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Introduction
Cultures have been viewed as “one” or “single” units, as wholes including sets of practices, beliefs, attitudes, and products such as texts, artworks, and so on. For example, Eric Liu, exploring tensions and multiplicities in his cultural identity in The Accidental Asian, notes that some scholars assert the existence of a “core” Sino culture (Huntington). Some may believe there is a core Asian American cultural identity. A cohesive cultural identity has been assumed to rely on this “oneness,” and internal multiplicity or diversity has been assumed by some to be at least problematic and sometimes a threat or deficiency.

In contrast, I suggest the following theses: A cohesive group cultural identity may proceed with a high internal degree of internal multiplicity, and need not be viewed as deficient or fragmentary. An individual person’s cultural identity may incorporate multiple internal affiliations, and need not be confused or deficient. Rather a person’s healthy cultural identity may proceed with a high degree of multiplicity. Multiplicity is not only compatible with group unity, but it may also enhance it. Multiplicity is not only compatible with a flourishing human identity of a person, but it may also enhance it. I explore these multiplicity theses here in the context of Asian American culture.

There are strong challenges to the singularity view, both theoretical and pragmatic. For example, philosopher Anthony Appiah, citing Toni Morrison, challenges the singularity or wholeness notion:

I have insisted that African Americans do not have a single culture, in the sense of shared language, values, practices and meanings. But many people who think of races as groups, defined by shared cultures, conceive that sharing in different ways. They understand black people as sharing Black culture by definition: jazz or hip-hop belongs to an African American...because it is culturally marked as black.5

Critiques of a single culture view can also be tied to cultural identity. Appiah also criticizes what Henry Louis Gates, Jr. calls “cultural geneticism,” i.e., simply by “having a racial identity,” you “earn rights to culture that is marked with the mark of a hard identity position.”3

While rejecting a singularity view of “a culture” tied to a racial group, Appiah also rejects the narrowness of cultural identification associated with that view. He invokes the view of the great thinker and leader, W.E.B. DuBois, who was born in Great Barrington, Massachusetts, was the first African American to major in philosophy at Harvard, was denied entrance into a philosophy Ph.D. program, and was a proponent of Pan-Africanism and a leader who helped found the NAACP.

Appiah says:

Cultural geneticism deprives white people of jazz and black people of Shakespeare. This is a bad deal—as DuBois would have insisted, “I sit with Shakespeare,” the Bard of Great Barrington wrote, “and he winces not.”4

We should also note that cultural geneticism deprives black people of classical music and opera as well as assimilates them too narrowly with jazz. It deprives Asian Americans of (for example) R&B, hip-hop, and basketball, and African Americans of traditionally Asian cultural experiences.

To whom is Appiah’s challenge addressed? Those who stand on the outside looking in on “Black culture,” or “The Black Experience,” especially from the viewpoint of white majority culture, may tend to think there is “one” culture. Analogous observations hold for “Asian culture” in America. A singularity hypothesis may help organize the complex array of cultural and ethnic categories that sometimes overwhelm persons in a highly diverse pluralistic society. Nevertheless, such views may simply “lump” groups and individual persons in distorting ways.

I will take up an Appiah-type challenge within what Asian Americans say about Asian American cultural identities in the plural. We may take from Appiah an analogous challenge for many groups’ cultural identities. One caveat: The point is not that Asian American culture is “like” or “parallel” to African American culture. Nor is the point that we ought to look for parallels between African American and Asian American cultures. Rather, my point is that Appiah’s challenge to single or “one” culture can be applied to many cultural identities in addition to African American. If we “look” carefully, we may see more perspicuously how multiplicity is contained within a cohesive cultural identity on both group and individual levels.

Appiah condemns the identification of black culture as a “single culture.” My views on multiplicity within identity clearly stand in line with challenges to cultural “geneticism” or to essentialism, the notion that each culture has an essence, or a unified core of essential features, or “cultural inherentism,” in Lawrence Blum’s term (“these people are just that way, e.g., Jews are stingy, whites are racist, Asians are studious...”).5 My multiplicity theses also support Seyla Benhabib’s critique of “faulty epistemological premises” in the assumption that a culture is a “whole” thing.6
Cultural identity is related to racial identity, yet the relation itself is highly complex and fraught with racialist, and racist associations, e.g., cultural geneticism. Can we strip away prejudice and arrive at a bias-free theory? In response, I question the notion that we can develop a coherent general theory on “the relation between culture and race.” The way race and culture interact is specific to each group, and must be contextualized. Cultural identity needs to be explored in its group specificity.

On the connection between racism and group cultural identity, we have much to learn from the specificity of Asian American experiences. Racism and prejudice arise in specific ways for each group. For example, given the ties of racial and cultural identity to a nation, the way a nation relates to U.S. military power (Vietnam War) and economic dominance (Japan) will filter down and affect groups and individual persons. Predictions of China’s increasing economic power may pose a warning of the potential for economic racism with a specialized character for Asian Americans. If history repeats itself, generalizations from “Chinese” to “Asian” may implicate many Asian groups. The economic dominance of a nation has racialized implications for Chinese Americans because of the “lumping” phenomenon. The overall point is that the structure of our linguistic terms “cultural” versus “economic,” or “cultural” versus “race,” artificially separates phenomena, implying separate spheres. In actuality, they are points of view that take on complex practices.

My method selects certain examples from Asian American experiences to expose the falseness in certain frameworks and point the way to accuracy. Recalling Wittgenstein’s saying, “Don’t think. Look!”, I try to expose misleading assumptions, some of which come from too much thinking and not enough looking. We need to examine actual cultural processes, observing how dynamic and fluid they are. Only then can we develop coherent philosophical methods and theoretical frames.

This method is also found in certain social scientific investigations. Lai mistakenly terms the model minority portrayal “monolithic” sounding a theme parallel to the major theses. Paul Watanabe, condemning false portrayals of Asian Americans, claims they are “simplistic, stereotypical, and devoid of critical nuances.” Watanabe’s methodological aim is to start with accurate description, rather than analysis or speculation, to reverse the effects of false portraits, and to more fully comprehend the “diversity that exists within (the Asian American) population.” He objects to the way the model minority set of generalizations (Note internally complex economic and cultural situation. “Slice” may mischaracterize a social-cultural-racial group’s internally complex economic and cultural situation.

Multiple cultural and economic practices are misleadingly coalesced into the model minority set of generalizations (Note that the myth entails more than one generalized attribution). In Takaki’s view these are “exaggerated,” because they are based on misinterpretations of (a) regional variations; (b) how economic income and wealth are produced within a household; (c) variation in certain sectors which are not doing well economically but are “mired in poverty...including Southeast Asian refugees such as the Hong and Mien as well as immigrant workers trapped in Chinatowns”; (d) literacy, language skills, and educational background (“Fifty five percent of the residents of New York Chinatown do not speak English well or at all.”); (e) the status of women and gender inequalities in debt-bonded labor for the disproportionate representation of women in garment industries.

The moral or ideological force of the “Asian Superminority” in media and governmental rhetoric is based on the values of individual effort and self-reliance. This interpretation mistakes the way in which many Asian families live and cooperate together. Assets are measured solely by household, obscuring the number of family members contributing and type of contribution from each individual member (recalling a similar problem in the gender division of labor, which obscures the contribution of the caretaking parent). Takaki’s interpretation implies a multiplicity thesis in social ontology: what is achieved by collective family units in Asian cultural patterns is misattributed—within the myth—to economic and cultural individuals. Many Asian American families manage economic productivity as social units, not simply as individuals.

Significantly, in my view, Takaki, in refuting the model minority myth, does not use the term “stereotype.” He calls it “society’s most recent jeremiad—a call for renewed commitment to the traditional virtues of hard work, thrift and industry...Look at the Asian Americans! They did it by pulling themselves up by their bootstraps.” He highlights the way this call divides Asian and African Americans. I also note that Watanabe does not specifically apply the term “stereotype” to the “model minority” although in general he criticizes stereotypes applied to Asian Americans.

In my view, the omission is significant because the ordinary notion of stereotype under-describes both the internal logical complexity and the negative moral force of the model minority portrayal. Drawing on Blum’s thesis that we need a new and more nuanced analysis of a “Variety of Racial IIs,” we may display more accurately how the false portrayal in the model minority negates the Asian American cultural group’s internal multiplicity and misattributes another false singularity to African Americans, a contrast then used to drive a wedge between the two groups. In brief, the other-attributed “model” myth directly denies internal multiplicity in ways that undermine both group and individual cultural identity. This political use of the myth should not, on Takaki’s view as I interpret him, be termed a “positive” stereotype. His view is that the false attribution to the group as a whole has negative effects on significant portions of the group as well as on other groups. There is little positive about it, since it undermines both intragroup unity among Asian Americans and intergroup unity among Asian and African Americans. In summary, although it is not the only element, a philosophical notion of one, single, or “whole” culture lies at the root of this cluster of mistaken attributions and messages in the so-called model minority.
Part II. Multiplicity within Individual Asian American Cultural Identity

While many Asian Americans have explored tensions in their individual cultural identity, the example of Asian descent children adopted by non-Asians presents a particularly challenging question. Do these children have a problematic cultural identity because they are not raised by Asians, and thereby do not have an “authentic” connection to Asian cultures? Many consider the child adopted outside the group, particularly by white parents, to be at risk for an authentic cultural and racial identity, or at least to be at risk for a problematic or confused racial and cultural identity. This view has been expressed within many racial, cultural, and national groups.

My question is: What are the assumptions concerning race and culture standing behind these worries? How do these relate to the assumption of “one” version of A, B, or C culture? Consider an analysis designed to reconstruct the background assumptions of the claim, but not to take a side on one ideological position on whether children should be adopted outside their group of origin, an issue I have explored in depth elsewhere.13

As I argue here, the assumption of a problematic cultural (and racial) identity often turns out to be based on a false assumption that “Asian cultural identity” is a monolithic, singular, whole, and that non-Asian parents lack a singular connection to Asian culture, (or do not have an Asian cultural identity). Significantly, these singularity assumptions would also condemn interracial families, where a non-Asian parent raises children of Asian descent. Analogous arguments might be made for African Americans, but I do not address this question here in order to remain consistent with my thesis that each culture-race identity issue should be contextualized in a group-specific context.

On a social level, Asian adoptees are often connected to their specific culture in their land of origin. Korean adoptee advocacy organizations are often considered as exemplary. Since Korean children were first adopted into the U.S. primarily by whites starting in 1956, these organizations have had an established tradition of sponsoring summer culture camps and organizing homeland tours. Even children adopted in rural areas with few Koreans or Asians may be able to have some connection with the homeland culture. Also, Families with Children from China (FCC) supports Chinese adoptive families with similar kinds of active cultural engagement. The Holt studies of psychosocial adjustment of Korean adoptees, considered solid social-scientific investigations, showed a high degree of healthy adjustment and are taken by many to demonstrate that cross-racial adoption need not be prima facie problematic because of its multiple cultural and racial influences. Various studies, for example, by Simon and Altstein, show that a majority of Korean descent adopted young adults identified themselves both racially and culturally as Korean American or Asian American. This does not mean individual conflict is absent, that a person’s identity can never be confused, or that psycho-social problems are nil. In view of these social scientists, the studies do show that a multiple set of cultural experiences can form the basis of a cohesive cultural identity, i.e., that multiplicity within identity is possible and has succeeded in terms of healthy adjustment as well as self-identified cultural and racial identity.

There are many ways a cultural identity can be imbibed. For example, a substantial number of Korean and Chinese adoptees travel to Korea or China to experience the culture firsthand. Yet they do not enjoy the privilege of growing up with a Korean or Chinese mother, “funneling China into our ears,” in Maxine Hong Kingston’s words. Ironically, these adoptive children travel to the motherland, but Kingston, whose mother gives her culturally rich detail (“...Kwantung Province, ...the river Kwoo, ...Just give your father’s name and any villager can point out our house.”), says, “I am to return to China where I have never been.”14

However, the multiplicity-within-identity theses seem to be strongly rejected by various groups’ opposition to out-group adoption. Let us next ask a meta-question: What is the relation assumed between race and culture, and what are the assumptions about a singular culture, presupposed in the worries of these critics of cross racial adoption? If racial identity were counted solely by biological lineage, one could be counted of African descent or of Asian descent, even if adopted by outgroup parents. (Granted, for the sake of argument, this way of counting race inclusion.) So where does the problem lie?

The source of the problem, on my reconstruction here, must lie in the cultural transmission of racial identity, since outgroup parents are assumed not to have the capability to transmit this on the view opposing out-group adoption. If racial identity were purely biological, and biologically transmitted, then, even if the biological parents were not doing the childrearing, the racial identity would already have been conferred. However, according to these critics, racial identity transmission is ongoing, surfacing critically in adolescence and young adulthood. Hence the critics’ assumption, or tacit presupposition, must be something like the following: transmission of racial identity must have a strong cultural component. And, therefore, only same-race parents can transmit healthy racial identity in the sense of self-ascribed identification and survival skills. I interpret the baseline presupposition on race and culture, presupposed within these critics’ view, to be that the child’s cultural experience of race must be, in some sense, a “whole” or “singular.” Only then can the requisite unity be established between racial identity and cultural identity. Granted, this “singularity” or “wholeness” presupposition differs in its complexity from Appiah’s challenge raised at the beginning of this paper on a “single” culture. Yet it does constitute a related challenge in the same territory. It also shows that part of the “meaning” of “racial” identity is so closely bound up with “cultural” identity, that it seems hard to disentangle the two (if indeed they are “two” in the first place).

Next, consider some hypothetical cases to investigate whether a healthy cultural identity needs to be tied to a single or “whole” culture.

Consider an adopted girl of Chinese ancestry, Lilly (LiLi in Chinese), whose U.S. white adoptive mother strongly emphasizes classic forms of Chinese culture and civilization in the home. The mother, highly aware she is not authentically Chinese, exposes her daughter to many Chinese people born in China and living in the U.S. (CBC’s versus ABCs). For example, in the Tang family, the children are taught the ancient Chinese virtues and core civilization of China. The father is a dedicated Confucian scholar advocating Confucian values in the diaspora, while the mother collects Chinese art, and draws Lilly into the villager can point out our house.”, says, “I am to return to China where I have never been.”14
run a heath clinic for Chinese immigrants. They repair their own cars and drains and laugh at the “spiritual pollution” of Confucian ideas, yet draw on Chinese cultural practices (e.g., traditional Chinese medicine) when it is pragmatically useful to their well-being.

Which version of these incompatible versions of “Chinese culture” will Lily take in? Which will most influence her? Surely, we can see that she has not been presented with one “whole” or “single” version of Chinese culture. Surely, we can also see that in the global, diasporic, and the current Asian American context, there is no one version of “Chinese culture” exemplified in the Chinese cultural identity of the three families. Indeed, there are multiple versions, each of which claims to be authentic, sometimes in direct opposition to the others.

By middle adolescence, the adoptive daughter Lilly dismisses her mother’s identification with classic Chinese culture, and remains indifferent to each of the Chinese cultural influences to which she is exposed. She advocates contemporary “Asian Pride” and looks on Asians around the world as having special (superior?) characteristics. She identifies across Asian ethnic boundaries, admires and wants to learn technologies developed in Japan, and thinks that Asian technologies will far outstrip Western ones. Perhaps she has developed a sort of “cosmopolitan identity,” in Jeremy Waldron’s term, not in a global culture-neutral or race-neutral sense, but firmly ensconced under an umbrella of a pan-ethnic youth-oriented version of Asian cultural identity. She directly says that her adoptive mother just fails to get (and never will get) what is important about Asian pride and Asian identity.

Next, consider an immigrated Chinese family with three children. The parents have effectively integrated to U.S. culture and have assimilated in terms of culture, religion, lifestyle, etc. Perhaps they exemplify a classic second-generation pattern. Now suppose each of the three children goes back to “authentic Chinese culture” being dissatisfied with their parents’ assimilation. Child number one rejects the parents’ Christian affiliation, practices Buddhism, becomes a scholar of ancient Confucian and Taoist texts, learns the ancient languages, and travels to shrines to record the original artwork in China. Child number two becomes a political activist, focusing on development issues in contemporary China, especially equal economic participation for women, human rights, and general economic well-being in twenty-first century China. (One and Two disagree over whether Confucianism is anti-equality for women.) Child number three becomes an advocate of what she calls “Asian pride,” identifies across national boundaries with the Chinese Diaspora and cultural features uniting persons of Chinese, Japanese, Korean, and other Asian descent, majors in Asian American studies, admires and tries to work in technologies developed in Asia. Still exhibiting the Chinese virtue of respect for elders, trying to save face for them, Number three implies gently that, regrettably, her parents just might have missed what is important about Chinese cultural identity, in particular, and Asian American identity, in general.

What points can we draw from these cases? The first point here lies in the strong multiplicity, even incompatibility, in what is defined as “Chinese culture” as derived from the original nation state(s) or geographical-temporal-historical location. Since the “original” or “mother culture” strands are so strikingly multiple, it is not surprising that contemporary “Asian American culture” generally will also reflect internal multiplicity. There are certainly more than three versions of Chinese culture, and far more within Asian American culture if we consider Korean, Japanese, Thai, Vietnamese, and Indian versions of Asian culture in America. I make the point within one tradition to emphasize the patent multiplicity within a supposed “one” classic, original “motherland” cultural identity. The general point to be gleaned is: there are multiple, contested, opposing, versions of what is authentically Chinese culture, and of what is authentically Chinese cultural identity. Each of offspring, child one, two, and three, would affirm their version as valid, and none would deny that the others have a Chinese cultural identity, although they might certainly put the particulars up for discussion. The third generation children have a familial identity and a Chinese cultural identity, in which loyalty and political unity are central. The same point applies to Asian Americans, for the most part, given the strong coalitions and community actions developed in unified political base. For example, the highly active and successful CAPAY (the Conference for Asian Pacific Youth) was founded by high school students, originating with a Laotian young woman student organizing a walkout to protest harassment against Asian women.15

The second point is that a strong group cultural identity can accommodate contested and even contradictory versions of Chinese culture, and by implication, Asian American culture (or B-culture or NA culture). Granted there are conditions of unity for cultural identities. What unifies the group cultural identity is not the “identity of a culture” in the ordinary way that “entities” satisfy identity conditions. This may sound a paradoxical point. However, the term “culture” does not designate an entity in the ordinary sense. So if Quine’s, “No Entity without Identity,” is not clearly satisfied for a culture, that implies that “a culture” is not an “entity.” It is highly doubtful that the internal multiplicity of the Chinese cultural map would satisfy Quine’s identity criterion. (The appearance of a name-type designator with a noun structure (a culture, this culture, the culture of x) misleads us into assuming that we are speaking of a “thing” with clear boundaries and identity conditions.) My ontological-linguistic analysis parallels Benhabib’s detection of “faulty epistemological premises” that “cultures are clearly delineable wholes,” “that cultures are congruent with population groups, and that a noncontroversial view of a culture is possible.”16

Unity, in cultural identity, has to do with continuity over time and space as well as the social-political unification of a group. Cultures are more accurately characterized as dynamic fluid processes contextualized in historical time and specific places.

The third point is that the energetic youth in our cases illustrate the cultural force of new generations defining each stage of cultural content and process. The philosophical point is that cultural identities are dynamic, fluid, and constantly changing, in process. Yet it is not only oppositional or adolescent identity that turns things around, carving out a new cultural constellation. Each new generation, one after another, in a “series of accretions,” or, in some cases, revolutions, defines the content and process of a given cultural identity. In Chinese history and in Chinese art, each dynasty takes from the old and recreates a new constellation. In the Chinese communist liberation, a radically new constellation emerged against the backdrop of many continuous cultural customs. Multiplicity has to be recognized to understand the true nature of culture. Little in cultural custom and practice can be static. Even the “old traditions” depend on contemporary in-group (often-contested) interpretations of what is authentically “old.”

The fourth point connects an internally multiple group identity with an internally multiple personal identity. Cultural identities of persons may contain a high degree of multiplicity within a strong, healthy, self-affirming self-concept. Conflict
among the various pulls of the multiplicities is not necessarily a problematic but a normal part of identity formation, and stabilizes the person’s ability to achieve equilibrium amidst variation. (Many models of individual identity cohesion contain an implicit assumption that a monolithic trait, e.g., “one” culture or race, is the most stable foundation, and that multiple sources are inherently problematic.)

However, the ability to process multiplicity, not an attachment to a monolithic cultural type, is the sign of stable flexible identity. Conflicting loyalties may exist to self-valued strands within a group cultural identity. Analogously, one person may value strands of cultural identity that stand in conflict to personal projects or goals, or even to other parts of his or her cultural identity. These are normal tensions in the growth of a person’s individual identities. The norm need not be defined as monolithic cultural affiliation or as monolithic racial identity. Most of such content is multiple, variable, and not monolithic. This point is also made strongly by Appiah when he explores the interaction of attributions by others and of self-identification in racial identity.

Chinese culture, on some views, includes multiple strands, many of which are contested and revisionist, incompatible, or frankly, may even negate and cancel each other out. (Traditional virtues of Confucian harmony based on hierarchy, e.g., wifely obedience, stand in opposition to twentieth century liberation anti-hierarchical ideas of equality, e.g., for women.) Perhaps what characterizes “typical” Chinese culture is a strong multiplicity of strands, standing in a dialectical relation to each other, sometimes esthetically or value-conflicting, and sometimes accompanied by internal political conflict.

This kind of internal multiplicity would not—could not—be true of most ordinary entities, e.g., a table, which for example, cannot have predicates such as blue and not-blue which negate and cancel each other out. The T is not both B and not-B, by the law of non-contradiction. At least not, at the same time, in the same place, and in the same respect. However, what we call “a culture” or “C-culture,” may have contradictory predicates attached to it, which are strongly disputed, i.e., contested contradictory predicates. Moreover, even the way these features are contradictory, contrary, and contested can be distinctively culturally “C.” My general point, in support of multiplicity within identity is that cultures do not have identity conditions in the way that ordinary “entities” do.

Part III: American Pacific Asian Identity

In a previous issue of this Newsletter, Tommy Lott raises intriguing questions on Asian American culture viewed in a pan-ethnic context. While affirming Lott’s attempt to shift criteria for pan-ethnic Asian American Pacific identity off a biologic-based focus on race, or the simplistic assumption of a three-race categorical scheme, I think it is worth probing the relative weights, role, and complexities of so-called physical characteristics. First, one example of physical characteristics in what Michael Hardimon calls the “ordinary concept of race.”

Even if I participate in and support Asian culture and strongly identify with Asian American identity; nevertheless, (as a round-eyed, blue-eyed, blonde, with pinkish-pale skin), I will continue being racially categorized as white Caucasian when I am stopped by the police for my u-turn, when I fill out my census, voting registration and informed consent forms, or when I apply for a medical experimental trial (all of which have occurred in an ordinary week). The police, census takers, medical professionals, etc. will counteract any thought I have to call myself Asian American, which I recognize, of course, would be a political falsity (in one sense) anyway. Thus, these observations hold both for what Appiah calls attributions of racial identity by others and identification by self. Second, these examples of racial categories in everyday life are (a) based on physical criteria, and (b) physical criteria as set up and interpreted by legally and governmentally sanctioned authorities, i.e., the Office of Management and Budget (OMB) which gives the census its categories and reaches into voting registration, medical and health care, etc. The Asian American Institute at my university will accept my membership and contributions, but major milestones of social practices in our racially regulated social lives will not accept me as Asian American. We need to recognize how pervasively physical or biological criteria are used in the everyday concept of race. Yet many theorists do not sufficiently emphasize how deeply these “physical” traits are tied to official government constructions.

Third, the reason an impulse to classify myself as Asian American is politically false, is that I am still socially treated as white, not Asian. Statistics based on OMB racial categories compile a track record of groups’ social and economic progress or regress, hate crimes, discrimination, economic status, and so forth. Carrying white privileges, I do not face the prejudice, overt or subtle stigma, and racist taunts or threats my Beijing-born daughter faces on playing fields in white-dominated communities. Nor do I face the risks of racist violence that she and other Asians and Asian women have to fend off. I can take her to self-defense class and try to inform her of ways to handle racist threats, but my bodily experiences and relation to racism are far different. Given the racist element in bodily experiences of Asian-descent persons and African-descent persons in America, I am sure Lott would agree with these points. Maybe these observations simply concretize Lott’s view, but the everyday versus the theoretical role of physical criteria in racial identity still needs to be refined.

Given how pervasive racial categories are in negotiating everyday life, the risks to Asian descent, African descent, or Latino/a persons are surely different and greater than the experiences of a person with white skin. It is worth stressing the point again: physical biological criteria are always culturally interpreted within a political-governmental scheme.

Next, I elaborate points in general agreement with Lott, then probe his assumptions to raise a new perspective on unifying factors in Asian-Pacific-American identity (hereafter “APA identity”). Lott as I understand him tries to push the central basis for pan-ethnic unity off a focus of monolithic physical or biological racial characteristics. He stresses the socially constructed meaning of physical or biological criteria of racial identity. (“I want to draw into question this reconstitution of the biological ground of racial identity.” “…all racial categories, including the Asian-Pacific-American, are more sociological than biological, as is the case of black and white Americans.”) In terms of my analysis, Lott rightly identifies a false singularity in the assumption that monolithic culture and physique is required for APA identity. For example, he analyzes intragroup antagonism in the comment to the editor by a Vietnamese descent person:

“I don’t think “Asian” Indian Americans should be considered “Asian or Oriental.”

Lott observes “the Vietnamese speaker is making the point that all APAs share a similar culture and physique that Asian Indians do not have.” He tries to show why this is an oversimplified and false assumption. His method exemplifies what I call a “multiplicity within identity” thesis by recognizing “biologically diverse APA ethnic groups. Figians, Samoans and Filipinos, for example, often share common physical characteristics with African Americans, Latinos, and Native Americans.” Lott also cites an other-ascribed “monolith” assumption, the phenomenon of “Lumping” Asians by
outsiders. This also illustrates a false singularity of racial allied to cultural traits, (perhaps a form of “cultural geneticism”) a phenomenon which led to the murder of Vincent Chin, a Chinese man killed by a white autoworker hostile to Japanese for taking U.S. jobs.

Lott stresses the false singularity of biological criteria for racial or pan-ethnic identity, in a way that coheres with the multiplicity theses I advocate. He also makes the following comment:

In the case of Asian Americans, the relative absence of a monolithic cultural heritage, combined with substantial intra-group resistance to a social realignment that requires each ethnic group within the APA category to shun its mother culture in favor of a new Asian-Pacific-American identity, is an important destabilizing factor. (And this is also true for other emerging pan-ethnic identities as well.)

One aspect of this comment, however, gives me pause: it needs to be probed more critically from a perspective of multiplicity within identity. Why does Lott assume that a “monolithic cultural heritage” is required for pan-ethnic Pan-Asian unity? That each group needs to “shun” its mother culture? Does he (do we?) overestimate the extent to which a “single” or “whole” or “monolithic” heritage is necessary for pan-ethnic unity?

Consider another form of multiplicity in the extent to which pan-ethnic Pan-Asian cultural unity exhibits syncretism (criss-crossing combination of elements of different cultures, a phenomenon long studied by anthropologists). The unifying factors may be but newly formed accretions of cultural practices and attitudes with a unifying solidaristic dimension. (They are not necessarily political even if they have political implications.)

Continuing our twenty-first century youth-focused examples, young people of Asian background around the globe connect with each other via expressive and artistic media. They emulate one another in ways that innovate new combinations of cultural elements but still retain distinctively Asian style and tradition. Some U.S. youth identify with the highly innovative fashions and hair dyes of Japanese teens, as shown in the book Fruits. They promenade on the streets with, e.g., brightly colored or spiked hair, and e.g., Japanese adaptations of classic Chinese Cheongsam dress, cut-short, worn above twelve-inch platform shoes, or satirizing U.S. pink dotted gingham Barbie outfits worn with dyed platinum-blonde hair. Another example carves Scottish tartans into piecemeal chunks and redistributes them in uniquely new ways, e.g., a Kimono sash in red Stuart plaid, (not unlike the outlandish styles of haute couture Parisian designer Christian LaCroix). A sizable number of American youth of Asian background know about these teens. Some dye their hair bright colors like pink or orange in explicit solidarity.

These practices can be interpreted as second-level commentaries on “classic” cultural traditions syncretizing specific Asian (Chinese, Japanese) elements and combining Western and Asian elements in novel ways. The young people have not “shunned” their “mother culture” but have reinterpreted it, and built a new Pan-Asian cultural baseline.

Many youth of Asian background also eagerly follow the latest developments in Japanese Anime, (a sophisticated form of film animation Princess Mononoke, and Spirited Away). While culturally recognized as originating in Japan, Anime often carries a cultural identification generalized to an Asian culture on a global scale. Young people attend Anime conventions in the U.S., and buy the latest Anime CDs and Manga (a genre of Japanese graphic novel) in local Asian or Japanese bookstores, groceries, and technology stores. In London, the Tate Modern Gallery shows Anime encyclopedias. Manga bookstores can be found near London’s British Museum, while Boston’s Museum of Fine Arts sells the Fruits book. The traditional line between “popular” and “high” culture dims in this global version of pan-ethnic Asian self-identification. Imitation of youth styles in other countries is a kind of self-affirming version of cross-national Asian pride. In summary, syncretism of cultures, a melding and blending in this Asian context, forms another example of multiplicity within identity, both on a group and individual level.

Conclusion

An assumption of much literature seems to be that cultures are monolithic, that persons are culturally and racially monolithic. Historically and empirically this assumption needs to be challenged more thoroughly in a way that penetrates into philosophical and theoretical analysis, since it carries a deeply misleading framework. There are many versions of multiplicity compatible with internally unified personal and group cultural identity as I have tried to stress. These are group-specific and are socially contextual. Empirical historical variation is philosophically significant. Misleading ontological assumptions of what a culture might be, or what “unity” might be, lead to much of our trouble. Linguistic and grammatical forms are sometimes the sources of falsely posed and counterposed issues. My youth-based examples feature the philosophical point that cultural identities are dynamic, fluid, constantly changing processes. Instead of looking at cultures backward in time, we need to look forward, for the “meaning” of cultural identity is created now into the future. Youthful explorations are a harbinger of what is to come, indicating that cultural identity is not a static present, but is constantly in process of being created. There are many ways to develop integrative strength. That integrative strength within a host of multiplicities can lead to strong, flourishing, politically empowered cultural and racial identities.

Endnotes

1. I would like to thank the Spencer Foundation for supporting the research on which this paper is based. Thanks to my daughter, Julia Farrell Smith, for technical and research assistance, and especially for vivid dialogue on culture and identities. Thanks also to Zhang Xi for technical assistance. Author Affiliations: University of Massachusetts Boston, Department of Philosophy, and Public Policy Ph.D. Program; and Harvard University, Fellow, W.E.B. Dubois Institute.


4. Appiah, Color Conscious, 90.

5. “Cultural inherentism” is related but distinct from biological inherentism in its racial form: “that certain traits of mind, character and temperament are inescapably part of a racial group’s "nature," and hence define its racial fate." See Lawrence Blum, I Am Not a Racist…But: The Moral Quandary of Race (Ithaca, NY: Cornell, 2002) 133-4.


We may observe that open, published critiques of whites adopting Asian descent children are less prominent than such critiques of African descent children adopted by whites. What this means can be questioned. Some Asian nations have periodically shut down foreign adoptions. Also, perhaps some Asians disapprove just as strongly but are reluctant to express it openly, a situation not unfamiliar in my experience. Might those who constrain open or public disapproval of Asian outgroup adoption be motivated by a desire to save face for the unfortunate adoptee? After all, she or he is still a member of the cultural group, even if viewed at risk for cultural identity. My belief is that such views deserve social recognition, even if they cause some discomfort in some quarters.

Anne Waters

1. Introduction

In Tanzania, Africa, the government once created natural habitats to preserve some lion species. The problem, as Navaya ole Ndaskoi, Coordinator of Indigenous Rights for Survival International, tells us, is that the lion population was protected and grew rather large in numbers, but the lions are now poaching the human species who live nearby. When we come across conservation programs analogous to this, whether in our own nations or some other part of the world, we need to ask, “What has gone wrong?”

In the context of things going wrong, we need to raise questions about who benefits from the use of global resources when things appear to go wrong. Ndaskoi raises issues as important to Africa as they are to Australia, to the Americas, and to Asia. Lions in Africa today may be kangaroos in Australia tomorrow. Resources growing in Australia today may be resources used in the U.S. tomorrow.

Why is it that countries like Tanzania with immense wildlife resources are the ones faced with abject poverty? The United State of America has set aside less than 4% of her land for conservation (Adams & McShane, 1992: 103). Disturbingly, rich countries use the vast majority of Earth’s available resources. They, with 25% of the world human population, use up to 75% of energy, 80% of all commercial fuels, and 85% of the timber. In one year, a single American uses the same amount of energy as 300 Africans. Coupled with greater life expectancy in the USA, this means that each child born in USA will be as great a burden on the environment-as represented by energy use-as 500 Africans. It is thus very unfair to demand further sacrifices from Africans, given these figures (Ibid: 232).

Theoretically, international localized indigenous bio-prospecting projects carry potential to dethrone current capital monopolies that humanly acquire, produce, sell, and consume pharmaceutical products (usually at the expense of local indigenous people/s). Practically, indigenous bio-prospecting projects can exemplify an alternative to the exploitation of public resources by first-world populations (which have long operated toward the purpose of filling stockholder pockets). Indigenous bio-prospecting activities provide opportunities to render international cautionary reminders in favor of human economic and environmental restraint.

But this counsel may well come with a gift. Some indigenous groups can put into practice local indigenous values of sustainability, interdependency, and respect for all our relation, in governing bio-prospecting projects. If so, then we may hold a fertile kernel of the larger global indigenous movement in our hands. Indigenous bio-prospecting projects can walk alongside ongoing struggles to teach colonial settler nations how to respect indigenous sovereignty. Indigenous bio-prospecting programs can carry agendas that pursue global indigenous rights on the local level, reaffirm indigenous sovereignty, and preserve an environment ecologically safe for all our relations, while preserving an organic balance to benefit everyone.

Equally possible, however, indigenous bio-prospecting agendas could result in disaster for indigenous people; resources may be co-opted, taken against our will, sold, depleted, and made unavailable. Because each plant species, just as each animal species, is unique, each has a role to play in the balance of the organic atmosphere that the human species requires for survival. Disaster or tragedy, following human arrogance and greed in bio-prospecting practices, could play itself out against the human species.

Academics, researchers, public policy makers, and most important, local traditionalists, have critical roles to play in the already ongoing political struggles of bio-prospecting. We must continue to respect traditional methods of human nurturance and healing for survival among both plants and animals, which compliment our complex environment. Knowledge of how to heal and nurture human environmental balance can be shared, or given. But in the sharing, or giving, the gift must remain with the giver (as Laurie Ann Whitt reminds us). And, since without respect for the sovereignty of the giver to give, without respect for indigenous sovereignty there can be no giving, and hence, no gift of sharing.

Commercial pharmaceuticals perceive themselves to have a huge financial stake in the politics of bio-prospecting. Public education could bring about a public awareness to the differences indigenous perspectives and concerns have toward bio-prospecting plans. Bio-prospecting for financial gain in indigenous communities could strike a mighty blow of backlash against pharmaceutical corporations. Many ongoing global environmental practices have already destroyed sacred places, medicine, peoples, and the environment. When these acts are done merely for the sake of amassing personal property assets (resulting in control over others), the balance of power and interdependency relations in the universe are disturbed. Under the guise of “promoting healing” for humankind,
unethical corporations can traumatize entire ecosystems simply in order to harvest their goods. Indigenous peoples may have an open window of opportunity to turn bio-prospecting practices around, and create nurturing and protective environments for the study of traditional healing, and ways of traditional living on the land.

II. Conditions

Bio-prospecting offers one of several strategies to build local economies, and preserve indigenous lifestyles in environmentally protective ways. If the “prospecting” aspect of “bio-prospecting” can be shifted from prospecting knowledge for financial gain, to prospecting information and allies to assist in the healing of human beings and maintaining our environment, indigenous communities may be more willing to take on the needed indigenous leadership roles to protect local traditional environmental knowledge about our flora and fauna, including the human species. As precedent to protect local traditional environmental knowledge about our environment, indigenous communities may be more willing to take on the needed indigenous leadership roles to self-determine all aspect of such a project.

In Australia, for example, such an undertaking as indigenously self-determined, can use the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) Guidelines for Ethical Research in Indigenous Studies (May 2000). Other similar indigenous documents exist, and still others can be created.

At least one indigenous bio-prospecting project currently underway in South America is self-determined; it respects the inherent rights of sovereign decision making among aboriginal people, and spells out guidelines for project management of ethical research that respects indigenous peoples and indigenous sovereignty. In this project, information and practices remain in the community, for the benefit of the community, and all decisions to share them are local community decisions.

Indigenous communities historically shunted by colonial settlers to the sidelines of state cities and marketplaces of commerce may have creative roles to play in sustainable bio-prospecting developments and practices. Creating an epistemology of indigenous medicine and a knowledge base of genetic resources, in the context of traditional indigenous values, may be part of this agenda. Colonial settler states and nations have a significant imperative of moral (and in some cases legal) obligation to respect indigenous peoples’ sovereignty to operate within the context of our own indigenous systems, including in the marketplace of bio-prospecting.

Minimally, responsible obligations of colonial settler nations to colonized indigenous nations includes respect for indigenous intellectual and patent rights, and sovereign control of materials. A sovereignty statement from the International United Nations posturing indigenous rights to traditional bio-prospecting materials, patents, products, research, and interpretive analyses would enhance this undertaking.

Important benefits of sovereign indigenous bio-prospecting endeavors could include: protecting traditional fauna and flora through holding genetic information important to humans and all living beings; promoting traditional learning, research methods, and knowledge bases that operate as a shield against past harms of colonial educational systems (that tended to denigrate traditional knowledge bases); raising the bar of international respect for indigenous systems of knowledge, epistemological belief, morality, science, sovereignty, and diversity in the world; articulating bio-

agricultural challenges, benefits, and risks of preserving sustainable development in local communities; developing human talent and ability to work with organic and inorganic offerings of nature; appreciation for the intellectual base of indigenous understanding of earthly cyclic and cosmic events; and gaining a perspective of how humanity may act within, rather than upon, any order anthropomorphically imposed upon the universe.

National programs to support local indigenous healing may help stop some of the international appropriation and distortion of indigenous resources and traditions. Strategies of bio-prospecting can encompass discovery of innovative ways to protect water, create new energy sources, and develop sustainable methods to protect and preserve a humanly healthy environment. In this way humanity can take a step forward through bio-prospecting, acting as humans pragmatically ought to behave, interdependently supporting the biodiversity of all our relations. Indigenous bio-prospecting projects can offer a desperately needed alternative path for our youth to follow to sustain our communities for future generations.

III. Assessment

Many indigenous medical practitioners do not currently see a place for themselves in bio-prospecting projects and for good reason. We do not see a place we can occupy without violation of our fundamental values inherent in our very identity as Indigenous peoples. Participating in commodifying terms would be the equivalent of renouncing our faith; certainly this is not a realistic option for participation.

