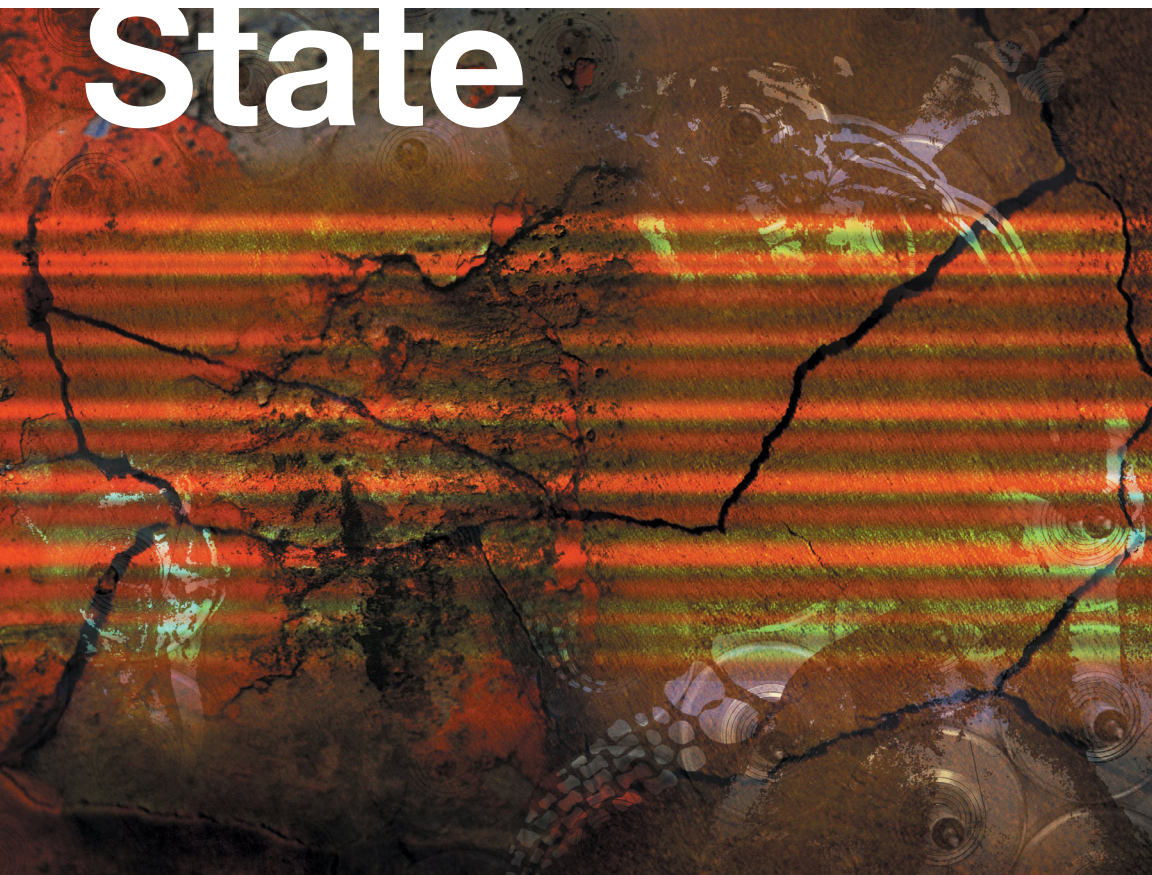


DAVINA COOPER

Feeling Like a State

Desire, Denial,
and the Recasting
of Authority



Feeling Like a State

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DAVINA COOPER

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Desire, Denial, and the Recasting of Authority

Duke University Press Durham and London 2019

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CONTENTS

Acknowledgments ix

INTRODUCTION. **Reimagining the State** 1

ONE. **Legal Dramas of Refusal** 28

TWO. **Retrieving Dissident State Parts** 52

THREE. **Pluralizing a Concept** 75

FOUR. **State Play and Possessive Beliefs** 105

FIVE. **The Erotic Life of States** 130

SIX. **Feeling Like a Different Kind of State** 153

Notes 177 References 225 Index 253

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INTRODUCTION. **Reimagining the State**

In 2016, Country Mill Farms applied for a license to sell its produce at East Lansing Farmer's Market in Michigan for the following year.¹ Selling produce there was something the farm had done since 2010. However, on this occasion its license application was turned down. In 2014, the farm had rejected two women's request to have their wedding ceremony in the farm's orchard because of the owner's religious beliefs. In response, one of the women had posted a Facebook message "discouraging people from patronizing Country Mill."² Shortly afterward, the farm's owner also posted a statement on Facebook affirming his commitment to the belief that "marriage is a sacramental union between one man and one woman."³ His action brought the farm into conflict with the City of East Lansing.

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On 7 March 2017, the city wrote to the farm refusing its application to sell produce at the market. The letter stated, “It was brought to our attention that The Country Mill’s general business practices do not comply with East Lansing’s Civil Rights ordinances and public policy against discrimination as set forth in Chapter 22 of the City Code and outlined in the 2017 Market Vendor Guidelines.”⁴

Much can be gleaned from a legal episode such as this, with its juxtaposition of religious and secular discourse. As “deeply held beliefs” get pitted against city codes and legal ordinances, liberal state authority confronts the conservative Christian views of a family business. In this book, I am interested in such episodes in terms of what we can learn about the state. Conservative Christians have been very ready to denounce liberal state authorities as oppressive and overreaching, improperly intervening in people’s personal and religious lives to promote a pro-gay agenda. However, I want to explore these episodes to think about something else. Can we take up conflicts such as this one, in which selling at a farmer’s market becomes the price for refusing two women an orchard wedding, to support thinking in transformative progressive ways about what the state could come to mean and be?

“The state” is a controversial term in political imaginaries of socially transformed, more just ways of living. Much recent work on thinking about better worlds, and how to accomplish them, treats scaled-up political and institutional structures as part of the problem. This is particularly apparent in anarchist writing, but not only there. Feminist, Marxist, antiracist, and other left-leaning politically motivated scholarship also imagines change in ways that regularly pit progressive forces *against* state power and authority. This is unsurprising since nation-states, particularly in the global North, emerge as prime movers when it comes to social injustice and harm, from colonialism and environmental depredation to propping up transnational corporations and imprisoning poor and stigmatized populations. But can states be otherwise; importantly, do we need to *think* the possibility of states being otherwise to imagine, and support the realization of, new forms of governing? Thinking states otherwise tends to refer to states *as we currently know them* behaving in new ways, including through wholesale practical reform. But there is another register for thinking states otherwise: it involves *conceptually reimagining what it means to be a state*. This second register lies at the heart of this book.

I want to use the language of statehood to think *toward* public political governance formations as responsible, activist, and caring; governing in ways that are horizontal, engaged, playful and sensory.⁵ And since states, and the political conditions of state thinking, vary considerably between geopolitical polities, this book focuses on a set of (neo)liberal common law polities in the global North.⁶ Liberals sometimes adopt an idealized approach toward those formations *currently understood as state formations* (or at least some of them), identifying in their essence possibilities for democratic renewal. From a more radical perspective, however, reimagining what states might *do* also requires reimagining what states *are*.⁷ This ontological dimension is particularly important when it comes to questions of responsibility and power. While these are often reduced to their exercise, also important for the account of states in this book is the presence of power and responsibility as potential—in other words, as dimensions of what it is to be a state that can be “held” as well as done. But if it makes sense to hold on to the state as an entity, what kind of entity is it? To the extent the state demonstrates the conceptual flux and plurality associated with many concepts, what ways of thinking about the state might prove helpful for a transformative social justice politics (recognizing that this will of course vary by time and place)? For instance, is it useful to think about the state as “embodied”—appreciating that this does not have to take a human form?⁸ Is the state better imagined as a terrain or field through which diverse networked relations are forged? Can we usefully think of states as diversely scaled and overlapping, drawing their authority from different, even contrasting, sources? And should we approach states as acting deliberately, and with intention; or instead treat what they do as merely the systemic effects of particular rationalities, interests and logics?

When it comes to the state, resources for thinking in progressive hopeful ways, by which I mean in ways oriented to greater social equality in power, resources, and freedoms within, beyond, and between social spaces; to living more collaboratively and less competitively; and to supporting ecological welfare among people, other animals, and varied vegetative life and landscapes, come from a number of places. One is utopian writing, including fiction.⁹ Ruth Levitas (2000: 28) describes “utopia’s strongest function” as being “its capacity to inspire the pursuit of a world transformed.” While developing desire for another way of living can be enhanced by novels depicting wonderfully perfect places, much contemporary utopian

fiction has changed tack, producing places that are complex, evolving, and conflict-ridden.¹⁰ Here, utopian fiction provides resources for the imagination in thinking about the challenges that less hierarchical forms of governing confront. With their flaws and histories of the future, they speak to progressive utopian concerns with what is possible rather than with what is merely daydreamed (Levitas 2000: 28). A different resource for thinking the state in more progressive ways comes from “real-life” experiments in governing.¹¹ In his Real Utopias Project, Erik Olin Wright (2010) advocates working the tension between imagining a better world and engaging with what is practical and, indeed, *practiced*.¹² From this perspective, radical local government, democratic participatory ventures, and other actualized counterinstitutions offer material grounds from which not only to organize governing differently but also—despite the antistate tenor of some of this work—to *rethink* what government or states (could) mean and entail, challenging the assumption that states must be oppressive, territorial, self-interested, and national.¹³ Utopian fiction and experiments in governing are important stimulants to the left imagination, but the approach of this book involves something else. It takes up a “real” contemporary experience rather than an imagined place or future. Yet the aim is not to extend the experience or realize its ambitions. Instead, and rather queerly, the book draws on a contemporary legal drama involving conservative religious activism to explore the lines of thinking it offers for reorienting the concept of the state leftward toward a progressive transformative politics.¹⁴

