a meaningful life, for James, must involve effort and coping with difficulties.⁴ In his discussion of the stale life in the Chautauqua community, James also emphasizes the pleasantness of the place and describes it as one in which there is “no suffering and no dark corners” (WML 152), stating his preference, instead, for “wilderness with all its sins and sufferings” (WML 153). Thus, for James, effort or coping with difficulties are necessary ingredients of the meaningful life.⁵

James also holds that there is some kind of eternal meaning of life that is then manifested or expressed to some degree in various people’s finite lives, perhaps somewhat similarly to the way Spinoza’s modes are specific modifications of God or Nature (Spinoza 1985 [1677]: 424–425; 430–431; 450–453). He writes:

there are compensations; and no outward changes of condition in life can keep the nightingale of its eternal meaning from singing in all sorts of different men’s hearts. . . . If the poor and the rich could look at each other in this way, *sub specie æternitatis*, how gentle would grow their disputes! (WML 167)

Unfortunately, James mentions eternal meaning rather cursorily, and does not elaborate his view on it.

The citation above suggests also that, like Viktor Frankl (1985: 86, 154; 1988: 16) many years later, James holds that all people’s lives are in fact meaningful. James seems to be saying that if certain factors detract meaningfulness from some people’s lives, other factors compensate for these detractions, so that the metaphorical “nightingale” of eternal meaning cannot be kept from singing in the hearts of “all sorts.” But since earlier in the essay James does explicitly suggest that the people in the Chautauqua community, and some poor people he observed, did not have meaningful lives, it is probably correct to read him here as saying not that all people have meaningful lives, but only that the option of having a meaningful life is never closed, so that there is always a chance to make life meaningful. This reading of James is corroborated by his claim, after discussing the “marriage” of the factors that make life meaningful (namely, having an ideal and trying to realize it with effort and pain) that “whatever or wherever life may be, there will *always* be the chance for that marriage to take place” (WML 166; emphasis added). James is suggesting here, then, that

there are no circumstances in which the option of having a meaningful life is closed. This, of course, is a very radical and optimistic claim.

James claims that the “comparatively deepest significance in life does seem to be its character of progress” (WML 164). But it is not completely clear what he means by the term. “Progress” is often understood as a process of change towards a positive goal. But James does not specify whether he is using the term in this regular sense. He explains progress as “that strange union of reality with ideal novelty which it continues from one moment to another to present” (WML 164). This is consistent with the common understanding of “progress”: in progress we have, thanks to the constant change towards a positive goal, something new and dissimilar to what we had earlier (since if we had no novelty, and the situation were similar to what we had earlier, there would be no progress). Thus, we have here continuous novelty. However, as Lekan (2016: 582) helpfully explains, “novelty” in this essay need not be understood as change, but rather as the opposite of “sodden routine” (WML 163), that is, freshness in attitude, which could be maintained even if one did not present new content. I think that we have to accept that James is not sufficiently clear on this point, and that he may or may not be claiming that meaningfulness is deepest when there is progress (in the regular sense of the term). It is probable, however, that he meant by this term what we usually mean by it. Otherwise, it is unclear why he would present the term at all and what function it would fulfill; he could simply have employed “novelty,” “continuous novelty,” “newness,” “freshness,” or the like, instead.

James may appear at first to hold that modernity decreases meaning. His description of the life in the Chautauqua community, typified by technological comfort and safety, as stale and meaningless seems to suggest that he takes modernized technology to diminish meaningfulness (WML 152). This is also suggested by his approval of Stephen’s sea-voyage metaphor: as cited above, the metaphor criticizes the modern, technological, and convenient way to sail (WML 166–167). In another place in the essay, on the other hand, he suggests that, at least as far as the *number* of ideals is concerned, all eras are similar:

The changing conditions of history touch only the surface of the show. The altered equilibriums and redistributions only diversify our opportunities and open chances to us for new ideals. But with each new ideal that comes into life, the chance for a life based on some old ideal will vanish. (WML 167)

According to this claim, although historical changes open opportunities for new ideals, these new ideals come at the expense of old ideals. Hence, the modern age is not typified by more ideals than earlier ages, and in this respect, modern life does not increase meaningfulness. The argument seems problematic, since new ideals may be added to old ideals rather than replace them; the number of ideals may change from era to era.

But James’s expressed view on the topic is not that life is less meaningful in the modern era, nor that all eras are alike; it is, rather, that we should adopt an agnostic stance on this issue: “he would needs be a presumptuous calculator who should with confidence say that the total sum of significances is positively and absolutely greater at any one epoch than at any other of the world” (WML 167).

2.

Lekan (2016: 589; 592n.5) claims that James’s view of meaningfulness in “What Makes a Life Significant” is best understood as contextualist rather than as subjectivist relativist. I suggest that what James says in this essay is consistent with seeing him both as a contextualist relativist and as a subjectivist relativist as regards the meaning of life. James writes, for example, that “there is nothing absolutely ideal: ideals are relative to the lives that entertain them” (WML 163). Likewise, he talks approvingly about the “simple faithfulness to *his* light or darkness which any common unintellectual man can show” (WML 164; emphasis added). But this suggests that individual unintellectual people, who may be more or less in the same circumstances and contexts, can have different types of light and of darkness. Further, when discussing ideals, James does

not at all allude to any contexts. The ideals necessary for a meaningful life should fulfill only the following three conditions: (a) they should be conscious, that is, should not be followed unawares; (b) they should be carried out with “uplift” or “brightness,” that is, should be understood positively by their bearers; (c) they should not be carried out as a habitual “sodden routine” but be experienced as a novelty or in their “freshness” (WML 163). None of these three conditions refers to context; it seems that ideals, for James, can be contextual (e.g., related to social, economic, religious, etc. conditions or groups) but can also be subjective (e.g., related to specific individual emotional makeup).

James’s contextualist and subjectivist relativism may seem to be in tension with his view, mentioned above, that there is also an eternal, and probably objective, general meaningfulness that can be manifested differently in different people’s lives. Perhaps, then, it would be more correct to typify him as an objectivist about the general, eternal meaning, and a relativist as regards its many possible manifestations.

3.

I have so far described some features of James’s view of the meaning of life in his essay “What Makes a Life Significant.” In the way of evaluation, I should also note some difficulties I find in his views.

I doubt that effort or coping with difficulties are indeed necessary conditions for meaningfulness. Suppose we were to find out that Shakespeare and Mozart did not, as a matter of fact, invest efforts or cope with difficulties when writing and composing. Their work was not at all demanding for them. It required no endurance, and did not involve coping with any difficulties. It was effortless, intuitive and fun for them to just let the plays and symphonies “flow” from their minds to the paper. Perhaps the true effort, for them, would have been in trying *not* to create, since their creativity just wanted to burst out of them. (Such people are sometimes referred to as “naturals” in their field.) Even if all this turned out to be the case, I suggest, we would (and should) still take Mozart, Shakespeare and Picasso to have had meaningful lives thanks to their valuable creations. Perhaps such “naturals” could even be taken to have lives that are more meaningful than the lives of those who have to make an effort and cope with difficulties in order to produce what they do.⁶

What has been said here about effort seems true also of courage and endurance that James mentions (WML 166). The examples above suggest that courage and endurance, too, may be helpful in some circumstances, but unnecessary in others (and perhaps even in some cases distract from or otherwise impede the creative process). I am not certain what precisely James meant by “fidelity,” but if it refers to something close to endurance or effort, then again I do not think that it is a necessary condition for meaningfulness.

James, as already noted, has some very negative things to say about the safe, convenient life in the Chautauqua community, taking it to represent safe, convenient ways of life in general. He may or may not be correctly describing the degree of meaningfulness in that community; I have no basis for an opinion about that. However, because of the difficulties I have with James’s views on the necessity of effort, endurance, etc. for meaningfulness, I also disagree that, in principle, inhabitants of communities in which life is safe and convenient need have nonmeaningful lives. Experience seems to show that one can lead a meaningless life in a comfortable community, but one can also lead a meaningful life in such a place.

I will not argue here against James’s Spinozistic notion of an eternal meaning that seems to be at least partly independent of the meaningfulness in specific lives. I am a nominalist about meaningfulness: I see it as always being a quality of lives, deeds, events, artworks, etc., and never existing independently of them. I am also uncertain that there is anything that is eternal. But James does not argue for his claim, and entering into the metaphysical pros and cons of his view is beyond the scope of this paper. I will only point out that I do not think that the pragmatist considerations for believing in God, which James presents in *The Will to Believe* (1979), also apply to believing in an independent, eternal meaning.

I also doubt the claim that the option of having a meaningful life is never closed, so that there is always a chance to make life meaningful. Those who have cared for severely depressed people know that, unfortunately, they often simply *cannot* form ideals such as those James talks about, much less strive and suffer for them. Severely depressed people frequently do not have the mental or emotional power needed for what

James envisages. They often find it hard or even impossible just to gather the strength needed to get out of bed. Many others who are not severely depressed are still so emotionally broken, despairing, or disappointed by various events in life that they cannot form or hold to ideals or, at least, cannot do so without professional help, which unfortunately is unavailable for many. There are also many people who, in some or many circumstances in life, cannot fight, focus, or suffer—James’s other conditions for meaningfulness—because they lack the determination or emotional, mental, and sometimes the intellectual powers necessary for that. James’s trusting view about the ability of all people to make their lives meaningful is heartwarming, and we would of course very much like it to be the case. But it seems overly optimistic.⁷

As pointed out above, James connects meaning to progress. I have to differ here too. I suggest that the intensity of the feeling of meaningfulness, and the objective value of what one relates to, each affects the depth or degree of meaningfulness no less than progress does. Meaningfulness can be very high, or deep, when these two other factors are present even if there is no progress; that is, even if one is stable in one’s meaningful activity or in one’s relation to what is meaningful. Even a state of affairs in which, notwithstanding work or effort, one slowly, and perhaps heroically, regresses may well be highly or deeply meaningful. On the other hand, progress without one or both of the two other factors (intensity and objective value) seems empty. Progress, then, may well be one of the factors of the depth of meaningfulness, but it is probably not the most important or main factor.

I suggested above that James is not completely clear on what he means by “progress”: he may be referring not to a development towards a positive end but to a state in which one continues to relate to one’s ideals in a fresh, non-habituated way rather than mechanically and routinely. But in this second sense of the term, too, progress does not seem to be more critical to the depth or degree of meaningfulness than are the intensity of the feeling or the objective value of what one relates to. Intensity is distinct from “freshness”: a feeling of meaningfulness that is “fresh” but weak or non-intense, does not seem very deep or of very high quality. Likewise, a “fresh” feeling of meaningfulness that relates to an objectively unimportant or worthless issue seems empty and shallow, while a non-fresh, routine commitment to a valuable issue (e.g., continuing one’s volunteer work as a medical assistant among the poor in a third world country) seems to be deeper and of a higher quality. Thus, when progress is taken to mean “freshness,” again, progress does not seem to be the factor that most importantly affects the depth or degree of meaningfulness.

I have suggested above that James is not only a contextualist but also a subjectivist relativist as regards the meaning of life. If that is indeed the case, then, following many others who have written on the topic, I too find this position difficult to uphold. Various writers on the meaning of life have argued that subjectivism regarding the meaning of life leads to conclusions that are too implausible to accept. Irving Singer (1996, 113), for example, points out that if this subjectivism is upheld, we have to accept that collecting bottle caps can make life meaningful. Susan Wolf (1997, 218) presents the example of counting tiles on a bathroom floor, Charles Taylor (1992, 36) the example of maintaining precisely 3,732 hairs on one’s head, and Eric Wielenberg (2005, 18–23) that of eating one’s own excrement. These authors present such cases as counterexamples to the view that relativist or subjectivist conditions are sufficient for taking someone to have a meaningful life. But according to James’s criteria for ideals, if Singer’s eccentric bottle cap collector does hold that collecting many, many bottle caps is very important and treats it as an ideal, it can make his life meaningful. Of course, following James’s criteria, the bottle cap collector would also have to be conscious of his or her ideal, to carry out this ideal with “uplift” and “brightness,” and to experience the ideal in its novelty rather than as a “sodden routine.” But if all these formal criteria are fulfilled, the bottle cap collector’s life would be meaningful. James also holds that the ideals should be followed with determination, courage, etc. But this condition, too, does not exclude the examples above. The bottle cap collector may follow that ideal through great discomfort and suffering, be quite determined, and add more bottle caps to the collection under dangerous conditions, thus also showing courage.

James’s account is also problematic if he is understood not as a subjectivist relativist but only as a contextualist relativist. In some economic, social, religious, and cultural contexts, people adopt and try to realize ideals that are very implausible to most of the rest of us, and accepting that their lives are meaningful

thanks to their investment in these ideals would be very counterintuitive. As Lekan points out (2016, 578, 581–82), the ideals people adopt can even be highly immoral. Some people embrace racist ideals. In some religious groups, persecuting, subjugating, or killing people of other faiths has been considered an ideal. Even if James’s account of meaningfulness were only a contextualist relativist account, it would be problematic.

It might be objected at this point that this criticism is unfair, since James is discussing in this essay not the meaning of life itself, but only the *sensation* of the meaning of life. According to this objection, James is focusing in this essay only on the psychological phenomenon of sensing life as meaningful, not on meaningfulness itself. And insofar as James presents merely psychological claims, it might be argued, he is right: the bottle cap collector, the devout Nazi, etc. do, as a matter of fact, have the sensation that their lives are meaningful, even if their lives are not objectively meaningful.

But James seems to be discussing in this essay meaningfulness as well, not only the sensation of meaningfulness. We can see this when James points out that he is also dealing with “a life objectively and thoroughly significant” (WML 165). Likewise, following and quoting Fitzjames Stephen, he recommends not just the feeling of meaningfulness but, rather, that which would bring people “full into the presence of time and eternity, their Maker and themselves, and [force] them to have some definite views of their relations to them and to each other” (WML 167). Since James is not presenting a merely psychological discussion, then, the relativist aspects in his account remain problematic.

I have focused in this last section on what I take to be some weaknesses in James’s account of meaningfulness in his “What Makes a Life Significant.” But these critical remarks should not overshadow the importance and the many interesting aspects of this essay. We have here, sometimes in embryonic form (which also has to do with the essay’s intended audience, namely, students), an example of an early nonreligious discussion of some of the main issues that were to come up later, in more modern research on the meaning of life. Like many of the philosophical discussions of the meaning of life that have developed only decades later, including the two pieces by Haack cited above, James’s discussion notes examples in the real world, relies on common intuitions, presents the pros and cons of various positions, and—notwithstanding his vagueness on some issues—aims at clarity. His discussion anticipates work on topics that have been treated in more detail and precision in recent and contemporary analytic research on the meaning of life.⁸

NOTES

1. From now on this text will be cited as WML followed by page numbers in the Burkhardt and Skrupskelis edition.
2. For a sharp literary portrayal of the experience see also Camus (1988 [1942]).
3. By “pains” James probably does not mean “suffering” but, rather the effort needed to cope with a difficulty.
4. James also mentions *care* here, but the term as he uses it here likely means *worry* rather than *good-willed attention*.
5. Interestingly, a central theme in Jack London’s highly successful *The Call of the Wild* (1900 [1903]) and *The Sea-Wolf* (2011 [1904]), which were originally published 4 and 5 years, respectively, after this essay of James’s, is the one discussed here. In *The Call of the Wild*, Buck, a dog who lives comfortably as the pet of a middle-class judge in Santa Clara Valley, is stolen and eventually finds himself as a sled dog, suffering many hardships in the process, learning the “law of the club,” and having to fight the lead dog to death. Eventually he escapes to the wilderness, joins a pack of wolves, and thus answers “the call of the wild.” But his new life of hardship, pain, and danger is represented as better for Buck than his previous comfortable life. The same theme is central to *The Sea-Wolf*, in which the domesticated intellectual Humphrey van Weyden, whose ferry has sunk, is rescued by a seal-hunting schooner where he is forced to work hard, cope with pain and brutality, toughen up, and become self-reliant. But that, too, in the end, is described as all the better for van Weyden. His life, like Buck’s, is represented as having become more significant and authentic.
6. For a similar claim from another angle see Landau (2017, 43–48).
7. For a similar criticism of Viktor Frankl’s view on this issue see Landau (2019).
8. I am grateful to Mark Migotti and Saul Smilansky for their helpful comments on earlier drafts of this paper.

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Susan Haack on How to Regain the Faith to do Philosophy

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To Susan Haack, with gratitude and admiration.

[I]t is difficult to understand the uneasiness which inevitably pursues anyone who dedicates himself to an intellectual profession. Despite so much science, so true, so fertile and so central to our life, to which so much human toil has been consecrated, the intellectual of today, if he is sincere, finds himself surrounded by *confusion*, *disoriented*, and intimately *discontent* with himself.¹

In my University I found various men interested (or uninterested) in their subjects, but, I think, no man with a view of literature as a whole, or with any idea whatsoever of the relation of the part he himself taught to any other part. [] Those professors who regarded their 'subject' as a drill manual rose most rapidly to position of executive responsibility (one case is now provost). Those professors who had some natural aptitude for comprehending their authors and for communicating a general sense of comfort in the presence of literary masterwork remained obscurely in their less exalted positions.²

1. THE INFLUENCE ENDURES

I became interested in philosophy after I was taught that philosophical efforts were directed at fundamental questions about the nature of art and science, and that philosophy was the best way to grasp the essence of these endeavours, to which I was dedicated at the time. Not that I knew much about Socrates, Plato, Aristotle, Kant, Hegel or whomever, but—I now count it not much more than a glimmering, not real knowledge—I had learned some interesting and moving things: that Aristotle had written a majestic *Poetics* and Aratus a beautiful astronomical poem; that Descartes had invented the analytical geometry and Leibniz the calculus at the same time as Newton; that Newton had spoken about some subtle magnetic spirit and Goethe had composed a theory of colour contrary to that of Newton, and all of these *opera* represented for me achievements of truth and beauty.

For me, this was a sort of melting pot of literature, science, and philosophy, and what was there of truth and beauty in it, and in what proportion, was what I wanted to know.

Like many young philosophy students, I was intrigued by what I'd later discover to be the correlated problems of truth in art and aesthetics in science. Marcel Proust's time and constitution of experience, James Joyce's *epiphanies*, Ezra Pound's *imagist poems*, Faulkner's *monologues* and the problem of the *stream of consciousness* counted for me as problems of truth and knowledge, as well as Descartes' analytical geometry, Newton's *ether*, Faraday's *lines of forces* and Maxwell's electromagnetic *field* counted too, besides their rational construction, as aesthetic insights, results of imagination, or simply as beautiful creations like Descartes' geometry.

It was precisely the consideration of theories as a kind of insightful but not entirely confirmed experience in which imagination, intuition, and even invention were on display that led me to become interested in the philosophy and history of science. But as soon as I began my MA studies, I found in my courses that history of science, philosophy of science, logic, epistemology, metaphysics, and even modern and classic philosophy were disconnected from each other. And this was not even the biggest problem, which was that each subject had its own specialized agenda that occluded the domains of the others, making interconnected paths hard to find and requiring a lot of time and effort just to understand each particular agenda. I found some solace in some works and ideas—of Alexandre Koyré, Irving B. Cohen, Peter Medawar; Mary Hesse and Larry Laudan for example—which leave room for the relation between science and its history, and even for imagination and creativity in the case of Medawar, but I lacked the ability to connect them to a “relevant” present issue in the philosophy of science.

So, in 2012, as a recently graduated student from a Philosophy of Science programme, with a brand-new PhD—if I'm honest, I was deeply confused, disoriented and intimately discontent with myself; I had sadly abandoned all those uncategorizable unspecific philosophical inclinations. Paradoxically, the big thing is that I didn't know it yet—I would discover it gradually, after meeting Susan Haack. Her guidance and teaching opened my eyes to what I'm going to say next; namely that I was terrifically fortunate to meet Professor Haack at a time when my professional academic life was about to begin, in disorientation, and with blurred goals and confused expectations, and I was anxious about my own capacities: was I skilled enough to meet the challenges that my discipline demanded of me? These daunting challenges were mainly that of specialized publishing and research, and had—as far as I can see now if I'm sincere—nothing to do with values, at least not with conscious values, those that you keep in mind in every step of the way, as I would later understand, after reading “Out of Step: Academic Ethics in a Preposterous Environment” (Haack 2013, 251-267).

Through Professor Haack's living example, and without her saying a single word, I eventually found the why, the reason for my malaise: though I had been trained to read, interpret, understand, this had been done mainly through imitation, both of highly specialized scholars and classic authors, those who had constructed and were presently constructing the philosophy of science. Although our training did include the reading of primary texts, the imitation I'm talking of was not supposed to be at first hand, but via interpretations of interpretations of interpretations that came up to us in the form of ultra-specialized vicarious messages that eventually seeded in me the honest and respectful although disoriented desire of “I want to talk, to write and to *act* like them”—like a specialized scholar, I mean—making me perceive my first inclinations as illusory chimeras.

Well, now the career I was pursuing demanded that I *become one of those scholars*, an original, innovative, creative, serious one; but I didn't know how to do that other than enlisting myself in a specialized group and follow their *credo*, their inner figures and their method, and this included thinking, acting and behaving in certain ways. You simply cannot “not do it,” as I painfully learnt sometimes by own experience.

You could say I was quite naive or easily swayed so as not to resist this influence, you could object that I was seeing the things too narrowly. Okay: perhaps I was impressionable, maybe, innocent, but the fact is that I really was being faithful to what I considered to be “THE philosophical way” which implied a certain kind of conduct and manners, even though I didn't know how to continue my philosophical development or even what else to do with my recent work. Granted, there were and still are colleagues and teachers whom I admired and still admire, but what now was expected from me, if I wished to make a living from philosophy, was original and audacious work.

There is certainly no one to blame for these professional limitations of mine; it wasn't my teachers' fault, or my institution's, or my advisor's—perhaps it was my fault, but most likely it was just the aftermath of the institutionalized philosophy atmosphere, where apparently the logic of education states that you must as soon as possible join up with a scholarly faction where one of the first things you start doing is respecting fallacious hierarchies, deferring to certain persons and showing admiration. I am not saying that we must not respect to any institutional authorities, not admire and respect inspiring and honest professors and even less I'm not inciting us to rise up against our mentors. But as I had the occasion to confess to Professor Catherine Lutz—precisely at a congress about *Culture and Affectivity* to which I was invited by one of these encouraging teachers—I have always thought that when you are a student and choose a tradition to follow you are choosing aesthetically or emotionally, not simply rationally, because you don't have enough theoretical background, knowledge and experience to see if your authors or tradition in fact have the philosophical merits you'll later be defending. This is a time when the student mostly needs to study the history of philosophy patiently and carefully, to exercise abilities, capacities and virtues to understand the discipline and its nature instead of pledging his work too early and becoming a paladin. This is a very subtle dynamic, the existence of which is hard to prove and the nature of which not easy to grasp, but I strongly believe that this common feeling exists between students and young professors and I appeal to this.

Of course there have always been students who maintain their independence and intellectual freedom as well as professors and groups that encourage their students, but the fact is that, if you want to make a living at this, your institutional environment encourages you to become as renowned a specialist as you can in as short a period of time as you can, and pushes you to prove this with productions, results, and recognition. The most *natural* way to do this is to follow a group where the opportunities to publish, attend conferences abroad, obtain scholarships and win a name flow, and all this usually requires joining a project where some personal and intellectual commitments have to be made. I'm not saying that we students deliberately and opportunistically choose the best platform to succeed in the task, I am just trying to show that this is the steam that drives the engines of the machinery.

For Haack, the problem arises mainly from a distorted academic dynamic, which, as “Out of Step” points out, gradually and systematically pushes students and professors in the direction of productivity, research grants, publications, specialization, prestige and recognition, turning the need for values into the convenience of abilities to achieve these sorts of results and shaping the original philosophical aims into a mixture of economic-philosophical marketing.

“Out of Step,” the centre of my attention, is a vivid, intense, brave and yet passionate document full of verve—whereby my intention here is not to do a provide a bad paraphrase or a poor imitation in my dull English. I consider this piece a must-read for any philosophy student or professional—not a text to excerpt—so I strongly recommend reading it in full. In what follows, I just want to make clear how it soon became a milestone in my academic life, and in doing this, I seek neither to justify my own mistakes and limitations, nor blame others for what I was doing wrong; I'm just trying gratefully to acknowledge that it was through Professor Haack that I began to recognize the superfluous and unnecessary conditions that make the “academic virtues” go dimmer. In every step of the picture I'm about to draw she is revealed as the opposite sort of spirit, as a philosopher educating you in the virtues philosophy demands.

2. BAD NEWS FROM THE OUTSIDE WORLD: *J'ACCUSE!*?

Certainly for a newbie graduate student, the philosophy he learnt through classic or contemporary-but-fundamental works is in some way different from the institutional philosophy he is meant to carry out. It seems to me that irrespective of whether such a one is a graduate student, postdoctoral researcher, young fellowship holder or on the tenure track, he is expected to *do* professional philosophy, which, institutionally speaking, means (at least) publishing, doing research, speaking at conferences and lecturing classes, organizing specialized academic events, attending group sessions, seminars, supervising students, keeping in

regular touch with the central figures in the field, and on top of this an ever-growing list of administrative tasks: all this displayed as the original results of his own research.

This kind of “productivity” requires at least time, effort, and too much hard patient work, but, in an academic environment where prestige is related to funded projects, money grants, selected scholarships, post-doctoral fellowships—since it’s extremely difficult to get a permanent job right away—and where we, the students or young professors, feel the constant pressure to publish and gain renown, these products soon become the habitual fuel for instant recognition and a possible subsequent position. But the corresponding values have scarcely been taught.

In Latin America perhaps everything is twice as hard, because we are not instilling our students the confidence to write *their* own ideas, not training them from the very first in the “art” and praxis of philosophy, as Tugendhat pointed out to be the case for Anglo-Saxons students (Hernández and Pinzón 2007, 91). Instead here in Mexico there is the common fear that we are inculcating wrong attitudes that soon or later conduct us towards the false idea that philosophy is more a posture than the outcome of real hard work. This situation is nourished by at least two conditions: the first, mentioned above, is the need to be a part of a specialized group, and the other is that each of these groups is trying to show itself to be the uppermost, most celebrated, cutting-edge coterie of philosophers, and this is very often accompanied by a corresponding training.

The structure within these groups is more a top-down hierarchical structure or a concentric circle where power emanates from than a real educational net: the top or the centre being some specialized figure or scholar (we love those who studied abroad—sometimes an administrator or an influential professor is enough) authorized to represent an important philosopher, a tradition, or simply an agenda, the inner lines being the closest colleagues (a cluster of some local but many international colleagues—we have some special predilection for Europeans), the next line being PhD or graduate students (we prefer those who speak another language and have already published *something*) and the outsiders line being undergraduates students and other enthusiasts (those that we need to be “forged” as one of my early professors put it). The vision of philosophy presupposed here seems more a matter of assimilation than education, and its logic is that of hierarchical instructions pouring down from the top or central figures into the students—in a time when the main contribution of we the students is imitation. These imitations commonly include impolite belittling of those below and other indications of “how to seem to know it when you don’t” (Pound 1954,15). One usual discourtesy among the top or central figures is the response “over the next months I’ll be very busy, but eventually I will...”—for whatever you have asked—or attitudes like “Stay away. I am a different person when I’m with important colleagues.” There are honourable exceptions of course.

Soon enough, we students are looking for quickly gratifying kudos rather than serious and gradual, distilled and slowly aged academic recognition. At least that was one of the general conclusions of the symposium “Philosophy as a Profession in Mexico and Iberoamerica” at the 18th International Congress of Philosophy held in San Cristóbal de las Casas in 2016 and organized by the Mexican Association of Philosophy. I was elected the secretary of the symposium’s plenary session on the challenges of the social commitments of philosophy. Among the concerns expressed was what kind of students we were forming and among the conclusions reached was that we need to reassess and even readdress the values that we are (or we aren’t!) inculcating. There was a general concern about fomenting a kind of arrogance in students, training them in intellectual gymnastics or fencing, focused on defeating and knocking down the opponent, without any engagement in the history of philosophy or the social world; whatever tradition they are interested in, in principle we teach them to dismiss the others as not worth it—as, in my own experience, analytic philosophers adhered to the motto “beyond here lies nothing.” This calls to mind Carnap’s and Quine’s supposed personal attitudes to their discipline taken as a philosophical principle.³

In consequence, seminars or courses bringing two distinct traditions together are extremely rare, since we are “the peak of the ultimate reasoning,” and notwithstanding that such interactions have occurred in the history of philosophy. Even Carnap in the *Aufbau* turned to Husserl and Nietzsche for their investigations about the constitution of experience and the problem of the self.⁴ Gadamer acknowledges Witt-

genstein's *Philosophical Investigations* as sharing his positive disposition towards the notion of "language games" (Gadamer 1998, xxxvii, n.13). It's difficult to find courses in which these interesting connections are addressed or even mentioned, although they are signs of intellectual modesty and philosophical honesty. Mary Hesse also has turned to Ricoeur and Gadamer in order to support her cognitive claims for metaphor, partly from a hermeneutical perspective (Hesse 1998, 9, 11-14). *La Métaphore Vive* of Paul Ricoeur is itself a philosophical investigation where philosophy of science and analytic and hermeneutic traditions coexist.

If not completely frozen, the free, reflective, critical philosophical spirit, when trapped within these faddish, specialised groups, is somehow paralysed, fenced-in by barriers in a sort of high walled enclosure; or it has no home at all, but passes from group to group and trend to trend in quick succession. As a Masters' student, I was an enthusiast of science and technology studies, but simply couldn't handle the enormous number of options for a thesis topic: from Husserlian "*Lebenswelt*" to the social impacts of mobile phone base-stations! Sometimes I wonder where those spectacular, massive congresses have gone, organized with grants and huge amounts of money in which it was hard to say if one was doing philosophy, sociology, history, anthropology; developing an economical programme or a humanistic engineering or whatever? Trends and fashions pass quickly, but students under their influence remain the same for decades.

I have seen the theses of most of my teachers, and it has been brought to my attention that they were the result of philosophical issues diametrically opposed to what they're doing right now. This is not necessarily wrong, since intellectual direction is a matter of free choice, but my teachers' themes, I fear, were not particular cases of free choice in their young academic life. Instead, they were following an implicit academic rule; for my teachers' themes reflect religiously the interests of their teachers, just as we reflect our teachers' latest interests—so, depending to whom they were following they have in common theses on their teachers' contemporary enthusiasm: Marxism, Existentialism, Foucault, or Analytic Philosophy, or whatever. Naturally, the problem here lies neither in Marxism, Existentialism, Foucault, Analytic Philosophy nor in the *Zeitgeist*, the problem lies in a kind of intellectual imposition and innocent reception. As far as groups are concerned, the problem is accentuated: what "matters" and what is "worth writing" is passed on to students immediately, automatically, almost affectively, as I said before. It seems to me that this dynamics of teaching and learning is more psychological or sociological than philosophical.