Some critical articles have been published warning against indigenous peoples engaging in bio-prospecting activities. Equally significant articles have engaged in working out parameters of indigenous involvement in bio-prospecting activities. One concern that needs addressing is whether information contained in academic articles provide a realistic assessment about indigenous involvement in contemporary bio-prospecting challenges. What can we glean by pulling together information about indigenous involvement in biopropecting? Indigenous peoples need a knowledge base of ongoing bio-prospecting projects in order to assess any realistic involvement.

At the Center for World Indigenous Studies, The Fourth World Journal contains statements made by indigenous nations and individuals regarding the nature of bio-prospecting. At least one definition, from a Congressional Act of the Philippines in 2002, ties down the meaning to commercial purposes.

‘Bioprospecting’ means the research, collection and utilization of biological and genetic resources for purposes of applying the knowledge derived there from solely for commercial purposes. An immediate problem is present in the definition of what bio-prospecting is, and means, for indigenous communities. If bio-prospecting is inherently to be used for commercial purposes, and indigenous peoples are given the sole right to determine issues related to bio-prospecting, indigenous nations are thrust into commercial relationships with colonial nations regarding bio-prospecting, without ensuring that indigenous involvement arises from indigenous self-determination of interest.

In other words, the play, or move, of opting out completely from bio-prospecting projects, under current colonial (and quasi neo-colonial) political conditions, seems at first consideration not to appear as an option on the playing board. If this is the case (and it may or may not be), commerce-like concepts that already play a role in determining the meaning of “bio-
prospecting,” need to be interpreted within the context of indigenous understanding and values of traditional sustainable medicine and commerce. Interpreting indigenous participation in bio-prospecting, within the context of traditional indigenous values of living on the land, shows respect for an indigenous perspective of the world. Most important, learning to see through an indigenous value lens recognizes how indigenous sovereign rights to self-determination operate to interpret linguistic ambiguities to the benefit of indigenous communities.

On the other hand, if indigenous communities have the opportunity to opt out of the bio-prospecting game completely, and decide to do so (possibly due to unfavorable international colonial economic policies already in place), the burden of negotiation through indigenous values shifts to colonial nations. Under such circumstances, successful negotiations would require a respect for the interpretive sovereignty perspective of indigenous nations participation parameters.

I believe indigenous nations do have this option. Moreover, it is fruitful to see how accommodating indigenous favorable interpretations of bio-prospecting language ambiguities might play out in the arena of competing international sovereign rights (to engage in commerce, for example).

In a nutshell, all bio-prospecting projects interpreted as favorable or not favorable for a particular indigenous nation (according to the values and decisions of the local indigenous community affected, as informed and self-determined) ought to be respected by all communities and states of interest. This principle puts self-determination in the hands of those who will be most affected by the decision, employs local values to determine the “who, what, when, where, why, and how” of any bio-prospecting projects undertaken, and shows a respect for sovereign indigenous status in all decisions respecting any bio-prospecting projects.

In the context of decision making with indigenous nations, it is essential to determine which principles of meaning should be resolved first: sovereignty or bio-prospecting. There are good reasons why the latter should not go forward without the former. Most indigenous nations are colonized nations within a settler state or united states. Rudolph Ryser says this about the U.S. and indigenous jurisdiction/sovereignty.

Indeed, I have argued elsewhere that “any conflict between a tribe and the United States, a State, a county, or a municipality involving questions about the jurisdictional authority of a tribal government is a political problem which cannot, must not, be placed before U.S. courts for resolution. Where a conflict concerns tribal governmental powers, the U.S. courts are bound by the U.S. Constitution to protect U.S. interests even if by doing so the rights and powers of Indian Nations are diminished or utterly destroyed.”

Are there any academic models for such a proposal (here at Macquarie University or) in Australia? John Hunter and Chris Jones have articulated how self-determination and sovereignty legal policies play out in the context of intellectual property as it relates to bio-prospecting.

Indigenous Peoples and Nations also declare that we are capable of managing our intellectual property ourselves, but are willing to share it with all humanity provided that our fundamental rights to define and control this property are recognized by the international community.5

Objections to indigenous nations acting within the context of bio-prospecting projects have included discussions about concerns of past and present genocide and theft from indigenous nations by settler states. Given that these actions are ongoing, nothing suggests conditions of bio-prospecting projects would preclude similar genocide and theft. The historical difference in ethics and values between indigenous and settler cultures appears to speak for itself as we travel through colonial museums. Nothing similar exists in indigenous nations.

The ongoing wounds of takings expressed in Tanzania, Africa, by Ndaskai, reminds us that settler poachers (legal or not) took many things from indigenous lands. These unethical acts continue today. Some items remain in individual collections, others remain in museums belonging to or governed by settler populations.8 They have never been returned. There are no plans for returning them. The United Nations has not made any statements about return of many stolen items of indigenous legacies. Throughout the world we find in museums tribal property that, by indigenous perspective, ought to be returned to tribal nations. It appears that no one but indigenous nations seems concerned about this issue.

Importantly, there is no indication that the United Nations or any other political group is going to address realistic contemporary or future healing for the genocide perpetrated upon indigenous nations globally. There is no talk of land return, and only “little gesture talk” of returning items from global museums. Colonial thinking, as articulated by the lack of United Nations interest, suggests that indigenous genocide can go unpunished, and items and ideology of stolen indigenous legacies become as gifts from and for humankind . . . but only so long as they remain in the possession and control of those who stole them. It seems that there is no basis for believing that indigenous peoples can expect anything different from bio-prospecting ventures.

IV. A Model

At least one model of a self-supporting, indigenous run, locally controlled “ethnobiomedical extractive reserve” exists. It is called the Terra Nova Rain Forest Reserve, and was established in 1993 in Belize, Central America. Since 1940, large machinery has destroyed two-thirds of Central America’s rain forest. Non-sustainable harvesting of medicinal plants, under these conditions, is not feasible. Hence, at Terra Nova, medicinal plants and resources are sustainably harvested for use at local markets. Mayan healers and students run a clinic that emphasizes empowerment of indigenous peoples. These communally owned and managed resources are deeded to the Belize Association of Traditional Healers, a group representing indigenous Mayan regions and nations. At least 75% of the local people depend on this center for their primary health care.

Grassroots health activists work with the healer’s association, scientists, governmental policymakers, and the local tourist industry. They try to ensure that only indigenous community members produce, market, and manage local medicines. In an important article about Terra Nova Rain Forest Reserve, Danielle Elford explains how decisions about marketing need to be considered in an indigenous context.

If trading is to be culturally appropriate, encourage real economic independence, and strengthen indigenous communities against immediate local, regional and national forces, commercialisation must start with the people themselves and the local market (Corry 1993:148-149; IWGIA 1993:9). Indigenous communities have had access to extensive trade networks for centuries (Stiles 1994:106). They can therefore utilize existing relationships on local and
V. Conclusion
The demands of indigenous bio-prospecting programs need to be considered against the needs of indigenous communities. Issues of sovereignty and rights to self-determination need to be resolved in the context of negotiating bio-prospecting plans. By setting out clear guidelines and priorities, as determined through the eyes and values of indigenous peoples, indigenous communities may have an opportunity to participate in the global sharing of biomedical information and healing for all our relations. Before any projects get underway, however, social, political, and legal issues ought to be settled so that informed decision can be made on the part of indigenous communities to partake of the invitation to bio-prospecting, or not.

Paper presented at the Indigenous Knowledge and Bio-Prospecting Conference, Macquarie University, Sydney, Australia, April 2004

Endnotes
2. For some interesting strategies of change see Ward Churchill’s last chapter in A Little Matter of Genocide.
6. From Tanganyika, England had stolen among other things, the largest ever-recorded ivory. Senoussi, an African slave of the ivory trader Shundi, an Arab from Zanzibar, shot the largest elephant ever recorded with tusks 3.17m and 3.10m long in 1898 at Mount Kilimanjaro. The tusks are in the British Museum in London (Kakahuona April-June 2000). There is almost a similar story that states that the longest ever recorded tusks are a pair from Congo preserved in the York Zoological Society in New York (McWhirter, 1980). When will these valuables and others be returned to their original owners?
7. Citation to the article about this can be found in the Fourth World Journal on the CWIS website.

Code Talkers: Who We Are
Marilyn Notah Verney
According to the 2000 official U.S. government census 180,462\(^1\) Diné,\(^2\) (Navajo people) live on Keyah\(^3\) which is land allotted to the Diné Nation by the U.S. government and which spans approximately 270,000 square\(^4\) miles. Dinétah\(^5\) is the word used to designate lands traditionally populated on by Diné, which are located within the four corners of northeastern Arizona, northwestern New Mexico, southeastern Utah, and southwestern Colorado. Although archaeological and linguistic evidence suggests that Diné arrived in the American Southwest between 1000 and 1525 CE,\(^6\) traditional Diné metaphysics places the Diné nation in the American Southwest prior to this time. From community to community, the traditional story of the Diné originated varies. There are stories that are told to us of how our ancestors once lived and traded with other groups of people as they traveled across the land. Through contact with colonial Spanish and indigenous Pueblo People, Diné acquired horses, sheep, goats, and agriculture. Following the indigenous Pueblo Revolt against Spanish colonialism of 1680, many Pueblo refugees began to live among the Diné. This resulted in mutual exchange which brought about parallel similarities between the Diné and Pueblo origin legends, cosmologies, metaphysics, and use of masked figures and sandpaintings in ritual. Diné elders describe this period as one of mutual exchange rather than unilateral influence. In contrast, Western traditional academia uses a comparative approach for studying the culture of the “other” by fragmenting the cultures and comparing “ceremonies” cross-culturally.

It is my aim I propose to demonstrate the importance of the integrated nature of Diné philosophical teachings when attempting to apply the Western concept of religion to Diné culture.

The word that the Dííyín Dííné’ (supernaturals of the Navajo pantheon) provided as a descriptor for my people is Diné. Some people refer to us as the Navajo, a Spanish word possibly originating from the phrase “Apache de Nabajo,” though it’s not known what the word meant.

Among our own Diné, Diné is used rather than the Spanish colonial term. It has been suggested by Peter Iverson that “Nabajo” might have meant “a place name or may have been an Indian term meaning ‘planted fields.’” For the Diné, living within the boundaries of the four mountains is an integral part of our identity and beliefs. For the Diné, there is an embodiment with all living entities in the universe, exemplified by an integrated and reciprocal relationship between the people and this land. These four major mountains are significant land sites that are considered alchini\(^8\) (sacred) in Diné’s myths, prayers, rituals, ceremonies, our creation story, and philosophical teachings of “Sa’ah Naaghai Bik’eh Hozho doo
K’e.” (a life of balance and harmony based on kinship with all living things in the universe).

Diné cosmology holds that there are relations between the earth and the large universe. These relations are integrated, interdependent, and reciprocal. Nihosdzání8 (earth), is a provider and sustainer of all living entities within the universe. For Diné, to lose our relationship with our land would be devastating because it would mean loss of our being both our physical existence and metaphysical identity. The significance of the land and how it connects us to everything within the universe is a primary foundation of the Diné Nation’s philosophy of life.

Da’jí’nii11 (It is told) that it is within these mountains (powerful metaphysical beings) live, and that ‘azázi12 (ancestors) were instructed by the Diyín Diné’e to make the ‘azázi home within the boundaries of these four mountains, and to live according to the teachings of “Sa’ah Naagháí Bikéhé Hózhó dóó Ké.” This is our elders’ story and it continues even today to be the foundation of how the Diné Nation originated.

Da’jí’nii: Our creation story reveals that the Diné were instructed by the Diyín Diné’e to live within the boundaries of the four major Mountains: To the east is Sis Naajiní13 (Blanca Peak), to the south Tsodzíl14 (Mount Taylor), to the west Dook’o’osíi15 (San Francisco Peak), and to the north Dibe Nitsaa16 (Mount Hesperus). It is said that the Diyín Diné’e live in these mountains. Da’jí’nii, that the Diné origin myth recounts the Hajíínáí17 (Emergence) of the Diyín Diné’e from a series of underworlds onto Nihookáá18 (the Earth Surface). Using a medicine bundle brought from the underworlds, in an all-night ceremony at the place of emergence, First Man, First Woman, and other Diyín Diné’e set in place the “inner forms” of natural phenomena (earth, sky, the mountains, plants, and animals), creating the present world. Upon emergence into the fourth world, the first man was created from yellow corn and that first woman was created from white corn. Asdáá’ Náleehi’19 (Changing Woman) was created in the fourth world and the Diné are her children. The story tells us that Asdáá’ Náleehi’ was impregnated by Jóhonaa’éí20 (Father Sun), and she gave birth to two sons who became known as Monster Slayers, who fought and killed predators in the previous underworlds. It is said that Asdáá’ Náleehi’ lives in Tsodzíl, one of the four mountains located in the state of New Mexico.

Walking in beauty and harmony, “Hózhóóįįį,” is the basic philosophy for my Diné Nation and is the foundation for our culture. The path of “K’e”22 (relations) is based on a reciprocal kinship relationship with the surrounding environment and the universe. Wilson Aronilth Jr., Diné bá’óltá’įįį (teacher, messenger), explains, “According to our great forefathers’ teaching, our clan system is the foundation of how we learn about our self image and self identity… A wise Diné can look back into the values of his clan and see his true self” (Aronilth 76).

History through Da’jí’nii tells us of the arrival of the “strangers” the Ná kái23 (Spaniards) and the Bila’ga’nas24 (White Men), and Da’jí’nii the warfare, imprisonment of my ancestors, genocide, and colonization that followed their arrival.

**Colonial Contact**

In 1862, the U.S. Government ordered Brigadier General Carlson to remove our ancestors, from our original homeland. The order was “to subjugate the Indians, protect the territory from a Confederate invasion, and open an overland mail route” (Keleher 1952: 229, Roessel 510). By September 1863, Carlson developed and began implementation of his campaign policy. In retaliation against the self-defense maneuvers of the Diné, Kit Carson was instructed by Carlson as follows: “Say to them, ‘Go to the Bosque Redondo [Fort Sumner], or we will pursue and destroy you. We will not make peace with you on any other terms... This war will be pursued against you if it takes years... until you cease to exist or move’” (Kelly 1970:52, Roessel 511).

Roessel tells of this journey quoting from the memories of the elders, “The journey was one of hardship and terror. Navajos remembered that there were a few wagons to haul personal belongings, but the trip was made on foot [over a distance of 300 miles]. People were shot down on the spot if they complained about being tired or sick, or if they stopped to help someone. If a woman became in labor with a baby, she was killed. There was absolutely no mercy” (R.Roessel 1973:103-104, Roessel 513).

The December 31, 1864 census shows a total of 8,354 Navajos at Fort Sumner (Keleher 1952: 502, Roessel 513); and by March 1865 the census shows a total of 9,022 Diné (Bailey 1964: 214, Roessel 513). From that date until the return of the Diné in 1868 via treaty, the number of Diné at Fort Sumner decreased. Diné prisoners, half starved, homesick, traumatized and sick, left Fort Sumner in large numbers…” (R. Roessel 1973: 41, Roessel 514).

Written documentation of the oral account by Florence Charley recalls “Women carried their babies on their backs and walked all the way hundred of miles. They didn’t know where they were headed” (R. Roessel 1973:149, Roessel 514). Howard Gorman relates: “The Navajos had hardly anything at that time; and they ate rations but couldn’t get used to them. Most of them got sick and had stomach trouble. The children also had stomach ache and some of them died of it. Others died of starvation... Some boys would wander off to where the mules and horses were corraled. There they would poke around in the manure to take undigested corn to be eaten... They said among themselves, ‘What did we do wrong? We people here didn’t do any harm. We were gathered up for no reason... We harmless people are held here, and we want to go back to our lands right away.’ Also the water was bad and salty, which gave them dysentery” (R. Roessel 1973:32-33, Roessel 514-515).

Prior to the colonial taking of my people to Ft. Stanton on the long walk, we were free people on our own lands with sacred mountains and familiar landmarks. We were independent, self-sustaining, and had lives full of living our spiritual relations with our place of being in the universe. This way of being in the world was made safe for us before colonial contact. Da’jí’nii, only through prayer, ceremony, and determination to survive in hopes of returning home did we survive.

**Treaty of Subjugation**

Roessel makes it clear that he believes the Diné are to be blamed and imprisoned for their self-defense measures against the encroaching colonials. Carlson sends Carson to fulfill a campaign policy of punishing Diné who resist subjugation. In a letter to Carson, Carlson justifies the Diné enslavement by directing Carson to tell the Diné: “You have deceived us too often and robbed and murdered our people too long—to trust you again at large in your own country” (Carlton letter of 9/19/1863, quoted by Kelly 1970:52, Roessel at 511).

The internal colonization was psychological warfare against the Diné while they were prisoners of war. The motivation was to make Diné feel guilty for our acts of self-defense in our own land. The Ft. Sumner POW experience furthered traumatized my people by making them believe that they had done something wrong and were the sole cause of colonial suffering among the settlers. Diné were told they
were responsible for creating their own human suffering, and that these self-defense actions justified imprisonment by the U.S. Government. This created generations of guilt among my people and generations of post traumatic stress syndrome. By treaty, in 1868, Diné people subjugated to the U.S. Government because we never wanted to be removed from our land again or to suffer ontological separation from our place of being and our metaphysical identity in the world. By treaty we gave up all rights and all property to be allowed to return to our land among the four sacred mountains and live in our place given by, and according to, instructions from the Diyin Dine'é.

The articles in the Treaty of 1868 between the Navajo Nation and the newly created U.S. government set a precedent for the Diné People to be recognized as “wards” of the U.S. government. We were to be governed by the newly created U.S. Constitution, although we were not recognized in the Constitution by the government. The Diné, like many other Indian tribes, were forced to submit to the physical power, and hence, legal control of this new U.S. government. We were forced to accept any and all conditions set by the rich, white, male property owners who were the citizens of this newly created government they created. Beginning with the General Allotment Act of 1887 and including the Reorganization Act of 1934.

During colonialism, many American Indians ceded much of our land in exchange for tribal sovereignty. Some of us recognized the U.S. government as the trustee of our land, enabling the U.S. government to manage all the mineral resources on our land; the Bureau of Indian Affairs created Indian agents that were assigned to oversee our care. Our children were to be educated by the settler government, forced to learn the English language, forced to lose their own language, and instructed to allow Christian missionaries to work among our people. In an attempt to break up traditional tribal government kinship systems and to gain control of the title to Indian reservation land (thus weakening the indigenous nations), land was allotted to individual Indians for private ownership. Owning land forced some Indians to be recognized as U.S. citizens, even though they were denied to vote until 1924 (when all American Indians not hitherto made U.S. Citizens were forced to receive citizenship). The primary goal of these colonial government acts was to acculturate (not assimilate) Indians to the dominant European-American culture.

Four Code Talker Values

After the Japanese bombed Pearl Harbor in Hawaii on December 7, 1941, war was declared by President Franklin Roosevelt on Japan and its Allies. As the war progressed, many military codes were intercepted by Japanese who were highly skilled in the English language. The U.S. Government needed to change the code. Philip Johnson, a Bila’gaardah (WW1 veteran) and son of a former missionary, approached the U.S. Marine Corp with the idea of using the Diné language for military operation in the war; Johnson who was raised on the Diné reservation, knew the language fluently, and he knew the Diné language was an oral language (unwritten) and that it was held by Bila’gaardah’s to be a difficult language to learn. Our Diné language is said to have different syntax and tonal qualities from European language, thus making it difficult for some people to learn. Johnson’s proposal was accepted.

The first 29 Diné men selected and asked to join the Marines had attended BIA schools. They were the best-educated American Indians in the European ways. They already knew through BIA school experience how to enact the disciplined military behavior and the protocol to follow instructions from superiors. As well, they must have felt their traditional tribal duties to protect Diné homeland by assisting the U.S. Government. The Diné Marine Corp Radio Operators were instructed to develop a code that could not be broken. They were selected because they were the first generation to attend BIA government schools, and thus they were bilingual. They had never left the Diné reservation, except for those who attended BIA schools off the Diné reservation. When they enlisted, the 29 Code Talkers were unfamiliar with military weapons, equipment, and supplies used in the war. As Radio Operators, they were responsible for transmitting information related to military movements, orders, and battlefield events. They were instructed to develop terms that were brief and accurate and to relay all the messages without any errors. Two hundred terms were created and eventually 600 more terms were added.

The values underlying the willingness of Diné men to use their language to protect the interests of the U.S. government can only be understood in the context of Diné colonial experience. I will call the value principle upon which (I believe) they might have acted, a Principle of Generations (PG). PG is a principle by which Diné live our lives in the context of being an internal colony of the U.S. Government. Our principles of action arise from traditional values of living with our land. In order to protect Diné homeland from invasion we must protect the external colony outside our borders. Diné life is based on a relationship with our land in a reciprocal, contribution, sustenance, and harmonious balance within the universe. Imprisonment brings the separation from our land, which is the ground of our being in the world. We must never be removed from our homeland or we will not be able to live with all our relations or fulfill our obligations. We must always remain on the land designated to us by the Diyin Dine’é (among the four sacred mountains). This is our purpose and the basis from which we gather meaning and strength of who we are as Diné. Living within the protection of the four mountains will allow us to live by our own Diné values, beliefs, and traditions with all our relations. It will allow us to fulfill our Diné responsibilities to our relations and accept the Gifts our relations present to us.

One of the important values of being able to live the Diné life as we are instructed is having the freedom to choose the Diné life, and once chosen, to follow the Diné path of all our people. In choosing to cooperate with the U.S. Government, the Diné chose to exert their freedom to choose as Diné. Choosing for Diné means making decisions that are based on the knowledge passed from previous generations to our people. It means putting the wisdom of our people into practical action for our people. Choosing as a Diné is to make a choice based upon what Viola Cordova has identified as “Ethics: The We and the I.”

Cordova tells us that Native Americans (unlike the Greeks) add to “the ‘We’ definition of human beings the idea of quality” that extends to all forms of life. Because a Native understanding of life extends to all that is, the entire universe participates in the life process. Hence, a Native American philosophy recognizes equal respect for all living things as interdependently being both parent and child of the Earth and Universe. Being a part of all things, everything is one process. Thus, argues Cordova, a Native view embraces equal difference, whereas the “Western” European view embraces hierarchical otherness. Cordova asserts a difference between teaching Native American concepts of autonomy, responsibility, and self-sufficiency versus teaching shame and guilt. Offering examples from her life, she shows us, rather than tells us, the meaning of these ethical concepts.

It is from the sense of “We” that our code talkers came to a decision to assist the U.S. government.
Notes

1. Jenny Notah, U.S. Department of Indian Health Services. Interview by Marilyn N. Verney (University of California Santa Barbara, April 17, 2004).
3. Ibid., 493.
10. Ibid., 875.
11. Ibid., 489.
12. Ibid., 140.
13. Ibid., 688.
15. Ibid., 99.
16. Ibid., 312.
17. Ibid., 398.
18. Ibid., 875.
19. Ibid., 123.
20. Ibid., 490-491.
21. Ibid., 459.
22. Ibid., 502.
23. Ibid., 148.
24. Ibid., 576.
25. Ibid., 221.
27. Ibid., 511.
28. Ibid., 513.
29. Ibid., 513-514.
30. Ibid., 514.
31. Ibid., 514-515.
32. Ibid., 511.
34. David E. Wilkes, 58.
37. Ibid., 3-6.
39. Ibid., xxx-xxx.

Bibliography

Wilson, Aronilth, Jr., “Foundation of Navajo Culture.”

Native Intelligence: The Jewish Bible and the Appropriation of Another’s Religion

Jack D. Forbes

Christians have attempted to lay claim to the Hebrew Bible as much as modern-day “New Age” people lay claim to Native American ceremonies and other practices. Appropriating someone else’s religious traditions is not new!

The Christians who invaded America after 1492 offered “the Bible” (Protestants) or the “Sacraments” (Catholics) to the American nations in exchange for their lands, their freedom, and their wealth. Usually the Europeans refused to discuss the controversies surrounding their religious traditions, but instead presented their “holy book” or “holy mass” to the often unsuspecting Americans as proven truths with no questions allowed. Often children were taken from their parents and indoctrinated without having any way of determining the validity of what was being presented.

This process still goes on today, with well-financed missionaries presenting “the Bible” to tribes everywhere as “the word of God.” It seems important that First Nation peoples become acquainted with scholarship surrounding the texts currently known as “the Bible.”

“The Bible” is not one single book at all. It is made up of many different books or writings and often each one of these is, in turn, a compilation of several texts or sources, often derived from different time periods and geographical areas. The main division is between texts written by Christians after about 40-50 CE (AD) and the Hebrew or Jewish Bible, put together for Israelite use between about the 600s BCE (BC) and 200-300 BCE, with older material as well.

What Christians term the “Old Testament” is actually the Jewish or Hebrew Bible. It was developed by Jews for Jewish use (although some material, such as parts of Genesis, may have been borrowed from the Jews’ Canaanitish relatives or other Semitic peoples). In the earliest days of the Christian movement, when there were many different opinions and no powerful hierarchy had developed, the Christians’ only sacred writings were the texts of the Hebrew Bible, known to them primarily in a Greek language translation, called the Septuagint. This gradually changed between about 50 and 300 CE, as the Christian leadership began to develop “official” compilations of their own writings, now known as the “New Testament.”

The Hebrew Bible was, however, put together by Jews for their own use and not for the use of those who eventually
departed from the Israelite fold. I believe that we should respect that fact and not attempt to appropriate the Israelite legacy, even though both Christians and Muslims, as well as others, might respect the information therein. Above all, we must remember that the Hebrew Bible was written in Hebrew and Aramaic, two closely-related Semitic tongues, and that the Hebrew-Aramaic text must be seen as the authoritative one, not an English translation, and especially not the so-called King James Version.

It is strange to see fundamentalist Christians arguing over some passage from the Hebrew Bible, using the language of “jolly old England”? If one cannot read Hebrew, then the next best thing is to go to a modern Jewish translation of the Bible (since new manuscript versions of the Hebrew Bible have been found in the caves along the Dead Sea, versions much older than any previous manuscript and perhaps more accurate than the Greek version which the Christian church depended upon for many centuries).

In short, we need to see the Hebrew Bible in the same way that we might look at traditional Navajo, Lakota, or other texts, texts which must always be primarily interpreted by speakers of the appropriate language, except where word-for-word linear translations are available. Of course, some Christians have argued that “God” has guaranteed that all translations of “the Bible” are absolutely accurate, thus making it unnecessary to study the original languages. However, the many discrepancies between different manuscripts and translations proves that humans have been in charge all along, I would argue.

It is a marvel to see how some Christians often misuse the Hebrew Bible, as when they might quote a passage which states that for one man to lay with another would be an “abomination.” What is peculiar about their usage of passages in the older books of the Hebrew Bible is that they will completely ignore nearby passages which require that land be allowed to rest fallow every seven years, and that all debts must be forgiven, and that gleanings must be shared with the poor, and countless other equalitarian injunctions which modern-day “conservatives” abhor. And, of course, they also ignore the popular Christian belief that the “Law” of the Jews was set aside by Yahshua (Yeshua, or Jesus).

The first five books of the Hebrew Bible are called “Torah” (Law) and ultra-orthodox Jewish belief that they stem from Moshe (Moses) and through him from Deity. In actuality, Moshe’s death occurs in these writings and thus he could not have been the author. Also two separate texts (an “E” text using the term Elohim for Deity, and a “J” text, using YHWH as a symbolic name for Deity) along with other material make up Torah.

One fascinating thing about the two versions of Genesis found in Torah is that the Elohim version points towards a theological view identical with many American nations, since Elohim is the plural form of El and Eloy (Deity) and points towards a Spiritual Plurality of Creative Power or a male-female, Grandfather-Grandmother Creative Power! There are many other things to be learned about the Hebrew Bible! I cannot claim to be an expert, but I have been researching the subject for years because it has played such an important role in American Native history.

(Jack Forbes is the author of ONLY APPROVED INDIANS, a collection of stories published by University of Oklahoma Press, and other books, including RED BLOOD, APACHE, NAVAHO AND SPANIARD, and NATIVE AMERICANS OF CALIFORNIA AND NEVADA.)

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Native Intelligence Religionism: The Moral Equivalent of Racism

Jack D. Forbes

A strange tradition appeared in the Middle East, specifically in Kanaan (Palestine), almost 3,000 years ago. This tradition is what I am calling “religionism,” an equivalent of racism. In the latter, a person or a group is judged primarily on its physical characteristics and/or ancestry and discriminated against on that basis. In religionism, a person or group is judged according to its form of worship or belief and is discriminated against for that reason.

From an American perspective, religionism is a very new phenomena, brought over here only since 1492 by Europeans. We are all familiar with the manner in which Catholics, most Protestants, Mormons, and others have attempted either to suppress traditional American spiritual values (often with very bloody pogroms), or to convince First Americans that they must “convert” exclusively to a single Middle Eastern-European sect, with no mixing or combining. The willingness to murder, torture, punish, discriminate, and “high pressure,” all for conversions to this exclusivity is not merely perverse, but in a very real sense, insane (from the Indigenous perspective).

It is safe to say, I think, that Native American peoples have generally believed that the Creator or Creative Power (“God”) and other sources of spiritual knowledge have been communicating with human beings for tens of thousands of years and that Grandfather-Grandmother have given us many prophets, messengers, teachers, guides, and elders with gifts of ceremonies, songs, prayers, rituals, ways of healing, et cetera, all of value, all to be respected, and all offering paths of spiritual knowledge. Thus each nation, clan, group, family may have its own messages from the Creator and all are equally to be respected, since all people are “signs” of the Creator’s work and all have had messages from the Creator. The only exception might be if a message has been misinterpreted so as to justify aggressive acts against people or animals (as when Abraham believed that he had to sacrifice his son or an animal substitute to please the Creator).

Generally, Americans did not believe in a great evil power (such as Satan/Lucifer) capable of challenging the Creator for human allegiance, until after Europeans brought in this Middle Eastern idea. Evil deeds certainly existed but they were either mistakes, the opposite side of good deeds, or the result of selfish, greedy thinking or even stupidity.

In any case, people were probably never persecuted for their spiritual beliefs, and there was a willingness to share religious ideas. Thus we find ceremonies, such as the Sun Dance, spreading from nation to nation, over a very large area. We usually find similar religious art, and ideas, over large regions, but often with variations even from village to village. By means of dreams, visions, and prayers people were in constant touch with the Unseen World and with the Great Creative Power.

As in many other parts of the world, Indigenous Americans were willing, very often, to incorporate new ideas into their spiritual lives. They saw no conflict in respecting and recognizing Yahshua’s (Jesus’) sacrifice into their thinking for, after all, Yahshua was very much like a Native American in his emphasis upon sharing meals and food, healing the sick, living simply, going to Nature for visions, being an adversary of the rich and powerful, and praying in private.
Certainly, Yahshua can stand with all of the other great teachers and healers who have come before and have been here since, beings like White Buffalo Calf Woman, Sweet Medicine, Quetzalcoatl, and countless others. This ability to respect and perhaps to incorporate, and not to seek exclusivity or domination over others’ beliefs, is a sign of civilized behavior, in my judgment. It is what distinguishes those who wage war for religious sameness from those who respect the Creator’s many voices. It is what avoids hierarchy and the power of priests and those who seek secular power by means of spiritual slavery.

The Hebrew Bible (the “Old Testament” to Christians) sadly provides us with many examples of how “religionism” evolved in the Middle East. For example, there is the case of Elijah (Eliyahu) who challenged 450 prophets of the Canaanitish deities to a religious duel. In the story, Eliyahu won the duel and immediately ordered the Israelites to capture the rival priests, whom he proceeded to slaughter in cold blood. Similar bloody, murderous deeds are, unfortunately, often characteristic of the evolution of Judaism, Christianity, and Islam. Eliyahu’s objective seems to have been to deny any form of worship within the Kingdom of Yudea (Judah) except that which he approved!

Tragically, the Christian Church, when it acquired secular authority after 300 C.E., began to follow Eliyahu’s example, suppressing rival interpretations of Christianity and eventually outlawing all non-Christian worship, destroying all ancient shrines, temples, schools of philosophy, and holy places. Eliyahu’s descendants, the Jews, were persecuted by their ungrateful offshoot!

Still later, the Muslims, although generally tolerant of Christians and Jews, took an extremely hostile attitude toward Zoroastrians (the “Magi” of Persia), Hindus, and all followers of Indigenous or traditional religions. The latter, called “unbelievers” have been the victims of Islamic hostility, as well as of Christian imperialism.

The followers of the often beautiful ancient “tribal” religions of the world are, to many Middle Eastern-derived sectarians, simply “heathens,” “pagans,” or “unbelievers” with no rights except the right to be converted and to have intolerant and sexist Middle Eastern cultural norms forced upon the people. In my view, “religionism,” “religious exclusivity,” and “sectarian supremacy” are diseases, infectious maladies, which can be challenged, and are being challenged by all lovers of freedom and human dignity. A truly spiritual path depends upon sincerity and freedom of choice.

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disturbing study of biocolonialism and critique of the Human Genome Diversity Project raises the issue of whether knowledge (genetic, pharmaceutical, agricultural) is a commodity or a gift. The jurisprudence of Chief Justice John Marshall’s three decisions concerning the Cherokee’s (surely a civilized people!) to create the legal concept of “domestic, dependent nations” raises serious questions about the Lockean basis of democracy. This study continues in the analysis of Lone Wolf v. Hitchcock, Balzac v. People of Puerto Rico, and Rice v. Cayetano.

With eighteen contributors and a uniformly high level of philosophically interesting contributions, I hesitate to draw attention to individual pieces. However, if the reader wishes to sample this feast, the articles by Deloria, Waters, Cordova, and Turner would surely whet the intellectual appetite. The last’s “Oral Traditions and the Politics of (Mis)Recognition,” drawing out the implications of the Canadian Delgamuukw case, asserts that “our survival” as indigenous peoples “depends on an American Indian intellectual community...finding creative, critical ways to assert and defend how tribal sovereignty is recognized and put to use in American law and politics. However, the question of what the “American Indian intellectual community ought to look like, and what an American Indian intellectual is, remains elusive and controversial” (231). Turner continues: “the pendulum-like nature of federal Indian policy over the last two centuries ought to drive home the point that, when it comes to American Indians, the Congress can, and does, do as it pleases.” But this power can be understood in two ways. Congress has brute physical power. But it also believes that its power is exercised legitimately. It is to understand and challenge the latter that native Americans need philosophically trained “word warriors.”

American political thought, for example, is often based on a contract theory, which usually places indigenous people in a pre-civil contract state. Further, democratic theory, of either end of the liberal-conservative spectrum, assumes a fairly homogenous cultural basis and hence overlooks the importance of tribal enculturation (which communitarian theory should recognize), not to mention cultural hybridization.

A detailed study of the American Indian Religious Freedom Act and the Native American Graves Protection and Repatriation Act takes on incredible poignancy set against the history of grave looting in the name of science. Perhaps humiliation of Iraqi prisoners is not an aberration.

I was struck by the notion that the role of a native artist is that of a healer, not a disrupter, as the Western artist has become. Does this apply to the Lakota story-teller? (See Julian Rice, Before the Great Spirit, University of New Mexico Press, 1998.)

The section on aesthetics includes a study of George Morrison’s paintings. Three points were clearly made: (a) the importance of here in our perception (and intellect), (b) the sense of the world as full of spirit(s) is not a primitive survival, but the effort to speak of it in metaphoric language can be blocked by linguistic dogmatism, (c) an Indian can often be refused recognition, as Morrison was by a major art center, for not being “authentic” enough.

The essay on the nature of philosophic discourse is a fitting conclusion to this study.

Mention should be made of the assistance of Lucius Outlaw, Leonard Harris, and Nancy Tuana and of the cover illustration by Jeanne Rorex Bridges. I trust this collection is a sign of more to come.

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Reviewed by Richard Simonelli

Every culture, every society on planet earth entertains utopian or idealistic dreams and visions to some extent, John Mohawk argues in *Utopian Legacies*. But in Western civilization, he says, this leaning is carried to an extreme. Starting at least from the ideal of Plato’s Cave in ancient Greece, Western people seek to find a utopia born of imagination and mental concepts; they have lived chasing ideals and “the one right way.”

*Utopian Legacies: A History of Conquest and Oppression in the Western World* is a short history of Western Civilization looking through the lens of utopian and idealistic thought. These are like a subtext guiding many Western outcomes. As ideals and utopian visions become almost sanctified within the culture as archetypes, it then follows that unspeakable acts of conquest, oppression, and genocide are easily justified by perpetrators in pursuit of the various ideals. “The pursuit of the ideal has provided a stream of rationalizations that justified plunder, racism, and oppression in the name of a better future,” says Mohawk. “The fact that conquests and their reward were acceptable and continue to be celebrated in Western history is a key to the story of how the world came to be the way it is.”

*Utopian Legacies* is a philosophical analysis of Western history, but it is also a book that takes the reader through a factual historic journey from ancient Greece to the present. The reader gets the sense of what happened as well as a glimpse at the utopian and idealistic “hidden text” driving the actors. The author points out that Western history is usually written by people within the worldview of the victory. As a modern Native American of the Seneca nation, Mohawk looks at Western history from both within and from outside its sweep. Inside, because as a professor of history in the State University of New York at Buffalo he participates in the dominant or mainstream culture as much as any of us. But as a descendent and active practitioner of the Peacemaker tradition of the Six Nations, he is not tied to the Western view as Euro-American colleagues might be.

Some of the Utopian visions of Western civilization include the Garden of Eden, Plato’s Republic, the Kingdom of God, or heaven on earth, the Worker’s Paradise, and even the popular scientific “Theory of Everything” spoken of today. The underlying idea is that we can have a perfect life if we just work hard enough at it. The “perfection,” of course, will be an expression of the ideal. One of the articles of faith is that the Western way is the one true way to achieve this perfection, all other ways eventually yielding to the Western view if they struggle long enough within their own systems. “The history of ideas in the West is dominated by a certainty that an ideal world is possible, that such a world will be in the best interest of all human beings, and its conception and production will inevitably be the product of Western thought,” says Mohawk.

An outcome of the utopian/idealistic basis of the Western worldview is the need for, and proliferation of revitalization movements. Social thrusts are constantly pетering out and finding themselves in need of revitalization. Judaism (through Abraham) is at the root of Christianity and Islam, which are in great turmoil today. How will all three be revitalized? The European Enlightenment is a revitalization of Church domination throughout the Middle Ages. Hitlerism was a
Another outcome of the pursuit of the ideal is the **progress ethic** that plays such an important role in Western history. Like the image of the donkey, the carrot and the stick, there is a constant compulsive drive to move away from one situation and towards another that offers more promise of realizing the ideal. The utopian ideal causes people to live in the future, neglecting perhaps the present. “People who are engaged in utopian projects tend to envision the world in a state of being that precedes another state of being,” says Mohawk. “The common wisdom among the converted is that things are progressing in a positive way toward the realization of the utopia. Inherent in true utopian thought, therefore, is a notion of progress. While the members of the group are awaiting its arrival—sometimes over very long periods of time—they are urged or coerced or terrorized in myriad ways to continue to believe that it will in fact arrive.”