Conservative Christians’ withdrawal of goods, services, or membership from gay subjects and activities on religious grounds,¹⁵ and public bodies’ ensuing withdrawal of contracts, employment, grants, and subsidies from withholding conservative Christians, has generated extensive legal action and attention. In this book, I explore both in pursuit of three objectives. The first is to reimagine what it could mean to be a state. Adopting an approach that treats the concept of the state as inevitably plural and contested—Are for-profit providers of public goods part of the state? What about organized religion or the institution of the family?—I want to think about different imagined and material “cuts” (Barad 2003: 816). By this I mean different ways of framing, combining, and separating the elements that assemble, and that are assembled, as state elements to support a progressive account. Clearly, there is no single way to do this. As the book unfolds, I explore a conception of the state organized around the assumption of responsibility, where responsibility is public, collective, and reflexive—as it stretches beyond

particular preexisting obligations. Responsibility can manifest itself in authoritarian as well as democratic ways, as right-wing as well as left-wing. This book approaches responsibility in terms of the pursuit of social justice, care, and democratic forms of embeddedness. But rather than focus on the policies or reforms that would allow states to operate in this way, I am interested in the contribution that *reconceptualizing* the state around notions of responsibility might make. If we orient ourselves in this way to what states could come to mean, what qualities and dimensions, including those currently glimpsed (or at least glimpsable), become important? Of course, this might include qualities identified as integral to *hegemonic* accounts of the (neo)liberal state. But this book focuses on other elements—ones that help to compose current state practices but are yet largely ignored as too marginal to warrant much attention. Being oriented to these elements, which also requires *reading for* these elements, plural forms of statehood, dissident elements in the state's makeup, and practices of sensory governing emerge; so, too, does play. This is not simply the cruel strategic play that politicians and nation-states undertake, but also state play that is creative, open-ended, pleasurable, and sometimes artful and wily. Play is an interesting, in many ways counterintuitive, register for thinking about state activity. One question this book poses is whether it would be good for practices of governing to be more playful and, as important, what transformations would be required for such play to be conducted willingly, equally, and free from the pressures of core unmet needs?

The second aim of the book is to explore the politics of withdrawal: of subjects pulling out and pulling things out. Withdrawal is an important, if contentious, technique of political activism. It is also an important, if contentious, means of governing. Carried out for different reasons, the withdrawal centered in this book is rationalized by the drive to avoid endorsing or legitimating the political “other,” an “other” that is sometimes gay, sometimes conservative Christian, and sometimes the liberal state. Failing to pull out, protagonists argue, risks leaving a personal residue within rejected activities and people while becoming tainted by their touch in turn. Pulling out is often approached as an exercise of sovereign authority and force, powerfully and painfully withdrawing. This imaginary is present here, but what is also expressed is a quite different politics of governing that involves circuits or chains of “reciprocating” and interacting withdrawals (as the farmer's market episode at the start of this chapter illustrates). Thus, despite the at times polarizing discourse of two forces

confronting each other (conservative Christians against secular state bodies; conservative Christians against gay-equality advocates), relations are more muddled and complex. Withdrawal is also not simply a severance or departure but a way of retying bodies together, including through the intense sensory experience its enacting can precipitate (chapter 3).

Finally, reimagining the state through a legal drama brought about by conservative Christian withdrawal provides an opportunity to explore a queer, utopian conceptual method for developing transformative progressive thinking.¹⁶ This method parallels other postcritical approaches in pursuing a reading that is generative and hopeful rather than negative and dystopic. Thus, the book does not focus critical energy on conservative Christianity or the (neo)liberal state, despite my sharp disagreements with both. Critical work on right-wing Christian forces and (neo)liberal states has been extensively and powerfully carried out, and my discussion seeks neither to replicate nor to negate this work. I do not want to repair conservative Christianity or the capitalist state—to uncover and celebrate nice, positive stuff in either. Rather, I am interested in the unexpected traction this legal drama offers for thinking about the state in some different ways, taking up Rita Felski's (2015: 12) suggestion that we consider what a text "unfurls, calls forth, makes possible." Applied to conservative religious activism, this is a method that aims to expand the conceptual resources available for progressive thinking—something that should not have to rely exclusively on left-wing practices, radical initiatives, and imagined utopias. But it is also a method that raises challenges and difficulties: how exactly do we work with a legal drama, such as this, to develop left conceptual thinking on the state? In this sense, the book is an experiment: to examine where this method might take us. What conceptual pathways are opened up, and how might these conceptual pathways—in which the state is reimagined—come to be practically forged and enacted?

Withdrawal: A Third Moment in Conservative Christian Antigay Politics

Conservative Christian antigay withdrawal came to prominence in the 1990s and continued to swell across the common law jurisdictions of the United States, Canada, and Britain and, to a lesser degree, Australia, New Zealand, and South Africa.¹⁷ By the second decade of the twenty-first century, the flow of news stories had become something of a gush

as story after story described conservative Christians' duels with secular state (and other public) authorities over their entitlement to be exempt from human rights and equality laws outlawing discrimination on sexuality grounds. The *Ladele* case, in which a London marriage registrar refused to perform (same-sex) civil partnerships on religious grounds, is one of the best-known British examples.¹⁸ However, the "conscientious objection" dramas in which service providers (police officers, doctors, social workers, teachers, therapists, librarians, and adjudicators) refused to fulfill gay-equality obligations because of their religious beliefs are not alone. They sit alongside a range of other withdrawal scenarios. Explored more fully in chapter 1, they include small businesses, such as printers, wedding-cake makers, and venue owners refusing to make their goods and services available to gay (or gay-positive) customers; Christian organizations excluding or dismissing (out) gay members and staff; and public bodies run or dominated by conservative Christian agendas, such as school boards or City Councils, withholding gay-positive resources.

Yet this legal drama, as I have said, not only involved withholding Christians. Alongside their many instances of refusal were those of public bodies who withdrew goods from conservative Christians, reacting to prior religious acts of omission (and sometimes commission). They included regulatory bodies denying accreditation to Christian colleges (or withholding access to professions, such as the bar); cities' and school districts' withdrawal of transportation, accommodation, and other subsidies from youth groups, such as the Boy Scouts of America, for taking a public antigay stance; universities withdrawing recognition from conservative Christian student societies whose membership criteria discriminated on grounds of sexuality; local authorities withdrawing adoption contracts from Catholic organizations for refusing to work with gay prospective parents; and the demotion and sacking of public sector staff who refused to work in a non-discriminatory manner.

Withdrawal is part of a complex and much longer history of Christian approaches to homosexuality, and of a conservative Christian agenda that also takes in antifeminist, anti-trans,¹⁹ racist, deregulatory, and anti-immigrant politics.²⁰ It constitutes a third moment within contemporary (neo)liberal state-Christian-gay politics, where opposing decriminalization constitutes one moment and resisting gay civil rights constitutes another.²¹ This third moment emerged as gay equality passed from being a social-movement aspiration and much fought-over civil right to a signature

policy of liberal governments as national leaders and representatives used gay rights to represent the kind of state they were. When the Conservative Party leader David Cameron resigned as prime minister of Britain in July 2016, he described the introduction of gay marriage as one of the “greatest achievements” of his term.²² Yet affirming gay equality was never just about the “we.” Presented as a core feature of liberal statehood, it quickly acquired an external aspect (indeed, its outward-facing application helped confirm its domestic status) as states took gay rights up as a litmus test of others’ civilized values. For migrants, in some cases, and nation-states, in others, demonstrating a willingness to accept or introduce gay equality came to symbolize transnationally “shared” norms of liberal tolerance, human rights, and cosmopolitan ethics.²³ As such, it also functioned as one section of a gateway to accessing sought-after international resources and goods, including political membership. East European countries confronted the dilemmas of a growing gay rights momentum, as decriminalization and antidiscrimination provisions became accession criteria for joining the European Union.²⁴ Carl Stychin (2003) describes how such provisions constituted a political staging post in normalizing homosexuality but also, in turn, in normalizing countries such as Romania.²⁵ Yet as states used gay rights to demonstrate their liberalness, conservative opponents expressed their opposition to liberalism through a mirroring antigay stance.²⁶ In Romania, the archbishop declared, “We want to join Europe, not Sodom” (see Stychin 2003: 122).²⁷

Identifying and mobilizing as the gay rights other—and so also using gay rights as an identity-confirming device—did not just involve cross-border relations.²⁸ In different countries, conservative Christians took up the stance of an embattled domestic minority to demand the right *not* to participate in advancing gay equality and to suffer no loss of public and professional benefits as a consequence.²⁹ The self-depiction of religious people being forced to withdraw from commercial and governmental transactions to pursue religiously upright lives reveals a very different political juncture to that witnessed in struggles by the Christian right against decriminalization and civil rights. In the battle over decriminalization, it was gay activists and supporters who were compelled to demonstrate that gay lives would not be harmful to others—an argument for keeping gay sex private and closeted so that a (presumptively heterosexual) public would not take offense. Civil and human rights protections and antidiscrimination laws, while also contingent on reassuring that there would be no “straight” harm, depended on demonstrating that gay people had a

right to lead fruitful, meaningful lives as gay, a right that state protection would help secure (see also Herman 1997). But in this third (neo)liberal moment, with human rights protections and antidiscrimination laws for both sexual and religious identities in place, the focus shifted. Instead of the spotlight being on a gay minority, it moved to the rights and freedom of *dissenters* and what they were also due. Conservative Christians argued that the struggle over equality and rights was not about defeating others' (undeserving but nevertheless legally institutionalized) identity rights but about protecting their own (see also Lewis 2017; McIvor 2018). Their right to "be," and to be Christian, was in jeopardy, thanks to public bodies' refusing to recognize their religious entitlement to live according to deeply held beliefs—to inhabit and dwell within a Christian normative universe rather than be forced to leave it in order to work, trade, and access public goods.

