Institution

critical histories of law

edited by

COOPER FRANCIS & DANIEL GOTTLIEB

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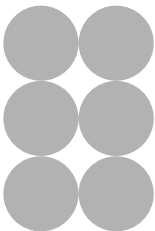
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Praxis and counter-finality: beyond Sartre on institutions

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Instituting is not the same as institution. This chapter attempts to isolate this active element, a praxeological matter that is difficult to grasp. In doing so, it explores the dynamics of instituting and qualifies it as a social praxis that finds its quintessential form in law. As an action and not only the result of an action, instituting exhibits what is being produced in the midst of its production.

The field of studies known in the anglophone world as 'Law and Society' – or, in this case, 'Law and Social Movements' – needs to be intertwined with an approach that properly values the praxis and transformative potential of instituting and that considers law as the instituting technique par excellence. Here, this approach is adopted within the ambit of contemporary ecological discourse and ecological movements. In contrast to the past, the use of law is not 'exterior' to contemporary movements and social struggles. Law is often perceived negatively, as somehow inimical to these movements. Research on Law and Social Movements often comes at the cost of a certain sociologism that examines law and society in an almost mechanical way. It asks 'Which comes first?' Here we will not offer any solutions to that ill-posed problem – rather, we will start from different assumptions.

Instituting praxis

In 'Instituting Praxis', chapter 10 of their monumental work
Common, Pierre Dardot and Christian Laval advocate for
instituting the commons, an entirely artificial construction of
practices of commoning, devoid of any naturalism.[1] Why? In
order to find a praxis without an author which could thereby
detach itself from any personalism and thus truly serve the cause
of the common, rather than the 'sovereign' one. In this chapter,
Dardot and Laval highlight the sociological reduction of institu-
tion to the instituted and then use Sartre's writings to isolate the
concept of praxis. They do so on the assumption that Sartre is
the thinker who understood praxis as the basis of any ontology
of the institution and that he treats this element in a dialectical
way 'in contrast to classical sociology'.[2]

Classical sociology, the primary discipline to have addressed
the institutional question, never really made it a problem as
such. It took the presence of institutions in the social world for
granted without focusing on their formation. Enquiries into the
sociological institution typically focus on what has already been
instituted. At the same time, the institution becomes synony-
mous with domination and power, and institutions thus appear
only as sovereign forms of control, untouchable once established
and yet always already established.

The classical sociologists Mauss and Fauconnet suggest that
the word 'institution' can be best understood as ways of acting
and thinking which individuals find ready at birth and are
transmitted through education. Institutions are consecrated by
tradition and imposed on newcomers early on.[3] Although Mauss
and Fauconnet acknowledge the transformation of institutions,

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1. Pierre Dardot and Christian Laval, *Common: On Revolution in the 21st Century*,
Bloomsbury, London, 2019.
2. Ibid., p. 284.
3. Paul Fauconnet and Marcel Mauss, 'La Sociologie: Objet et Méthode', 1901, *Grande
Encyclopédie*, vol. 30, in M. Mauss, *Œuvres*, vol. 3, Éditions de Minuit, Paris, 1994.

they also note that these variations are merely static variations. This demonstrates two prejudices: that institutions envelop the whole of society and that they are more or less static sources of control. This thought confuses historically concrete actors and oppressive institutions with what is and cannot but be. We might call this 'oppressive thought' about institutions. In fact, we can also see this in Sartre, who expresses the essential lines of such an oppressive thought. Despite the potential beauty of another world, it is simply not possible: we are oppressed and cannot help but be oppressed. What oppresses persists despite all adversity and attempts at its negation.

