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Books, Debate, Specificity

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FOREWORD

BOOKS, DEBATE, SPECIFICITY

*Neal Kumar Katyal**

Political discourse in 2018 was driven by vague notions of extreme positions attributed to unnamed people and forces. Whether it was the national debt or the border wall or Syria, President Trump kept asserting that an entire party or vague group of people believed something quite extreme, and he would then answer that extreme claim with an extreme counterclaim of his own.¹ This phenomenon was an escalation of Trump's earlier realization that by attributing views to some amorphous set of people, he could frame the debate without taking responsibility or providing an accurate target for opponents to criticize. Thus, he said about Obama's birth certificate in 2013, "You know, some people say that was not his birth certificate."² During the campaign, he said, "Many people are saying that the Iranians killed the scientist who helped the U.S. because of Hillary Clinton's hacked emails."³ Other examples abound.⁴

The theater of it all called to my mind a different form of pretend argument: high school and college policy debate. In high school debate, like in

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1. Consider President Trump's statement that "[t]he Democrats want to invite caravan after caravan of illegal aliens into our country. And they want to sign them up for free health care, free welfare, free education, and for the right to vote." *President Trump Rally in North Carolina*, C-SPAN 19:50 (Oct. 26, 2018), <https://www.c-span.org/video/?453397-1/president-trump-campaigns-republicans-north-carolina&start=1181>. He then decided to shut the federal government down until he achieved funding for his border wall. *US Government Shutdown Will Last Until Deal on Border Wall: Trump – Video*, GUARDIAN (Dec. 25, 2018, 7:03 PM), <https://www.theguardian.com/global/video/2018/dec/26/us-government-shutdown-will-last-until-deal-on-border-wall-trump-video> [<https://perma.cc/3KFP-H48N>].

2. Tal Kopan, *Trump Spars with ABC Reporter over Obama's Birth Certificate*, POLITICO: POLITICO NOW BLOG (Aug. 11, 2013, 11:22 AM), <https://www.politico.com/blogs/politico-now/2013/08/trump-spars-with-abc-reporter-over-obamas-birth-certificate-170348> [<https://perma.cc/8NCT-89QQ>].

3. Donald J. Trump (@realDonaldTrump), TWITTER (Aug. 8, 2016, 6:45 PM), <https://twitter.com/realDonaldTrump/status/762781826549030912> [<https://perma.cc/VD2Q-CGB8>].

4. See Gregory Krieg & Jeff Simon, *Many People Are Saying — That Trump Drives Conspiracies and Gossip*, CNN (Aug. 9, 2016, 10:45 PM), <https://www.cnn.com/2016/08/09/politics/donald-trump-conspiracy-many-people-are-saying/index.html> [<https://perma.cc/4N59-3LX9>].

the 2018 political discourse, the two sides would present outlandish claims (with virtually anything leading to a nuclear war through dubious chains of causation),⁵ and both would be locked in polarized combat. But there was a difference—each debater would have to provide a source for every claim she was making. And the other side could then go and impugn the expertise of the source, instead of being stuck having to refute some vague, undifferentiated claim allegedly attributed to some party or force.

I never thought I'd say this, but it turns out that policy debate was a lot more focused and realistic than last year's presidential political discourse. How could a bunch of naive high schoolers—obsessed with winning through extreme and escalating arguments—somehow end up more grounded?

The books being reviewed in this issue begin to point to an answer. In short, critical to the advancement of ideas is a discourse of specifics, not generalities. When a specific person advances a claim, one can refute that specific claim and contextualize it within other claims made by that same individual. The upshot is a far more productive democratic dialogue.

We can see this with virtually any book being reviewed in this issue. Erwin Chemerinsky and Howard Gillman's *Free Speech on Campus* is notable because it takes seriously specific proposals to restrict campus speech, instead of just condemning a mushy "safe spaces" movement.⁶ The upshot is a much more nuanced description of the debate over speech on campus today and a solution that attempts to balance competing, serious concerns. Readers may disagree over where the line should be struck, but one comes away knowing that the authors took the specific animating concerns of both sides seriously.

Or, take another example of a tract being reviewed in this issue, the great *Apology of Socrates* by Plato.⁷ *The Apology* is Plato's defense of Socrates. But the defense is not written as an attack on some broad, undifferentiated accusations against Socrates. Rather, it is specifically a rejoinder to attacks by Lycon, Anytus, and Meletus.⁸ The trio of accusers levy concrete charges against Socrates: he has corrupted the youth and preached impiety (ignoring the gods recognized by the Greek State and inventing new gods).⁹ The defense is a specific, point-by-point rebuttal of each: "[F]irst, I will reply to the older charges and to my first accusers, and then I will go on to the later ones."¹⁰ A ten-page rebuttal follows:

I have said enough in my defence against the first class of my accusers; I turn to the second class who are headed by Meletus, that good and patriotic

5. See *The Axe Files: Nate Silver*, U. CHI. INST. POL. & CNN 9:15–10:42 (Feb. 11, 2019), <https://politics.uchicago.edu/pages/axefiles> (on file with the *Michigan Law Review*).