**Utopian Legacies** is filled with well-known historic facts seen through the viewpoint of utopian ideals. There is one chapter, however, that presents a fascinating in-depth look at the Conquest of Mexico by way of Cortez’s victory over the Mexica (Aztec) people in Montezuma’s capital city of Tenochtitlan, now Mexico City, in 1521. This chapter presents intriguing information about the dynamics of Cortez’s victory—how he was able to defeat the Mexica empire with a relatively small force, and the relationships that existed between Montezuma and the nearby indigenous tribes that made victory possible for Cortez.

**Utopian Legacies** reveals the role that clear philosophical thought can provide in understanding history. By contrast, the study of Western philosophy reveals how excessive dependence on ideas can go wrong. Mohawk says: “It is not difficult to understand that few contemporary students are attracted to the study of the history of Western philosophy because it is a discouraging study of a series of bad ideas that have gone wrong. There have been no powerful new ideas in Western culture for several generations. Because philosophy has limited itself to ideas that find their way into Western discourse through a traditionally Western path, and people from other cultures have not historically had access to that path, Western philosophy has not had the benefit of the ideas of people of other cultures. That is and has been changing for some time, however. Philosophy, anthropology, and history all have advocates for pluralism within their disciplines.”

What’s the way forward into a happier, survivable future as offered by this book? Tolerance and pluralism. We must learn from history that excessive idealism and seeking “the one right way” has unhappy consequences in the world. But help is close at hand from other outlooks on life that exist separately from the main line of the Western view. Allowing diverse thought and peoples back into the history of the world as equal partners offers one strong ray of hope for the future.

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**ANNOUNCEMENTS**

1. Submissions are requested for the **APA Newsletter on American Indians in Philosophy**, email as attachment to brendam234@aol.com, or snail mail to Anne Waters, 1806 Arizona, NE, Albuquerque, New Mexico, 87110.


3. Proposals for upcoming 2005 APA conferences are requested. They can be sent to Dale Turner, for the Committee session(s) and to Anne Waters for the American Indian Philosophy Association session.
This Fall 2004 issue of our Newsletter comes not only at the beginning of a new academic year but also marks a new beginning in the distribution and format of the Newsletter. We will now be an online newsletter and available to all members of the APA. We welcome having a wider audience and look forward to your response and contributions. The success of our publication depends on the contributions of many diverse voices and viewpoints. Your submission of articles, book reviews, class syllabi, teaching aids, bibliographies, and announcements are most welcome. As we embark on both a new year and format, we also have a new chair of our Committee on Blacks in Philosophy. Frank Kirkland of Hunter College is now on board and we welcome him as we go forward on the journey to advance the understanding and appreciation for the philosophy of the Black experience.

This issue has two articles and one book review essay covering a wide range of topics within the philosophy of the Black experience. John H. McClendon’s essay, “The African American Philosopher and Academic Philosophy: On the Problem of Historical Interpretation,” addresses the question of how the history of African American philosophy is more than an exercise restricted to nonacademic philosophers engaging in philosophical deliberation. The empirical facts of the case point to a history where academic (professional) philosophers have tremendously contributed to the progression of African-American philosophy. McClendon contends there is a trend among contemporary scholars of African American philosophy to neglect this vital tradition of academic African American philosophers. George Yancy’s essay, “W.E.B. Du Bois on Whiteness and the Pathology of Black Double Consciousness,” explores W.E.B. Du Bois’ conception of whiteness. The author maintains that Du Bois’s conception of whiteness is not grounded within racial essentialism, but structured along an axis of imperialistic hegemony and social, interpersonal hierarchies based upon historical myths and norms. Yancy improvises his work on the fictional character Pecola Breedlove within the framework of Du Bois’s “double consciousness” construct. Audrey Thompson, professor of philosophy of education and gender studies in the Department of Education, Culture, and Society and an adjunct professor in Ethnic Studies at the University of Utah, provides a critical and comprehensive review of What White Looks Like: African-American Philosophers on the Whiteness Question, edited by George Yancy. She brings her own critical and historical knowledge of whiteness studies to complement the many significant observations and theorizations made in What White Looks Like, while providing a positive assessment of the book’s value and uniqueness within the context of the panoply of whiteness studies literature. Of course, Thompson also insightfully interrogates the text, suggesting ways in which the text may have been philosophically and historically enhanced.

Although presently we are witnessing the production of an array of books on African-American philosophy, to date there have not been any texts devoted strictly to the history of African-American philosophy. I think that solid texts in the history of African-American philosophy can emerge only when certain core questions are meaningfully and adequately addressed as matters of theory and method in the historical account of philosophy. Now let us systematically interrogate this matter of the history of philosophy. I submit the following questions only as a brief sampling of possible interrogations. The first set of questions is empirical in nature and the second is more conceptual in tone.

In the first set we have: Who are the African-American thinkers who have grappled with philosophical questions and problems over the course of history of the African-American philosophy? What type of training/education did they receive? What were the venues (institutional settings) available for their work? Were such outlets academic or nonacademic in makeup or did both come into play? Which mattered most in terms of philosophical work (teaching or research) for the earlier generations of African-American philosophers? What audience did they seek to address? And what means were at their disposal for reaching an audience? What subfields in philosophy did they explore and what schools of thought captured their allegiance? It is apparent that all of the above questions require empirical research for us to obtain answers.

The second set includes: Does theory demand that the history of philosophy pose perennial questions—such as the mind/body problem—and of which we witness changes only in form, while what remains as consistently true is an essential content that lasts over time? Is historical method a matter of knowing how to demarcate the past from the present via some method of periodization? How does one weigh the philosophical merit of ideas or issues in philosophy’s history.
from more general notions concerning intellectual history in the broader nonphilosophical sense of the term? In other words, what are (properly) considered to be philosophical questions, issues, and problems? Do we need the past as a yardstick for measuring the current level of philosophical attainment? Obviously this second set of interrogations involves conceptual examination in contrast to empirical investigation for the former set.

We can readily see that these theoretical and methodological problems (affixed to the history of African-American philosophy) could possibly be one of the causes for the contemporary absence of texts on the topic. The lack of texts nevertheless does not mean that important preconceptions about the history of African-American philosophy are completely absent from books dealing with more general aspects of African-American philosophy. Fundamental notions about the nature of African-American philosophy often implicitly contain preconceived notions about its historical context and character. Certain anthologies of African-American philosophy, especially those designed to function as introductory texts, often attempt to address the historical context of various philosophical problems. And, subsequently, these problems are critical in shaping the contours of the study of African-American philosophy. For those teachers and students with little or no knowledge of the history of African-American philosophy, these anthologies on many occasions take on a canonical veneer and they often shape basic conceptions about the very definition and interpretation of African-American philosophy.

Our fundamental notions about the nature of African-American philosophy are grounded in the definitions and interpretations adjoined to the practice of philosophizing. Moreover, they direct us toward metaphilosophical deliberation and the unending question of “what is philosophy?” And when we ask the question “what is philosophy” we are actually approaching our more broadly conceived perspectives regarding philosophical inquiry. Two key aspects of metaphilosophy are the formulations and elaborations we make about the tasks of philosophical definition and interpretation.

Most philosophers presume that philosophical inquiry—definition and interpretation—are essentially matters that are more conceptual—rather than empirical—in nature. I think that, for the most part, this presumption holds true. For example, when philosophers ask the question of “what counts as belonging in the world?” or “what constitutes the furniture of the universe” it is generally taken as given that an empirical accounting of all the items of the universe is not the intent. Instead, philosophers are governed by the conceptual imperative to grapple with the ontological task of outlining what it means to exist in the world. An explanation of the nature of reality becomes paramount and an empirical description of various forms of matter in their lawful motion, for example, takes a backseat to philosophical perspectives grounded in abstract reflection and consideration.

Ontological ordering establishes the primacy of some entities over others and, consequently, descriptive accounts—however exhaustive—are validly deemed (if not unnecessary) at least serving as a minimal requirement to the process. In fact, some very significant phenomena from the standpoint of scientific (empirical) inquiry may be completely overlooked in a philosophical account about the nature of reality. The empirical reality of molecules, atoms, and quarks, while crucial in the physicist account of the world, subsequently may not be a matter of concern for philosophical discussion about the nature of being and reality.

The rule of thumb about the essentially conceptual nature of philosophical inquiry and interpretation sets philosophy apart from the physical, natural, and even the social and behavioral sciences. This is because empirical investigation is crucial to the very notion of scientific research and this continues regardless of the particular field of science. With that said, we cannot conclude that philosophy is completely bereft of an empirical dimension. Although definition and interpretation are paradigmatically conceptual, we observe that from the standpoint of cognitive progression they are both grounded on the manner in which we offer description(s), and we recognize that description of phenomena is categorically an empirical exercise. An ontological ordering that is consistent with the findings of science must take into account the restrictions attached to the results of empirical investigation. In addition, the predisposition to ground our philosophic definitions and interpretations within the realm of the possibility of empirical boundaries is a helpful safeguard against rampant idealist speculation and arid metaphysical contemplation. (Undoubtedly; this is one of Kant’s most salient points in his *The Critique of Pure Reason.*)

We must not overlook the fact that even some subfields of philosophy are innately connected to empirical inquiry. The history of philosophy is both a matter of philosophy and history and where beforehand we acknowledged that philosophy is quintessentially conceptual; we must also be cognizant that history, in turn, is preeminently an empirical undertaking. The history of philosophy (more a subfield of philosophy than history per se) nonetheless must consider the facts of the case, i.e., the empirical reality which our philosophical interpretation depends upon and derives from.

The historical interpretation of African-American philosophy must be grounded in a factual framework and its affixed descriptive accounts. I contend that the empirical side adjoined to philosophy’s history has monumentally significant implications for conceptualizing African-American philosophy. The set of empirical questions (outlined above) concerning the history of African-American philosophy amplifies this point. Moreover, all talk about what constitutes an African-American philosophy is decidedly intertwined with how we understand what makes up the history (formation) of African-American philosophy.

The interpretation of the history of African-American philosophy has specific methodological problems attached to it that differ from how we often tackle philosophical issues per se via conceptualization. Namely we are keenly concerned with how framing certain questions preclude what amounts to the historical mode of thinking; wherein philosophical questions are viewed in abstraction from the historical consideration of philosophical traditions. This method of ahistorical framing gains legitimacy precisely due to the epistemological task of the logical reproduction of the object in thought. Certain historical aspects of a given problem are deleted in view of accenting what is considered the essence of a given problem. The logical reproduction of the object stands as the opposite pole to chronological reproduction, for chronological reproduction, which is the substance behind the exercise of the historical method, is focused on the process (or the formation) of given entity.

So we observe that a philosophical interest in the nature of whiteness need not involve referencing or reflecting on previous traditions and other historical currents among African-American philosophers. Of course, there are historical prototypes such as W. E. B. Du Bois’s “The Souls of White Folk” (which George Yancy addresses in this issue of the *Newsletter*) that have contemporary relevance. Yet the previous
encounters with this problem are not necessary for our own philosophical perspectives and judgments on whiteness today. Although we can take prior explorations into account, we are not faced with an imperative to do so. Put simply contemporary inquiry into the issue of whiteness can legitimately take place and be removed from any concerns about the historical context for and traditions in African-American philosophy.

Just as a mathematician need not know the history of mathematical thought in order to solve specific problems in the disciplines of geometry or calculus, so it is that the contemporary philosopher is not obligated to know the history of African-American philosophical thought on the question of whiteness to obtain an adequate answer to the problem of whiteness and other such philosophical issues. In this sense philosophical inquiry is very much an "ahistorical" encounter. Here my use of the concept of 'ahistorical' does not mean that there is no need for any reference to history as such, only that the history of African-American philosophy (antecedent philosophical tradition) is not operative in our deliberations.3

Although there are valid grounds for justifying the pursuit of philosophical investigation sans historical context and traditions, the notion of a general conception of an African-American philosophy with its ancillary meaning(s) and import cannot be established without basic presumptions about the history of African-American philosophy i.e., its process of motion, change, and development. Here is where the empirical aspect of the history of African-American philosophy proves to be decisive. If one presupposes that a particular approach to a philosophical issue is novel in some way then that assumption must be established on the basis of historical facts. What may be thought of as novel could actually be no more than the replication of an earlier idea or even a rehash of a rather long tradition of philosophic thinking. There is always the possibility that the original idea or previous tradition might have already have proven to be misguided or off the mark. Hence, the replication and rehashing of old ideas could amount to falling into a trap that had already been uncovered and avoided by preceding philosophers. Also, having some knowledge about previous philosophical traditions can help to inform our contemporary research and provide insight into the complexities we are facing today.

A case where knowledge of the history of a determinate philosophic approach would have radically improved the contemporary examination of European thought—by an African American thinker—is Marimba Ani's claims in Yurugu.4 Ani offers a critique of European philosophy and particularly Plato and Greek philosophy. Her major thesis is that European and African philosophies are fundamentally opposed and are, in fact, basically antagonistic. At the root of European racism, chauvinism, and white supremacy, Ani claims, is the classical Greek tradition in European philosophy of which Plato is the chief progenitor. Today, we know that Ani is a leading proponent of Afrocentricity and her text has gained canonical authority among many in the Afrocentricity camp. The publisher of her text has even indicated it is his top selling book. So a number of people are influenced by Ani's thesis about the antithetical nature of European and African thought and how it originates in Greek philosophy and ancient African philosophy.5 This thesis quite evidently rests on a preconception about the history of both European and African philosophy.

However, in contrast to Ani, the Guyanese born philosopher George G. M. James presents a historical account of Greek philosophy that concludes that it is African (Egyptian) in its essential make up. Far from there being an opposition between Greek and African philosophy, Greek philosophy reduces to plagiarized African philosophy. James's controversial magnum opus Stolen Legacy, published in 1954, has captured the attention of a number of Afrocentric advocates, including the historian of Africa and African peoples Yosef ben-Jochannan, who in turn pronounces strongly on behalf of James. Also the pioneering historian of ancient Africa, William Leo Hansberry of Howard University, thought so highly of James's contribution to the history of ancient philosophy that he wrote a favorable book review of it in 1955 for the Journal of Negro Education.6

James is one of those academic philosophers whose career emerges within the historically Black college and university (HBCU) institutional network. He taught at several historically Black colleges and universities and this also includes a position as Professor of Logic and Greek at Livingston College, Professor of Languages and Philosophy at Johnson C. Smith, Professor of Mathematics and Dean of Men at Georgia State College, Professor of Social Science at Alabama A. & M. College and as Professor of Social Sciences at Arkansas A. M. & N. at Pine Bluff. He was on faculty at the latter institution when he wrote The Stolen Legacy.7

James's thesis amounts to the claim that what is traditionally considered to be Greek philosophy is no more than African philosophy. Greek philosophy is actually philosophy which was stolen from Africa. One can readily see that James's position is diametrically the opposite of Ani's. However, he is not the first in the history of African-American philosophy to write and publish on this topic. The Stolen Legacy stands as the second text written by an African-American philosopher that deals with the history of Greek philosophy. Rufus Perry's Sketch of Philosophical Systems, published in 1889, was the first book by an African American philosopher on Greek philosophy.8 (More will be said about Perry later.) What is most significant here is that there are sources, by African-American philosophers, to which a serious contemporary scholar can turn to gauge the history of Greek philosophy. Furthermore, given Ani's commitment to the African-centered approach, it would seem that, if she did not know about Perry's seminal book, she could have drawn on James when formulating her own position.

Nevertheless, Ani only briefly cites James and fails to address the basic point of contention between her work and James's study. Unlike the aforementioned ben-Jochannan and Hansberry, who as historians grasp the import of James's interpretation, Ani makes little use of James's work as historian of Greek philosophy. Ironically, Mary Lefkowitz and Stephen Howe, both of whom are leading critics of Afrocentricity, devote more attention to James's text than does Ani, a fellow Afrocentric thinker.9

The reason they challenge James's position is, in part, that their own stance is quite akin to Ani's premise about the vast distinction between Greek and Egyptian philosophy. In their opinion, if one assumes no connection between Greece and Egypt (Kemet) then these two histories of philosophy are fundamentally different and the autonomy of Greek development is preserved. Yet if James is correct, then not only does the view about Greek philosophy's autonomy from Africa—as a working hypothesis—stand as false but also we discover that the Ani thesis about mutual antagonism is equally false in light of James's presupposition about there being a common heritage. Whatever the merits of James's history, and I think there many demerits, Ani's arguments would have been seriously challenged if she had offered a detailed response to James's historical interpretation.10
Empirical Description, Philosophical Definition and Historical Interpretation

Any and all basic presumptions about African-American philosophy’s history should be grounded in a solid comprehension of this history, one which is based on empirically acquired facts. When it comes to our assumptions about the history of African-American philosophy, the use of imagination, creative thinking, and speculation may have a place in our examination; however, they all must be anchored in sound empirical investigation of the evidence. This is why description is foundational in the cognitive process and hence anchors definition and interpretation in the history of philosophy. Description is a composite rendering that is only possible given the factual groundings of observation. Hence, inadequate and incorrect descriptions, linked to a historical account, can result only in weak definitions and misguided interpretations.

Unfortunately, some scholars of African-American philosophy have a view of its history which is not founded on the rigorous empirical assessment of actual historical evidence. Their presumptive context for the very idea of what constitutes African-American philosophy is often grounded in implied and preconceived notions about its history, rather than in the results of explicit research projects directed specifically at history. One prevailing and dominant preconception is that the history of African-American philosophy is essentially one that derives from nonacademic (rather than with academic) intellectuals. In fact, nonphilosophers are often given priority over those actually trained as philosophers. This preconception is especially evident in two recent anthologies that are designed to function as introductory text in African-American philosophy.

By nonacademic sources or basis, I do not mean nonscholarly or even nonphilosophical work, rather I mean to point to philosophical works and philosophers who are not in or connected to the academy. Nonacademic philosophers are people who were not formally trained in philosophy or who do not teach and do philosophical research at academic institutions. Some very important philosophical works by nonacademic thinkers (from Maria Stewart and Martin Delaney to more contemporary thinkers such as Malcolm X) form a crucial part of the history of African-American philosophy. Yet this does not preclude that African American academic philosophers have also played a critical role in the history of African-American philosophy.

But on reading certain recent anthologies on African-American philosophy, particularly those that purport to be comprehensive introductory texts on the subject, African American academic philosophers—especially on or before the year 1965—are conspicuously absent. The year 1965 is employed as a marker for three reasons. First, most philosophers who earned their doctorates in philosophy or who taught philosophy before or beginning in that year are more than likely no longer formally in the academy; we have the example of Dr. Joyce Mitchell Cooke—the first African American woman to obtain a doctorate in philosophy (from Yale in 1965)—is now retired from the academy. Second, there some academic philosophers still active in the academy that earned their doctorates shortly after 1965 and are a part of the contemporary scene of African American philosophers. Third, Malcolm X remains a prominent nonacademic philosopher and his death in 1965 mark a significant turning point in the emergence of the distinctive subfield of the Philosophy of the Black Experience. So we have a scenario where the African American philosophers in the academy (pre-1965), with the possible exception of Alain Locke, has virtually disappeared from view in general accounts of African-American philosophy.

For example, we have James Montmarquet and William Hardy’s text Reflections: An Anthology of African-American Philosophy, published by Wadsworth Publishing (2000), and Tommy Lott’s, African-American Philosophy: Selected Readings (Prentice Hall 2001), which accentuate how the historical character of African-American philosophy is primarily non-academic. They do so by including nonacademic African American philosophers in the historical (noncontemporary) parts of their respective books and simultaneously they exclude academic African-American philosophers. Not a single African-American philosopher who was an active academic philosopher before 1965 is presented in either text. The African American philosophers who are included are all contemporary philosophers (post-1965 intellectuals). As a result, we are left with the impression that the advent of academic-oriented African-American philosophers is more a recent matter tied to contemporary concerns, not something emerging from the concrete historical development of African-American philosophy. Since these works are not texts specifically on the history of African-American philosophy, then all of the assumptions concerning the history of African-American philosophy are implicit, thus resting primarily as presuppositions that are embedded in the very organization of the texts and reflecting the authors’ underlying conception of African-American philosophy. Each book is conceived as a comprehensive introductory text on African-American philosophy that includes both historical and contemporary dimensions of the subject.

Now, given the racist character of academic philosophy over the last two centuries, there is certainly justification for calling attention to the nonacademic sources of African-American philosophy. Undoubtedly, the full measure of the historical sweep of African-American philosophical work cannot be confined to just academic philosophers and philosophers. After all, there were few opportunities for African Americans to enter the academy. This was first due to slavery and then to segregation and racial quotas. However, the very exclusion of Black people, for the most part, from the academy does not in any way point to the lack of philosophical traditions among African Americans. Given the racist nature of the white academy in this country, the alternatives that African Americans pursued in their quest for carrying out philosophical work involved academic as well as nonacademic avenues.

So when we see that the Montmarquet and Hardy text includes Martin R. Delaney, Frederick Douglass, and Sojourner Truth, and the Lott book has Maria Stewart, Mary Ann Shadd Carey, Edward Blyden, and Booker T. Washington, among others, there are reasonable and considerable grounds for their inclusion in the respective works. But what happened to the academic philosophers of the nineteenth century and even the twentieth century before 1965?

Lott, unlike Montmarquet and Hardy, refreshingly has a section on Marxism. Yet Lott gives a nod to Cornel West, who is openly anti-Marxist-Leninist, and leaves out Eugene C. Holmes. You may wonder, “who was Eugene C. Holmes?” Before Angela Davis came onto the academic scene, Holmes, for many years, was the only African American Marxist philosopher in the academy. Lott’s section entitled “Marxism and Social Progress” could have drawn from the numerous articles Holmes published in this area. Of particular note is a paper Holmes gave before the APA titled, “A General Theory of the Freedom Cause of Negro People.” Holmes’s various essays on African-American social/political philosophy, the aesthetics of Black art, Black education, biographical sketches on Locke, Langston Hughes, and Du Bois, as well as his works in the materialist conception in the philosophy of science,
could have offered invaluable insights into the philosophy of Marxism via the Black experience. Moreover, not only are there at least two published bibliographies of Holmes’s publications, but as recently as Yancy’s interview with Albert Mosely in 17 Conversations (in 1998), Mosely talks explicitly about Holmes as the Marxist philosopher at Howard University.11

In my estimation, there is real danger with the historical interpretation of African-American philosophers and philosophy where the prevailing assumption is that nonacademic philosophy remained the limit of African-American philosophical contributions. The presupposition that somehow only during our contemporary time do we find that African American philosophers make real (first) strides in academic philosophy is patently ahistorical and grossly inaccurate. In this sense, the aforementioned anthologies are considerably lacking in the historical depth ancillary with the African American philosophical tradition in academic philosophy as was demonstrated in (and especially with the 1983 first edition of) Leonard Harris’s Philosophy Born of Struggle.12

All the available options were not restricted to working outside of academia. African-American philosophers exercised the options to leave the country and undertake the study of philosophy elsewhere. Some even taught philosophy at institutions outside of the country. Moreover, the white academy was not the sole option for working in academic philosophy within this country. Most academic African-American philosophers studied and taught at historically Black colleges and universities.

To ignore the rich history of Black educational institutions in this country is to neglect the essential role and scholarly progress of African American academic philosophers. Historically, Black colleges and universities were not only the primary academic setting where African-American philosophers conducted their work, but also they additionally gave formal recognition to Black achievements in the field of philosophy. This was of particular import since white educational institutions virtually fail to hire Black philosophers, let alone publicly acknowledge African-American philosophical accomplishments. It wasn’t until the 1940s that Cornelius Golightly became the first African American philosopher to teach at a predominantly white college (after Patrick Healy) when he joined the faculty at Olivet College. Golightly was hired after the Rosenwald Fund offered an incentive for Olivet to hire Black faculty. He later became Dean of Liberal Arts at Wayne State University.13

One shining example of how Black educational institutions celebrated Black philosophers involves the case of Rufus Lewis Perry. Perry was a former slave who graduated from Kalamazoo Seminary in 1861, where he studied both philosophy and theology and eventually became an ordained minister. Perry’s role as a philosopher was intimately linked to his position as a Baptist clergyman. Reverend Perry served on various Baptist educational boards, and he was also active in journalistic endeavors with the Church. An outstanding orator, Perry was widely sought after as a public lecturer. Furthermore, it was his endeavors with the Church. An outstanding orator, Perry was widely sought after as a public lecturer. Furthermore, it was his role as a philosopher was intimately linked to his position as a Baptist clergyman. Reverend Perry served on various Baptist educational boards, and he was also active in journalistic endeavors with the Church. An outstanding orator, Perry was widely sought after as a public lecturer. Furthermore, it was his role as a philosopher was intimately linked to his position as a

Shortly thereafter, in 1889, Perry published a book, Sketch of Philosophical Systems. With this particular work Perry became the first African American to author a book on the history of philosophy. Four years later he published his book, The Cushite, or the Descendants of Ham as Found in the Sacred Scriptures and in the Writings of Ancient Historians and Poets from Noah to the Christian Era, which traced the ancient history of Black people.13 Given Perry’s work in the history of philosophy and the ancient history of African people he (along with George G. M. James) would undoubtedly be a good source for conceptualizing an approach to the problem of historical interpretation in philosophy.

Unfortunately, while Perry gained recognition from his contemporaries, he and many others like him have not been afforded requisite historical notice from today’s scholars of African-American philosophy. Alain Locke remains the only African American academic philosopher to receive substantial scholarly attention. Perhaps the reason why Alain Locke has not fallen upon this fate and instead has garnered the lion share of scholarly attention is due to the fact that Howard University is considered by many as the most influential school among Black higher education institutions. Additionally, Alain Locke was the first Black person to become a Rhodes Scholar. Along with the formation of the scholarly association called the Alain Locke Society, a considerable number of contemporary philosophers have carried out research on Locke.

The list includes Johnny Washington’s Alain Locke and Philosophy: A Quest for Cultural Pluralism (1986) and his A Journey into the Philosophy of Alain Locke (1994), Blanche Radford-Curry, “Values, Imperatives, and the Imperative of Democratic Values” (1999); Leonard Harris’s “Identity: Alain Locke Atavism” (1988), The Philosophy of Alain Locke: Harlem Renaissance and Beyond (1989); and The Critical Pragmatism of Alain Locke (1999). We also have the late Ernest Mason’s doctoral dissertation, Alain Locke’s Philosophy of Value: An Introduction (1975) and his article Alain Locke’s Philosophy of Value (1982), Tommy Lee Lott’s “Nationalism and Pluralism in Alain Locke’s Social Philosophy” (1994); Clevis Headley’s “Instrumental Relativism and Cultivated Pluralism” (1999); and, more recently, Rudolph Alexander Kofi Cain has published his book Alain Leroy Locke: Race, Culture, and the Education of African American Adults (2003), a book on the educational philosophy of Locke.

However, besides Alain Locke’s presence at Howard University, there is a long roll of academic philosophers who were either students or on the philosophy faculty at the “Capstone” of Black higher education. Outstanding philosophers from varying philosophical schools of thought at Howard were as diverse as Lewis Baxter Moore, Forest Oran Wiggins, Eugene C. Holmes, Winston K. McAlister, Joyce Mitchell Cooke, William R. Jones, and William Banner, to name only a few. Yet if all of the articles (that were ever written by African American philosophers) on all of the above philosophers at Howard were combined into one bibliography, it would not even amount to one quarter of the aforesaid cited list of publications on Locke. For example, Eugene C. Holmes, who followed Locke as the Chair of the Philosophy Department at Howard University, has garnered only two African American philosophers to publish three works devoted to examining his contributions.16

More starkly, Winston K. McAlister, the next in the line after Holmes as Chair, goes virtually without notice. With the exception of William Banner’s memorial tribute in the Proceedings of the APA, there are no articles from African-American philosophers pertaining to McAlister and his work.17
Yet McAllister is one of the few African American philosophers to specialize in philosophical psychology. In the history of African-American philosophy, not since Gilbert Haven Jones (in manner similar to William James) who paved the way in both philosophy and psychology, did another philosopher emerge before McAllister to work in this subfield of philosophy.18

The historically black colleges and universities formed the intellectual foundation for the sustained development of the academic African-American philosophers. The relationship of African American philosophers to Black schools was reciprocal in character, the institutions nurtured the development of philosophical work, and a number of these philosophers were more than just faculty members at Black institutions. Some philosophers such as Locke, Holmes, McAllister, and Banner at Howard and Samuel W. Williams at Morehouse, Francis Thomas at Central State in Ohio, and Richard McKinney at Morgan State were chairs of their respective departments. In that capacity they carried out vital administrative duties, advised students, majors and nonmajors, and found ways for the department and the institution to survive. Thomas at Central State even assumed duties as both chair and Director of Audio Visuals.

Others became presidents at historically black colleges and universities, while all along functioning as active teaching members of the philosophy faculty and some, even serving as ministers in churches within the Black community. The significance of this three-fold attack with regard to philosophy is that the administrative goals of curriculum development were linked to teaching in both an academic and nonacademic setting of the Black community. African-American philosophers not only taught philosophy but also trained leaders to serve the Black community.

Before assuming the chair at Morgan State, Richard McKinney was the President of Storer College in West Virginia and thus became the first African American to do so. Before receiving his doctorate from Yale (1942), he did undergraduate work at Morehouse and graduate study at Andover Newton Theological School, where he earned a B.D. degree (1934) and the S.T.M. (1937) specializing in the philosophy of religion. A Baptist minister and scholar in the philosophy and history of religion, McKinney most recent work is Mordecai—The Man and His Message: The Story of Mordecai Wyatt Johnson (1998).19

Marquis Lafayette Harris was the first African American to receive a Ph.D. in philosophy from The Ohio State University (1933). During the course of his doctoral work, he was also engaged as the minister of a Methodist Episcopal Church in Columbus. Highly trained in physics, his doctoral dissertation (Some Conceptions of God in the Gifford Lectures, 1927-1929) addressed questions about the Theory of Relativity. Harris was preceded by Robert T. Browne as an African American philosopher of science doing work on Einstein’s theory. Browne’s 1919 book, The Mystery of Space, and Harris’s dissertation share a common dialectical idealist approach. Eventually, Harris not only taught philosophy of science, he also served as President of Philander Smith from 1938 to 1961.20

And at Wilberforce we find that Gilbert Haven Jones and Charles Leander Hill both held the post of president and philosophy professor. Jones, the third African American to earn a doctorate in philosophy, received his Ph.D. degree from the University of Jena (1909). After a number of administrative position at several historically black colleges and universities, Jones held the chair in the Philosophy Department at St. Augustine College, and later he assumed the Presidency of Wilberforce University in 1924.21

Charles Leander Hill, who followed Marquis Harris in earning a doctorate in philosophy from the Ohio State University (1938), was president at Wilberforce from 1947 to 1956. As for the history of philosophy, Hill was the first African American to publish a history of Western philosophy during the modern era. His translation of William Anthony Amo’s work on apathy into English was the very first such translation, and Amo was also the first African to gain a doctorate in philosophy. Both Jones and Hill were ministers and leaders in the A. M. E. Church. Hill was a strong advocate of not only civil rights but also civil liberties, the struggle for world peace, and ending nuclear weapons.22

At Morehouse, Samuel W. Williams, who was chair of philosophy and religion from 1947 to 1870, taught philosophy to a young Martin Luther King. King subsequently received a ’C’ during the first semester in Introduction to philosophy from Williams. And also mentoring King at Morehouse was George Kelsey who taught philosophy and theology there. Kelsey (1946 Yale doctorate) was at Morehouse from 1938 to 1945. In contrast, while Williams gave King a ’C’ in introduction to philosophy, Kelsey gave King his only ‘A’ at Morehouse in theology.23

Williams and Kelsey were mentors to King and helped him to cultivate his understanding of the civil rights movement and the philosophy of nonviolence. In addition to them, we have William Stuart Nelson of Howard University whose counsel on the philosophy of nonviolence for King came directly in the very conditions of civil rights campaigns. In addition to meeting Gandhi and starting the Gandhi Memorial Series, Nelson was the first person to teach a formal course in the philosophy of nonviolence on a college campus. It was also Nelson who started the academic journal, The Journal of Religious Thought.24 What is most evident is that the African American academic philosophers adjoined to the historically black colleges and universities were not ivory tower intellectuals but rather people engaged in social change initiatives and as well as bringing philosophy to the broader African-American community. An African-American philosophy reader designed to present an introduction to the field would be hard pressed to think it has covered the bases, from the standpoint of history, and leave out not just some but all of the above. And the above list leaves out so many other African American academic philosophers with the Ph.D. The names of Marc Moreland, John Milton Smith, Francis Hammon, Albert Dunham, Roy Morrison, Berkley Eddins, and Broadus Butler have not been afforded treatment in articles or books exclusively devoted to them.

Even before the Black institutions were viable alternatives to following the course of academic philosophy, a few African Americans boldly departed from this country to engage in academic philosophy. We discover, for example, that antebellum philosophers such as Alexander Crummell and Patrick Francis Healy left the United States to gain a higher education in philosophy. Crummell, an 1853 graduate of Cambridge University, studied with the Cambridge Platonist, William Whewell. Furthermore, Crummell’s teaching career in philosophy was also outside of the United States. Crummell taught philosophy in Liberia, where he was a Professor of Mental and Moral Science. After his return to this country, he advanced the institutional development of the African American academic life. For Crummell, the crowning intellectual achievement was perhaps his founding of the American Negro Academy in March of 1897. This first attempt at founding a national Black think tank included scholars of the caliber of W. E. B. Du Bois and artists of the stature of Paul Laurence Dunbar, the esteem poet from Dayton, Ohio.25
Although Crummell formally pursued the study of philosophy, Patrick Francis Healy progressed even further along this path and became the first African American to earn a doctorate in philosophy. Like Crummell before him, he left this country and received his terminal degree from the University of Louvain in 1865. Healy taught philosophy at both Holy Cross College and Georgetown University. He later became the President of Georgetown in 1874, making him the first African American to head a white higher education institution.

Given the legacy of slavery, it should be no surprise that some of the most powerful philosophical treatises were nonacademic tracts against slavery. The examples of Frederick Douglass, Martin Delaney, David Walker, Sojourner Truth, and Maria Stewart in the nineteenth century bring into bold relief the great degree of philosophical richness, complexity, and sophistication via the African American intellectual traditions that originated outside of the academy. Slavery, nevertheless, also had its direct mark on African-American academic philosophers.

The first two African Americans to earn doctorates in philosophy were born in slavery. Healy, the son of a slaveholder and slave mistress, was given his freedom and sent to Massachusetts for a formal education, where he gained an undergraduate degree from Holy Cross in 1850. Healy taught at three higher educational institutions, St. Joseph’s College, Holy Cross, and Georgetown. So fair in complexion, he passed for white and therefore during his tenure as President of Georgetown, he had the dubious distinction to be the first African American (1874) to hold such a position precisely when Georgetown did not admit African-American students into the student body.

Our second African American to covet the Ph.D. in philosophy was Thomas Nelson Baker. Born only five years before Healy got his doctorate and seven years after Crummell graduated from Cambridge, Baker received his doctorate from Yale in 1903. Baker was 33 years old when he received his first degree from Boston University and ten years later he earned his terminal degree. Prior to his doctorate, Baker obtained a Bachelor of Divinity from Yale. Born on a slave plantation in Eastville Virginia, his formal education included studying at Hampton Institute, Mt. Hermon in Northfield, Massachusetts, as well as Yale. Both men were ordained ministers, as well as, academic philosophers; Healy was a Catholic priest and Baker was a Congregational minister.

Baker’s doctorate from Yale came some thirty years after Edward Alexander Bouchet received his Ph.D. from the same institution. He was not a philosopher but rather a physicist. After earning his undergraduate degree from Yale in 1874, he coveted the doctorate in 1876. Not only did Bouchet earn his doctorate in just two years, he was the sixth person in this country and received his terminal degree from the University of South Carolina, and he published philosophical essays including his article, “The Value of Soul” in 1895.

In the case of Richard T. Greener, he became a Professor of Mental and Moral Philosophy at the University of South Carolina in 1873. How could this bastion of segregation in the 1950s and 1960s have a Black person teaching philosophy? Well, the Reconstruction Period resulted in Black enrollment and employment and white flight in its wake. USC became a traditionally white school that had a predominantly African American student body. Three years earlier, Greener had graduated from Harvard, becoming the first Black person to do so. In addition to teaching philosophy at the University of South Carolina, he was a librarian and had teaching duties in the Departments of Mathematics, Latin and Greek, as well as in Constitutional History. Later in 1875, Greener became the first African American to become a member of the American Philosophical Association. Before the Ph.D. in philosophy became the hallmark of academic philosophy, classical education was the benchmark and Greener’s position at USC is not the only testimony that lends support to this fact.

Another scholar was Lewis Baxter Moore, a pioneer African American academic philosopher who held his doctorate in classics. In 1896, the same year as the infamous Plessy vs. Ferguson decision, Lewis Baxter Moore became the first African American to earn his Ph.D. from the University of Pennsylvania, and his doctoral dissertation was entitled The Stage in Sophocles’ Plays. In addition to teaching Latin, pedagogy, psychology, and education, Moore taught philosophy and established the philosophy department at Howard University, which we previously acknowledged as one of the prime institutions for the continuation of African American academic philosophy. From Baxter’s efforts we get the rich tradition of philosophy at Howard from Locke to Cooke.

The first Black member of Phi Beta Kappa was George Washington Henderson of the University of Vermont. He was inducted in 1877, which was two years before his school mate John Dewey. Additionally, Henderson and Dewey belonged to the Delta Psi fraternity. Henderson was also the head of his class and presented a commencement address in 1877 entitled “The Economy of Moral Forces in History.” Henderson’s path from his classical education was toward theology and philosophy of religion. And previous to Thomas Nelson Baker, he received the Bachelor of Divinity from Yale. He eventually ended his teaching career at Wilberforce University as a Professor of Classics and Theology, where he taught theology and classical languages from 1909 to 1932.

It is important to note that academic philosophy, at this time, was not confined to those exclusively holding the terminal degree in philosophy. African-American academic philosophers without the doctorate in philosophy, as Crummell did before them, taught philosophy within the academy. The key here is that a strong classical education served as the basis to continue as an academic in philosophy. John H. Burrus, who in 1883 became the President of Alcorn A&M, was a Professor of Moral and Mental Philosophy. He held an M.A. from Fisk (1879), and he was also qualified to teach Constitutional history, having passed the Tennessee bar examination in 1881.

Joseph C. Price was another Black college president that undertook doing philosophy based on training in classics. A graduate of Lincoln University (PA), he was the valedictorian of his 1879 class, where he majored in Classics. Price also completed a degree in theology two years later. He was the Founder and President of Livingston College in Salisbury, North Carolina, and he published philosophical essays including his article, “The Value of Soul” in 1895.

Another one of Lincoln University’s graduates, and as well as a prior valedictorian (the class of 1868), was William Decker Johnson. Johnson served as the Secretary of Education of the AME Church. He lectured widely and one of his topics was precisely on the subject of “Philosophy.” Johnson’s 1893 address before the Scientific and Literary Institute of the Georgia Conferences in Bethel A. M. E. Church, Atlanta, Georgia, was later published in 1895. Not only did he take up the topics of the definition of philosophy, the philosophical method, and the field of philosophy, but he also discussed how philosophy related to the plight of African Americans.

In the case of Charles Francis Johnson, he became the first African American Bureau of Indian Affairs agent and a member of the American Philosophical Association. Johnson also had its direct mark on African-American academic philosophers.