In contrast to other moments in which Christian opposition focused on the harms homosexuality caused—corrupted children, damaged families, and disease³⁰—in this drama, conservative Christians focused on the harms caused to them by compelled activity and by the state. Insisting that gays would not be affected by their "conscientious" withdrawal (since alternative willing providers were readily available), conservative Christians claimed that the state and other liberal public bodies were hurting and damaging them by forcing them to act against their beliefs.³¹ Discussing Lillian Ladele, the London registrar who refused to perform same-sex partnership ceremonies, the Australian academic Patrick Parkinson (2011: 290) remarked, "Ms. Ladele didn't seek for her views on same-sex civil partnerships to become the law of the country but that her personal and conscientious objections be respected." Here, instead of focusing directly on gay beliefs and activities, as happened during other moments, conservative Christian dissenters focused on what *they* themselves believed in and wished to do, where compelled compliance with sexual-equality rights would severely undermine their capacity to pursue authentic and committed lives. Yet in doing so, they were also able to create a discursive space for religious antigay beliefs regarding sin. This was not done ostensibly to delegitimize gay rights (or to argue the state should treat gay sexuality as less valid) but to legitimate *their own right* not to participate.

It would be wrong, however, to read conservative Christians' demands for legal accommodation as driven simply by a desire to be left alone. There has been extensive discussion on the place of religion within contemporary (neo)liberal public spheres. Writers debate the public legitimacy and utility

of explicitly religious arguments and rationales; how and whether states should recognize religion as a (stable) source of values or as a fit basis for public service provision;³² and how to balance dominant, minority, and nonreligious belief structures in institutional arrangements,³³ as well as in a nation's ongoing story (or stories). These discussions have taken different forms across the jurisdictions of this book, being inflected by national religious cultures, histories, demographics, and, specifically in Britain, the enduring established status of the Church of England, with its official fusion of church and state (see, e.g., Commission on Religion and Belief in British Public Life 2015).³⁴ They are also discussions that have taken shape within different religious communities, including Christian ones, at times with great ferocity between (and among) more liberal and conservative wings.³⁵ Since the status of Christianity in political and policy discourse has been extensively addressed, I do not want to spend longer on it here. What is important for our purposes is the claim that legal accommodation was not simply about conservative Christians' opposition to gay rights but part of a more ambitious Christian project. It is striking that the litigation discussed in this book, precipitated by the religiously motivated withdrawal of gay-positive goods and services, almost entirely involved Christians and Christian organizations rather than conservative Muslims, Jews, and Hindus, for example. This discrepancy can be explained in terms of access to resources, strategic priorities, and the complexion of faith-based litigating organizations (including, specifically, the presence of several very active conservative Christian litigation organizations).³⁶ But it also reflects two other social factors: first, many Christians' sense of lost entitlement as they watched (and depicted themselves watching) their hegemonic status slip away; and second, their ambition to advance public Christianity, using litigation in the struggle to do so.

In the rest of this chapter, I explore in more detail how a Christian project of maintenance, resistance, and advancement can contribute to reimagining the state as a salient concept for a transformative progressive politics. At first glance, it seems rather odd to imagine that a legal drama over conservative religious activism—a drama that foregrounds withdrawal rather than provision; that reveals state power in its disciplinary and extractive (some would add, punitive) form; and that is framed, at least here, by the litigation that ensued—can provide fruitful ground from which to reimagine, leftward, what it could mean to be a state.³⁷ I want therefore to focus

on three core dimensions of this legal drama: the expression of dissenting religious beliefs, withdrawal, and litigation.

Minority Dissenting Beliefs

Conservative Christian action provides an interesting site from which to think about the political work of dissenting beliefs. From a left perspective, resistance and dissent are typically approached in a positive, empathetic, even celebratory manner, predicated on the assumption that the dissent in question involves left-wing opposition or refusal. But when dissent comes from right-wing forces, interpellating themselves as vulnerable minorities, what does this mean for progressive political thought? While some radical academics favor all dissent for its attachment to minority status, and for keeping hegemonic projects precarious, others want to secure progressive hegemonic state projects. But how, in the process, should objectors be treated? Here we are talking not about objectors waving placards or marching in public civic spaces, but about objectors who dissent by refusing to comply with, or otherwise disputing, the terms and reach of already-in-operation equality law. Should objectors be compelled to comply; should wiggle room be made available through legal accommodation as “conscientious objectors”;³⁸ or should other means be found for dissent to be performed in less adversarial registers, such as through state-based forms of play (see chapter 4)? These kinds of normative and policy questions surface regularly in debates about agonistic democracy. I want to approach them from a different angle: how should we treat minority dissidence in conceptualizing what it is and means to be a state?

There is a tendency for both supporters and opponents of conservative Christian dissenters to treat them as the *recipients* of state action, separate from the state even as states act on them (and sometimes in partnership with them). But when and why are they separate? Does it have to do with their status, inasmuch as they are users and clients of state provision or publics affected by the state’s regulatory reach? Is it because their expressed beliefs are minor, dissident, or improper? This would suggest that religious people may form a state part—for instance, as employees—but in the process their beliefs and illegitimate actions are stripped from what they bring to composing the state. The place of *minor* elements in the conceptualization of the state is a recurring theme of this book. Routinely,

what is deemed to make up the state is limited to hegemonic and durable systems, values, and forces. But if we want to explore what statehood could mean when constituted according to more democratic forms, including as a responsive part of heterogeneous everyday life, we may want a *conception* of the state that not only incorporates dissident, minority, even fleeting values, forces, and actors, but that recognizes them as already incorporated. We may also want a conception of the state that is not restricted to the *provision* of regulation, control, and of goods and services but that also encompasses their receipt and usage (see chapter 2). Withdrawal by conservative Christians foregrounds the value of such a move by drawing attention to the shifting, often ambiguous distinctions drawn between providers and users of state goods—Where, for instance, do foster carers sit?—while highlighting some of the minor political rationalities carried into state processes by both. As with many issues in this book, the question of how and where to place minor rationalities and beliefs has both normative and interpretive dimensions: what kinds of beliefs *should* be (and become) part of the state's composition, and how should we understand and think about those beliefs *already identified as present*? What makes something “part of” a state rather than “within” it? And does it matter? What is at stake in how we address this question?

Conservative Christian legal activism draws attention to the marriage registrars, teachers, firefighters, foster parents, and others who occupy state positions and roles yet refuse to affirm gay equality. It also helps us to think about state form and reach in the overlap and clash of entities that claim to “feel like a state.” Conservative Christianity signals a sovereignty that seems far from progressive with its religious hierarchy and authorities—deific and human. Nevertheless, despite (perhaps even because of) its authoritarian key, conservative Christianity—like other countersovereign religious structures—poses a powerful challenge to state-assumed monopolies on organized political sovereignty. Certainly, the history of state-church relations, in the jurisdictions of this book, is an entwined one, as secular (lite) states in countries such as Britain emerged from histories of religious political power in ways that, over time, mirrored, deposed, resisted, delimited, and revised Christian body politics. Yet as this book explores, the litigation that withdrawal has generated, and the claims made during its course, reveal how contested political and legal authority remain. This book does not focus on Christian conceptions of sovereignty in any detail. However, it takes up their challenge to a state sovereign mono-

poly as an entry point for thinking about other governance forms. To the extent these forms are overlapping and competing, they suggest a version of “strong state pluralism” particularly when governance forms do not recognize each other as animate or existing, let alone as having legitimacy (see chapter 3). But while conservative Christian withdrawal stimulates thinking about contested authority within (neo)liberal polities, the legal and political rhetoric surrounding attempts to withdraw from gay-equality entitlements simultaneously invokes visions of monolithic and monstrous states overstretching their proper mandate and role. I explore these depictions of an overreaching state in chapter 2. Certainly, they can be read as deliberately exaggerated. Nevertheless, from the perspective of reimagining the state they are helpful in thinking about how state boundaries and limits should be (and are) conceptualized. Is there a space beyond the state—the conventional terrain coded as civil society—or should we treat the state as reaching everywhere and everything? Conservative Christians present the extensive state as a form of liberal fascism, but there are other ways to think about a more pervasive state presence that do not assume all social relations are entirely or fully captured by it.

Thinking through Withdrawal

The second primary dimension of this book, withdrawal, foregrounds a wide spectrum of different norms and rationalities. When undertaken by states, withdrawal can mean the removal of welfare and other goods from those deemed undeserving. As such, it produces (but also reveals) the precarity of those whom states abandon or permit to be legally subjected to abandonment by others (see chapter 1). Yet withdrawal can also be a part of social activist, trade union, Indigenous, and nationalist politics. In the form of strikes and boycotts, withdrawal aims to exert economic or political pressure or to symbolize opposition to another’s actions along with a refusal to be implicated.³⁹ Withdrawal can act as a denial of state sovereignty and legitimacy, such as when Indigenous or minoritized nations withdraw recognition from colonial powers, asserting their right to autonomy or countersovereignty instead.⁴⁰ It can also assert national attachments against a transnational regional structure, witnessed in the movement of withdrawal to have shadowed this book’s writing, namely of the UK’s planned departure from the European Union. The withdrawal discussed in this book, however, cannot be easily compartmentalized because

it involves varying rationalities on the part of (neo)liberal states, conservative Christians, and others as independence, autonomy, legitimacy, punishment, and reattachment provide important justifications within this mix.

Withdrawal is an important composite political concept. But it has received limited academic attention as an overarching term. Discussion tends to focus on one or another of its strands and rationalities. As a mechanism for governing and for politics, withdrawal contributes to the institutional and political (re)allocation of respect and allegiance; (re)directs resources, opportunities, and recognition; and expresses public rejection of certain values while affirming others. As an episode of disruption or challenge, it also provides a productive analytical frame. Different scholars have described how breaks, ruptures, exceptions, and refusals refract social life in generative ways, creating understandings that can get missed when life goes on as always. Withdrawal illuminates relations, resources, and practices obscured by the repetitions of ordinary government. I want to briefly signal three that are central to reimagining the state: responsibility, the quotidian, and sensation.

