Bend Until It Breaks

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“[T]he problem is to begin with a conception of power relations that grants that resistance is always possible but not always successful.”
—David Sholle²

Why resist?

The capability inherent in digital humanities for resistance is part of what makes digital humanities “humanistic”—rather than, say, techno-utopian or neoliberal—it’s what connects the digital humanities to the humanities. Alan Liu and Stephen Ramsay have both argued for the necessity of theorizing “resistance” and its place in the work of digital humanists. Ramsay gets to the heart of what “resistance” might look like in this context when, in an eloquent defense of the humanities in general, he describes the humanities as a discursive space in which we answer the pressing question, “How do we become individuals who move through the world with awareness, empathy, and thoughtful-

ness, and who know how to act upon those dispositions?” 3 What if, “we can resist” were at least a partial answer to Ramsay’s question? If this is what resistance can do for us, for the project of being or becoming human, then I think we can see pretty clearly why it matters, why digital humanists should be investing time and resources in activities of resistance. As Liu observes, however, “[h]ow the digital humanities advances, channels, or resists today’s great postindustrial, neoliberal, corporate, and global flows of information-cum-capital is […] a question rarely heard in the digital humanities associations, conferences, journals, and projects with which I am familiar.” 4

What is resistance?

In thinking about resistance and the role it has to play in humanistic inquiry, I am using the definition David Sholle offered more than twenty years ago: “At its root, as an activity, resistance is a defensive contestation, an act of refusal. If we strip away the inessential from the inflections of resistance that have been described thus far, it can be seen that they are all, at root, defensive activities in that they work to limit the capacity of power to define the parameters of action.” 5 As Sholle describes it, resistance in this sense involves first understanding how power relations—social, economic, political—work to perpetuate things like inequality or poverty or racism or “evil,” in part, through the fragmentation of “all points of view and all values [so] as to render them without meaning beyond their value as commodities.” 6 Resistance then requires a “refusal to participate in a strategic contest that power dictates,” i.e., “a rule-breaking activity” aimed at “encourag[ing] or discourag[ing] other activi-

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3 Stephen Ramsay, “Why I’m In It,” blog post, 12 September 2013.
6 Ibid.
ties aimed at altering power effects.”

To the extent humanities scholarship is itself an attempt at resistance, “[s]imply finding resistance already operating is not enough.” Rather, scholars “must be interested in pointing out where and when particular struggles point to potential alliances that lead to further transformative action.”

Although in Sholle’s formulation successful resistance might be rare, opportunities for resistance abound. Success is uncertain because power itself is uncertain. Power is not hegemonic, consolidated, or even consciously coordinated. Rather it is shifting, changeable, contingent, and diffuse. Success depends in part upon carefully thinking through how power relations may evolve in response to a particular strategy of resistance, including understanding how and when new power relations may emerge to contain or neutralize it. In this way, we can identify strategies that not only work to change how power is distributed within the system, but also — and this is the real trick if it can be accomplished — disrupt or destabilize the “means of bringing power relations into being” in the first instance.

Why resistance and DH?

Given a working definition of resistance that highlights the necessity of rule-breaking, of interfering with and perhaps even restructuring power relationships, Jesse Stommel’s declaration, “The digital humanities is about breaking stuff,” can be seen for what it is. More than a provocation, it is a call to action. In particular, I would like to explore how the tendency towards, even perhaps the necessity of “breaking stuff” in the digital humanities plays out in the regulatory context. The idiomatic expressions we use to describe criminal activity in English are telling here. We describe criminals as those who “bend” or “break” the

7 Ibid.
8 Ibid., 97.
9 Ibid., 99.
law. Obviously, breaking the law in this sense, while it may be resistance in one definition, isn’t effective resistance of the sort Sholle describes and for which Liu and Ramsay are advocating. That’s because criminal activity is, returning to Sholle again, a form of resistance that is already “managed” and “limited”\(^\text{11}\) within the law’s discursive space for the most part (though important exceptions to this general observation do exist, of course, including civil disobedience of the sort we saw during the US civil rights movement and have seen in Nigeria,\(^\text{12}\) Egypt, Turkey, and, even more recently, the rallies and “die-ins” that have organized to protest racialized police violence against people of color in the US).\(^\text{13}\)