These fallacious hierarchies, of groups versus groups and somebodies versus nobodies, threaten the student's education far too early, eroding his freedom and creativity, and ability to exercise critical attitudes. Students start by asserting themselves over others, sometimes by defending and promoting one tradition over the others based on a figure of authority, some other times under the form of protected technical language, defending the superiority of some language for its technicality and difficulty, and then transmitting this to their respective students when they become professors.

One of the criticisms that recently struck me in a particularly acute way was that of Nancy Cartwright, Roman Frigg, Mauricio Suárez and others at the London School of Economics against the semantic as well as structuralist programmes in the philosophy of science. Their criticism, was straightforward, expressing one of the basic concerns we philosophy of science students have when are being taught this conception. They expressed philosophical reservations against the semantic-structuralist views of theories by noting that structuralists "cannot account for [the fact] that models represent" (Frigg 2002, 2). In other words, they have raised philosophical doubts about how the formal structures (set-theoretical models) can effectively be related to the empirical phenomena they are supposed to stand for, since structures cannot represent. The most important thing for my purpose here is that this is criticism that goes no further—the core of this assessment is *pure* philosophical criticism that doesn't need the highly specialized technicism of set-theoretical semi formalism structuralists love to use. But it is a philosophical objection we the students would be afraid to advance, if I can speak on behalf those schoolmates and colleagues with whom I've been acquainted.

I wonder how many graduate dissertations or professional papers deal with this sort of intuitive fertile criticism. I suspect not many here in Mexico, at least not my own. The fact is that this philosophical oppo-

sition under authoritative voices made the structuralists burst into a flood of defensive arguments (Suárez and Cartwright 2008, 62-63).

Why are we so afraid? So reluctant to learn from these philosophical examples? I think that's because hyper-specialization one way or another tells you that "you have to learn either my technical language or tools and methods before you can criticize me." As far as I can tell from my own experience here in Mexico, this happens among Husserlians, metaphysicians, Heideggerians, and yes structuralists. It seems that the object or the problem—be it theories, knowledge or being—is captured and you have no longer access to it, unless you learn and master the language they speak and use and master the tools they use. The philosophical object is now a product of their own views and not a general problem. These languages, methods, and tools usually take many years of training to understand, undergone at a time you are more a bonded disciple than a free, convinced member of the profession. I remember in passing, I was once invited to a book presentation about one of the present *turns* in the philosophy of science; it surprised me that the author was a well-known member of a group having an entirely different conception about theories to that he was defending in his book. I asked him if he was abandoned his former allegiance and he replied: "sort of," and continued, "after so many years it took me to learn the language, I simply cannot abandon the programme."

I believe specialization threatens first intellectual freedom, embracing very soon personal and intellectual engagements that instead of reinforcing the values that underpin philosophical reflection, undermine creativity and induces us to stray from our personal abilities and interests. How many of our theses and papers are just thickening the bulk of scholarly bibliographies without adding anything original?—unless we think *original* is to apply the group specialized views or treatment to a "new" phenomenon, i.e. a phenomenon to which that specialized treatment hasn't been applied yet.

The LSE's philosophers of science objections that made some structuralists uncomfortable embrace one of the basic concerns many students have in the introductory structuralism courses. Why don't they crystallize into PhD theses or papers for example? They're not a matter of common sense naturally, but usually, an authoritative voice is needed to point out deficiencies, limitations and excesses of an established programme. These hyper-specialized programmes require many years of complex training in which our critical capacities increasingly diminish, and their basic philosophical assumptions are eclipsed for formulas and jargon.

This all along made me think of Hume's warnings against abstruse philosophy in his first inquiry (Hume 1748/1996, 3-16)—one of the most basic limitations of the semantic-structuralist view was in front of us all the time and we couldn't notice it because we were thoroughly imbued with the false idea that we must be an utmost logician-mathematician to find philosophical deficiencies into the programme. To be fair, on the other side of course is always the pernicious dilettantism—In my University some of our philosophical luminaries convey the best of Hellenic philosophy: like Socrates, they write nothing, but spend their time dialoguing like Plato, and walking through the University corridors like Aristotle.

As Susan Haack would happily accept, when she welcomes the label of "Neologicistic Typographical" for her style of philosophy and adopts it "as an accurate self-description" (Haack 1993, preface x), there's nothing wrong with technical languages *per se*! Problems arise when technical details overshadow everything else. In "The Fragmentation of Philosophy: The Road to Reintegration" (Haack 2016, 3-32),⁵ Haack argues that the best and most ground-breaking work has come, not from hyper-specialized work on "X's and Y's interpretation of Z's W," but as a result of hard and serious reflection about philosophical problems and their interconnections, from engagement with the philosophical past, and from attention to the real world. Illustrated with the examples of Plato, Peirce, James, and Dewey among many others and with John Locke's magnificent metaphor urging philosophers to venture into the "great ocean of knowledge," the advice of "The Fragmentation of Philosophy" is that our philosophical spirit should be inspired by the example of these great thinkers instead of by cliques, fads, and fashions.

The linguistic excesses of groups whose slogans impose a heavy emotional and psychological burden also function, it seems to me, as affective conditions that deactivate the critical reflection of students from the very beginning. What happens is that certain phrases, used to identify the colossal objectives or the sup-

posed achievements of certain schools—"strict science," "apodictic principles," "ultimate foundations" in the case of phenomenology, or "first philosophy," "first principles," "metascientific," just to mention a few salient examples—are in effect abused, turned into weapons. To say for example that anything that is not metaphysical is "second philosophy" is a strong emotional invitation to think that what one does is the most important and the most difficult thing, that one dwells in the realms of being and knowing.

All this reminds me of an appearance of George Bernard Shaw on film, where he satirically denounces—acting himself, staring into space, looking nowhere with a hint of sadness of gravity—that seriousness, solemnity and genius can always be acted and that it happens that sometimes the knowledge is being acted.⁶ Supposedly, he also advised to be aware that false knowledge is worse than ignorance.

3. BAD NEWS FROM MY OWN TRENCH. HAACK'S CALL FOR REAPPRAISAL

Of course, many of us are tempted to believe that we are capable at any time of turning to the Ionians, Aristotle, St. Augustine and whoever, with enough intellectual ease, but I am here referring to that inability genuinely to connect to tradition through a problem—as Peirce does regarding the problem of the universals and connecting it to his scientific realism, or as Carnap respect to the constitution of experience—and not considering tradition just as a scholarly preamble to our school. I once thought, I confess it with blush now, that St. Thomas Aquinas would have nothing interesting to say about metaphor—it had to be a colleague who brought me out of my mistake. Now I find the little relevance of St. Thomas in cognitive studies on metaphorical thinking surprising. One reads the great philosophers of all time, but presumptuously thinking that truth is not in the past.

Now I must say that all I have just related found parallels in my own development, and that my first encounter with Susan Haack revealed to me what an exemplary echo I was. That first encounter with Professor Haack was prompted by my sending her my book *Science and Metaphor* with a request for her opinion on Black's and Hesse's approaches to metaphor. I had formed the belief that metaphor announces new entities, possible worlds that could crystallize within the ontology of theories, and Haack simply replied, if I remember correctly, that hers was "a pragmatic approach not a semantic one." As a "budding" scholar I in subsequent emails tried unsuccessfully to insist that she ought to engage with Hesse and Black, since they were seminal after all! Haack did, of course, know the traditional tests about metaphor and its philosophical significance, but what I wasn't able fully to grasp was that she was defending *her own* view about the role, function, scope and force of metaphor, not engaging in, or untangling, specialized problems—it took me some time to understand this philosophical shift. And yes, the scholar starter pack usually includes this kind of naive arrogance.

As for my work, there was another thing I ignored at the time. Not only was my student work only tenuously connected with the main branches of philosophy—epistemology, ontology, semantics—it didn't seriously consider other traditions in the history of philosophy, and in particular *pragmatism*. My efforts were connected only to current views of views in metaphor, these were all I was concerned with. I could understand the principal authors and their interpreters correctly; I could argue and I could quote and make reference to a massive list of authors, views, conceptions, and concepts, just like the scholars I was taught to quote and to admire—and of course most of them do deserve admiration—but what I am pointing to here is that we scarcely are taught about the values, the efforts, the virtues and hard work it takes to be like them, and, most importantly, about the real purpose of original philosophical research. For me it was only the unconscious need to show that I could write in a sound and eloquently manner, hence only few things in my research were of real value.

I don't want to be misunderstood, I had a genuine concern about what metaphor was and what its nature and powers in many respects: discovery, creativity, theoretical explanation and the construal of scientific concepts. I did quote Aristotle, Cicero, Quintilian, Richards, Black, Hesse, Davidson, Quine, Rorty, Haack; and I discussed Black's semantic interaction view on metaphor and cognitive perspectives. But I had been seeing only a small part of what these intellectual telescopes were showing me; I saw it all as a homog-

enous mass, and took everybody to be in the business of disclosing the *essence* of metaphor, *I hadn't see the metaphor problem* yet. In other words: my resources were correctly interpreted, but my research aim was wrongly oriented. My need to become an expert, to discover only original stuff was taking its first victim: my own work. And I still was looking for a group to join.

Surprisingly, Professor Haack continued our email conversation for almost a month, despite the fact that I was probably talking nonsense most of the time. In the meantime, and with laconic warnings, she saved me from wrong conceptions on metaphor, theories, concepts, propositions, ontology, epistemology, etc., etc. This was the very first lesson I got from Haack: she teaches much by saying little. Later I would learn that she encourages without making concessions, and, without flattering, but recognizing your capacities, pushes you to improve. Haack's conduct towards you is the best example of her ethical behaviour. She educates in philosophy in a vivid passionate way, inculcating in you at the time the values to do the job.

Why was I so disoriented? What was I missing? Reading of "Out of Step" alerted me to my aforesaid situation and showed me that it was indeed an extended situation. Immediately, I could see the problem in a broader and clearer way, and I saw myself as a part of it—first as a former student, later as a Faculty professor.

In "Out of Step" Haack declares that the present academic environment mostly generated by perverse incentives (publish—but quickly! or perish! Don't think twice—produce!) is eroding the very virtues that serious academic life demands, which she lists as: industry, patience, judgement, integrity, focus, realism, impartiality, independence, consideration, and courage. But Haack is inspirational to young professors, encouraging us to reinforce these virtues, so contrary to this "preposterous" environment in which self-promotion, prestige, money grants, production targets, fads, cliques, fashions, pseudo-technique language of highly specialization fuel the engines of "fast philosophy" and fast recognition and are creating a state of confusion. And the core of her own work is a call for the return of a sense of vocation, and the values and character necessary for any patient, solid, hard work.

No need to say that most likely I wouldn't have been able to see these problems by myself—yet, besides them, I pointed out and added above what I consider to be the specific challenge to Mexican philosophical institutions: to fight against these fallacious hierarchies, usually the companion of specialized philosophy groups, that in the form of technical language, baroque problems, principles of authority and even power figures, dim critical minds and diminish philosophical scope, instead of allowing students' creativity and self-confidence to unfold through common philosophical virtues, not through science-like specialized training.

You could still call all this an outrageous embittered *j'accuse*, but this is a call to accentuate the positive, I would call it Haack's *cri de coeur* in defence of serious philosophy, a plea for a return to basic values best suited to bring us peace of mind and many other advantages, to do our jobs better and to outdo our weaker selves. And I think this includes an appreciation of your *own* errors and mistakes. But is this possible in a scenario where they teach you the worst you can do is to be wrong?

From the very moment I met Susan Haack, I felt pushed, and pushed towards both an effort to clarify what I was saying and a subsequent responsibility of make its consequences mine. Last September I asked her to please correct the abstract of a paper of mine about metaphor in science. In my email I explained that I believed that the cognitive power of metaphors lies in their being able to generate new entities, and allow a certain access to them. She simply replied—"Still don't know how anything metaphorical or verbal can CREATE AN ENTITY!" Once again, I was struck by this sudden inquisitor light that highlighted my pre-suppositions. I agreed, words cannot create physical things, maybe what I was trying to say was something different, that metaphors show us possible ways to unknown entities, explanations, etc.

Yes one of the most valued things I have learned from Professor Haack is that, if we're serious about what we're doing, everything you say or write has consequences, and they go beyond our little group of colleagues' approval or disapproval; every idea, concept, etc. has its proper meaning that has much to do with its proper place in the history of philosophy and the development of thinking and less with groups, fads or fashions. Philosophy is not in the fast lane of science trying to accelerate ever faster.

All that I said supposed commitments and had immediate implications and effects on all my discourse and on that whole universe called philosophy, as she continuously showed me in her relevant responses. My first striking impression? “Susan Haack takes seriously every single word that I, a recently graduated philosophy student, writes or says!” My first reaction? Respect and admiration for that modesty and intellectual generosity. Susan Haack taking her time to read, reply, ask, argue, and only after that correct my questions and my ideas, and yet in a gentle but serious and rigorous manner? That was a thing I wasn’t prepared for! My first desire? to imitate that way of working first and, perhaps later!—still waiting though—that way of thinking. I was making mine the first lesson in philosophy: imitate patient, honest and responsible work, consider the real implications of ideas, perspectives, views, and avoid the blurred vision that comes with the rush for writing and the need to adopt labels. Along with that, respect for others’ work, consideration for their efforts, industry, and a whole lot of other things.

I had had this idea of positive imitation for a long time, I learnt it from Pound’s *credo* that the young writer, like the young painter, must begin imitating the masterpieces—let’s say his major influences, those he admires the most: “As for ‘adaptations’; one finds that all the old masters of painting recommend to their pupils that they begin copying masterwork, and proceed to their own composition” (Pound 1954, 10) and from E. C. Riley theory on “Don Quixote” as well: “There is nothing notably unusual in his seeking to imitate some exemplary hero in life, or, like a courtier, to emulate the best in previous models. But what is noteworthy is that he is also behaving like an artist” (Riley 1996, 64), which in philosophy should mean to exercise freedom, creativity, criticism within responsibility, judgement and prudence. But it seems to me that unlike poetry and painting, we young philosophers here in Latin America keep imitating techniques and manners without ever sail by ourselves to conquer *our* theme. Look, the most modest of our writers have been translated into many languages, the most conspicuous of our philosophers into none.

4. A GRATEFUL TESTIMONIAL

I want to dedicate these last words to Susan Haack’s honesty and integrity by just saying one thing. Constantly, continuously, what I saw in living examples first, I read it in her texts later and vice versa. Several years ago, I wrote to tell her that I had the idea of writing a paper showing that it was Edgar Allan Poe who first proposed a third way of inference that later Peirce would call it abduction. I hadn’t gathered up enough courage and this was crucial for me—she not only sent me material urging me to continue, she encouraged me by saying “you have something very interesting in mind” and she even corrected my first inefficient drafts transforming them in the more decent text it is now (Sampieri Cábal 2017).

Along with her honesty, integrity and serious philosophy, even there’s enough room for humour—should I say British humour?: when I confessed her I learned by myself my poor English by mostly listening *blues*, she replied: “—oh, that’s very sad!”. And once we were travelling from Veracruz to Xalapa city something caught her attention: it was this highways side sign that here in Mexico warns you to “obey the signals!”, with her characteristically humour—now with epistemological emphasis—she suddenly asked what was the difference between this and the other signs in case you are not obeying them!? Why should you obey this one?

This is a grateful testimonial to how Susan Haack has transformed my philosophical world and my conception about what was *right* and *wrong* in doing philosophy. I may have not succeeded yet, but my intention here was this: to say that Haack is a living example of rectitude, integrity, honesty, seriousness, and yet humour. Do I really need to say that? What I still cannot thank enough is that she considers me her student, a real and encouraging honour I wish to deserve.*

NOTES

1. Zubiri 1981, 7.
2. Pound 1954, 15-16.
3. Professor Irving Bernard Cohen's testimony says that in two remarkable encounters he could observe the null disposition they both had to the history of science and history of philosophy: Carnap by replying to the Prof. Cohen's invitation to speak to a graduate-student history of science club that "[h]e had nothing whatever to say, [...] about the study of the *history* of scientific ideas that could possibly be of interest to historians!" and Quine by supporting the attributed judgement that "[t]here are two reasons why a person is attracted to philosophy: one is because he is interested in *philosophy*—and the other is because he is interested in the *history* of philosophy" and by remarking that "he was not at all drawn to ideas solely because they were expressed by even the greatest of men; he was only concerned with statements that are true" (Cohen 1977, 310).
4. Carnap 1928: §§ 3, 64, 65, 124, 164, for Husserl; §§ 65, 67, 163 for Nietzsche.
5. I'm using here an author's copy though.
6. I could only find two links that approximate George Bernard Shaw's visit to America that I first saw. The two links below come closest: https://www.youtube.com/watch?v=aEESoO7cN_g (minute 2:00) and <https://www.youtube.com/watch?v=c60b8gORtTc> (minute 18:43).
- * I wish to thank Mark Migotti for his helpful comments on a previous draft and for his patience and kind help to improve my English version.

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Reflections on Truth in Law

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PREFACE

I have been a fan of Prof. Susan Haack's work for a very long time.¹ I have especially learned a great deal from her clarification and defense of the pragmatist tradition.² And I have long aspired to emulate the approach to philosophy (and to life) she has perfected: "passionate moderation,"³ exemplified in relation to theoretical topics by a rejection of ungrounded extreme positions and false dichotomies.⁴ Additionally, of course, she has been a central figure in many fields, some far away from my limited areas of expertise: E.g., epistemology, the nature of logic, evidence and proof in science and law, and the use of scientific evidence in the courts. In 2017, I had the good fortune to be part of the same conference with Prof. Haack, commenting on Brian Tamanaha's most recent book on socio-legal theory.⁵ It is great to have this opportunity to be part of a *Festschrift* in her honor.

INTRODUCTION

Throughout her academic career, Susan Haack has been one of the most important scholars on how best to understand claims of truth within and about science, philosophy, and law. She has been the voice of both sophistication and good sense. (In academia these days, those two virtues are only rarely combined—the scholars who purport to be sophisticated are too often peddling post-modern, post-structuralist, post-truth views, views which Prof. Haack has shown to be thoroughly untenable: as often as not, self-contradictory, and, overall, not able to withstand direct scrutiny.) Her work has consistently been the careful and important response to extreme claims and misunderstandings of all kind.

I support and applaud Prof. Haack's work, and, in this article, I will elaborate and clarify, and perhaps amend slightly, her analysis in one small sub-topic within her works on truth: the difficult question of truth within and about law. In what follows, Part I introduces some of the complications of speaking about truth in and about law. Part II takes up and elaborates Prof. Haack's observation regarding the way that legal truth is—and is not—relative. Part III elaborates and clarifies a small but important point in Prof. Haack's discussion of truth in law, relating to a problem of gaps in the law. Part IV discusses problems raised for legal truth by official error and fiat; and is followed by a brief Conclusion.

I. LEGAL TRUTH—INITIAL COMPLEXITIES

When one speaks about legal truth, one could be referring to one of a number of different things. To be more precise, one can make true (or false) propositions of very different kinds and at quite different levels of generality or abstraction, all having some connection to law. There are specific propositions regarding individuals' legal rights and duties at a given time (e.g., "Valerie and I have a valid contract law under American federal and state law⁶ for the purchase and sale of a 2012 Volvo"). There are "doctrinal" (legal science) propositions about a particular legal system at a particular time (e.g., "consideration is required for a valid contract under Minnesota law"). At a higher level of generality, one can make claims about particular legal systems as a whole (e.g., "the Law and England and Wales gives greater priority to form relative to substance, especially compared to the law of many Continental European countries" or "the American legal system in the early 21st century remains pervasively sexist and racist"). At a higher level of generality or abstraction, one can also make claims about law in general⁷ (e.g., "all legal systems make a 'claim to correctness'"⁸). Though all of the above propositions are within or about the law, they differ very much in type, with some claims more internal to the (legal) discourse, and others more in line with other types of discourse, e.g., sociology.

What types of things make these different categories of propositions true or false varies—sometimes significantly—from one to the next. In the present article, I will be focusing primarily on the truth status and truth-making grounds of relatively specific propositions within or relating to law: e.g., "X currently has a legal duty [under Minnesota state law] to pay Y ten dollars" and "capital punishment is an acceptable form of legal punishment under American federal constitutional law in 2020." Questions regarding other levels or types of legal truth—e.g., whether theories of (the nature of) law or of particular doctrinal areas can be said to be true⁹—are of significant interest, but must be left to another time and place.

One additional complication should be noted. Adjudication often involves what appear to be propositions of a non-legal nature: factual or moral claims. In a trial, a judge or a jury may be required to make "findings" regarding what happened in some matter relevant to civil or criminal liability: How fast was A going?, Did B shoot C?, Were the goods delivered by the deadline?, and so on. These are findings that appear to be statements about facts in the world. Additionally, the judge or jury may make findings that are "mixed questions of law and fact": Was A negligent? Did B use "best efforts" in distributing C's product?, Did D act "recklessly"? There are other contexts still where courts are required to make what appear to be purely moral judgments: Does the statute give different groups "equal protection of the laws"? Was A given "due process"? And so on.

Prof. Haack resolves—or, perhaps "dissolves"—the complication apparently raised by court findings of seemingly factual truth by noting that "the task of the 'fact-finder' is not to discover whether the crucial factual claims are true, but to give a verdict as to whether or not *they have been established by the evidence presented* (to whatever degree of proof is required, and under whatever procedural rules apply)."¹⁰ One might be tempted to put the same point slightly differently. Under that alternative characterization, the court is making a claim about the world, about what really happened, but it is a modified claim: "Given the evidence the court was allowed to consider, and the burdens of proof and standards of evidence imposed by the legal system, *this* is what we think happened." However, in the end, I do not think that this second, alternative characterization is satisfactory, for it does not ultimately make sense to say that one is describing the world while simultaneously admitting that certain otherwise relevant information has been excluded and certain (legally imposed) presumptions and burdens have been inserted.

One might think that a similar re-characterization (that a proposition is not about the world but about the meeting of legally imposed burdens) might work for the moral-sounding claims embedded in some legal judgments; however, the question here is more complicated. Sometimes, courts adjudicating what process is due or which punishments are "cruel and unusual,"¹¹ etc., state that they are merely applying the standard as it has been explicated in relevant precedent—equality for the purpose of the 14th Amendment, as interpreted, rather than "equality," full stop. At other times, though, the arguments offered by judges for

their conclusions make it clear that the court is making a claim about “equality” or “cruelty” or “due process” full stop (or at least full stop, subject to relevant precedent—if a higher court had decided that the death penalty is not per se “cruel and unusual,” then it is not open for a lower court to say otherwise, though it might be open to the lower court to conclude that the death penalty is “cruel and unusual” if applied to a minor or to someone with significant mental disabilities¹²). Whether, in cases interpreting moral-sounding terms of the United States Constitution, judges should apply their best understanding of the moral value in question, the country’s conventional understanding of that moral value, the moral views of those who drafted or ratified the provision, or some other standard, is far beyond the scope of the present work.

II. HAACK ON TRUTH (AND LAW)

Prof. Haack has properly insisted that “true” does not change its meaning across different areas of study or areas of discourse: “whatever the subject-matter of a proposition, what it means to say that it is true is the same.”¹³ This is a subtle but important point. Some people might wonder how “truth” could be the same, if the criteria of “truth” vary. If in one area of discourse, truth is grounded on empirical investigation, while in another area truth is a matter of agreement among an elite, it would at first seem like “truth” in those two areas *must* be very different things. If quite different sorts of facts ground truth, it might seem like what they ground could have no more than a family resemblance.

However, as Prof. Haack properly insists, it is not “truth” that changes from one context to another, but only the means by which truth is shown. As she states, “what distinguishes logical from historical truth ... is just what distinguishes logic from history: namely, what the propositions are about—and so, what makes them true.”¹⁴ This is correct also in regards with law: it is not that we mean anything different by “true” when speaking either within or about legal discourse, but the grounds of assertion are, or can be, distinctive.

As Prof. Haack points out, legal truth is, in one important sense, relative to time and place, and relative to a particular legal system.¹⁵ What was allowed by American law in 1860 may be legally prohibited under American law in 2020. Of course, this does not make truth in law “relativist” in the philosophical sense, where relativism is an alternative to objective moral truth.¹⁶ The sort of relativism at work here is not significantly different from statements like “I am in my office” (which is true this morning, while writing this, but will not be true tomorrow afternoon) and “it is below freezing outside” (which is true in some locations on some dates, but false for other locations and other dates). What counts as a true statement of American law changes over time, because the state and federal legislatures (and some other legal officials) have the power to add to the law, as well as, expressly or implicitly, to revoke or alter what had earlier been the law, courts have the power to invalidate statutes on constitutional grounds and executive and agency actions for exceeding delegated powers, federal law can override judicial common law rulings and agency actions, federal laws can preempt state laws, etc. What is true in law changes all the time through the intentional actions of officials delegated the power to do just that: change the law in a particular legal system. However, as discussed, this does not raise any significant philosophical issues.

III. GAPS, PREDICTION, AND REASONING

At one point, Prof. Haack states the following regarding judicial interpretation and legal truth:

To say ... that legal truths are in part constructed by judicial interpretations is not to say, *simpliciter*, that legal truths are made, and not, like natural-scientific truths, discovered. ... The point is ... that unlike natural-scientific truths, legal truths become true only when some person or body made them so; but of course, once they have been made true, that they are true is something to be discovered.¹⁷

In speaking of “some person of body” making legal truths, it is clear from context that Prof. Haack here means a judicial decision.¹⁸

The implications of this comment is that where a particular issue is not covered by the clear language of a statute (or other authoritative legal text) or a court decision applying that legal text, then there is no legally true propositions regarding that issue, and this will continue until a judge or other officer makes an official pronouncement as part of a court or agency decision. However, this understanding, at least if read narrowly, is in tension with our normal practice within the American legal system, and also the other legal systems with which I am aware. It is conventional to argue that legal truth applies to a wider range of disputes than those on which there is some direct authoritative pronouncement. It is both common and perfectly sensible to say: “The courts have not given a decision directly on point, but it is clear that activity X is [not] allowed under the statute.” Lawyers and legal scholars use standard tools of legal interpretation and doctrinal analysis to fill in some of the “gaps” not expressly covered by the clear language of statute or court decision. This is what we take three years learning in law school (and, for some of us, many years *trying to teach* in law school). And this is what lawyers are (highly) paid by clients to do: to state whether a certain action is legal or illegal, *where the answer is not immediately obvious under the relevant legal texts*.

Consider the alternative: if ever a factual situation varied in a small way from a binding precedent (in a Common Law country) or if the application of a statute to facts involving any sort of judgment, then one would be forced to say that there was no law. (Hans Kelsen, at one point, seemed to be making just such a claim: that each act of law application, however apparently straightforward, was also an act of law creation.¹⁹) This seems untenable, or at least insufficiently grounded either in our practices or in our normal understanding of practical reasoning.

Of course, there are well-known dangers at the other extreme, in being too loose in equating “what the law is” with “what conclusions might be argued from the premises of authoritative texts.” There are ongoing disputes regarding how far the process of extrapolation can go and still be considered a declaration of existing law (rather than the creation of new law). Ronald Dworkin famously argued that there was a right answer to all, or nearly all, legal disputes, asserting there were sufficient legal materials (taking into account legal rules, legal principles, and other legal standards) from which to construct possible theories of what the law requires in each case, with the right answer being the theory which best combined fit and moral value.²⁰ I do not mean to be sidetracked here into the extensive debate about Dworkin and his right-answer thesis.²¹ Suffice it to say for present purposes that there is ample room for a middle position, believing that there are right answers to legal disputes in *many* situations where the statutory language and court decisions have not yet given a clear response, without necessarily believing that this is the case for *all* (or nearly all) such situations. In other words, one can still believe that there are right answers for most legal disputes, but for a significant number of legal questions (in this, or any other, legal system) there may be no right answer, no legal truth.

Let us return for a moment to the possible skeptical view, that there is no truth of the matter regarding a legal dispute unless there is clear language in a statute or prior court decision directly on point. The argument would be that law depends on social sources,²² and where no social source—no statutory text, judicial decision, or agency declaration—can be found, then there is no law (yet). As already noted, it is part of our current practices (in the American legal system and in many other legal systems) to speak *as if there is* a truth of the matter, at least some of the time, even prior to a court decision expressly on the topic. (As Dworkin points out, if one goes by the rhetoric used by advocates and judges in discussing legal disputes, the parties seem *always* to imply that there is an existing legal answer available to be found, even if reasonable lawyers and judges might disagree on what that answer is²³). The question still remains: how are we to understand a truth claim here?

There are, broadly, two different directions one could take in filling in the gaps in the legal materials. One approach would be an argument about objective right answers using the doctrinal reasoning and other acceptable forms of reasoning within the legal system in question. The second approach would be a prediction of how the courts will resolve the matter, even if that prediction varies from what one considers the

objectively best answer based on the legal materials and acceptable forms of legal inference. Obviously, the two approaches should converge for most cases (we predict that courts will reach the decision that is best under current rules and standards of legal reasoning), but might diverge in cases involving high-profile political or moral issues, where judges might be more guided by outcomes than by what doctrinal reasoning would require.²⁴

As Prof. Haack points out, the prediction approach is associated with Oliver Wendell Holmes²⁵ and later with the American legal realists²⁶ (like Prof. Haack, I do not make the mistake of believing that Holmes' talk of predicting court action was meant as a general or conceptual theory of law²⁷). The prediction approach and purely doctrinal approach are in obvious tension,²⁸ and this is not the occasion to attempt to choose between them.

One should note that the claim that there might be a right answer to an open interpretive question within a legal system is entirely consistent with Prof. Haack's interesting and important point that the law in general, and legal texts (including constitutional provisions) in particular, can change and grow in meaning over time.²⁹ Just as the fluidity of meaning of language over time does not foreclose the possibility that a term may have a clear meaning at a particular time, so the fluidity of legal meanings over time is consistent with there being a right answer to a legal question at a certain moment. At the same time, the possibility of (e.g.) a "living constitution"³⁰ (Canadian legal scholars speak of a "living tree constitution"³¹), or other changing legal meanings, does open the possibility that any given moment *might* be a moment of transition, where the old meaning is starting to give way to the new. As standards change regarding, for example, what is meant by "freedom of speech," "freedom of religion," "privacy," or "cruel and unusual punishment"³²—perhaps in response to changing technology or changing social practices, or perhaps reflecting changing social norms—then at the period when the change is under way but not yet complete, there may be uncertainty as to the application of the legal standard.

As Connie Rosati points out, in trying to work out the intricacies of legal truth (and its objectivity), one might choose between two standard philosophical analytical moves, which parallel the idea about responses to legal gaps mentioned earlier.³³ First, one might argue—broadly in line with a prediction approach—that law is simply what a majority of judges say it is; second, one might argue that the law is what an judge in an ideal epistemic situation would decide (basically a sophisticated restatement of the doctrinal argument approach).³⁴ Each approach has distinct advantages and disadvantages. If law is just what a majority of judges (on the highest court) says that it is, it is hard to make sense of judicial dissenting opinions or courts reversing themselves in later cases (on such occasions, the courts do not say that they are simply "making new law"; they say that the original decision was "mistaken").³⁵ However, if the law is what a judge would decide under ideal conditions, then one must be able to articulate what "ideal conditions" might be, as this has been shown to be surprisingly difficult.³⁶

IV. ERROR AND FIAT

However we respond to the problem of "gaps" (where a legal official has not spoken but one can make claims based on past decisions, justified either on doctrinal reasoning or prediction grounded in part on non-doctrinal reasons), the complexity is that courts can end up deciding cases that are contrary to how we think they should have come out, as a matter of doctrinal reasoning, and/or contrary to how we predicted that they would decide. Especially for outcomes contrary to what we believe that the legal materials and legal reasoning require, commentators might describe the decision as a "mistake," as "wrongly decided." And this possibility adds layers and intricacies to the analysis of legal truth.