Praxis and matter

Sartre's thought on institutions is encapsulated in the relation-ship between praxis and inertia.[4] In *Critique of Dialectical Reason* Sartre attempts to isolate the moment when an institution arises by focusing on the organized group that he believes immediately precedes any institutional formation.[5] In Sartre's view, the 'group-in-fusion' is at the apex of praxis and without inertia. The institution, on the other hand, is the result of the group's inevitable passage from the first state to the second and the subsequent petrification of its praxis. It appears, for Sartre, as a pure corpse. While praxis represents totalizing activity, the

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4. My argument here is indebted to a paper by Alberto Toscano that ultimately adopts Sartre's perspective on the human–matter relationship, bringing us closer to ecological issues and the new materialism. See Alberto Toscano, 'Antiphysis/Antipraxis: Universal Exhaustion and the Tragedy of Materiality', *Mediations*, vol. 31, no. 2, 2018, pp. 125–44. Recently, after decades in which Sartre was almost forgotten, his philosophy, existentialism, his relationship to Marxism, and new interpretations of the dialectic are being proposed in various disciplines. See Philippe Cabestan, *La philosophie de Sartre*, Vrin, Paris, 2019, and 'De l'Être et le néant à la Critique de la raison dialectique: le tournant "marxiste" de Sartre', *Alter* 29, 2021, pp. 85–100. See also Jean Bourgault, 'Repenser le corps politique: "L'apparence organique" du groupe dans la *Critique de la raison dialectique*', *Les Temps modernes* 632–634, 2005; Hervé Oulc'hen, *L'intelligibilité de la pratique. Althusser, Foucault, Sartre*, Presses Universitaires de Liège, Liège, 2017.

5. Jean-Paul Sartre, *Critique of Dialectical Reason*, Volume 2: *The Intelligibility of History*, trans. Quintin Hoare, Verso, London and New York, 2004, ch. 6, 'The Institution'.

practico-inert is its opposite: alienation and inertia. Praxis is an
exclusively human activity, authored by potentially collective
subjects, but a dialectic ultimately grounded in the individual.
The practico-inert, on the other hand, constitutes a pure objec-
tivity for the latter and thus contributes to her alienation. Matter
becomes alienated praxis, as the subject, through work, invests
part of itself into inert matter, thus becoming a quasi-object.
Sartre begins with the individual's needs, asserting that humans
must work given an inescapable context of penury or scarcity.[6]
The institution is inscribed in this scarcity. Sartre writes:

> It is always scarcity, as a real and constant tension both between
> man and his environment and between man and man, which
> explains fundamental structures (techniques and institutions) – not
> in the sense that it is a real force and that it has produced them, but
> because they were produced in the milieu of scarcity by men whose
> praxis internalises this scarcity even when they try to transcend it.[7]

Through scarcity, a more general point is made: the negativity
of scarcity is a way of expressing the negativity of matter. Scar-
city becomes synonymous with negativity and material reality is
fundamentally perceived as absolute otherness, forming the basis
for both change and subjugation. In the context of the inescap-
able state of scarcity, the Other is no longer the same as us but
becomes 'anti-human' and is perceived as belonging to another
species, our 'demonic double'.[8] In other instances, Sartre uses the
term 'inhuman' to describe matter, specifically stating that other
species are also deemed inhuman.

While there would appear to be useful elements in Sartre's
analysis, ultimately it is grounded in a negative view of
the practico-inert as the foundation of alienation. When

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6. Ibid., p. 125. On this point, see S. Moravia, *Introduzione a Sartre*, Laterza, Rome &
Bari, 1983, pp. 116–17. Penury, writes Moravia, appears as a 'metastructure located on this
side of history' that is not even the fate of some individuals but is the 'fate of Man'. This
is by no means a logic that one might expect to find in Marx.

7. Ibid., p. 127.

8. Ibid., p. 132.

transitioning from the group-in-fusion to the institution, a change occurs that can be easily transposed onto the work–matter relationship. Just as human activity becomes alienated and quasi-objective, so does the group become alienated after the Dionysian moment of fusion and it is compelled to reduce its praxis once more to the practico-inert that constitutes the institution, so Sartre argues. The transition from a group of fused individuals to a group forming a collective entity inherently results in a loss. No resources emerge from the establishment of an institution: individuals lose their freedom, spontaneous fusion ceases, and the process of rendering praxis passive results in alienation. This outcome is inevitable because of the scarcity we are condemned to live with. We can observe that this is not just a thought of oppression, but a thought that is itself restraining in the way that it portrays the unavoidability of certain dynamics.