**When is DH resistance?**

What does it mean, though, to engage in professional practices whose end is, at least in part, to “bend,” “deform,” or even “break” the law? What happens when digital humanists—or any humanists, for that matter—rather than treading lightly,\(^\text{14}\) instead run roughshod through the carefully cultivated regulatory landscape in which formal, aesthetic distinctions between art and scholarship, between creating and critiquing, and between pedagogy and artistry must be maintained and reproduced in order for everything to work?

I have written elsewhere about how the discursive representation within legal decision-making of literary concepts such as “authorship,” “scholarship,” “utility,” and “ornament” have influenced the evolution of copyright law.\(^\text{15}\) These legally significant

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\(^{11}\) Sholle, “Resistance,” 97–100.


concepts are often borrowed almost wholesale from the discourse of literary studies or humanistic scholarship more generally. Thus, for example, the “authorship” copyright rewards does not include “sweat of the brow” collection and rote organization of information—however much labor that might involve, and however useful or interesting the resulting artifact—but only original, creative “invention.”16 In the digital humanities, ethics of collaboration, such as those expressed in the “Collaborators’ Bill of Rights,” arguably require us to push back against this institutionalized elevation of invention over the other forms of essential labor involved in the creative process: “All kinds of work on a project are equally deserving of credit (though the amount of work and expression of credit may differ). And all collaborators should be empowered to take credit for their work.”17

The law in turn has influenced and shaped the work we do as scholars and the forms our scholarship can take. The fair use analysis, for instance, often relies on a presumption that the items enumerated in the fair use preamble—“criticism, comment, news reporting, teaching […], scholarship, or research”18—will not look like creative artifacts, that literary scholarship will not resemble, except in the most superficial way, the literary objects with which it engages.19 To the extent humanistic inquiry redefines things like “authorship” and “scholarship,” and also begins to shift its practices in ways the law has not already anticipated, these transformations become part of the objective reality the law must come to terms with and regulate in subsequent deci-

16 See, e.g., *Feist Publications, Inc. v. Rural Telephone Service Company*, 499 US 340 (1991), in which the Supreme Court held: “The revisions [to the 1976 Copyright Act, United States Code Title 17] explain with painstaking clarity that copyright requires originality, §102(a); that facts are never original, §102(b); that the copyright in a compilation does not extend to the facts it contains, §103(b); and that a compilation is copyrightable only to the extent that it features an original selection, coordination, or arrangement, §101.”


18 United States Code, Title 17, Section 107.

19 Wharton, “Digital Humanities.”
sions. By understanding the relationship between the law and the objects and activities towards which it is directed, and the complex discursive exchange among law and literary studies, we begin to reveal pressure points where opportunities for resistance, as I’ve described it here, arise.

**How does DH break the law?**

In his essay “The Law Wishes to Have a Formal Existence,” collected in *There’s No Such Thing as Free Speech: And It’s a Good Thing, Too*, Stanley Fish observes,

> [A] legal system whose conclusions clashed with our moral intuitions at every point so that the categories legally valid and morally right never (or almost never) coincided would immediately be suspect; but a legal system whose judgments perfectly meshed with our moral intuitions would thereby be rendered superfluous.”

While there may be much to disagree with in Fish’s analysis of the law’s rhetorical operation, that analysis — and particularly this point — nevertheless manages to isolate a potentially useful discursive tension produced when the law casts human activity into narrative in order to accomplish its aim. Certain kinds of scholarly activity within the digital humanities exploit that tension to resist the process of disciplinary regulation through legal narrativization.

All discourses (not only Marx’s, but also Smith’s or Ricardo’s or the discourse of neoclassical economists) can be read as comprising different orders in which signifiers are articulated into discourse in order to produce different meanings; that is, different discourses are different constitutions of signs

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rather than different interpretations of an empirically given object of analysis.