Questions of responsibility arise in relation to the distribution and consequences of withdrawal. As I discuss in chapter 1, political and legal discourse often distinguishes between the rights of religious organizations to withdraw membership from those, such as “out” gays, deemed to be embodying a message inconsistent with the values of the organization, and the obligation placed on state bodies *not* to discriminate. In this way, conservative Christians argue for their own right to withdraw, while at the same time demanding unconditional provision from the state—that its goods, including employment opportunities, should not be withdrawn from them simply because they withdraw from others. This distinction speaks to a perception of state responsibility as being significantly different from that of social movements or religious or charitable organizations. Conservative Christians characterize their movements and organizations as legitimately able to set conditions for accessing their resources. However, they don’t feel the same about the state—or, at least, the conditions states impose, conservative Christians argue, should not curtail religious freedom. This argument has not been adopted in full by the courts, although the law varies between jurisdictions. For our purposes, what is important is the anchoring of this argument of distinction in claims about the state’s proper reach, powers, membership, and responsibilities. Critics argue that these distinctive features cause the state’s withdrawal of contracts, resources,

and benefits to look very different from withdrawal by religious and community organizations, even when the withdrawal concerns an analogous benefit, such as employment. The distinction between the state and civil society is one that liberals and many conservatives accept. However, if reimagining the state unsettles it, one question is: in what direction? Treating state bodies as akin to community organizations may suggest that states should also have the freedom to differentiate between lawful identities on normative grounds and so be able to provide jobs, resources, and services to some but not to others. Alternatively, community organizations may be properly treated more like responsible state organizations and so prohibited from applying “private” values. One problem with both proposals is that they rely on *existing* conceptions of the state or community in constructing one as the paradigmatic norm. If we reimagine what it means to be a state, both state and wider society get reconstituted in the process. This has implications for how we think about responsibility and what it means to act like a state.

The second facet that withdrawal highlights is the *everyday* character of governmental resources: the jobs, membership, leisure activities, festive spaces, schoolbooks, accreditation, and recognition that public bodies provide. Governing here is not some abstract activity operating on a lofty plane but centrally concerned with the substance and availability of those everyday goods on which people rely. In the legal drama of this book, the goods in question come from many sources. It is not simply that one (elite, powerful) body offers and so has power to withdraw goods from another. Both provision and withdrawal are far more dispersed and dynamic. What different bodies withdraw may diverge, but even seemingly power-poor actors—frontline workers and sole traders, for instance—can withdraw sought-after goods, including their bodies, its labor, and the symbols of community approval.

Tracing withdrawal, particularly as it moves through circuits of bodies pulling out and pulling back, draws attention, thirdly, to the rich texture of governing. At one level, withdrawal foregrounds the formal mechanisms and systems through which a prior (or anticipated) contact takes shape: from market purchases to accreditation systems, policy agreements, and contracts. But at another level, it foregrounds the sensory character of governance, as pulling out—refusing to provide a service or benefit—generates friction and so, in effect, contact (see chapter 5). Writing on state touch or contact focuses largely on its coercive and dominating qualities (see, e.g.,

Woodward and Bruzzone 2015; Zengin 2016). But if we are interested in reimagining what it could mean to be a state in ways that give the state a conceptual relevance for transformative progressive politics, the capacity for other kinds of state touch to be possible is hugely important.⁴¹ Certainly, instances exist of seemingly kinder, gentler forms of touch in relation to particular public services. These forms have not been exempt from criticism. At the same time, they provide a jumping off point for thinking about other forms of sensory government. Reimagining what it could mean to be a state, as this book does, unsettles prevailing left assumptions about what state touch *necessarily* entails. It asks, What would be required for state touch to be replenishing, stimulating, and satisfying, or to be teasing, playful, and lighthearted? Chapter 5 explores these questions by bringing the concept of the erotic to bear on this drama of withdrawal. In relation to the state, the erotic-as-sex is usually deemed a pernicious form of political power. But are there other, horizontal, pleasurable, consensual ways to approach erotic governance, attuned to governance's vital, desiring, sensual qualities? And what can a legal drama about conservative Christian withdrawal contribute to this discussion?

Litigation and Legal Narratives

Finally, this book is about litigation. Within gay, queer, and other sexual movements, intense debate has occurred for some decades over the political place and value of litigation in contrast to other, seemingly less individualized, reactive, and commodified ways of pursuing social change.⁴² This debate has been immensely fruitful in developing a nuanced, more equivocal, account of rights. This book deals with similar kinds of legal conflict, but I do not approach the cases as instances of the legalization or juridification of politics. My aim is not to evaluate the effects of litigation—the difference that tallying wins and losses might make; how litigation influences social movement politics; or whether the courts are the wrong place for this kind of political controversy.⁴³ I am not reading court decisions to understand their underlying legal rules, principles, and values; to analyze their rhetorical techniques; to appreciate how the courts think about the terms of the dispute; or to identify better jurisprudential ways to resolve them. This work has been extensively and effectively done. Rather, I am interested in legal *narratives* (and the discursive utterances that surround such narratives)⁴⁴ for the representational and organizational work they do

in telling a particular, *authoritative* story of events, depicting a social drama that, in the process, they also actualize and shape.⁴⁵ Court documents, from briefs to judgments, produce a story that is far from transparent and unmediated. As feminist, queer, antiracist, and other legal scholars have long argued, legal documents presuppose, reinforce, and generate particular ways of understanding the world. Their juridical form and underpinning legal principles order events and evidence in ways that, purposefully (and otherwise), edit and frame the views of litigants, witnesses, and other participants. In a politicized drama such as this one, litigants' and witnesses' words also arrive carefully sculpted—not least by litigating organizations engaged in manufacturing “stock narratives” of loss and hardship.⁴⁶ Their words cannot be read as expressing, in any straightforward way, the authentic or autonomous beliefs, understandings, and feelings of those to whom they are assigned.

Still, the legal narratives cast by this drama are productive for reimagining the state even as they foreground certain relations and practices rather than others. (Indeed, it is because they so clearly represent the world through and from a particular institutional place, as Patricia Ewick and Susan Silbey (1995) discuss, that legal narratives shed light on the situated character of other, less obviously institutionalized knowledge claims about the state.) First, they are sites of political multiplicity. This is most clearly evident in the utterances and texts preceding and surrounding legal decisions,⁴⁷ but even judgments weave different voices together, incorporating divergent, often clashing, narratives as they constitute a particular preferred reading of the conflict. The polyglossia of court documents as spaces in which counternarratives and counterdiscourses coexist with hegemonic ones is well known. For my purposes, the value of legal texts here comes particularly from the stories judges tell.⁴⁸ These are stories of victimization, discrimination, and hurt; of intention and motivation; of the legal constraints actions confront; and of investments, risk, and loss. They are also stories about values; about what it means to practice equality, fairness, and justice; and about the legitimacy (or illegitimacy) of discipline, order, and hierarchy when the alignment of right and left with hegemonic and subversive perspectives—of which is which—remains far from settled and clear. In this drama, judicial stories, and the stories told around these stories, are fundamentally stories of the power, scope, and responsibilities of governing. As such, they offer a detailed reconstruction of institutional practice and the intricacies of organizational interactions in conditions

where secular liberal governance projects confront challenging religious assertions of sovereignty.

Litigation over withdrawal provides the primary archive for this book—a varied, sometimes jumbled collection of materials that helps with the task of reimagining what it could mean to be a state. The texts I assemble and draw on are a mix of judicial findings (and declarations); legislators’ assertions; and organizations’, litigants’, and activists’ predictions, claims, and fears. Not unlike the free-running discussed in chapter 4, these varied texts provide a terrain that I work with and repurpose, moving among different segments and strands of this legal drama’s landscape to develop an account of the state, oriented to what it *could* mean and be. I have spent some time tracing how a legal drama over conservative Christian refusal can support progressive reimaginings of what it could mean to be a state, recognizing that this legal drama may seem a queer or strange ground from which (and with which) to engage in transformative state thinking. Yet so far my discussion has presupposed that states are worth transforming, materially and imaginatively. I therefore want to turn finally to this question: why should progressive actors hold on to the state in thinking about transformative politics, and how might it be done?

Why Hold On to the State?

Left critiques of the state are legion and take a variety of forms. There are those who reject the state, conceptually, as an unhelpful and mystifying abstraction that reifies (and overstates) concentrations of political power. Addressing feminist state scholarship, Judith Allen (1990: 22) describes the abstract category of the state as “too aggregative, too unitary and too unspecific to be of much use.” Philip Abrams (1988: 77) also famously objected to the concept of the state on the grounds that it reified a “legitimizing illusion.” Abrams (1988: 79) argued that, to avoid *believing* in the state, it was important to recognize “two distinct objects”: “the state system and the state-idea.” Abrams (1988: 77) writes, “The postulate of the state serves to my mind not only to protect us from the perception of our own ideological captivity but more immediately to obscure an otherwise perceptible feature of institutionalised political power, the state system, in capitalist societies.”