To me, the questions about legal truth after an apparently (allegedly) wrong judicial decision are both more difficult and more central than the questions when the courts have not yet spoken. When the court makes the mistaken decision—say, the "separate but equal" race equality decision of *Plessy v. Ferguson*³⁷—at the time of the decision, there is a sense in which that court's decision both *is* and *is not* a correct statement

of the law.³⁸ There are, it seems, two inconsistent legal truths, each with grounding in the authoritative legal materials.

Of course, *Plessy* was eventually overturned,³⁹ and this may simplify the analysis. Many lower court decisions that are generally considered mistaken are reversed on appeal, and occasionally, decisions are rejected by a later decision by the same court (the only option for “correction” if the original decision was by the highest court). One should, however, here also note that this same fate—“correction” by a higher or later court—could also occur when the original decision was considered to have been correct.

If the mistaken decision is quickly reversed or overruled, then there may not appear to be a philosophical problem. The prior court was simply mistaken, and there was one legal truth all along, even if a court give an erroneous declaration that confused matters for a while. However, there are other Supreme Court decisions that commentators consider to have been mistaken (which decisions those are will vary by which commentator one consults, of course), but which have not been “corrected” (and keep in mind that *Plessy* was “good law” for almost 60 years).

The philosophical problems do not go away easily, even for “corrected” decisions. What shall we say about the truth-value of the legal proposition(s) announced by a court while it is being appealed? What should we say about those propositions after the “correction”—that they were true for a time but are no longer (like legislation that is changed), or that they were never true, even though they were treated as true for a period of time? In all such cases, the temptation to say that there is either multiple, inconsistent truths about what the law requires (at least for a period of time) is strong.

To be clear: I am not here advocating any sort of postmodern doubt about truth, or, for that matter, any classical form of skepticism about truth.⁴⁰ The analysis in this article assumes conventional understandings of truth, but asserts that within the domain of law generally—and known legal systems (for the present discussion, the United States legal system) in particular—there are some significant complications in certain types of instances of asserting what is legally true.

In a prior work, I emphasized a traditional binary when thinking about truth in morality, law, and other, comparable discourses: will and reason⁴¹ (Lon Fuller called it “fiat and reason”⁴²). Truth in law is always a product of a combination of reason—doctrinal/practical reasoning from the authoritative legal texts—and will: the choices of officials who have the authority to make choices for the community. Sometimes these choices are what John Finnis (following Aquinas) call “*determinatio*”: making choices among equally legitimate alternatives.⁴³ At other times, though, the choice can be one made contrary to “reason,” in the sense of being doctrinally wrong. The court decision may be the law because the court said so (and reaffirmed that interpretation of the law consistently over time). What is legally true is inevitably a mixture of reason and will; on occasion, though, reason and will point in different directions, and we are simply left uncertain (as in those occasions where *Plessy* both *was* and *was not* a true statement of American law).

CONCLUSION

Throughout her long, very productive, and very influential career, Prof. Susan Haack has been a reliable—and necessary—guide to the intricacies of understanding truth in many forums: truth in science, evidential truth, and truth in law generally. This article has tried to dive into the intricacies of statements of truth within and about law, in ways that are consistent with Prof. Haack’s writings, but which push on some matters further than she had occasion to discuss.

As this article elaborated, truth about particular legal propositions often turns on some combination of “will” and “reason”: the decisions made by officials authorized to make choices for the community, on one hand, and what follows from those decisions, as a matter of the distinct form of practical reasoning known as “doctrinal reasoning.” And where will and reason conflict, sometimes there may be, if only temporarily, more than one legal truth.⁴⁴

NOTES

- 1 Among the works of hers that have helped me the most in developing my own ideas are Haack 1998, 2003, 2004, 2005, 2006, 2008, 2014, 2016, 2018a, and 2018b.
- 2 E.g. Haack 2005, 2006, 2008, 2009, 2018a, 2018b.
- 3 Haack 1998.
- 4 E.g., Haack 2018a.
- 5 We were commenting on Tamanaha 2017. Our contributions were Haack 2018b and Bix 2018.
- 6 In the United States, individuals are subject to both federal and state law. Contract law, the example given in the text, is primarily a matter of state law.
- 7 There are scholars who claim that one cannot speak abstractly or conceptually about law in general,
- 8 This refers to part of Robert Alexy's theory of law. Alexy 2002.
- 9 See, e.g., Moore 2000.
- 10 Haack 2014: 305 (emphasis added).
- 11 *U.S. Constitution*, 8th Amendment.
- 12 In fact, the United States Supreme Court has held the death penalty unconstitutional as applied both to the mentally disabled, *Atkins v. Virginia*, 536 U.S. 304 (2002), and to persons who committed their crime while a juvenile, *Roper v. Simmons*, 543 U.S. 551 (2005).
- 13 Haack 2014: 304. She offers Aristotle's summary: "to say of what is that it is, or of what is not that it is not, is true." Haack 2003: 17 (quoting Aristotle 1933: 201). In another article, she paraphrases Peirce: "to say that something is true is say that it is SO, whether you, or I, or anybody believes it is so or not." Haack 2019: 268.
- 14 Haack 2014: 304-305 (emphasis omitted).
- 15 Haack 2014: 308.
- 16 See, e.g., Baghramian and Carter 2015.
- 17 Haack 2014: 317; cf. Haack 2018b: 1072-1073.
- 18 In a parenthetical in the same paragraph, Prof. Haack writes about a judicial decision, "*Daubert III*" (*Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), see Haack 2014: 306 n. 51): "after *Daubert III*, that *Frye* had been superseded federally was a true proposition that could be discovered by legal research." Haack 2014: 317. It is thus clear that for Prof. Haack—at least in the view presented in Haack 2014—where the court has not yet spoken on some issue, there is no legal truth to be discovered.
- 19 See, e.g., Kelsen 1992: §31(e), at 70. Karl Llewellyn also seemed to flirt with a similar idea. Llewellyn 1933: 72-74, quoted (in translation) in Fuller 1934: 445.
- 20 Dworkin 1985: 119-145 ("Is There Really No Right Answer In Hard Cases?").
- 21 I have written on those topics at some length before. See, e.g., Bix 1993: 77-132; Bix 2019: 93-107.
- 22 E.g., Raz 2009: 37-52.
- 23 E.g. Dworkin 1985: 144.
- 24 See, e.g., Segal and Spaeth 2002.
- 25 Holmes 1897: 460-461.
- 26 E.g., Llewellyn 1930: 437-438, 447-449.
- 27 Haack 2005: 79-80; Haack 2018b: 1059.
- 28 Rosati writes: "[C]laims about what the law really is are often offered precisely to support decisions that run contrary to what we would reasonably predict." Rosati 2004: 294-295.
- 29 E.g., Haack 2008: 461-467.
- 30 E.g., Ackerman 2007.
- 31 E.g., Waluchow 2011.
- 32 E.g. Haack 2008: 469-470 (on the changing constitutional rules and principles regarding freedom of religion).
- 33 The analysis also raises issues surrounding the question of "global error"—whether all legal officials (at a given time, in a given legal system) could be wrong about some legal question. See, e.g., Kramer 2008, Bix 2009.

- 34 Rosati 2004: 306-322
35 Rosati 2004: 308-310.
36 Rosati 2004: 317-322.
37 163 U.S. 537 (1896).
38 Rosati 2004: 291.
39 See *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).
40 Comesaña and Klein 2019.
41 Bix 2010.
42 Fuller 1946.
43 E.g., Finnis 2012: 284-289.
44 An earlier version of this work was written for the 2020 University of Girona Seminar in Connection with the International Prize on Legal Culture given to Susan Haack (a Seminar which was ultimately cancelled due to the Coronavirus Pandemic).

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What is Foundherentism, and what can it contribute to the Theory of Evidence in The Law?

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1. THREE ANECDOTES ABOUT SUSAN HAACK

When I call to mind how I met Susan Haack, three memories from three different places come to mind, although the contexts are similar. The first is of an encounter after a lecture I gave in Lima on some problems raised by evidentiary argument. Susan Haack was in the audience (she was giving a lecture later) and when I had finished she came up to me, apologised for not being able to express herself better in Spanish (although her Spanish was a lot better than my English) and gave me a copy of her book *Evidence Matters* (Haack 2014). The second memory is from Girona, at a congress paying tribute to Michele Taruffo. I gave a lecture on the philosophical problems raised by the possibility of using progress in neuroscience to provide evidence of mental states. Once again, she came up to me afterwards, and offered me her opinion of the importance of language for the emergence of mental states and activities. Then, Larry Laudan called her because they were going to lunch. She replied along these lines: “Just a minute, I’m talking to my friend Daniel.” You cannot imagine how honoured I felt at that moment. The third memory is from Alicante, where Susan Haack had come to give a lecture as part of the master’s degree course in legal argument. Quite some time had passed since our previous meetings, so I had serious doubts about whether she would recognise me, but she had no sooner caught sight of me than she smiled broadly and opened her arms in recognition. When people ask me about Susan Haack, I tend to recount these stories because they so nicely demonstrate her serious and permanent commitment to philosophy and, at the same time, her affable, open nature and easy manner.

Susan Haack has published widely on questions of legal evidence, always with reference to specific themes (the role of probability as a criterion for evaluating evidence, truth in Law, evidence of causality, scientific evidence, etc.) rather than as a general topic. However, each of these works demonstrates that her conception of epistemology can contribute to the subject of legal evidence. In these pages, I am going to try to suggest that foundherentism—presented fundamentally but not exclusively in *Evidence and Inquiry* (Haack 1993)—can provide a good framework for constructing a theory of legal evidence and for rethinking certain issues which legal philosophers have perhaps considered to be closed. So, I have two aims: firstly, to present the main features of foundherentism, and secondly to link some of these features to important discussions of the theory of evidence in Law.

2. WHAT IS FOUNDHERENTISM?

“Foundherentism” is the neologism used by Susan Haack (a keen creator of neologisms) to refer to her theory of epistemic justification. According to Susan Haack, epistemology must try to answer two basic questions: first, what reasons or evidence justify our beliefs; and, secondly, how are such criteria themselves justified. In other words, what is the relationship between those criteria and truth of those beliefs. Foundherentism tries to answer both questions, overcoming the problems that have arisen for foundationalist and coherentist epistemologists by integrating elements of both approaches.

Foundationalism considers that a belief is justified when it is supported by another belief, which is supported by another, and so on, establishing a chain of justification (in a single direction) ending with basic beliefs (foundations of knowledge). These would be defined as those beliefs for which justification does not depend on other beliefs. In empirical foundationalism, which is what interests us here, these basic ideas are directly justified by the subject’s experience.¹ In this way, foundationalism has to distinguish between two types of belief (and justification): those justified by other beliefs and those justified by the subject’s experiences. But this raises several problems, including two important ones: the first arises because beliefs based on experience also seem to be *loaded with theory*—any observational statement refers to other ideas or knowledge. For example, my belief that there is a glass full of water in front of me refers to concepts like “glass” and “water” (which suggests that justification cannot depend only on experience unless this is supported by other ideas). A second problem is that although the foundationalists maintain that the justification relation is a logical relation between propositions, it is not easy to explain how there can be logic relations between experiences (which are facts) and the content of beliefs (which are propositions). Foundationalism may, therefore, explain how experience can justify the fact that people have beliefs, but not how it can justify the content of those same beliefs.

Meanwhile, coherentism maintains that beliefs are always justified by other beliefs in a kind of network rather than in a linear structure. The justification of a belief depends on this conception that it is coherently integrated into a network of beliefs that support one another. This raises the problem, however, that there may be a lack of connection with experience and reality, so that two incompatible beliefs inserted into different coherent systems can simultaneously be justified. Borrowing an image from C. I. Lewis, Haack argues that, without any connection with experience, empirical knowledge would be like two drunken sailors holding each other up so they did not fall over, both of them in a vacuum.

Foundherentism is an attempt to overcome these and other objections. To do this, it takes from foundationalism the idea that experience is important for justifying beliefs (but without requiring that beliefs should be exclusively justified by experience) and from coherentism the idea of mutual support between those beliefs. Susan Haack offers the following minimum characterisation of foundherentism:

- a) “A subject’s experience is relevant to the justification of his empirical beliefs, but there need be no privileged class of empirical beliefs justified exclusively by the support of experience, independently of the support of other beliefs.
- b) “Justification is not exclusively one-directional but involves pervasive relations of mutual support” (Haack 1993, p. 19).

The best way of intuitively comprehending foundherentism is an image or metaphor that Haack frequently uses: instead of the inverted pyramid of foundationalism or the network of coherentism, her model is the crossword. Justifying a belief is like filling in a crossword in which each of the solutions depends on certain initial clues (perceptions, experience) and on the solutions provided by other solutions already filled in (mutual support between beliefs).

3. PRAGMATISM AND NATURALISM

To complete this initial, sketch of foundherentism, two more characteristic features must be taken into account: pragmatism and moderate naturalism.

Pragmatism is a philosophical attitude, not a developed philosophical conception articulated and it includes shared material commitments. Some of the features of this attitude pointed out by Susan Haack are:

- “• An approach to meaning in terms of consequences (...) a conception of meaning as in constant evolution, shifting and growing in use and in experience.
- A disinclination to philosophize in an *a priori* way and an understanding of philosophy as about the world and not exclusively about concepts or language.
- A distaste for dogmatism and, correspondingly, a robust and thorough-going fallibilism.
- A repudiation of false dichotomies and a corresponding stress on (to borrow Peirce’s word) synchism.
- A concern with the social character both of language and inquiry.
- An acknowledgement of contingency, of the role of chance, both in the cosmos and in human affairs.
- A willingness to draw on results from the sciences and, in particular, to take evolution seriously.
- An inclination to look to the future and a distinctive way of knitting future and past” (Haack 2018, 1055).²

All these features can be detected in Susan Haack epistemology, but the aversion to dogmatisms, the rejection of dichotomies, the conception of philosophy as being about the world, and the attention to results from science seem particularly clear. And it is this last idea that connects with the second feature of foundherentism: moderate naturalism.

Philosophical naturalism is the tendency to reconstruct philosophical concepts and theories based on concepts admitted, or at least admissible, by natural or empirical sciences (frequently identified in the strict sense of science with physics, chemistry and biology). This broad (and minimalist) characterisation can cover both what we might call the “thesis of replacement” of philosophy by science and what we might call the “thesis of complementarity” or “continuity” (Martínez and Olivé, 1997, 16). While Quine, who at times suggested the replacement of epistemology by cognitive psychology, can be seen as leaning towards the first thesis, Haack adheres to the the second, or at least some versions of it.

Susan Haack distinguishes three main types of naturalism in epistemology:

- a) A *posteriori* reformist naturalism, which maintains that epistemology is not an entirely *a priori* task but rather operates in continuity with the cognitive sciences, accepting that these could be relevant for solving epistemological problems.
- b) Scientific reformist naturalism which maintains that the cognitive sciences by themselves can provide responses to some epistemological problems.
- c) Revolutionary scientific naturalism which takes the view that traditional epistemology should be replaced by the cognitive sciences.

The position adopted in *Evidence and Inquiry* to develop foundherentism conforms to the first of these. This has various consequences in Susan Haack’s epistemology, as shown by the criteria for justifying our beliefs with human capacities; the continuity between scientific forms of knowledge and other areas and the rejection of the possibility of an epistemology without a knowing subject. We will examine this thesis and its relevance for a theory of evidence in Law.

4. THE UNITY OF EPISTEMOLOGY

One of the theses accepted by foundherentism which is important for a theory of legal evidence is upholding the continuity between the scientific method and other cognitive activities in other spheres. We might call it the thesis of the unity of empirical argument or evidentiary argument. For Susan Haack, what counts as evidence, and as criteria for confirming our beliefs, is not something exclusive or internal to scientific activity. Faced with the excessive deference towards the scientific method, which often results in disillusioned scepticism, the author suggests an approach which says that the criteria used by all those who investigate are the same (Haack 1998, 45). (Ultimately a “critical common sense”, which recalls the jurists’ reference to “healthy criticism”). Scientists are not, she writes, “in possession of a uniquely rational and objective method of inquiry, unavailable to historians, detectives, and the rest of us, and guaranteed to produce true, or probably true, or progressively more nearly true, or progressively more empirically adequate, etc., results” (Haack 2009, 26). This does not mean that a layman can easily understand what scientists do. Despite the fact that ultimately the criteria (the way the evidence is weighed) are the same, knowledge of the underlying scientific theories, experimentation methods, technical terminology, the use of statistics and specific formalisms increase the complexity of science. Nor does this mean denying that science has had considerable success that must be recognised. However, this is the result of more accurate measurement methods and observation instruments, statistical methods and complex formalisation as well as, especially, the sustained cooperation of many researchers over generations gradually filling in the puzzle of knowledge. A crucial element that accounts for the success of the natural sciences is their social nature; they are not in possession of a specific, privileged method ensuring objectivity and the knowledge of reality (Haack 1998, 46).

This can be applied to the case of legal argument about facts. Although this is subject to special institutional restrictions and although there are important limitations on the methods of collecting evidence aimed fundamentally at safeguarding values other than the discovery of the truth, which can come into conflict with them, there is no valid *legal epistemology* exclusive to this sphere. When—in a radical interpretation of the “free evaluation of evidence”—jurists considered that a belief has to be accepted as justified if the judge feels intimately convinced of it, without no further requirement, or when they over-estimate the role of immediacy as intuitive access to the credibility of a statement,³ they are simply wrong, assuming irrational criteria, not criteria validated by the peculiar circumstances of the context. If we are looking for rational criteria for legal argument about facts, we must look for guidelines to evaluation that are valid in any sphere concerned with investigating facts.

Susan Haack distinguishes between criteria for justifying beliefs and guidelines for the conduct of inquiry. The former are like the criteria for judging whether or not a meal is nutritious and the latter are like instructions for cooking it (Haack 1993, 279). The procedural guidelines attempt to determine the strategy that should be followed to carry out a good investigation, but it is possible that there may be a plurality of methods (and it is even desirable that the same investigation should be carried out using diverse methods). These methods are subject to the investigator’s discretion and it can only be “regulated” using broad guidelines. This distinction could serve to help understand what is peculiar about legal evidence. The peculiar thing about evidentiary activity in Law lies not in the argument about facts in the strict sense (how the weight of evidence is evaluated) but in the procedural rules (the rules of evidence) which establish, in this case, unlike other contexts, a rigid method of carrying out the investigation, determining which evidence can and cannot be accepted; who has the burden of proof; and even sometimes which conclusions we must accept as proven. And they do so not only considering truth as a purpose of the process but also bearing in mind the protection of other values. This regulation of procedure has an important impact on argument, but not enough so that we can say there is a different epistemology for Law.

5. EPISTEMOLOGY WITHOUT SUBJECTS AND OBJECTIVITY

As theorists of judicial evidence, we have been concerned to reduce the possibility that decisions on proven facts should be arbitrary or wrong. One of the dangers we have warned of is the subjectivity of judicial decisions, which would lead to a lack of control over them. In general, it would seem that some of the formulations of procedural rules determining the evaluation criteria and standards of sufficiency of evidence refer to mental states. As such, they do not ensure a minimum level of objectivity and should be reformulated. For this purpose, it has been stressed that the purpose of evidence cannot be merely to convince the judge, and that if a judge states that he or she is (or genuinely is) intimately convinced that something is a fact, it says nothing about the justification for stating that the fact has been proven. What we might call “the legal philosophers’ theory of evidence” is presented as an objectivist conception, while “the proceduralists’ theory of evidence” is labelled a conception rooted in subjectivism.⁴ It is beginning to be commonplace to assume that only an objectivist conception of evidence can be rational, so we need to release judicial evidence from its psychological bonds, avoiding, as far as possible, its references to mental states. Following Jordi Ferrer, for example, it has been assumed that “*p* has been proven” must be understood as “There are sufficient elements of judgement in favour of *p*”, and not as “The judge believes that *p*” or “The judge is convinced of *p*” (Ferrer 2005, p. 28 and ff). The distinction between “It is proven” and “It has been held to be proven” has also been stressed (Ferrer 2005, 96). Concerning standards of proof, it has been maintained that one of the requirements that must be met is to “avoid linking evidence with the deciding subject’s beliefs, convictions or doubts concerning the facts” (Ferrer 2008, 146). To this is added the thesis that beliefs (the fact of having a belief) are not voluntary, from which the conclusion can be drawn that they may not be considered as justified or unjustified. In fact, what may or may not be justified is the proposition believed, but not the fact of having beliefs—belief as a mental state. For this reason, insisting on linking evidence with beliefs makes the former arbitrary.

This process of “de-psychologisation” is strongly reminiscent of Popper’s *epistemology without knowing subject*. As Haack points out, Popper is apparently “an atheist about beliefs—an *objectivist* atheist, one might say, since he seems to assume that any epistemological theory acknowledging a role to beliefs is thereby bound to be objectionably subjectivist” (Haack 2010, 73), which leads him to see epistemology as a question of “propositions and their logical relations” (Haack 2010, 73). For Popper, traditional epistemology is a philosophy of belief but it is not genuine epistemology. He sees epistemology as relating to scientific knowledge; it belongs to what he calls *world 3*, the world of theories, and constitutes objective knowledge. On the other hand, knowledge understood as a subjective mental state belongs to *world 2*—to psychology (Haack 1979, 310).

On the other hand, Susan Haack’s epistemology revolves around the issue of when a belief (not merely the proposition that is believed but its being believed) is justified. This is in keeping with her pragmatism and her moderate naturalism. Her aim is to give content to the idea that “*A* is more/less justified, at time *t*, in believe that *p*, depending on ...” (Haack 1993, 117), where the ellipsis is initially filled in by “how good his evidence is”. In her conception, justification of a belief is something personal, relating to a subject, and not impersonal. One person, therefore, may be more or less justified in believing *p* than another in as far as they have more or less evidence in favour of *p* and depending on the quality of that evidence. But the fact that it is *personal* does not mean that it is *arbitrary*, because its justification depends on the evidence the person really has and the reasoning he really undertakes, not on those they think they have (Haack 1999, 41). The rejection of psychologism is the result of confusion between the two meanings of “subjective”: subjective as “personal” and subjective as “arbitrary”. But the first meaning of subjective does not necessarily imply the second.

Haack goes beyond denying that an epistemology that can include beliefs must therefore be irrational and also offers an argument in favour of an epistemology that takes the subject into account. Her argument is that an epistemology without a subject cannot take account of the role of experience in justification. However, it would be entirely counterintuitive to think that what we see, hear, etc. should have nothing to

do with the justification of our beliefs. Beliefs (some beliefs) form the bridge between perceptions and sensations (experience) on one hand, and propositions, on the other.

By eliminating beliefs understood as mental states, Popper's epistemology ends up losing its grip on empirical reality. As we know, for Popper there is no undoubted knowledge—in other words, there is no room for the absolute confirmation of theories. This is a result of his rejection—linked to his anti-psychologism—of induction as a valid type of inference. The characteristic feature of scientific theories, which allows us to continue talking about rationality in science, is that they can be either partially corroborated or refuted by science. A theory is partially corroborated when a singular statement can be deduced from it which is confirmed as true, and it is refuted when such a singular statement is proved false. But how can we know if such a singular statement is true or false? For Popper, the provability of basic statements does not come from experience, because the relationship between this and the decision to accept a statement can only be causal and not logical (deductive). The acceptance of basic statements is a matter of *convention*. But, if this is the case, it is not appropriate to empirically corroborate or refute any theory because everything ultimately depends on a convention of the scientific community. Popper's project collapses. Ultimately, “any plausible account of the epistemic relevance of experience will have to throw off the Popperian constraints of extreme deductivism and extreme anti-psychologism” (Haack 1993, 108). The failure of projects like Popper's demonstrates that justification cannot merely be a relation of inference between propositions and that a “double aspect” notion of justification is required: causal and logical. For a belief to be justified by an experience, it must be possible to infer (not necessarily by deduction) the content of the belief from the content of the experience, and having had this experience must have caused the state consistent with having that belief.

In any case, before wrapping up this point, a conclusion could be drawn for the theory of judicial evidence: an appeal to psychological states, such as belief, knowledge, etc. as part of a theory of evidence, even as part of the meaning of “*p* is proven”, does not necessarily lead to arbitrariness or irrationality, nor to any objectionable meaning of the term “subjective”. “*P* is proven” can mean that “The judge justifiably believes *p*” (where *p* can mean the fact subject to the evidence or the fact that there are reasons for accepting this as a premise of judicial syllogism). The error of the “proceduralists’ (and judges’) theory of evidence” is not that it relies on the judge's mental states but rather that, sometimes (even recently, although probably now only in exceptional cases) there is an attempt to infer from this that judges do not therefore have to give reasons for their convictions. This is what should be criticised, not the reference to mental states.

6. THE CRITERIA FOR JUSTIFYING BELIEFS AND THE EVALUATION OF EVIDENCE

One of the central problems of the theory of evidence is that of providing criteria for evaluating evidence—criteria to support the hypothesis that the judge considers proven. Legal systems are quite vague when it comes to indicating these criteria and usually restrict themselves to referring to common sense or “healthy criticism”. Case law in our countries has made some progress, suggesting some of these criteria, especially concerning circumstantial evidence (given the particular difficulty it presents). And, if we assume the thesis of the unity of epistemology or evidentiary argument, then we can find more clues drawing on criteria proposed in other areas (and realise that, except in terminology and frequently in precision, they do not differ from those established by case law). Foundherentism can also be useful for understanding the criteria we need to use to support our hypotheses. But before seeing the criteria we should remind ourselves of some ideas:

- a) As we have seen, what interests Susan Haack is the degree of justification of a belief of a particular subject at a particular time. For example, the degree of justification of a judge at the time of making a decision. Justification is gradational (this is something that was not always mentioned in the proceduralists' theory of evidence, at least with respect to so-called direct evidence); personal (the same belief can be justified for one person but not for another); and temporary (a belief may be justified for a subject at a particular time but not at another).

- b) The justification of beliefs is an objective matter (in the sense of not being arbitrary or entirely discretionary): what matters in order to justify a belief is not what the subject thinks about whether the reasons for this belief are correct but on how good they, in fact, are.
- c) The justification of a belief depends on experience and on the support it receives from other beliefs. The degree to which the two elements combine can vary from one belief to another, but there is no belief that is not ultimately partly justified by experience (Haack 1993/1997, 76).
- d) The criteria for whether beliefs are correct are different from procedural guidelines or strategies for carrying out an investigation.
- e) There are two aspects to the justification of a belief: a causal aspect and a logical aspect. Two dimensions of beliefs must be distinguished: belief as a mental state (state beliefs) and what is believed, its content and its propositional aspect (content beliefs). The two dimensions of beliefs are interlinked with the two corresponding dimensions of proof or evidence: their dimension as a mental state (state evidence) and their content (content evidence). The causal relations arising between state evidence and state beliefs and logic (or evaluational) relations arise between content evidence and content beliefs. State evidence causes me to have certain state beliefs, but those state beliefs have a particular content. Causality forms part of justification because a belief is justified when its content is inferred from the evidence that causes it and not from any other. In the author's words: "The degree of justification will depend on the quality of the evidence that, *in fact*, causes the belief in question" (Haack 1999, 41; my italics).

What are the criteria on which the degree of justification of a subject's belief, *p*, at a particular time depend? Let us return to the crossword example: The correctness of a solution in the crossword depends (a) on the clues and the other solutions already filled in that cross it, (b) on the correctness of these other solutions (regardless of the one we are evaluating and (c) how complete the crossword is. In a parallel way, the justification of a belief B1 depends on:

- (1) the level of support provided by other beliefs B2, B3, Bn etc. for belief B1 (support);
- (2) how justified the other beliefs B2, B3, Bn are, regardless of belief B1 (independent security);
- (3) how complete the subject's set of evidence is with respect to the set of relevant evidence for belief B1 (Haack 1993/1997, 117; 46 and ff). (comprehensiveness).

In previous work, I have suggested analysing a judge's argument about facts as an inference connecting the evidence with the hypothesis to be proven through empirical regularity (maxims of experience). I have suggested the following criteria for the solidity of this inference (and I have also suggested that what jurists call evidence evaluation criteria can be understood as criteria for the solidity of evidentiary inference). With respect to evidence, this means how much we have in favour of the hypothesis, its variety, its reliability and its relevance. With respect to empirical regularity, this refers to its inductive foundation and the probability that the correlation it establishes is fulfilled. And, with respect to the hypothesis, it concerns its corroboration, its preference compared to alternative refuting hypotheses, its narrative coherence, its capacity to explain the evidence, etc. The criteria I have suggested are parallel to those the courts have suggested in case law in various judgements, particularly in relation to circumstantial evidence. They are more specific than those suggested by Susan Haack, but that does not mean they contradict hers. Rather the contrary, they can be seen as making her criteria more specific and they can be seen as being based on her criteria. So, requirement (1) (support) is related to the relevance, quantity and diversity of the evidence or the greater weight of the hypothesis that is finally accepted compared to the refuting hypotheses or the degree of probability expressed in the maxim of experience; requirement (2) (independent security) relates to the reliability of the evidence and the solidity of the empirical regularity (maxims of experience); requirement (3) (comprehensiveness), meanwhile, has been put forward by Jordi Ferrer, following Keynes, under the notion of "weight of evidence" (Ferrer 2014, 227).

The result of assessing the justification of a belief in accordance with these criteria offers a certain higher or lower degree of justification, and this raises the problem of deciding whether that degree of justification is sufficient for the judge to make the decision. This—the degree of sufficiency of the evidence—is an important matter that has been the centre of many arguments and works on the theory of evidence. Philosophers and legal philosophers, such as Larry Laudan and Jordi Ferrer, have demanded more precise formulations of standards of proof than those we normally find in Law (such as “beyond all reasonable doubt”, “sufficient conviction”, “clear and convincing evidence”, etc.). The purpose of these standards would no longer be to evaluate the justification of a belief (although, unfortunately, standards of proof are often confused with evidence evaluation criteria), but rather whether the level of justification achieved is sufficient for making the corresponding juridical decision. The ultimate aim is to eliminate the judge’s discretion in determining the sufficiency of evidence and to increase juridical certainty, but I would venture to say that, within the framework of foundherentism, this objective (a sufficiently precise standard of proof to reduce discretion concerning the *sufficiency* of evidence) is impossible to achieve. In Haack’s words: “Because the quality of evidence is multidimensional, we should not necessarily expect a linear order of degrees of justification; e.g. the evidence for A with respect to p may be strongly supportive (support) but weak in terms of comprehensiveness (amplitude), while its evidence with respect to q may be strongly comprehensive but only weakly supportive. *A fortiori*, it does not seem possible to aspire to something as ambitious of a numerical scale of degrees of justification” (Haack 1999, 49). Those who maintain the need for a standard of proof do not aspire as highly as a numerical scale of justification. Nevertheless, if it is not possible to have a linear order of degrees of justification, it does not seem possible to meet these lesser expectations either. I believe foundherentism does not support the possibility of precise, general standards of proof determined *a priori*. Nor do I, as I have tried to argue on other occasions (González Lagier, 2020a, 90 and ff). All we can do is clarify the justification criteria and require judges to use them in giving reasons for their decisions. We can also indicate what makes for lack of justification. In an approximate way, and without being able to avoid gradual expressions such as “good fit”, “high degree of support”, etc., we can elucidate what makes for reasonably well justified belief; much more than this we can’t do.