In order to make sense of the set of meanings produced in a particular discourse, we must take into account the relations of confrontation between this particular discourse and other discourses. These relations of confrontation are themselves the partial result of the operation of different politico-theoretical priorities in discourse. Thus, for example, the meanings that Marx ascribed to his key concepts (e.g., value, economy, ideology) do not have fixed, empirical referents. These meanings are construed as they are because Marx, facing the meanings produced by classical political economy, confronted this school of thought-its politico-theoretical priorities-by setting out to produce a different set of meanings exhibiting a different set of priorities.21

Much more recently, Stephen Best has asked us to consider,

How does the “form” in the commodity form generate social phenomena in ways that are neither mechanical (historical causality) nor fully contingent (analogy)? When I ask, what is the generative power of form? I am not asking the conventional question, what does form cause? […] It is more a question of what form produces, what form generates.22

As Jack Ameriglio and Antonio Callari argue, because of how discourses function, we can always expect slippage between an “empirically given object of analysis” and each of the various discursive forms we use to talk about that object. Further, again because meaning within discursive systems depends more upon the relationship among signifiers, rather than the relationship between any given signified and its signifier(s), some discursive

systems will actually tolerate quite a bit of slippage between an object and its discursive representation. Finally, in the “relations of confrontation” between discourses, such as those Fish identifies between legality and morality, lies a generative potential, one that is neither—to draw from Best—”mechanical” nor “fully contingent” in its operation, when the forms of one discourse are drawn into, or in conversation with another.

Because the law—like most discourses probably—is a hybrid, blending legal and non-legal discursive forms, legal narratives simultaneously comprise a variety of narrative registers or modes, including documentary, fiction, and speculative realism. Legal statutes and court cases simultaneously describe the world as it is, how it needs to be in order for laws and legal doctrines to make sense, and how it might be if everything goes according to the regulatory game plan. As I’ve argued previously,

[court decisions] can, of course, be read as judicial responses to historically specific social, political, and economic pressures. They may also […] be read as judicial efforts to create an internally coherent legal epistemology that not only reacts to the world it is intended to regulate but also proactively creates the terms by which that world will subsequently be known and understood.23

Forms, both objective and discursive, matter in the law. Legal narrative can tolerate a certain amount of fictional or even speculative realism without losing its authority. When, however, the slippage between the “real” objects of regulation and their discursive representation becomes too great, or, even, when the discursive representation of things in statutes and legal decisions strays too far from how those same things are represented in other discourses—like scholarly essays or the popular press—the law’s ability to “define the parameters of action” is tested, and occasionally even disrupted.

23 Wharton, “Digital Humanities.”
When digital humanities scholars make scholarly artifacts, when any scholars make scholarly artifacts that don’t conform to aesthetic expectations baked into the law (or into more localized regulatory apparatus such as campus intellectual property policies or review, promotion, and tenure procedures), they are potentially engaging in a kind of resistance. Such artifacts present opportunities to construct new disciplinary, discursive, and professional alliances and to write new narratives within which such forms can be discursively articulated as “scholarship” or “fair use” or “non-infringing” or, perhaps most tellingly, “transformative.”

Similarly, when digital humanities projects establish new working relations among collaborators that not only ignore but in some cases actively defy institutionalized hierarchies of labor, we create pockets of jurisdictional uncertainty where regulatory assumptions about whose contributions will count for what and why are called into question. Simply making or building these things, however, is not in and of itself going to lead to the creation of a world in which “individuals […] move through the world with awareness, empathy, and thoughtfulness, and […] know how to act upon those dispositions.” Rather, we must also be able to cast these objective forms into discursive forms that can act within, can transform the complex regulatory narratives that constrain the field of human activity. And finally, because no one should be expected to two jobs for the price of one, we must be open to new collaborative

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24 See, for example, Katherine D. Harris, “Explaining Digital Humanities in Promotion Documents,” *Journal of Digital Humanities* 1, no. 4 (2012).