> Every praxis is primarily an instrumentalization of material reality. It envelops the inanimate thing in a totalising project which gives it a pseudo-organic unity. ... If the unity persists, it does so through material inertia. But this unity is nothing other than the passive reflection of praxis ... the object produced reflects the whole collectivity. But it reflects it in the dimension of passivity.[9]

Sartre offers the well-known example of 'sealing' an object to signify ownership and authenticity that, upon performance, gives birth to the practico-inert, becoming a signifier that imposes itself on humans as a mere signified.[10] This unavoidable dynamic of praxis and inertia dominates Sartre's text, apart from a hypothesis he introduces which, though still an operation of the negative, he calls 'counter-finality'.

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9. Ibid., p. 161.
10. Ibid.

Counter-finality

Sartre unexpectedly affirms that matter, no longer limited to crystallizing into a practico-inert material substructure, is also capable of exhibiting a certain kind of 'action'. We are not talking about agency – attributing this term to Sartre's thought would be excessive – but the question of counter-finality does lead towards a partial re-evaluation of the oppressive dynamics of institution in general.

Alberto Toscano focuses on this aspect of the problem in his article 'Antiphysis/Antipraxis: Universal Exhaustion and the Tragedy of Materiality', where he works through contemporary Marxist ecological thought and ultimately examines Sartre's *Critique*.[11] Toscano's article raises the question: how ought we analyse contemporary ecological discourse with a materialist lens? With which Marx, or within which Marxist line of thought, would this analysis be made most forcefully? Toscano investigates the thought of two leading Marxist ecologists today, Jason W. Moore and Andreas Malm.[12] Positioning himself against both positions for, respectively, a holistic naturalism (in the case of Moore) and dualistic humanism (in the case of Malm), Toscano also criticizes Sartre's concept of counter-finality, which he takes to be representative of a broader adoption of the tragic form.

To illustrate the phenomenon of counter-finality, Sartre offers the 'ecological' example of Chinese peasants, who

> for four thousand years, have been appropriating arable land on the frontiers of their territory, from Nature and from the nomads. One aspect of their activity is deforestation which has been going on for centuries. This praxis ... inscribes itself on nature, both positively and negatively. Its positive aspect is that of the soil and the division of cultivation. Its negative aspect is a signification of which the

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11. See note 4 above.
12. See Jason W. Moore, ed., *Anthropocene or Capitalocene: Nature, History, and the Crisis of Capitalism*, PM Press, Oakland CA, 2016; Andreas Malm, *Fossil Capital: The Rise of Steam Power and the Roots of Global Warming*, Verso, London and New York, 2016.

peasants themselves are not aware, precisely because it is an absence
– the absence of trees.

He adds that 'their goal was conquest of the soil' and that they
saw no lack but 'only the plenty represented by their harvests',
which was for them only a liberation from scarcity through
'elimination of an obstacle', a pursuit of security that developed
into a 'lack of protection'. In other words, the 'positive system
of agriculture was transformed into an infernal machine' and
the peasant became his own enemy. At the moment of its
lived unfolding, however, the peasant's action did not 'include
this consequence, either intentionally or in reality' and so 'for
counter-finality to exist', Sartre argues, it must be foreshadowed
in a kind of '*disposition* of matter'.[13]

Sartre cautions that we cannot be sure that the absence
of deforestation would have prevented floods. Nevertheless,
counter-finality, considered outside this example, seems to echo
the inevitable negativity that envelops humanity as it transitions
from the individual to the institution, save for the brief moment
of fusion. Deforestation itself assumes here the role previously
held by the institution. As Sartre writes, continuing the example
of the Chinese peasants: 'In being realised, human ends define a
field of counter-finality around themselves.'[14] This occurs either
in the initial stage when praxis is inverted by joining with matter
through labour or in the second stage when, as in the Chinese
case, individuals become their own enemies through their own
labour.