The prime institutions for the continuation of African American academic philosophy, From Baxter’s efforts we get the rich tradition of philosophy at Howard from Locke to Cooke.
In conclusion, the latter part of this essay on the empirical description of the various philosophers and their historical context can make real sense only in light of the host of empirical and conceptual questions posed at the onset. Herein is the raw material, the factual foundation of the descriptive stage. It is from here that we can move to definition and interpretation, knowing full well that the limits of our inquiry into the history of African-American philosophy is empirical research.

Rather than presume there is no academic philosophical traditions of value, let us dig long and deep into the empirical treasure chest and build on that. For when we integrate the academic with the nonacademic philosophers of the past, we will come closer to grasping and reconstructing the history that can aid us in our contemporary needs. The measure of our progress will be our comprehension of the past, especially from the standpoint of our present realities and future ambitions.

Endnotes


15. Rufus Lewis Perry, Sketch of Philosophical Systems (Springfield, Massachusetts: Wiley and Co., 1889) and Rufus Lewis Perry, The Cushite, or the Descendants of Ham as Found in the Sacred Scriptures and in the Writings of Ancient Historians and Poets from Noah to the Christian Era (Springfield, Massachusetts: Wiley and Co., 1893).


20. On Browne see “Negroes in the Field of Philosophy” The Negro History Bulletin VII, n. 9 (June 1939). For Harris consult “We are Philander Smith College” http://www.philander.edu/ataglance/we_are.asp.


W.E.B. Du Bois on Whiteness and the Pathology of Black Double Consciousness

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High in the tower, where I sit above the loud complaining of the human sea, I know many souls that toss and whirl and pass, but none there are that intrigue me more than the Souls of White Folk.

—W.E.B. Du Bois (1920)

Snow-blindness. White solipsism: To think, imagine, and speak as if whiteness described the world.

—Adrienne Rich (1979)

Introduction

In such areas as philosophy of race, feminist theory, critical whiteness studies, critical pedagogy, post-colonial studies, and critical multiculturalism, a growing number of white scholars have created a critical discursive space within which to come to terms with what it means to be white. Through a process of critical self-reflexive consciousness, these scholars have been able to render whiteness visible, trace its socio-historical trajectory, map its political and economic power, and demonstrate how it constitutes itself as the transcendental signified, that which is said to determine difference, but is not itself defined by difference or seen as different. In other words, whiteness constitutes itself as the core of normativity, the standard against which nonwhite people are constructed as Other, alien, savage, different, strange, rude, uncivilized, evil, inferior, ugly, stupid, exotic, and infra-human. Theorizing whiteness can function as a powerful means in terms of which the invisibility of whiteness is rendered visible. The invisibility of whiteness is a function of its status as normative. Part of the function of critical whiteness studies is to show, genealogically, how whiteness is a value-creating site of power, a site that is deeply invested in maintaining white power and control. Hence, critical whiteness studies attempts to show how whiteness is an expression of historical and cultural particularity.

On this score, whiteness is not a metaphysical (ahistorical) essence, but a socio-historical construction. It is important that we do not forget, through a process of historical elision, that Blacks, within the context of the so-called New World, have long had to theorize the meaning of whiteness. Granted that the Middle Passage or the Black Atlantic can be understood as a transitional space of identity and cultural hybridization, as Paul Gilroy argues,¹ we should keep in mind that the Black Atlantic was also a transitional matrix that led to the creation of a destructive doubleness in the psychic structure of Black people.

The point here is that the attempt to call into question the normativity of whiteness did not begin with whites, particularly academic white males. From David Walker, Nat Turner, W.E.B. Du Bois, Thomas N. Baker, Sojourner Truth, Harriet Jacobs to
James Baldwin, Ralph Ellison, Frantz Fanon, Toni Morrison, and bell hooks, Blacks have not only theorized whiteness, but have lost their lives fighting against it. For Black people, struggling against whiteness was/is a question of existential survival. There was nothing “chic” about the importance of subjecting the normative structure of whiteness to critique. Unlike Blacks, critical whiteness theorists who are white can critique whiteness, while still maintaining the color-coded value of their white flesh. Their whiteness continues to possess value. Like many men who refer to themselves as “feminists,” while continuing to benefit from the pervasive norms of patriarchy, anti-whiteness whites, despite their critical discourse aimed at dislocating and dismantling the power of whiteness, continue to benefit from being white within a social and cultural context within which whiteness continues to maintain hegemony.

Critical whiteness theorists should guard against making a fetish of theorizing whiteness and thereby re-inscribing whiteness as center. Critical whiteness theorists must remain open to those nonwhite voices (African American, Latino, Asian, and others) that continue to suffer under what bell hooks refers to as the “terror” of whiteness. She notes: “All black people in the United States, irrespective of their class status or politics, live with the possibility that they will be terrorized by whiteness.” To make a fetish of theorizing whiteness will vitiate any serious attempt to engage whiteness at the level of political praxis. Du Bois knew that theory (and education) was not sufficient to engage whiteness. In “Of the Coming of John,” he writes of John Jones who, after being educated, comes to feel his two-ness in a white world that saw him as a threat to the white order of things, a social order of white power within which John was expected to rest content or be tortured and lynched by white power. Du Bois also knew of Sam Hose who was cut into bits of Black flesh for white visual consumption. Du Bois knew about Hose’s charred knucklebones in an Atlanta shop window. Perhaps it was the result of seeing the consequences of white terror that shook the grounds of Du Bois’s Enlightenment sensibilities and positivist tendencies. He writes:

There cut across this plan which I had as a scientist, a red ray which could not be ignored ... a poor Negro in central Georgia, Sam Hose, had killed his landlord’s wife. I wrote out a careful and reasoned statement concerning the evident facts and started down to the Atlanta Constitution office ... I did not get there. On the way news met me: Sam Hose had been lynched, and they said that his knuckles were on exhibition at a grocery store farther down on Mitchell Street, along which I was walking ... I turned back to the University. I began to turn aside from my work.

Could it be that this process of “turning aside” suggests turning toward a more radical form of praxis, a moment of doubt regarding the sufficiency of the social sciences to address the nonrational performances of whiteness, white supremacy, white brutality? The Sam Hose case revealed to Du Bois that dealing effectively with white racism required more than the accumulation of knowledge. White racism exists on the far side of episteme and logos. Of the many characteristics of white racism (solipsism, myopia, xenophobia, narcissism), passionate hatred—the unapologetic cruel hostility shown toward Black people—is a powerful, destructive emotion that destroys the fruits of knowledge and reason. Du Bois looked into the souls of white folk and saw profound levels of bad faith, hatred, terror, and rationalization. Du Bois:

And yet as they [white folk] preach and strut and shout and threaten, crouching as they clutch at rages of facts and fancies to hide their nakedness, they go twisting, flying by my tired eyes and I see them ever stripped—ugly, human.

This article is divided into two sections. First, I will explore Du Bois’s characterization of whiteness, particularly as this theme is developed in “The Souls of White Folk.” My sense is that Du Bois does not understand whiteness within the context of biological essentialism, but sees whiteness as a social performance that occurs within the interstices of the web of social interaction between whites and Blacks. Moreover, for Du Bois, whiteness is a structural and material site of power that expresses itself through imperialist power and hegemony.

Second, I will explore, through an analysis of Toni Morrison’s The Bluest Eye, how whiteness is fundamentally linked to double consciousness as pathology. Despite Du Bois’s variegated ways of talking about double consciousness and two-ness, I will focus on the motif of double consciousness as pathology.

A Du Boisian Reading of Whiteness

What, then, does Du Bois say about whiteness? What is it that he claims to see with his “tired eyes” as he looks upon whiteness “ever stripped”? Du Bois describes himself as sitting high in his tower watching white folk. The metaphor suggests an angular position that provides for greater clarity. He even claims to be clairvoyant with respect to the souls of white people. Already, Du Bois is hinting at the invisible structure of whiteness, for to be clairvoyant is to be able to see beyond what is present to the senses. Hence, Du Bois sees through the social and historical maintenance of so-called white superiority. Du Bois claims to be able to “see the working of their entrails.” This on view, white folk are “open” to clear view. There is no hiding behind pseudo-scientific rationalizations and historical falsifications and erasures regarding Black people. Historically contextualizing the whiteness of Pan-Europeanism, Du Bois writes: “Today...the world in a sudden, emotional conversion has discovered that it is white and by token, wonderful!” He adds: “This assumption that of all the hues of God whiteness alone is inherently and obviously better than brownness or tan leads to curious acts.” The reader will note that Du Bois says “this assumption” and refers to “curious acts.”

Buttressing his position is the argument that whiteness is founded upon mythos, narrative white myths and assumptions that form an episteme within which whites attempt to define and control what is known and what is regarding themselves and Black people. On this score, white supremacy is shaped by a (white) racist and racist epistemology and ontology. Du Bois does not say that whiteness is by nature evil or good; rather, he says that certain “curious acts” follow from the assumption that whiteness is “better.” This places whiteness within the space of “acts” or performativity. Du Bois moves whiteness to a relational space of social ontology. It is an issue of how whites constitute the meaning of whiteness vis-à-vis Blackness. Hence, on a Du Boisian reading, whiteness does not belong to a realm of ontological substances, but to a realm of social ontological constitutionality. Returning to the idea of mythopoetic white constructions, Black folk were believed to be the dark inhabitants of the curse of Ham or the curse of Canaan. Historian George M. Fredrickson, elaborating on the work of white racist Samuel A. Cartwright’s work, observes:

Cartwright wrote a book to show how the anatomical evidence of Negro inferiority could be correlated with the Biblical description of “the curse on Canaan”—God’s condemnation of Canaan and his allegedly black descendants to be “servants unto servants.”

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Notes:
1. Du Boisian Reading of Whiteness
2. To make a fetish of theorizing whiteness and thereby re-inscribing whiteness will vitiate any serious attempt to engage whiteness at the level of political praxis.
3. Du Bois also knew of Sam Hose who was cut into bits of Black flesh for white visual consumption.
4. Du Bois knew about Hose’s charred knucklebones in an Atlanta shop window.
5. Critical whiteness theorists should guard against making a fetish of theorizing whiteness and thereby re-inscribing whiteness as center.
6. Critical whiteness theorists must remain open to those nonwhite voices (African American, Latino, Asian, and others) that continue to suffer under what bell hooks refers to as the “terror” of whiteness.
7. Du Bois describes himself as sitting high in his tower watching white folk.
8. And yet as they [white folk] preach and strut and shout and threaten, crouching as they clutch at rages of facts and fancies to hide their nakedness, they go twisting, flying by my tired eyes and I see them ever stripped—ugly, human.
9. This on view, white folk are “open” to clear view.
10. There is no hiding behind pseudo-scientific rationalizations and historical falsifications and erasures regarding Black people.
11. Historically contextualizing the whiteness of Pan-Europeanism, Du Bois writes: “Today...the world in a sudden, emotional conversion has discovered that it is white and by token, wonderful!”
12. “This assumption that of all the hues of God whiteness alone is inherently and obviously better than brownness or tan leads to curious acts.”
Blacks were not deemed part of the human community (read: white community). Such an ideological and political space of whiteness formed a racially closed community that constituted a white Herrenvolk democracy. Sure, Blacks were “allowed” into this community, but only as inferior servants, as hewers of wood and drawers of water. Du Bois was cognizant of how these mythopoetic constructions functioned, how they theologically sanctioned Black people as inferior. On this score, Black people were not believed to be inferior because of circumstances; rather, Black people, in their very souls, were ontologically inferior, born this way by nature.

Du Bois draws attention to those “curious acts” of whiteness, those performances that attempt to conceal themselves behind ordinary, everyday encounters and conversations with Black people. He refers to an “obbligato of tune and tone” that can be heard with his power and gift of clairvoyance. Even the “sweeter souls,” as Du Bois says, of whites folk, speak with a kind of “doubleness” or duplicity. As a Black, some whites greet you with a certain sweet comportment. They talk with you about the weather, while all along performing hidden racist scripts:

My poor, un-white thing! WEEP not nor rage. I know, too well, that the curse of God lies heavy on you. Why? That is not for me to say, but be brave! Do your work in your lowly sphere, praying the good Lord that into heaven above, where all is love, you may, one day, be born—white!12

The idea here of being born white, a kind of re-birth, in relationship to Blackness, has deep theological, moral, and psychological implications. Theologically, the idea is that perhaps when Blacks get to heaven, assuming that this is even possible given the white assumption that Black people lacked immortal souls, perhaps they might be transformed into beings of whiteness, entities of light. Blackness, as a cursed hue, will perhaps supernaturally fade away, giving way to a blessed and pure whiteness, moving from the margin of darkness (impurity) to the center of whiteness (purity). The theological implications are clear. Within the Western theological paradigm, with its white iconography, God is white, angelic beings are white, and heaven is pictured as “a place” of tremendous luminosity.

Morally, whiteness or light is that which is deemed good, beautiful, and pleasant to look upon, without blemish. “To be white is to have expunged all dirt,” as Richard Dyer says, “faecal or otherwise, from oneself: to look white is to look clean.”13 Dyer traces whiteness not only to the beginning of European expansionism, but specifically to the Crusades. Although Dyer is not critical of Christianity in its entirety, he notes the significance of the Manichaean dualism regarding lightness and darkness, and indicates how these binary terms are framed by certain axiological assumptions:

Christianity brought a tradition of black: white moral dualism to bear on an enemy [the dark Islamic powers] that could itself be perceived as black. The Crusades were thus part of a heightening awareness of skin colour difference which they further inflected in terms of moral attributes.14

Pulling from contemporary examples of technological uses of light, Dyer argues that light is used as a medium that calls forth, as it were, individuation. Keep in mind that Black people were believed to be devoid of subjectivity, interiority, individuation, and autonomy; they were beings of heteronomy, controlled by animal instincts and the external environment. And, of course, when one links the significance of autonomy to Immanuel Kant’s ethical theory, that is, his emphasis upon the autonomy of the will as the indispensable condition of moral agential praxis, it is not difficult to call into question the moral status of Black people. Blacks were not individuals so much as they constituted an undifferentiated mass of usable raw material, all meant for one aim and one purpose: to serve white people. Dyer notes:

It is at least arguable that white society has found it hard to see non-white people as individuals; the very notion of the individual, of the freely developing, autonomous human person, is only applicable to those who are seen to be free and autonomous, who are not slaves or subject peoples. Movie lighting discriminates against non-white people because it is used in a cinema and a culture that finds it hard to recognize them as appropriate subjects for such lighting, that is, as individuals.15

He further argues:

What is at issue here is not how white is shown and seen, so much as the assumptions at work in the way that movie lighting disposes people in space. Movie lighting relates people to each other and to setting according to notions of the human that have historically excluded non-white people.16

Not only theologicaaly and morally, but psychologically the obbligato of white tunes and tones take their toll. Black folk, under this “religion of whiteness,”17 as Du Bois says, come to see themselves as inferior, often resulting in a powerful form of psychological deformation. Although I will say more about this shortly in reference to at least one of Du Bois’ interpretations of double consciousness, Blacks, within the context of white power and brutality, white racist lies, myths, and assumptions, begin to internalize a negative self-understanding. Aware of how myths harden into “empirical truths,” Du Bois writes:

How easy, then, by emphasis and omission to make children believe that every great soul the world ever saw was a white man’s soul; that every great thought the world ever knew was a white man’s thought; that every great dream the world ever sang was a white man’s dream.18

Many Blacks, through white “emphasis and omission,” came to internalize the myth, at their own psychological peril, that whiteness is supreme.

Du Bois did not have to look far for philosophical support for the dictum that everything white is superior and great. Prominent European philosophers helped to buttress such a myth. In his “Of National Characters,” Scottish philosopher David Hume maintained:

I am apt to suspect the negroes, and in general all other species of men (for there are four or five different kinds) to be naturally inferior to the whites. There never was a civilized nation of any other complexion than white, nor even any individual eminent either in action or speculation. No ingenious manufactures amongst them, no arts, no sciences. In Jamaica indeed they talk of one Negro as a man of learning; but ’tis likely he is admired for very slender accomplishments, like a parrot, who speaks a few words plainly.19
Johann Wolfgang von Goethe writes:

people are devoid of agency. And concerning aesthetics, dominated just as the land is to be subjected to white brutality and oppression against Black people, “the descent to and as whites subsequently begin an unapologetic wage of insisting upon their right to human dignity, as John Jones did, trope of capitalist domination and exploitation. white countries. Whiteness, within this context, functions as a and paternalist tendencies of white America vis-à-vis non-
jollity,” whites charge Blacks with impudence, they say “that their “attitude toward charity is sullen anger rather than humble of whiteness to the best things that life has to offer, and when Blacks assume their “naturally” assigned stations in life, white— 12 —

It would appear that it is Blackness that functions as an aberration, that which sullies the purity of whiteness. All is beautiful without Blackness; all is rational without Blackness; all, indeed, is perfect without Blackness. “In fine,” Du Bois writes, “that if from the world were dropped everything that could not fairly be attributed to White Folk, the world would, if anything, be even greater, truer, better than now.”

Du Bois’ “tired eyes” have seen even more. As long as Blacks assume their “naturally” assigned stations in life, white folk are content to provide them with gifts for minimal sustainability. As long as Blacks remain docile and thankful to whites for “barrels of old clothes from lordly and generous folk are content to provide them with gifts for minimal— 12 —

However, as soon as Blacks begin to question the entitlement of whiteness to the best things that life has to offer, and when their “attitude toward charity is sullen anger rather than humble jollity.” whites charge Blacks with impudence, they say “that the South is right, and that Japan wants to fight America.”

The reader will note that Du Bois was aware of the imperialist and paternalist tendencies of white America vis-à-vis non-white countries. Whiteness, within this context, functions as a trope of capitalist domination and exploitation.

Du Bois notes that as whites begin to think that Blacks are insisting upon their right to human dignity, as John Jones did, and as whites subsequently begin an unapologetic wage of brutality and oppression against Black people, “the descent to Hell is easy.” This “descent to Hell” is a powerful image. For up in his tower, Du Bois sees whiteness as a form of misanthropy, a form of hatred that lusts for Black blood. Du Bois:

I have seen a man—an educated gentleman—grow livid with anger because a little, silent, black woman was sitting by herself in a Pullman car. He was a white man. I have seen a great, grown man curse a little child, who had wandered into the wrong waiting-room, searching for its mother: “Here, you damned black—” He was white. In Central Park I have seen the upper lip of a quiet, peaceful man curl back in a tigerish snarl of rage because black folk rode by in a motor car. He was a white man.

The reader will note the refrain: “He was a white man.” Du Bois uses this refrain to establish a deepening and deafening portrayal of anti-Black hatred embedded in whiteness. This hatred has historically expressed itself in the form of lynching, that spectacle of white fear, anxiety, and sexual psychopathology, with its attendant pleasure reserved for the white racist scopophilia. Within this context, Du Bois speaks of the “lust of blood” that fuels the madness of lynching Black bodies, that “strange fruit” about which Billie Holiday sang. The point is that Du Bois was aware of how it really did not matter whether or not the person lynched did anything wrong. All that mattered was that some Black, any Black, had to pay. Blood had to be spilled to satisfy and appease the white demigods. With deep psychological insight into the “entails” of whiteness, Du Bois is worth quoting in full:

We have seen, you and I, city after city drunk and furious with ungovernable lust of blood; mad with murder, destroying, killing, and cursing; torturing human victims because somebody accused of crime happened to be of the same color as the mob’s innocent victims and because that color was not white! We have seen—Merciful God! in these wild days and in the name of Civilization, Justice, and Motherhood—what have we not seen, right here in America, of orgy, cruelty, barbarism, and murder done to men and women of Negro descent.

As I have noted above, one of the objectives of critical whiteness studies is to get whites to examine what it means to be white, to begin to explore how whiteness is concealed through processes of denial. Du Bois places the responsibility on white folk to be honest about their anti-Black hatred. He writes: “Ask your own soul what it would say if the next census were to report that half of black America was dead and the other half dying.” And although Du Bois admits that he too suffers from the weight of white hatred, he questions whether he, in his Blackness, is the sole sufferer. He writes:

I suffer. And yet, somehow, above the suffering, above the shackled anger that beats the bars, above the hurt that crazes there surges in me a vast pity—pity for a people imprisoned and enthralled, hampered and made miserable for such a cause, for such a phantasy!

One might object: “But Du Bois, white people cannot possibly suffer under the weight of their own whiteness. After all, being white in America is highly valued.” While it is true that whiteness is valued like property, even providing poor whites with a “public and psychological wage,” it is important to focus on Du Bois’ use of such terms as “imprisoned,” “enthralled,” “hampered,” “miserable,” and “phantasy.” Du Bois feels pity for those who are white, because they have to live with the lie of white supremacy; they have to live lives of self-deception; they are inculcated to feel hatred for Black people; they are afraid to move within that uncertain space of acceptance of those who are not white; they must remain within the imaginative space of wishing that all Black people were dead; they are imprisoned within their own feelings of white solipsism. In Levinasian terms, the white would rather remain imprisoned within the ontology of sameness, not willing to sacrifice its own false security for the call of the Black Other. Implicit in what Du Bois is arguing is that white folk prevent the possibility of the development of a new form of relationality.
vis-à-vis Black people, for they prefer to remain locked within their own sense of (white) enthrallment. As a result, they suffer. They suffer from their lack of ethical performativity; for it is within the process of sacrificing one’s self-certitude that one is able to ethically reach across the chasm of (non-hierarchical) difference and embrace the Black Other in his/her Otherness. As long as whiteness is deemed the most valuable property to possess, white people will continue to be prisoners of the white imaginary. “A true and worthy ideal,” as Du Bois says, “frees and uplifts a people.”72 He adds, “But say to a people: ‘The one virtue is to be white,’ and people rush to the inevitable conclusion, ‘Kill the ‘nigger’!” Of course, on this score, the idea that “the one virtue is white” is a false ideal, for it “imprisons and lowers.”73

White folk, in their imperialist drive to demonstrate to the non-white world the power of white supremacy and imprisoned within the false ideal of whiteness, failed to listen to Black voices. Du Bois writes, “These super-men and world-mastering demi-gods listened, however, to no low tongues of ours, even when we pointed silently to their feet of clay.”74 Whiteness is that “transcendent universality” that is beyond the realm of particularity. It is Black people who embody particularity, who have “feet of clay.” Kant, Hume, Hegel and Goethe cannot possibly be mistaken: Blacks are inferior, ugly, dark; they are people of the ground, autochthonous. After all, Kant, Hume, Hegel and Goethe are just some of the (white) super-men, geniuses par excellence, that Europe has produced. White plantation owners cannot be mistaken. Black folk work like mules, complain little, and want for nothing. They are “happy darkies.” The white “sciences” of phrenology and physiognomy cannot be mistaken. The white anthropologist says: ‘Just look at the prognathous jaw of the Negro!’”75 D.W. Griffith’s The Birth of a Nation cannot have been incorrect in its cinematic portrayal of Black buffoonery and ignorance. Little Shirley Temple and Audrey Hepburn have shown us what feminine whiteness looks like. Feminine whiteness is that which is diametrically opposed to the Black Mammy, the Black Jezebel, and the Black Sapphire. It is to be a little lady, a white princess. And Fay Wray showed us what it meant to embody white purity and innocence as she played opposite that huge Beast, King Kong. The imaginary white interlocutor in Du Bois’s “The Superior Race,” says proudly, “I prefer the colors of heaven and day: sunlight hair and blue eyes, and straight noses and thin lips, and that incomparable air of haughty aloofness and aristocracy.”76 The reader will note Du Bois’s interlocutor’s analysis along the axis of both race and class.

The above are only fragments of the historical, epistemological, and semiotic field within which whiteness has been/is communicated. The above instantiated definitions of whiteness are perpetuated through value-laden (white) interests, aims, and purposes. At times, strangely enough, Blacks have had to remind whites of the latter’s “superior” status. In The Matrix, for example, it is Morpheus (Laurence Fishburne) who has unfailing faith in the white man, Neo or the “One” (Keanu Reeves). As James Snead has noted: “Mythification is the replacement of history with a surrogate ideology of elevation or demotion along a scale of human value.”77 Du Bois was aware of how historical reality can be falsified through ideology, that is, white ideology. What is clear is that despite the essentialism in Du Bois’s conception of race, he understands white supremacy as historically constructed. Du Bois writes:

This theory of human culture and its aims has worked itself through warp and woof of our daily thought with a thoroughness that few realize. Everything great, good, efficient, fair, and honorable is “white”;

everything mean, bad, blundering, cheating, and dishonorable is “yellow”; a bad taste is “brown”; and the devil is “black.” The changes of this theme are continually rung in picture and story, in newspaper heading and movie-picture, in sermon and school book, until, of course, the King can do no wrong—a White Man is always right and a Black Man has no rights which a white man is bound to respect.78

The last line in this quote is an explicit reference to the famous Dred Scott decision in which (white) Chief Justice Roger B. Taney declared that Dred Scott and his wife, Harriet, who had petitioned to be freed, would remain slaves.

As stated earlier, for Du Bois, whiteness does not belong to a realm of ontological substances, but to a realm of social ontological constitutionality; he realizes that so-called white superiority is a sham designed to be taken as “natural,” a hoax around which both Black and white people are supposed to organize and live their lives. Du Bois:

If we take even that doubtful but widely heralded test, the frequency of individual creative genius (when a real racial test should be the frequency of ordinary common sense) —if we take the Genius as the savior of mankind, it is only possible for the white race to prove its own incontestable superiority by appointing both judge and jury and summoning only its own witnesses.79

In short, the stage is set. The results are in already. Whiteness has long ago made its preemptive strike against all that is nonwhite. Whiteness has already set the stage upon which Black folk are expected to play (low and degraded) scripted roles written by whites themselves. And many Blacks have played these roles. Some have rejected them in the face of death. Others have used such scripts as forms of mimicry, and, hence, as forms of resistance. While others, those more unfortunate Black souls, have internalized such white lies, resulting in a massive split, a pathological double consciousness.

Double Consciousness as Pathology
What has Du Bois shown thus far? He has made a strong case that whiteness deems itself the transcendental signified. Whiteness is that axiological standard against which all nonwhites are to be judged and assessed. Du Bois also recognizes the flexibility of whiteness, how certain people can become white, which, again, points to the social constitutionality of whiteness. In this way, he realizes that whiteness is parasitic upon Blackness. Many white immigrants who came from Europe began with very little power. Once in America, however, they learned how to negotiate their new “(white)” identities vis-à-vis Black people. Du Bois notes that America “trains her immigrants to this despising of ‘niggers’ from the day of their landing, and they carry and send the news back to the submerged classes in the fatherlands.”80 They soon learn about the deep cultural dimensions of America’s color-line. Because Blackness is ugly, whiteness is beautiful. Because Blackness is stupid, whiteness is intelligent. Because Blackness is impure, whiteness is pure. Because Blackness is criminal, whiteness is innocent. Concerning this last point regarding the “criminal” nature of Blackness, Du Bois writes:

Mudcr may swagger, theft may rule and prostitution may flourish and the nation gives but spasmodic, intermittent and lukewarm attention. But let the murderer be black or the thief brown or the violator of womanhood have a drop of Negro blood, and the righteousness of the indignation sweeps the world.81
Du Bois’s point here is that Blackness, from the perspective of white mythopoetic constrictions, is the problem, not the crime committed.

The connection between Blackness and the concept of “being a problem” is central to Du Bois’s understanding of what it means to be Black in white America. Du Bois’ reference to that obligato of tune and tone will prove to be helpful. As was argued earlier, Du Bois shows that white folk engage in a process of duplicity while speaking to Blacks. They often approach the Black in a hesitant fashion, saying “I know an excellent coloured man in my town; or, I fought at Mechanicsville; or, Do not these Southern outrages make your blood boil?”  

Du Bois maintains that the real question that whites want to ask is: “How does it feel to be a problem?” Notice that they do not ask, “How does it feel to have problems?” The question is raised to the level of the ontological: “How does it feel to be a problem?” Also, note that the structure of this question does not apply to people who have at some point in their lives felt themselves to be a problem (as in “Johnny is a problem child”). In such cases, feeling like a problem is a contingent disposition that is relatively finite and transitory. When Black people are asked the same question by white America, the relationship between being Black and being a problem is noncontingent. It is a necessary relation. The idea of outgrowing this ontological state of being a problem is believed impossible. Hence, regarding one’s “existence as problematic,” temporality is frozen. One is a problem forever. It is from within the white imaginary that the question “How does it feel to be a problem?” is given birth.

Franz Fanon writes about the Black body and how it can be changed, deformed, and made into an ontological problem vis-à-vis the white gaze. He describes a scene where a young white boy sees a Black man and screams, “Look at the Negro!…Mommy, a Negro!” Fanon:

My body was coming back to me flattened out, disjointed, destroyed, mourning on that white winter day. The Negro is a beast, the Negro is evil, the Negro is mischievous, the Negro is ugly; look, a Negro, it is cold outside, the Negro is shaking because he is cold, the boy is shaking because he is afraid of the Negro, the Negro is shaking with cold, that cold that goes through your bones, the handsome boy is shaking because he thinks the Negro is shaking with anger, the white boy throws himself into his mother’s arms: Mommy the Negro is going to eat me. 

The white imagery of the Black as a savage beast, a primitive and uncivilized animal, is clearly expressed in the boy’s fear that he will be eaten by the “cannibalistic” Negro. Notice that Fanon talks about the experience of having his body “come back to him.” What does this mean? After all, Fanon’s body is forever with him. It never leaves. So, how can it return? Ralph Ellison’s invisible man also experiences a kind of “return of the Black body.” He knows himself as embodied flesh and blood, but yet he is invisible. His body is, and yet he is not. The invisible man observes:

I am an invisible man. No, I am not a spook like those who haunted Edgar Allen Poe; nor am I one of your Hollywood-film ectoplasms. I am a man of substance, of flesh and bone, fiber and liquids—and I might even be said to possess a mind. I am invisible, understand, simply because people [in this case white people] refuse to see me. 

The reader will note that in Fanon’s example, the Black body is hyper-visible, while for Ellison the Black body is rendered invisible. In either case, though, the Black body “returns” in some distorted form. There appears to be a slippage between one’s own understanding of the Black body and how others (whites) understand that same Black body. Moreover, this is a lived experience that takes place within a space of transactional meaning constitution and constructivitv. Du Bois also writes about his own lived experience of a slippage of sorts. He writes:

In a wee wooden schoolhouse, something put it into the boys’ and girls’ heads to buy gorgeous visiting cards,—ten cents a package—and exchange. The exchange was merry, till one girl, a tall newcomer, refused my card,—refused it peremptorily, with a glance. Then it dawned upon me with a certain suddenness that I was different from the others; or like, mayhap in heart and life and longing, but shut out from their world by a vast veil.

In this example, Du Bois suggests that he was in some sense similar to the other (white) children. In “heart,” “life,” and “longing” he felt a kindred relationship. But something happened. There was this sudden self-doubt, which presumably did not exist prior to this encounter. Hence, Du Bois undergoes a distinctive process. He moves from a sense of the familiar to the unfamiliar. He feels different. He was, as it were, taken outside of himself and returned. Surely, Du Bois is the same self that he was prior to the glance enacted by the tall white girl. But is he? After all, he does feel different. As with Ellison’s invisible man and Fanon, there is a sense of disjointedness in terms of being one thing as opposed to another. It is as if there is an extrinsic social transactional process that throws the self outside of itself, only to return to itself with a different feeling, resulting from now seeing the self through the eyes of another. Even Ellison’s invisible man needs light. He, too, has been invaded by some extrinsic power not of himself. It is this extrinsic power that makes him feel invisible. This is why he says that “light confirms my reality, gives birth to my form.”

At the heart of each of these experiences emerges a question. The question is posed from within what Du Bois calls the “veil.” Whether interpreted as a figure of speech indicating systemic racism/structural segregation or as that which “indicates, rhetorically, a knowledge of difference that is itself discursively based,” the rich metaphor is, at bottom, fundamentally linked to the hegemonic performances of whiteness, performances that can lead to external societal fissures or internal psychological fractures. It is the latter that is emphasized within the present context. So what is this question? It is not a question born of quiet solitude (think here of Rene Descartes), but of racial, embodied struggle. It is not intellectual struggle, thinking through some academic conundrum, but an existential and ontological struggle, though some form of cognition is always present. It is not born of hyperbolic doubt, a questioning of all things that fail the test of epistemological indubitability, though it may involve, as Du Bois says, “incessant self-questioning and the hesitation that arises from it.” The question is: “What, after all, am I?” Unlike Descartes, who asked a similar question—“But what then am I?”—after arriving at the indubitabile Cogito argument (“I think therefore I am”), and who reaches the eventual conclusion that he is a thing that thinks, Du Bois’s question is linked to his sudden (embodied) feeling that he was different from the white children. Whereas Descartes moves in a methodical way, questioning all things previously held to be true, Du Bois is traumatically (and non-methodically) shaken out of a space
of psychosocial familiarity. He was not prepared to have his flesh and blood identity thrown back to him as something to be questioned. It is his Black body schema that he is forced to come to terms with, a schema that he was forced to thematize in ways not typically required. When the girl refused his card, young Du Bois was no doubt thrown into a state of incessant questioning. Indeed, from what has been developed thus far, one plausible answer to the question might be: “I am a problem! Who I am as a Black body/self is a problem!” As the tall white girl refused him, she sent a semiotic message, a message whose meaning was immediately registered in the consciousness of the young Du Bois. Her body language, her refusal, involved a ritual. The ritual took place within an interpreted space of racial meaning. Du Bois’s Black body was already coded as different, as a problem, as that which should be avoided. Though young, the tall white newcomer had already become hampered and imprisoned by the myths of whiteness vis-à-vis the Black body. Through the performative act of refusal, though words were presumably never spoken, Du Bois became, even if unknowingly, “a damn nigger.” Through her glance and her refusal, she reduced Du Bois to his Blackness, a mere surface, a thing of no particular importance, though important enough to reject and avoid. Du Bois was no longer within the group, but outside of it, left looking upon himself through the eyes of the newcomer. In short, he underwent a process of double consciousness. Du Bois:  

It is a peculiar sensation, this double-consciousness, this sense of always looking at one’s self through the eyes of others, of measuring one’s soul by the tape of a world that looks on in amused contempt and pity. One ever feels his twoness—an American, a Negro; two souls, two thoughts, two unreconciled strivings; two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder.  

There are many ways to interpret the Du Boisian concept of double consciousness. Indeed, from the above quote, it is not clear that Du Bois had a single meaning in mind. Black people have lived within the existential and social identity spaces of “hyphenation,” attempting to join various tension-laden aspects of their identity. Living within white America, the Black is forced to ask, “What, after all, am I?” This question is indicative of a crisis in Black identity created by a society governed by white supremacy. The Black experiences two thoughts and two strivings. White America has created the conditions not only for an unhealthy form of Black cognitive dissonance, but it has created the extreme polarization of Black will. American or Negro? African or American? Two thoughts: “Should I drop my bucket where I stand or should I fight for equality and the right to vote.” Two ideals: “Should I rest content to assume the role of softening ‘the whiteness of the Teutonic to-day’ or should I align myself with the ‘mad money-getting plutocracy.’” Two souls: A soul (blood?) whose message to the world is filled with spiritual values, music, sorrow songs, dance, unselfishness, and the strength “to live and suffer in patience and humility” or a soul that forsakes the spiritual and joins the ranks of the materialistic, the builders of that “vast Frankenstein monster known as the “White Imperial Industry.”  

What should be clear is that Du Bois had a single meaning in mind. Black people, the consequent recognition of their humanity; the establishing of an inclusive, American civic identity (that is, the suppression of the distinction between legal citizenship and unofficial ‘second-class citizenship’); and the corresponding elimination of segregated institutions and public places, racially-segregated economic structures, and double legal standards applied to blacks.  

Moreover, it is not always clear that Du Bois sees “twoness” as a split to be overcome.  

The history of the American Negro is the history of this strife,—this longing to attain self-conscious manhood, to merge his double self into a better and truer self. In this merging he wishes neither of the older selves to be lost...He simply wishes to make it possible for a man to be both a Negro and an American, without being cursed and spit upon by his fellows, without having the doors of Opportunity closed roughly in his face.  

And there are other times that Du Bois appears to define the state of unhappiness felt within the “veil” in terms that are empowering.  

Given what has been explored regarding the epistemological and ontological lens through which whiteness constructs Blackness, focus will be limited to the notion of double consciousness that involves measuring and judging one’s soul by the tape of a white world that gazes upon the Black in contempt and pity. In the case of Du Bois, his feeling of difference, and perhaps his sudden lived experience of being a problem, was the result of the internalization of the perspective of the white newcomer. For Du Bois, this internalization resulted in the experience of twoness, a double consciousness, which yields “him no true self-consciousness.”  

Bracketing the issue of what “true self-consciousness” means, particularly in terms of an authentic, true “racial” self-consciousness, a paradigm case of the interpretation of Du Boisian double consciousness as a manifestation of pathology can be demonstrated within Toni Morrison’s rich, fictional text, The Bluest Eye. As I have shown, for Du Bois, whiteness associates Blackness with evil. Blackness is ugly. It is dirty. It is uncivilized. Within the episteme of whiteness, “Darker peoples are dark in mind as well as in body; of dark, uncertain, and imperfect descent; of trailer, cheaper stuff.” Although a fictional character in Morrison’s text, Pecola Breedlove has fully internalized the myths of whiteness, particularly the white image of beauty. She has come to see her dark skin, her non-blue eyes, as composed of “cheaper stuff.” In Morrison’s text, within the semiotic space of whiteness, blue eyes signify universal beauty. Blue eyes signify perfect descent, giving one the feeling of being proud in body and in spirit. Pecola, unlike Ellison’s invisible man, has so internalized the standard of whiteness that her twoness, her doubleness, no longer appears to be something that she can recognize. The internalized “different voice,” as it were, that speaks to Pecola as being a dark problem, as something aesthetically disgusting, does not appear to take place within a soul of “two warring ideals.” There appears to be only one voice, the voice of the white demi-god. When she looks inside herself, there appears to be only one soul, one thought, a single striving, one ideal: To be white, to possess blue eyes. However, beneath this apparent “singleness,” the doubleness continues to exist, for she is still Black. She engages in a whitening of her soul that is so profound that it results in insanity. Hence, doubleness can lead to profound psychological rupture. The invisible man at least knows that he is invisible vis-à-vis “those eyes with which they [white folk] look through their physical eyes upon
Pecola only sees herself “through the revelation of the other [white] world.” Like the contemporary skin bleaching that is so prevalent in parts of Africa, which involves the obsessive desire to look white, resulting from the hegemonic image policing power of America and Europe, Pecola has become seduced by whiteness. She has looked upon Venus de Milo, measured herself by the bright eyes and white pure innocence of little Shirley Temple, internalized all the cultural images that visually speak to her of her degradation, and she has found her Black body/self seriously wanting. Within the process of becoming “double,” her fragile psyche could not sustain the constant warning, so her little dark body was “torn asunder.” Concerning the issue of beauty, George Fredrickson writes:

The neoclassical conceptions of beauty that prevailed in eighteenth-century Europe and America were based primarily on Greek and Roman statuary. The milky whiteness of marble and the facial features and bodily form of the Apollos and Venuses that were coming to light during the seventeenth and eighteenth centuries created a standard from which Africans were bound to deviate. As will be shown, Pecola is a tragic figure. In the text, she never recovers from having bleached her “Negro soul in a flood of white Americanism.” Unlike Emma Lou Brown, the Black female protagonist in Wallace Thurman’s *The Blacker the Berry*, Pecola never gains a sense of “mental independence.” Emma came to feel that her Black complexion was a liability, not an asset. Indeed, she thought of her Black skin as a curse. The reader will recall the narrative of the curse of Ham or the curse of Canaan. As Thurman writes: “Not that she minded being black, being a Negro necessitated having a colored skin, but she did mind being too black.” From the perspective of whiteness, even if someone only has one-drop of “Black blood,” one is still too Black. And although Emma insisted upon using “an excess of rouge and powder” to whiten her skin, she ceased trying to be what she is not, and learns how to fight “not so much for acceptance by other people, but for acceptance of herself by herself.” Pecola, however, never comes to accept “herself by herself.” She finds salvation in blue eyes.