25 Julia Flanders, “Time, Labor, and ‘Alternate Careers’ in Digital Humanities Knowledge Work,” in *Debates in the Digital Humanities*, ed. Matthew K. Gold (Minneapolis: University of Minnesota Press, 2012). Flanders does an excellent job of exploring the ways in which “alternative academic” or “alt-ac” work within DH labs and centers contravenes, undermines, and calls into question traditional models of academic labor. She also offers suggestions about how graduate education and academic work environments could be restructured to better accommodate, value, and reward the variety of labor that makes DH scholarship possible.
relationships and new definitions of what counts in academic hiring, tenure, and promotion.  

How does resistance become reform (Pt. 1, Pedagogy)?

In “Unpacking My Library,” and in his other work on the figure of the collector, Walter Benjamin argues for the existence of subject–object (or maybe object–object) relations that, even though they cannot exist outside of the exchange economy, nevertheless resist the ontological consequences of that economy in highly productive ways.  

I see similar potential in Mark Sample’s description of non-consumptive reading. Non-consumptive reading resists the ontological consequences of the current regulatory system, transgressing distinctions between the products and objects of literary analysis upon which its operation depends. It blurs the distinction between producer and consumer, or artist and critic—categories with substantial legal, social, and economic significance. Because non-consumptive reading causes us to re-examine foundational and often implicit discursive assumptions, it has potential value not only as a scholarly practice in the digital humanities, but also as a critical pedagogical practice in the humanities, and perhaps even other disciplines more broadly.

26 See for example, Trevor Muñoz, “Digital humanities in the library isn’t a service,” blog post 19 August 2012. Muñoz makes a compelling argument that, “Having those who work on digital projects claim identities as researchers rather than as some other kind of academic employees who serve faculty research is important for addressing the issues of power balance within the academy.”  


28 Mark Sample, “The Poetics of Non-Consumptive Reading,” *Sample Reality* (blog), 22 May 2013.
For children can accomplish the renewal of existence in a hundred unfailing ways. Among children, collecting is only one process of renewal; other processes are the painting of objects, the cutting out of figures, the application of decals—the whole range of childlike modes of acquisition, from touching things to giving them names.\textsuperscript{29}

I want to advocate for a poetics of non-consumptive reading in the digital humanities. Scholars and students of art, literature, history, and culture ought to transform more of our non-consumptive research into expressive objects. Non-expressive use of texts is a dead-end for the humanities. A computer model surrounded by a wall of explanatory words is not enough. Make the computer model itself an expressive object. Turn your data into a story, into a game, into art.\textsuperscript{30}

To put it another way, digital humanities scholarship has caused us to examine more carefully how the discursive forms—including the channels of distribution—produced within humanities disciplines are deployed in regulatory discourses to perpetuate a copyright regime that chills speech and significantly restricts academic freedom, as well as to maintain structural inequality throughout the academy. Classroom praxis in the humanities comprises discursive forms that can be just as rigidly predictable, and as closely entwined with regulatory apparatus, as those we find in traditional print journal articles and scholarly monographs. Too often in post-secondary pedagogy we ask students to iterate discursive forms without asking whether that is the best way to teach them—either the forms or the students. Yes, certainly, it may be the best way to train students to become members of our own professional discourse communities as they are currently configured, but given the precarity of the academic labor market, we should at least be questioning the wisdom of that justification.

\textsuperscript{29} Benjamin, “The Collector,” 61.
\textsuperscript{30} Sample, “The Poetics of Non-Consumptive Reading.”
A digital humanities pedagogy of resistance cannot simply take for granted that the whole purpose of K–12 education is to prepare students for college and a job, and also that the social, political, and economic functions of the academy are all unquestionably good. Instead, DH practitioners should participate in a genuine, dialogic conversation about what the purposes of lifelong learning should be and how best to design our pedagogy to fulfill those purposes at every stage in a learner’s experience. Rather than presuming serious discussion should be the model for every seminar meeting, we should be much more mindful of how what we (a we that includes instructors and well as students) want to accomplish in a given period, students’ learning preferences, and the material under consideration should determine the methods we employ. We should be open to the possibility that field trips, games, physical activity, show and tell, and other “childish” things need not be left behind once students enter college. Examples of pedagogical practices that emphasize and value play, emergence, and collaborative processes over rules, structure, and individual work product include Adeline Koh’s “Trading Races,” Pete Rorabaugh’s and Jesse Stommel’s “Twitter vs. Zombies,” Frederick Cope’s and Michelle Kassorla’s Generative Literature Project and the sprawling, semi-mythical DS106 that began at the University of Mary Washington. We should be aware that the spaces in which learning takes place may be as variable as the activities that take place within them. Finally, we must be attentive to the affective dimensions of the learning experience. Ensuring learning is pleasant, engaging, and pleasurable — as well as challenging, sometimes difficult,