The next step is decisive: since counter-finality is posited
by matter, by a certain 'disposition' of matter, it designates an
'absurd future' in so far as it encroaches on humanity from
the 'inhuman'.[15] How does inert, passive matter possess such

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13. Sartre, *Critique of Dialectical Reason*, vol. 1, pp. 161–3.
14. Ibid., p. 164
15. Ibid.

a disposition that it determines the encounter with humans and not the other way around? If floods could help produce a 'river civilization', then at this level matter indeed appears to express an 'inverted praxis'.[16] To illustrate this, Sartre uses the example of Spanish colonialism and the discovery of Peruvian mines, which, unexpectedly, led to misery and inflation back in Spain. He criticizes Braudel's naturalistic explanation of Spanish price fluctuations as caused by the 'hostile distances' separating Florence from the sea. Distances only matter when techniques to overcome them are lacking. Sartre notes that matter is no longer a 'limit to signification' and has become a 'mediation between significations', such that 'it is in and through matter that significations (crystallised praxis) combine into new but still inert syntheses'.[17] However, Sartre seems still to have doubts about the supposed inertia of matter, especially in passages such as the following in which matter 'as the receptacle of passivized practices is indissolubly linked to lived *praxis*, which simultaneously adapts to material conditions and inert significations, and renews their meaning, *reconstituting* them by transcending them, if only to transform them'.[18] This oscillation between a matter that cannot but influence human praxis and an inert matter warrants further exploration. The aim is not to remain within a strict interpretation of Sartre, but rather to push Sartre's thought beyond and against itself. What if the group-in-fusion, the positive moment, did not have the practico-inert as its antithesis, but a generative, productive and positive *infrastructure*?

For Sartre, the institutional dimension is a necessary outcome of the passivity that tragically seizes the group-in-fusion, consolidating what is ultimately an absence of freedom. The group-in-fusion's spontaneity is eliminated as it becomes an institution,

16. Ibid, p. 165.
17. Ibid., p. 167.
18. Ibid., p. 168.

leaving just the individual – the collective can only be viewed through its spontaneity and immediacy. Because he takes the institution to be the epitome of the practico-inert, encompassing sovereignty, authority and bureaucracy as three inevitable components of institutional forms, Sartre posits a vertical otherness inherent to institutions, which, upon formation, would derail the horizontal and immanent fusion of the group. The institution implies hierarchy and the oath is its seal: it is the degradation of the common. But could we not offer our own counter-finality to Sartre's logic that would work against his assumption that the institution is always authoritarian and sovereign, such that we might conceive of institutions differently?

Institutions and/as the social

To do so, we will develop his own locution: *praxis without an author.* For Sartre, any such authorless praxis is essentially debased, enslaved to the thing, passive. He writes:

> Every praxis is a unifying and revelatory transcendence of matter, crystallising in materiality as a signifying transcendence of former, already materialised, actions. All matter conditions human praxis through the passive unity of prefabricated meanings. There are no material objects that do not communicate among themselves through human mediation, and no person is born outside a world of humanised materialities and materialised institutions.[19]

Let us try to identify what connects these 'humanised materialities' and 'materialised institutions'. First, we will demonstrate how the absence of institutional authorship plays a positive role and then we will address the ecological thread mentioned above.

For Sartre, the denial of authorship is a requirement of institutions, one aspect of the being of things that are specifically 'materialised'. His voluntarism, however, makes it difficult

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19. Ibid., p. 169.

for him to perceive any positive aspect to this loss of authorship, dispersed and petrified within institutional structures. Let us approach this differently, keeping in mind that when Sartre discusses institutions the existence of a group always precedes it. Two texts that can help us move beyond the Sartrean impasse are the young Deleuze's 'Instincts and Institutions' and Yan Thomas's *Les opérations du droit*.[20] Each radically reopened the institutional question and infused it with performativity.