The charge that the concept of the state is excessively general, idealized, and grandiose, and that it masks key relations of power is an impor-

tant one. (It also parallels contemporary critiques of other, quite different concepts, including gender.) A different critique focuses less on the state as an abstraction of form and more on its value as a governance concept. According to this critique, the state has become (or is becoming) an anachronism, its prominence (and dominance) as concept and object evaporating in the face of other growing forms and techniques of contemporary rule and identification. While the nation-state once had importance, coherence, and meaning as a political formation, the globalization of neoliberal markets and the growth in non-state forms of governance have whittled its status and significance away so that it is no longer an exceptional source of power or rule (see, e.g., Shearing and Wood 2003; Strange 1996). Economic and political power resides with international geopolitical forces and transnational corporations. These now determine, in large part, the goods, services, and regulatory structures that states once controlled, while identifications and attachments work at scales above and below the nation or involve other social affiliations, such as gender, sexuality, religion, or ethnicity.⁴⁹ In the contemporary world, the nation-state is in rapid decline, at best a minor support to other, more powerful entities.

The third main critique of the state, and the one that is most relevant to this book, is an activist and normative one, emerging from anarchist and other radical forces and commentators opposed to the notion that states can ever support the relocation of power and resources. For left critics, the state is a key source of domination (for some, *the* key source of domination) within national societies. It is a symbol of order and discipline (see, e.g., Newman 2001) and a primary mechanism for reproducing not only dominant economic relations but also racialized, gendered, sexual, and geopolitical ones.⁵⁰ States do not just oppress through physical coercion and violence. This may represent state domination in its most excessive or spectacular register, but states also rule through other means. For many radicals, even seemingly progressive state initiatives stultify transformative grassroots politics as states colonize social justice projects, dominate public rationalities, promote conformist moralities, and domesticate progressive identities and desires (see chapter 4). Bonnie Honig (2009: 136–37; emphasis added) remarks, “In seeking the best legislative and juridical practices, we must be mindful of how *such endeavors press us* to make our cases and envision ourselves and our political futures in terms quite different from those we might otherwise imagine and seek to vouchsafe.” Honig does not reject institutional and state politics; her concern here is

with their cultural power. For others, however, radical change is impossible within or through the state; there is no helpful “dictatorship of the proletariat” en route to the state’s “withering away” (a point I return to at the end of the book). For anarchists and their fellow travelers, because the power and authority of the state comes, at least in part, from its acceptance and naturalization in routine everyday engagements, communities need to withdraw recognition, resituating transformative energy and attention within non-state social worlds, particularly the commons (see Kinna 2019; see also chapter 5). The radical geographers Jenny Pickerill and Paul Chatterton (2006: 736, 731) argue for the value of autonomous “networked and connected spaces” within “broader transnational networks, where extra-local connections are vital social building blocks” as “part of a [politically enacted non-state] vocabulary of urgency, hope and inspiration.”

These three primary critiques of the state—conceptual, analytical, and political—have proved hugely significant. They have also generated considerable debate as other activists and writers argue for the state’s continuing significance. The conceptual critique generated the rejoinder that, while the abstract state may be a fiction, as an idea held and deployed by officials, politicians, community activists, academics, and others, it produced important effects—“state effects” in the consequential and adjectival rather than illusory (magical) sense. Colin Hay (2014: 463) suggested that the state might be approached “as if it is real,” given “the *analytical* utility of the concept” in order to avoid the irresolvable discussion, attendant on its abstract character, of determining whether or not it in fact is.⁵¹ Analytically, the claim of anachronism has generated a swathe of counterargument, anchored in the notion that the state—and specifically, the nation-state—remains an important site of attachment, concern, and interest,⁵² while its vertical order provides a key form for domestic governance and international extraterritorial agency.⁵³ The importance of the state as an organizing source of regulatory control has been explored in relation to the state-based management and constitution of economically precarious subjects, including through detention, conditional welfare payments, and the use of “orders” to manage nonnormative behavior (e.g., Crawford 2006). Others focus on the (neo)liberal state’s ongoing economic role; transnational corporations may exercise considerable power, but this power is facilitated by state action. In other words, internationally powerful states remain crucial for the reproduction of capitalist economic relations; manage a range of transnational processes; and actively shape international policy regimes as govern-

ments project the interests of domestic capital abroad.⁵⁴ States, Bob Jessop (2010, 2016) suggests, may *interiorize* capitalist interests and be subject to their speed (in ways that also privilege some state parts over others),⁵⁵ but they are not passive terrains or containers of action; nor can their authority and presence be assessed by their visible influence alone, given states' indirect abilities to structure the power and capacity of others.

Finally, the critique of the state as a legitimate site of transformative politics is challenged by those activists and writers who believe that democratic states, as sites of public provision, resource redistribution, and regulation, remain important for progressive, social justice politics.⁵⁶ This argument has both a descriptive and a normative dimension. While left-wing state retrievers recognize the validity and necessity of critiquing economic colonizing projects, along with the racism, security agendas, and "prison-industrial complexes" of neoliberal states in the global North, they also approach such states in terms of their histories and possibilities for progressive developments. If states condense social relations, they also condense the unevenness and struggles around these relations.⁵⁷ State formations may support the interests of powerful classes, including through the assertion of favorable sociopolitical rationalities and processes,⁵⁸ but (neo)liberal states do not operate simply and exclusively as agents of hegemonic forces and projects—thanks to those gains pressed on institutional processes from "below," and thanks to the (neo) liberal state's investment (if an uneven one) in social stability. Progressive initiatives in (neo)liberal states may be overshadowed by other, more powerful agendas and projects, but if the state is an evolving historical formation, with neoliberalism far from permanent, absolute, or unitary, progressive state practices and projects can (and do) emerge and develop also.⁵⁹

Janet Newman and John Clarke (2014: 154, 164) point to the potential for a more progressive version of the British state to provide "a bulwark against the market's destructive powers," promote "the public good," and advance "sustainable futures." Such a state does not have to monopolize progressive politics, extinguishing the oxygen of non-state initiatives. Rather, the "dialogic state" they describe can develop and facilitate *public* action beyond the state over matters of shared concern, providing resources for social experimentation and innovation. In their short, hopeful discussion, Newman and Clarke (2014) are keen not to romanticize states. They recognize that states in the global North can also destroy publicness; that they support capitalism and function as intrusive apparatuses of security and surveillance. Nevertheless, they argue, the state should not be abandoned. It constitutes

a political and organizational formation (and idea) essential to mobilize and renew if major transformative changes are to occur.

The state, then, might be retrieved as a useful conceptual frame—approached “as if” it is real. It might, analytically, offer a meaningful placeholder for the national political apparatuses that support capitalist markets, sustain social control, and stage affective attachments. More hopefully, the state might promise a bulwark for people against the pernicious effects of these processes. However, there are other critical reasons for holding on to the concept of the state. One, paradoxically, is to avoid the state’s overreification. Treating the state, *but not other social formations*, as irretrievable implies that the state has an essence, that it is a thing with boundaries and an exterior such that we can know when we are dealing with the state and when we are not. Left state critics recognize that states may be tangled up with other bodies and forces, but they tend to treat the state as an entity with a clearly defined outside, and it is there in this outside where real transformative politics are expected to occur. In this book, I want to avoid exceptionalizing the state; to refrain from treating the nation-state as a formation elevated above social life; to explore similarities between states and other governing formations; and to address their interconnections and relationships in conditions where less is conceptually and politically at stake—where being defined as state or non-state does not make *all* the difference (even if there are some particular uses we might want specifically of the state). Avoiding a state/non-state binary also avoids the counterromanticization of civil society evident in the work of some anarchists. For instance, the geographer Simon Springer (2012: 1617) writes: “Anarchist geographies of co-operation are to be born from outside the existing *order*, from sites that the state has failed to enclose, and from the infinite possibilities that statist logics ignore, repel, plunder, and deny.” Yet, as critics and commentators on contemporary anarchism point out, exclusions, hierarchy, and authoritarianism are not just characteristics of the state. They also occur within non-state forms, including small-scale, self-regulating communities or peer-based forms of mutualism (see, e.g., Benkler 2013). The challenge is not simply to shift scales from the national to the local or to replace impersonal institutional structures and systems with highly personal, constantly deliberating modes of decision making and practice, but to find new ways of combining and imagining them.

This book takes as its starting point a radical democratic willingness to treat the state as having value. It recognizes that this value is a contextually

specific one, subject to the social and historical conditions which make the state conceptually available for progressive thinking. It also recognizes this value *may be just a transitional value*. But within the conditions of progressive politics in the global North, this book is anchored by a refusal to relinquish (or abandon) the state, including as a politically *imagined* formation. It is a refusal to allow elite forces and coercive forms of authoritarian capitalist practice to appropriate what state-based public governance might mean. This refusal does not deny the oppressive ways in which currently identified state formations act. However, in contrast to accounts that focus on materially reforming the state, oriented to what can be done *with* state power in service of an altogether different political agenda or regime—a “left art of government,” in the Foucauldian terms James Ferguson (2011: 63) takes up—this book instead focuses conceptually on what it is and means to be a state, treating the “the state” *as an orienting rather than a defining concept*. By this I mean that I am less interested in “pinning” the state down than in taking it up as a way to orient our discussion of public governance toward questions of form, scale, and ethos. As a result, my discussion does not pursue new institutional designs. It does not address practical state projects and the changes in ownership, taxation, planning, environmental policies, international agendas, and welfare provision that they might demand, as vital as these are. It does not address how best to deploy the institutional power of existing political machinery. Rather, it addresses the more conceptual, and in some ways anterior, question of how to think about the state.

Quentin Skinner (1989) has very usefully traced historical changes and developments in the postmedieval application and constitution of the state concept in Western Europe. His account demonstrates how certain state conceptions achieved dominance—namely, those that treated the state as a realm of governing separate from the people (and in some instances, as a distinct persona separate from government). His account also reveals the decline and defeat of other more democratic conceptions. Today, conceptions of the state among contemporary theorists are various as writers draw the boundaries, connections, apparatuses, and practices that statehood entails in radically different ways. The extent of this variation poses questions (rarely directly addressed) about what statehood *could* (and *should*) *come to mean*. Working from a legal drama over conservative Christian withdrawal, I explore lines of thought for the state’s reimagining, lines that entail making new imaginary cuts and joins in the political-institutional landscape *to reframe and regather what is taken to be a state*. As the book progresses,

I move toward a conception of the state organized around the shape and condition of public governance. But my aim is not to sally out to defend the language and terms of statehood so much as to *provisionally* take them up to repurpose them.