34 See the Generative Literature Project archives on Hybrid Pedagogy: A Digital Journal of Learning, Teaching, and Technology for a history and overview of the project: http://www.hybridpedagogy.com/tag/generative-literature-project/.
35 The DS106 project site can be accessed at http://ds106.us/.
and transformative—does not necessarily reduce a pedagogue to an entertainer.

Looking beyond college and university classrooms to education reform policy debates taking place in legislative sessions and the popular press, we should be worried by unreflective calls for increased “rigor” and greater “accountability” in K–12 education. Standardized testing, the controversial common core standards, proposed MOOC-ification of remedial education, these “innovations” are all arguably attempts to address students’ “underpreparedness” for college and the workplace. Meanwhile, art, music, physical education, and recess are disappearing from the curriculum. In their zeal for “reform,” policymakers may be eradicating the very things about K–12 education that might teach us and our students about where practices like curation, building, and creative production fit in humanistic inquiry.

Further, even where we have begun to acknowledge their value, our obsessive emphasis on end results may actually empty out the resistive potential of these pedagogical strategies. For Benjamin, “childlike processes” and collecting—processes that work against or at cross-purposes with the logic of capital—are strategies of material and ontological renewal precisely because they are done for themselves rather than as a means to a consciously articulated and pre-determined end. The end result of

38 Tyler Kingkade, “San Jose State University Begins MOOC Partnership As California Schools Pushed To Online Education,” Huffington Post, 16 January 2013.
40 Dominik Lukës, “Zero pedagogy: A hyperbolic case for curation and creation over education in the age of the MOOC (#moocmooc),” Researchivity—Exploring Open Research and Open Education, 15 August 2012.
42 Dale Dougherty, “Georgia Tech's Makerspace is a Model for Higher Education,” Make:, 28 March 2013.
education reform focused on learning as a product that serves individual interests, rather than a process that enriches the community as a whole as a public education system — and, increasingly, a system of higher education — that exacerbate income inequality and the effects of institutionalized racism. Parents and students with the means to pay for it can still pursue an education filled with opportunities for open-ended exploration through play, building, performance, and making. Parents and students without that option are often forced to settle for an education designed to enforce compliance rather than empower citizens. If wealthy, white suburban parents are entitled to “opt-out” of the relentless cycle of high stakes testing in public schools on behalf of their children, then why the parents and teachers of children of color must be disciplined so harshly for their own vital acts of resistance in relation to the very same system? To understand digital humanities pedagogy as resistance is to understand that technology can be used to oppress as well as liberate, and to be wary of institutional conversations that construct an us against them relationship between those who use technology in the classroom and those who do not. As Sholle reminds us, the forms of resistance are various and highly context-dependent. We should build communities of pedagogical practice around the shared goal of student empowerment, not fascination with the latest gadgets and technological solutionism.

As a lawyer and legal scholar, I am absolutely aware of how essential the ability to interpret and reproduce the discursive

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forms in which power speaks to power can be. Yet, what is truly empowering is understanding such forms are constructed, contingent, open to interpretation, negotiable, and also knowing where they fail and when other forms are better suited to the task at hand. I have seen in a variety of contexts how process and methodology work to establish personal and professional identity in ways that can be liberating and also limiting. We should constantly be re-examining how our own processes and methodologies as teachers, students, scholars, and artists position us in relation to one another and the subjects/objects of study within our classrooms. Rather than simply allowing social, economic, political, legal, and disciplinary regulatory structures to dictate the shape of what we do, we should be more mindful of how what we do helps give rise to and reinforce such structures.