Deleuze situates institutions within the social sphere and establishes them as the origin of society. He claims that instincts and institutions have a resemblance, since both can be defined as processes of satisfaction. According to Deleuze, instincts are processes that satisfy tendencies and needs, passing through an operation of extraction from the external world that directly satisfies them. Institutions, on the other hand, also serve as means of satisfaction but result from an operation of elaboration. In this case, the initial tendency undergoes a transformation, resulting in the insertion of the tendency into a different realm – not nature, but an organized system of means.

This immediately presents a paradox: an institution satisfies a tendency, but the established institution does not determine the tendency that generated it. If we approach the institution logically, it may seem easy to justify money in terms of exchange, marriage by sexual relations, and the aperitif as a brilliant solution for addressing hunger in the late afternoon. However, we can quickly see that the desire to whet one's appetite does not sufficiently explain the aperitif, sexual desire certainly does not explain marriage, and the need for exchange does not explain money. The problem here is that this reasoning tends towards

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20. Gilles Deleuze, 'Instincts and Institutions', in David Lapoujade, ed., *Desert Islands and Other Texts (1953–1974)*, Semiotext(e), Los Angeles CA, 2003; Yan Thomas, *Les opérations du droit*, EHESS–Seuil–Gallimard, Paris. Ten essays by Yan Thomas have recently been translated into English by Anton Schütz and Chantal Schütz, collected under the title *Legal Artifices: Ten Essays on Roman Law in the Present Tense*, ed. Thanos Zartaloudis and Cooper Francis, Edinburgh University Press, Edinburgh, 2021.

a naturalization that overlooks the fact that institutions are not given but are rather instituted. This implies that instead of existent institutions there could have potentially been a myriad different ones that in fact can yet be created. Deleuze affirms that institutions are 'things' that undergo historical processes and for this reason end up 'hiding' the sense deposited in them and the needs that allowed them to emerge. The forms of the instituted are mistaken for given and uncreated forms when, on the contrary, they were invented, emphasizing an aspect of openness to the future and transformative potential.

Because they are invented, institutions are not just social but 'original' for Deleuze. They compose an 'organised system of means' which, in contrast to the negative element of needs outside the social realm, constitutes a positive model of society as the element in which needs are satisfied. This model of institutions would be opposed to another, namely that of law. This opposition represents the eternal debate between contract and institution as the foundations of society.

For social-contract theory, society functions as a limit, a brake, and a sanction of the totality of rights guaranteed in nature. Society is the negative aspect to be accepted in order to live together. The positive element (rights) is then taken as a natural given. Society intervenes to prescribe limitations to the enjoyment of rights and to sanction the limit. Law, then, sanctions the boundlessness of any such enjoyment. The negative element is made to reside in society, while the positive element exists outside of it in natural rights. Deleuze does not explicitly define law (he sometimes writes 'the contractual limitation') in the introduction to 'Instincts and Institutions', but we can infer its meaning by examining the attributes of his concept of institution. Deleuze draws a stark opposition between laws and institutions, suggesting that the law does not belong to the broader set of institutions. He is interested in the original status

of society and he opposes the primacy and privilege attributed to law understood as contract.

There are several problems with this perspective. First, institutions are portrayed as creative and inventive while laws merely limit, restrict and prohibit. In this dichotomy, what is usually attributed to institutions as a limit, block or brake on praxis is now merely attributed to law. Such an insistence on a binary distinction between law or social contract and institution risks reasserting the origin-focused thought that much of twentieth-century philosophy tried to undermine, ultimately re-naturalizing institutions as original facts. While Deleuze argues that institutions are necessary for and even create society, he does not address *how* institutions are instituted and thus by what sort of instituting praxis society is formed. To avoid this, we will need to think about an origin that is itself instituted, rather than any founding myth or naturalistic origin of society. To emphasize the practice of instituting is to assert the primacy of process, technique and medium. Deleuze, on the contrary, seems to hypothesize an immediate institutional formation without any mediation, as if society and institution could emerge together without first an instance allowing the institution to be formed.