Reimagining the state in this book involves four primary moves: foregrounding the heterogeneous composition of state formations; pluralizing state imaginations; exploring play as a register of governing; and resituating desire and the erotic within state action. Underpinning these moves is an intuition that reimagining states as heterogeneous, plural, socially embedded, and quotidian *may* support democratic participation and public “ownership” of the state rather than the reverse (of states possessing people) and that pleasurable, playful, and sensual governing may be valuable in its own right, as well as supporting—and, as I discuss, *necessitating*—the development of different kinds of states. These moves suggest a conception of the state that diverges from the more established thought paths of many liberals and radicals. But what, fundamentally, can such a conception do? Aside from all of the ways in which future-directed projects fail,⁶⁰ the lines of state thinking I have suggested can seem thoroughly risky. Appealing, perhaps, in some future utopia—yet as a way of rereading and reorienting the contemporary (neo)liberal state, they may seem to naively underestimate the organized reality and force of the state’s current form. Heterogeneity, plurality, play, and pleasure may also seem to drastically underestimate the need for “serious” state power to advance and secure progressive “ends.”

Max Haiven and Alex Khasnabish (2014: 3) describe the “radical imagination” as “the ability to imagine the world, life and social institutions not as they are but as they might otherwise be. . . . [T]he radical imagination is not just about dreaming of different futures. It’s about bringing those possible futures ‘back’ to *work on* the present, to inspire action and new forms of solidarity today.” Conceptual prefiguration is one aspect of this return in which practices are undertaken “as if” meanings were otherwise (Cooper 2017).⁶¹ In this book I pursue a slightly different conceptual practice based on *reorienting* a critical conception of the state so that it is not saturated by the oppressive experiences of statehood to date. This is not in any way to dismiss critical accounts or to suggest that the approach adopted here takes place at a distance from them. However, if the state can be productively conceptualized in multiple ways, being explored and shaped through different paradigms and usages,⁶² what this book offers is a *postnormative* account. Thus, it does not invoke ideals of the perfect state or suggest criteria

for evaluation, strategies for transition, or modes of reform and improvement, important as these all are.⁶³ Instead, it aims to complement work that pursues these lines by focusing on the development of provisional and situated conceptual threads that draw on social glimpses and ideas in the present to turn toward something else.

Locating this “something” in the future as that which is “not yet” is not unproblematic. Nor do I want to suggest that transformative projects should face only in this direction. Progressive conceptions of the state can work across many temporalities, as work on historic utopias and critical uses of nostalgia demonstrate. At the same time, Hirokazu Miyazaki’s (2004) invocation of hope as a prospectively oriented epistemological method is suggestive for approaching concepts in anticipatory ways. Here, transformative accounts may require recognition of the inchoate character of new conceptual lines in which hope is also “an embrace of the limits of knowledge” (Miyazaki 2016: 10). Gilles Deleuze and Félix Guattari (1994) suggest the process of inventing concepts experiments with what is emerging and under way, speaking to people’s desires for new ways of being and living (see also Patton 2010: chap. 2). Their focus, however, is philosophical concepts. My interest, in contrast, is in exploring the life of everyday concepts—those more widely and heterogeneously held, concepts not marked by any single person’s name or signature.⁶⁴ Anticipatory conceptual lines are not “academic gifts” bequeathed to an unknown future. Emerging in multiple places through multiple forms of practice by people in all kinds of roles, they are undertakings of the present,⁶⁵ shaped by and in turn shaping what differently placed actors do, desire, plan, aim for, and oppose.⁶⁶ What, then, does this mean for the state? We can explore how conceptions of the state shape what actors do, as Nick Gill (2010) evocatively explores in his discussion of different refugee organizations’ engagements with the state. But how can non-elite actors in (neo)liberal polities put their desires and ambitions about what states could be (and become) into practice? This is the subject of my final chapter, which explores state play with revisions as a way to develop and try out new state and institutional imaginaries.

Chapter Outline

In closing, I want to briefly trace the arc of discussion through the chapters that follow. Chapter 1 explores in more detail the different kinds of withdrawal—by both conservative Christian and liberal state bodies—that

have emerged in this legal drama. Working both from and away from the notion that withdrawal means abandonment, the chapter focuses on the subjects, authority, and political imaginaries generated by litigated withdrawal to provide a ground for thinking about embodiment, power, governing, attachment, and discharge in the rest of the book. Chapters 2 and 3 turn to the question of state form. Chapter 2 asks how we might more expansively reimagine the makeup of the state in developing an account of state heterogeneity and embedding. It explores how the legal drama over conservative Christian withdrawal helps challenge the standard state account, supporting instead an account of state composition that makes room for the fleeting and dissident. Focusing on acts of dissent within state formations reveals one way that wider social life permeates states, but to develop a broader understanding of the embedded state, the chapter also explores the wider terrain in which states inhere and asks, following a democratic logic, how this wider terrain, in turn, might inhere in the state. Such a relationship of constitution can take different forms. If conservative Christians' animus is partly driven by a perception that their part in the makeup of the state is a passive one, merely intended to extend the state's reach, what does a more active relationship to state authority involve? Chapter 3 continues this exploration, drawing on the legal drama of this book to consider the relationship between the nation-state and other state forms. Central to this chapter is the question of state plurality in terms of what counts as a state; how states evolve and change; and how states are known. Challenging nation-states' claims to an objectively defined form and exclusive state status, the chapter explores other state forms and knowledges, including through touch, to advance a radically plural conception of the state.

Chapters 4 and 5 take up the book's legal drama to explore the state from a different angle. Instead of focusing principally on what it could mean to be a state, the discussion turns to the question of state ethos, to those ways of behaving that can be considered state ways. Chapter 4 tackles this question in relation to play. Its starting point is the way antidiscrimination and human rights law have consolidated religious and identity beliefs into a form of property that state law will protect and recognize. Since this works to depoliticize beliefs, the chapter asks whether state-engaged play can contribute to unsettling and repoliticizing this proprietary relationship. It pursues this question through three play forms: state-engineered role playing in which conservative Christian and gay-equality advocates attempt to leave their clashing beliefs behind to consider other perspectives; as state

experimentation, where taking up and advancing beliefs in gay equality constitute a form of “nationalization”; and as “free-running,” where gay activists challenge refusals by City Councils to provide Gay Pride proclamations, using provincial state commitments to gay equality in order to do so. Through exploring how states play in this legal drama, the chapter asks whether play is something states should do and examines the conditions required to play more justly. Chapter 5 turns to the question of the erotic state. Paralleling the previous chapter, the discussion is oriented to the question of whether public governing might benefit from being attuned to the erotic. However, this question is approached, in postnormative terms, through an erotic reading of the state invoked by the legal drama of this book. This reading examines withdrawal, attachment, and governing in terms of their desires and sensations, attending to questions of friction, discharge, waste, and the sensory pleasures of collaboratively creating public goods. While chapters 2 and 3 address how to combine two different understandings of state form—namely, as the shape and condition of public governing and as gathered formations—chapters 4 and 5 take up this dual account to explore the relations and tensions that might constitute progressive state practice when approached as quotidian, activist, and caring.

More generally, across these four chapters I focus on the task of reimagining what it could mean to be a state, tracing lines of thinking through heterogeneity, plurality, play, and the erotic. Yet while reimagining is important, the *manifestation* of new state forms is at least equally so. As practical enactments with political authority, newly imagined states are extremely hard to realize, particularly by grassroots actors. In the final chapter, I consider one modality for doing so. Role-play-with-revisions provides a way of simulating tribunals, constitutions, currencies, universities, adjudicators and statehood in a progressive, transformative key. Taking up lines of argument developed in earlier chapters, I explore what these forms of role playing bring to thinking about the democratic everyday state and to the relationship between state care and activism. Finally, the chapter explores what state play, when retrieved and spun into different networks of political action, can do.

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INTRODUCTION

1. *Country Mill Farms et al. v. City of East Lansing*, Opinion and Order, no. 1:17-cv-487, filed 15 September 2017.

2. *Country Mill Farms et al.*, 5.

3. *Country Mill Farms et al.*, 5.

4. *Country Mill Farms et al.*, 9.

5. This book focuses on “public” governance formations, raising of course questions about the status and definition of ostensibly nonpublic forms, such as intimate or personal kinds of governance, which public governance also helps to define and structure. The distinction between public and personal governance is necessarily fuzzy, provisional and contested. In this book, my interest is in governance forms that (should) engage people, politically, as members of publics, take responsibility for “public things” (Honig 2017), and build more collectively responsible worlds.

6. I use “(neo)liberal” rather than the more common “neoliberal” to emphasize that while certain state practices, systems, and discourses are neoliberal, in the (deliberately narrow) sense of being organized to imitate and support abstract market paradigms and advance commercial interests, other state qualities speak to more traditional liberal conceptions of political and social liberty, justice, and formal equality. These latter are tied in to the history of economic liberalism and the development of postindustrial societies. However, they have a contemporary salience that is not entirely aligned with market rationalities. My analysis in this book seeks to reimagine the state from the geopolitical spaces of the (neo)liberal global North. This is not the same as seeking to reimagine the (neo)liberal state, but rather is a recognition of the ways in which location and context (this book was written in London between 2013 and 2018) structure thinking in both conscious and less conscious ways.

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While the legal drama of this book is constituted by, and entangled in, the contemporary legal politics of common law jurisdictions in the global North, it draws on interdisciplinary scholarship across (and addressing) a range of geopolitical spaces to support alternative ways of thinking about what it could mean to be a state.