7. RATIFYING CRITERIA

We began by pointing out that foundherentism attempts to answer two basic, related questions: what are the criteria justifying our beliefs? And what makes these criteria valid? In other words, why are these the right criteria for justifying beliefs? Susan Haack’s answer is that the criteria of support, independent reliability and comprehensiveness are *truth-indicative*. The aim of investigation processes is to achieve a knowledge of the world, so it is fundamental that our beliefs aspire to be true. Therefore, if the aim of judicial evidence is to try to ensure, as far as possible, the truth of statements declared to be proven, the criteria used must be truth-indicative.

What can be said to support the idea that these criteria are really truth-indicative? This is one of the points where Haack, together with other arguments, makes use of a resource drawn from a naturalistic conception of epistemology. Criteria of justification are closely related to the capacities of human beings needed to ensure their survival. Anchoring our beliefs in experience (perceived through the senses and through introspection) on one hand, and the way they fit into the network of beliefs that explain the world (on the other) serves to guide us in a reality independent of ourselves. These are fallible capacities, but the fact that they have allowed our survival to date supports their approximate reliability, which is all we can aspire to (Haack 1999, 52). It is a version of the best explanation argument: the best explanation we have that our cognitive capacities have allowed us to adapt to the natural world and “ride the wave of evolution” is that such capacities are reliable when it comes to showing us what this world is really like. Meanwhile, the fact that these are our cognitive capacities is, in turn, also based on what cognitive sciences and the theory of evolution tell us. So, the different entries in the crossword of the problem of ratifying the justification criteria fit together and the crossword is filled in.

In order to be suitably linked to the human capacities that allow us to adapt to our environment and survive, criteria of justification must be persistent over different cultures and communities. Susan Haack's position is that apparent divergences of opinion about when a belief is justified are not, as relativists would maintain, due to the fact that different justification criteria are used in each community, but rather to the "deep beliefs" providing these criteria with content. Communities may differ with respect to what counts as good evidence, but we do not differ over the fact that the justification of our beliefs depends on having good evidence. To use one of Susan Haack's examples: "Now suppose you and I are on an appointments committee. You believe that a certain candidate should be ruled out on the grounds his handwriting indicates that he is not to be trusted; I think graphology is bunk and scoff at your 'evidence' (...) Here we disagree not only about *p*, but also, as we might say, about 'what counts as a reason' for doubting the candidate's honesty. But I don't think anyone would be much inclined to think that this kind of commonplace disagreement suggests that you and I have 'different standards of evidence' in any deep or interesting sense. We simply disagree about what evidence is relevant because we disagree in some background beliefs" (Haack 1993, 206).

8. EPISTEMIC VIRTUES AND ETHICS OF INVESTIGATORS

If epistemology has to take into account the role of the subject; if it is not a merely a question of deductive relations between propositions; if what matters is how we can expand our knowledge and that our beliefs point to the true; and if it is not possible to design precise methodological rules that tell us, implacably, how to conduct the investigation so that will be infallible—ultimately if the investigator's discretion and good practice are necessary for the success of their investigations—we need to think about the characteristics and abilities the investigator must have. That means considering their virtues.

Susan Haack has concerned herself with this point in various works, as well as reflecting on the aspects of organisation of science and universities that could make investigative activity difficult. As virtues of an investigator, we should mention capacity for imagination, necessary, for example, for formulating hypotheses; skill and persistence in seeking evidence; rigorous argument for deciphering the consequences of conjectures; and good judgement for evaluating evidence (Haack 2003, 97). These would be epistemic virtues. But the most important of these would be at once an epistemic and an ethical virtue (Haack 2003, 305): intellectual honesty and integrity, which Haack defines as respect for evidence "the moral fiber to resist the temptation to stay out of the way of evidence that might undermine their conjectures, or to manipulate unfavorable evidence they can't avoid" (Haack 2003, 97). Intellectual honesty is an attitude towards oneself and towards others: "Being honest with yourself means avoiding self-deception, both about where the evidence you have leads and whether you have the evidence you need to draw any conclusion at all. It doesn't require that you abandon a promising idea in the face of any and every piece of apparently contrary evidence; but it does require that, recognizing how complex and confusing evidence can be, you are ready to follow in good faith wherever it takes you. Being honest with others requires, obviously, that you not present fabricated, fraudulent or massaged data, but also that when you report all your work you report all the relevant evidence" (Haack 2007, 9-10).

This virtue follows from the aim of pursuing the truth and is the criterion for distinguishing a genuine investigator from a false investigator (who does not pursue the truth, whatever it is, but rather seeks arguments to support preconceived theses at all costs) and a pseudo-investigator (who seeks arguments to support the truth of a proposition to which they are indifferent but that allows them to promote themselves in some respect) (Haack 1996, 1,415).

It is clear that these virtues are also judicial virtues (to which could be added others deriving from the specific function of the judge and the fact judges are subject to the Law)⁵ in as far as these also seek truth as an objective. Respect for evidence is also an assumption of the rational evaluation of evidence and a requirement imposed by the judge's duties of independence and impartiality. As Josep Aguiló points out, "while independence refers to control over the judge's motives with respect to extra-legal influences coming

from the social system, impartiality concerns the judge's motives with regard to extra-legal influences from the proceedings" (Aguiló 1997, 77). The best way of avoiding these influences is making the judge subject to the law and, it should be added, respect for evidence (Muñoz Conde 1999, 67) in the sense indicated by Susan Haack.

So what is the relevance of these virtues? Of course, it is possible to make good discoveries without intellectual honesty, and it is possible to be the most honest investigator and not make them. They are, in all cases, contributory conditions, and the need for them must be measured in overall rather than individual terms. Intellectual honesty is a condition for excellence in investigation and intellectual dishonesty degrades investigation. In the same way, a judge's dishonesty when evaluating evidence makes that judge, of course, a terrible one, even though in a particular case the same judge may have made a correct decision. A lesson for the theory of evidence in Law which can be drawn from this is that we must pay more attention to the theory of epistemic virtues (and ethics). However, in my opinion, we do not need to concede that the justification of decisions depends exclusively on them having been made by a "virtuous" judge (González Lagier, 2020b, 99 and ff).

Finally, we might wonder, how are virtues learned? For Aristotle they are learned through habit, developed through effort and the imitation of good examples. Scientists must imitate model scientists; judges must imitate exemplary judges; and philosophers must imitate philosophers like Susan Haack.

NOTES

1. I will consider only empirical foundationalism, which says that justification of basic beliefs depends on (sensory or introspective) experience. However, foundationalism can also consider that basic beliefs are logical or mathematical rather than empirical, or that they are self-evident, or that they are directly justified (via some causal relation) by a state of things that makes them true.
2. For an analysis of Susan Haack's legal pragmatism see Atienza, 2018, 467-489.
3. A critique of both issues can be seen in Ibáñez, 2015, 251 and ff.
4. For example, de Paula 2019, Chap. I.
5. Amalia Amaya considers that judicial virtues are a specification or concrete expression of general moral virtues and lists the following: impartiality, sobriety, courage, wisdom and justice. In her opinion, these are simultaneously moral virtues (they tell us how to act correctly) and intellectual virtues (they help us form justified beliefs (Amaya 2009, 24). Meanwhile, Manuel Atienza, proposes "good judgement, prudence, broad-mindedness, sense of justice, humanity, compassion and courage", to which he adds temperance or self-control in the use of their power (Atienza 2001, 140).

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Proof Beyond Any Reasonable Doubt? Or Beyond Some Reasonable Doubt?

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PROLOGUE

Susan Haack's work does a marvelous job of restoring the humanity of scientists by arguing that their methods and thought processes are the same as those used by careful thinkers in any discipline. She makes her case in a way that will leave no reader feeling left behind in the discussions about the use of evidence.

In recent work, she has sought to defend science against a variety of charges, launched by proponents of extreme positions. On the one hand, she rejects what she calls 'scientism', the exaggerated showing of deference towards science and the acceptance of any claim made by science as being authoritative, as if scientists are epistemologically privileged. On the other hand, she rejects the many current cynical postmodern critics of science who have said that scientists' stated concerns for honest inquiry, respect for evidence and a search for truth are illusions being used as a cover for their other agenda relating to power, politics or rhetoric.

Indeed, I have relied on Haack's work in my claim that a science of evidence excludes no one interested in honest inquiry, a respect for evidence and a search for truth. As Haack (2003, 23) says:

The core standards of good evidence and well-conducted inquiry are not internal to the sciences, but common to empirical inquiry of every kind... respect for evidence, care in weighing it, and persistence in seeking it out, so far from being exclusively scientific desiderata, are the standards by which we judge all inquirers, detectives, historians, investigative journalists, etc., as well as scientists. In short, the sciences are not epistemologically privileged.

In my account of the science of evidence as a study of the properties, uses, discovery and marshaling of evidence, I will claim that it involves everyone having the characteristics Susan Haack has just described (Schum 2009, 204-205).

My title is related to the notion of a *benefit of the doubt*, which stands in opposition to *good faith* (in the sense of human "credulity"), and indicates that if *any reasonable doubt* is introduced in judicial proceedings it may be used as a favoring (f) or disfavoring (d) factor in relation to the claims or hypothesis that the parties argue in those judicial proceedings.

A standard of proof that required judges to exclude each and every (possible) reasonable doubt would be useless in courts of law. The employment of such a standard of proof would require the use of a “conceptual microscope” that allowed judges to have a “magnifying lens” in relation to any reasonable doubt(s) that may be observed and resolved in the adjudicative fact-finding process, specifically in the stages of the examination of evidence and the assessment of proof. But the focus of judges’ magnifying lenses should not be directed towards *all* reasonable doubts, but only those that can be observed in relation to the structural issues or properties of evidence (E*): credibility, relevance and weight or evidential force.

The approach to standards of proof just indicated must allow that, in legal proceedings and in daily life, they can be understood in a way that conceives the notion of being *probable* from the perspective of inductive logic and, and with regard to the structural issues or properties of evidence (credibility, relevance and *weight* or *evidential force*) (Tecuci, Schum, Marcu, & Boicu 2016, 62-68). This approach resonates with Haack’s epistemology, with its focus on *degrees of warrant* (Haack 2014, 47), and its integration of considerations drawn from philosophy, psychology and law.

In the first section of this paper, I will argue that it is in the stage of the evidentiary activity called the *examination of evidence* when the judge manages to establish the standard of proof required by the Federal Rules of Evidence (Vargas 2019, 19-20). Next, I will argue that it is in the second stage of the evidentiary activity called the *assessment of proof* when the judge, after establishing the *credibility* of the evidence (Schum 2001, 92-108), or the *quality* of the evidence (Haack 2014, 53), can make a connection (relevance of evidence), in terms of *inductive* and *diffuse* probabilities or *degrees of warrant* (Haack 2014, 47), between the said evidence and the claims or hypotheses of the parties, in accordance to the provisions of the FRE-401.¹

Finally, I will show that, in this same second stage, the judge may assign a *weight* or *evidential force* to *individual* and *combined* evidence (body of evidence items) through the assistance of 1) the combinations of evidence (corroboration, convergence, contradiction, conflict and evidentiary redundancy, 2) the methods of support (+) or reduction (-) of the value of evidence, 3) the properly supported generalizations and 4) the ancillary evidence (Schum 2001, 109-126).

1. FIRST ROUND OF DOUBTS: THE EXAMINATION OF EVIDENCE

Doubts that must be resolved in the stage of examination of evidence in the judicial proceedings are related to its credibility. These doubts are translated into questions that can be asked in relation to the attributes of the credibility of evidence (E*), which, for the testimonial evidence, are veracity, objectivity and observational sensitivity. These questions, regarding the attributes of the credibility of evidence (E*), constitute ancillary evidence (A*) used to support (+) or challenge (-) the credibility of evidence (E*). For the tangible evidence, such as the documentary evidence or demonstrative evidence, those attributes are authenticity, reliability and accuracy (Schum 2001, 92-108).

A first question, which allows the judge to settle this first doubt, is related to the credibility of evidence (E*) that a party brings to the judicial proceedings (Tecuci, Schum, Marcu, & Boicu 2016, 68):

How likely is it that what is stated in evidence (E*) is true, i.e. is it credible?

or

How likely is it that E* is true?

or

How likely is it that the event E reported in E* occurred?

This first question allows the judge to determine whether the evidence presented makes controversial facts credible to the degree required for the judicial proceedings at hand; in Haack’s epistemological vocabulary, the judge is to determine *whether the evidence presented warrants to the required degree the proposition(s) at issue* (Haack 2014, 57).²

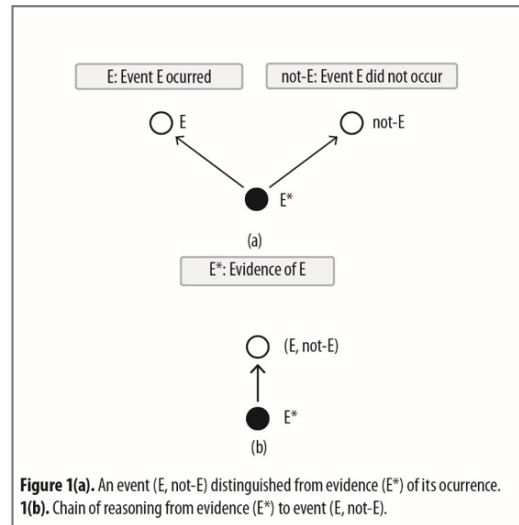


Figure 1 illustrates what is related to this first question, referring to the credibility of evidence (E^*). This first doubt concerns to how seriously the judge should consider evidence (E^*) that is offered or produced in the examination stage. It is healthy to consider this first “doubt”. It is reasonable.

A judge may follow one or other of two generalizations in relation to the credibility of testimonial evidence (E^*_t):

If a person affirms a fact, then, generally, this fact has occurred (“good faith”).

Such a judge would be very gullible:

If a person affirms a fact, then, in general, he believes it (veracity), he has perceived it through his senses (objectivity), and he has correctly perceived it (observational sensitivity).

Such a judge would not be behaving so credulously, but would be instead “atomizing” good faith attributes of credibility for testimonial evidence (E^*_t) – (Schum 2001, 109). Attributes of credibility pertinent to testimonial evidence are: veracity, objectivity and observational sensitivity.

A person’s veracity is associated with his honesty; that is, with his believing what he claims to believe. In empirical matters, objectivity is related to whether or not what the person affirmed has been perceived through his senses. Observational sensitivity is related to the quality of the perception in question—conditions of mode, time and place and the way in which the person got knowledge of the facts (Schum 2001, 110-111).

Figures 2a, 2b, 3a, 3b, 4a and 4b illustrate “good faith” in relation to the credibility of testimonial evidence (E^*_t) and how it can be decomposed, atomized or questioned as such, considering these three attributes of credibility of testimonial evidence (E^*_t): veracity, objectivity and observational sensitivity (Vargas 2019, 35-41).

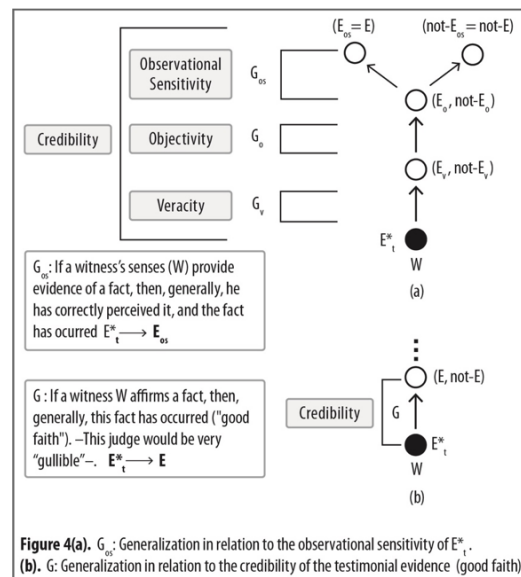
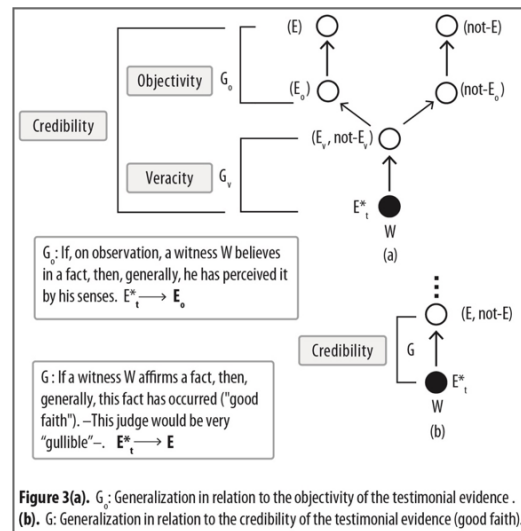
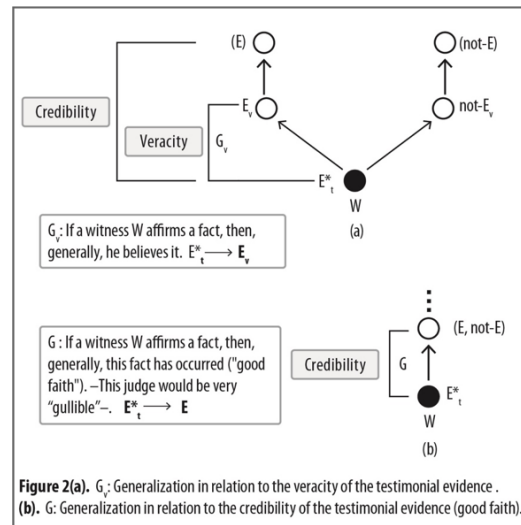
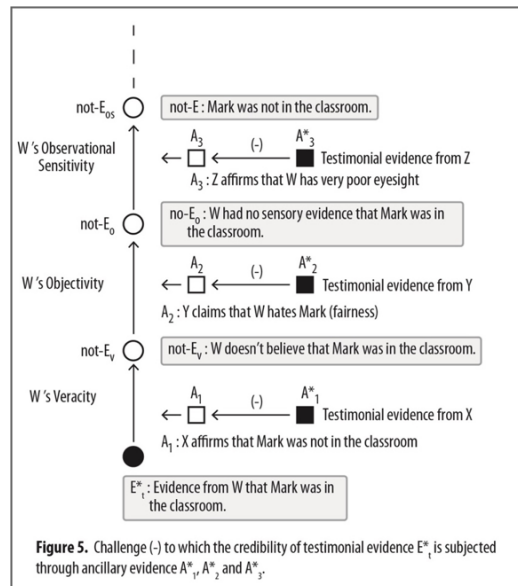


Figure 5 illustrates the increase (+) or the reduction (-) in support which can raise or lower the credibility of testimonial evidence (E^*_t) through the use of ancillary evidence (A^*).

Note how these pieces of ancillary evidence (A^*_1 , A^*_2 , and A^*_3) act to reduce (-) the attributes of veracity, objectivity, and observational sensitivity of testimonial evidence (E^*_t) (Schum 2001, 112-114, 153-160).



Each question asked in the examination constitutes ancillary evidence (A^*_1 , A^*_2 , and A^*_3) that allows judges to establish the *credibility* (Schum, 2001, 92-108) or *quality* (Haack 2014, 53) of testimonial evidence (E^*_t).

The questions are *tests* for each of the attributes of credibility (veracity, objectivity and observational sensitivity) of the testimonial evidence (E^*_t); and each one constitutes a *reasonable doubt* whose answer, if credible, allows the judge to have a better knowledge of the controversial facts in the judicial proceedings.

The answers to these questions and doubts allow the judge to make a decision that can be considered as “reasonable,” “best possible” or “best adjusted to justice.”

2. SECOND ROUND OF DOUBTS: THE ASSESSMENT OF PROOF

The doubts that must be resolved at the stage of the *assessment* of proof are related to the *relevance* of evidence. This concept is closely related to the burden of proof, which the parties bear as their responsibility and it is as well the legal basis for the rule of judgment used by the judge in his decision, which is only probable (Vargas 2019, 89-96).

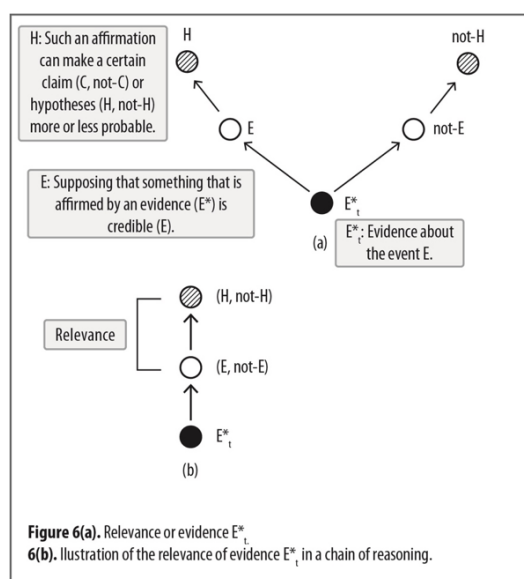
A second question that allows the judge to settle a subsequent doubt is related to the relevance of evidence (E^*_t) that a party brings to the judicial proceedings (Tecuci, Schum, et al. 2016, 68):

How likely is the hypothesis (H) of the party that produces the evidence (E^*_t) to the judicial proceedings, assuming that what is stated by the evidence (E^*_t) is true (E)?

or

Assuming that E is true, how likely is it that H is true?

Figure 6 illustrates what is related to this second level of doubt, in reference to the relevance of evidence (E^*_t). This second doubt concerns the judge's belief about how evidence (E^*_t) bears upon the possible conclusions he entertains. It is healthy to consider this second variety of doubt. It is reasonable.



3. THIRD ROUND OF DOUBTS: THE EVIDENTIAL FORCE OF EVIDENCE

A third question, based on the previous two, allows the judge to settle another range of doubts, related to the *weight* or *evidential force* of the evidence (E_t^*) (Tecuci, Schum, et al. 2016, 68):

How likely is it the hypothesis (H) of the party that brings such evidence (E_t^*) to the judicial proceedings is true, based only on the truth of (E_t^*)?

or

How likely is it that H is true, given only E_t^* ?

Evidential weight or *force*, like weight or force as vector quantities in physics, has a *direction* and a *measure* (*magnitude*). Direction illustrates whether an evidence (E_t^*) favors (f) or disfavors (d) a certain claim or hypothesis (H, not-H). Magnitude is a probability that is assigned to the *conjunction* of *credibility* and *relevance*. This magnitude is gradational, as indicated by *verbal expressions* of inductive probability and diffuse probabilities (Tecuci, Schum, et al. 2016, 69), according to, for example, the ordering below:

No support < Likely < Very likely < Almost certain < Certain

This approach to the weighing of evidence combines elements of Baconian³ (Cohen 1977, 229-244; Eells 1991, 115-131) and fuzzy probabilities (Tecuci, Schum, et al. 2016, 69).

A judge has to assess a claim or hypothesis (H) based only on E_t^* ; and for the first question above (the credibility question) “certain” means that we are sure that the event E reported in E_t^* did indeed happen; and “no support” means that E_t^* provides no reason for us to believe that the event E reported in E_t^* did happen.

For the second question above (relevance question), “no support” is the probability assigned when E_t^* is not relevant to H, and “No support” is the answer when E_t^* tends to disfavor H.

For the third question above (the question of weight), the answer is the *minimum* of the relevance and credibility answers. To believe that H is true, based only on E_t^* , E_t^* should be both relevant to H (favoring or disfavoring) and credible (Tecuci, Schum, et al. 2016, 69).

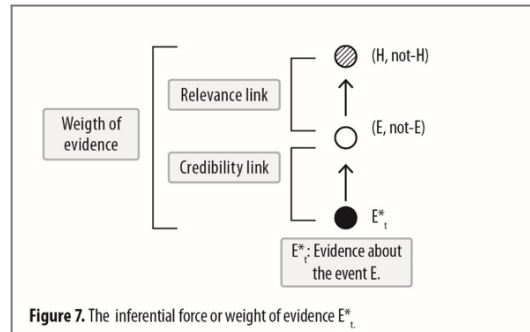
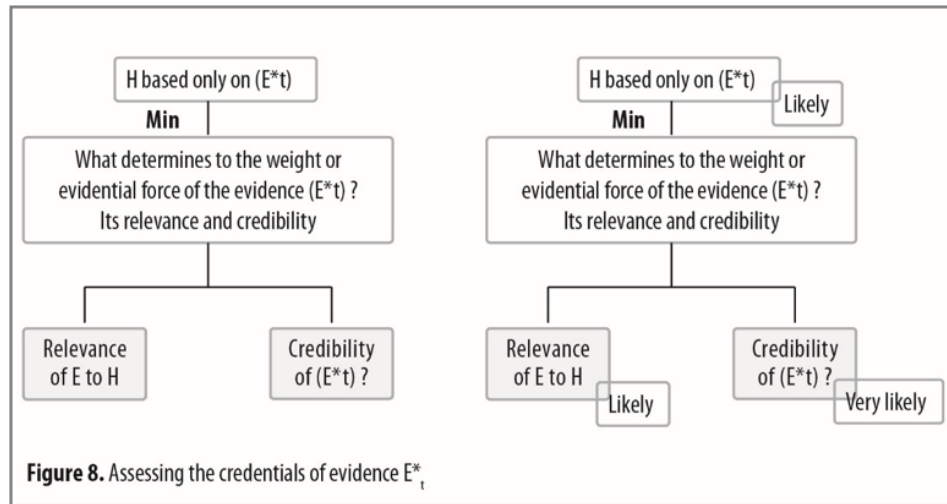
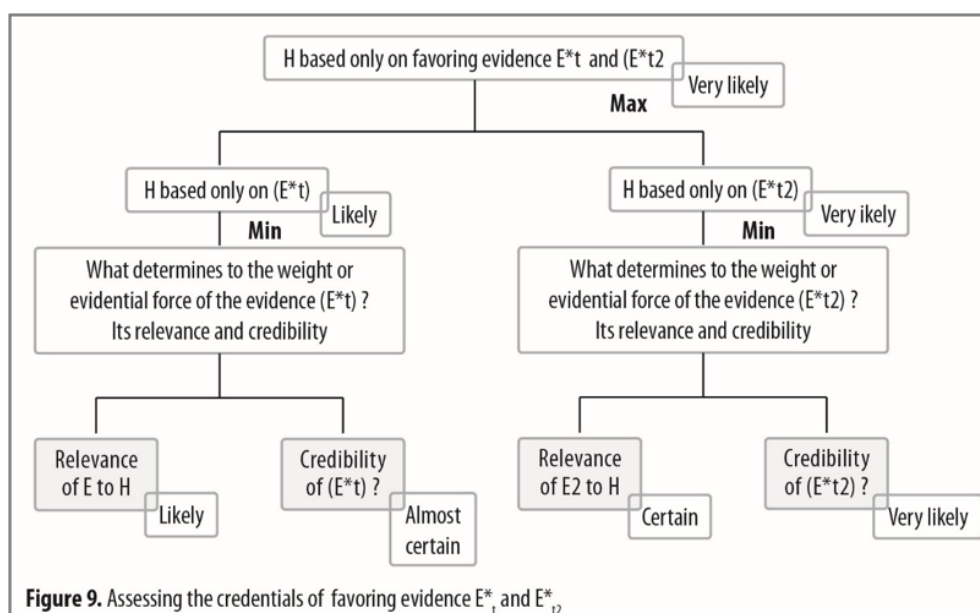


Figure 8 illustrates what is related to this third doubt, in reference to the *weight* or *evidential force* of the evidence (E^*) (Tecuci, Schum, et al. 2016, 70-73).



The judge who assesses a hypothesis (H) has several items of evidence, not just one. Let's assume that the judge has a second piece of testimonial evidence (E^*_{t2}) that points to a different fact E_2 and favors H. So, if the inferential force of E^*_{t2} is "very likely", determined to be by the same procedure discussed for E^*_t , then the judge determines the inferential force of both testimonial evidences E^*_t and E^*_{t2} on the hypothesis H as the *maximum*⁴ of their inferential force ("very likely"). It is enough to have a very relevant and credible item of evidence to convince the judge that the hypothesis H is true (Tecuci, Schum, et al. 2016, 70-73).

Figure 9 illustrates what is related to this third level of doubt, in reference to the *weight* or *evidential force* of both testimonial favoring evidence E^*_t and E^*_{t2} (Tecuci, Schum, et al. 2016, 70-73).



These three questions are raised in an effort to support the thesis that *not everything* is necessary in the decision-making process. It is not necessary to have a knowledge *beyond reasonable doubt* to make a decision. Only *a few doubts* govern our knowledge in the decision-making process: “Tell me with what standard of proof you are going to measure me, and I will tell you how I will behave in the judicial proceedings. If you measure me with the wrong standard, don’t complain about my behavior.” A judge of the year 2020 would measure with *verbal expressions*, typical of inductive probability (Cohen 1977, 217-244) and diffuse probabilities (Schum 2001, 243-266; Tecuci, Schum, et al. 2016, 69), rather than with numbers, typical of mathematical logic (Haack 2014, 58).

“Tell me how you are going to put your questions to me, and I will tell you how I am going to answer you. If you ask me about *everything*, don’t complain about the evasiveness of my answers. I do not know *all* the answers to *all* the questions you are imagining, especially with the ‘vague and ambiguous’ language that you use when you ask such questions in the judicial proceedings.” A judge in 2020 would not ask about *everything*. This judge would recognize that only *a few* questions would *bring him closer* to a more appropriate decision, in terms of inductive and fuzzy probabilities; that is, a probable decision: something *more reasonable* within the judicial proceedings.