Praxis without an author

In contrast, Yan Thomas does not accept any opposition between laws and institutions or between what is social and what is non-social within institutions. If he isolates a duality it is between what is given and what is instituted, where the latter is understood to be equivalent to the social without remainder. Thomas explains very clearly that from the point of view of the institution there is no place for what Durkheim called a *social fact*, because for the institution nothing is in fact given and there

is always a need to first construct those distinctions and categorizations necessary for value judgements and action.[21] Facts and relations first must be subjected to an operation that constitutes them as artefacts graspable within processes of collective deliberation – that *makes them social*. Without a *mise en forme* of social matter, which is always a political and not a 'natural' elaboration, there can be no institutions.

We call this art of shaping 'law'. At its origin is language as an act: a performative use of language that uniquely does what it says while saying what it does and so enables institutional constructions to take place. Because they are constructed through distinctions, social objects can be said to be instituted and *therefore* social. The *ars iuris* is that language which names and decides, a vocabulary that invents the words it uses to order the social world. It is essential to understand that there is a linguistic-historical *a priori* that coincides with an all-embracing praxis. The assumption that the things of the world are already there, offered, given, and only legally qualified later through logical reasoning, is itself a construct.[22]

Deleuze has provided us with the coordinates for thinking about the institution and moving away from the contractual hypothesis, but this is not enough. With Thomas we can additionally ask whether we should not see the institution in a genuinely institutionalist way. This would amount to asking *how* an institution is instituted. If the answer is that in the Western world law has been the essential tool for forging institutions, then let's ask ourselves whether and how it makes sense to ask the question of its own origin.

Yan Thomas argues that law presents itself as having been always already transmitted, without origin. While it may in fact

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21. See Yan Thomas, *Los artificios de las instituciones: Estudios de derecho romano*, Eudeba, Buenos Aires, pp. 9–12.
22. This issue is more fully developed in Xenia Chiaramonte, 'Instituting: A Legal Practice', *Humana.Mente: Journal of Philosophical Studies* 41, 2022, pp. 1–23.

have one, it is certainly not an origin in the singular. European law finds its roots in Rome, the space where it was invented. The practices that arose and that we now call law materialized within Rome's walls, *ab urbe condita*. Our understanding of law's origin as a medium is limited to its birth within this spatial framework. Law is that text which dematerializes its origin and depersonalizes any potential authorship. Civil law is an extension of casuistics that abstracts the authorial *lex* (from *legere*, 'to read') from its legislator or magistrate, transforming it into text – a *ius* – as a fungible and acephalous norm. Its inventors are now nameless agents who succeed one another in service of a continuous translation. Calling the law into question can help us to picture the ambiguous *praxis without an author* that Sartre failed to see in perspective.

Paolo Napoli highlights the point that legal techniques do not embody any predetermined ideological perspective.[23] Instead, they are versatile, inherently adaptable to various uses and irreducible to the needs of a particular class. Yan Thomas articulates this awareness as follows: 'If the question is how abstraction, norm, and mediation emerge, this is the answer. The rest is ideology.'[24] Ideology's adventures have perhaps been too glorious. It could prove advantageous for the transformation of institutional practices and social struggles to be able to count on a more innovative vision than we have been able to find in a dogmatic legal Marxism. It is with this in mind that one might today dust off the praxeological autonomy of legal operations. As Napoli states, the materialism of the first thesis 'On Feuerbach' does not exclude law: as praxis, law's operations meet the criteria for a materialist approach. Ultimately, legal instruments should be viewed as 'weapons' which can be employed in various ways

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23. Paolo Napoli, 'L'histoire du droit et le commu: Quelques éléments de réflexion', lecture presented to the seminar 'Du public au commun', 6 April 2011 (unpublished).
24. Yan Thomas, 'The Law between Words and Things', in *Legal Artifices*, p. 69.

without an inherent telos directing them towards an exclusive goal.