For critical whiteness theorists, it is important to keep in mind that before Toni Morrison’s seminal text *Playing in the Dark: Whiteness and the Literary Imagination*, from which they frequently quote, where Morrison explores how the literary white imagination is parasitic upon various literary configurations of Blackness, there was *The Bluest Eye*. Although written over thirty years ago, the text is powerful in terms of its location and interrogation of the semiotic spaces of whiteness. It is a crucial text that clearly demonstrates the psychological price to be paid by bleaching, according to Du Bois’s imagery, the Negro soul in a flood of Americanism/whiteness.

Although the textual foreground of *The Bluest Eye* explicitly portrays the body/self deformation of Pecola, the text “pecks away,” according to Morrison, “at the [white] gaze that condemned her.” In short, Morrison demands that we uncover the secret of Pecola’s “ugliness,” her psychopathology, by turning our critical gaze toward the constituting activities, and discursive field, of whiteness. Examining whiteness as a force of constituting activities is important. Whiteness is not restricted to an ideological realm; it involves certain actions as well, what Du Bois refers to as “darker deeds.” Pecola did not ask to be born within a society that held up a mirror to her that exclaimed, “You are ugly and of ‘lower grade’.” Du Bois: “The preservation of the white family depended on the degradation and insult of black women; and that unless black girls could be seduced without penalty, white civilization was in danger.” It is Pecola as embodied, as negatively epidermalized, who is subject to the weight of white power and the white racist gaze. It is her dark body, objectified and negatively configured by the normalizing white gaze, which is the indelible and indubitable mark of her existential and ontological contemptibility. This is the same gaze that profoundly impacted Ellison, Fanon and Du Bois. Morrison characterizes the structure of the white gaze, revealing its powers of racial objectification, during a moment in the text where Pecola goes into Mr. Yacobowki’s Fresh Veg. Meat and Sundries Store to buy some candy. Mr. Yacobowki is one of those whites who was, as Du Bois writes, taught “to believe that white people were so inherently and eternally superior to blacks, that to eat, sit, live or learn beside them [or even to sell them candy] was absolute degradation.” Mr. Yacobowki’s gaze, his surveillance of Pecola, is a case of gazing through the all-powerful white imaginary, which is linked to the power to define. Morrison writes:

She looks up at him and sees the vacuum where curiosity ought to lodge. And something more. The total absence of human recognition the glazed separateness. She does not know what keeps his glance suspended. Perhaps because he is grown, or a man, and she a little girl. But she has seen rest, disgust, even anger in grown male eyes. Yet this vacuum is not new to her. It has an edge; somewhere in the bottom lid is the distaste. She has seen it lurking in the eyes of all white people. So. The distaste must be for her, her blackness. All things in her are flux and anticipation. But her blackness is static and dread. And it is blackness that accounts for, that creates, the vacuum edged with distaste in white eyes.

Carrying the weight of internalized white racism and the white gaze, Pecola has come to “know” the deficits of her Black “lived body” all too well. As will be shown, moving in and out of such white racist semiotic spaces, Pecola comes to relate to herself as inferior, limited, and somatically uglified. Encountering Pecola Breedlove for the first time within *The Bluest Eye*, narrated by the character Claudia, the reader becomes immediately aware of significant familial and ontological fractures in her life:

Cholly Breedlove [Pecola’s father], then, a renting black, having put his family outdoors, had catapulted himself beyond the reaches of human consideration. He had joined the animals; was, indeed, an old dog, a snake, a ratty nigger. Mrs. Breedlove was staying with the woman she worked for; the boy, Sammy, was with some other family; and Pecola was to stay with us. Cholly was in jail.

Adding to an already dismal set of circumstances, Claudia adds, “She came with nothing.” Existentially, Pecola is just there, solitary and destitute. And like the flowers that Claudia later describes as having failed to grow, Pecola comes to relate to herself as inferior, limited, and somatically uglified. Indeed, it constitutes “the real terror of life.”

Capturing the finality of being outdoors, Claudia says: “But the concreteness of being outdoors was another matter—like the difference between the concept of death and being, in fact, dead. Dead doesn’t change, and outdoors is here to stay.” So, the sense of being outdoors is not just a spatial relationship; it also connotes an ontological stasis, a sense of nothingness. Hence, Claudia’s observation that Pecola came with nothing is...
itself rich with existential themes of dread and meaninglessness. Claudia goes on to say: “Knowing that there was such a thing as outdoors bred in us a hunger for property, for ownership.”82 In other words, in her state of “nothingness,” which acts as a trope signifying both race and class, Pecola is desperate for something of value, something that she can own, a piece of property. She hungry for something that will provide her with a sense of being, belonging, and self-value. However, as Pecola fully comes to accept, being Black does not confer value; indeed, Blackness is tantamount to being property-less. Concerning the point that whiteness is a form of property, the reader will recall that Du Bois understood whiteness as a form of property, a wage that paid handsomely in terms of public deference, psychological uplift, protection from harm, access to public parks, and better schools.82

Within the context of white greed, Du Bois asks himself why whiteness is so desirable and answers: “Then always, somehow, some way, silently but clearly, I am given to understand that whiteness is the ownership of the earth forever and ever, Amen.”83 So, too, with descriptive clarity, indicating the degree to which Blacks were subject to the greedy ways of white landlords, Morrison provides the reader with a view of the depressive physical environment within which Pecola lived. The Breedlove family is described as “nestled together in the storefront. Festerling together in the debris of a realtor’s whim.”84 The furniture itself invokes a sense of aesthetic disgust:

In the center of the bedroom, for the even distribution of heat, stood a coal stove. Trunks, chairs, a small end table, and a cardboard “wardrobe” closet were placed around the walls. The kitchen was in the back of this apartment, a separate room. There were no bath facilities. Only a toilet bowl, inaccessible to the eye, if not the ear, of the tenants.85

Having received a damaged sofa, which occurred during delivery, Cholly, Pecola’s father, argues with one of the white movers:

“Looka here, buddy. It was O.K. when I put it on the truck. The store can’t do anything about it once it’s on the truck…” Listerine and Lucky Strike breath.

“But I don’t want no tore couch if ‘n it’s bought new.” Pleading eyes and tightened testicles.

“Tough shit, buddy. Your tough shit.”86

The reader will note the implied reference to Blackness as something dirty, as feces. But this is how whiteness fortifies its purity. Whiteness involves “the all-pervading desire to inculcate,” as Du Bois says, “disdain for everything black, from Toussaint to the devil.”87 Combining elements of class, race and fundamental dimensions of internalized (white) self-surveillance, Morrison writes:

The Breedloves did not live in a storefront because they were having temporary difficulty adjusting to the plant. They lived there because they were poor and black, and they stayed there because they believed they were ugly (My emphasis)...Mrs. Breedlove, Sammy Breedlove, and Pecola Breedlove—wore their ugliness, put it on, so to speak, although it did not belong to them.88

What is the source of this ugliness? What has created in them the “conviction,” as Morrison says, that they are ugly? What is it about their Black bodies (like Ellison’s invisible man, Fanon, and Du Bois) that get “returned” in some distorted form? If the ugliness does not belong to them, then to whom does it belong? In a passage rich with figurative language, Morrison provides a glimpse into the origins of this conviction. It is here that the argument that the self is not prior to the effects of discourse becomes relevant. Morrison:

It was as though some mysterious allknowing master had given each one a cloak of ugliness to wear, and they had each accepted it without question. The master had said, “You are ugly people.” They had looked about themselves and saw nothing to contradict the statement; saw, in fact, support for it leaning at them from every billboard, every movie, every glance. “Yes,” they had said. “You are right” And they took the ugliness in their hands, threw it as a mantle over them, and went about the world with it.89

In other words, the Breedloves are trapped within a semiotic space of white aesthetic ideals. They appear unable to cast off the white imposed cloak or veil. They have been split, doubled, through the measurement of their souls by the tape of a world where whiteness is deemed ontologically and aesthetically supreme. Invoking the image of a master, Morrison is aware of the crippling impact of the institution of American slavery. She is cognizant of how deep white colonialism impacts the (dark) colonized, creating a double consciousness in their very souls through the construction of a semiotic space designed to “confirm” their colonized status. Morrison is clearly aware of the mutual reinforcement of power and knowledge. “You are ugly people,” when applied to Black people, carries an epistemic truthvalue within a white discursive field that already comes replete with its own stipulated criteria for what constitutes beauty. As Du Bois said earlier, whiteness supplies its own judge and jury and summons its own witnesses.

The mesmerizing power of whiteness, the sheer weight of its normativity, is clear where Frieda, Claudia’s older sister, brings Pecola a snack:

Frieda brought her four graham crackers on a saucer and some milk in a blue-and-white Shirley Temple cup. She was a long time with the milk, and gazed fondly at the silhouette of Shirley Temple’s dimpled face. Frieda and she had a loving conversation about how cute Shirley Temple was.90

Why is Pecola so obsessed with Shirley Temple? What does she see in her? What does Pecola not see in herself? Indeed, why does Pecola feel a deep sense of internal vacuity when looking at Shirley Temple? On the view developed thus far, Shirley Temple represents what Pecola is not. Indeed, Pecola’s difference is defined relative to Shirley Temple’s whiteness (as transcendental signifier). Pecola’s Black body/self is “returned” to her, reconfigured as ugly vis-à-vis the way in which Shirley Temple’s body has been constructed as intrinsically beautiful (read: white). As Richard Dyer notes:

In Western tradition, white is beautiful because it is the colour of virtue. This remarkable equation relates to a particular definition of goodness. All lists of the moral connotations of white as symbol in Western culture are the same: purity, spirituality, transcendence, cleanliness, virtue, simplicity, chastity.91

Whiteness is the standard against which difference and Otherness are constructed. But it is not just the image of Shirley Temple that holds Pecola’s attention, it is also the white substance inside the cup. It is only later in the narrative that we are told that Pecola drank three quarts of milk. Milk is
symbolic of whiteness. It is not out of greediness, as believed by Claudia’s mother, that Pecola consumes so much milk; rather, it is out of her need to become white through the very act of consuming the milk. Perhaps the whiteness in the milk will create a metamorphosis, changing her from Black to white, from absent to present, from nothing to something, from ugly to beautiful. This theme involving the ingestion of whiteness is clear where Pecola goes to buy some Mary Janes. Even the innocent act of buying candy becomes an opportunity for racial self-resentment and self-denigration. Something as presumably benign as a candy wrapper functions as a site of white cultural semiosis. Morrison writes:

> Each pale yellow wrapper has a picture on it. A picture of little Mary Jane, for whom the candy is named. Smiling white face. Blond hair in gentle disarray, blue eyes looking at her out of a world of clean comfort. The eyes are petulant, mischievous. To Pecola they are simply pretty. To eat the candy is somehow to eat the eyes, eat Mary Jane. Love Mary Jane. Be Mary Jane [my emphasis].

Like the whiteness of the milk, the piece of candy is believed to have the power to produce a genuine state of ontological change in Pecola, a change from Black to white, from doubleness to singleness, from a state of dirtiness to clean comfort.

Through a process of blurring reality and fiction, which nurtures her double consciousness, Pecola’s mother, Pauline, is caught within a world of white filmic hyper reality. Pauline:

> The onliest time I be happy seem like was when I was in the picture show. Every time I got, I went. I’d go early, before the show started. They’d cut off the lights, and everything be black. Then the screen would light up, and I’d move right on in them pictures...Them pictures gave me a lot of pleasure, but it made coming home hard, and looking at Cholly hard. I don’t know. I ‘member one time I went to see Clark Gable and Jean Harlow. I fixed my hair up like I’d seen hers on a magazine. A part on the side, with one little curl on my forehead. It looked just like her. Well, almost just like.

Like Pecola, Pauline has internalized the fiction that whiteness is supremely beautiful. While at the picture show, she is able to imaginatively inhabit the filmic space of whiteness. She is able to be the luminescent Jean Harlow. As has been argued through the work of Richard Dyer, it is also the cultural uses of light, through technology, that constructs white people as individuals. Pauline is elevated by the medium of light used to enhance the whiteness of the characters on the screen; she partakes of the humanizing [read: white] and privileging powers of white light.

> Living her life through cinematic white images, it is no wonder that Pauline, when Pecola was born, describes Pecola as “a black ball of hair.” Pauline adds, “But I knowed she was ugly. Head full of pretty hair, but Lord she was ugly.” But even that pretty hair will eventually give way to “tangled black puffs of rough wool to comb.” As an ideal servant of whiteness (after all, she does work as a housemaid for a white family), Pauline plays the part impeccably, superimposing upon Pecola her own self-hatred. This is why Pecola sits for hours “trying to discover the secret of the ugliness, the ugliness that made her ignored or despised at school, by teachers and classmates alike.” And even when she is “recognized,” this only further reinforces her status as Other:

> She also knew that when one of the girls at school wanted to be particularly insulting to a boy, or wanted to get an immediate response from him, she could say, “Bobby loves Pecola Breedlove! Bobby Loves Pecola Breedlove!” and never fail to get peals of laughter from those in earshot, and mock anger from the accused.

The reader will note the similarity between the name “Pecola” and “Peola,” who played the self-hating mulatto in the 1934 film Imitation of Life. Peola, like Pecola, desires to run away from her Blackness, to be humanized by whiteness, treated as “normal” (read: white), and to be accepted. Both are enthralled with whiteness. Through the act of giving her daughter a name that phonetically sounds like “Peola,” Pauline has discursively marked her daughter as a problem. Pecola believes in the redeeming powers of whiteness. She believes that if she were white she would not be teased. Indeed, she believes that the poor relationship that she has with her mother and father would improve if she were only white. Whiteness, on this score, is believed to possess a talismanic function. Claudia narrates, “If she looked different, beautiful, maybe Cholly would be different, and Mrs. Breedlove too. Maybe they’d say, ‘Why, look at prettyeyed Pecola. We musn’t do bad things in front of those pretty eyes.’” Pecola firmly believes that she, that is, her Blackness, is responsible for the irascible and violent behavior of her parents. However, it is the internalization of “epistemic violence” that leads her to believe this. Feminist philosopher Susan Bordo’s contention that anorexia nervosa is linked to androcentric disciplinary technologies of the body is key here. For like many who suffer from this condition, Pecola is also subjected to her own “white ghosts” who speak and confirm her wretchedness and ugliness. She knows herself as the degraded Other, she knows herself as a problem. This knowledge causes her to wish for her own disappearance: “Please, God,” she whispered into the palm of her hand, “please let me disappear.” This is Pecola’s way of attempting to escape her Blackness, to extricate herself from the space of being ontologically a problem.

Pecola, however, did not receive affection from her mother. Pauline’s relationship with her children is evident given her requirement that they refer to her as “Mrs. Breedlove.” However, the white Fisher family, who describes Pauline as “the ideal servant,” was allowed to call her “Polly.” It is whiteness that humanizes Pauline. And the only time that Pauline appears to be most happy is when she is either under the control of filmic white images or being sexually objectified by Cholly. In either situation, Pauline undergoes a form of erasure. Cholly’s affections are also hermetically sealed off from his children: “Having no idea of how to raise children, and having never watched any parent raise himself, he could not even comprehend what a relationship should be.” Cholly spends most of his time in a drunken stupor, reflecting the pangs of racism and feelings of rejection: “Abandoned in a junk heap by his mother, rejected for a crap game by his father, there was nothing more to lose.” Instead of directing his anger toward the larger white social structure partly responsible for what he has become, Cholly’s anger becomes impulsive, impacting all those closest to him.

Was it not Frantz Fanon who reminded us of how impulsive anger can become under the duress of white colonial oppression? “So it was,” as Claudia sadly narrates, “on a Saturday afternoon, in the thin light of spring, he staggered home reeling drunk and saw his daughter [Pecola] in the kitchen.” Reeling with self-doubt, a sense of self-hatred, feeling like a failure in the white man’s world, discarded by his biological parents, Cholly undergoes a process of implosion, a process which
expresses itself inward as well as outward: He rapes Pecola. The reader will note that earlier in the text Pecola wonders about the meaning and feeling of love:

Into her eyes came the picture of Cholly and Mrs. Breedlove in bed. He makes sounds as though he were in pain, as though something had him by the throat and wouldn’t let go. Terrible as his noises were, they were not nearly as bad as the noise at all from her mother. It was as though she was not even there. Maybe that was love. Choking sounds and silence.106

Having been racially Othered, rejected, uglified, put outdoors and taught to hate herself, Pecola’s rape and subsequent impregnation by Cholly, decisively broke her fragile spirit, forcing a complete split in the fabric of her psyche. After seeking out a character named Soaphead, who is capable of helping the unfortunate to “overcome Spells, Bad Luck, [read: Blackness] and Evil Influences,” Pecola successfully performs the necessary task that will grant her blue eyes.107 When the reader encounters Pecola again she is happily engaged in a lively conversation with herself about her new blue eyes:

Sure it is. Can you imagine? Something like that happening to a person, and nobody but nobody saying anything about it? They all try to pretend they don’t see them. Isn’t that funny?…I said, isn’t that funny? Yes. You are the only one who tells me how pretty they are. Yes. You are a real friend. I’m sorry about picking on you before. I mean, saying you are jealous and all. That’s all right. No. Really. You are my very best friend. Why didn’t I know you before. You didn’t need me before. Didn’t need you? I mean…you were so unhappy before. I guess you didn’t notice me before. I guess you’re right. And I was so lonely for friends. And you were right here. Right before my eyes. No, honey. Right after your eyes.108

Finally, Pecola has completely undergone a process of psychological transmogrification. She has completely measured herself by a white world that only sees ugliness and inferiority in Black people. Unlike Pauline and Pecola, Du Bois’s fictional Black character in “The Superior Race,” sees through the subterfuge of blue eyes, white skin, and thin lips. Du Bois:

And I, on the contrary, am the child of twilight and night, and choose intricately curly hair, black eyes, full and luscious features, and that air of humility and wonder which streams from moonlight. Add to this, voices that caress instead of rasp, glances that appeal rather then repel, and a sinuous liveness of movement to replace Anglo-Saxon stalking—there you have my ideal.109

In other words, Blacks can avoid certain psychological manifestations of double consciousness. It is not necessary that Black people become prisoners of measuring their souls by the tape of a world that looks upon them with contempt, pity, and hatred.

Similarly, unlike John Jones, in Du Bois’s “Of the Coming of John,” Pecola presumably never even comes to feel the veil. Through a process of education, John came to see with painful clarity what was previously invisible. He came to “feel almost for the first time the Veil that lay between him and the white world.”110 It is not clear that Pecola ever really becomes self-aware of the social and psychological devastation resulting from living within the veil. Like a bird longing to fly high and envelope itself within the blueness of the sky, Pecola can be observed “beating the air, a winged but grounded bird, intent on the blue void it could not reach—could not even see—but which filled the valleys of the mind.”111 After Du Bois’s encounter with the tall white newcomer, he also found himself living within a region of blue sky, but it was not “the blueness of the sky” that indicates the fanciful flight of insanity. Moreover, Du Bois very consciously decided not to tear down the veil. So, he still remained empowered. Du Bois: “I had thereafter no desire to tear down that veil, to creep through; I held all beyond it in common contempt, and lived above it in a region of blue sky, and great wandering shadows.”112 Pecola did not hold what was beyond the veil in contempt. To have done so would imply a certain level of indignation, a certain level of resistance to white power. In her soul, Pecola became white. She was not only an effect of white ideological power, but she became its vehicle of expression.

But in Pecola’s agony and sorrow, where were the Sorrow Songs, as Du Bois says, that inspired hope? Where were those comforting cadences that should have enabled her to see that there is an ultimate justice? There was no release from existential angst and despair that resulted in victory, triumph, or confidence marked by inner peace. Du Bois asks: “Do the Sorrow Songs sing true?”113 Answer: For Pecola, not in this world. Not in this world!

Endnotes

3. “The Coming of John” is a story of John Jones who left his hometown in Altamaha, Georgia, to be educated. He was always known as an excellent worker in the fields. His mother, Peggy, wanted him to be educated. Hence, he subsequently went away to school and passionately embraced the areas of astronomy, history, and ethics. Upon his arrival back home, he wanted to open a school for Black folk, but was told that he must only teach them how to be submissive. John had higher aspirations. He taught them about the French Revolution. Whites in the small town were furious, particularly a white racist magistrate, Judge Henderson. The school was closed and the children forced to leave. As the story progresses, Judge Henderson’s son, whose name is also John, attempts to force himself physically upon John Jones’s sister, Jennie. John sees this, and kills Judge Henderson’s son. The story ends with John looking bravely toward the sea, as the Judge and a white lynch mob ride toward him.
6. Ibid.
7. Ibid.
8. Ibid.
9. Ibid.
10. Ibid.
14. Ibid., 67  
15. Ibid.  
16. Ibid., 102.  
18. Ibid.  
20. Quoted in West (1999), 83-84.  
21. Quoted in Dyer (1997), 70  
23. Ibid.  
24. Ibid., 455.  
25. Ibid.  
26. Ibid.  
27. Ibid.  
28. Ibid.  
29. Ibid.  
30. Ibid.  
31. Ibid.  
34. Ibid.  
35. Ibid.  
41. Ibid., 456.  
43. Ibid., 43.  
45. Ibid.  
47. Du Bois, The Souls of Black Folk, 44.  
51. Ibid.  
59. Wilson, “Towards a Discursive Theory of Racial Identity,” p. 208. Wilson makes the insightful point that knowledge of the veil is far more important that not knowing about the veil. After all, one can exist within the veil and live the life of happiness, all along not being the wiser concerning one’s oppression. Or, one can exist within the veil in a state of unhappiness, realizing that one is oppressed. It is this state of unhappiness that is preferable to the state of happiness, for at least one is to some extent more empowered precisely through one’s knowledge of the veil. This knowledge could conceivably lead to resistance. Wilson argues: “If a person does not see herself through the eyes of the oppressor then she will be trapped without the knowledge of that imprisonment. If she does not see the veil and embrace double-consciousness, then she misses an opportunity to resist the social forces that shape her subjectivity.”  
60. Du Bois, The Souls of Black Folk, 45. Du Bois’s gendered-specific language aside, it is clear that he believes that Black folk can remain “who they are,” and yet thrive and flourish within the body politic of America. The question begged here is, “Who are Black folk?” Although this question goes beyond the primary focus of this article, there are interesting philosophical issues to be raised in terms of true self-consciousness and Black identity with respect to what Du Bois thinks about such issues and how such issues might apply to Toni Morrison’s character Pecola Breedlove. For example, if Pecola had not been a prisoner to whiteness “who” would she be? Does her “true” identity exist beyond the veil or within the veil? Or, perhaps her “trueness ” resides in limbo, somewhere in the fabric of the veil, a place of identity articulated by voices that are always in tension. If Pecola had not been duped by whiteness, would she possess what Du Bois refers to as “true self-consciousness”? And what is true self-consciousness? What is the nature of the “self” in relationship to which one would be truly conscious? One might infer that for Du Bois, Pecola might be described as possessing a false self-consciousness. After all, whiteness might be said to form the ideology that prevented her from realizing that whiteness was the source of her oppression. The rub here is that it is difficult to separate what Du Bois meant by “true self-consciousness” from his essentialist understanding of race. On this score, to possess
a “true” self-consciousness is to see the real nature of the self (Black self?) as it exists beyond the distortional dimensions of the veil. Does possessing “true (racialized) self-consciousness” mean that one is authentically Black? Was Pecola an inauthentic Black, at least in her consciousness? Does “true” self-consciousness mean that one lives one’s Black flesh in celebration? Indeed, given the racist philosophical and scientific presuppositions that influenced Du Bois, one is tempted to say that answering the question “Who am I?” has to do with tracing one’s life along a racial (biological?) narrative. To possess “true” self-consciousness would suggest that one aligns one’s identity to the correct narrative, perhaps even the meta-narrative. And what is the meta-narrative that renders intelligible the “who” that Black people are? Given Du Bois’s discourse regarding such things as “Black blood,” Negro ideals, aims, habits of thought, (natural) spiritual and psychical dispositions in The Conservation of the Races (p. 22) one is led to believe that Black people have identities that are governed by some inner racial tetos. (For a very insightful analysis of Black identity within the context of postmodernism see Clevis Headley’s “Postmodernism, Narrative, and the Question of Black Identity,” in Robert Birt (Ed.) The Quest for Community and Identity: Critical Essays in Africana Social Philosophy (Lanham, MD: Rowman & Littlefield Publishers, 2002.) Indeed, it is as if Black identity is inextricably tied to a racially Black habitus? If so, how flexible is the structure of this habitus? Since we are historically contingent, and identity exists within a field of possibilities, how is such discourse as “true” self-consciousness impacted?—unless, of course, we are prepared to talk about pragmatic identities that are “true” relative to certain cultural objectives, historical pressures, and political goals. Would Du Bois be prepared to embrace the implications of this meta-stability in self-consciousness? Beneath Du Bois’ question about identity, is there room for a post-metaphysical Black self, a self that is hermeneutic? In a world dominated by white supremacy, is there not some danger associated with imagining the Black self beyond its Blackness? And are selves that are said to be the effects of discourse strong enough to weather the storm of white hatred? Should we not be concerned with those extra-discursive dimensions of the Black body.

For those readers who have come across my analysis of Pecola Breedlove in other contexts, I would ask them to continue reading. Because Pecola is such a tragic figure, though fictional, I have been looking for different ways of thinking about her tragedy. She has become dear to me; a though fictional, I have been looking for different ways of understanding her life vis-à-vis the perniciousness of whiteness. Du Bois, The Souls of Black Folk, 45.


Ellison, Invisible Man, 3.

Du Bois, The Souls of Black Folk, 45.

power, privileges, and violences are far from invisible. Indeed, other designated non-white perspective, whiteness and its being not so much invisible as undiscernible. The fuzziness of the central claims sometimes obscures this theory and which anti-racist moves such theorizing supports, considerable consensus as to what is at stake in whiteness contentious in part because the terms are ill defined. Despite Whether to call whiteness “invisible” has been a source of some contention in critical whiteness studies. As Paul Taylor observes in his fine chapter in the collection, "the nonwhites to whom whiteness was quite visible had to be on who is doing the looking. From a black, brown, or white history (p. 230). Here, whiteness as an organizing value be rendered invisible: whiteness then is treated not only as normal (as under formal white supremacy) but as neutral and universal. Although the U.S., since the end of the Civil War, “is no longer a nation-state explicitly organized as a venture devoted to White Supremacy,” as Lucius Outlaw observes, that is not to say that there are not plenty of whites “fighting to preserve white racial hegemony in the absence of white supremacy” (p. 165). Many whites fear, resent, and blame people of color for perceived incursions into white territories. Taking for granted the right to control particular jobs or access to higher education, many whites insist that the presence of people of color in previously all-white enclaves represents a lowering of standards. If even only one or two faculty members in a large academic department are scholars of color, there may be rumblings of “we’ve gone politically correct” —white code for “in letting in people of color, we have abandoned objective, meritocratic standards.” The white assumption in such cases is that, if merit alone were consulted, the department would be all white.

As Outlaw notes, many of the values associated with white supremacy continue to be widely assumed and practiced, but because “white predominance is no longer legitimated by a public philosophy,” white entitlements must be rationalized under the coded terms of colorblindness. Through mechanisms such as outright denial, willed ignorance, color-blind etiquette, disciplinary standards, and exclusionary institutional practices, “whiteness has made itself invisible” in particular cases, Taylor observes (p. 236). The result of this manufactured invisibility, says Outlaw, is an “especially insidious,” unacknowledged version of white supremacy. “The lack of public legitimacy has simply thrust it deeper, to be insinuated in life-world convictions and practices,” denied and masked by the rhetoric of color blindness, but still vital. The commitment to white supremacy can be measured by its consequences. The “predominant public philosophy of antiracism and fair equality of opportunity” continues to yield “unequal outcomes—acceptable as long as these outcomes are to the advantage of white folks” (p. 166).

In Paget Henry’s Hegelian analysis, “the white supremacist core of the Western master self has remained largely intact,” despite significant challenges to its power. The Black Civil Rights movement, economic challenges from the Pacific Rim, and the U.S. defeat in Vietnam have “wounded the master self” without “transform[ing] or overthrow[ing] it.” Thus challenged, “the Western master self felt its grip on itself slipping as the resurgent humanity of racialized and colonized subothers began signaling equality rather than the confirmation of its desired white supremacy.” Pressed, “this now embattled self was forced to make concessions and to try to conceal more effectively its delegitimized supremacist needs” (p. 206). Reforms such as the white acknowledgment of multiculturalism and acceptance of policies of affirmative action stopped well short of any transformation of race relations, however, and Henry observes that before long even these modest reforms came under attack, as whites blamed affirmative action for a newly discovered rash of incompetence in the workplace. When I ask my students, over two thirds of whom are white, whether they have ever had an incompetent boss or co-worker, most say that they have; when I ask them the percentage of whites in this group, the answer is close to a hundred percent. Yet incompetence in whites is never attributed to race, let alone to centuries of affirmative action for whites. Whereas the incompetence of black or brown workers often will be explained solely by their race, the incompetence of white workers is infinitely variable, attributable to immaturity, old age, personal laziness, neurosis, charm unaccompanied by skill, an overweening ego, lack of application or commitment, selfishness, boss-pleasing looks
or smarminess, creeping insanity, or a blood relation to the company owner. Because competence is implicitly white, the whiteness of incompetence is invisible.

Whereas blackness and brownness either need to be explained or are themselves invoked to explain particular situations, whiteness in Western racial hierarchies is a taken-for-granted operating condition that serves no officially recognized explanatory function. As the socially enforced norm, white is merely the way things are unless “we” say otherwise. Thus, it goes without saying that when we say “president,” we mean a white, male, heterosexual president. Invisible in the sense that it is unmarked, whiteness is taken for granted by whites as the normal state of affairs. Partly this is a matter of white solipsism—what Adrienne Rich defines as “a tunnel-vision which simply does not see nonwhite experience or existence as precious or significant, unless in spasmodic, impotent guilt-reflexes, which have little or no long-term continuing momentum or political usefulness.” More than irresponsible and anti-relational self-preoccupation, though, whiteness often means an active, willed form of ignorance. Because Western democracy is nominally impartial, the racial contract that grants whites power and privilege at the expense of people of color must be masked by what Charles Mills calls an epistemological contract. Prescribing an “epistemology of ignorance,” the epistemological contract mandates that whites “learn to see the world wrongly but with the assurance that this set of mistaken perceptions will be validated by white epistemic authority.” As a result, “whites will in general be unable to understand the world they themselves have made.”

Because commitments to white supremacy must be masked, whiteness is recoded in neutral terms. When an academic department says, “We’re looking for the most qualified scholar, regardless of race or gender,” “most qualified” usually means “white and male”; it does not necessarily mean “most qualified.” Whiteness, then, is a suppressed and in that sense invisible hiring criterion. But while often invisible, whiteness is usually restored to visibility when whites perceive their privilege or dominance to be under threat. Not only white supremacists but mainstream whites who feel injured by so-called reverse racism may then explicitly name themselves as white. In his introduction to What White Looks Like, editor George Yancy recalls the white philosophy student who remarked “that because he was the only privileged white male in the class,” he was bound to receive a lower grade than the other students in the class (p. 2). In meetings and at conferences and awards banquets, white, male, heterosexual professors may refer to themselves jocularly as “that vanishing species, the white male” or, less jocularly, may demand attention to the “neglected” experiences of white men. In such namings of whiteness, whiteness is visible primarily as an identity under siege. It is not visible as a system of intellectual, aesthetic, relational, and political values, a set of privileges, or organized dominance.

What whiteness looks like, then, depends on the context and the observer. To many whites, it looks like virtue and righteousness, the so-called Protestant work ethic, patriotism, legal and scientific neutrality, competence, innocence, beauty, and self-reliance. To many African Americans and African Canadians, American Indians and First Nations peoples, Latinas/os, Asian Americans, Asian Canadians, and other people of color and Third World peoples, whiteness looks like greed, malice, deception, foolish ignorance, theft, dishonor, and disinformation. In whiteness studies, the term has been given a variety of meanings. As Taylor notes, it is at times a slippery concept. For a great many contemporary researchers, the term “whiteness” is shorthand for white privilege. Following Peggy McIntosh’s lead in referring to white privilege as the “invisible package of unearned assets that I can count on cashing in each day,” these scholars focus primarily on the “tools, maps, guides, codebooks, passports, visas, ...and blank checks” that allow whites to move about their worlds more or less freely. For example, McIntosh writes, “I can go shopping alone most of the time, fairly well assured that I will not be followed or harassed by store detectives.”

Although McIntosh also notes that “other privileging factors” having to do with “class, religion, ethnic status, or geographical location” are “intertwined” with her particular experience of race privilege, many current discussions drawing from her framing of white privilege assume a more generic approach. Some progressive scholars treat white privilege as independent of gender, sexuality, language, ethnicity, nationality, age, class, (dis)ability, region, or religion, while a few insist that white privilege does not really apply to gays, women, Sicilians, or the working class, say. Apart from defensiveness, the rejection of the concept of white privilege may be owed to a mistaken assumption that there is a finite, timeless set of privileges on which all whites are said to rely. Clearly, however, a homeless white man does not enjoy the same privileges as a New England blueblood, nor does a white lesbian mother have the same privileges that a married white heterosexual mother does. Nor are all forms of privilege material. Some forms of white privilege may be largely psychological: as Yancy suggests, poor whites may “deem themselves more important, valued, and powerful” than Oprah Winfrey, “if only because they are white and she is not” (p. 7). In some cases, white privilege may be little more than a never-to-be-realized expectation—the expectation, for example, that one could some day become president.

Even for those who are undoubtedly richly privileged, not all of the “blank checks” associated with whiteness can be cashed. Since the increase in airport security measures following September 11, 2001, Muslims, Arabs, and people of color have overwhelmingly been targeted in “random” searches for weapons, yet whites have not enjoyed the straightforward exemption from suspicion that some regard as their due. Newspaper columnist Kathleen Parker was outraged that she, “a smallish, middle-aged, Anglo-Saxon, 14th-generation American mother/wife/journalist,” was subjected to intrusive anti-terrorist airline security measures. Given her “race, sex, creed, [and] nationality,” Parker wrote, any “thinking human” would not have bothered to consider her as a possible risk. Although her convoluted flight plans and recent ticket purchase indicated that she might fit a possible statistical profile for terrorism, her racial profile ought to have placed her above suspicion, Parker insisted. Only “to prove a cultural point,” she believed, would anyone indulge in such a waste of her time and others’ resources. “It’s like assigning 50 cops to an inner-city neighborhood? Of a white, gay factory worker? Of a single white woman who lives and teaches in an inner-city neighborhood? Of a white lesbian Ivy League-educated environmental lawyer? Those of a single white woman who lives and teaches in an inner-city neighborhood? Of a white, gay factory worker? Of a straight white male associate professor of philosophy? What Yancy calls the “philosophical performativity of whiteness” (p. 117) —for example, treating the Western, white, male, academic literature on ethics and epistemology as
canonical, defining pragmatism or phenomenology exclusively in terms of their white, male founders, or equating highly abstract discussions of justice with intellectual rigor—involves specifically academic privileges that many other whites will neither share nor be interested in sharing.

Not all so-called white privileges are best understood as privileges. Although they may function as privileges under the terms of a racialized social order, many forms of white privilege ought instead to be universally available human rights, as Lewis Gordon points out. Physical safety, access to food and shelter, “education through which each generation can achieve its potential,” and “positive aesthetic imagery to transform spaces into places” are not privileges but rights, “imperatives that apply to and for all human beings” (p. 175). Other privileges, as McIntosh observes, cannot in good conscience be described in the positive terms that “privilege” connotes, for they refer to forms of control and exclusion that represent violence to others. For example, she notes, whites have the option of not listening to people of color. “Such privilege simply counters dominance, gives permission to control, because of one’s race or sex.”

Defining whiteness as dominance shifts the emphasis away from unearned privilege to systemic power. Society is organized to provide institutional support for certain groups at the expense of others. Whereas the oppressed “lack…institutional backing” for their intended actions, María Lugones writes, members of dominant groups can rely on back up for their seemingly individual agency. Whiteness, together with other dimensions of institutionalized power, can be understood as the backing given to exclusionary white interests. George Lipsitz points out that the Federal Housing Act that “brought home ownership within reach of millions of citizens by placing the credit of the federal government behind private lending to home buyers…channeled almost all of the loan money toward whites and away from communities of color.” Whether framed as white supremacy, investments in whiteness, or whiteness as property, the characterization of whiteness as dominance insists on the historical, global, systemic, and institutionalized character of hierarchical race relations. Racism thus understood is neither an unfortunate systemic, and institutionalized character of hierarchical race dominance insists on the historical, global, systemic, and institutionalized character of hierarchical race relations. Racism thus understood is neither an unfortunate systemic, and institutionalized character of hierarchical race relations.

White entitlement means that preference for whites is taken “as a baseline,” Taylor observes. “Racial privilege becomes a natural right, and establishes the starting point for deliberations about distributive justice. The result, of course, is that proposals to distribute social goods in ways that deviate from the old, asymmetric, racist distributions strike whiteness perceivers as unjust” (p. 230). Whites’ “fair share” is whatever is best and most. When economist and journalist Julianne Malveaux asked a well-to-do white man “what it was that he wanted,” he replied, “My fair share… I worked hard for it, and now you are asking that I take less.” She objected that he already had almost everything:

> “You have more than 90 percent of the city contracts, and more than 80 percent of the police and fire employees. You dominate far more than you should. What else could you possibly want,” I asked in frustration. Without missing a beat the man responded, “All of it.”

With a nod to religiously inflected white righteousness, Du Bois put it thus: “Whiteness is the ownership of the earth forever and ever, Amen”

Arguing for the abandonment of “the mainstream liberal ‘anomaly’ framing of race” in favor of theories that interrogate white supremacy, Mills points out that, “unlike the currently more fashionable ‘white privilege,’ white supremacy implies the existence of a system that not only privileges whites but is run by whites, for white benefit” (p. 31). Shifting attention away from questions of individual white motivation and access to privilege, the focus on the systemic character of white dominance “capture[s] the crucial reality that the normal workings of the social system continue to disadvantage blacks in large measure independently of racist feeling” (p. 32). “Although individuals within an oppressed group can at times acquire a great deal of power,” as Gordon observes, the power of a Colin Powell “rarely translates into [power for] the group.” Indeed, the existence of such exceptional figures provides a “further rationalization of the supposed absence of limits” (p. 180).