Placing a magnifying lens in the wrong place (or *beyond reasonable doubt*) may not allow focusing easily on what you want to observe or what you want to clear; that is, the *doubt*, which does not allow you to make a decision in any way. To the extent that a magnifying lens is placed closer to an appropriate distance, or *beyond some doubt(s)*, it will focus on what you want to observe; that is, on *any doubt(s)* that allow(s) a decision somehow to be made, a decision which will be probable only.⁵

NOTES

1. Rule 401—Test for Relevant Evidence. Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.
2. Haack notes that, as Bertrand Russell (1948) had pointed out, it is important to begin with how warranted a claim is for a person at a time, and cites.
3. In the Baconian view of probability proposed by L. J. Cohen, the probability of a hypothesis depends on 1) how much relevant evidence the subject (in this case the judge) has; 2) how much believable evidence he has; and 3) how complete the coverage of existing evidence on matters being relevant in the analysis made by the subject/judge is. In this vision, the probability of a conjunction is never less than the smallest Baconian probability of either of its conjuncts. Baconian conjunction can be referred as a minimization rule (Min) (Cohen 1977, 217-244).
4. In the Baconian system proposed by L. J. Cohen (Cohen, 1977), the probability of a disjunction is never less than the greatest Baconian probability of either of its disjuncts. Baconian disjunction can be referred as a maximization rule (Max) (Cohen, 1977, 217-244).
5. I want to express my thanks to Mark Migotti for all his helpful advice on this text. Any imperfections that remain are the result of my ignorance and lack of understanding.

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The Relevance of the Susan Haack's Epistemology to Evidence Law in Latin America

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1. FOREWORD

The tireless and world renowned epistemologist Susan Haack is also a beautiful, inspirational person deserving of great admiration.

We met Professor Haack in Cartagena de Indias (Colombia) at an International Congress on Procedural Law organized by the University of Medellín in 2013. At that time we were amazed by her lucidity and the fine irony she weaves with constant puns, images and metaphors. In many ways, all of them remarkable, we met someone *still so British*, despite living in the United States of America for a long time.

Since then, we have enjoyed the invaluable gift of Haack's friendship and have met with her on various occasions, in Colombia, at her office at the University of Miami School of Law, and in Argentina.

Towards the end of August 2017, she gave an unforgettable lecture on *Justice, Truth, and Proof: not so simple, after all* (Haack 2016, 311-340) to participants of the Master's Degree Program in Procedural Law at the National University of Rosario, Argentina. The title of her talk is very much related to the extensive contributions her epistemology can make to our understanding of evidence law.

2. EVIDENCE LAW AND THE EPISTEMOLOGICAL TURN

From a perspective we share, we turn to *epistemology* in search of "science as a process," that is, a discipline interested in understanding the nature of its *product*, the function of its *procedures*, and the *conditions* under which it takes place (Samaja 2004). We agree that "the question of *doing* is deeper than that of *being*. In particular, Epistemology has been leaving aside the question of 'the being of Science' to ask about 'what Science does' ('what does the scientist do when he does science' or 'what kind of act is *the act of explaining scientifically*')" (Ibid., 15). Trying to narrow down the sense in which he will use the term, the great Argentine mathematician and philosopher Gregorio Klimovsky maintained that "the epistemologist asks a question of crucial importance to understand and analyze the cultural significance of science today: why should we believe in what the scientists affirm" (Klimovsky 2001, 28).

One of the fundamental tasks of epistemology is the attempt to answer questions about the ways in which the synthesis between factual and theoretical components in scientific knowledge relate to each other. Different episte-

mological theses will respond differently to these opposite pairs of “*empeiria*/theory” and “discovery/validation.”

Ever since the modern age, the great Latin question *Quid iuris?*—expressed eloquently with the question: “How do we have the right to be safe? Or with this even more explicit question: What circumstances authorize us to be sure?” (Ibid., 58, citing Ayer 1956)—was answered in terms of contradiction by *rationalism* and *empiricism* (and by its unwanted derivations... dogmatism and skepticism) (Ibid., 59). Based on the Kantian criticism and the construction of the concept of action as *praxis*, various “middle ways” that try to get out of these extremes (contemporary empiricism, pragmatism, dialectical-genetic theses) were developed (Ibid., 77).

2.1. Nowadays it is not surprising that legal theorists and philosophers of law undertake studies on aspects of the *quæstio facti*. A few decades ago this was not the case, when the dominant legal theory¹ began, gradually, to become strongly concerned with the *facts* in law (in general), and for the *facts* in the decisive legal context of *process* in particular, and, consequently, for the *proof of facts*. The outstanding work of Twining (1994), Damaška (1997a, 1997b, 1998), Ferrajoli (1998), Taruffo (2002, 2008, 2010), Andrés Ibáñez (1992, 1994, 2010), Gascón Abellán (1999), González Lagier (2000, 2003, 2005), and Ferrer Beltrán (2005), amply testify to this in the Spanish-speaking world.

So thoroughly indebted as we are to the teachings of Daniel González Lagier and Perfecto Andrés Ibáñez² in 2004 we published a paper intended to report on these doctrinal efforts, and from there raise questions and open new lines of research around this important topic (Chaumet and Meroi 2004). Clearly, differences between epistemological perspectives in relation to the very possibility of knowing and the ways of knowing also materialize in different perspectives on *evidence in the legal process*.

2.2. A legal *process* can be seen as an *epistemic instrument*: a means of discovering facts (usually past, but also present and future) necessary for making a decision on a controversy to which they are relevant. As González Lagier points out, the extreme epistemological positions of objectivism and skepticism are reflected in the procedural conception of evidence.

Indeed, on the one hand, *objectivist traits* (or, at least, *naive objectivists*) can be found in positions that rely—*tout-court*—on the “*immediacy*” of a judge’s direct contact with the parties to the case and the evidentiary material. Similarly, difficulties in or lack of evidence are taken to be problems of lack of information. On the other hand, we can find *skeptical traits* in those procedural positions for which the purpose of evidence is conviction, with total disregard of the truth (unattainable) of the facts alleged, or merely formal or procedural truth (material truth is unreachable) (c.f. González Lagier 2003, 19).

2.3. In a good part of Argentinean procedural dogmatics—certainly, not strange or distant from a good part of the procedural dogmatics of European continental law, to which it is heir—there is a commonplace in the studies of evidentiary law that basically consists of: 1) the distinction between “formal truth” or “procedural truth” on the one hand, and “real truth,” “material truth” or “objective truth,” on the other; 2) the primacy of “objective truth” over “procedural truth” and, therefore, the claimed triumph of the former over the latter, often “at any cost.” These doctrines are present yet more strongly in judicial practice.

In Latin America in recent decades, this panorama has been augmented by an influence of postulates from the so-called “constitutional rule of law,” also by a strong impact on the proof of the facts of a case (or, perhaps, we should say, on the frequent “no proof” of the facts).

3. HAACK’S FRAMEWORK AND THE LAW

Our honoree’s biography tells us about her transatlantic move from the University of Warwick’s Department of Philosophy (converted almost entirely to “postmodernism”) to the University of Miami in the 1990s. In a very interesting interview she reveals how surprised she was to learn that Terence Anderson—

professor in the University of Miami School of Law—used her *Evidence and Inquiry* as a textbook (Vázquez 2013). From then on, Haack has been pleased to see a vast and rich field of research growing out of her work, initiating an invaluable academic contribution to evidence law, both from her publications and for her courses at the University of Miami School of Law.

What is Susan Haack's theoretical framework? In the introduction to her book-length contribution to the philosophy of law (2014, xvi), she states that her work is imbued with:

- a) the spirit of the classical pragmatist tradition-influenced, that is, not only by Oliver Wendell Holmes's writings on the law, but also by the classical pragmatists' thinking about inquiry generally, and about scientific inquiry in particular;
- b) her understanding of the evolution of legal concepts and legal systems and her stress on the limits of formalism, align with Holmes's;
- c) her objective conception of truth is in the spirit of Charles S. Peirce's observation that "truth is so, whether you or I or anybody thinks it is so or not";
- d) her distinction between genuine inquiry and advocacy research runs parallel to Peirce's distinction between real inquiry and sham reasoning;
- e) her crossword analogy (one of her "trademarks") is inspired in part by Peirce's critique of Descartes' metaphor of a chain of reasons;
- f) her conception of scientific inquiry as a human enterprise, thoroughly fallible but nevertheless capable of real advance, with its echoes, not only of Peirce but of other classical pragmatists;
- g) her conceptions of law, morality and the relations between them, shaped, in part, by William James's and John Dewey's ethical writings.

From Haack's perspective, a "two-way traffic" between legal practice and epistemological theory could greatly benefit not only legal thinking about evidence, but also the increasingly self-referential and narrowly-focused "niche" epistemology that, sadly, predominates today (Ibid. xvii).

Haack gives us multiple occasions to rethink evidence law: specifically, her work on truth (2016, 312), her foundherentist epistemology—formulated by González Lagier's formulation as "the aversion to dogmatism, the rejection of dichotomies, the conception of philosophy as being about the world, and the attention to results from science" (González Lagier 2020)—the intersection of her epistemology with evidence law (Haack 2014), her rescue of the "knowing subject" (see, Haack 2009; 2013, 21), the differences between inquiry and advocacy³, her theses on "degrees" and "standards" of proof (Haack 2014, 47), among many others, provide many very valuable insights pertinent to analyzing the regulation of evidence in different legal systems.

4. PECULIARITIES OF CERTAIN DEBATES IN LATIN AMERICAN EVIDENCE LAW

Latin America—so often visited by our honoree—is heir to the legal tradition of *civil law*, of "continental law." In this tradition, evidence law has been mostly associated with the so-called *inquisitorial system*, as opposed to the *accusatory system* (in criminal matters) or "*dispositive*" (in civil matters) (*adversarial*, in the common law tradition).

More than half a century ago, Piero Calamandrei summarized the differences between the conceptions of legal process by highlighting that

the one that entrusts the inquiry of the truth to the judge's responsibility and discretion, before whom the parties appear as the passive object of investigations at the mercy of the public interest, and the one that entrusts the development of the process above all to the incentive of the conflicting interests of the part, and that counts, for the success of justice, with the contenders' collabora-

tion and responsibility, considered as free people to behave according to their interest, but aware of the consequences to which their behavior may expose them” (Calamandrei 1951, 159-160).

These are the two ways of conceiving the administration of justice: the inquisitorial process and the accusatorial process.

Beyond the attempt to sharpen the differences between both conceptions of the process, reality refuses to classify itself in either of these two “pure” forms. As the great comparatist Damaška has shown, “only the core meaning of the opposition remains reasonably certain” (1986, p. 3). Continental procedural scholars have long debated the canonical distinction between a criminal process whose purpose is the search for “material truth” (and is therefore mostly under the rules of the inquisitorial system), and a civil process that pursues the “formal truth” (and is therefore related to the accusatory system).⁴

In recent decades we have witnessed a change in this direction: under the influence of the Anglo-Saxon model, many countries have converted their criminal proceedings to the adversarial system; at the same time, the civil process is adding even more inquisitorial and state driven traits, among which it is worth highlighting the objective of seeking the truth and the greater powers of judges to achieve it.⁵

This topic, with its multiple edges and variants, far exceeds the scope of the present work.⁶ Nevertheless, within this framework, we would like to highlight two current trends in evidence law in Latin American civil procedure, in particular their risks and what help foundherentist epistemology may provide.

5. “OBJECTIVE LEGAL TRUTH” AND FOUNDHERENTISM

As part of the debates about the purpose of the legal process and the concepts of “procedural truth” and “material truth,” of “formal truth” and “real truth,” Argentine civil procedural dogmatics began to recite a kind of mantra: “the conscious renunciation of the truth is incompatible with the service of justice.”

This last phrase is taken from a famous, endlessly quoted ruling of the Supreme Court of Justice of Argentina issued in 1957. The construction “objective legal truth” had a very high impact on procedural studies⁷ and, above all, on jurisprudence. It has served, very especially, to give a stamp of authority to the incorporation of evidence that, by the application of certain rules of evidential procedure, would not count. Thus, means of proof with expired deadlines for their offer or production, evidentiary negligence of the parties, judge’s private knowledge about certain circumstances and a long etcetera, benefit from this “exceptional argument” and its great rhetorical force.⁸

As has been correctly asserted, the *dictum* in “Colalillo” commits the courts to the epic mission of finding “objective legal truth” (Salgado and Trionfetti 2012). Of course, none of the modern epistemologies would embrace a universal, necessary and definitive idea of infallible truth, which this procedural doctrine seems to demand. So the trite phrase “objective legal truth” amounts to “an absurd negative because it refers to a situation in which the subject is absent, which means a crazy adventure of the mind and a mirage of language: someone verifies that something is objective (!)” (Ibid).

Obviously, Haack’s teachings come immediately to mind: on the one hand, her warnings about the search for a Truth (that is with capital T, almost holy) and *truths*, i.e., particular true propositions, some of which are relative, subjective, partial, etcetera (Haack 2016, 313), on the other, her alertness to the conditions that the law imposes on that knowledge of “the true” (Haack 2014, 92). How astonishing that an epistemologist should be needed to remind us that a legal system is not a scientific research laboratory and that, rather, it should be thought of as a set of rules and machinery for resolving disputes and making it possible for people to live together in some kind of order!

Moving away—once again!—from false dichotomies, Haack does not believe in a legal system that aims *only* to resolve disputes or *only* to discover the truth: “The goal is to resolve disputes on the basis of evidence, in the hope that this it will, often enough, uncover the truth” (2016, 325).

As Haack would say, while a legal process is about *determining* the truth of a *proposition* regarding facts, “what *determining* the truth means [in this context] is arriving at a conclusion as to the facts in a

legally-correct way; which is by no means the same as *seeking*, let alone *discovering*, the truth” (Ibid., 325-326). And as González Lagier aptly points out:

[t]he peculiar thing about evidentiary activity in Law lies not in the argument about facts in the strict sense (how the weight of the evidence is evaluated) but in the procedural rules (the rules of evidence) which establish, in this case, unlike other contexts, a rigid method of carrying out the investigation, determining which evidence can and cannot be accepted; who has the burden of proof; and even sometimes which conclusions we must accept as proven. And they do so not only considering truth as a purpose of the process but also bearing in mind the protection of other values (2020).

Unmasking the *cliché* that the *civil law process* is intrinsically better than the *common law process* in respect of the “search for truth,” Haack reminds us that

a civil-law judge’s factual determinations are constrained by standards of proof; and the whole process, like a common-law trial, is subject to real constraints of time and resources, not continuing indefinitely or waiting for every conceivably-relevant bit of evidence to come in. So it looks to me as if a civil-law judge, like a common-law ‘fact-finder’, is asked to determine whether guilt or liability has been established to the required degree of proof by the evidence considered; in the hope, as with common-law trials, that this will, often enough, produce factually correct verdicts (2016, 332).

Of course, none of these considerations are meant to celebrate a process without truth, or endorse an unacceptably formalist drift of adjudication systems that betrays an insufficient regard for the just solution of cases. Rather, the point is that awareness of a host of factors—the difficulty of knowing what is true, and the existence of rules that impose limits (sometimes to promote the emergence of truth, sometimes to safeguard other values that compete with the truth in the process), and of the context of conflicts of interest (and not only of rights), and of the cultural, social and economic restrictions, among many other factors that surround this epistemic instrument called a “process”—can help us better discern the problems and weaknesses of the process and define which factors can be modified and which conform to legitimate political options.

Under these conditions, to insist on a judge’s *duty to seek objective legal truth* is to ignore all the complexity that lies under the knowledge produced in a process and, often, to hide decisions disregarding evidentiary rules behind an aspiration with a high emotional burden (who does not want the truth?) and with an uncertain result.

6. CONSTITUTIONAL RULE OF LAW, NAIVE OBJECTIVISM AND FOUNDHERENTISM

In evidence law we usually say that the object of proof consists of *facts*. Strictly speaking, the proof falls on statements or propositions about “facts,” beyond the linguistic license that we usually allow ourselves (Taruffo 2002, 113-114; González Lagier 2005, 21; Gascón Abellán, 1999, 83). The concept of a *fact* as object of proof is extremely complex (González Lagier 2005, 20) and its characterization encompasses the idea of *legal relevance*. The law is not interested in any old fact, but only in the founding facts of a procedural claim, i.e., those captured by a rule in the description of the factual event that it regulates. Hence, the law decisively influences the selection of factual data: “Since facts are investigated to determine whether they have consequences foreseen in some rule, it is with the prism of law that we judge which facts are relevant to the process. The rules then act like lenses—or theories—that direct our attention towards one or another aspect of the facts” (Ibid, 43).⁹

Nowadays, certain characteristics of the current legal system add to the habitual complexity in the operation of selection of relevant facts.¹⁰ The qualitative distinction between *rules* and *principles* is of course one of the pillars of current dogmatics. To a large extent, the constitutional state model assumes that norms¹¹ (in general) and constitutional norms (in particular) can be divided into these two categories. The entire system comes to be understood as an open system of principles and rules susceptible to axiological considerations in which the realization of fundamental rights plays a central role.¹²

To be sure, it is beyond the scope of this work to deal with the structural differences between rules and principles¹³, although a first distinction can be based on the criterion of *indeterminacy*. From a structural point of view, and with respect to what concerns here, we note that the particularities of a case are not even generically determined by principles; or rather, the conditions under which principles are applied and the model of behavior prescribed, are open-ended. In other words, neither individual actions, nor courses of action causally adequate to achieve proposed objectives flow from the norms themselves.

Consider, for example, the norms that regulate various so-called “new rights”: environment, historical and cultural heritage, health, education, consumer... etc. The very definitions of these “goods” are highly problematic.¹⁴ A principle that generically mandates an assessment of “the best interests of the child” poses infinite difficulties, not only in determining what the best interests of the child are in concrete, legally effective terms, but also in determining under what conditions (description of the generic fact hypothesis) the norm must be applied.

The facts—if identified in the norm—appear less and less *denoted* and more and more indicated or gestured at with multiple or even contradictory expressive or suggestive meanings. In such cases, the task of selecting the facts must be preceded by a task of normative integration in which—in an analytical back and forth—the impact of factual data can assume decisive importance. Obviously, it will be necessary to convince a judge first, of the *construction* of the generic factual hypothesis and, later, of the *proof* of the concrete facts of the case.

As Damaška points out,

[d]espite the simplifying potential of the law’s formal regime, divergent viewpoints can still cause problems for the administration of justice. This is especially likely in a deeply split society, where normative standards are uncertain. Fuzzy legal standards in this environment provide no effective barrier to a multiplicity of viewpoints that bear on factual inquiries: legal indeterminacy contributes to the elusiveness of truth. Faced with cacophony in the citadel of justice, an authoritarian government can impose the power-holders’ perspective as pertinent. But a liberal polity, with fluid power structures and wide group participation in the administration of justice, has no such option. As a result, it can be difficult in this polity to establish what counts as objective knowledge in some cases” (Damaška 1998, 293-294).

In order better to understand the scope of possible discrepancies among them, as well as difficulties presented by certain kinds of fact (omissions, psychological events, causal relationships, etc.), it is worth remembering the fundamental distinctions among *external* facts, *perceived* facts and *interpreted* facts (González Lagier 2000, 72). For, “if the *law* is awash in *normative indeterminacies* and is constantly referred to *constitutional principles* of great abstraction, and is furthermore charged with an axiological burden, and all of this is claimed to be directly operational: if all this is so, then, now more than ever it is appropriate to assume that in practical effectiveness and especially in judicial application, the meaning of norms is not detachable from the analysis of facts” (Ruiz Pérez 1987, 136). If judicial adjudications are justified from constitutional principles, then, if one proposes an ideal reformulation of the principles that takes into account all the potentially relevant properties, the sociological dimension of legal cases will inevitably have to be taken on board. It is evident that in judicial cases, the discernment of the best interests of the child, the protection of the environment, the consumer, the obligation not to harm, the access to decent housing, the right to health, etc., will depend on the factual circumstances of each case. And the same point holds as regards the

axiological aspects of the case. If we do not want to fall into apriorist positions, we should acknowledge the sociological dimension of the problem. Every valuation supposes the accomplishment of an ideal duty to be applied to a concrete reality. If there is no reality to assess, there is no assessment (Chaumet 2016/2017, 19).

Even within this framework, there are numerous problems to be taken into account and one that is truly significant when it comes to making decisions is that of *verifying the facts*. Paraphrasing Atienza, we could assert that arguing in an indeterminate and constitutionalized law is, in many ways, an argumentation about the facts, even though those facts are qualified by (or seen through) norms (Atienza 1994, 82).¹⁵ It is true that one of the areas where judges have the most discretion—and, consequently, the greatest possibility of arbitrariness—is that of argumentation concerning facts.¹⁶

Andrés Ibáñez describes the judicial treatment of the facts as natural entities, previously and definitively constituted from the moment of their production, “those cold data of reality.” The data as “what has already been given,” which allows the judge a kind of spontaneous operation, without mediation, “the judgments of fact understood as simple findings of the ‘raw data’” (Ibáñez 1992, 263). This being the case there is still an inadequate, taken for granted culture of motivation, which starts from the idea that questions about the facts are not especially problematic, that it is good enough to approach them with “good eyes,” with the best of intentions, and that the issues are beyond interrogation.

6.1. In the context of certain so-called *neo-constitutionalist and activist* tendencies, reference is made to the aforementioned “objective legal truth.” At the level of many concrete judicial decisions, it is at least paradoxical that “objectivity” is invoked and yet the immediate conclusions about what happened are formulated by mere intuition, or sheer “gut feeling.”¹⁷

The inclusion of a statement of fact in a declaratory judgment must be provided with the necessary support that justifies it. Mere gestures in the direction of highly valued principles (life, children, women, health, the environment, the consumer, etc.) does not give rationality or criteria of truth to statements of fact.

In many of our judicial decisions, however, this is not usually what happens:

the majority of people feel that conscience constitutes such an obvious way of arriving at evaluative ‘truth’ than any ‘normal’ person (i.e. ‘reasonable,’ and ‘reasonable’ tends to coincide, for each one, with the content of the own conscience rather than that of the other) is able to find the correct answer. The guiding myth consists in this, something that in practice we can’t rescue from subjectivity is projected onto the field of reality and objective truth. The fact is that this myth tends to preside over legal thinking in general today, and that is why it is so easily accepted that debates are about the application of principles, values and rights that are not detailed, but are stated as if their content were obvious for each case. (Guibourg 2015, 1229).

From the point of view of procedural dogmatics, these decisions are underpinned by a widely disseminated idea: “to circumscribe the purpose of the evidentiary activity to produce in the judge’s mind a certainty, not logical or mathematical, but psychological, about the existence or non-existence of the facts stated. In other words, it is the production of a psychological conviction of the agent of the judicial body on this last point, the telos to which evidentiary activity ultimately tends” (Palacio 2011, 264¹⁸). A “judicial conviction” to which “evident facts” or “well known facts” (the mentioned “facts” related to “values” or “principles”) are added.

Is it really so?

6.2. Once again Haack’s foundherentism can help us clarify things.

Of course, the evidentiary reasoning just mentioned would not meet the requirement that its justification or guarantee be “*evidentialist, experientialist, gradational, foundherentist, quasi-holistic, and worldly*”

and, in its most fully-developed form, combining “individual and social elements” (Haack 2014, 12). On this latter point, judicial reasoning would be lacking *inter alia* (in Haack’s expression), i.e., an account of how warranted a claim is for a group of people (clearly, the parties in conflict, but also other “subjects of proof,” like witnesses, not just the judge), by the evidence available at a given time.

6.3. Moreover, this idea of judicial *conviction* calls forth echoes of the foundherentist vindication of the knowing subject and its necessary presence; the perceptions, experience, and background assumptions of actual knowing subjects will all have an impact on evidentiary reasoning. Would it be possible not to count on the judge’s *beliefs*?

In this particular instance González Lagier’s astute reflections come to our help, reporting on the enormous efforts of legal theorists to avoid arbitrariness:

One of the dangers we have warned of is the subjectivity of judicial decisions, which would lead to a lack of control over them. In general, it would seem that some of the formulations of procedural rules determining the evaluation criteria and standards of sufficiency of evidence refer to mental states. As such, they do not ensure a minimum level of objectivity and should be reformulated. For this purpose, it has been stressed that the purpose of evidence cannot be merely to convince the judge, and that if a judge states that he or she is (or genuinely is) intimately convinced that something is a fact, it says nothing about the justification for stating that the fact has been proven. What we might call ‘the legal philosophers’ theory of evidence’ is presented as an objectivist conception, while ‘the proceduralists’ theory of evidence’ is labelled a conception based on subjectivism (2020).

Susan Haack’s epistemology rescues the “knowing subject” and the concern about how justified a *belief* is: In her view,

The justification of a belief is something personal, relating to a subject, and not impersonal. One person, therefore, may be more or less justified in believing *p* than another in as far as they have more or less evidence in favour of *p* and depending on the quality of that evidence. But the fact that it is *personal* does not mean that it is *arbitrary*, because its justification depends on the evidence and arguments the person really has, not on those they think they have. The rejection of psychologism is the result of confusion between the two meanings of ‘subjective’: subjective as ‘personal’ and subjective as ‘arbitrary’. But the first meaning of subjective does not necessarily imply the second. Haack goes beyond denying that an epistemology that can include beliefs must therefore be irrational and also offers an argument in favour of an epistemology that takes the subject into account. Her argument is that an epistemology without a subject cannot take account of the role of experience in justification. However, it would be entirely counterintuitive to think that what we see, hear, etc. should have nothing to do with the justification of our beliefs (González Lagier, 2020).

Thus, certain propositions must be able to be justified with reference both to empirically verifiable data, practices and procedures, and to other beliefs, avoiding dogmatic statements of fact that, frequently, serve to mask reality or disclose a bias.

7. FINAL WORDS

There is a claim to truth in a legal process, but not at any cost; there is a claim to truth, but not only truth.

From our point of view, the search for the truth of facts that gives rise to one sort of claim is of obvious interest; but we must also consider the claims of resolving conflicts as soon as possible (or, at least, in a rea-

sonable time), and of not revealing intimate aspects of a family dispute or allocating huge public budgets to the resolution of small matters, etc. etc.

Examples could be multiplied exponentially, but would end by demonstrating the same thing: law and its institutions (in this case, the legal process and evidence) exist for the regulation of life in society. As Haack argues, legal truths are a special sub-class of truths about social institutions and, like many truths about a society, are socially *constructed*, considered true based on what people *do* (legislators, judges and others) (Haack 2014, xxv). In any case, and even for those who defend the possibility of truth, our theory of it must be reconciled with the view that reality is created by social actors: “the question is important because most facts we seek to establish in adjudication are ‘social’ facts rather than phenomena intrinsic to nature” (Damaška 1998, 291).

A legal process is not a scientific laboratory; claims founded on *rights* are at stake but also claims founded on *interests* and conditioned by *power relations*. The “just resolution” of the case depends on the declaration of the truth of some of the basic facts of the claim.

Each society designs its own model of a legal process according to its historical-cultural heritage and specific needs. Beyond the phenomenon of globalization and intense legal exchanges, different judicial regimes retain differences when it comes to honoring the values that underlie and inform legal responses.

At this point it must be clear that we do not support irrationalist perspectives but that, at the same time, we subscribe to a sensitively critical cognitivism, which acknowledges context and the strong limits on the possibility of knowing, particularly in a legal process.

As Twining writes:

[i]n the course of my explorations I have made regular use of three standard devices of ‘contextual’ or ‘realist’ thinking: clarification of the standpoint; thinking in terms of total pictures; and thinking in terms of total processes. These devices, coupled with the assumption that for most academic and practical purposes in law the study of rules alone is not enough, justify labelling the approach of this book as ‘realist’ or ‘contextual’. But ‘realism’ is not a distinctive form of legal theory nor, in my view, do these techniques amount to anything like an comprehensive methodology for the study of law. They ought, however, to be part of the basic equipment of any student of law (Twining 1994, 368).

Twining considers that:

[m]aybe realism in law stands to Legal Theory as Reality Checkpoint stands to the classroom. It does not itself offer a rounded theory of or about law or life, but it furnishes a point of reference against which to check any theory for its plausibility or connection with what happens out there —if, of course, there is anything there. It is quite compatible with the idea that each of us sees the world around us with multiple lenses which construct, constitute or reveal many different realities. It helps to maintain connections in a down-to-earth way with actual events and practices and people in the world of fact, however varied, complex and elusive that world may be (Ibid).

With Haack (2014, 198) we can conclude by insisting that:

[o]f course, the real world is always much messier than philosophers would like... The categorical distinction between genuine inquiry and advocacy research... while agreeably neat and tidy conceptually, isn’t adequate to the complexities of real life; it needs to be reconstrued as identifying the two extremes of a continuum. No investigator can approach his question free of any preconceptions whatever; most investigators have some preconception of the expected upshot from the beginning.

NOTES

1. In recent years, many thinkers emphasize the consideration of more than one aspect (fact, norm and value) in each legal phenomenon. Thus, for example, Bobbio argued that any legal response must overcome the *reductionisms* that lead to eliminate or confuse the three constituent elements of the legal experience: ideals of justice to achieve, normative institutions to be carried out and actions and reactions of men against those ideals and these institutions (Bobbio 1980, 5); on criticism of the use of the voice “reductionism” see (Guibourg 2010, 1). In the interview that Atienza carried out for *Doxa* review, Robert Alexy answered that “[t]o the first question, that is, what is Law, I have given an answer that is complex, because according to it, Law consists of three elements: (1) legality in accordance with the law, (2) social effectiveness and (3) correction regarding content. The first element represents the institutionality of the law, the second the facticity and the third its morality. The grace of this trialist concept of law is that the three elements are not simply related in any way” (Atienza 2001, 684). We are convinced that the trialist theory of the legal world—which places the emphasis on considering facts, norms and values at stake in each legal phenomenon—satisfactorily responds to the great challenge of current thought that the reference to complexity means (in relation to the subject v. Goldschmidt 1987; Ciuro Caldani 1976, 1982/4, 2000).
2. Lessons in the Master in Legal Argumentation, University of Alicante, 2004.
3. For example, Haack 2009, Chapter: “Epistemology legalized. Or, truth, justice and the american way.”
4. This is beyond the worthy criticisms of the very distinction between “material truth” and “formal truth.” See, for example, Taruffo (2010, 101-102), who on the one hand considers that “there are no several species of truth depending on whether we are inside or outside the legal process: the truth of the statements about facts always depends on the reality of those facts. On the other hand, the rules that limit or condition the search for truth do not determine the discovery of a different truth; at most, there will be a limited and incomplete truth or no truth. The same should be remembered with respect to *res judicata*, which has even been made more flexible in recent times by expanding the possibilities of new evidence techniques (e.g., DNA studies).”
5. For a critical reference to this change, see Alvarado Velloso 2009a, 145; 2009b.
6. We have expounded on the issue in our doctoral thesis in Meroi, in press.
7. So much so, that an extensive book on the subject takes that title (see Bertolino 2007).
8. “En la aspiración a una verdad omnicomprendensiva se cuele con facilidad el quiebre de reglas y principios básicos del Derecho Procesal y Constitucional y la actividad judicial se transforma en la búsqueda de un horizonte que, por ser tan ‘noble’, como fugaz e incontrolable, crea inseguridad y atropella garantías” (Trionfetti 2002, 193 nota 7).
9. Quote from Jerome Frank.
10. We have dealt extensively with the subject in Chaumet and Meroi 2008. For an interesting and exhaustive study of the influence of the “constitutional rule of law” on the facts, see Vigo 2012, 679.
11. We are using the concept of norm as an encompassing of rules and principles. Although rules and principles appear to be linguistically similar normative entities, there is a difference between the two as regards their use and function in legal reasoning. For example, Alexy claims that “principles” are “norms,” even though he distinguishes two kinds of norms, rules and principles: both rules and principles are norms, because both prescribe what is to be done (see Alexy 2001, p. 83).
12. As early as the 1960s, Esser maintained that the center of gravity was slowly moving from the codified system to a judicial casuistry oriented according to principles (Esser 1961). However, it was Ronald Dworkin’s (1978) works that pushed the subject to the center of the stage of the theory of law.
13. See Atienza and Ruiz Manero 1996; Vigo 2000.
14. “En cuanto al objeto de la adjudicación, huelga repetir que la comprensión del medio ambiente, del consumo, del patrimonio histórico, cultural, lingüístico, requerirá esfuerzos especiales del juzgador que no encontrará simplemente en las normas. Abordar el análisis de dichos problemas supone la aceptación decisiva de la influencia de otras disciplinas, en muchos casos interactuando con ellas. En muchos supuestos el juez debe integrar su conocimiento—sin diluirlo—en la interdisciplinariedad. Para los reduccionismos jurídicos ello no es relevante. Ya

hemos dicho que, en gran medida, el paradigma jurídico dominante de la modernidad fue construido en un momento en donde no se habían desarrollado la antropología, la psicología y la economía, entre otras disciplinas” (Chaumet 2017, 271).