7. This question has been sidelined or “black-boxed” in much contemporary critical scholarship. The influence, over more than two decades, of work on governance and governmentality has been to foreground the “how” of governing rather than the “what,” with the “what” seen as overly reifying. The trouble, however, when leaving the “what” behind is that it becomes hard to reimagine what states *could* be or become.

8. Or, to the extent states draw (figuratively) on human or other animal forms of embodiment, we might draw on critical work that reimagines what this entails. I explore this further in chapter 5.

9. In some utopian fiction there is no state at all. In *News from Nowhere*, William Morris ([1890] 2003) depicts a society where government and state have been abolished. When the narrator asks, “How do you manage with politics?” Hammond, his interlocutor, replies, “I am glad that it is of *me* that you ask that question. . . . Indeed, I believe I am the only man in England who would know what you mean. . . . I will answer your question briefly by saying that we are very well off as to politics—because we have none . . . a man no more needs an elaborate system of government, with its army, navy, and police, to force him to give way to the will of the majority of his *equals*, than he wants a similar machinery to make him understand that his head and a stone wall cannot occupy the same space at the same moment” (Morris [1890] 2003: 73, 65; see also Buzard 1990). Other utopian novels, however, assume that state-like governments remain. Thus, their accounts present different models of government involving a wide variety of scales, from the planetary and global to the national and local. Utopian fiction can stimulate the imagination even as it also demonstrates the limits of what is thinkable in particular times and places (see Jameson 1982). One striking illustration of the anachronistic character of past/passed state utopias is H. G. Wells’s *A Modern Utopia* ([1905] 2005).

10. On critical utopias, see Moylan 1986.

11. I have explored this further in relation to the new urban socialism in Britain of the 1980s (see Cooper 2017).

12. For Wright (2010: 6), visions are important contributors to social change, but “vague utopian fantasies may lead us astray, encouraging us to embark on trips that have no real destinations at all, or, worse still, which lead us toward some unforeseen abyss.” What are needed, he suggests, are proposals that are viable given the current conditions of postindustrial states (even if not all will prove *realizable* thanks to contemporary social and political constraints). Several writers, including Levitas (2013: 148), have criticized Wright for developing a utopian framework that sticks too closely to, and so is limited by, current realities.

13. For helpful and interesting accounts on rethinking the state through experiments in governing, see Fung and Wright 2003; Hancox 2013; Mundy 2007. Experimenting through mimetic forms of play is explored further in chapter 6.

14. This book does *not* focus on the structural character of drama in social life. Its concern is, rather, with the expressive, evolving, dynamic character of legal conflict,

read here as a particular organizing moment within the wider contours of a “social drama” (see Turner 1980, 1982) involving conservative Christianity, gay-equality activism, and liberal states. Describing this conflict as a drama is not, in any way, to diminish it as an “over-show” of heightened emotion or to reduce it to a performance composed and staged solely for its audience. At the same time, heightened feeling and the conflict’s staged character, particularly in the courts, are important parts of its legal enactment.

15. Use of the term “conservative Christian” (or “Christian right”) has been questioned on the grounds that ideological positions configure differently in the different jurisdictions of this book. For instance, in Britain conservative stances on sexuality and the family may not correspond with conservative positions on economic issues (see, e.g., Walton et al. 2013). My use of the term “conservative Christian” refers to positions taken on gay equality and gender/sexual politics more generally, rather than necessarily equating to a conservative stance on other issues. I also do not discuss *pro-gay* or gay-equality Christian politics.

16. As such, it builds on the conceptual methodology I develop in Cooper 2014.

17. There is an extensive literature on this legal drama (see, e.g., Koppelman 2016; MacDougall and Short 2010; Major 2017; Malik 2011; Malloy 2017; Massaro 2010; Stychin 2009a, 2009b; Velte 2018; Wintemute 2014). The intensely uneven geopolitical character of this drama is, of course, not because political opposition to gay equality is limited to these few countries or even because litigation that addresses issues of gay sexuality is so limited. The drama explored in this book involves *withdrawal* as a calculated response to gay equality’s formal legal advancement, where it can be *legally* rationalized on religious grounds. It therefore is limited to those jurisdictions in which legal protection exists for both sexual orientation and religious beliefs.

18. *Ladele v. London Borough of Islington*, 2009 EWCA Civ 1357.

19. Indeed, the prominence given to antigay politics may be displaced in coming years by a growing focus among conservative Christians with gender fluidity, transitioning, flexible gender categories, nonbinary identities, and governmental attempts to accommodate these sociopolitical changes. One case being litigated as this book went to press involved the Colorado Masterpiece Cakeshop, whose litigated refusal to make a wedding cake for a same-sex couple (see chapter 4) was followed by a refusal, in 2017, to make a cake that was pink inside and blue outside for a customer’s birthday to celebrate her coming out as trans, on the grounds the shop owners believed sex was “immutable” and “God-given”; see *Masterpiece Cakeshop v. Elenis* verified complaint, USDC Colorado, Case 1:18-cv-02074, para. 199; discussed also by John Culhane, “The Cake Controversy That Just Won’t Go Away,” *Politico Magazine*, 16 August 2018, accessed 16 August 2018, <https://www.politico.com/magazine/story/2018/08/16/masterpiece-cakeshop-controversy-219365>. For a related story, see the case of the British printer who in 2017 would not print business cards for a consultant in transgender diversity, citing loyalty to fellow Christians struggling against contemporary diversity politics: Frank Cranmer, “Gender, Religious Belief and Discrimination in Service Provision,” *Law and Religion U.K.*, 21 October 2017, accessed 2 July 2018, <http://www.lawandreligionuk.com/2017/10/21/gender-religious-belief-and-discrimination-in-service-provision>.

20. This book focuses on a relatively narrow, if dense, set of legal cases, all concerning opposition to “gay” equality, as an entry point for thinking about the state. My argument is not that these cases are more significant in advancing and expressing conservative Christian agenda than others or that they are the only set of cases to provide a productive ground for reimagining the state. Rather, this book is intended to sit in conversation with accounts of the reimagined state drawing on and from other (re)sources.

21. Talk of “moments” rather than eras or stages avoids the assumption that gay equality developments, in the face of conservative religious opposition, have a universal trajectory (or path dependency), with different countries going through the same process and stages even as the timing of their starting point may differ. Contemporary sexuality politics reveals how the standard trajectory of progress can be compressed, reversed, or mixed in domestically distinctive ways. For a useful troubling of the notion of shared geopolitical narratives of linear progress, see Mizielińska 2011; Mizielińska and Kulpa 2011.

22. Quoted for instance in Tara John, “The Six Moments That Defined David Cameron’s Leadership of the British Government,” *Time*, 13 July 2016, accessed 2 July 2018, <http://time.com/4403622/david-cameron-leadership-legacy>.

23. Judith Butler (2008: 3) describes how the Netherlands used photographs of two men kissing to test potential new migrants’ liberal sensibilities. Israel has been similarly criticized for “pink washing” (see Franke 2012; Gross 2014; Puar 2011).

24. On Romania, see Stychin 2003: 134–35. On the politicization of homophobia since the European Union accession, see Graff 2010.

25. Although as Stychin (2003: 122) discusses in the Romanian context, some of the pressure came from domestic nongovernmental organizations, routed through international organizations as a way of pressing for internal reform.

26. For a thoughtful and perceptive account of the struggle over same-sex marriage in Hawai‘i, see Goldberg-Hiller 2002.

27. Archbishop Bartolomeu Anania, quoted in Roxana Dascalu, “We Want to Join Europe, not Sodom—Romania,” 12 December 2000, accessed 2 July 2018, <https://www.iol.co.za/news/world/we-want-to-join-europe-not-sodom-romania-44242>.

28. On the ties between domestic opposition to LGBT rights in the global North and opposition elsewhere, see Browne and Nash 2014; see also Buss and Herman 2003.

29. For further discussion on this point, and the associated perception that Christianity has become improperly marginalized, see Herman 1997; Kettell 2017; McIvor 2018.

30. In her work on the U.S. Christian right, Didi Herman (1997: 62, 64) explores their late twentieth-century depiction of gay sexuality as a “plague” or “tidal wave” that had to be resisted if children were not to “drown” and civilization was not to collapse. During this third moment, conservative Christians identified the harm that they felt the recognition of gay relationships would cause as lying in the *simulation* and claimed equivalence with heterosexual marital arrangements rather than in gay relationships’ difference from normative heterosexual sex. For earlier depictions of hypersexual gay masculinity, see Herman 1997: 80–82.

31. For critical discussion of the discursive shift from family values to religious freedom in the U.S. context, see Williams 2018.

32. Adam Dinham and Vivien Lowndes (2008) usefully explore this in the British context, addressing faith networks' involvement in urban governance through taking up activities previously performed by government. Yet in a context where religious bodies and values are foregrounded as relevant to secular governance activities, from "civic renewal" to running schools, there may be even more impetus on liberal states to "de-radicalize" religion, using law (alongside other techniques) to differentiate between mainstream faith practice and less comfortable varieties.

33. For recent exploration of some of the complex legal and moral issues that religious-based exceptions raise, see Vallier and Weber 2018.

34. See also Christian Concern's response, 7 December 2015, accessed 2 July 2018, <https://www.christianconcern.com/press-release/response-to-the-woolf-institutes-commission-on-religion-and-belief-in-british-public-l>.

35. The politics of sexuality has been a source of much dissension in *internal* Christian politics, including in the Anglican/Episcopalian church, where it also functioned as a way of articulating and enacting other divisions. For discussion of internal Christian disagreements over gay sexuality, see also Hunt 2014; Sachs 2009.

36. For discussion of conservative Christian "public interest" law firms and litigation organizations in the United States, see Hollis-Brusky and Wilson 2017.