6. ERWIN CHEMERINSKY & HOWARD GILLMAN, *FREE SPEECH ON CAMPUS* (2017).

7. PLATO, *Apology*, in *SIX GREAT DIALOGUES 1* (Tom Crawford ed., Benjamin Jowett trans., Dover Publ'ns, Inc. 2007).

8. *Id.* at 6.

9. *Id.* at 7.

10. *Id.* at 2.

man, as he calls himself. And now I will try to defend myself against them: these new accusers must also have their affidavit read. What do they say? Something of this sort:—That Socrates is a doer of evil, and corrupter of the youth, and he does not believe in the gods of the state . . . [L]et us examine the particular counts.¹¹

In writing this way, Plato creates a real debate between warring camps. It is, I suspect, not surprising to anyone that such specificity enables a true clash of ideas. That is the genius of our adversarial system. But a subtler point follows: the dialectical tradition helps explain the unique niche that fiction can occupy in political debate as well.

At its best, fiction is a mechanism for us to understand paradigms fundamentally different from our own daily lives. This understanding sharpens dialogue and provides the concreteness necessary to imagine alternate worlds. Consider, for example, the one book of fiction being reviewed in this issue, Mohsin Hamid's *Exit West*.¹² It is one thing to attack, as President Trump does, a Democratic Party belief in "open borders."¹³ Such a claim set up Donald Trump's inane counterproposals, such as the Wall and the Muslim Ban. An impoverished debate resulted, with the President attacking something that Democrats never believed. The upshot was predictable, silly policies.

Sometimes the only way to have a vibrant debate is through the lens of fiction. Some ideas are so radical that they are not susceptible to easy political debate—instead they need to be recast through the lens of a fictional world. Science fiction at its best does that.¹⁴ And, at times, even the opposite

11. *Id.* at 7.

12. MOHSIN HAMID, *EXIT WEST* (2017).

13. Press Release, President Trump and Vice President Pence, Remarks by President Trump & Vice President Pence Announcing the Missile Defense Review (Jan. 17, 2019, 11:25 AM), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-announcing-missile-defense-review/> [<https://perma.cc/KA94-XBVR>] ("The [Democratic] Party has been hijacked by the open borders fringe within the Party."); *see also* Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 11, 2018, 7:04 AM), <https://twitter.com/realDonaldTrump/status/1072462207416446976> [<https://perma.cc/WLX2-4VYR>], *with* Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 11, 2018, 7:12 AM), <https://twitter.com/realdonaldtrump/status/1072464107784323072> [<https://perma.cc/53M9-AYDY>] ("The Democrats, however, for strictly political reasons and because they have been pulled so far left, do NOT want Border Security. They want Open Borders for anyone to come in.").

14.

[S]cience fiction is the only genre that depicts how society could function differently. This is the first step towards progress as it allows us to imagine the future we want, and consider ways to work towards it. It also makes us aware of futures we wish to avoid, and helps us prevent them.

Helen Klus, *Imagining the Future: Why Society Needs Science Fiction*, STAR GARDEN (Apr. 3, 2012), <http://www.thestargarden.co.uk/Why-society-needs-science-fiction.html> [<https://perma.cc/R73F-R336>]; *see also* Isaac Asimov, *Foreword* to *ENCYCLOPEDIA OF SCIENCE FICTION* (Peter Nicholls & John Clute eds., 1979) ("Science fiction writers foresee the inevitable, and

of science fiction—history—can be best illuminated through fiction. Just think about the brilliant *Underground Railroad* by Colson Whitehead¹⁵ three years ago. Whitehead brings the reader back to antebellum days, with gruesome depictions of the sexual slavery and absolute deprivations of rights that slaves endured. Reading about it in a history book, or even some sort of non-fiction analysis, can't easily bring us into the minds of those who lived it every day. Absent contemporary written accounts (and there were few because so many slaves could not write and it was a crime to teach writing),¹⁶ it needs fiction.