Oppression as Gordon defines it is not tied to absolute exclusion from the forms of success enjoyed by the dominant group, but refers to “inequality over the conditions by which everyday life can be lived” (p. 178). Oppression, then, does not mean that some members of oppressed groups cannot rise to positions of individual power, but rather that they cannot alter the system or set the terms on which they and others like them may succeed. Whiteness, says Gordon, is “a system of meaning” (p. 182). In such a system of meaning, white assumptions are never interrogated but are taken for granted, treated as normal and obvious. Although social goods in the U.S. are distributed unequally, with black and brown people suffering disproportionately from poverty and poor working conditions, environmental pollution, ill health, crime, police violence, incarceration, premature death, and inferior schooling, the dominant ideology treats these patterns as aberrations. If whites do not have these problems to anything like the same degree, goes the dominant thinking, then the problem must be that people of color do not know how to negotiate the world—do not know how to take care of their health, how to choose a good school, how to avoid trouble. In Taylor’s words, the way that whites “see the world just is the way the world is, and the way they get around in the world just is the right way to get around” (p. 230). The ease of white movement, however, depends on forms of institutional back up not available to others. As Lugones observes, “The successful agent reasons practically . . . within social, political, and economic institutions that back him up.” Not only is he able to form “intentions that are not subservient to the plans of others,” but “he shares in some measure in the control of the context in which he forms his intentions.” He is “a shareholder in power.”

Both whiteness as privilege and whiteness as dominance turn upon the normalizing of whiteness and white values as the taken-for-granted point of reference. As Clevis Headley puts it, “whiteness serves as the norm for social acceptability or what is considered to be naturally human” (p. 94). Further, as Gordon points out, white normativity smuggles in the assumption that whites exemplify humanness (p. 181). The conflation of whiteness with normalcy underwrites whites’ assumption that what is common sense for them is common sense for all—so that the adoption of alternative views counts as a clear violation of common (and civic) sense. For example, many whites assume that blacks want full integration with whites, socially as well as economically. When blacks reject this vision in favor of voluntary segregated spaces, whites have a hard time grasping that what they see as inclusive is only inclusive on white terms. Predominantly white social spaces, schools, workplaces, and philosophy departments are safe, friendly environments for whites. From a white normalizing
perspective, Headley observes, it is only predominantly white, mainstream institutions—Institutions “historically structured on the basis of white privilege and black exclusion”—that count as “beyond race, grounded on rational Enlightenment principles,” and therefore capable of full inclusion. In contrast to particularistic black (or womanist or Latina/o, or queer) settings, these supposedly neutral and culture-free “institutions can readily accommodate any group, regardless of its cultural heritage” (p. 95). Indeed, whites intent upon promoting integration may pride themselves on fostering a welcoming climate for all, failing to realize that the very framing of inclusion as “welcoming” means identifying this space as “our” space, inscribing those who are “included” as outsiders. Welcome to our world: we want you to feel as if you belong.

Several of the contributions to What White Looks Like take on the liberal insistence that, since race is a social construction, it is not real and should be ignored. This debate is referenced to philosophy more than to critical race and whiteness theories, for in the latter it is understood that to call whiteness a social construct is not to say that it is unreal. As Mills observes, “the standard answer” that critical race theorists give to the objection that “races do not exist” is that races have a “social rather than biological efficacy” that, in a “racialized world,” has real effects (p. 36). Headley, Outlaw, and John McClendon variously point out that to argue that race is not biological or not rooted in eternal essences is not to argue that race is not real; on the contrary, it has countless material health, economic, political, and educational among other consequences. Taking a somewhat different tack, Gordon argues that “much contemporary race theory” treats race reductively, making “the social world into all there is” (p. 184). Such theorizing falsely concludes that “there is no material, historical difference prior to these constructions” (p. 185). Yet “if race is [merely] a social construction, why is it that when members of the same designated race pair with each other, they don’t produce children of or who look like the other designated race?” he asks (p. 183). Gordon’s point is not that race is not importantly a social construction, but that in privileging the social sciences over the natural and medical sciences, race theorists have developed an overly simple theory of race.

Headley suggests abandoning the metaphor of construction for that of conjuring. Conjuring, he writes, allows us to focus not only on “the making of reality but also the idea of the radical transformation of social reality through immaterial means” (p. 90). The metaphor of social construction is architectural, implying “that there is no world until it is constituted” (p. 91). By contrast, conjuring, an African metaphor connoting magic, creativity, and healing, offers us a way to think about “mapping and managing the world in the form of signs,” as Theophus Smith explains.10 Echoing this language, Yancy speaks of “the mesmerizing power of whiteness” (p. 128) and its “talismanic” character (p. 132), while, elsewhere, Gordon notes the countervailing power of Africana philosophy to create possibilities of freedom. “Like Caliban,” writes Lewis Gordon, “modern Africana thinkers’ use of Prospero’s language is infused with forces of magic: They represent disruptions and rupture.”20

Conjuring “implies both that we conjure up the world in the sense of constituting it, but also that we transform a previously constituted world,” Headley writes (p. 91). Whereas the language of construction invites the response of deconstruction, as if whiteness could be dismantled through the rational exposure of its contradictions, the language of conjuring invites skepticism about rational control. Suspicious of the Western philosophical reliance on rational knowledge to guide action, Headley observes that “there is no direct and rationally persuasive way of linguistically describing the urgency of this cause,” for the languages of law, politics, and rationality are “infected with the project of whiteness” (p. 103). Our categories and concepts are organized to serve white forms of power. If the role of conjuration largely has been that of “summoning whiteness into the world” (p. 92), argues Headley, it can also be the means of suspending whiteness. “Whiteness cannot be dismantled through rational or analytical means. Its suspension must come in the form of a continuously affirmed refusal to prolong the ontological and existential project of whiteness” (p. 103).

Headley’s focus on a “continuously affirmed refusal to prolong the ontological and existential project of whiteness” stands as an important challenge to several existing approaches to whiteness theory. Some versions of whiteness theory seek to develop critical intellectual tools of deconstruction; others seek to help whites achieve new, anti-racist (or, in some constructions, non-racist) identities; still others attempt to undermine white hegemony by interrupting racist business as usual. Framing whiteness as a project—a framing that Outlaw also adopts, albeit in a somewhat different vein, characterizing “racialized White Supremacy as a nation-state project” (p. 166)—emphasizes the elements of lived commitment, ongoing adaptability, and institutional back up that characterize whiteness as not merely an involuntary inheritance of race privileges but, as Yance says, a “productive” exercise of power (p. 114). Thinking of whiteness as a project is helpful in addressing the question raised in Outlaw’s title, as to whether whiteness can be rehabilitated.21 It also speaks to a number of other important concerns raised by the contributors to What White Looks Like: Robert Birt’s question, “Can a white person be authentic? Or must his whiteness condemn him inexorably to the prisons of bad faith?” (p. 55), Blanche Radford Curry’s examination of the possibilities for a “liberating discourse” between the “new African-American womanists and new white feminists” (pp. 255, 259), and Janine Jones’s question, “What does a heart of whiteness really desire? What does goodwill desire?” (p. 79).

Jones begins her chapter with a story about Mary, the adopted African-American daughter of Sharon Rush, a white woman. In Rush’s book, Living across the Color Line, says Jones, Rush “recalls a scene in which her daughter, Mary, raced with a little white girl. Twice, the two girls tied.” Despite some resistance from the parents, the coach insisted “that the girls race a third time.” This time, the little white girl won; while she was being congratulated, “Mary said to the coach ‘Why did you hold me that way?’ certain that she could have tied the other girl a third time if she had not been held back.” When Rush challenged the coach, he became defensive, demanding, “But why should I hold your daughter back?” while the other white parents waited for Rush to make Mary apologize (p. 66).22 Before she had Mary in her life, Rush tells the reader, she herself—despite a longstanding belief in racial equality—would not have understood the pervasiveness of racism, would have resisted believing that a basically decent white person could enact racism. “Like Rush in her past life,” comments Jones, goodwill whites do not see racism as explaining any events involving other goodwill whites. Either they do not want to “or simply cannot believe—evidence to the contrary—that race is relevant to the kind of situation that arose with the coach” (p. 67).

Pondering the “impairment of empathy in goodwill whites,” Jones asks how we are to explain the notable failure of empathy in whites for African Americans. Surely, she writes, we cannot say that the goodwill white who refuses empathy is being rational—that her way of not understanding you is, after all, serving her practical purposes” (pp. 78–79). In Jones’s
view, “it cannot serve her practical purposes to deliberately misunderstand the people around her, as long as they really do exist independently of her and have goals and values and emotions of their own” (p. 79). What this analysis assumes, though, is that such a person is motivated relationally. It assumes that it could never be worth it to her to win if winning meant forfeiting others’ good opinion and affection, let alone if it meant cheating, lying, and being known to have cheated and lied. Unfortunately, we do not have to look far to recognize that people in positions of relative power often are motivated specifically by winning, having the last word—even if that requires refusing to see how others see one.

The project of whiteness all too often involves an insistence on winning at any price, while being given the benefit of the doubt and being assumed to be innocent. It means being heard by others while refusing to listen in turn. The longstanding pattern of white feminists ignoring the voices of womanists and feminists of color, as Curry notes, has meant that “by choice, white race privilege remains invisible in the work of white feminists” (p. 257). Indeed some white feminist philosophers have hotly and self-righteously defended such a choice in the name of pluralism. Because whites do not have to listen to people of color and have an investment in not doing so, they often don’t. “As the ‘unequals’ of whites, blacks are spoken to, not listened to or communicated with,” as Yancy observes (p. 111).

Even in the academy, nominally dedicated to free and open inquiry, whites rarely have to listen to people of color if they don’t want to. Often, of course, there are no people of color. But even when there are, the terms of listening and speaking usually are set by whites (the exceptions being departments in which white paradigms specifically are called into question, as in African American studies programs), in the form of supposedly neutral policies, curricula, etiquettes, pedagogies, and standards. Not only is writing and reading as if whiteness were neutral the standard, expected approach in the academy, it is likely to be treated as a moral-intellectual stance. To call attention to white patterns of sense-making is to challenge the standards of objectivity, rigor, and neutrality upon which the disciplines pride themselves. It is to render explicit a racial economy that so thoroughly organizes meaning upon which the disciplines pride themselves. It is to challenge the standards of objectivity, rigor, and neutrality upon which the disciplines pride themselves. It is to render explicit a racial economy that so thoroughly organizes meaning upon which the disciplines pride themselves.

What White Looks Like: African-American Philosophers on the Whiteness Question is the first collection of essays that explicitly takes up contemporary African-American challenges to philosophical whiteness. Providing a number of powerful challenges to the carefully maintained invisibility of whiteness in philosophy, the contributors take on Rawls, Hegel, Kant, Dewey, Zack, Appiah, and Gutman, along with anonymous white feminists. For the time being, the whiteness of Marx, Heidegger, Levinas, Habermas, Richard Rorty, Martha Nussbaum, and Charles Taylor is left unexamined. So too, for the most part, is the reflexive question as to how the whiteness of the discipline affects the work of philosophers of color. Insofar as the disciplines perform a disciplining function—teaching us how to ground our work in the literature, how to mount an argument, and how to cite, for example—they shape the kinds of meanings we make. While a number of the contributors to this volume do speak to this issue, primarily by calling upon the Africana tradition in philosophy, perhaps the most intriguing analysis of the personal consequences of disciplinary whiteness is that offered in Joy James’s chapter, “The Academic Addict,” in which she uses the trope of white supremacy as addiction to destabilize the familiarity of ordinary academic practices.

“Syllabi and bibliographies are paraphernalia,” she writes. “Addiction makes you convoluted, hiding in words” (p. 264). In her academic writing, James tries to “remember the ancestors,” but has to work to learn to be faithful. “It is opportunistic to call them only in prefaces, and immature to run to them only in crises” (p. 266). Here, I think, James speaks to a pattern that is unfortunately common to most whiteness theorizing, including my own and including that found in the present volume. Other than the work of W. E. B. Du Bois, Frantz Fanon, and Toni Morrison (as well as that of a number of contributors to the volume, such as Mills and Outlaw), substantive references to generative black and brown theorists do not play a large part in these analyses—Baldwin, Woodson, and Lorde, for example, are not cited, work by critical race theorists such as Kendall Thomas and Mari Matsuda is not consulted, and indeed most work by black and brown feminists, womanists, and queer theorists is notable by its absence. My point is not that particular scholars of color should have been cited, but rather that even when we challenge whiteness and patriarchy, we tend to privilege whiteness and patriarchy. Grounding the present discussions of whiteness in some of the generative work by queer theorists and feminists of color might have tempered the tendency in these chapters to treat...
whiteness in sweeping terms without addressing the ways in which particular forms of whiteness are caught up with heteronormativity and patriarchy. (Many of the authors do acknowledge the class and national interests that intersect with whiteness.) Finally, drawing upon Latin American, African, and other Third World philosophical work, as well as work outside of traditional philosophy, would have helped to call into question mainstream philosophy’s claims to map the world. As Outlaw pointed out recently, it is granting too much to philosophy to allow the discipline to exclude work from other countries and other traditions, work that asks similar questions about meaning and value, just because it does not conform to the standards or does not consult the canon authorized by generations of white men.26

Despite these caveats, the contributions of the book are extraordinary; the collection offers rich and resonant engagements with the questions that grip many of us—questions about bad faith, relationality, justice, and the nature of knowledge. I have only been able to suggest, here, some of the ways in which the book speaks to these questions. The chapters themselves far outstrip anything that I have been able to say about them (and I have sadly neglected some of my favorite chapters). This book is a gift as well as a challenge to white philosophers such as myself, who seek to engage in a multiracial dialogue about the whiteness of our discipline, our judgments, our perceptions, and our assumptions. “The real work of whiteness studies,” writes Taylor, lies not in any further theorizing of whiteness but “in cashing out, in concrete terms, the social realities that the epistemic reorientation…is supposed to uncover” (p. 238). Although I am not certain that all the necessary work in whiteness theorizing is behind us, I agree that the most important work that such theorizing does is to inform concrete analyses—analyses of our institutions, our policies, our practices. What White Looks Like cashes out some of the important ways in which whiteness is performed in the academy, leaving us with vital challenges regarding the work yet to be done.

I would like to end with a challenge of my own. Those of us who are white often rely on our colleagues of color to enhance the diversity of our departmental offerings and to bring students of color into our disciplinary programs. We congratulate ourselves on making our own contribution by including three or four scholars of color in the syllabus—a syllabus which otherwise clings tightly to the comfort and familiarity of white academic narratives. As Adrienne Rich has written, “white feminists are not going to transcend the past through careful ‘inclusion’ of one or more black women in our projects and imaginations; nor through false accountability to some shadowy ‘other,’ the Black Woman, the myth.”27 What I want to ask, and to have us think honestly and profoundly about, is: What are we—white philosophers and other academics—doing to move beyond an imaginary or abstract “accountability” to blackness and brownness? What do we need to learn and what practices must we change, if we are to embrace an actual accountability, based in meaningful intellectual, pedagogical, civic, and personal relationships, to the black and brown people we know and those we have neglected to listen to, neglected to know?

Endnotes

1. I resort to the phrase “designated non-white” because racial color is not necessarily a matter of personal identification. Some who regard themselves as white may not be viewed as white by the dominant society in the U.S., Britain, Canada, Australia, or New Zealand. What counts as white in Iran, for example, does not at present count as white in the U.S. For the most part, in this review, I rely on the terms “black” and “brown” to refer to people of colors other than white. Although by no means unproblematic, this decision reflects the most common current use. (Other usage specifies red and yellow in addition to brown, black, and white. This once-familiar practice seems likely to become common again in the future; however, it has not thus far been taken up widely by the groups so named.)


3. Charles W. Mills, The Racial Contract (Ithaca, NY: Cornell University Press, 1997), 18. Italics removed. Mills’s work has been enormously influential in philosophical work on whiteness. In addition to informing much of the recent literature in the field, including What White Looks Like, it was the centerpiece for the Rock Ethics Institute’s Ethics and Epistemologies of Ignorance conference, March 26–27, 2004 at Penn State University, organized by Nancy Tuana and Shannon Sullivan.


8. Ibid.

9. Kathleen Parker, “Airline Security Inspires No Confidence,” The Salt Lake Tribune (February 10, 2002): AA1. This explicit appeal to “common sense” brackets together inner-city residents, young men “of Middle-Eastern descent,” foreigners, and, implicitly, Muslims, as security risks who should not be extended the exemptions due to a middle-class white woman.


11. The only published account I have seen that takes up McIntosh’s challenge to name one’s own set of privileges is Ruth Anne Olson, “White Privilege in Schools,” in Beyond Heroes and Holidays: A Practical Guide to K–12 Anti-Racist, Multicultural Education and Staff Development, ed. Enid Lee, Deborah Menkart, and Margo Okazawa-Rey (Washington, DC: Teaching for Change, 1998/2002), 81–82. No doubt most such lists remain private. When I ask my students to generate their own lists, they are able to do so, but of course their lists are never published.


13. Lugones, Pilgrimages/Peregrinajes, 211.


18. Lugones, Pilgrimages/Peregrinajes, 211.


21. In “Behind Blue Eyes,” Winant characterizes whiteness in terms of several different projects, with a view to understanding how whiteness might be rearticulated.


23. Although whiteness theory (or, more often, other critical race-based analyses) may be taken up in these fields, such approaches are treated as marginal to the dominant scholarship in the area. By contrast, whiteness in historical scholarship represents a burgeoning (if nevertheless controversial) area of research.


CONTRIBUTORS

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Audrey Thompson is a professor of philosophy of education and gender studies in the Department of Education, Culture, and Society and an adjunct professor in Ethnic Studies at the University of Utah. Among her areas of study are critical whiteness theory, radical pragmatism, African American epistemology and pedagogy, feminist ethics, feminist epistemology, and feminist and anti-racist pedagogy; her publications have appeared in Harvard Educational Review, Curriculum Inquiry, Educational Theory, McGill Journal of Education, and The Lion and the Unicorn, as well as many other journals and books. Some of her recent publications in the area of whiteness theory include “Not the Color Purple: Black Feminist Lessons for Educational Caring,” “Who Thinks Like This?”, “Anti-Racist Work Zones,” “Gentlemanly Orthodoxy: Critical Race Feminism, Whiteness Theory, and the APA Manual,” and “Tiffany, Friend of People of Color: White Investments in Antiracism.” Her current research project focuses on the race/gender narratives that organize biographies of black and white anti-racist and abolitionist activists.

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Guest Editors: Jon Dorbolo (Oregon State University) and Ron Barnette (Valdosta State University)
Deadline: March 1, 2005
(The submission date has been changed from earlier announcements)
Daniel Dennett will accept the Barwise Prize at the Eastern American Philosophical Association meeting in December 2004. Conferred by the APA Committee on Computing and Philosophy, the Barwise Prize is awarded for significant and sustained contributions to areas relevant to the philosophical study of computing and information.
To commemorate this award, Minds and Machines and the APA Newsletter on Computing and Philosophy will collaborate to publish two special issues regarding “Daniel Dennett and the Computational Turn.” The Fall Spring 2005 APA Newsletter on Computers and Philosophy issue (Guest Editor: Ron Barnette) and a special issue of Minds and Machines in Fall 2005 (Guest Editor: Jon Dorbolo) will present this work. Submissions made in response to this call will be considered for both publications, and authors will be consulted on the outcomes of the review process, with regard to which publication is suitable. An editorial board will conduct the reviews. Members of the editorial board are:
Terry Bynum, Southern Connecticut State University
Robert Cavalier, Carnegie Mellon University
James Moor, Dartmouth College
Susan Stuart, University of Glasgow
David Rosenthal, City University of New York
Bill Uzgalis, Oregon State University
For this publication effort, the editors will focus on those aspects of Dennett’s work that have implications for the issues where philosophy and computing or information intersect. These include artificial intelligence, artificial life, information ethics, machine learning, mentality and machines, robotics, and education, among others. Both expository and critical approaches to such topics are sought.
Based on the works received, the authors intend to pursue a book proposal and symposia at major meetings in addition to the Newsletter and Journal special issues.
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A Conversation with Susan Stuart

Bill Uzgalis
Oregon State University

Bill Uzgalis: Susan Stuart, I met you at the first CAP conference here at OSU in 2001. You had come all the way from Glasgow, Scotland and you were giving a presentation titled “The Embedded Self-Aware Agent”. Why don’t you tell us a bit about your background, and how you ended up coming to that CAP conference and talking about that topic.

Susan Stuart: Apart from a year when I took some English Literature classes, my undergraduate degree was pure and not-always-so simple philosophy. For my Master’s degree, I read more Kant—realizing that I was probably better feeding this addiction than trying to resist it—and Philosophy of Language. But it was the subject of my Ph.D., “When is it justifiable to ascribe mental states to non-human systems?” that moved me towards the areas of Artificial Intelligence and Computing.

On completion of my Ph.D. I moved to Glasgow where my husband had secured a post doc in astronomy—he’s a mathematical physicist—and I began teaching in the Philosophy Department. Within the year I had a contract but was still only teaching on other people’s courses. How this changed is not at all interesting; but when it did I began, rather naturally, to put together courses of an interdisciplinary nature, courses that were being influenced, if not determined, by my research interests and experience, and which the students seemed to enjoy every bit as much as me. Alongside these courses, I have been running my more traditional classes on Kant’s epistemology, logic, philosophy of religion, and so on. But I found that in my discussion with the students, I was beginning, for example, to introduce cognitive science metaphors to explain Kant’s metaphysics, and I thought, if this goes much longer, I’m going to have to write something to justify my claims. So, along with a colleague from the Open University, Chris Dobbyn, I did, and two of the issues that came up repeatedly were (i) what is meant by embodiment, and (ii) in what way might we specify the minimal requirements for consciousness. As you’ll know from hearing and reading the paper, these were the main themes of “The Embedded Self-Aware Agent.”

Now, I tend to think that the most exciting work in any discipline is done at its borders where it overlaps into other disciplines; for it is in that dialogue that we begin to perceive our problems differently and unearth novel resolutions. However, this isn’t the viewpoint of conventional philosophy departments or even some conferences, and occasionally you feel that your work doesn’t quite fit anywhere. Well, that’s when the CAP conference call for papers fell into my email inbox, and I thought that’s the one for me. There was such a variety of subject and approach, and I got a sense of, what I now know to be, your and Jon’s hallmark enthusiasm from the CFP. It never occurred to me that this was the winter and that there might be bad weather, nor did it occur to me that this was anything other than an international conference; so I was delighted when my abstract was accepted and planned my journey.

Bill Uzgalis: One of the beauties of CAP conferences is that the presentations often end up getting published. Happily both you and I have Jim Moore and Terry Bynum to thank for publishing both the paper you wrote and the one Gene Korienek and I wrote up from our presentations at CAP 2001.

Susan Stuart: Yes, this was a wonderful stroke of luck! I had felt that there was a lot of energy in my presentation, but I was delighted to discover that there had been enough clarity to persuade Jim and Terry that there was something of publishable quality there. It’s a splendid book, and I am very pleased to be in there with you and Gene, but also with so many other really interesting people doing great work. If I list the people I know, I’ll be forced to leave out others, and they may then infer that their work isn’t great. So I’ll briefly mention John Weckert who he went to establish the first CAP in the southern hemisphere last year at The Australian National University, Canberra.

Bill Uzgalis: So, having experienced your first CAP conference, you decided to hold the first CAP conference in Europe? How did that happen?

Susan Stuart: At CAP@OSU Robert Cavalier explained that he had plans to expand CAP from its North American home and asked if I would be interested in organizing one in Glasgow. I wasn’t exactly enthusiastic because I’d really only just met everyone and, although there was a tremendous buzz about the group and the place, I wanted to let things settle down and try to figure out what exactly I might be getting myself into. I also needed to let things settle down because some members of the philosophy department I was in weren’t too keen on interdisciplinary work, even going as far as to deem it not to be philosophy.

So, in the year when I thought things through, I decided that these people I’d met in Oregon were reliable people working in unconventional areas in a collegial and supportive manner, and I moved to another “department,” the Humanities Advanced Technology Information Institute, where the Institute’s Director was very encouraging about my running a Computing and Philosophy conference in Glasgow, and more especially so because it would be the first outside the United States. He also gave me £1,000 to get things started and didn’t ask that it be repaid. I can’t think of anything more I would have needed on my side!

Bill Uzgalis: Well, there certainly are difficulties in working in areas that are not recognized as traditional parts of philosophy. I think you were very lucky to find a place and people who were really supportive. Unfortunately, CAP@Glasgow took place at exactly the same time as the Pacific Division of the APA, and I had commitments there, so I didn’t get to attend...
That brings us up-to-date about your background and your involvement with CAP conferences and IACAP. So, why don’t you tell us about your current research?

**Susan Stuart:** My one regret is that we couldn’t take into account the APA Division meeting times, but I did think about it and concluded that, since this was an event primarily aimed at bringing together people from the continent of Europe, then I should be swayed more by the European academic terms and meetings than the North American ones. Nevertheless, the conference was a terrific success: Luciano Floridi presented the Alan Turing Lecture in Computing and Philosophy, talking about consciousness and multi-agent systems, and Aaron Sloman gave the Thomas Reid Memorial Lecture in which he presented a case for an architecture-based philosophy of mind. Nearly every paper was presented with great passion and engagement, with one of the most memorable being Claude Lamontagne’s presentation on how to teach the neural functioning that underpins vision using spreadsheets.

The feedback during and after the conference was extremely positive, but I began to get a little anxious when people asked me if it would be the same time and place in 2004! Not only does it take a lot of energy to run a conference but I thought E-CAP could quickly become stale if it stayed in one place. Europe is a big place with a great deal of cultural, academic, and social diversity, and if we really are going to create an international network, then we need to move around, gathering in those people who might be able to get to a conference that is local to them one year when they would be unable to get funding for a conference much farther away.

To my great delight, Lorenzo Magnani came forward to express an interest in organising the second European-CAP (E-CAP) at the University of Pavia, Italy, and he has done a splendid job. I had only one small problem with Lorenzo running the conference and it was this: I feared that Pavia’s ancient and medieval heritage might upstage Glasgow’s conflation of late medieval, neo-gothic, industrial architectural styles. Thankfully after a day or two, I realised that they both have their merits, and he and I are simply very lucky to live in two of the most beautiful towns in Europe!

**Bill Uzgalis:** And, so this led, I take it, to your becoming the European Regional Director of IACAP?

**Susan Stuart:** Yes, it seems so, and that’s something I didn’t expect when I set out for Oregon State University in January 2001. That really was a very big opportunity, not just to meet intelligent and like-minded people, but to meet people who demonstrate a kindness and generosity of spirit that is at a premium in the academic environment. I am glad that I took up Robert’s offer/challenge to get E-CAP off the ground, very pleased that Lorenzo took over and ran with the second one, and that now our progression is to a third E-CAP is made possible by the vitality and spirit of Gordana Dodig-Crnkovic, who will be its host in 2005 in Västerås, Sweden.

Naturally, I shall provide support and assistance where I can and when Gordana needs it, but being the Regional Director, and not host, does give me an opportunity to do a bit more research!

**Bill Uzgalis:** That brings us up-to-date about your background and your involvement with CAP conferences and IACAP. So, why don’t you tell us about your current research?

**Susan Stuart:** Of my current philosophical research, I consider my most exciting to be (i) work on unifying approaches to the unity of consciousness, where I start from a position of accepting Kant’s metaphysics as prescriptive of the requirements for conscious human experience and go on to examine how Kant’s functionalist claims might be reinterpreted, recognized, and possibly even realized within the framework of contemporary neurophysiology and robotics; and (ii) the compelling, yet illusory, sensory feedback provided by haptic technology, which presents the agent with an experience that seems to stretch them out into their world, even though it is not a physical world and the agent is only scarcely embodied within it.

I am also interested in the questions that surround the nature of digital identity and reidentity over time, and in how we define and determine the extent of collections, for example, of texts, that are stored and accessed electronically. Oh, and as a bit of fun though still academic work, I’ve written a couple of papers on *Buffy the Vampire Slayer!*

**Bill Uzgalis:** Why don’t you tell us a bit about the paper you are going to give in Pittsburgh at the upcoming CAP conference?

**Susan Stuart:** The paper I’ll be delivering at CAP at Carnegie Mellon in August 2004 is about Kant and cognitive science, but I have moved beyond the claims for the necessary spatial and temporal prerequirements for inner and outer experience to the application of the categories, the synthesizing operation of the application of the categories, and the drawing together of the manifold into a unity, that is, a thought to which an “I think” could, even only in principle, be attached.

In this enquiry, I am influenced, very naturally, by arguments I’ve made in other papers about the need for embodiment and sensory input, even if that embodiment is not physical but virtual, and even if that sensory input is, in some sense, illusory. And, further, in the paper I presented at CAP@OSU in 2001 I argued that any autonomous agent—the kind that might be a candidate for consciousness—would have to be active in its participation with the world, able to synthesize its internal representations from its own point of view; effectively the agent would have to be embedded in a complex and dynamically changing environment.

Now, for all of this to be possible we need to be able to move around our world, and this reminded me of Charles Sherrington’s Man on his Nature (1940) and Sherrington’s emphasis on movement and the need for muscular enquiry when trying to understand our world, and I thought, this is in Kant’s second Analogy—where he argues that self-conscious experience is possible only if we can distinguish subjective experience from objective fact, a distinction which, in its turn, is only made possible if we can distinguish movement from stasis—and it is in Rodney Cotterill’s 1995 paper “On the unity of conscious experience” wherein he argues that consciousness is primarily associated with movement and response, and that the necessary coordination of movement and response requires a unity of conscious experience. Cotterill goes on to add that the position of our muscles and our subsequent muscular movements are what make it possible for us to ask questions about our environment; for example, where we are in relation to other objects, are we balanced, is this object soft to my touch, and so on. Thus, it is through muscular enquiry that I engage with my world and, I want to argue that, as a result of this, the whole system is cognitive, not just the bit at the top of the spinal column.

Kant, Sherrington, and Cotterill’s models all work well if you are in good shape physiologically with information being processed and responded to appropriately, but what about individuals who have lost their proprioceptive sense and cannot gain that all important haptic input from their world; for them, a visual sense providing visual feedback of their muscular movements is what makes it possible for them to move again in a controlled way, but it is insufficient for their regaining a sense of a unified self. In “Self-Consciousness and the Body” (2000), Monica Meijisng says of the patient IW, “In
the dark he did not know where his hand was; and even if he knew, he would not have been able to move it towards the bedside table without visual feedback” (p.42), but she goes on to indicate that IW’s sense of unity, his coherent sense of self, returned only when he had learned to move again. It is the interplay between incoming information and active, muscular self-movement that places the self, the unity of experience, firmly at the centre of its environment.

And now my challenge in this paper is twofold: (i) to bring all of this together to show that Kant is committed to an active, sensorimotorily enmeshed view of consciousness, and (ii) to demonstrate how Kant’s claims might be reinterpreted, recognized and possibly even realized within the framework of contemporary neurophysiology with Cotterill’s work on the anterior cingulate as the possible “site” of consciousness, and within the framework of contemporary robotics with Brookes’s work on COG and, possibly, a little something on soccer robotics and sewer inspection teams!

Bill Uzgiris: I think one thing that continues to impress me as I interview more and more members of the CAP community is how traditional philosophy in conjunction with the computational turn often spawns interesting insights both about the new digital world we are encountering, but about the old philosophers as well. Both your research efforts and your involvement with CAP conferences and IACAP seem to be adding up to a real CAP success story!

References


Bibliography: Susan Stuart


“The Development of Potential Models of Advance Directives in Mental Health Care.” *Journal of Mental Health* vol. 12, no.6 (2003): 575-84.


“What is the Imagination and What are its Evolutionary Advantages?” for In Our Time on Radio 4 with Melvyn Bragg, 28 November 2002.


ECAP REVIEWS

Review of the European Conference for Computing and Philosophy, 2004

Susan Stuart

On March 27, 2003 we gathered in the Senate Rooms of the University of Glasgow for the first European Computing and Philosophy (ECAP) conference. It was a very proud moment for everyone on the program committee to have brought together scholars from all over the world in the collegial interdisciplinary environment that typifies CAP conferences now the world over. But I hadn't reckoned on how delighted I would be to be present at the University of Pavia, Italy, from the 3-5 of June 2004 for the second ECAP conference.

The setting was the magnificent Collegio Ghisleri, the conference organizer was Professor Lorenzo Magnani and, if he'll forgive me for one moment, the smooth running of everything from accommodation and registration to the editing of the abstracts was done by, the much too modest, Elena Gandini.

The diversity of papers being presented was matched only by the diversity of backgrounds from which the conference participants came and all of this led to lively questions and dialogue in the discussion sessions that followed the paper presentations. The paper for me which most clearly exemplified this was Deborah Johnson’s “Integrating Ethics and Technology” in which she argued that technology is not just material objects in isolation but, in its creation and use, it is an integral part of our social relationships, institutions, practices and systems of knowledge. This was reasonably uncontroversial, so much of the talk discussed the ethical and pedagogical issues pertaining to information technology, theoretical issues in artificial intelligence, various types of abductive reasoning (and the prospects for computationally modelling them), the nature of consciousness (and the prospects for modelling it), computational models of scientific reasoning, and other topics as well. Magnani is to be commended for putting together a program with such diversity and strength. Summarizing all the papers presented at E-CAP 2004 is not feasible—there were approximately 40—but a summary of several papers should be sufficient to convey the depth of thought and breadth of subject matter.

Luciano Floridi (Oxford and Bari) delivered one of the invited addresses, entitled “Presence—Its Ethical and Epistemological Implications.” It was a fascinating exploration of the notion of telepresence. Floridi argues for the inadequacy of Epistemic Failure accounts of telepresence and defends a Successful Observation approach to understanding telepresence. On his analysis, one can be telepresent by controlling artificial agents from a distance (e.g., a Mars rover), participating in chat rooms, or playing a game online, but one may not be telepresent by reading War and Peace or by watching Casablanca. After clarifying the use of telepresence and distinguishing it from telepistemics, Floridi argues that carefully thought out notions of presence may help to shed light on our notions of privacy and pornography.

Deborah Johnson (University of Virginia) delivered an invited address entitled, “Integrating Ethics and Technology.” She argued that technology is not value neutral and that a proper understanding of it should not be separated from the social practices of which it is a part. This line of thinking is carried to the point where it is claimed that technological artifacts should be seen as having a kind of moral agency. Johnson’s criteria for moral agency consisted of (a) an entity having intentionality, and (b) that same entity having effects on moral patients (defined as beings who have interests). That technological artifacts have effects on moral patients is relatively uncontroversial, so much of the talk discussed the kind of intentionality that artifacts may have, a kind of external intentionality (as opposed to the internal intentionality appropriate to conscious agents). The technological artifacts that have the purported external intentionality would include...
entities as diverse as toasters and personal computers. By granting a kind of moral agency to artifacts, Johnson intimates that the effects that artifact s have on moral patients will be taken more seriously. In a related address, “Moral Mediators in a Technological World,” Lorenzo Magnani (University of Pavia and Georgia Institute of Technology) argues that the Kantian view that “there is no need of science or philosophy for knowing what man has to do in order to be honest and good, and indeed to be wise and virtuous” is outdated. Public policy decisions regarding artifact s that mediate our access to knowledge are sufficiently complex that we need to reconceive our traditional ways of thinking about our moral and political obligations pertaining to the pursuit of knowledge. One of the interesting twists in Magnani’s story comes when he suggests that we abandon the Kantian view that we are ends in ourselves (as opposed to means to the ends of others). Pace Kant, Magnani suggests that it may be by treating moral agents as means that we may be able to come up with a better account of agency and the duty to know. While my preference is to rehabilitate the notions of reason and agency found in, say, Aristotle and Kant, to achieve the kinds of theoretical and practical goals sought by Johnson and Magnani, their thoroughgoing challenge to these traditional notions provided an opportunity for stimulating discussion.

The length of the papers varied. The invited addresses (including but not limited to those mentioned above) were an hour in length. Other papers were either 20 or 40 minutes long. In a 40-minute session, Rens Bod (Universities of Amsterdam and Leeds) presented a computational model of reasoning by exemplars. The model focuses on derivational explanations and presupposes a corpus of previously explained phenomena. Bod shows how to use parts of previous (exemplary) derivations in the derivation or explanation of new phenomena. The model attempts to capture both deductive and non-deductive explanations. Of particular concern to Bod is showing how to capture derivations that incorporate the kinds of ad hoc rules and approximation schemes that Nancy Cartwright has discussed in her work. Mark Sprevak (Cambridge) also dealt with scientific reasoning in “The Frame Problem and the Treatment of Prediction.” After an extended discussion of what the frame problem is and is not, Sprevak suggests that it may be useful for distinguishing between common sense reasoning and scientific theorizing, arguing that (a) the kinds of qualifications and context sensitivities at issue in predictive scientific reasoning differ from the concerns of common sense reasoning, and (b) that the frame problem is best understood as a problem that arises in trying to model reasoning present in everyday contexts, not scientific contexts.

At least five of the papers presented dealt with abduction, and some dealt with the prospect of computationally realizing it. At least four papers dealt with the nature of consciousness, and at least two papers were explicitly critical of the very idea of computationally modelling cognition. (Some other papers had the critique of computationalism as a background theme.) Still other papers dealt with issues as diverse as semantic theory, the language of thought, and appropriate and inappropriate uses of technology in the classroom. While this summary does not capture all the subject matters discussed at the conference, it should provide a sense of the range of the material engaged.

As impressive as the material discussed was the way in which it was discussed. The conference was thoroughly interdisciplinary with many participants coming from outside of philosophy. While differing theoretical backgrounds can lead to confusion and impatience, this conference was marked by an exceptionally high level of collegiality and constructive evaluation.