15. In the same sense, for Comanducci 1992, 221, this activity is not a simple intellectual diversion, it must be recognized that descriptive inquiries are usually carried out through it.
16. It is the moment of exercise of judicial power par excellence, since in the reconstruction of the facts it is where the judge is more sovereign, more difficultly controllable, “puede ser—como ha sido y en no pocas ocasiones sigue siendo—más arbitrario” (Ibáñez 1992, 261). Likewise, Prieto Sanchís (1987, 88), for whom the judge’s margin of appreciation is greater due to closer procedural proximity to the *quaestio facti*.
17. Certainly, the intuitive approach to the facts is not enough, supposing that because “common sense” is appealed to, the facts enter the legal process with all their objectivity. Solving according to a hunch is not the same as solving it with suitable criteria to be communicated.
18. Similarly, a classic of Latin American evidence law, see Devis Echandía 1970, 252-253.

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To Susan Haack

KIRIAKE XEROHEMONA

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I met Professor Susan Haack as a first-year graduate student in the fall of 1990 at a social gathering for new faculty and students. I did not know much about Professor Haack then. But I was impressed. At first, it was her accent, but as I came to know more about her, it was the breadth and depth of her scholarship, her powerful mind, her incredible prose, and her quiet but feisty demeanor.

Professor Haack has been my inspiration and my role-model. Even now, after so many years have passed, I am surrounded and guided by her. Her books sit next to me on top of my desk. Her writings offer me not only a venue of knowledge, but also inspiration, strength, encouragement, and often a small chuckle.

Susan still impresses me with her exquisite use of words and witty remarks. She always challenges me with her powerful and passionate arguments about concepts and things that are worth-while, and she still guides me when I engage with my students in our shared inquiries.

I am privileged to have had the opportunity to study with a person I consider to be one of the most brilliant philosophers of our time. It is with great pleasure that I join all others in celebrating the immense contributions of Professor Susan Haack in my life, the profession, and society. I am truly honored and grateful to be one of her students, (the laconic one).

Susan: for all the glimmerings of light that you show me, I can only say thank you.

For Susan Haack

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Legal academics in Ibero-America—and, more notably, Spain—have a persistent problem: research and researchers are divided into separate isolated departments or “knowledge areas”—civil law, criminal law, procedural law, administrative law, philosophy of law, etc. This isolation occurs at many levels. Ideas are rarely discussed in shared forums, academic journals are aimed at readers and contributors from a single department or area, and even the literature consulted to prepare papers is often produced by other researchers in the same area. This tendency has a high cost, clearly reflected in the quality of the results. Many of the issues studied require a multidisciplinary perspective. Any approach that limits an expansive viewpoint is partial one, and runs the risk of encouraging theories that would be untenable from a more comprehensive perspective. Moreover, debates and developments in one area of knowledge often provide constructive contributions to others.

This division of legal studies into separate departments occurs to a yet greater extent between legal and non-legal disciplines. All too often, law is studied in total isolation from theory in the social sciences, from philosophy and, even more so, from empirical studies.

This situation—not at all conducive to the development of knowledge—contrasts sharply with Susan Haack’s approach and highlights one of the outstanding characteristics of her scholarship: working across disciplinary boundaries. From her publications in the philosophy of logic (which is extremely useful for legal applications of deontic logic) through her work in the philosophy of science (which bears significantly on evidential legal reasoning) to her ideas about proof of causation or expert evidence, Susan Haack’s work bridges disciplines and cuts across knowledge boundaries. Beyond this, it has focused on many relevant meta-disciplinary issues such as the problems of peer review and the acceptance of academic papers or the perverse incentives used to evaluate individual researchers or teaching or research centres. Needless to say, Haack’s body of work is extensive in scale and, especially, scope.

A second point that we would like to make concerns the impact of Haack’s work on evidence and proof theories being developed in Ibero-American countries. Until twenty years ago, scholars’ approach to evidential problems was formal and dogmatic. During the last two decades, however, it has become more common to view evidence for judicial proceedings from an epistemological perspective. Haack’s work on the philosophy of science and her numerous articles on legal evidence have considerably influenced this emerging view and the principal Ibero-American authors in the area. This has led to a substantial number of invitations to partici-

pate in events and conferences, where the quality of Haack's arguments is enhanced by her distinctive sense of humour.

This impact of Susan Haack's work on the academic community of legal scholars in Ibero-America was rightfully acknowledged a few months ago by the Chair in Legal Culture of the University of Girona with the presentation of the International Award for Legal Culture 2020. The award ceremony gave Haack the opportunity to visit us again and to present the Spanish edition of her book, *Filosofía del derecho y de la prueba. Perspectivas pragmatistas*, translated by Carmen Vázquez, and published in the *Filosofía y Derecho* series, by Marcial Pons, co-edited by Jordi Ferrer.

Susan Haack's thorough editing of her academic writings, including translations, compares only to her dedication and generosity of effort. This generosity led her to overcome physical limitations, and even the challenges of the COVID-19 pandemic, to join us in March, for the fourth time in nine years. She had been here previously to take part in the Standards of Proof and Scientific Evidence workshop (2011), to serve on the board of examiners for the doctoral thesis of Carmen Vázquez (2014) and to give various seminars in the first edition of the Master's in Evidential Legal Reasoning (2017). The video library available on the Chair in Legal Culture's YouTube channel is a record of those contributions.

Our love and appreciation for Susan is a token of our gratitude to her for a rigorous academic example, always accompanied by smiles and hugs.

How to be a Good Haacker

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Haackers are a rare breed. It is much easier to encounter a hacker than a Haacker, but that extra vowel makes a considerable difference. For instance, the former tends to stick rigidly to only one perspective—in particular, a chosen conceptual scheme. Typical hacking may also include an overreliance on science and the unique viewpoint that comes with it. But Haackers are not like that. When they Haack, they are ready to change perspectives, take advantage of various tools and tackle quite different problems. They pay attention to the technical language they use, but without fetishizing it. They cherish science, but within reason. They do not stick to one logic only, since they know very well that any logic, even a deviant one, may prove useful.

The most impressive trait in Haackers is their devotion to the discussion and solution of genuine problems. They never seek to show the fatal flaw in one system or another, a strategy which may be easily exploited to gain fame, money or merely ridicule one's adversary. They do not compile long lists of the errors that plague the programs developed by their colleagues. They do not seek out a back door, but march right up to the front, armed only with a smile tinged with a hint of irony.

They despise all kinds of fundamentalism. An unshakable belief in a theory or a method is as alien to them as embracing various fashionable 'isms'. Yet they also know that nothing can be built without being somehow anchored, however provisionally. The most coherent construct just hanging there in the air has as much connection to reality as campaign promises to real commitments. There is no evidence for either. And evidence matters.

A Haacker's favorite desktop application is *defrag.exe*. But the point is not only to keep one's files in order. It is much more important to have a general overview of the available applications, helping to see how they may interlock and cooperate with one another more clearly. For a Haacker, fragmentation is a symptom of a dysfunctional mind, not merely of a disarrayed and underperforming hard drive.

There are times when the attitude of a Haacker may seem painfully pragmatic, almost akin to old-fashioned priggery. Yet at its heart is a pragmatism of the best sort, as it used to be long time ago. It is the rejection of dogmatism and false dichotomies, coupled with a healthy distrust of *a priori* considerations and the belief that we are tasked with ensuring a constant growth of meaning. A Haacker seeks answers by carefully identifying the practical consequences of his or her views, not by looking into the (allegedly broken) mirror of nature.

Haackers prefer cats over dogs. Some people claim that this is connected with the fact that Jean Jacques Rousseau, no hero to the Haacker, had been unable to survive without the company of his dog. However, this seems to be a far-fetched explanation and it seems much more likely that cats are so cherished by Haackers because they symbolize character traits which are dear to any Haacker: autonomy, independence and the tendency to hunt alone. Like cats, Haackers are not pack animals.

Another mystery surrounding Haackers is their love of crossword puzzles. Not the love of such puzzles in itself but rather that Haackers are not particularly interested in solving them successfully. Instead, they are fascinated by the very mechanism behind crossword puzzles, as if it were capable of illustrating some eternal truth. Fortunately, this little quirk is quite innocent. It only gives them an edge in *Jeopardy!* when the clue reads 'Arthur Wynne'.

I do not want to leave the Reader with the impression that to be a good Haacker means only caring about genuine problems, steering the middle way between the Scylla of foundationalism and the Charybdis of coherentism, opposing fragmentary worldviews and highly specialized nonsense, and solving crossword puzzles under the baleful supervision of one's cat. Haacking is much more than that. It is about passion: for the serious exercises of the mind rather than the frivolous, for the truth—however weird or innocent it may turn out to be—and most of all for moderation in all things intellectual. When you choose to be passionately moderate, you take the first step to becoming a Haacker.

Preposterism vs. The Pursuit of Truth

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I have had the good fortune of meeting Susan Haack personally, and my encounters with her have had a profound impact, not only on my understanding of philosophical issues and positions, but on my own practice and teaching of philosophy. Unquestionably, my encounters with Haack's texts, and with her, have made me a better professional; and I see no better space than this *Festschrift* to reflect on a topic that has concerned and occupied Susan Haack for some years. I refer to her work on intellectual ethics and the situation of research in the field of philosophy.

Susan Haack is one of the brightest minds in philosophy today. Her work has shaped the agendas of logic, the philosophy of language, epistemology, metaphysics, the philosophy of science, and the philosophy of law. But what strikes one the most about her work is the great coherence and cohesion of her thinking, so that each area of knowledge in which he has worked is mutual supportive of the others, and is at some point interwoven with the others. In this sense, it becomes very difficult to talk about Haack without doing her vast work a certain degree of injustice.

Having had personal contact with our author of honour and having been fortunate enough to carry out publication projects with her, I have got to know her way of working and the exhaustive care she puts into each text, whether for a renowned magazine or for a presentation at some little-known university. This care has extended to something that many philosophers today lack; an aesthetics of writing, which made her entirely worthy of the Ulysses medal from the University of Dublin in 2009.

This why I would here like to dwell on one profound and highly penetrating line of thought—though all of Haack's inquiries and reflections fit these descriptions—pertaining to the hard work of philosophical inquiry, which has radically transformed the way I understand, take up, and carry out work in this area of knowledge.

The way in which Haack's criticism of the current state of philosophical inquiry has affected me positively has its counterpart in how philosophy is conceived and carried out in our Latin American countries. A metaphor of Carlos Pereda illustrates this reality very well: in Latin America there is a "branch office fever." We study at world-renowned universities, are trained in certain authors and theories, and open a branch in some Latin American university devoted to what we have learned:¹ "Once the intellectual shop is up and running, it is set for life, operating in a slavishly disciplined manner, phenomenological, hermeneutic, logical-positivist, post-analytic, postmodern ..." (Pereda 2017, 63).

This way of doing philosophy is absolutely foreign to the principles that Peirce offers us: to develop any and every

inquiry that might be taken to be valuable, principles that Susan Haack takes up and from which serve as a starting point for her thinking. The interesting thing about these principles, and the thinking that derives from them, is that they are rooted in ethical conditions rather than in intellectual abilities, conditions that, nevertheless, have direct effects on the kind of reasoning involved in pursuing philosophical understanding.

Susan Haack identifies two types of so-called inquirers whose interests and motivation are a real obstacle to knowledge. The fake inquirer (or reasoner) on the one hand, and the sham inquirer/reasoner on the other. At first glance we might think of these two adjectives as synonymous, but Haack makes distinctions worth noting. The fake inquirer defends the truth of propositions for the sake of some extraneous benefit, for example of reputation, while not having an opinion about whether the propositions are in fact true or false, or indeed having any other attitude in particular towards them in themselves. Because of this, fake inquirers will obfuscate and hide behind “affected obscurity.” By contrast, the sham inquirer defends the truth of propositions to which he is already committed. His real interest is in amassing evidence, argument, and proof in favour of the propositions he defends, which means that he will avoid examining evidence that contradicts them too closely, will devalue it, or minimize its importance (S. Haack, 1998, 190).

The values and qualities required to do good work in philosophy appear to have been skewed; the peace of mind, creativity, patience, and time required for true philosophical effort have been replaced by the business and administrative skills needed to manage high-budget projects with an eye to efficiency and productivity. These distorted values are fomented, even celebrated, by university institutions as they have evolved in recent years and decades. The majority of Latin American universities have added to what is expected of their academics and researchers the ability to generate material resources. A good philosophical inquirer is no longer one who contributes to the generation of high quality knowledge, with a significant impact among the work of his colleague, and to the training of future professionals in philosophy, but—I would dare say that, mainly—a good researcher is instead one capable of garner mega projects with large budgets with respect to which actual research work will take a back seat to the administration of material resources, to political relations, and to sheer power.

This immersion of philosophy in “a culture of grants and research projects”, in imitation of the sciences, creates favorable ground for the fakery and sham reasoning of which Haack speaks. It is an inhospitable environment for the fragile intellectual integrity required for genuine discovery. Long-term intellectual work, with uncertain results that can end in dead ends is overshadowed by exaggerated results, half-truths and absolute exaggerations about what has been achieved (S. Haack, 1998, 194-195). In drawing attention to this, Haack identified something fundamental; that the real problem lies, not with individual inquirers and their intellectual capacities and respect for genuine investigation, but in the inhospitable context for bringing ethical intellectual work to fruition: a context capable of extirpating intellectual virtue in those immersed in it from the beginning.

When choosing trivial topics, promising easily obtainable results, is encouraged, rewarded, and incentivized; and when problems are disguised rather than confronted, and strategies for dealing with them governed by fashion, allure, surprising obscurity or confusion, as opposed to deep, difficult and painful clarity we are, says Haack, in a hostile and unfertile environment for good research (S. Haack, 1998, 191-192).

Borrowing the term from Jacques Barzun, and giving the concept a Peircean dimension, Haack calls the specious reasoning that gives rise to and encompasses these ways of exercising philosophy “*preposterism*” (S. Haack, 1998, 188). Sham inquiry and fake inquiry are preposterous because what comes first is what should come last: preposterous reasoning seeks in advance to find arguments for the truth of propositions determined in advance.

As I hinted above, however, Haack’s work on the ethics of inquiry and what it takes to be a good philosopher is focused primarily not on finding fault with individual reasoners, but on the shaping force of institutional policies that undermine the virtues that enable the sort of inquiry desired in philosophy. It’s in institutional contexts that the “preposterization” of the practice of philosophy exercise is most evident, in promoting the inversion of values that holds sway in this field of knowledge. Virtues such as intellectual

honesty, persistence, good judgment in discriminating good work from shaky and shallow work, concentration, among other virtues, are hampered by the reigning demands, pressures, evaluations, and types of incentives. The result is not only bad philosophers but bad philosophy (Derpmann, Düber, Meyer, Rojek 2016, 150).

Where is the chief pressure and demand of this institutional context? In the concept “productivity”, something more appropriate, as Haack observes, for the manufacture of widgets than the advancement of knowledge. Productivity is what we see reflected in the ranking of publications, the ability to generate resources through mega projects whose problems or themes are seductive and alluring or passing fads or in the proliferation of publications in prestigious journals considered as vehicles more of the validation of authors than the dissemination of knowledge. These demands and standards of productivity disrupt the virtues and values that underpin intellectual work of quality and provoke, on the contrary, a “pandemic of sham reasoning” (Haack 1996, 1414-1415).

The consequence of this state of affairs for Latin American philosophy is devastating. On the one hand, most of the agendas of fashionable, attractive, problems require one, as Pereda points out, to be open, very open “to what is coming” (Pereda 2017, 63-64) with ephemeral and low-impact projects whose agendas arrive, with a delay of a few decades, from outside Latin America. On the other hand, one of the most frequently employed strategies for achieving those rankings and major publications, and this is not limited to the Latin American context, is to focus one’s academic life on the study of a single author or the discussion of problems in hyper-specialized fields.² This type of research often restricts itself to interpretations and re-interpretations, criticisms and defenses of very narrow points pertaining to extremely limited problems, so that its sphere of philosophical interest extends only to a very limited community. This absence of impetus to the advancement of knowledge does not worry such researchers too much because the core purpose of their work is to support their CVs, or the obtaining of academic positions, or status in their home departments and universities.

Dark though the outlook may be, Susan Haack’s reflections are a call, an opportune cry that demands radical, and, it should be noted, difficult transformations of a culture that prioritizes the quantitative over the qualitative, with profound implications for professional development and intellectual work. Betting on the values, virtues and paths that lead to serious research and good philosophical work can mean a reduction in recognition, collaboration, publications and jobs.

For these reasons, intellectual integrity can be a extremely difficult to sustain in an adverse environment. But as Sara Barrena affirms in an excellent piece on the academic ethics of Susan Haack, “what should give meaning to academic life is the joint effort to get to the truth, inquiry motivated by the desire to know” (Barrena 2018, 459). In Peircean terms, the chief engine for intellectual integrity is the authentic desire to learn.

In the face of this great challenge with which Susan Haack’s reflections confront us, with and the possible institutional consequences for individual professional development, I close with exhortation from Haack prompted by the question whether criticism and denunciation of her opinions has not led to her being surrounded by enemies: “better ostracism than ostrich-ism” (Nemko 2016). This response not only invites us to emulate her high intellectual and ethical conduct, but admirably sums up the remarkable quality of Professor Susan Haack’s work.³

NOTES

1. Pereda applies this metaphor, or vice in his words, to all philosophical thought in Spanish. In this text I will limit my reflection to the Latin American philosophical context based on the academic ethics of Susan Haack.
2. Susan Haack (2013) has a deep and timely reflection on the problem of hyper-specialization in "Out of step. Academic ethics in a preposterous environment."
3. I wish to thank Mark Migotti for inviting me to contribute to this Festschrift for Susan Haack and for his kind help with previous drafts.

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Susan Haack: On Pineapples, Puzzles and Real-Life Philosophy

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1. INTRODUCTION

Finding and solving pineapples

I have been reading Susan Haack's work since 2009, but it wasn't until 2012 that I got to meet her personally. When I think of ways to describe her, two scenes strike my mind almost immediately, both of which involve joyful moments that I had with her in Porto Alegre. The first was when she was amused by a parked truck full of pineapples, and I explained to her that "*abacaxi*" (the Portuguese word for pineapple) has a figurative meaning here in Brazil: when we Brazilians have a problem, we say "I have a pineapple to solve." Susan found that very funny and later even published a paper¹ in which she mentions this scene. The other occasion was when she asked me what was written on the sign we see posted on all elevator doors in Brazil. "Before entering the elevator, make sure it is on the same floor as you are." I answered. Again, she found it hilarious, and together we laughed at the incongruity.

Those scenes speak volumes about Susan—about how curious, amused, and interested she is in culture, real life and how everything works. Susan aims to truly understand the world; empty exercises of intelligence are definitely not for her. As Susan herself puts it, "epistemologists (...) have to get past their self-absorption and focus on the real world."² This is a serious matter for her: if you don't have an actual problem (as is the case with the "problem" the incongruous sign on the elevator door intends to "solve"), then you have nothing to worry about (nor to inquire or develop philosophy about). When you have a question, a problem to be solved—a pineapple, as it were—then and only then is inquiry indeed worth it.

2. THE BEST INQUIRER FOR THE JOB MIGHT BE... SOMEONE WHO IS PREPARED, SOMEONE WHO RUNS SUCCESSFUL INQUIRIES

This leads us to the same, only different. A crucial point about Susan and her work, then, is that the way she sees epistemology/philosophy/science does not put epistemologists/philosophers/scientists in a any kind of hierarchy. Everybody has problems to solve every day, and, therefore, anyone *can* theoretically become an inquirer: yes, a scientist, a detective, an investigative journalist, an historian,³ but also someone who simply wants to find out why his/her

second bromeliad died, so as to prevent the others from dying as well. The desire to solve the questions that reality poses is the same for tribesmen and for scientists.⁴

However, Susan never meant that everyone *should* go into philosophy/science/epistemology.⁵ In fact, she reckons that creative philosophical thought is a “quite rare and unusual talent,”⁶ and thus, actual merit is the best way to have the most prepared person doing the job. Susan acknowledges, for example, that there have been many situations in which, as a woman, she has experienced awkward and unfair situations.⁷ Understandably, she took offense in those moments. And yet it was not because she believed there is a “female way of knowing”;⁸ but rather because she thinks that “no one should be excluded from a scientific career (or from any other, I am sure she would say) on the basis of irrelevant considerations such as race, sex, or eye color”.⁹ After all, first and foremost, inquiry involves being prepared and having talent (like hers, I would add).

True inquiry, however, is not only about being prepared; it also involves extensive work.¹⁰ This, again, is what she herself has always done with her own ideas by creating, testing, retesting etc. It is what she did when she understood that she would have to learn a lot about a specific field of science to test her theoretical approaches,¹¹ for instance. Or when she developed a general idea of inquiry and presented it in *Evidence and Inquiry*, and in *Manifesto*, and, later when she further developed and applied it to science, in *Defending Science*, and to law, in *Evidence Matters*; always developing “rules, or, better, guidelines, for the conduct of inquiry” and figuring out “what environments are supportive of, and what hostile of, successful inquiry.”¹²

This passion for the truth (and consequently for true inquiry) is also what made her choose a difficult and harsh path for herself, aiming precisely at the independence she suggested all true inquirers should pursue. In her own words: “I am beholden to no clique or citation cartel; I put no stock in the ranking of philosophy graduate programs over which my colleagues obsess; I accept no research or travel funds from my university; I avoid publishing in journals that insist on taking all the rights to my work; etc., etc. Naturally, this independence comes at a price; but it also earns me the freedom to do the best work I can.”¹³

3. COMPLETING THE ENTRIES OF A NEVER-ENDING CROSSWORD PUZZLE

Susan recognizes that the *real-life crossword puzzles* (using her own analogy) can be non-ending: an enormous puzzle with some entries “in almost-indelible ink, (...) some in pencil (...). Some are in English, some in Swahili (...) Some entries were completed hundreds of years ago (...), some only last week”.¹⁴ What is interesting about knowledge, as Susan highlights, is the way “each new step in understanding potentially enables others”¹⁵ (something discovered in genetics can later be used in new technologies for boats, for instance). Curiously enough, this is precisely how Susan’s work became so important to many different areas beyond general Philosophy and general Epistemology, such as physics, history, epidemiology, law and so on. Given that she’s interested in how to make inquiry successful, her ideas are useful in several fields. She is, therefore, not only completing her own puzzle, but also enabling other people to interlock their entries with hers.

That is where scholars like me come in. In the field of evidential reasoning in law, which is my area of expertise, her contributions are vast. Michele Taruffo,¹⁶ one of the fathers of the new School of Evidential Reasoning in civil law countries, explicitly based many of his thoughts and theories on the clues that Susan had completed: foundherentism, the idea that warrant comes in degrees; the importance of previously obtained knowledge; the importance of combined evidence; the importance of comprehensiveness etc. Jordi Ferrer, the *caposcuola* of Girona, developed his thesis about the rational evaluation of evidence by interlocking his ideas with Susan’s: about relevance, about the ways in which mathematical probabilities *cannot* be used in Law, and about the null role that subjective beliefs play on the degree of warrant. Carmen Vázquez, writing about expert testimony,¹⁷ also elaborated on many of Susan’s ideas, such as the importance of expert communities, the error of trying to draw a clear line between science and “non-science”, and the problems with Daubert’s trilogy. What is more, in many ways, her work actually seems intended to answer questions

that Susan had raised in both *Defending Science* and *Evidence Matters*.¹⁸ I, too, follow in many of her footsteps. Writing about the burden of proof,¹⁹ for example, I stood on Susan's shoulders when stating that Brazilian civil procedure didn't pay serious enough attention to comprehensiveness, and I then tried to develop ways of improving it. My most recent work on Witness Testimony²⁰ is also rooted in her ideas and attempts to add new entries to her entries in the never-ending crossword on how, while evaluating the evidence, subjective impressions of the fact-finder about the testimony shouldn't have any weight, on how we need to use knowledge from other areas to improve our legal systems etc.

Furthermore, in the invaluable contributions in *Evidence Matters*, we find yet another very interesting aspect of Haack's thought. As she once put it, fallible and imperfect as it may be, "science (and we could say, more generally, inquiry) is a manifestation of the human mind at its cognitive best."²¹ Hence every inquiry, and every inquirer, has natural limitations. That is precisely why I reckon that some of the answers she offers about the Law, the only field where my crossword puzzle might have a few more entries completed than Susan's, indicate some of her own incomplete entries.²² For instance, her answers might benefit from interlocking with further entries from comparative law and in the general theory of law. And this just makes me admire both Susan and her work more and more. After all, inquiries can only be made by humans. And, yes, she's right again when she says that we "feel threatened (...) both by the successes of science [of philosophy, of epistemology, of inquiries...] and by its failures; not surprisingly, perhaps, since it, and we, are only human."²³ As for Susan, yes, she is only human; but an absolutely outstanding, talented and hardworking one. She is truly one of a kind.

NOTES

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3. Haack, Susan. "The Long Arm of Common Sense." In: *Defending Science—Within Reason*. New York: Prometheus Books, 2003, p. 98.
4. Haack, Susan. "Multiculturalism and Objectivity." In: *Manifesto of a Passionate Moderate*. Chicago: University of Chicago Press, 1993, p. 145.
5. In her interview with Richard Carrier, when asked if she would encourage women to pursue advanced degrees in philosophy, she eloquently said that she would not encourage women or any other people, "independently of being male, female, white, black, green, or purple!". Carrier, Richard. Interview with Susan Haack. May, 2012. Available at: <https://www.richardcarrier.info/archives/1207>. Accessed on March 13th, 2020.
6. Haack, Susan. "Science as Social? Yes and No." In: *Manifesto of a Passionate Moderate*. Chicago: University of Chicago Press, 1993, p. 104.
7. The episode in which a boy at school stated that "everyone knows girls can't do chemistry" (Haack, Susan. "Knowledge and Propaganda: Reflections of an Old Feminist." In: *Manifesto of a Passionate Moderate*. Chicago: University of Chicago Press, 1993, p. 123); another such situation happened when, after receiving the *congratulatory first* at Oxford (that she attributes to the University's policy of blind evaluation), she heard that the examiners had asked for her exams to be revised because the author "couldn't be a woman" (Vázquez, Carmen. "Entrevista a Susan Haack". In: *DOXA, Cuadernos de Filosofía del Derecho*, 36 (2013), pp. 573-586); and yet another, when she felt obliged to explain to a chairman in a job interview that she didn't hope to be a good professor just for the female students, but also for the male ones (Haack, Susan. "The best man for the job may be a woman... and other alien thoughts on affirmative action in the academy." In: *Manifesto of a Passionate Moderate*. Chicago: University of Chicago Press, 1993, p. 168).
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10. Haack, Susan. "The Long Arm of Common Sense." In: *Defending Science—Within Reason*. New York: Prometheus Books, 2003, p. 96.
11. See, for example, Carrier, Richard. Interview with Susan Haack. May, 2012. Available at: <https://www.richardcarrier.info/archives/1207>.
12. Haack, Susan. "Knowledge and Propaganda: Reflections of an Old Feminist." In: *Manifesto of a Passionate Moderate*. Chicago: University of Chicago Press, 1993, p. 130-131.
13. Carrier, Richard. Interview with Susan Haack. May, 2012. Available at: <https://www.richardcarrier.info/archives/1207>.
14. Haack, Susan. "The Long Arm of Common Sense." In: *Defending Science—Within Reason*. New York: Prometheus Books, 2003, pp. 93-94.
15. Haack, Susan. "The Long Arm of Common Sense." In: *Defending Science—Within Reason*. New York: Prometheus Books, 2003, p. 98.
16. See, for example, Taruffo, Michele. *La Semplice Verità. Il Giudice e la Costruzione dei Fatti*. Roma: Laterza, 2009, and also Taruffo, Michele. "La Valutazione delle Prove." In: Id., *La Prova nel Processo Civile*. Milano: Giuffrè, 2012.
17. Vázquez, Carmen. *De la Prueba Científica a la Prueba Pericial*. Madrid: Marcial Pons, 2015.
18. See, for example, Haack, Susan. "The Troubled Marriage of Science and Law." In: *Evidence Matters*. New York: Cambridge University Press, 2014, p. 78.
19. Paula Ramos, Vitor de. *Ônus da Prova no Processo Civil*. [2015] 2nd. Edition. São Paulo: RT, 2018.
20. Paula Ramos, Vitor de. *Prova Testemunhal*. São Paulo: RT, 2018. Also in Spanish: Paula Ramos, Vitor de. *La Prueba Testifical*. Trad. Laura Criado. Madrid: Marcial Pons, 2019.
21. Haack, Susan. "What Man Can Achieve When He Really Puts His Mind to It." In: *Defending Science—Within Reason*. New York: Prometheus Books, 2003, p. 325.
22. For example, when characteristics of the American legal system are overgeneralized ("when the evidence that a drug or chemical is dangerous is overwhelming, plaintiffs' claims are likely to be settled out of court," p. 94), or when stating that "the law relies on an adversarial procedure" (p. 91), which is not the case in civil law systems. Or when making affirmations that seem to oversimplify legal interpretation (Nothing Fancy: Some Simple Truths about Truth in the Law, specially from p. 313 on). Haack, Susan. *Evidence Matters*. New York: Cambridge University Press, 2014.
23. Haack, Susan. "What Man Can Achieve When He Really Puts His Mind to It." In: *Defending Science—Within Reason*. New York: Prometheus Books, 2003, p. 325.

Not Only Words

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Professor Susan Haack is one of the top philosophers in the world. It is a great good fortune for legal evidence scholars that at some point she took an epistemological interest in legal philosophy. Today, the impact of Haack's epistemological lessons for the law exceeds the frontiers of the common-law tradition; and I feel honored and privileged to have contributed to the dissemination of these ideas.