That brings us to *Exit West*. Hamid imagines a world where magic doors appear and provide portals from one continent to another. He begins with a description of a couple, Saeed and Nadia, who meet in an unspecified city “swollen by refugees.”¹⁷ Ultimately a magic door appears that takes them to Greece. Later doors take them to London and Marin, California.¹⁸ Native Londoners are aghast with the influx of refugees. No wall can stop them—for the doors operate interstitially—permitting refugees to waltz into the UK from distant lands. Police are called, and they raid the houses that the refugees find themselves squatting inside. The refugees themselves start organizing politically to protect themselves and their rights.¹⁹ The nativists do not sit by silently either, resorting to physical attacks on the new refugees.²⁰

Ultimately, the government cuts electricity with the aim of stopping the violence.²¹ As any student of architecture could have guessed,²² the plan backfires because lighting is essential to fighting crime. “[M]urders and rapes and assaults” take place, with nativists blaming the refugees and vice versa.²³ And the characters in the book begin to appreciate that there is not one undifferentiated mass of “refugees” who speak with one voice and have one set of traditions—but rather a plethora of different approaches and people from different lands.

The different traditions are felt in Saeed and Nadia's own lives—with Saeed increasingly embracing the culture of his former country and the beliefs of some of the radicalized refugees, including even at one point taking

although problems and catastrophes may be inevitable, solutions are not. Individual science fiction stories may seem as trivial as ever to the blinder critics and philosophers of today—but the core of science fiction, its essence . . . has become crucial to our salvation if we are to be saved at all.”).

15. COLSON WHITEHEAD, *THE UNDERGROUND RAILROAD* (2016).

16. HEATHER ANDREA WILLIAMS, *SELF-TAUGHT: AFRICAN AMERICAN EDUCATION IN SLAVERY AND FREEDOM* 7 (2005).

17. HAMID, *supra* note 12, at 3.

18. *Id.* at 123, 188.

19. *Id.* at 128, 166.

20. *Id.* at 133–34.

21. *See id.* at 141.

22. Neal Kumar Katyal, *Architecture as Crime Control*, 111 YALE L.J. 1039, 1056–57 (2002).

23. HAMID, *supra* note 12, at 146.

possession of a gun.²⁴ Nadia, by contrast, becomes alienated from the tribal violence that pits refugees against nativists. “The fury of those nativists advocating wholesale slaughter was what struck Nadia most, and it struck her because it seemed so familiar, so much like the fury of the militants in her own city.”²⁵ Yet Nadia pulls back from the thought, for “around her she saw all these people of all these different colors in all these different attires and she was relieved, better here than there.”²⁶

Not every Londoner is upset by the emergence of the doors. Some realize that all of the insistence on borders has trapped them in lives that are unfulfilling. In one vignette, a British accountant tries to commit suicide as his means of escape from the London environment around him, only to realize a black door has opened up.²⁷ He takes the door and arrives in Namibia. Later we learn that he has sent texts to his daughter telling her not to worry because he is on the beach and “felt something for a change.”²⁸ Open borders turns out to be liberation for some Westerners, instead of the reverse.

Hamid’s work forces us to imagine a world of true open borders and who the winners and losers would be. The current political debate, by contrast, has no language for such a world, which is why it ultimately devolves into name-calling. But Hamid makes us reflect on what such a world—which may be inevitable as technology grows and globalization continues apace—would do. What is the moral case for closing our borders to those from distant lands who are suffering? Why should the accident of birth decide so much in our lives? Do we win when borders are closed? Or do we lose? And if open borders are ultimately inevitable, what does a society do to ease the transition to it?

CONCLUSION

2018 was a year of tremendous change in our political order. And as the remarkable collection of books being reviewed in this issue demonstrates, it was also a banner year for legal scholarship. Justin Driver has written a deeply important book about the ways in which the federal judiciary has largely abandoned constitutional protections in schools.²⁹ Adam Winkler has penned a lengthy analysis of whether corporations truly are persons.³⁰ And the list goes on.

Yet I’ve chosen to focus my few words here on a work, *Exit West*, that isn’t one of legal scholarship; indeed, it’s not even a work of nonfiction. To hard-nosed litigators, whose world I also inhabit, it is odd to think that a

24. *Id.* at 156.

25. *Id.* at 159.

26. *Id.*

27. *Id.* at 129–31.

28. *Id.* at 131.

29. JUSTIN DRIVER, *THE SCHOOLHOUSE GATE* (2018).

30. ADAM WINKLER, *WE THE CORPORATIONS* (2018).

work of fiction can illuminate much about the law. But *Exit West* reminds us that the artifice of fiction can allow us to glimpse the possibility of other worlds—and that the messy facts of today sometimes will obscure our contemporary consciousness about the changes that, one day, will come.