How does resistance become reform (Pt. 2, Scholarship)?

Sholle’s definition of resistance has been in circulation in media studies since the early nineties. Resistance, like many of the other things digital humanists do, is something media studies and cultural studies folks have also been doing for thirty years or more. I wonder, though, if part of the reluctance Liu has observed on the part of digital humanists to do cultural criticism is attributable, at least in part, to scholars’ general reluctance to engage with entrenched power dynamics and structural inequality within the academy itself, however astutely they may critique their manifestation beyond the ivory tower.

[I]t is essential those involved in promotion and tenure reform recognize that excellence is a socially constructed notion. As human beings in social systems within universities, we are flawed. Efforts to become a more diverse, inclusive community are intimately tied to the kinds of work our aca-
democratic reward systems value, how we evaluate it, and how conscious we can be about the biases we bring to the table.47

The redesign of scholarship to allow for participation is an enormous undertaking, not yet much beyond prototypes, none of which have yet proved fully viable except the wiki. And the difference between a book chapter that lays out a well informed and studied discussion of new research and a set of guided activities for the acquisition of that knowledge is the difference between research and pedagogy. They perform different roles.48

We must understand the conversations about things like getting rid of the dissertation—or accepting digital projects in lieu of graduate theses or print monographs—as arguments about whether and how to resist. We need to acknowledge how new modes of open access and open source scholarship and publication may involve reconfiguring the means of academic production, and the relationship between author and producer, reader and consumer, text and commodity in ontologically significant ways. Similarly, debates about the relationship between pedagogy and scholarship, and their relative value in the academy, are directly relevant to the project of theorizing resistance in the digital humanities.49 When we build things, we are also building networks and relationships. When we define “digital humanities” and “scholarship” in ways that exclude “pedagogy,” we are articulating relations of power that will govern the working con-

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49 In “Play, Collaborate, Break, Build, Share: ‘Screwing Around’ in Digital Pedagogy, The Debate to Define Digital Humanities… Again,” Polymath: An Interdisciplinary Arts and Sciences Journal 3, no. 3 (2013): 1–24. Katherine Harris, for example, argues that definitions of “digital humanities” as a field that exclude teaching and pedagogy “silence” the only “brand of Digital Humanities” in which most scholars at teaching-intensive institutions engage, given the institutional circumstances in which they perform scholarly labor.
ditions of our colleagues, shaping and perhaps constraining the field of intellectual activity within and perhaps even beyond the academy for years or decades to come.

At the same time, we must do more than pay lip service to scholarly or disciplinary innovation. We must walk the walk as well as talk the talk, hack as well as yack. The formal risks digital humanists take with their scholarship are every bit as important to the project of resistance as are theoretical and institutional advocacy that help to justify such work as scholarship. If the digital humanities are to be an effective path of most resistance in the academy, then the “digital” in digital humanities needs to refer to more than just the methods scholars employ, and the digital forms they produce must do more than simply iterate the aesthetics and conventions of print scholarship. Advisors and dissertation committees must be willing to let graduate students take formal risks with their work, and hiring and tenure and promotion committees must be willing to accept innovative forms not just in addition to, but in lieu of the print monograph.

The goal of resistance in the digital humanities should not, I think, be to replace one kind of thing with another kind of...
thing in academic work, but to open up the field of possibilities. Further, we must be open to critique that points out unintended consequences, and be wary of the “old wine in new bottles” problem in which forms that seem innovative at first glance simply repackage and recirculate the familiar damaged goods of socio-economic stratification, political alienation, contingency, ivory tower isolationism, and exclusion or disenfranchisement of people of color, those who identify as queer, women, and many others who don’t fit into a dominant Western, white, male, heteronormative paradigm. To resist, we must refuse to accept as given and even be willing to break the existing rules, and we should also be careful we don’t intentionally or unintentionally replace them with something worse.
Bibliography


United States Code, Title 17, Section 107.