I first met Professor Haack in 2007, in São Leopoldo, Brazil. She was scheduled to present the plenary lecture of the 1st Meeting of the Brazilian Analytic Philosophy Association. Before the event, I sent her an e-mail introducing myself and my research, and expressing my hope of working with her. I was a legal scholar writing a Ph.D. dissertation on the evolution of Charles Sanders Peirce's thought about the normative sciences. After exchanging a couple of messages, she asked me if I could translate a short hand-out for her coming talk. I said yes, of course; and next thing I was in São Leopoldo, a small city in Southern Brazil, spontaneously greeting Professor Haack with a kiss on her cheek—something that would never happen again. Upon getting to know her, I realized that the traditional, exuberant Brazilian kiss on the cheek wasn't compatible with her moderate, more sober English style.

The encounter above marked the beginning of a long and prosperous relationship. Professor Haack supervised my doctorate research abroad, and in the years that followed I translated some of her philosophical and legal work into Portuguese—two articles, an interview, and perhaps her most sharp and engaging book, *Manifesto of a Passionate Moderate: Unfashionable Essays*. In supervising my doctoral research and in revising my translation of her work, Professor Haack educated me.

In 2008 I received a scholarship that allowed me to spend the academic year as a visiting researcher at the University of Miami School of Law. Professor Haack's willingness to take an active part in my philosophical research surprised me. After all, I was just a visiting international researcher, not formally registered with her institution. Despite her numerous academic responsibilities, Professor Haack received me in her office every Friday at 3pm. We would talk about my research and her current projects; and gossip about academic life. She encouraged me to send her drafts with my work in progress and returned them with several corrections in the margin in pen. This is not something you see very often in the academia. Senior professors often stand on an inaccessible pedestal. I wasn't expecting to receive that kind of special attention. For the first time, I

learned, with the most distinguished professor I had ever interacted with, that philosophical research and writing shouldn't be a lonely job.

When I returned to Brazil, I started to work on the translation of *Manifesto*. It was 2009, more than a decade after its publication in 1998. Professor Haack wanted me to translate *Defending Science—Within Reason*, which had been recently published. *Defending Science* continued to denounce a host of fashionable projects that undermined the legitimacy of the epistemological enterprise as a whole, and it also advanced Haack's thoughts about the interactions between science and the law. But *Manifesto* was (and still is) for me a special book. It's a statement against a popular form of doing philosophy all too common in the academia; and, besides that, Haack included a sarcastic and fascinating chapter displaying Peirce's and Rorty's philosophical texts in conversation and disagreement. Translating *Manifesto* was a hard job, for I had not only to deal with technical, philosophical language, but also to be faithful to Haack's sharp prose and humorous style. Once more, Professor Haack's willingness to help me was surprising: she read every single word I translated and correctly identified typos, syntactical errors, and even idiomatic problems in Portuguese.

Today, I recognize that perhaps the most important lesson Professor Haack taught me is how to conduct myself in academic life. You don't need to be pedantic if you want to be a serious philosopher. I feel lucky to have worked so close to Professor Haack; it was an extraordinary opportunity to appreciate her academic qualities and (pragmatically) understand what it means to exercise those virtues of intellectual integrity she so often requires from us. Professor Haack educated me with actions, not only words.

Susan Haack: A Passionate Moderate

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The title of this brief piece offers the clearest of clues as to why Susan Haack is of interest to this journal's readership. Whether or not Susan considers herself a liberal (in the *classical* sense of course), her concerns are certainly coextensive with those of classical liberalism. That Susan is one of the finest technical and most original philosophers of her generation is a given. What I want to emphasize, though, is Susan's distinctiveness in poking her head above the parapet in taking on *illiberality*—an illiberality that manifests itself in perennially hot topics, a Gordian knot of relativism, multiculturalism, feminism, affirmative action, scientism, junk science, the sociology of scientific knowledge, social constructivism, literary theory, epistemic privilege and more besides—in Susan's words, "activism masquerading as inquiry". Post-Sokal it seemed that this "fashionable nonsense" was in retreat. But its promoters were merely regrouping only to remerge in a big way two decades later. The New Cynicism that Susan had identified twenty years ago, is now even more ubiquitous within the academy and this time round, has gained currency well beyond the university.

Inspired by the issues Susan raised in *Manifesto of a Passionate Moderate: Unfashionable Essays* and *Defending Science—Within Reason: Between Scientism and Cynicism*, I set up an analytically inclined journal that offered a forum to take on the radical constructivists and &c. Along with the late Anthony Quinton and Alvin Goldman, Susan formed the core tripartite of *EPISTEME*'s launch at the British Academy. Susan came off a long flight from China suffering from a nasty cold, and being the trouper that she is, went ahead with her talk without missing a beat. I thoroughly enjoyed Susan's company when I saw her at an *EPISTEME* conference on evidence and law at Dartmouth in 2008. Chatting about the philosophy department at the University of Miami over lunch I was struck about how forthright she was. The last time I saw Susan was at The University of British Columbia in 2011 when she delivered Sikora Lecture with a thoroughly entertaining talk, opening up with the "Rumsfeld Problem."

Susan is a paragon of intellectual virtue—independent-minded and epistemically modest—without ever dispensing with a commitment to approaching the truth. Unlike the prevailing virtue-signaling sophists, Susan is not only a philosopher's philosopher but talks without condescension to the proverbial man on the Clapham omnibus—other passionate moderates. Thank you Susan.

Not One of the Boys: Memoir of an Academic Misfit

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An unlearned carpenter of my acquaintance once said in my hearing: “There is very little difference between one man and another; but what little there is, *is very important*.”—William James (1890)¹

In his heart every man knows very well that, being unique, he will be in the world only once, and that no imaginable chance will for a second time gather together in a unity so strangely variegated an assortment as he is.—Friedrich Nietzsche (1874)²

Looking back over my fifty-plus years in the academy I realize that—though I have always felt I chose the right career, and have been doing the work I was made to do—I was never one of the boys; or one of the girls, either, for that matter. I have always been something of a misfit.

For one thing, I never quite fitted in socially. Indeed, I still recall the culture-shock when I first arrived in Oxford: No one in my family had ever been to university; my accent betrayed my lower-middle-class origins; I hadn’t, like most of my classmates, attended a private school; and I wasn’t well-prepared for the level of work expected of me. I didn’t even know what the meals were called—what I had grown up calling “dinner” was “lunch,” and what I had grown up calling “tea” was “dinner.” Quite unconsciously, I soon learned to speak better; by dint of very hard work, I soon caught up academically. But it wasn’t until many years later that I understood the extent to which Oxford was about “contacts” and pedigree rather than education.³

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- 1 William James, “The Importance of Individuals,” *The Open Court* 4, no. 154 (August 1890): 24–37, reprinted in William James, *The Will to Believe and Other Essays in Popular Philosophy* (1897; New York: Dover, 1956), 255–62, 256–57.
 - 2 Friedrich Nietzsche, “Schopenhauer as Educator” (1874), in *Untimely Meditations*, trans. J. R. Hollingsworth (Cambridge: Cambridge University Press, 1993), 125–94, 127.
 - 3 The penny finally dropped during a lunch with Lord Quinton, Sir Alfred Ayer, and Sir Peter Strawson (the other members of the small British contingent) at a 1988 conference at Washington University in St. Louis for Quine’s eightieth birthday. The conversation turned to the applicants for a chair at Oxford. Sir Peter, who was on the hiring committee, groaned about one applicant: “Do I really have to read his boring book?” he asked; to which Sir Freddie replied: “I don’t see why, he didn’t even go to a proper school.” (Ayer went to Eton; how far down the list of prestigious private boys’ schools the concept of “proper school” reached, I don’t know to this day).

And even much later, when I was an established professor, I felt awkward among colleagues and peers. I've never been particularly good at small talk with people I hardly know;⁴ don't care for beer, or cheap wine, or the whisky that one chairman favored; detest those loud "receptions"; and never could disguise how little I cared for discussions of soccer, cricket or, later, football, baseball, etc., or how uncomfortable I was with those one-sided, mutually-reinforcing conversations about political issues, real and academic..

Moreover, I have learned over the years that I am temperamentally resistant to bandwagons, philosophical and otherwise; hopeless at "networking," the tit-for-tat exchange of academic favors, "going along to get along," and at self-promotion; that I have very low tolerance for meetings where nothing I say ever makes any difference to what happens; and that I am unmoved by the kind of institutional loyalty that apparently enables many to believe in the wonderfulness of "our" students or "our" department or "our" school or "our" university simply because they're ours. Nor do I feel what I think of as gender loyalty, a sense that I must ally myself with other women in my profession simply because they are women—any more than I feel I must ally myself with any and every British philosopher simply because he or she is British. And I am, frankly, repelled by the grubby scrambling after those wretched "rankings" that is now so common in philosophy departments. In short, I've never been any good at academic politicking, in any of its myriad forms.

And on top of all this, I have the deplorable habit of saying what I mean, with neither talent for nor inclination to fudge over disagreements or muffle criticism with flattering tact, and an infuriating way of seeing the funny side of philosophers' egregiously absurd or outrageously pretentious claims—that there are no such things as beliefs,⁵ that it's just superstitious to care whether your beliefs are true,⁶ that feminism obliges us to "reinvent science and theorizing,"⁷ and so forth.

Most to the present purpose, though, I have never quite fitted in intellectually, either; somehow, both my interests and my ideas have almost always managed to be out of the current fashion, and often out of the mainstream altogether. From the beginning, just about, I seem to have been swimming against the intellectual tide.

When I started, it was acknowledged, albeit somewhat grudgingly, that maybe, women *could* do philosophy—preferably ethics, aesthetics, and such, supposedly the "softer" side of the subject. But I was already out of step;⁸ I found ethics impossibly *hard*—but as I learned logic, I found it more congenial, more

4 Now I remember a quite extraordinary conversation with Richard Rorty, when we found ourselves the first to arrive for a lecture at a conference in Belo Horizonte, Brazil. Trying to be civil but not too cordial—since we would inevitably clash philosophically during the event—I asked whether his wife had accompanied him; she hadn't, he replied: "We're bird-watchers, and Mary only comes when I'm going to a part of the world where there are birds we've never seen before." I was about to explode: "But look, *you* say there's no such thing as the way the world is, so what the heck do you mean, 'parts of the world where there are birds we've never seen'?" Luckily, just then a pure black hummingbird flew by, and the conversation was saved.

5 Paul Churchland, "Eliminative Materialism and the Propositional Attitudes," *Journal of Philosophy* 88, no. 2 (1981): 67–89; Stephen P. Stich, *From Folk Psychology to Cognitive Science: The Case against Belief* (Cambridge, MA: Bradford Books, 1985); Patricia Churchland, "Epistemology in the Age of Neuroscience," *Journal of Philosophy* 64, no. 10 (1987): 544–53. See also Susan Haack, *Evidence and Inquiry*, 2nd expanded ed. (1993; Amherst, NY: Prometheus Books, 2009), chap. 8.

6 Stephen P. Stich, *The Fragmentation of Reason: Preface to a Pragmatic Theory of Cognitive Evaluation* (Cambridge MA: Bradford Books, 1990) (by 1990, Stich had finally acknowledged that, after all, there *are* beliefs). See also Haack, *Evidence and Inquiry*, chap. 9.

7 Sandra Harding, *The Science Question in Feminism* (Ithaca, NY: Cornell University Press, 1986), 252. Asked, nearly a decade later, what breakthroughs feminist science had achieved, Harding replied that we had learned that menstruation, pregnancy, and menopause aren't diseases. Well, duh. See Colleen Cordes, "2 Scholars Examine the 'Bizarre War' Against Science They Say is Being Waged by the Academic Left," *Chronicle of Higher Education*, April 27, 1994.

8 I use the phrase deliberately because, as we'll see, when, many decades later, I ventured into writing about aca-

manageable, posing philosophical questions to which I might contribute. In fact, I still recall, after I'd written a paper on deontic logic for my tutorial in ethics with her, Philippa Foot observing, quite kindly, "yes, I see; this is obviously more your kind of thing!" And when I arrived in my first job, as a very junior lecturer at New Hall, Cambridge, I did a deal with a neighboring college: I would teach the young men from St. John's logic, in exchange for Renford Bambrough's teaching the young ladies from New Hall ethics. (One of those young men, by the way, was Graham Priest, whom I taught logic from the propositional calculus through Gödel's theorem—though I'm glad to say that it was not I, but Richard Routley, who was responsible for his later diversion into *soi-disant* "dialethic logic.")

But even in logic I soon found myself *still* out of step: arguing, against Quine's insistence that "prelogical peoples," and hence deviant logics, were merely "mythical," an invention of bad translators,⁹ that there can be genuinely deviant logical systems, and even that it was possible that such a system might be better than the classical Frege-Russell system. Now, however, I'm getting ahead of myself; before explaining why my ideas have never been in the mainstream, I should say something about how those ideas evolved and why the scope of my work turned out to be so much broader than most others'. For one of the ways in which I've never quite fitted in intellectually is that, at a time when professional philosophy has gradually become more and more hyper-specialized, my interests have grown broader and broader.

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William James once described his philosophical work as "flights" (lectures and articles) and "perchings" (books).¹⁰ The avian metaphor is lovely; but my version would be rather different. After the first flutterings, my work seems to have been a matter of spreading my wings (extending my scope to new questions and new fields), then landing and digging for something juicy (figuring out new details, new problems, new ways to navigate unfamiliar territory), then swooping back (returning to older questions in light of what I have spotted from the new perspective) and then, spreading my wings a bit more, moving on further, digging a little deeper—and so on. In fact, you might describe my journey as a philosopher as Samuel Butler describes Ernest Pontifex's journey to intellectual maturity: as like the flight of a snipe,¹¹ zig-zagging over many fields.

So, while I began in logic and philosophy of language, as soon as I was asked to teach the year-long course on Epistemology and Metaphysics offered by the philosophy department at the University of Warwick, I began spreading my wings as I thought, taught, and eventually wrote, about these new questions. Around the same time, prompted by Quine's casual dismissal of his observations about truth,¹² I began reading C. S. Peirce seriously; and was inspired to dig deeper as well as stretch further. So after *Deviant Logic*¹³ and *Philosophy of Logics*,¹⁴ I started real epistemological work; eventually, after many years, finishing *Evidence and Inquiry*.¹⁵

demic ethics, this became my title. Susan Haack, "Out of Step: Academic Ethics in a Preposterous Environment" (2012), in Susan Haack, *Putting Philosophy to Work: Inquiry and Its Place in Culture*, 2nd ed. (Amherst, NY: Prometheus Books, 2013), 251–68 (text) & 313–17 (notes).

9 W. V. Quine, "Carnap and Logical Truth," in *The Philosophy of Rudolf Carnap*, ed. P.A. Schilpp (La Salle, IL: Open Court, 1963), 385–406, 387.

10 William James, "On Some Omissions of Introspective Psychology," *Mind* 9, no. 33 (1884):1–26, pp. 2–3.

11 Samuel Butler, *The Way of All Flesh* (1901; New York: Random House, 1998), 241 (I understand that a "snipe-hunt" is the idiom for a wild-geese chase in Ohio).

12 W.V. Quine, *Word and Object* (Boston: Massachusetts Institute of Technology Press, 1960), 23.

13 Susan Haack, *Deviant Logic* (Cambridge: Cambridge University Press, 1974). A second, expanded edition was published in 1996 under the title *Deviant Logic, Fuzzy Logic: Beyond the Formalism* (Chicago: University of Chicago Press, 1996).

14 Susan Haack, *Philosophy of Logics* (Cambridge: Cambridge University Press, 1978).

15 Haack, *Evidence and Inquiry*.

This book led to a whole raft of unexpected invitations to defend the objectivity of epistemic standards against skeptics of many kinds, requiring me to spread my wings much further as I developed the sustained response to postmodernist skepticism expressed in the essays in *Manifesto of a Passionate Moderate*.¹⁶ Among my targets were radical feminist, post-colonialist, and sociological critiques of the pretensions of the sciences to tell us something of how the world is; and so this critique led, in due course, to the even more ambitious topics and themes of *Defending Science—Within Reason*,¹⁷ which offers an account not only of the epistemology of science and its metaphysical presuppositions, but also of its place in society and its relation to law, literature, and religion.

My involvement with questions about the law, like many of my philosophical turns, was almost pure chance, fortuitous intellectual opportunism—in this instance, prompted by my discovering that a colleague in the law school at the University of Miami was using my *Evidence and Inquiry* in a course on the analysis of evidence. As I learned more about why my work was relevant to evidence scholars, I discovered that, while I had a *theory* of evidence and its quality, the legal system was dealing on a daily basis with evidence far more complex and tangled than any philosopher could imagine. So I have spent many years refining and amplifying my foundherentist ideas as I applied them in the law, exploring the consequences of my critical common-sensist philosophy of science for courts' handling of expert testimony,¹⁸ and—glimpsing new possibilities out of the corner of my eye—gradually getting familiar with the work of Oliver Wendell Holmes, Jr., and then developing my own neo-pragmatist philosophy of law.¹⁹ This involved, in part, thinking about legal systems *qua* evolving social institutions, looping back to ideas I had earlier developed in metaphysics and in philosophy of the social sciences.

By this time, I had been reading the old pragmatists for many years, and as a result my metaphysical ideas had already moved well beyond the mainstream analytic focus on our language or our conceptual schemes: My metaphysics, like my philosophy of science, is “worldly,” and so depends on experience; not, however, the *recherché* experience needed by the sciences, but close attention to aspects of everyday experience so familiar we don't usually notice them. This was the approach that led to my Innocent Realism, an ontological picture—very different from the more familiar forms of realism—of a world best described as a pluralistic universe.²⁰ And this required me to return to issues from *Evidence and Inquiry* as I developed and deepened the understanding of mind I had begun to sketch in response to Stich's and the Churchlands' skepticism about the very existence of beliefs and other propositional attitudes. Similarly, my thinking about the role of logic, first in science and then in law, led me back to issues from *Philosophy of Logics* about

16 Susan Haack, *Manifesto of a Passionate Moderate: Unfashionable Essays* (Chicago: University of Chicago Press, 1998).

17 Susan Haack, *Defending Science—Within Reason: Between Scientism and Cynicism* (Amherst, NY: Prometheus Books, 2003).

18 Susan Haack, *Evidence Matters: Science, Proof, and Truth in the Law* (New York: Cambridge University Press, 2014).

19 Susan Haack, “On Legal Pragmatism: Where Does ‘The Path of the Law’ Lead Us?,” *The American Journal of Jurisprudence* 50 (2005): 71–105; “On Logic in the Law: ‘Something, but Not All,’” *Ratio Juris* 20, no. 1 (2007): 1–31; “The Pluralistic Universe of Law: Towards a Neo-Classical Legal Pragmatism,” *Ratio Juris* 21, no. 4 (2008): 453–80; “The Pragmatist Tradition: Lessons for Legal Theorists,” *Washington University Law Review* 95 (2018): 1049–82; “The Pragmatist [Oliver Wendell Holmes Jr.],” in *The Pragmatism and Prejudice of Oliver Wendell Holmes Jr.*, ed. Seth Vanatta (Lanham, Maryland: Lexington Books, 2019), 169–89.

20 Susan Haack, “Realisms and Their Rivals: Recovering Our Innocence,” *Facta Philosophica* 4, no. 1 (March 2002): 67–88; Susan Haack, “The World According to Innocent Realism: The One and the Many, the Real and the Imaginary, the Natural and the Social” (2014), in *Susan Haack: Reintegrating Philosophy*, eds. Julia Göhner and Eva-Maria Jung (Berlin: Springer, 2016), 33–58; Susan Haack, “Brave New World: Nature, Culture, and the Limits of Reductionism,” in *Explaining the Mind*, eds. Bartosz Brozek, Jerzy Stelmach, and Łukasz Kwiatek (Kraków: Copernicus Center Press, 2018), 37–68.

the scope and limits of formal methods.²¹ And teaching a class on philosophy and literature—I focused on epistemological novels—was not only, like my many discussions with Meggan Padvorac, enormously enjoyable, but also led me to all kinds of interesting questions about intellectual integrity, misleading evidence, sham reasoning, and so on.

*Putting Philosophy to Work*²² brought a good deal of this together, along with some wry reflections about the state of my profession, rife as it now is with perverse incentives that gradually undermine the genuine desire to figure things out without which serious philosophy is impossible. More recently still, noticing a distinct rise of scientism in philosophy, as in our culture more generally, I returned to issues from *Defending Science*, to articulate just what this mistake is, what forms it takes, and what’s wrong with it.²³ And of late, after decades of wrestling with the ever more unreasonable demands of referees, editors, copy-editors and, especially, academic publishers, I have turned my attention to the horrendous condition of academic publishing.²⁴

As I said, ever since I began reading Peirce seriously in the 1970s, my work has always been informed by the insights of the classical pragmatist tradition—a distaste for the a priori method and a focus on the world, a repudiation of false dichotomies and a search for continuities and, most relevant here, a lack of concern for disciplinary and sub-disciplinary boundaries. The “AOS” and “AOC” of job advertisements and résumés signal that the norm in our profession today is for most people to work in two or three areas at most; and no doubt some think I’m all too given to trespassing on their proprietary territory. But really I’m just doing what’s needed to follow ideas and problems where they lead me, without much concern for the boundaries of those professional specialties and sub-specialties.²⁵ In consequence, though my path occasionally crosses others’—the path of those *soi-disant* “virtue epistemologists,” for example, or of the “epistemology of testimony” crowd, or the path of those scientific atheists who ally themselves with the “Brights,”²⁶ and so on—I’ve always been the outsider.

Moreover, while my work has gradually become more and more interdisciplinary, it has somehow never been interdisciplinary in any of the currently fashionable ways. I don’t do neurophilosophy, for example, or philosophy of literature, or even philosophy of law, as these are usually understood today; and I have never had any enthusiasm for those team-taught courses where faculty members from different departments talk past each other and the students flounder. And of course I’m an outsider, too, in my attitude to the history of philosophy, the study of which seems to be frankly despised by many in the analytic mainstream; and in my pragmatism, which would have been readily recognizable to Peirce, James, Dewey, Mead, or to Sidney Hook or Stan Thayer, for that matter, but is utterly unlike the Vulgar Pragmatism of Rorty and his followers, and far removed from the “Analytic” Pragmatism of Brandom and his disciples. (I won’t soon forget the reaction when I mentioned George Herbert Mead’s important contributions to philosophy of mind in a talk at NYU: “Mead? Where’s he?”—apparently my audience thought I was referring to some up-and-coming contemporary philosopher of mind they somehow didn’t know about.) I don’t quite fit, even, in the circle of Peirce scholars, James scholars, Dewey scholars, etc., though I have many valued friends among them; for

21 Susan Haack, “Formal Philosophy: A Plea for Pluralism” (2005), in Susan Haack, *Putting Philosophy to Work: Inquiry and Its Place in Culture*, expanded ed. (2008; Amherst, NY: Prometheus Books, 2013), 235–50 (text) & 310–13 (notes).

22 Susan Haack, *Putting Philosophy to Work*, 2nd expanded ed. (2008; Amherst, NY: Prometheus Books, 2013).

23 Susan Haack, “Six Signs of Scientism” (2010), in Haack, *Putting Philosophy to Work*, 105–20 (text) & 287–83 (notes); Susan Haack, *Scientism and Its Discontents* (Rounded Globe, 2017).

24 Susan Haack, “The Academic-Publication Racket: Whatever Happened to Authors’ Rights?” *Borderless Philosophy* 2 (2019): 1–21.

25 Susan Haack, “The Fragmentation of Philosophy, the Road to Reintegration,” in Göhner and Jung, *Susan Haack: Reintegrating Philosophy*, 3–32.

26 See, e.g., “The Brights’ Principles,” The Brights, accessed January 2, 2020, <https://www.the-brights.net/vision/principles.html>.

my concern has always been, not only to understand and interpret these remarkable thinkers of the past, but to learn from them—to find, in their ideas, ways of tackling the problems I encounter in my work.

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But it's not just the scope and focus of my work, but also its content and its approach that don't quite fit the conventional mould. Indeed, even my style of writing—which, unlike the stilted, impersonal “social science” style adopted by so many philosophers today, is direct, plain-spoken, and yet informal, conversational, idiomatic, sometimes even humorous²⁷—is far from the norm. But I'll focus here on my philosophical approach and the content of my work.

Even early on, while I was still concentrating primarily on logic and philosophy of language, I was never tempted to participate in the “Davidsonian boom” that was then dominating British philosophy, nor to sign up for the Kripke cult, or join to Popper's band of disciples or the rival inductivist crew. While I was concerned to grasp the technical complexities of Tarski's theory of truth, I was never disposed to hope that this theory would do all the philosophical work that Popper, or Davidson, expected of it. And while at this time I was impressed (*too* impressed, I now believe) by Quine's seductively smooth prose and the sense of important philosophical substance his logical cleverness conveyed, I was no follower. I worked on the deviant logics he thought mythical; I also pointed out inconsistencies in his ideas about analyticity,²⁸ worked hard to figure out what reasons could possibly lie behind his dogmatic repudiation of quantified modal logic, and asked questions about the epistemology and metaphysics of logic that he brushed aside with a rhetorical question: “if sheer logic is not conclusive, what is?”²⁹ Indeed, the plural in the title of my *Philosophy of Logics* itself revealed my off-center slant.

As I began writing *Evidence and Inquiry*, though, I found myself even *more* out of step with others in the field. The false dichotomies here, I found, were even worse than those I'd encountered in my earlier logical work: foundationalism vs. coherentism, of course, but also internalism vs. externalism, logical vs. causal approaches, evidentialism vs. reliabilism, apriorism vs. scientism, and so on. After a whole lot of work, I arrived at my foundherentism, marrying the strong points of foundationalism and coherentism while avoiding their weaknesses, and including both internal and external elements. My approach put evidence and its quality center-stage, but at the same time was concerned to articulate the connection between a belief's being more, or less, justified by foundherentist standards and the likelihood of its being true. My approach was also naturalistic, in the sense of allowing the contributory relevance of results from psychology, etc., to epistemology, but not in any sense scientistic. (Puzzling over “Epistemology Naturalized,” by this time I had realized how skillfully Quine's way of doing philosophy could disguise fatal ambiguities that blurred genuine insights.) And so on.

The response of the epistemological mainstream was predictably defensive. Despite my having argued in excruciating detail that foundherentism really is a new approach, some simply couldn't escape the false dichotomy of foundationalism vs. coherentism: Several authors were sure that I was really a covert foundationalist; others were equally sure that I was really a covert coherentist. And as for evidentialism vs. reliabilism—well, my repudiation of this false dichotomy prompted a truly bizarre correspondence with Alvin Goldman, who was apparently quite unable to escape its grip. First he sent me a draft paper in which he described me as focusing exclusively on evidence and paying no attention to truth; in response to which I politely pointed out that the last chapter of my book was precisely about the relation between evidential quality and likely truth. In reply he sent me another draft, now describing me as a reliabilist like himself; in

27 I have written on the role of humor in philosophy in Susan Haack, “Serious Philosophy,” *Spazio filosofico* 18 (2016): 395–407.

28 Susan Haack, “Analyticity and Logical Truth in *The Roots of Reference*,” *Theoria* 42, no. 2 (1977): 129–43, reprinted in Haack, *Deviant Logic, Fuzzy Logic*, 214–225.

29 W. V. Quine, *Philosophy of Logic*, 2nd ed. (1970; Cambridge, MA: Harvard University Press, 1986), 81.

response to which I asked him, rather less politely, please to look at my chapter 7—devoted to a thoroughgoing critique of reliabilism—and to remove his endnote thanking me for my help!

Though I touched briefly on issues about testimony and about the conduct of inquiry, *Evidence and Inquiry* had focused primarily on the degree of justification of the beliefs of individual knowing subjects. In the mainstream, however, interest in these crucial questions had waned rapidly—not, apparently, because people believed solutions had been found, but because they were bored with them, and felt like moving on. Mainstream attention turned to social epistemology and virtue epistemology—and, almost unbelievably, back to Gettierology, which in 1993 I had thought was, thank goodness, in decline. (A decade earlier, I had written a paper explaining why Gettier-type “paradoxes” were inevitable, and harmless, given the mismatch between the gradational character of justification and the categorical character of knowledge; but I didn’t think it worth publishing until the second, 2009, edition of *Evidence and Inquiry*, at the peak of a new Gettier boom.)³⁰

However, despite the mostly dispiritingly defensive reception among specialists in epistemology, the first edition of *Evidence and Inquiry* found many readers elsewhere, among philosophers in other areas, legal scholars, natural scientists, economists, etc.—including some who pressed me to give a verdict on the then-burgeoning new specialty of “feminist epistemology.” Wisely or not, I agreed; but concluded that, so far as I could see, there was no such connection between feminism and epistemology as the rubric “feminist epistemology” required. The idea that feminist epistemology would represent “women’s ways of knowing” simply reintroduced old, indefensible sexist stereotypes; the idea that considerations of what was to women’s advantage should determine theory-choice would not only undermine inquiry by politicizing it, but undermine the possibility even of determining what *is* to women’s advantage.

This didn’t make me popular with some professional feminists, who evidently thought that women in philosophy should stick together—we might have our internecine disputes, but we must display our solidarity in the face of the sexism they believed to be endemic in the field. I must, they concluded, be some kind of reactionary, hostile to feminism. This was what I meant when I said I was never one of the girls, any more than I was ever one of the boys: while I like and respect some of the women in philosophy, I like and respect them *as individuals*, not as fellow members of my “gender.” (I like and respect some of the men in the field, too!)

It didn’t help matters, probably, when a few years later I wrote what I hoped and believed was a very temperate essay in which I expressed some reservations about affirmative action, and specifically about preferential hiring of women in universities:³¹ an essay that one referee wanted suppressed from my *Manifesto of a Passionate Moderate*, and that no reviewer dared even mention. (That was disturbing; but as I said in my introduction to the book, “better ostracism than ostrichism.”)³² Nor, sadly, did it help when, shortly afterwards, I wrote my own humanist, individualist, feminist position-statement—stressing, not women-as-a-class, but what all humans beings have in common, and what’s unique about each and every individual.³³ By this time, I fear, feminist philosophers were already sure I was beyond the pale, and wouldn’t condescend to read me.

30 Susan Haack, “Know’ is Just a Four-letter Word” (written in 1983), in Haack, *Evidence and Inquiry*, 2nd ed., 391–430.

31 Susan Haack, “The best man for the job may be a woman’... and other alien thoughts on affirmative action in the academy” (1996), in Haack, *Manifesto of a Passionate Moderate*, 167–88. This paper was written at the invitation of Martha Nussbaum for presentation at an APA session she had told me would be a “debate.” It wasn’t; all the other presenters, and most of the audience, were keen supporters of preferential hiring of women in the academy. The only exception was the small contingent of black faculty in the room, who thanked me warmly for saying that it wasn’t clear to me that the problems they faced and the problems white women faced were entirely the same.

32 Haack, *Manifesto of a Passionate Moderate*, x.

33 Susan Haack, “After My Own Heart: Dorothy Sayers’s Feminism” (2001), in Haack, *Putting Philosophy to Work*, 221–29 (text) & 309–10 (notes).