37. Developing a normative concept from social practice can risk carrying or encoding the commonsense assumptions of the social practice. This is a critique made of some context-based normative theory that extracts and abstracts from the ground in which it is anchored (or embedded). On nonideal (and ideal) theory, see Hamlin and Stemplowska 2012; Valentini 2012. My aim, however, is not to identify the best kind of state, to develop principles for more effective governing, or even to determine what better governing means for participants. Rather, I am interested in purposively interpreting this legal drama—a drama that foregrounds noncompliance and refusal—in ways that generate traction for reimagining the state. The state is not a normative concept in the ways concepts such as justice, equality, and democracy are conventionally understood. Thus, this book offers a postnormative conception of the state, enrolling conceptions of the state within a transformative progressive politics without either limiting the state to a narrowly prescriptive definition or determining, more practically, what the state ought to be or become.

38. For detailed discussion of liberal perspectives on conscientious objection, see Nehushtan 2016.

39. On protest camps as a deliberately signaled withdrawal from the "system," that is sometimes accompanied by newly declared (grassroots) states or republics (see Frenzel 2014). I explore this further in chapter 6.

40. For a helpful discussion of withdrawal in this context, see Simpson 2014.

41. I have explored some of the challenges in thinking about ostensibly benign forms of state touch further elsewhere (see Cooper 2014: chap. 3).

42. See, e.g., Herman 1994; Smith 1999. Both address these themes in relation to the legal character of gay politics in Canada. See also Stychin 1998a.

43. An important and extensive literature on the left has debated the value and limits of human rights and antidiscrimination provisions (see, e.g., Bumiller 1992; Fudge and Glasbeek 1992; Goldberg-Hiller 2002; Herman 1993, 1994; McNeilly 2018).

44. This includes legislative debates and media (including social media) stories, as well as accounts from litigation advocacy groups. In cases to do with “compelled speech,” where conservative Christians refuse to express the pro-gay perspectives required of them by their work, litigation documents and supplementary texts provide a space through which not simply refusal and silence but the *desired* speech of litigants and supporters can be expressed.

45. For discussion of these issues, see for instance Baron and Epstein 1997; Ewick and Silbey 1995. As a social drama, the withdrawal of goods and benefits by conservative Christians and liberal public bodies is knotted into a complex series of struggles that stretch through time and space. However, this complexity is whittled down, bounded, and contained in the course of its production as a legal drama. Since the disputes at the heart of the book acquire their specific form through litigation, law becomes a key determinant of how withdrawal comes to be authoritatively framed. In other words, the complex entanglement of economic, political, social, and philosophical issues, bleeding across different places and times, become delineated, pruned, and framed to produce the legally salient act or series of acts involving withdrawal. This cutting is given effect politically, as well as judicially, since activist and media attention mobilize in relation to litigation and the events litigation references, which are sometimes treated as detached, discrete episodes and sometimes as part of a wave of events or protests.

46. For discussion of “stock narratives,” see Chesler and Sneddon 2017; see also Herman 2011.

47. For instance, Roger Parloff suggests conservative Christian documentation surrounding the litigation over wedding cakes frequently described bakers as “cake artists” to emphasize the (legally important) expressive dimension of their work: see Roger Parloff, “Christian Bakers, Gay Weddings, and a Question for the Supreme Court,” *New Yorker*, 6 March 2017, accessed 2 July 2018, <https://www.newyorker.com/news/news-desk/christian-bakers-gay-weddings-and-a-question-for-the-supreme-court>; see also chapter 4.

48. Because these texts are framed by secular law, they do not foreground Christian specificity. In other words, while they are about religious rights as taken up and articulated by Christians, the specificity of Christian spiritual imaginaries, understandings, and texts are downplayed beyond their broadest brush-stroke representations. While these cases are brought by Christians for reasons discussed earlier, many of the legal claims and court judgments could apply equally well to other religions.

49. For discussion of this narrative, see Jessop (2010).

50. See for instance contemporary work on the patriarchal and racist state (e.g., Bracey 2015; Kantola 2006), extending and complicating earlier writing on the capitalist state. A critical account of antistatism is also addressed in work on “state phobia” (see Foucault 2008: 187–88). Foucault’s exploration of state phobia is discussed further in Dean and Villadsen 2016; Dhawan 2019.

51. Hay (2014: 477) writes, “The key to resolving ‘the difficulty of studying the state’ . . . is not the abandonment of the concept of the state . . . but, instead, the recognition that the state is in fact a conceptual abstraction which belongs—like patriarchy and the class structure—to the realm of the ‘as if real’ and not to the real.” Colin

Hay's work on the state is helpful and interesting. However, by distinguishing a certain set of abstract "composite" concepts and locating them within a space of the quasi-real, in contrast to the seemingly unproblematic reality of other, apparently less abstract concepts, Hay's approach presumes what needs demonstrating—namely, that some concepts (would motherhood or Parliament count?) are somehow *really* "real." The approach I adopt here avoids distinguishing between more and less abstract concepts. It approaches concepts (and my focus is nontechnical concepts) as taking shape in the oscillation between imagining and actualization (two dimensions that also fold practically into each other), while recognizing that forms of actualization (or manifestation) will vary depending on the concept (see Cooper 2014: chap. 2).

52. For an interesting discussion of this point in relation to Arctic states, see Medby 2018.

53. In a detailed and nuanced account of decentered regulation, Julia Black (2001: 145) suggests that "hierarchy will always lurk behind heterarchy."

54. For an account of states' complex and contradictory relationships, domestically and internationally, to capitalism and how this varies according to different state projects and capacities, see Jessop 2016.

55. Jessop (2010) explores how states also seek to manage capitalism's rhythms and mobility.

56. For further discussion of this point, see Cooper 2017; Cumbers 2015; Newman 2012a.

57. For useful discussion, see Angel 2017; Angel and Loftus 2017; Jessop 2016; Lake 2002; Lefebvre 2009; Martin and Pierce 2013; Poulantzas 1980; Van den Berg 2003.

58. See Jessop (1990; 2016: chap. 3) on the strategic and structural selectivity of the state, and on the state as a social relation, for some of the complexities of how this occurs.

59. For one discussion that emphasizes the place of the local state and local institutions in developing anticapitalist initiatives, see Cumbers et al. 2016.

60. For discussion of this point, see Geels and Smit 2000; Tutton 2017.

61. For a parallel discussion of prefigurative theory as a way to emphasize "those elements of [the world] worth promoting," see Davies 2017: 17. For further discussion, see chapter 6.

62. While I take a different approach, my account is indebted to work on "essentially contested concepts" (Gallie 1955). See also Collier et al. 2006; Dryzek 2016; Haugaard 2010.

63. For discussion of ideal and nonideal (more context-dependent) approaches in political theory, see Hamlin and Stemplowska 2012; Valentini 2012.

64. In this sense, I also diverge from Mieke Bal (2002: 11), whose very interesting book on "travelling concepts" focuses on concepts which "hover . . . between ordinary word and theoretical tool."

65. We also, of course, politically inhabit the present in what we imagine states—materially and culturally—could come to be; for discussion of this point in relation to health prognosis, see Bhandar 2009. For a detailed exploration of the relationship between prognosis and time, see Grabham 2017.

66. On the need to reimagine the present to encourage and help produce other futures, see Gibson-Graham 1996. For a strongly formulated argument on the performative character of social-science scholarship, see Law and Urry 2004.

ONE. Legal Dramas of Refusal

Epigraph: Vanessa Willock v. Elane Photography, LLC, HRD no. 06-12-20-0685, 2008, para. 20 (New Mexico Human Rights Commission, decision and final order); see also Elane Photography, LLC v. Willock, 309 P.3d 53 (NM 2013).

1. Focusing on withdrawal rather than discrimination shifts attention from differential treatment based on social characteristics—how one person or grouping is treated compared with another—to the relationship between the one withdrawing and the one withdrawn from vis-à-vis the things (tangible or otherwise) that are withdrawn.

2. See, e.g., Cobaw Community Health Services v. Christian Youth Camps Ltd. and Another, 2010 VCAT 1613, para. 339–40.

3. In some instances, it is potential customers or service users who turn away: see, e.g., Barnes-Wallace v. City of San Diego, 530 F.3d 776 (9th Cir. 2008). Here, parents would not let their sons use facilities given by the city to the Boy Scouts of America because of the organization's discriminatory policies.

4. See, e.g., Kirk Session of Sandown Free Presbyterian Church, re Application for Judicial Review, QBD, 2011 NIQB 26, para. 61. The Advertising Standards Authority concluded that while the church could advertise its “opposition to sodomy or the Gay Pride March,” the advertising in question was legitimately rejected because of its “strident and offensive language.” This was overturned in court on Article 10 (freedom of expression) grounds. For a quite different judgment, see R on the Application of Core Issues Trust v. Transport for London and Another, 2014 EWCA Civ 34, discussed in chapter 5.

5. In some cases, acts of withdrawal were pitted against each other; in other cases, as with Catholic adoption agencies and their relationship to the Catholic Church, charities demanded the right to withdraw to stop withdrawal by their Catholic funders: see, e.g., Catholic Care (Diocese of Leeds) v. Charity Commission for England and Wales, 2012 UKUT 395 (TCC), paras. 29–30.

6. *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47 (2006).

7. Autonomy may also be asserted by individuals or groups refusing to defer to the authority of another body. For discussion of such refusal in relation to anarchist left politics, see Klausen and Martel 2011.

8. Writing about Tibetan refugees, McGranahan (2016: 338) discusses how their attachment to Tibetan citizenship also led them to *refuse* citizenship offers from both India and Nepal. She writes, “Refusing citizenship constitutes one means of asserting a right to sovereignty, of producing a state history and a subject-body, and thus of generating desired political effects at the level of the individual and the collective.”

9. For further discussion in relation to inoperativity and the possibility of opening up to new uses, see Agamben 2014; Honig 2015.