Legal techniques serve as both products and resources of expertise that can be utilized by ideologically and spatially distant subjects to achieve diverse objectives. This does not eliminate the issue of contextualization, taking into account the material, social and cultural resistance each environment may present against the dominance of means and the self-sufficiency of instrumental rationality. Nevertheless, these means should not be seen as distractions that mystify reality and its necessities; their techniques instead shape the plane of immanence where praxis is organized as innovative creation. These techniques can be repurposed and transformed within historical dynamics, ultimately eluding association with socio-political power focused on the subject.[25]

Napoli effectively demonstrates that concentrating analytical attention on the *means* represents a theoretical choice and not just a methodological one. It is a question of admitting that processes are intelligible, starting from that layer of know-how situated between subjects' intentions and the ends they intend to pursue. These means are condensed meanings, readily available for actions that possess a life relatively independent of human intentions.[26] They constitute nothing less than that *praxis without an author* that Sartre failed to recognize due to his ultimately voluntarist view of history.

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25. Napoli, 'L'histoire du droit et le commun'.
26. Paolo Napoli, in Adalgiso Amendola and Paolo Napoli, 'French Theory e Italian Theory: l'impatto della filosofia contemporanea sul diritto', *Rivista critica del diritto privato* 4, 2014, pp. 591–614.

Neither one nor two

In conclusion, let us briefly revisit the ecological implications of this change of perspective on the institution. If the new 'new materialism' is not satisfied with Marx's 'old' new materialism, this is because of the way the latter treated the problem of relations. Re-examining the Chinese peasants' example, we can derive a different conclusion from Sartre's. It is within an infrastructure of relationships that practices are inscribed. Once we recognize that deforestation facilitates and accelerates water flow, we can identify the systems, techniques and practices that address this new, human and material-induced condition. The interpretation will not be vaguely 'agential' when considering natural entities, such as would look to re-establish any dualisms or primacy of matter over humanity. Instead, it will once again focus on relations. We are com-posed or, keeping with the preferred grammar here, *co-instituted.*

In Sartre's view, potential assemblages are only thought of as counter-finalities or unwanted occurrences. Matter is almost wilfully and tragically opposed: only the negative enables one to think composition. It is only the tragic consequences of unconscious practices that allow for the contemplation of human–matter assemblages. On the other hand, the latest new materialism seeks to rethink the relation in various, albeit often problematic, ways. We cannot discuss the variety of proposals here, but it is worth noting the political and *legal* implications of the work of Jane Bennet.[27] Bennet, like Latour, argues that the actor and the network must be intertwined so that political responsibility is understood to rest within a human and non-human assemblage.

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27. Jane Bennet, *Vibrant Matter: A Political Ecology of Things*, Duke University Press, Durham NC, 2010.

However, if taken seriously, it is not just a matter of determining 'what relationship they or we are in', but also of examining 'what effect that relationship has'. This crucial consideration is also a legal problem because it is unclear how to attribute harm to someone in the context of an anonymous matrix of harm and diffuse interests (such as ecosystem destruction). In doing so we must highlight that assemblages can no longer be considered inert. The implication this has for how we are to think the relationship is critical. Slavoj Žižek counters Bennet in his caustic manner by stating 'We can think of Auschwitz as an assemblage – in which the agents were not just the Nazi executioners but also the Jews, the complex network of trains, the gas ovens, the logistics of feeding the prisoners, separating and distributing clothes, extracting the gold teeth, collecting the hair and ashes, and so on.'[28] Should we attribute responsibility for Auschwitz solely to the entirety of this assemblage?

As Donna Haraway brilliantly puts it, 'One is too few, but two are too many!'[29]

28. Slavoj Žižek, *Absolute Recoil: Towards a New Foundation of Dialectical Materialism*, Verso and New York, 2014, p. 8 n8.
29. Donna Haraway, 'A Cyborg Manifesto: Science, Technology, and Socialist-Feminism in the Late Twentieth Century', in *Simians, Cyborgs and Women: The Reinvention of Nature*, Routledge, New York, 1991, pp. 149–81.