But *Manifesto* tackled not only the “feminist philosophy” crew, but a whole variety of postmodern confusions, including confusions about science. Mainstream philosophers seem mostly to have ignored postmodernism; but some mainstream philosophers of science, probably prompted by the wild claims of radical sociologists of science, *had* begun, very cautiously, to try to accommodate some social elements in their logical models of scientific inference. Once again, however, I found myself out of line. For one thing, I saw philosophy of science, not as a freestanding specialty, but as intimately related both to epistemology and to metaphysics. As a result, I found myself thinking in ways quite outside the usual late twentieth-century/early twenty-first century lines, ways more akin to the ideas of such thinkers as Thomas Huxley, Albert Einstein, John Dewey, Percy Bridgman, and Gustav Bergmann. So in *Defending Science—Within Reason*³⁴ I developed what I called my Critical Common-sensist philosophy of science.

As I’d already suggested in *Evidence and Inquiry*,³⁵ in *Defending Science* I argued that scientific inquiry is continuous with everyday empirical inquiry, only more so: It is usually more careful, more thorough, more rigorous; it often relies on instruments and other specialized tools; and it is generally the work of many people, both within and across generations. There’s no “scientific method,” i.e., no method used by all, and only, scientists. There are the familiar procedures of everyday inquiry: make an informed conjecture, see how well it stands up to the evidence you have and any further evidence you can get, use your judgement whether to accept it, to draw no conclusion but seek out more evidence, or to start over; but these are not used *only* by scientists. And there are the special tools and procedures developed by scientists over hundreds of years—from models and metaphors to aid the imagination, instruments of observation and measurement to aid the senses, through the calculus, the theory of probability, the computer, etc., to aid reasoning powers, means for the dissemination of results so that evidence can be shared, and incentives to keep scientists productive and honest; but these scientific “helps” to inquiry, always evolving and often local to a specific scientific field, aren’t used by *all* scientists. These helps engage scientists’ imagination, extend and refine their sensory reach, enable new reasoning powers, and (up to a point) maintain honesty and encourage creativity and the sharing of results. This is how the sciences have been as successful as they have.

The evidence for scientific claims, my argument continued, is continuous with the evidence for everyday empirical claims, only more so—a mix of sensory evidence and reasons, but far more complex and tangled: The experiential components are often mediated by instruments, with all their theoretical backing; the reasoning is often dependent on computer programs, with all the assumptions built into them; and such evidence is almost always a shared resource, the result of many people’s work. Thinking about the sharing of results, i.e., scientists’ pooling of evidence, I was obliged to dig deeper into issues about social aspects of epistemology, only touched on in *Evidence and Inquiry*.

The evidence for scientific claims rests ultimately on experience, and of course it’s individuals who have experience. But the evidence for such claims is almost always a shared resource. So, unlike the social epistemologists, who seemed concerned with the warrant of scientific claims for a group or team of people, I started from what I’d done in *Evidence and Inquiry* to explain the degree to which a claim would be warranted for an individual. Then I turned to how to handle the degree of warrant for many people, whether members of the same team or scattered around the world or even over centuries; a matter, I suggested, of the degree of warrant for a hypothetical individual who had all the evidence possessed by these people all together, discounted by some measure of how justified each person is in believing the others reliable. And finally I constructed an account of the degree of warrant of a scientific claim at a time.³⁶ (This, as I noted, turned Popper’s “epistemology without a knowing subject” on its head.)³⁷

34 Susan Haack, *Defending Science—Within Reason: Between Scientism and Cynicism*.

35 Haack, *Evidence and Inquiry*, 164.

36 Haack, *Defending Science*, 69–72 (this task proved extremely complicated, not least because scientists will likely differ in their background beliefs; but the analogy of many people working in the same giant crossword puzzle proved helpful).

37 Haack, *Defending Science*, 60. Some of my arguments here were anticipated in Susan Haack, “Epistemology with a

This approach suggested an important role for epistemologically-informed sociology of science: in the form, for instance, of questions about what kinds of environment enable such work and what kinds impede it, the kinds of perverse incentives that encourage scientific fraud, and so on. But this was more in keeping with the ideas of earlier sociological thinkers like Robert Merton than with the radical skepticism about the epistemological pretensions of the sciences then in vogue among up-and-coming sociologists of science.

Moreover, I had distinguished the social from the natural sciences in a somewhat non-standard way; and repudiated the false dichotomies that I believed impeded an understanding of how the two are alike (both use the same procedures and methods as everyday empirical inquiry) and how they are different (the social sciences using different specialized helps, and seeking different kinds of explanation, in terms of people's beliefs, desires, plans, fears, etc., rather than physical forces). So I was more than somewhat out of line with mainstream thought among philosophers of the social sciences, too.

The epistemological strands of my *Defending Science* intertwined with metaphysical elements derived from the conception of a pluralistic universe at the heart of the Innocent Realism I was then developing. But once more I was out of step. Some philosophers of science wanted to eschew ontological commitments entirely, some to derive such commitments from scientific theories, and some to skirt the issue by appeal to a Kripke-Putnam theory of reference for natural kind terms. I, however, was arguing that—while, for science to be even possible, there must be real kinds and real laws—there is no guarantee that current scientific vocabulary matches real kinds, which is why the language of science is constantly shifting and changing; and that these shifts and changes of meaning need not impede inquiry, but can actually advance it when they come closer to real kinds in the world. This suggested another reason (besides their failure to accommodate experiential input) why those formal models of scientific inference failed; and suggested that the metaphors often used by scientists are not only important helps to the imagination, but can also contribute to the evolution of scientific vocabulary.³⁸

Unfortunately, if predictably, *Defending Science* was greeted with less than overwhelming enthusiasm by the philosophy of science establishment: One reviewer even had the poor taste to complain that the thinkers I relied on were *dead*—no boost for his and his friends' citation counts there, I suppose! Another reviewer, apparently quite unable to read the book, thought I had said that science is “just common-sense.”³⁹ However, like *Evidence and Inquiry*, *Defending Science* found a large and appreciative audience elsewhere: among philosophers not specialists in the field, among scientists of every kind, and among lawyers and law professors struggling to understand how best to deal with scientific testimony—but I'll get to them later.

When I thought about the relation of science and imaginative literature, I was concerned both with the similarities and with the differences between the two, notably with the difference between the imaginative (common to both) and the imaginary (the province of fiction). It was while I was thinking about literature, by the way, that my path crossed the virtue epistemologists'; or more precisely, the path of Linda Zagzebski and her followers.⁴⁰ (I had already filed Sosa's “virtue epistemology”⁴¹ in my head under “reliabilism,” itself filed under “failed theories”). Epistemological virtues, I concluded, are often best understood through the rich detail of novels such as Sinclair Lewis's *Arrowsmith*, Samuel Butler's *The Way of All Flesh*, and Dorothy Sayers's *Gaudy Night*. But instead of mining these rich resources, the “virtue epistemology” crowd seemed to have settled for a somewhat hackneyed list of rather thinly described virtues, and hadn't articulated that what makes a virtue epistemological is the subject's relation, and his reaction, to evidence. So I found myself out on a limb yet again when, at a conference on virtue epistemology at which I had spoken about Butler's

Knowing Subject,” *Review of Metaphysics* XXXIII, no. 2 (December 1979): 309–35.

38 See Susan Haack, “The Art of Scientific Metaphors,” *Revista de filosofia portuguesa* 75, no. 4 (2019).

39 To be fair, by this time there were many fewer general philosophers of science than there had once been; the field had split into philosophy of physics, philosophy of biology, etc.

40 Linda Zagzebski, *Virtues of the Mind* (Cambridge: Cambridge University Press, 1996).

41 Ernest Sosa, “The Raft and the Pyramid: Coherence versus Foundations in the Theory of Knowledge,” *Midwest Studies in Philosophy* 5, no. 1 (1980): 3–25.

extraordinary semi-autobiographical novel, an audience member asked me how on earth I had come up with that example (nowhere to be found, I gathered, in the “virtue epistemology” literature). I tried to explain that this book was one I had loved for years, but that I had only recently articulated its epistemological lessons. He looked baffled.

I remember, while I was writing chapter 9 of *Evidence and Inquiry*, “Vulgar Pragmatism: An Unedifying Prospect,” thinking that if I were Richard Rorty, and really believed, as he professed to, that standards of epistemological evaluation were purely conventional, I wouldn’t bother going after epistemologists, who are really very small fry indeed; I’d be raring to dismantle the legal system—which, if there really are no objective standards for the evaluation of evidence, could be nothing but a cruel farce. Not surprisingly, then, I later found myself drawn into questions about epistemology and the law of evidence and, especially, the legal system’s handling of scientific testimony.

Once again, though, I found myself at odds with the social epistemologists, some of whom had begun to interest themselves in questions about testimony, and were applying their work to legal contexts. They seemed too content with what sounded to me like verbal solutions of no practical help; and their work seemed insufficiently informed either by the nitty-gritty details of real-life evidence in real-life cases or by an awareness of the very special constraints on the presentation of evidence imposed by legal rules and procedures. And since I saw legal degrees of proof as something quite different from mathematical probabilities, I was even more sharply at odds with the Bayesian wing of the “New Evidence Scholarship” then predominant in legal circles; but at the same time was underwhelmed by the “story-based,” “narrative” approach that was its main rival—too much hand-waving, not enough details. And neither philosophers nor legal scholars had much interest in my reply to Peirce’s critique of adversarialism, or even in my reply to Bentham’s objections to exclusionary rules of evidence.

As my legal interests began to extend to questions about scientific evidence specifically, the U.S. Supreme Court was handing down a series of decisions on the standards of admissibility of such testimony in a trilogy of cases: *Daubert* (1993), *Joiner* (1997) and *Kumho Tire* (1999).⁴² And my first paper on these matters was even prompted by a newspaper article reporting that in *Joiner* the Supreme Court had ruled that there is no real distinction between methodology and conclusions.⁴³ But again I was out of mainstream thinking. Legal scholars weren’t terribly interested when I showed that Justice Blackmun’s ruling in *Daubert* had Popper’s and Hempel’s incompatible philosophies of science completely confused; nor, more surprisingly, when I showed that this ruling had also confused “scientific” and “reliable,” as if all and only scientific testimony were reliable. Neither, so far as I know, were philosophers of science much interested.

Nonetheless—perhaps because in an early piece in this area I had cracked a memorable joke about Justice Blackmun getting his Hoppers and his Pempels all mixed up⁴⁴—I soon began receiving interesting legal invitations; and eventually, quite without planning to, became something of an expert on the epidemiological evidence so often crucial to toxic-tort cases. Predictably, however, *Evidence Matters*,⁴⁵ where much of this work can be found, bears little resemblance either to standard legal texts on evidence, or to other philosophical work in the area.

Naturally this book is pragmatist in orientation; but not, of course, in the sense of following Judge Posner’s confused idea that pragmatism means eschewing theory. Rather, it is pragmatist because of its worldly, nuts-and-bolts approach to the law, quite in keeping with the ideas of Holmes or of Benjamin Cardozo, also

42 *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993); *Gen. Elec. Co. v. Joiner*, 522 U.S. 136 (1997); *Kumho Tire v. Carmichael*, 526 U.S. 137 (1999).

43 Susan Haack, “An Epistemologist in the Bramble Bush: At the Supreme Court with Mr. Joiner,” *Journal of Health Politics, Policy, and Law* 26, no. 2 (April 2001): 217–48.

44 Susan Haack, “Trial and Error: The Supreme Court’s Philosophy of Science,” *American Journal of Public Health* 95 supp. (2005): 66–73, reprinted as “Trial and Error: Two Confusions in *Daubert*,” in Haack, *Evidence Matters*, 104–21.

45 Susan Haack, *Evidence Matters: Science, Proof, and Truth in the Law* (New York: Cambridge University Press, 2014).

a legal pragmatist of the classical stripe. The epistemology on which it calls is foundherentist, and the philosophy of science Critical Common-sensist. Undertaking this work enabled me to deepen my foundherentist critique of epistemological atomism, as I argued that a congeries of pieces of evidence, none sufficient by itself, may in some circumstances jointly warrant a conclusion to the legally required degree of proof; and legal probabilism, showing that degrees of proof differ from mathematical probabilities, and that Bayesian efforts to analyze evidence fail and that the “doubling of risk” standard for admissibility of epidemiological evidence in toxic torts are both bad epistemology and bad policy. This volume also includes thoughts about truth in the law, and about the relation of law and morality; none, as usual with me, the standard kind of thing. Moreover, because those legal invitations had include many from other countries—the U.K., and Canada, across Europe, across Latin America, and even in China—*Evidence Matters* is probably more aware than much evidence scholarship of important differences in evidentiary procedure in different jurisdictions; subsequently, I have written specifically about this.⁴⁶

When I presented an early paper on epistemology and the law of evidence at Notre Dame Law School,⁴⁷ John Finnis commented that I was “a real pragmatist, not like Rorty.” This prompted me to begin reading Holmes seriously. The first result was a paper on his famous lecture, “The Path of the Law,” arguing, against the received view, that Holmes’s so-called “prediction theory” was no such thing, but only the first step towards something much subtler and much deeper. The next was a paper exploring Holmes’s critique of Christopher Columbus Langdell’s idea of a legal system as a set of axioms from which correct decisions could be deduced. Holmes was right, I argued, to say that “the life of the law has not been logic, it has been experience”;⁴⁸ but it remained to be seen whether the more powerful apparatus of modern logic, not known to Langdell or Holmes, might be up to the task of formalizing legal decisions. It would not, I concluded; and thus set my face against those many, especially in Europe, working on legal logics of one style or another.⁴⁹ The reason for the limits of formalism here, I realized, as with the sciences, lay in the shifts and changes of meaning of legal concepts over time.⁵⁰

All this eventually this led me to develop my own neo-classical pragmatist legal philosophy. Innocent Realism proposes a pluralistic universe of natural stuff, things, kinds, phenomena, laws, and so forth overlaid, in “our” small corner of this universe, by a whole raft of human artifacts, physical, social, imaginative, intellectual, and so on. Legal systems are a pluralistic universe *within* this pluralistic universe; indeed, the U.S. legal system is a pluralistic universe in itself, *within* this pluralistic universe of legal systems *within* the pluralistic universe of the world. This gave rise to many good questions about the evolution of legal systems, the ways different systems borrow from each other, and so forth. (But I haven’t focused on such familiar questions as “what is law?”—to which I can only reply that the concept of law is itself fuzzy and itself evolving.)

Although the subtitle of *Defending Science* was “*Between Scientism and Cynicism*,” I had devoted more space to dismantling cynicism than I did to combating scientism, simply because the anti-scientific critiques of radical sociologists and rhetoricians of science, feminist and post-colonialist science critics, etc., seemed the more immediate danger. Before long, however, there was a kind of backlash, both in the acade-

46 See, e.g., Susan Haack, “La justicia, la verdad y la prueba: No tan simple, después de todo,” in *Debatiendo con Taruffo*, eds. Jordi Ferrer Beltrán and Carmen Vázquez (Madrid: Marcial Pons, 2016), 311–36.

47 Susan Haack, “Epistemology and the Law of Evidence: Or, Truth, Justice, and the American Way,” Olin Lecture, Notre Dame Law School, published in *American Journal of Jurisprudence* 49 (2004): 43–61, reprinted in Haack, *Evidence Matters*, 27–46.

48 Oliver Wendell Holmes, *The Common Law* (1881), in *Collected Works of Justice Holmes*, ed. Sheldon M. Novick (Chicago: University of Chicago Press, 1993) 3:111–325, 115.

49 Susan Haack, “On Logic in the Law: Something, but Not All,” *Ratio Juris* 20, no.1 (2007): 1–31.

50 Susan Haack, “The Growth of Meaning and the Limits of Formalism, in Science and Law” (2009); amplified version, “Ripensare la razionalità: La Crescita di significato e i limiti del formalismo,” *Diritti & Questione Pubbliche* XIX, no. 1 (2019): 160–79.

my and in our culture more generally: an alarming rise in the popularity of a crude scientism often, but not always, driven by anti-religious sentiment. My first response was to try to articulate exactly what scientism is, what's wrong with it, and how to spot its telltale signs;⁵¹ my next, to continue this work by showing the extraordinary weakness of the scientistic philosophy then coming into vogue.⁵²

This naturally put me at loggerheads with the “Experimental Philosophy” flash-mob and with reductionists of every stripe, from Ladyman and Ross and their soi-disant “naturalized metaphysics” to Alexander Rosenberg and his depressing “physics fixes all the facts” bravado. It even put me at odds with many readers of *Free Inquiry*—a journal to which I had already contributed on several occasions—when I said in their pages that one might repudiate scientism without having any kind of religious agenda, and that it was no less fallacious to argue that, if religion doesn't explain anything, science must explain everything, than it was to argue that, if science can't explain something, religion must explain it.⁵³

Still, while by this point I felt yet more alienated from the majority in my profession, there was an upside: spelling out the crucial difference between today's scientistic philosophy and Peirce's aspiration to make philosophy scientific—by which he meant that it should be undertaken with the “Scientific Attitude,” the genuine desire to find out the truth, and use the “Scientific Method,” i.e., experience and reason—enabled me to articulate why it can *seem* that you can do philosophy from your armchair, when in fact it depends on experience. As Peirce had argued, unlike the sciences, which require specialized, *recherché* experience, what philosophy requires is close attention to aspects of the experience we all have every day but seldom notice. This means you can do philosophy anywhere, without the need for expeditions, instruments, etc., but not that it's a purely a priori exercise. And this, of course, is precisely the middle way that's needed, the way to avoid both the extravagances of wild, unanchored a priori philosophical speculation and the equal-and-opposite extravagances of “X-phi” and all the other forms of scientism now rife in our field.

And, because that *Free Inquiry* paper had begun by *agreeing* with the editor's observation in his letter of invitation that professional philosophy is in bad shape, while disagreeing with his diagnosis—that the problem is the rise of religiously-oriented work in the field and the horrible influence of the Templeton Foundation—it meshed neatly with other pieces I'd written about the state of the profession: “Preposterism and Its Consequences” (1996),⁵⁴ on the appalling culture of grants and research projects; “Out of Step: Academic Ethics in a Preposterous Environment” (2013),⁵⁵ on the virtues needed to do good intellectual work and the ways in which our over-administered universities are systematically eroding them; and “The Fragmentation of Philosophy” (2016),⁵⁶ on the disastrous splitting of our discipline into a host of sub-specialties and cliques. This, together with my frustration with academic publishers—the extraordinary length to which I had to go to be treated as an author rather than a fungible content-provider with no rights in my own work, prompted me to carry on this work in another piece, “The Academic-Publication Racket: What-ever Happened to Authors' Rights?” (2019).⁵⁷

I've long thought that philosophy should be, not hermetic and self-absorbed, but engaged, concerning itself with what Dewey called “problems of men.” I suppose that was why, in light of a recent invitation to give the *Theoria* lecture, I chose a topic that engaged my logical, my epistemological, my metaphysical, *and* my worldly concerns: the idea that we are now living in the era of “post-truth.” This meshed neatly with a

51 Susa Haack, “Six Signs of Scientism” (2010), in Haack, *Putting Philosophy to Work*, 105–20 (text) & 278–83 (notes).

52 Susan Haack, *Scientism and Its Discontents*, (Rounded Globe, 2017).

53 Susan Haack, “The Real Question: Can Philosophy be Saved?” *Free Inquiry* 37, no. 6 (2017): 40–43.

54 Susan Haack, “Preposterism and Its Consequences,” *Social Philosophy and Policy* 13, no. 2 (Summer 1996): 296–315.

55 Susan Haack, “Out of Step: Academic Ethics in a Preposterous Environment,” in Haack, *Putting Philosophy to Work* 251–68 (text) & 313–17 (notes).

56 Susan Haack, “The Fragmentation of Philosophy, the Road to Reintegration,” in Göhner and Jung, *Susan Haack: Re-integrating Philosophy*, 3–32.

57 Susan Haack, “The Academic-Publication Racket.”

series of earlier papers on truth, in the course of which I developed my “Laconicist” approach (Kiriake Xerohemona’s word) to the concept. But even when I’m writing about “post-truth” my slant is distinctive. The problem, I emphasized, is that the idea that we are now post-truth is ambiguous; and that while it is true on one understanding (unconcern for truth is on the rise), it is false on the other (the concept of truth is illegitimate, out of date).

I can’t guess, of course, which, if any, of my ideas will stand the test of time; I can only hope that some, at least, will do so. But I can be pretty sure I’ll never be mainstream, not in this lifetime anyway. As Peirce once said, “there is a kink in my damned brain that prevents me from thinking as other people think”;⁵⁸ I guess there’s a kink in *my* brain, too.



Not surprisingly, I have never had a “prestigious” job, landed a major grant, held any academic office with the power of patronage, or anything of that kind. None of this has really bothered me; though I’d be lying if I said I don’t get annoyed when one of those “lucky,” well-connected few who seem to lead charmed academic lives feels entitled to condescend to me. And naturally I dislike unwarranted criticisms of things I never said and absurdly defensive reactions to ideas of mine threatening to those who might have to admit that they were wrong if I were right.

I suppose I could have used a thicker skin, because academics can be—well, they can be quite nasty. I don’t want to dwell on this, but I’ll note few particularly egregious examples of thing kind of thing I mean. I was dismayed to learn that Bernard Williams—who had been chair of the philosophy department at Cambridge when I was a Ph.D. student there—had simply ignored the help I gave him, decades later, in response to his request for references on pragmatism; and instead used “pragmatism” to refer to Rorty’s confusions—and dismissed my response to Rorty’s misunderstandings about truth as if they were as unsophisticated and unsubtle as John Searle’s or Jay Rosenberg’s.⁵⁹ I was disappointed to learn that when, in 2008, Anil Gupta “discovered” that we needed a theory of empirical justification combining the strong points of foundationalism and coherentism, he didn’t so much as *mention* my work.⁶⁰ I was distressed to discover how many people seized so eagerly on a pitifully weak paper by Peter Tramel claiming that my foundherentism is a form of foundationalism—apparently without having read either Tramel or myself with any care.⁶¹ I was disgruntled when the organizers of a conference on “the point and purpose of epistemic evaluation”—at which mine was the only paper that referred to real-world issues at all!—asked me to make my paper “more like ours” before publication.⁶² And I was disheartened when the editors of several anthologies wanted to include my critique of feminist epistemology, but apparently had no interest in, or perhaps no knowledge of, my constructive epistemological work.

58 My source is E. T. Bell, *The Development of Mathematics* (New York: McGraw Hill, 1949), 519.

59 Bernard Williams, *Truth and Truthfulness: An Essay in Genealogy* (Princeton: Princeton University Press, 2002). Mark Migotti, I’m glad to say, pointed out how grossly inappropriate this was. See Mark Migotti, “Pragmatism, Genealogy, and Truth” (Critical Notice of Williams, *Truth and Truthfulness*), *Dialogue* 48 (Winter 2009): 185–203.

60 Anil Gupta, *Empiricism and Experience* (New York: Oxford University Press, 2006). Curiously enough, Gupta *did* refer to two papers in Louis Pojman’s anthology on epistemology; but missed mine, which appeared between the first and the second of these. See Louis Pojman, *Theory of Knowledge: Classical and Contemporary Sources* (Belmont, CA: Wadsworth, 1998). Go figure!

61 Peter Tramel, “Haack’s Foundherentism is a Foundationalism,” *Synthese* 160, no. 2 (2008): 215–228. See also Susan Haack, “The Role of Experience in Empirical Justification,” in Göhner and Jung, *Susan Haack: Reintegrating Philosophy*, 157–65 (responding to commentators who had picked up Tramel’s muddled ideas).

62 I declined. The paper is “The Embedded Epistemologist: Dispatches from the Legal Front,” *Ratio Juris*, 25, no. 2 (2012): 206–35.

And then there was the editor-in-chief of a journal for which I was putting together an issue on “Feminist Epistemology: For and Against” who urged me to accept what he agreed was a very weak paper from a feminist Big Noise. The reason, it turned out, wasn’t that he thought I shouldn’t reject bad papers from big noises—though that would have been bad enough; it was that accepting this weak paper would make the feminist epistemologists look bad—which was *not* the project for which I thought I’d signed up. (I resisted; and instead accepted an even-handed and sober paper from Iddo Landau⁶³—the beginning of our now decades-long friendship.)

But, though I would certainly have preferred to have been less intellectually lonely and—much as I have enjoyed my discussions with Peirce et al.—to have had more living people to talk to, there has surely been a bright side. I have enjoyed a full intellectual life—with all the frustrations and disappointments such a life inevitably involves, to be sure, but also with its moments of exhilaration and the pleasurable company of “clean, humorous intellect.”⁶⁴ I have enjoyed the privilege of teaching generations of students of many and various talents, some of whom have become my good friends and respected colleagues; and of making, along the way, not “contacts,” but much-valued friends, among philosophical, and now, legal thinkers—and many others, too, all around the world. Some of these, sadly, are no longer alive; I will mention particularly Robert L. Heilbroner,⁶⁵ Jacques Barzun,⁶⁶ Peter Strawson,⁶⁷ Louise Rosenblatt,⁶⁸ and Sidney Ratner.⁶⁹

Sometimes people suggest to me that my work has not been valued as it should be “because you’re a woman.” In my estimation, though, in many quarters my work *has* been valued as it should be; though, granted, this has more often been by other outsiders than by the mainstream. And while I have certainly encountered my share of sexism,⁷⁰ I have also had some remarkable good fortune on this score, notably Ox-

63 Iddo Landau, “Should There Be a Separatist Feminist Epistemology?” *The Monist* 77, no. 4 (1994): 462–71. (Prof. Landau and I corresponded for several years, by the way, without my knowing whether he was a man or a woman.)

64 F. M. Cornford, *Monographia Academica: Being a Guide for the Young Academic*, reprinted in *University Policy: F. H. Cornford’s Cambridge and his Advice to the Young Academic*, ed. G. Johnson (Cambridge: Cambridge University Press, 1994), 100.

65 After *Evidence and Inquiry*, Robert L. Heilbroner (1919–2005)—historian of economic ideas, author of the best-selling *The Worldly Philosophers*, sent me a charming letter the burden of which was “My God, woman, you can actually *write*” (quite a compliment coming from him). We soon became fast friends.

66 My correspondence with Jacques Barzun (1907–2012), historian of ideas and former Provost of Columbia, began after I sent him a copy of *Manifesto of a Passionate Moderate*, where I had used his word, “preposterize.” See Jacques Barzun, *The American University: How it Runs, Where It is Going* (New York: Harper and Row, 1968), 221. Later, he would send me a copy of his *A Word or Two before You Go*, inscribed “To Susan Haack, gourmet of words” (again, quite a compliment, coming from him).

67 I first met Peter Strawson (1919–2006), Waynflete Professor of Metaphysical Philosophy at Oxford, at that conference in St. Louis mentioned earlier. He proved a very helpful and agreeable correspondent over a series of letters that began with my signing “Yours respectfully, Susan Haack” and his signing “Yours sincerely, Peter Strawson,” but soon moved to “Love, Peter” and “Love, Susan.”

68 I first met literary theorist and educator Louise Rosenblatt (1904–2005), author of *Literature as Exploration* (1933), at a dinner with her husband, Sidney Ratner; she was 90 years old at the time. Later, after Sidney’s death, she would visit Miami in the winter, where she taught a class in my course on philosophy and literature, and delighted me with stories of her time as Margaret Mead’s roommate at Barnard College.

69 I met Sidney Ratner (1908–1996), a historian of economics who had at one point collaborated with Dewey, through meetings of the Society for the Advancement of American Philosophy. There followed an enjoyable correspondence in the course of which he sent me a copy of Dewey’s correspondence with Arthur Bentley—whose reaction to reading Peirce for the first time was exactly like mine: “Oh my goodness, I just found a goldmine!”

70 Readers can find one such story in “The best man for the job may be a woman, and other alien thoughts on affirmative action.” But I don’t care to dwell too much on such past injustices and condescension—it’s a waste of a short life.

ford's admirable practice of grading undergraduate final exams anonymously—but for which I might never have got past the first post.⁷¹ I suspect, though, that my biggest problem hasn't been my sex, but my stubbornly independent temperament.⁷²

As you see, my academic and intellectual independence, the freedom to think things through for myself, hindered only (only!) by my own weaknesses, prejudices, and blind spots, has come at quite a high price: isolation, a sense of alienation, and sometimes real resentment and hostility on the part of some who are unwilling, or not in a position, to pay the price such freedom requires. (Perhaps that explains my experience at the Humanities Center at the University of Minnesota, where my first lecture had a tiny audience, my second a much larger one; and after the second a shy graduate student came up, handed me a brown-paper package—which turned out to contain a copy of Helmut Schoeck's *Envy*,⁷³ inscribed "To Susan Haack, with admiration"—and scuttled away before I could thank him.)

So I'll end with a treasured memory, a favorite anecdote that strikes all the right notes: Sometime in the mid 1990s, Sidney Ratner called to tell me that during a dinner at the Institute for Advanced Studies in Princeton the previous evening, Morton White, who knew something of my work on pragmatism, had asked him "who *is* she?"—a question expecting the answer, "she's So-and-So's student, from Such-and-Such University." "I hope I didn't say the wrong thing," Sidney went on. "What *did* you say?" I asked. "I said, 'she's very independent,'" said Sidney; "was that all right?"—to which I replied, "Sidney, if you weren't in New Jersey, I'd *kiss* you!" That was the nicest, as well as the most accurate, answer he could have given.⁷⁴

71 At least, if what I was subsequently told by someone in a position to know—that in my case, after they learned the names of the candidates, the examiners had sent the class list back to the Registrar's office with a little note saying "check this one; it can't be a woman"—was true.

72 Of course, the two issues intertwine; probably an independent woman philosopher is even harder for the establishment to stomach than an independent male philosopher is.

73 Helmut Schoeck, *Envy: A Theory of Social Behavior* (1966), trans. Michael Glenny and Betty Ross, (Indianapolis: Liberty Fund, 1987) (I have always wondered whether philosophy graduate students might have been discouraged from attending my lectures by a graduate director who was, I fear, disturbed by my critique of feminist epistemology; but, of course, I can't actually *know* what happened.)

74 My thanks to Mark Migotti, who, as usual, gave me very helpful comments on a draft, and to Nicholas Mignanelli for his help with formatting the footnotes.

Editorial Information

AIMS AND SCOPE

COSMOS + TAXIS takes its name and inspiration from the Greek terms that F. A. Hayek famously invoked to connote the distinction between *spontaneous orders* and *consciously planned orders*.

COSMOS + TAXIS offers a forum to those concerned that the central presuppositions of the liberal tradition have been severely corroded, neglected, or misappropriated by overly rationalistic and constructivist approaches. The hardest-won achievements of the liberal tradition has been the wrestling of epistemic independence from overwhelming concentrations of power, monopolies and capricious zealotries. The very precondition of knowledge is the exploitation of the *epistemic* virtues accorded by society's *situated* and *distributed* manifold of spontaneous orders, the DNA of the modern civil condition.

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