Part V

Conclusions
CHAPTER XVI FRAMING THE LEGAL WITHIN THE POST-FOUNDATIONAL

We are in the Land of And when we knowingly face a choice between two or more possible points of view, neither of which has the power to command acceptance... Thus, we must choose between two valuable interpretations, not between a good and bad one... [W]e prefer both sides of the contradiction for different reasons, and thus a choice is forced, a choice calling for an assertion of one of two or more possible labels, all of which commend themselves to our attention. In the Land of And costs abound. Every choice forces us to give up something valuable... [s]uch choices are tragic choices, because we cannot... gain everything and lose nothing by our choice.¹

On the Idea of Frames

What might the positive implications of the foregoing chapters be for the way we think and write about international law? One tempting response may be that there simply are none. This is a charge often levelled by opponents of post-foundationalism; that it simply has nothing to say about the creation and justification of a system of social normativity. Of course, on some readings, Rorty takes this criticism and turns it into a fighting faith: the role of post-foundational philosophy is only to keep us from lapsing into impossible expectations based on sets of bad questions.² On this view, our politics neither has nor needs any philosophical support. As I have argued, however, this claim is premised upon a particular, narrow view of phi-

² See e.g. Christopher Norris, “‘What is enlightenment?’: Kant according to Foucault”, in Gary Gutting, ed., The Cambridge Companion to Foucault (Cambridge: Cambridge University Press, 1994) 159-196, at pp. 162-166. I examined this issue in detail in Chapter VI.