The icing on the cake was the location: Pavia was originally founded over 2000 years ago, has medieval towers, centuries old churches, and breathtaking Romanesque architecture. The university was originally founded in 1361, and the Collegio Ghislieri, where the conference took place, dates back to the sixteenth century. The design of the college and the art adorning its walls were a daily delight.
**Logic, Computational Models and Tools**

Chair: Alison Pease

*Music to Our Ears: A Required Paradigm Shift for Computer Science*
  
  Dave Billinge
  
  Tom Addis

*The Scheme of Development of Mathematics according to Lakatos and its Application to Riemann’s Scientific Activity*
  
  Wiesław Wójcik

*Moral Mediators in a Technological World*
  
  Lorenzo Magnani

**Logic, Computational Models and Tools**

Chair: L. Magnani

*Coping with Meaning Towards an Evolutively Plausible Computational Semantics*
  
  Asunción Álvarez

*Can Vision Be Computational?*
  
  Rosaria Domenella
  
  Alessio Plebe

*“It’s a Wonderful Model”: An Investigation into the Notion of an “Algorithmic Explanation” and its Computational Limits*
  
  Chiara Tabet

*A Modal Perceptive on Proof Dynamics*
  
  Patrick Allo

**Cognitive Science, Epistemology, and Metaphysics**

Chair: Selmer Bringsjord

*Compositionality, the Language of Thought, and the Dynamic Map of Thought*
  
  Marius Dumitru

*Philosophy of Information, a New Renaissance and the Discreet Charm of the Computational Paradigm*
  
  Gordana Dodig-Crnkovic

**Internal and External Representations, Consciousness**

Chair: Roberto Feltrero

*Authentic Robots and Inauthentic Daseins*
  
  A. Barua
  
  M. Satpathy

**Invited Lecture**

Chair: Mario Stefanelli

*Modelling Lakatos’s Philosophy of Mathematics*
  
  Simon Colton
  
  Alison Pease

**Cognitive Science, Epistemology, and Metaphysics**

Chair: Claudio Pizzi

*An Argument against Computationalism*
  
  Eduard Barbu (Talk Cancelled)

**Ontology for Information Systems Artifacts as a Case Study**

  Massimiliano Carrara
  
  Marzia Soavi

*A Relational Stance in the Philosophy of Artificial Intelligence*
  
  Colin T. Schmidt

**Ethics, Technology, and Teaching and Learning**

Chair: Eliano Pessa

*On the Importance of Teaching Professional Ethics to Computer Science Students*
  
  Gordana Dodig-Crnkovic

*Intentionality and Moral Agency in Computers*
  
  Thomas M. Powers

*If a Divination and Computer Science: A Case for African Tradition*
  
  T. Otselu Ogbhemhe
  
  T. Ifamidon Obaseki

**Abduction, Creative Reasoning, Scientific Discovery**

Chair: R. O. Elveton

*Is a Closed-Loop Discovery System Feasible?*
  
  Alexander Riegler

*Intelligent Alarm Correlation and Abductive Reasoning*
  
  Stefania Bandini
  
  Alessandro Mosca
  
  Matteo Palmonari

*Rational Perception and Creative Processes in Cognitive Science*
  
  Arturo Carsetti

**Invited Lecture**

Chair: Arturo Carsetti

*Computer Imitation and Mathematical Understanding*
  
  Giuseppe Longo

**Invited Lecture**

*An Argument against Computationalism*
  
  Eduard Barbu (Talk Cancelled)
COGNITIVE SCIENCE, EPISTEMOLOGY, AND METAPHYSICS
Chair: Laura Pana
Unifying Approaches to the Unity of Consciousness
Susan Stuart
Rationalism versus Empiricism: A New Perspective
A.M. Stepak
From the Middle Age to Multimedia: How Ramon Llull’s Ars Magna can be Revived on the Computer
Thessa Lindof

INTERNAL AND EXTERNAL REPRESENTATIONS, CONSCIOUSNESS
Chair: Thomas Powers
Revealing Colours
Ludovica Lumer Luca De Carli Davide Gadia Daniele Marini
Towards Meaning Processes in Computers from Peircean Semiotics
Antônio Gornes Ricardo Gudwin Charbel Niño El-Hani João Queiroz
Mechanisms and Simulations
Gianluca Paronitti

ETHICS, TECHNOLOGY, AND TEACHING AND LEARNING
Chair: Tarja Knuuttila
The Role of Computers in Scientific Research: A Cognitive Approach
Roberto Feltrero
Behaviour, Mental Processes and Theories: Prisoners in the Room of our Beliefs (and our Computations)
Luciano Celi

INVITED LECTURE
Chair: Luciano Floridi
Introducing Chogic: A Primitive Part of the MARMML Machine Reasoning System
Selmer Bringsjord Kostas Arkoudas Paul Bello Marc Destefano Bram van Heuveln Yingrui Yang

ABDUCTION, CREATIVE REASONING, SCIENTIFIC DISCOVERY
Chair: Susan Stuart
From Theoretical and Empirical Constraints to Synthetic Experiments on Symbol-based Communication
Angelo Loula Ricardo Gudwin João Queiroz
Problems with Simplicity and Analogy in the Theory of Explanatory Coherence
Marcello Guarini Pierre Boulos
Can Tacit Knowledge fit into a Computer Model of Scientific Cognitive Processes? The Case of Biotechnology
Andrea Pozzali

COGNITIVE SCIENCE, EPISTEMOLOGY, AND METAPHYSICS
Chair: Roberto Cordeschi
Computable and Non-computable Procedures in Turing’s Theory of Mind
Jean Lassègue
Computer Science as a Subject Matter for Philosophy of Science
Peter Kühnlein

ETHICS, TECHNOLOGY, AND TEACHING AND LEARNING
Chair: Guglielmo Tamburrini
Metaphor Processing in Text Understanding on the Web: A Hermeneutic Approach
Stefan Trausan-Matu
Defining and Using Deductive Systems with Isabelle
F. Miguel Dionisio M. Paula Gouveia Joatildeo Marcos
The Interactive Learning Environments Made on a System Dynamics Basis
Stanislava Mildeová

INVITED LECTURE
Chair: Lorenzo Magnani
Philosophy of Science and the Ethics of AI and Robotics
Roberto Cordeschi Guglielmo Tamburrini

What is Embodiment?
R. O. Elveton
The Role of the Internal and External Representations in Sustaining Creative Processes
Alberto Faro
Daniela Giordano

On the Representational Role of the Environment and on the Cognitive Nature of Manipulations
Alberto Gatti
Lorenzo Magnani

Cognitive Science, Epistemology, and Metaphysics
Chair: Luciano Floridi

Computing or Dynamics: Does it Matter For a Theory of Mind
Mathieu Magnaudet

The Frame Problem and The Treatment of Prediction
Mark Sprevak

Biorobotic Experiments in the Scientific Understanding of Adaptive Behaviours: Epistemological and Methodological Issues
Edoardo Datteri
Guglielmo Tamburrini

Logic, Computational Models and Tools
Chair: Jean Lassègue

Semiosis in Cognitive Systems: A Neural Approach to the Problem of Meaning
Eliano Pessa
Graziano Terenzi

Steps towards a Computational Metaphysics
Branden Fitelson
Edward N. Zalta

Why Cognition Can’t Be Computation
William A. Cameron

Goodman’s Paradox Generalization
Evgenii Vityaev
Irina Khomicheva

Internal and External Representations, Consciousness
Chair: Luciano Floridi

Deconstructing the External/Internal Divide: The Case of Self-organizing Maps
Tarja Knuuttila
Timo Honkela

External and internal representations of road pictographic signs
Brigitte Cambon de Lavalette
Patrick Brézillon
Charles Tijus
Sébastien Poitrenaud
Christine Leproux
Alexandre Lacaste
Marie Bazire

Interactive Diagrams for Charles Peirce’s Theory of Signs
Priscila Farias

Special Panel on Abductive Reasoning
Chair: Thomas Addis

Projectual Abduction
Giovanni Tuzet

Abduction and its Distinctions
Lorenzo Magnani

Serendypian and Non-serendypian Abduction
Claudio Pizzi
Duccio Pianigiani

Cognitive Science, Epistemology, and Metaphysics
Chair: Eliano Pessa

The Ins and Outs of Mental Properties
Allard Tamminga

Evaluating Traditional, Hybrid, and Distance Approaches to Teaching Deductive Logic
Marvin Croy

Invited Lecture
Chair: Susan Stuart

Telepresence—Its Ethical and Epistemological Implications
Luciano Floridi

Cognitive Science, Epistemology, and Metaphysics
Chair: Robert Stepak

Connectionism Meets the Language of Thought
Paul Schweizer [Talk Cancelled]

The Dynamic Nature of Meaning
Claudia Arrighi
Roberta Ferrario

Abductive, Creative Reasoning, Scientific Discovery
Chair: Alexander Riegler

Why There Cannot Be a Complete Science of Enquiry
Brendan Larvor

Artificial Intelligence and Philosophy: The Case of Simon’s AI Project
Stefano Franchi
ARTICLE

Getting Outside of the Margins

Jon Dorbolo
Oregon State University

Margin, noun. Middle English, from Latin margo border.
1. The part of a page or sheet outside the main body of printed or written matter.
2. The outside limit and adjoining surface of something.
3. A spare amount or measure or degree allowed or given for contingencies or special situations.
4. A bare minimum below which or an extreme limit beyond which something becomes impossible or is no longer desirable.
5. Measure or degree of difference.
(2004, Merriam-Webster Online Dictionary)

Do web pages have margins? Though there is a physical limit to the screen, hypertext links on a page exceed those limits. For instance, Pierre de Fermat set the mathematical world on a three hundred fifty-year quest by posing a theorem in his notebook then adding in the margin; “I have discovered a truly remarkable proof which this margin is too small to contain.” With hypertext in an electronic medium there are no margins too small for proofs or anything else. The electronic medium extends the potential of texts.

This matter of margins is of immediate significance to the Newsletter on Computing and Philosophy, because as of this issue, the publication is moving to a completely electronic format. Some of the advantages of online publication are being forgone in favor of restricted access. The newsletters are restricted to APA members. A result of this choice is the danger of imposing strict margins on a medium that possesses potential for broader horizons.

In the twentieth century, significant new attention was focused on positions, writers, voices, and groups that have been historically marginalized. Marginalization involves being left out of the main body of texts that constitute the officially received and mainstream philosophical discourses throughout history. The American Philosophical Association (APA) produces newsletters in service of topics in philosophy that have been historically marginalized. These include: The Newsletters on American Indians in Philosophy, Asian and Asian-American Philosophers and Philosophies, The Black Experience, Feminism and Philosophy, Hispanic/Latino Issues in Philosophy, Philosophy and Lesbian, Gay, Bisexual and Transgender Issues. These publications regularly produce top-quality articles and discussions. For any contemporary philosopher who may have missed it before, these publications document the distinct philosophical importance of topics that have moved (or are moving) well out of the margins and into central focus.

In addition to the above-named newsletters, four more are included in the biannual APA newsletter bundle; Philosophy and Law, Philosophy and Medicine, Teaching Philosophy, and Philosophy and Computers. These subject matters may not be subject to historical marginalization and are produced for other reasons. Issues of teaching and learning are important because so many philosophers do teach as a part of their profession. As editor of the Newsletter on Philosophy and Computers, I have continually argued that
information technology is changing the nature and practice of philosophy in general. The ubiquity of information technology in use by contemporary philosophers and the deep changes at work in the computational turn render it necessary to address the issues of computing and philosophy in a scholarly forum. This Newsletter, Computing and Philosophy conferences (CAP), the journals such as Minds and Machines and Ethics and Information Technology, as well as the International Association for Computing and Philosophy (IACAP), are addressing those issues. The APA Newsletters perform important roles in the philosophical world.

Moving to an electronic publication offers much potential to take advantage of the medium to enhance production and usability values. To gain these advantages it is necessary to recognize that print media and electronic media are very different forms and require different design strategies. It will not be sufficient to take a print publication and make text files available on the web (e.g., by posting pdf files of the newsletters). Such an approach would be no more an effective use of media than it would be to merely printout a website as a means of producing a journal. An online newsletter is an excellent idea for many reasons. It can only satisfy those reasons if it is designed with maximum value to the online author and reader in mind. Here are some advantages that can be gained by publishing an online newsletter.

Multiple format: an online publication should be presented in multiple formats so that readers can use it in the ways most suitable to their needs. A high-quality hypertext design with strong link strategies, multimedia, reader response, and regular maintenance is essential to a successful online publication. Print versions of pages (either plain html pages or pdf) with appropriate graphics for easy printout make online publications more usable. Some quality sites allow readers to select among different features and modes of view. Responding dynamically to the needs of the reader is one of the core values of a strong electronic publication. Americans with Disabilities Act (ADA) compliance is an important goal for an online publication that can be approached with thoughtful design.

Global access: The web allows unprecedented access to resources from all parts of the world. Despite the reality of the digital divide between have and have nots, the web is well utilized by educators, scholars, libraries, publishers, journalists, and governments. Any publication that aspires to high quality in online publication must make an effort to be accessible globally. Language barriers are not yet surmountable by translation software (though it is advancing) but abstracts of articles should be provided in multiple languages so that international scholars may determine whether pursuing translation of an article is worthwhile. The APA Newsletters should reach out to the world community rather than hold to a subset of professional U.S. philosophers. The Paideia Project produced in conjunction with the Twentieth World Congress of Philosophy at Boston University is a superb example of a well-designed (though still monolingual) site with an international authorship and readership. Labyrinth: An International Journal for Philosophy, Feminist Theory and Cultural Hermeneutics provides a valuable example of a multilingual site, though not cross lingual. Sic et Non is a bilingual German/English journal that does an admirable job of synthesizing dual languages.

Reader and author interaction: One of the major changes from print media to online media is the capability for rapid feedback from the readers. When we publish in print journals, there is sometimes no way to know whether anyone has read the paper or what they think of it. This is one reason why academic conferences are valued; an audience is immediately available for discussion, even if only for ten minutes or so. The Internet changes this factor radically by allowing for feedback and discussion from readers in the same Web pages that the paper is presented in. The journal Monist carried out an early experiment in interactive journal publishing. Many current publications provide for reader feedback and discussion. Newsletter readers and all APA members will benefit amply by an interactive publication.

Content flexibility: When readers react, authors discover reasons to revise their work. Online publications allow for content revision and version control. The paradigm case of flexible content in an online publication is the Stanford Encyclopedia of Philosophy. Editor Ed Zalta asserts that a main purpose of the online encyclopedia is to provide a solution to the currency problem that many print publications have. The solution is “a dynamic encyclopedia which gives the authors direct access to their entries and the means to update them whenever it is needed, and which does so without sacrificing the quality of the entries.” Online newsletters with author driven flexible content and version control will add to the quality of the content by allowing authors to correct errors and update their work indefinitely.

Content management: The costs of maintaining a high-quality online publication can be mitigated by using content management software. Open Journal Systems of the Public Knowledge Project, University of British Columbia is a sophisticated open source program (i.e., available at no cost) that supports the style and management of an online publication. The features of this well-designed tool include: online submission of articles by authors, managing and tracking the publication’s sections and structure, managing and tracking the editorial and review process, automated indexing of published articles with metadata marking for library searching, maintenance of subscription email lists for editors with automatic mailing of a notice with the contents of the current issue upon publication. Such software focuses the editorial effort where it belongs, on content decisions, rather than web design and production questions.

Numerous content management systems are available for different purposes. For example, phpWebSite from the Web Technology Group at Appalachian State University is a sophisticated, yet highly usable website production system with which a variety of utilities useful to online publications (e.g., discussion forums, group memberships, image galleries, etc.). Many other general use and specialty content management systems are available at SourceForge.net. These software package are all Open Source which means that they are developed collaboratively and free of charge (sustaining donations are accepted).

Open access: The attractive potential of using Open Source content management software to produce and administer APA Newsletters online raises a related issue about who is allowed to read them. I maintain that the APA membership would benefit by making these publications openly available across the disciplines and around the world.

The physical sciences, medicine, and the social sciences are currently engaged in a discourse about open access and proprietary publishing. The concerns about academic publishing are partly in response to the “serials crisis”; the attrition of serial publications purchased by libraries due to steeply rising costs of subscription. Another factor in academic publication is that scholarly authors typically offer up their articles to journals for free with the result that future access to the pieces by the authors and colleagues can only be had by paying (sometimes exorbitant) fees.
The Open Access movement is a global effort led by academics who envision electronic publishing as a means to low-production costs and free access to scholarly output. Peter Suber is a leader in the Open Access movement, as well as a contributor to this Newsletter. Suber describes the advantages of Open Access to academic authors:

Compared to print, the Internet lets us achieve wider distribution and lower costs at the same time. That’s a very good reason to use it. But the internet doesn’t itself remove the price and permission barriers that restrict access today. These are removed by the will of the author or copyright holder. We scholars are likely to consent to open access for journal articles because we are not paid for them. We write them in order to make a contribution to our fields, and thereby to make a contribution to our careers. We are paid by our employers to make this kind of contribution to knowledge, which compensates us even when only a handful of people around the world care to read what we’ve written. When we consent to open access, we increase the size of our audience and the impact of our work. But we don’t lose any revenue. So we have everything to gain and nothing to lose.9

Making the APA Newsletters open-access works will benefit the contributing authors, the global philosophical community, the areas of concentration in the Newsletters, and the association as well.

Open access newsletter publishing is the rule rather than exception among high-quality professional association websites. Some large associations also have journals, some of which are positioned as benefits to members. Newsletters, however, are typically available to everyone. Academia and the professions provide many excellent models, such as Perspectives of the American Historical Association,10 various newsletters of the American Psychological Association,11 Academe of the American Association of University Professors,12 Footnotes of the American Sociological Association,13 Spectrum of the Institute of Electrical and Electronics Engineers.14

The Ethics of Association

There is a strong ethical case to be made for open access to APA Newsletters.

1. The APA is an association—that is, individuals connected by common interests.

2. The APA Constitution specifies the common interests in its statement of purpose: “The purposes of The American Philosophical Association shall be to promote the exchange of ideas among philosophers, to encourage creative and scholarly activity in philosophy, and to facilitate the professional work of teachers of philosophy.”15

3. The APA Newsletters are implementations that serve APAs’s purpose.16

4. This purpose is advanced by facilitating the widest range of exchange of ideas. If it is possible to exchange those ideas globally, then it is in the interest of the association to do so. Indeed, APA members do have global concerns and relationships. Limiting the APA Newsletters to members of the American (U.S.) association is not based in the principles of the APA Constitution and By Laws.

5. Online publication offers the potential for a global open access and interaction.

6. It is in the interest of the association of APA members to have globally open access newsletters with interactive forums.

7. So, the APA Newsletters should be Open Access globally and should seek to develop open interactive forums.

This case is further strengthened by the ethical standards of contemporary discourse. In a forward-looking article, Charles Ess details how computer networks, especially those employing hypertext (e.g. the World Wide Web) embody design aspects that parallel the theories of discourse ethics of Jurgen Habermas and Robert Alexy.17 The publically available World Wide Web was not yet one-year old when Ess published this piece, yet he clearly describes the potential for online systems in which democratic discourse could thrive:

Such a system would facilitate discourse among a diversity of grass-roots communities that might agree, by way of the same form of discourse upon different norms, and thereby preserve individual and cultural differences.18

That is, it serves the interests of a community to have open communications outside of its own membership. The APA is such a community. An inclusive, rather than an exclusive, stance is most beneficial to the association.

This discourse must further be free from other forms of social coercion—the subtle but powerful cues of hierarchy, status, gender, and so on.19

Several of the APA Newsletters deal specifically with issues of social coercion, hierarchy, and power. The Newsletter on Philosophy and Computers includes inquiries into how information technology may affect social structures of power. Producing the APA Newsletters as openly accessible to all with forums for interactive discourse is consistent with the APA Constitution, contemporary practices of professional associations, effective uses of available technology, and the principles of ethical discourse within a diverse community. I hope that we head there soon. It will help get us outside of the margins.

Endnotes


16. Ibid.


18. Ibid., 251.

19. Ibid., 252.

References


This issue of the Newsletter highlights the varying contributions of Iberian, Latina, Hispanic, and Chicana feminist philosophers and might profitably be read together with the APA Newsletter on Hispanic/Latino Issues in Philosophy edited by Eduardo Mendieta.

The three invited articles include “Philosophical Women of Early Modern Iberia” by Joan Gibson, “Public Philosophy and Feminist Gain in South America” by Amy Oliver, and “Chicana Feminisms and Lived Theory” by Jane Duran. Gibson explores some of the possible roots of Hispanic philosophy by looking at Iberian philosophers of the early modern period. She offers a fascinating look into the literature and culture of the period while also making an important contribution to our study of the history of philosophy. Gibson scrutinizes texts by female authors as well as texts about feminine deportment and morality.

Amy Oliver’s article takes us to Uruguay in the early part of the twentieth century. She recovers and analyzes some of the feminist insights from Carlos Vaz Ferreira and offers an original translation to part of his Sobre feminismo (On Feminism). As Oliver explains, “many of the ideas of this seminal Latin American social thinker and his provocative study of gender and family...appear as timely and universal today as they did when first delivered in Uruguay beginning in 1914.”

Jane Duran situates her article within the larger project of global feminist theory and emphasizes both the history and the contemporary relevance of certain facets of Chicana/Mexicana feminism. In particular, Duran discusses the “resuscitation of La Malinche” and the “predominance of metaphors surrounding the Virgen.” Her discussion also brings to light the invaluable work of Gloria Anzaldúa, who died earlier this year. In addition to her contributions to Chicana philosophy, Anzaldúa was a powerful force in publicizing the innovative work of diverse feminist scholars in her two co-edited collections, which form the basis of the review essay by Viki Soady.

Soady’s review, “Anzaldúa and the ‘Bridge’ as Home: Healing the Ruptures of Reason: *This Bridge We Call Home: Radical Visions for Transformation*,” presents the essays, memoirs, and poems of *This Bridge We Call Home* in light of the groundbreaking earlier collection *This Bridge Called My Back*. The juxtaposition of the two books, which share many of the same contributors, accentuates the work that still needs to be done for global feminism. Anzaldúa challenges readers to accept a new epistemological project that rejects dualisms and distancing in favor of “the possibility of wholeness.” This new perspective—the new project—is necessarily collective, and the contributions to the two *Bridge* volumes demonstrate both the hazards of the old view and the potential of the new.

This issue of the Newsletter is rounded out with two compelling book reviews. The first is a review of Jane Duran’s *Worlds of Knowing: Global Feminist Epistemologies* by Catherine Hundleby. Like Anzaldúa, Duran has outlined a new epistemological project that considers the lived experiences of women throughout the world—including women from Mexico and Latin America. Hundleby offers an insightful analysis of Duran’s methodology and stresses the myriad strengths of Duran’s work. The second book review is a review of The Subject of Care: Feminist Perspectives on Dependency edited by Eva Feder Kittay and Ellen Feder. The review, by Lucinda Peach, summarizes and analyzes the various essays in the collection with an eye toward the influence of traditional women’s roles (as highlighted also in the articles by Oliver and Duran as well as Hundleby’s review) on philosophical thinking on “dependency.” In addition, Peach shows how certain of the essays participate in the larger discussions on global feminism that form a current running through all of the contributions to this issue of the Newsletter.

If you have an idea for a future issue of the APA Newsletter on Feminism and Philosophy, please contact the editor. As this issue demonstrates, the different meanings of feminist philosophy span multiple traditions and methodologies. The Newsletter is an excellent forum to give those diverse views a voice.

**About the Newsletter on Feminism and Philosophy**

The Newsletter on Feminism and Philosophy is sponsored by the APA Committee on the Status of Women (CSW). The Newsletter is designed to provide an introduction to recent philosophical work that addresses issues of gender. None of the varied philosophical views presented by authors of Newsletter articles necessarily reflect the views of any or all of the members of the Committee on the Status of Women, including the editor(s) of the Newsletter, nor does the committee advocate any particular type of feminist philosophy. We advocate only that serious philosophical attention be given to issues of gender, and that claims of gender bias in philosophy receive full and fair consideration.

**Submission Guidelines and Information**

1. **Purpose:** The purpose of the Newsletter is to publish information about the status of women in philosophy and to make the resources of feminist philosophy more widely available. The Newsletter contains discussions of recent developments in feminist philosophy and related work in other disciplines, literature overviews and book reviews, suggestions for eliminating gender bias in the traditional philosophy curriculum, and reflections on feminist pedagogy. It also informs the profession about the work of the APA Committee on the Status of Women. Articles submitted to the Newsletter should
be limited to 10 double-spaced pages and must follow the APA guidelines for gender-neutral language. Please submit four copies of essays, prepared for anonymous review. References should follow The Chicago Manual of Style.

2. Book Reviews and Reviewers: If you have published a book that is appropriate for review in the Newsletter, please have your publisher send us a copy of your book. We are always in need of book reviewers. To volunteer to review books (or some particularly book), please send to the Editor a CV and letter of interest, including mention of your areas of research and teaching.

3. Where to Send Things: Please send all articles, comments, suggestions, books, and other communications to the Editor: Dr. Sally J. Scholz, Department of Philosophy, Villanova University, 800 Lancaster Avenue, Villanova, PA 19085-1699, sally.scholz@villanova.edu

4. Submission Deadlines: Submissions for Spring issues are due by the preceding September 1st; submissions for Fall issues are due by the preceding July 1.

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**NEWS FROM THE COMMITTEE ON THE STATUS OF WOMEN**

**Report from the Chair**

Since last reporting to you in this Newsletter, the CSW has been very busy. As you will recall, the panel members at the 2003 APA Eastern Division Meeting in Washington, D.C. challenged the CSW and all the women in the profession to “open a discussion about the institutional marginality and encapsulation of feminist philosophy within professional philosophy, and about the link between the position of feminist philosophy and low representation of women in the field” (Margaret Urban Walker, “Diotima’s Ghost: Contribution to a Panel on Women Philosophers, Sidelineled Challenges, and Professional Philosophy,” APA Eastern Division Meeting, 2003). That discussion was opened, and some of the results of it will be heard at the two CSW panels Sally Scholz has organized for the 2004 APA Eastern Division Meeting in Boston. One is entitled, “The Different Meanings of ‘Feminist Philosophy,’” and the other is called, “Feminists Connecting across Generations.” We hope that the sessions will be well attended so that we can gain greater clarity on matters of interest to the women in our profession.

Most of the members of the CSW were able to make either the Pacific Meeting in Pasadena or the Central meeting in Chicago. We held long meetings at both of these locations; but before I report on these meetings, I cannot resist mentioning the excellent quality of the Pacific Panel on the innovative work of Michèle Le Doeuff and the Central Panel on the timely issue of “Making Peace in Time of War.” Organized by Lorraine Code and Charlene Haddock Seigfreid respectively, these two panels demonstrated that women in the profession are as skilled at developing new theories (e.g., LeDoeuff’s The Sex of Knowledge in which she presents the philosophy of the “unthought”) as they are at analyzing pressing matters of public policy (e.g., the war in Iraq and “terrorism” in general and the troubling image of “Private Jessica Lynch” in particular). I left these panels energized and inspired by the collective brilliance and passion of the women in the profession of philosophy.

The CSW meetings held in Pasadena and Chicago were, as I suggested above, very productive. Among the matters we discussed, endorsed, enacted, and/or implemented were the following:

First, we endorsed a statement on inclusiveness forwarded by Lucius T. Outlaw to the Executive Board on behalf of the Committee on Inclusiveness. The statement read in part as follows:

(A) Increasing the numbers and respected presence of persons from groups that have historically been subjected to invidious discrimination. These groups include, but are not limited to, disabled persons; persons of African descent; American Indians; Asians and Asian Americans; Hispanics and Latinos/as; Jews; persons of Middle Eastern descent; multiracial persons; lesbian, gay, bisexual, and transgender persons; women.

(B) Recognizing and supporting the development of scholarly philosophical research, teaching service, and professional activity pertaining to the concerns of these groups.

Note that this statement is a work in progress and that it will be further developed and implemented by Joan Callahan, the incoming Chair of the Committee on Inclusiveness.

Second, we developed four ideas for large-scale projects we believe are worthy of external funding as the APA heads into a major fundraising campaign. Among these ideas (a full list is available from me) was one for a conference to address the role of women in philosophy. The purpose of the conference would be to provide a forum for women who do philosophy to voice their concerns about the practice of philosophy in general and about their role and status in the profession of philosophy in particular:

1. The number, rank, age, race/ethnicity/nation of origin of women in philosophy,
2. The areas of specialization and competence of women in philosophy,
3. The need for women in philosophy to strengthen networking and mentoring efforts,
4. The ways in which women philosophers have contributed to the development and transformation of the discipline of philosophy in the twentieth and twenty-first centuries,
5. The ways in which women do philosophy in disciplines other than philosophy and outside the academy’s boundaries,
6. The relationship between doing feminist philosophy and being a woman in philosophy (to what extent are there correlations? disjunctions?),
7. The relationship between feminist philosophy and the kinds of philosophy done by/represented by the APA diversity committees,
8. The relationship between U.S. women philosophers and women philosophers in other nations, particularly developing nations.

Third, we lamented the lack of good data about the status of women in the profession. In 1994, the CSW published a report on the status of women in the profession, but the results of this report were limited because, frankly speaking, a group such as the CSW does not have the time, expertise, resources, or funds to do high-quality empirical research. More recently the APA has published a report on the status of the profession but that report is also partial and provisional in nature due to the fact the only a relatively small number of philosophers

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filled out the questionnaire upon which the report’s full success hinged. Significantly, it was the data issue, more than any other single issue that led us to write a letter of support for the National Board’s Proposed Amendments to the APA By-laws. We addressed the letter, which is posted on the CSW Web page, to Peter A. French, Chair of the Committee on the Status and Future of the Profession. In part it read:

What seems to still be at issue among some of the members of the Divisions is the balance of powers and of responsibilities of the National Office relative to the Divisions. It seems to us that two competing views of the APA emerge from the disagreement: (1) that the APA is essentially a loose confederation of Divisions, the primary purpose of which is to promote opportunities for members to meet regionally and exchange ideas—a sort of scholarly or learned society; and, (2) that the APA is a more centrally coherent and unified organization that actively promotes its members’ professional interests in addition to those of organized scholarly exchanges—more like a professional organization.

For a multiplicity of reasons, including data gathering, the CSW supports the latter view of the APA and would welcome your reaction to our current position.

Fourth, we focused on the fact that some problems for women in the profession never go away. Recently, we discovered several large boxes of old CSW documents going back to 1980. We are currently sorting through those boxes and will post some of the results on the Web page, the updating of which remains a CSW priority. Among the documents are ones labeled: nonexist language, sexual harassment, professional harassment, sexual orientation, hiring, promotion, retention problems, childcare (lack thereof), and data (lack thereof). Clearly, progress for women in the profession is oftentimes slowed by the fact that women are, after all, women with the problems and challenges that typically befall women in societies structured as ours.

Fifth, we realized the CSW needs better means of communication between it and The Association for Feminist Ethics and Social Theory (FEAST), Society for Women in Philosophy (SWIP), Feminist Approaches to Bioethics (FAB), and so forth. We welcome suggestions on other groups with which we should be better connected. We are also interested in ideas about how to develop a manageable communications system aimed at coordinating events, avoiding “wheel reinventing,” minimizing confusion, and harnessing collective energies.

Sixth, we worried a great deal about the number of women in the profession who, for one reason or another, are not members of the APA, and who, for this reason, may not be as “plugged into” the multiple networkings APA membership makes possible. In this connection, we also worried about the “classism” within the profession: oftentimes data gathering privileges schools with graduate programs over ones that do not have graduate programs, and four-year colleges are focused on to a degree that two-year colleges are not. Moreover, many “part-timers” and/or non-tenured philosophers are lost in the shuffle of the profession. This state of affairs is unfortunate for many reasons not the least being that we suspect that many women in the profession are located in the outposts of the profession. Our concern is that many women in the profession remain unrecognized, under-appreciated, or otherwise neglected.

Seventh, and on a happier note, we celebrated all of the accomplishments of women in our profession, vowing to work harder with the other APA diversity committees (Committee on American Indians in Philosophy, Committee on the Status of Asian and Asian-American Philosophers and Philosophies, Committee on Blacks in Philosophy, Committee on Hispanics, Committee on Inclusiveness, and the Committee on the Status of Lesbian, Gay, Bisexual, and Transgender People in the Profession) to transform our profession—to make it more open to multiple views, and to make it more proactive in addressing our world’s pressing concerns.

The CSW looks forward to hearing from you. We need your help to improve the status of women in the profession. Please get in touch with us with your ideas and suggestions. Appreciatively,

Rosie Tong

ARTICLES

Philosophical Women of Early Modern Iberia

Joan Gibson
York University–Toronto

The history of philosophy acknowledges very few women philosophers before about the eighteenth century. Among these few, perhaps the only philosophically trained Hispanic woman generally known is the Mexican nun, Sor Juana, whose most explicitly philosophical work—a treatise on logic—is lost. The remaining, more literary, works are also richly philosophically informed. Her audacity in doing philosophy, and in incorporating it into such diverse genres, may appear without antecedents; but an understanding of sixteenth and seventeenth Iberian precedents can provide a background for the positive reception her learning received at the vice-regal courts. There had been earlier women, often associated with the Spanish and Portuguese royal courts and most noble houses. In these courts and nearby convents, they displayed publicly their mastery of philosophical material. Several of them also combined philosophical and literary interests as did Sor Juana. The memory of their accomplishments, attained and displayed close to centers of power, could have encouraged the vice-regal patronage which Sor Juana enjoyed. Other women, who like Sor Juana began as much more modestly placed, also studied and wrote or debated philosophically.

It is often assumed that there were few women in continental Iberia who had the prerequisite education to pursue philosophy especially since, by the seventeenth century, women’s education had declined considerably there. Additionally, it may be thought that any women philosophers at the time would be found primarily among those intellectual women writing in the vernacular tradition of Platonic poems and treatises on love. But however true this may have been elsewhere on the continent, vernacular Platonism was not an especially popular genre for women on the peninsula. Few took up the challenge of Pietro Bembo’s rhapsodic evocation of Platonic love in the closing pages of Balthasar Castiglione’s Book of the Courtier (1528). Nevertheless, learned women, including female philosophers, were unusually prominent in Early Modern Iberian courts and convents, although following a different path. One difference lies in how Spanish and Portuguese women used their language skills.
The ability to read Latin was a prerequisite for serious study of most forms of philosophy. Latin was by far the most common language of philosophy, and few philosophical works had been translated at this period. The number of such translations specifically into Spanish and Portuguese was very low. In an unpublished paper, Felipe Ruan and I documented over sixty Latinate Iberian women in the period from the end of the fifteenth century through the early years of the seventeenth. While this compares favorably with the known number of those with similar language skills documented in Italy and England, it appears that Iberian women had other ends in mind for their Latinity than the Italian and English women. For Spanish and Portuguese women, Latin was far less likely to be regarded as a social ornament or displayed in literary works. In the Iberian pattern, women were instead more apt to use Latin for reading, or for oral purposes rather than writing and to claim it for practical purposes. Among those practical purposes was the study and translation of scholarly material, some of which included philosophy. In both the humanistic and scholastic philosophical traditions, we can identify several philosophical women, and even specify some of their writings. Unfortunately, very little of their work is still extant to allow for more detailed analysis, and the current evidence is tantalizing as to what has been lost.

The study of ethics provides a particularly important area of study for women and philosophy. It is important to remember that in early modern texts, when the term “philosophy” occurs without a modifier, it should generally be understood as “moral philosophy,” and this was the form under which philosophy was most widely studied by both men and women. Given the profound concern with women’s virtue in the period, moral philosophy was especially prominent among women philosophers. In the humanist tradition, ethics had been refocused on issues of practical concerns, rather than on speculative ethics, and in particular on the obligations, temptations, and moral permissions of various estates of life. For women, notions of virtue were central to both decorous and moral behavior, and both were circumscribed by an insistent prescription of chastity, silence, and obedience, as suitable to the roles of daughter, wife and widow. Such emphases were scarcely new, having been a staple of popular ethics from the classical period and throughout the Middle Ages, as they were compatible with, and occasionally reinforced by, pagan standards of decorum and virtue for women.

Early modern humanists readily drew on Christian exhortation based in Latin patristics to address ethics across a range of topics, mixing it with the works of the Roman moralists and the neo-stoics. Ethical dilemmas which arose were discussed in a wide range of literary genres as well as in narrowly philosophical treatises. A thorough grounding in the Latin authors, such as Cicero, or—especially for the Spanish— their native son, Seneca, was thus a foundation of politico/ethical thought. This training was shared, for example, by powerful women such as Queen Isabel and her daughters, as well as by various Hapsburg women regents, who were approaching the task of rulership, and needed to read such staples of ethical/political theory as the mirrors of princes.

It is possible that a broadly moral philosophy was the basis for the ambiguous claim that Lucía de Medrano (?-d. 1531), whose conversation with a wide circle of learned men was said to be “like that of a very wise philosopher.” She was a member of the very large and powerful Mendoza family who were distinguished for producing scholars as well as warriors, in both the male and female line. Íñigo López de Mendoza, second Count of Tendilla, had provided for both his daughters an extensive education in Latin and Greek. María was well-learned in mathematics, and medicine, history, poetry and Holy Scripture. In 1521, she led the resistance of the Toledo commune against Charles the V for nine months after her husband, Juan de Padilla, was captured and decapitated. When she soon decamped for Portugal shortly thereafter, she was accompanied by a long-time member of her entourage, Diego Sigeo, father of Luisa Sigea, a highly philosophical woman. Sigeo père subsequently served the leading family of Portugal, the Dukes of Braganza, before eventually joining his daughters, Luisa and Angela, at the royal court.

Luisa Sigea (1522-1560) served for over a dozen years in the household of the Infanta D. Maria (1521-1577), half-sister of the Portuguese King, João III. The Infanta was an extremely intelligent, virtuous, and charitable woman, a noted patron of the arts and letters who was said to be well-versed in history and the arts and sciences and was a generous patron of learning. Her court became legendary as the Academy of the Infanta, for the number of educated and talented women and men who attended there. It was to her that Luisa Sigea, a widely known and highly praised polyglot and poet, dedicated a Latin dialogue in1552, The conversation of two young women on life at court and private life (Duarum virginum colloquium de vita aulica et privata) is the most extended piece of Latin philosophical writing left to us by an Iberian woman of the period, and Sigea is one of only two women whose extant work allows us to examine their philosophical interests. The introduction to the dialogue interestingly places it firmly in the context of a female (dare I say feminist) readership, alongside male readers. The dialogue takes up issues of personal morality and its intersections with public life in a manner similar to the male-centred dialogues of Balthasar Castiglione (1528) and Thomas More (1516). No woman I am aware of had publicly addressed both politics and women’s virtue since Christine de Pisan (1365-ca.1429).

To present her views, Sigea chose the genre of dialogue, newly revived from its classical precedents and enjoying a huge popularity from the fifteenth century through at least the eighteenth. Situated between rhetoric and dialectic, the dialogue form was especially appreciated for its ability to debate the practical problems of correct behavior within evolving social structures. Sigea’s is among the earliest known dialogues in which a woman makes use of the form. Only one woman had preceded her, the courteous Tullia d’Aragona (c1510-1556) whose 1547 Italian treatise on the infinity of love (Dialogo della infinità d’amore) is cast within the tradition of philosophical discourses on the nature of love.

Sigea’s dialogue situates itself between the issues of Castiglione’s Book of the Courtier and Cicero’s Tusculan Disputations (44 BCE). It begins as a discussion of early modern court life, as seen from the perspective of a woman courtier and finishes as a debate on the nature of the good life, with the contesting claims of the active and contemplative, the public and the private life. Her characters are Blesilla and Flaminia, who are enjoying a three-day retreat in a countryside villa, situated between the rustic and the urban or courtly. As the full title tells us, both participants are as noble as they are learned, and each displays both qualities in urging the pursuit of virtue within a different form of life. Blesilla, the elder of
the two young women, has retired from her former life at court to seek studious leisure. Her friend, Flaminia, is still in service and enjoys its liveliness, although she finds it sometimes tiring. She does not share a taste for what she terms Blesilla’s “philosolitude,” relishing instead, the ability to pass between the two worlds at will. Their individual characters pervade their approach to the choices they make: Blesilla is somewhat austere, and Flaminia more lighthearted and sociable.

Sigea assigns to her two protagonists a highly complex rhetorical performance. In her preface, Sigea claims that she will examine and attack the opinions of her two young women by testing them against the opinions of the wisest of men. In a virtuoso display, her characters then exchange over 472 citations taken directly from a formidable array of pagan and Christian authors. Both intersperse Greek and Hebrew quotations into the Latin text. Each uses material from the same author to respond to points made by the other. Neither ever indicates that this is unusual behavior for young court ladies. They call attention to their own acts of speaking, and invoke the standard of reason and philosophy as their ground, guide, and arbiter. Several times they indicate that each must decide a point for herself, or choose her own style of life. These moves, especially when combined with the practice of refuting each other with words drawn from the author just cited on the opposite side, reverses the announced strategy of testing the young women against the opinions of their authorities. Rather, it stresses the extent to which they are their own authorities, and that it is their own debate, not one between competing authorities, which is in issue. Blesilla dominates the dialogue throughout their own debate, not one between competing authorities, to their extent to which they are their own authorities, and that it is

Although Sigea penned the only remaining philosophical work produced at the Portuguese court, she was not the only philosophical woman there nor was she even the only one writing. Two nieces of King João III (r. 1521-1557), D. Maria, (1538-1577), and D. Catarina (1540-1614) were raised at the court of his sister the Infanta’s Maria. Both girls knew Latin, and Maria was said to have known mathematics, natural philosophy, and theology—for which philosophy was generally prerequisite. A lost treatise on The Opinions of the Holy Fathers is attributed to her. After Catarina wed her cousin, João, the Duke of Braganza, she continued an active involvement in Portuguese intellectual life from their palace, Vila Viçosa, near Lisbon. Catarina became the patroness of another learned Portuguese woman, Hortensia Publia de Castro, (c.1548-?) who eventually became a nun in Évora. De Castro is reputed to have dressed as a boy to study humanities and philosophy at university and to have defended philosophical and theological theses at the University of Évora. She took part in a public disputation on Aristotle when she was only seventeen. She was especially renowned for her command of rhetoric and Aristotelian philosophy. De Castro is said to have debated publicly before kings, princes, and ambassadors, and even to have become something of a tourist attraction. None of her dialogues on religion and philosophy, her poems, or her letters are extant. There remain only eight psalms that she translated into Portuguese for the Duchess Catarina.

De Castro’s Aristotelian background is significant since serious academic philosophy remained closely tied not only to Latin and Greek authors, but especially to the neoscholastic Aristotelian tradition. Spanish logicians of the sixteenth century played a leading role in the neoscholastic revival in Paris centered around the College de Montaigu, where Sigea’s father and other Spanish and Portuguese court humanists had been educated, and who, in turn, educated their children and the children of their patrons. It may not be coincidental that Iberian women philosophers are unusually active in that area of philosophy. Although sometimes disputed, a work entitled Notas y commentarios sobre Aristoteles is attributed to “La Latina,” the famous Latinist Beatriz Galindo (?1465/1475-1535), associated with the court of Isabel the Catholic.

Even the noted Spanish humanist, Juan Luis Vives had undertaken an intense, and originally enthusiastic, apprenticeship in scholastic philosophy in his Paris years. He was able to bring both his early training and his later reservations to bear in his long and close friendship with Mencia de Mendoza (1509-1554), who was his pupil and correspondent. As another granddaughter of the Marquis of Santillana, Mencia was a first cousin to María Pacheco and her sister. Unlike them, however, she did not begin serious studies in her youth, though she amply recouped lost ground as an adult. Vives spent several years near her estates in Nassau, perfecting her Latin, and composing several works there. His immensely popular dialogues to help students learn Latin (Exercitatio linguae latinae, 1538) and the commentary on Vergil’s Bucolics (In Bucolicæ Vergili interpres, 1537) may have been composed for her. His review and critique of Aristotle, the Censura de Aristotelis operibus (1538) was also probably influenced by her interests.

Another particularly interesting example of a scholastic woman philosopher is the famous Isabel Joya, a woman with an extraordinary reputation for oratory and learning (Serrano y Sanz, 1.386). She seems to have been born in Barcelona near the end of the fifteenth or the beginning of the sixteenth century, but little else is known about her origins. She had received a humanist education, but also knew scholastic philosophy well, and was especially drawn to the work of Duns Scotus (c.1265-1308). Isabel felt a mission to convert the Jews.

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and wished to become a Jesuit to further that end. As part of that plan, she went to Rome in 1543, accompanied by a number of other women of Barcelona. Although they were not finally admitted into the Company of Jesus, Isabel argued Scotistic doctrines in philosophy and theology while in Rome before an assembly of cardinals, and stayed on to co-found the fraternity of the Blood of Christ. A similar theological examination on Scottus is also attributed to her companion Isabel Roser by Guillaume Postel, the French humanist, in his Très merveilleuses victoires des Femmes (1553), where it is located just after his lavish praise of Luisa Sigea.

To Oliva Sabuco, (c.1562-1762) is attributed a lengthy treatise, The New Philosophy of Human Nature Not Known and not Reached by the Ancient Philosophers that Improves Human Life and Health (Nueva Filosofía), on medicine and medical philosophy, in which she explores extensively the relationship between emotional and bodily health. In the course of her work, she also broaches political philosophy, arguing for the state as a macrocosm of the individual, and commenting on a wide range of moral and practical topics, including the legal system and the contemporary educational system. Her stance is resolutely anti-Aristotelian, and the work included two brief discussions in Latin, one on human nature, and the other on the true philosophy.

The last figure to be mentioned was another international prodigy famed for her mastery of over a dozen languages. Juliana Morella was born in Barcelona in 1594, and studied with the Dominican nuns there at a very tender age after her mother’s death. At eight, she accompanied her father when he fled to his native France to escape a charge of murder, and continued her studies there. When she was twelve, she gave a public defense of theses in ethics and dialectics Summa Cum Laude, dedicating them to the Queen of Spain. She added to her knowledge of these subjects, rhetoric, music, physics, metaphysics and canon and civil law, which she again defended publicly at Avignon in 1608. Shortly after, she entered a Dominican convent in Avignon, where she lead an exemplary life until her death in 1653. Her writings included a translation with commentary and notes of Vincent Ferrer’s Vita Spiritualis, a French translation of the Rule of St. Augustin with additions (Avignon, 1680), and three hundred Latin poems on pious matters.

It is extremely unfortunate that so little remains of the work of these early Iberian philosophers, and that even their names are not so widely known as they once were. Their fame for learning is well attested among their contemporaries and for the next few generations, in letters, memorial verses, and the books of praise of famous women. Juan Pérez de Moya (1513-1596) was the author of one such catalogue, which lists fifteen women learned in Latin and Greek including some names are not so widely known as they once were. Their trail how the women philosophers of early-modern Iberia acquired their philosophical training. But it is good to know that the trail they opened, though long obscured, has been re-opened to their descendants.

Endnotes

1. An earlier version of this work was delivered at the Xth International Symposium of Women Philosophers, Barcelona, 2000.
5. Ibid., 341.
7. For an overview of the Infanta’s court, see Carolina Michælës de Vasconcelos, A Infanta D. Maria de Portugal (1521-1577) e suas Damas (1902, reprint, with preface by Américo da Costa Ramalho, Lisbon: Biblioteca Nacional de Lisboa, 1983). Though she has been corrected in many details, I am grateful for her introduction to the court.
10. Vasconcelos, 46.
11. Selvagem (10) believes she studied at the University of Coimbra, while Costa (110, 134-44) places her at Salamanca. Pinto (168) doubts that she actually attended at all. Carlos Selvagem, Cultura portuguesa Vol. 6 (Lisbon: Empreza Nacional de Publicidade, 1971), Sousa Costa, Dona Catarina, duquesa de Bragança: rainha de Portugal à face do direito (Lisbon: Fundaçao da Casa de Bragança, 1958), and Carla Allerés Pinto, A Infanta Dona Maria de Portugal (1521-1577): o mecanato de uma princesa renacentista (Lisboa: Fudaçao Oriente, 1998).
13. Vasconcelos, 112.
17. I have not been able to examine this work personally. The most extensive work on Sabuco has been by Mary Ellen Waiithe and Maria E. Vintrro. Their research has done much to call into question a reattribution of the treatise to her father, Miguel Sabuco, and restore Oliva to the position as author, which she held for over 300 years. Maria E. Vintrro, “Oliva Sabuco” http://sabuco.org/ and Mary Ellen Waiithe, “Oliva Sabuco de Nantes Barrera,” in A History of Women Philosophers. Vol. II, Medieval, Renaissance and Enlightenment Women Philosophers, ed. Mary Ellen Waiithe (Boston: Kluwer, 1989).

18. The two Dictae Breviae have been translated from Latin by Angel Zorita and Mary Ellen Waiithe. These opuscula are scheduled for publication along with Sabuco’s treatise on the true medicine.


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**Public Philosophy and Feminist Gain in South America**

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Public philosophy is comparatively more widely practiced in Latin America where philosophers often play a more public role in several ways. For example, they deliver lectures and participate in panel discussions that are well attended by academics and the general public. Philosophers in Latin America regularly contribute long essays to newspapers as academics and the general public. Philosophers in Latin America where philosophers often play a more public role in several ways. For example, they deliver lectures and participate in panel discussions that are well attended by academics and the general public. Philosophers in Latin America regularly contribute long essays to newspapers as academics and the general public.

In Latin America, many universities have an “autonomous” status that is denoted in their name partly because they are perceived to play a socially valuable role as providers of independent or alternative perspectives on crucial issues of the day and in cultural preservation. In the early part of the twentieth century, many philosophers in Latin America were especially active participants in public discourse.

In the case of Uruguay, on which I will focus in this essay, intellectuals in general, and philosophers in particular, were an esteemed and integrated part of society. In addition to their frequent public lectures and writings in daily newspapers, they often spoke before the legislature. Beyond their university responsibilities, their role was to engage the public and to help sort out the cultural issues that kept Montevideo abuzz with activity.

Feminist philosophy that would still be considered theoretically rich today was written in Batllist Uruguay, by, among others, the major Uruguayan social philosopher, Carlos Vaz Ferreira (1871-1958). Vaz Ferreira was a pioneer in feminist theory, and his impact and feminist projects together demonstrate a telling lesson about feminism in Latin America. His writings and feminist political stance had significant impact on women’s rights throughout Latin America.

Many of the ideas of this seminal Latin American social thinker and his provocative study of gender and family arguably appear as timely and universal today as they did when first delivered in Uruguay beginning in 1914. Sobre feminismo (On Feminism) is primarily concerned with examining “factual” differences between the sexes and with “normative” issues such as the political and civil rights of women, the social life of women, and the organization of the family within society. Vaz Ferreira analyzes the disproportion between the ideas and faculties of women and the scope that society allows to their activity. He advocates the right of women to participate in all that makes life valuable to the human being.

The ideas he expresses in Sobre feminismo are poignant, relevant, and innovative in light of contemporary social debates throughout the Americas: “His point of view, imparted through his university professorship, the press, and Parliament, essentially becomes official doctrine about women, and it gains wide acceptance throughout society.”

In terms of content and tone, and, more significantly, impact on elite thinking, the English-speaking counterpart of Sobre feminismo may be John Stuart Mill’s The Subjection of Women, written in 1869. Sobre feminismo, however, reflects social changes that could be expected more than a half-century later. Vaz Ferreira’s early influence on the suffrage movement was significant, and his contributions are especially noteworthy given that Hispanic men of his era, generally speaking, were not renowned for their progressive attitudes toward women. In Latin American intellectual circles in the early part of this century, one effect of pervasive machismo (and its complementary femininity) was to marginalize women so thoroughly that thought about gender and family roles could have more immediate, widespread impact when expressed by powerful men such as politicians or philosophers.

One of Latin America’s most influential social philosophers in the early-twentieth century, Vaz Ferreira’s complete works were collected in nineteen volumes and published in 1957 by the University Press of Montevideo. Although Living Logic (1920) and Fermentary (1938) are among his best-known works, and both have been translated into English and several other languages, his lesser-known essay on women, men, and their roles and rights within the family, Sobre feminismo, was first published in 1933, though it was written between 1914 and 1922, as segments of it were delivered as public lectures at the University of Montevideo where Vaz Ferreira was an internationally renowned professor. The lectures would likely have been published in book form much earlier than 1933 if the operations of the university press had not been suspended with some frequency. Subsequent Spanish-language editions of Sobre feminismo were published in 1945, 1957, and 1963.

Set within the Latin American experience, carefully examining Sobre feminismo has the advantage of building on a historically powerful document, one which presents cogent arguments against the marginalization of women, the infringement of their political rights, and the second-class status they experienced in marriage. Vaz Ferreira outlined a theory of cooperation between men and women that privileged monogamy, the family, and the equitable division of household tasks. He studied the ways in which pregnancy can be a disadvantage for women and suggested remedies to compensate for what he viewed as biological inequality. Well ahead of his time, Vaz Ferreira reflected on divorce, artificial insemination, and abortion.
Vaz Ferreira was a painstaking, self-consciously philosophical craftsman who clearly grappled with what “evidence” he could muster to support what was essentially cultural and social criticism of the intimate dealings of men and women. He was avid in applying the idea of avoiding contradiction, an insistence on philosophical probity not then expected in Latin American discourse about women’s roles. Some of his importance rests on just that point: he is considered a model of solid, anthropologically sensitive social philosophy.

Interestingly, the first printing of Sobre feminismo coincided with the year in which Uruguayan women’s suffrage was enacted. Since Uruguay was one of the first Latin American countries in which women’s suffrage was achieved, the lengthy gestation period and public lectures leading to the publication of the essay reveal both its timeliness within Uruguayan society and Vaz Ferreira’s role as an influential public thinker.

These dates are historically significant because they show that women and men have done systematic feminist thought in Latin America for nearly a century. The theories of Carlos Vaz Ferreira have not yet received the critical attention they deserve. In general, Sobre feminismo continues to be a relatively unknown work even in some militant circles in which European and North American analyses of the human condition in general, and feminism in particular, remain privileged and widely disseminated. One distinguishing feature of Vaz Ferreira’s work is that it includes analysis of justice for women within the context of the family, while many more contemporary theories of justice omit consideration of women in families. John Rawls, for example, in his well-known A Theory of Justice, did not address this problem. In the United States, women later published theories of justice that explicitly deal with the problem of the family.

Sobre feminismo is an analysis of the social situation of the woman “of flesh and bone,” in Miguel de Unamuno’s terms, in the context of “feminism” and “anti-feminism.” Vaz Ferreira explains, “those terms ‘feminism’ and ‘antifeminism,’ ‘feminist’ and ‘antifeminist,’ in reality, do more harm than good, and they complicate the many and sometimes enormous difficulties of the problems; they complicate them further with questions of words and with confusions derived from the words.” Vaz Ferreira believes that a false polarization is produced by the terms “feminism” and “antifeminism,” because there are people who believe that “we are the true feminists because we want to preserve the distinctive traits of the female sex. You want to make men of women; your true name ought to be ‘hominists’ and not ‘feminists’” (17).

According to Vaz Ferreira, the issues are neither this polarized nor this simple, and this kind of resentment impedes serious analysis of the truly agonic situation of modern woman. Nevertheless, considering the different connotations the word “feminism” has, the contemporary person sometimes runs the risk of being misunderstood when calling herself or himself a “feminist.” Vaz Ferreira recognizes the importance of clarifying language usage and, consequently, he tries to extract concrete meanings when discussing feminism. Still, he claimed, “if they want to call me a feminist, I will not contradict them.”

The best strategy, according to Vaz Ferreira, for confronting the problem of the social situation of women has two steps: 1) examining questions of fact, the possible questions about the similarities and differences between the two sexes; 2) examining normative problems. Vaz Ferreira distinguished factual questions from normative ones in his Living Logic (1910). Factual questions are those of knowledge and verification. Normative questions are those of action, preference, and choice. The second are most relevant to the condition of woman.

Among the questions of fact, of similarities and differences between the sexes, Vaz Ferreira maintains that there are debatable data and undebatable data. The undebatable fact that is most crucial and most radical for his time is: “From the union between a man and a woman, the woman can become pregnant; nothing happens to the man.” He argues, “Finding this fact to be satisfactory is to be ‘antifeminist.’”

For Vaz Ferreira, factual data are of three types: 1) biological, 2) physiological, and 3) psychological. Today, as in Vaz Ferreira’s day, one of the most debated issues is that of “the comparative intelligence of the two sexes, a special case in the category of comparative psychology.” In his treatment of the intelligence and mental aptitudes of women, Vaz Ferreira accepts the hypothesis that it could be verifiable that women might be less intelligent than men as he pondered why there have been no female Beethovens or Darwins, for example. This is the weakest point in his argument and one of the rare occasions when he fails to take socialization into account in ways we routinely use today when trying to explain differences between social groups and their roles.

More convincing is his treatment of normative problems in Sobre feminismo. The normative problems for Vaz Ferreira are: 1) a woman’s political rights; 2) a woman’s activity in society, her access to public office, her access to careers, professions, and education; 3) civil rights; and 4) the relations between the sexes and the organization of the family.

The central idea in his analysis of these problems is to maintain the difference between “feminism of equality” and “feminism of compensation.” “Feminism of equality,” according to Vaz Ferreira, is based on the idea that “jobs and careers should be open to women as they are to men; that women should have the same civil capacity as men, the same level of education; that, in general, the sexes should be equalized by diminishing the difference between them and by placing women in the same situation as men, making them more like men.” For Vaz Ferreira, “feminism of equality” does not merit much attention because of the mere fact that women are biologically mistreated by the likelihood of pregnancy in their unions with men and, therefore, to speak of “equalization” is not possible. He writes, “To ignore it (that women can become pregnant as a result of sexual relations) is to be a common feminist, one who thinks of equality. To keep in mind this fact (pregnancy), to feel that some of its effects are painful and unjust, and to seek compensation for them—which could involve equalizing or unequalizing, depending on the issue—would be the true and good feminism.” For Vaz Ferreira, the only acceptable feminism is that of “compensation,” which is based on the idea that society must compensate physiological injustice, given that equalizing it will never be possible and that attempting equalization would be counterproductive. For Vaz Ferreira, “Antifeminism takes as its guide that fact (women’s biological disadvantage). Bad feminism does not even take it into account. Good feminism strives to correct it and compensate for it.”

With respect to the civil and political rights of women and the social participation of women, Vaz Ferreira, working with many others, had a decisive impact in favor of women in the Uruguayan legislature. Suffrage in Uruguay was enacted in 1933, following the United States (1920) and Ecuador (1929), and before many European countries.

Vaz Ferreira also proposed a bill that passed into law exactly as he had conceived it: the law of “unilateral divorce,” which “gives women the power to obtain a divorce at will, without giving cause, while men have to show just cause.” This law
is consistent with his theory that the situations of men and women are fundamentally different. When the law was passed, "opponents of divorce did not like it because of their need to preserve the family as the basis of society. Proponents of the right to a divorce did not like it either because they framed the question as one of 'equality.'"

This position of Vaz Ferreira can be criticized as a case of reverse sexism in which men do not have the same right as women. It can also be placed in the context of his theory of "feminism of compensation," and in this way he appears to propose replacing patriarchy with a form of matriarchy for the purpose of correcting historical inequities. To some extent, Vaz Ferreira also believes that matriarchy deserves a turn in beginning the long process of compensation.

The normative problems that most concern Vaz Ferreira are those of relations between the sexes and the organization of the family. He addresses the structural issues that suffragist feminists had not yet had time for, and made significant contributions to theorizing about women in relation to the family: "Vaz Ferreira's ideas about the family and the role of women in it constitute, even today, a kind of paradigm in Uruguayan society." His analysis of marriage and divorce is a curious mix of obsolete and progressive, contemporary ideas. On the one hand, he asserts that roles outside the home are for men and those inside the home are for women, that women may be less intelligent than men because the great cultural figures are men (Plato, Beethoven, Shakespeare, et al.), and that "free love" is a destructive social force.

On the other hand, Vaz Ferreira is a pioneer of feminist ideas that became widespread much later. For example, although he believes that relationships are ideally constituted as monogamous marriages, he identifies marriage as an institution that regulates and limits the role of women in professions and the workforce and, therefore, needs modification to correct the unfair treatment of women. In 1917, Vaz Ferreira wrote, "A woman's ability to live for herself, which has to do with power, ability, and opportunity, should not depend wholly on marriage, as it appears to in mainstream society, which is one of the saddest and most unpleasant aspects of traditional society." He also critiques the arguments of opponents of divorce who "reason as if those who support the right to a divorce maintained that divorce is a good." He was also concerned with the plight of single women in Uruguayan society, and defended the right of women to choose to remain single without society looking askance at them. "A woman's ability to live for herself, which has to do with power, ability, and opportunity, does not depend entirely on marriage, as society would have us believe…The horrible part is that society is organized around making pariahs of women who do not marry."

Vaz Ferreira's biography illuminates in part his interest in the rights of single women. In addition to his two brothers, a biologist and a lawyer, his sister, María Eugenia Vaz Ferreira (1880-1925), was a distinguished poet. The social pressure suffered by his sister did not escape Vaz Ferreira's attention when she chose to remain single and defy familial and societal expectations. Throughout her life, María Eugenia's single status often received more attention than her literary work. Cultural critics of the time even referred to her as an "autumnal virgin." Her brother, in addition to defending the rights of single women, also understood the pressures suffered by married women in oppressive relationships. For that reason, he supported a woman's right to divorce for "irreconcilable differences," without further explanation or elaboration.

Generally, Carlos Vaz Ferreira was a progressive thinker, within whose vast writings occur some contradictions about women's roles and history, but his study of women and family is as timely today, in many senses, as when he delivered his lectures on the subject in Montevideo beginning in 1917. He advanced the right of women to participate in all that is valuable for any human being. His public stance on issues about women represented a cultural watershed for such issues throughout educated groups in Latin America.

The impact of Vaz Ferreira's thought was crucial to the artful and forceful discussion of the progress of Uruguayan women. It should be noted that he was not the only man working for women's rights, and that many women were working toward the same goals. Vaz Ferreira's writings belong to a period of great activity serving the improvement of social and political conditions for women. Vaz Ferreira's originality lies in the philosophical seriousness of purpose we can see in his arguments and in the way he exercised his social standing for the benefit of women and society.

What follows is an original translation of a passage from Sobre feminismo in which Vaz Ferreira's methodology and seriousness of purpose about women's circumstance are evident:

[Beginning of translated text] I intend to analyze the problems related to the battle between "feminists" and "antifeminists." After suitably distinguishing those problems, I will provide my opinion about each one. This is the bulk of the argument:

 Suffrage is related to women's political capability. It is the first thing that one thinks of, although it is not the most important. Suffrage is better addressed separately, and not simply because a practical struggle is the most obvious and, for that reason, has been given a name. Suffrage must be dealt with separately because the arguments that support it, as we will see, are of a special order, which makes this problem the most capable of being isolated.

In addition to the problem of political capability, there are many other problems related to women's social activity. The issues of women's access to public office, and to professions and careers, are, strictly speaking, distinguishable problems, but they are better examined together because of their reciprocal connections. (It is worthwhile to deal with the
All the previous problems are subordinated to the most important issue, which dominates and polarizes the rest, and which must be treated as fundamental. It must be dealt with, in part, inevitably, with the previous ones; however, in the end, it is worthwhile to deal with it separately, in and of itself. I refer to the basic problem of relations between the sexes and the organization of the family.

All those problems are “normative problems,” in the sense developed in my Living Logic; problems of activity or ideal; problems dealing with what we should do, wish for, or prefer, which must be treated in a special way, and in which special errors are committed, because of which I feel obligated to ask that you keep in mind what I have demonstrated in my referenced work about these problems (for which there usually do not exist perfect solutions, but rather preferable solutions made by choice...).

Yet the following still remains:

These problems of “feminism” have data derived from facts (in this case, biological, physiological, and psychological data). If those pieces of information or facts were not controversial, they would be left behind, and only issues about what would have to be done or preferred, called normative problems, would be raised.

However it happens that, if some of those facts that serve as data are not disputed, there are others that can be discussed.

For example, we will not dispute the fundamental anatomical differences of the reproductive organs in one sex or the other, nor gestation, the birthing process, or lactation. There can still be discussion, for example, about whether women are as intelligent as men.

Thus, there are problems of fact that come first logically since their solution, or what is believed to be their solution, must be taken into account to deal with the normative problems. Whatever is believed about what is must be taken into account to resolve what must be done or desired. The most controversial of such previous problems of fact is that of the comparative intelligence of the two sexes, which is a special case of the more general problem of comparative psychology.

The best plan to examine the problems related to the debate about feminism would be, in order of logic, the following:

First and foremost, to examine the questions of fact: possible issues about the similarities and differences between the two sexes, especially the most controversial ones about women’s intelligence and mental capabilities.

Then we can examine the normative problems:

First, there is the issue of women’s political rights.

Second, there is the problem of women’s social activity: their access to political office, administrative employment, and to careers and professions; their education: all of those listed above constitute one group of problems.

The problem of women’s civil rights, although it belongs to the same group, and is not well separated from the previously mentioned list, can be isolated and treated separately (it would thus be the third problem), above all, because of its character of technical specialization.

Without doubt, together with those of the above group we can relate and begin to examine more deeply the organization of the family. Without detriment to this last issue, we also would have to examine it separately; it would become our fourth problem: the social relationships between the sexes.

That would be a good plan. I will follow it, although it will not be possible in these lectures to examine the issues in great depth. Rather, I present some suggestions about each one of them and explain my opinion or tendency. I will examine them in the order mentioned.

I will examine them directly, dispensing with existing theories, opinions, and labels such as whether the solution is “feminist” or not. These “feminist” and “antifeminist” terms do more harm than good, and they complicate the many, enormous, and real difficulties of the issues with matters of words and with confusions derived from words.

Of the confusions stemming from labels, some have to do with the fact the same terms are used for different problems. Others have to do with the incorrect use of words or the ambiguity of the terms themselves:

First, the use of the same terms to describe different problems.

One who maintains that women possess intelligence equal to that of men’s is labeled “feminist.” In the problem of suffrage, one who thinks that women should be given this right to vote is a feminist. In employment and careers, one who believes that positions should be widely available for women is a feminist. In the dilemma of civil rights, one who thinks women should be given this right to vote is a feminist. In the problem of suffrage, one who thinks women possess intelligence equal to that of men’s is labeled “feminist.” In the problem of suffrage, one who thinks that women should be given this right to vote is a feminist. In employment and careers, one who believes that positions should be widely available for women is a feminist.

Many believe or begin with the stance that we must take the position on all the problems that everything is labeled in the same way: one must take either the “feminist” or “antifeminist” position. In other words, the solutions given the same label are in common cause.

For example, one who wishes to grant suffrage to women or to open the professions to them is thought to believe that women have intelligence equal to that of men. The others, the “antifeminists,” must necessarily think the opposite.

Meanwhile, one can think that men and women possess unequal intelligence, and nevertheless, want to give women the right to vote (for example, because one thinks that women’s intelligence is adequate, or because one thinks that women have other qualities such as common sense, sympathy, etc., that could supplement intelligence. One might even seek, as a basis on which to permit women’s suffrage, to determine the psychological differences between the sexes, so that the actions of one and of the other complement and neutralize each another to produce a desirable result).
One might think that women lack originality or creative ability, and nevertheless want to give women the opportunity to have careers and hold public office. For example, one might believe it is not necessary to be a genius to hold public office because women can compensate with other aptitudes. One might even believe that genius would be an obstacle to holding public office and gaining employment, and that other qualities are more important. For example, one could hold that a particular aspiration renders a man, but not a woman, unfit for the continual and minute discharge of certain tasks. From another point of view, one might believe that the tests required for particular careers or the practice of certain professions serve as a control such that only qualified individuals are able to obtain a given position.

I mention those possible opinions only as examples; and you will be able to imagine others that relating the different problems could generate: nothing is easier, thus, than supposing in what state of spirit and with what arguments someone could sustain that women should have civil but not political rights, or vice versa, etc.

The aforementioned does not mean, naturally, that there is no particular connection between the solutions that carry the same label when applied to different problems.

What I want to say is that solutions do not always share common cause, or that they may not be completely consistent; for what is better in every respect is to disregard the nominal feature.

Secondly, terms are often misused in and of themselves. The terms “feminism” and “antifeminism,” “feminist” and “antifeminist,” are not very good, and they tend to generate questions and confusion. They suggest various meanings that sometimes interfere with one another: a sense of “favorable”; a sense of “equalizing”; a sense of “differentiating.”…

Thus, for example: to sustain that jobs, careers, etc., should be open to women just as much as to men; that women should have the same civil capacity as men, the same education as men; that in general, the two sexes should be equalized, represents the tendency that has come to be termed “feminist” in some sense. In a sense, it predicts the intention of elevating women, of dignifying them, of liberating them. Yet it tends to diminish the differences between the sexes, or the situations of the sexes. “Feminism” places women in men’s situations and makes them more like men. In this sense, the label does not settle very well: useless questions of word usage arise, such as those that have produced those writers who are arguing against people who call themselves feminists. They write: “we are the true feminists because we want to conserve the distinctive traits of the female sex. You all want to turn women into men; your true name should be ‘hominists’ and not ‘feminists,’ etc.” [End of translated text] (my translation; Ferreira 1945, 19-24)

Vaz Ferreira’s insistence on difference may seem peculiar, but preserving distinctive masculinity and distinctive femininity is, for better or for worse, a hallmark of Latin culture. Thus, he bristles at the notion of “equalization” of the sexes, without being opposed to various progressive principles. A distinctive feature of his arguments is that he strives to preserve the distinctions for the most part, without jeopardizing women’s or men’s desirable possibilities in the world.

More recent feminist thought in Latin America can also be differentiated from many of its North American and northern European counterparts by a pervasive concern for the family and forms of Latin social life and relationships. While alternative lifestyles do exist among women in Latin America, commonly feminist philosophy has attempted to end discrimination against women while simultaneously accepting the family as the fundamental social unit. While many widely read translations of North American and northern European feminist thought are published in Latin America, their emphasis on the individual rather than family is not easily adaptable to some central Latin American contexts and is often seized on as evidence of unbridgeable cultural difference.

My purposes in providing this translated passage include opening a historical window on a feminist cultural moment in Latin American thought that also shows emphases on traditional notions of the feminine and masculine. To expect more in the early twentieth century is to misjudge the vast distances between feminist theory and analysis in our era and the situation of those pioneers, women and, as shown here, men committed to public exchange about improving women’s status and potential. Such writers and public figures also sought the overturning of what they saw as deeply unjust and wasteful forms of social domination and subjugation. Modern readers might find it fruitful to see in such early eras educated people rallying to feminist causes in Latin America clearly similar to those associated with John Stuart Mill and other men who spoke up for justice for women generally.

Endnotes

1. The period known as “Battlist Uruguay” reflects the decisive influence on many areas of Uruguayan life wielded by President José Batlle y Ordóñez, who served two terms (1903-1907 and 1911-1915). “Battlism” refers to state-sanctioned action against foreign “economic imperialism” and socially progressive programs such as unemployment compensation, eight-hour workdays, divorce laws, free education, etc.

2. For a more extensive analysis of the Latin American context in which Vaz Ferreira labored, see my “Early Twentieth-Century Feminist Philosophy in Uruguay,” Thinking About Feminism in Latin America and Spain, eds. Amy A. Oliver and María Luisa Femenías (Amsterdam, New York, NY: Rodopí, 2004).


7. Ibid., 17.

8. Ibid., 111.

9. Ibid., 25.

10. Ibid.

11. Ibid., 12.

12. Ibid., 16.

13. Ibid., 25.


15. Ibid., 83.

16. Uruguay can be seen as progressive regarding divorce, especially when compared to Chile, in which divorce is finally becoming legal in 2004.
Chicana Feminisms and Lived Theory

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Gloria Anzaldúa, noted Chicana feminist and originator of many of the “border” metaphors that Chicana/Latina feminists have found helpful and empowering, passed away shortly before this issue was to go to press. She was the co-editor, along with Cherrie Moraga, of the groundbreaking This Bridge Called My Back (New York: Kitchen Table Press, 1983), and author at a later point of Borderlands: La Frontera (San Francisco: Aunt Lute Books, 1999). Although her work is referred to herein, no brief mention of her influence can do justice to the enormous impact that her work had on the Chicano/Latino community.

Chicana/Mexicana feminisms are as old as the Southwest, and as contemporary as downtown Los Angeles. Although it has been customary in the literature to distinguish between the North American influenced “Chicana/o” culture, and the cultures of Mexico itself, current immigration patterns mean that there is an enormous influx of cultural material from Mexico at any given moment.

One of the dominating features of Mexican life, and particularly its manifestation in the arts and intellectual realms, is the influence of the mestizaje. Today’s Mexican population is the product of centuries of intermarriage between persons of European origin—largely from Spain and Portugal—and indigenous Americans. (To be sure, although the influence in Mexico is not as large as in the surrounding Caribbean, there is also an admixture of African blood from the importation of slaves.) But the mestizaje itself, although pushed as a construct by the Mexican government in past decades, is a cultural trope with a strongly androcentric and/or masculinist construction, and one that frequently, in its more popular manifestations, is cast almost completely in male terms. From the popular oleo calendars that feature idealized scenes of family life to the dominating influence of thinkers such as Octavio Paz and his emphasis on “hijos de la chingada,” the formation of the mestizaje derives much of its impetus from the violation of indigenous women by European men, and its highly metaphorical resonances, resulting in the “sons-of-violation” who provide Mexico with its own flavor.

How the Chicana/Mexicana creates new feminisms and powerful tropes of gynocentricity from a melange of cultural artifacts available to her is an intriguing story, and one that is beginning to be told by a number of theorists. In this story, three lines tend to merge: one takes off from the overwhelming influence of the Virgen as a marker of culture, still another from the ancient and much retold story of Malinche, Cortez’s translator and, in the macho world, a betrayer of her people, and still another from the activist and community-organizing efforts of Dolores Huerta, co-founder of the farmworkers’ movement, and others like her.

The mythology surrounding Juan Diego’s original sighting of the Virgen of Guadalupe in the early part of the sixteenth century is only one of the features surrounding this symbol and its importance for Chicana/Mexicana feminism. Insofar as the virgin manifestly represents female strength and care in a careworn world, the various permutations of her influence are powerful and evocative metaphors. Juan Diego’s vision was, of course, related to the syncretism of Catholicism and reverence for the corn goddess—but this syncretism quickly became a harbinger of other forms of cultural growth. In his classic work on the history of Mexican-derived peoples in the United States, Julian Samora writes:

Along with the Sacred Heart, she [the Virgin] is also enthroned in the homes of Mexican Americans throughout the Southwest. Another important representation of the Virgin Mary is Nuestra Senora de los Lagos located in San Juan, Texas. Mexican American migrant workers make the shrine the focal point of the beginning and the end of their entry into the seasonal migrant stream; it is a tradition for many migrant families to have their vehicle blessed at the shrine before the beginning of their northern journey.

The nurturing qualities of the Virgin make her an object of veneration, obviously, but they affect the growth of a mujerisma among Chicanas in numerous ways. Some are obvious: images of the Virgin are frequently spotted in natural objects, and almost every home has a small shrine within the home.

But, more metaphorically and with respect to the formation of the mestizaje—that is, the mixed-race culture that has Native American origins as a prominent part—the notion of curing has blended elements of veneration for the Virgin, the indigenous healing rites, (again goddess-related, in many cases) and generally Catholic reliance on saints into powerful strands of curanderismo. Lara Medina, writing in the contemporary anthology Living Chicana Theory, mentions “consejeras, curanderas...espiritistas and even comadres practiced and still practice their healing ways...” Each of these gynocentric or female-identified forms of folk worship takes off from indigenous practices interspersed with the influence of various permutations of the Virgin, and each has a powerful significance within the culture. Family celebrations such as Dia de los Muertos take on a more powerful meaning because of the involvement of abuelitas and other family members whose knowledge of the culture is transmitted from generation to generation, and this in and of itself gives impetus to gynocentric cultural markers.

II

Just as important as the construct of the Virgen of Guadalupe has been the continuing reappropriation of La Malinche as a point of departure for young Chicanas/Mexicanas. In his crucial new work on the intersections of critical race theory and Chicana/o cultures, Carl Gutierrez-Jones mentions the work of Gloria Anzaldúa and its importance in refurbishing Malinche as a figure.

Historically, Malinch, or Doña Marina, as the Spaniards called her, was seen as a betrayer of native peoples, since it was assumed that her ability with languages was one of the key features in the success of Cortez and others in their conquest. But from a more solidly feminist point of view, one can see Malinche as a young girl caught between forces in a male-dominated world. She learned to survive, and her survival lives on in the mixed-race natures of her literal and figurative descendants. According to Gutierrez-Jones, this new
appropriation of Malinche as survivor and translator in more ways than one “build(s) on the theory and practice of translation—with all the productive betrayal implied by La Malinche as a Chicana feminist force.” The notion of border-crossing or transgression becomes, of course, a sort of postmodern instantiation of what it means to be a Chicana in the United States today.

In this mode of thinking, new and powerful tools for the articulation of theory are available for the feminist, and innovative ways of thinking and categorization arise. Malinche was not only a translator and a border-crossover—she was a “mother” in many senses of the word. Without the race mixing, that which is specifically Mexican could not exist today—it can be separated, as the official discourse often does, from both its indigenous and European roots. Of this, Vicky Ruiz has written:

Given these symbolic meanings, one of the first tasks a Chicana feminist faced was that of revising the image of La Malinche. Adelaida Del Castillo’s pathbreaking 1977 article provided a new perspective by considering Malinche’s captivity, her age, and most important her conversion to Christianity. What emerges from Del Castillo’s account is a gifted young linguist who lived on the margins and made decisions within the borders of her world.

All of the borders that can be crossed are, more-or-less, available to the young Chicana today—perhaps more so than her Mexican sisters—simply by virtue of her living in the cultural network that is the United States. Within the contemporary cultural framework, everything—identity, sexuality, language, customs, religion—is up for grabs, and because of this, the Chicana is, in a sense, more than postmodern.

But if Malinche has become a powerful trope—and if in some ways aspects of Malinche recapitulate aspects of the Virgen—there are other modes of identification that propel activism and a resurgent spirit.

III

Chicana/Mexicana women have long been at the forefront of labor movements, but, as is so commonly the case with endeavors by women, they often received little notice or credit at the time. As a number of historians were beginning their pathbreaking work on the Mexican-derived population in the 1960’s, Dolores Huerta was, in tandem with César Chávez, founding the United Farmworkers Movement. She had previously worked with the activist Community Service Organization groups, and came with ready knowledge and will. Drawing together some of the various strands of culture that have already been remarked upon here, Huerta and Chavez staged one of the largest and most successful protest marches of the 1960s from Delano to Sacramento, California, culminating on Easter Sunday, 1966. In a display of solidarity that drew on the strength of Catholic metaphors and symbols for those marching, thousands of men, women and children marched under a banner labeled “perperegrinación”, with the image of Our Lady. The Rev. William Scholes, an observer, noted in an essay written in the 1960s:

At this writing the strike still continues, and the boycott has been shifted from Schenley to Di Giorgio products. The Spanish-speaking farm laborers who carried the emblem of Our Lady of Guadalupe from Delano to Sacramento have persevered longer than anyone thought possible, and have received more support from the public than even they dreamed of.

It goes without saying, of course, that the women who marched under the banner decorated with the Virgen of Guadalupe were precisely those whose daily caretaking activities made the march possible. To recapitulate some of the labor history that culminated in the march and others like it, the historian Vicky Ruiz has gone back to examine records of labor activities involving women of Mexican ancestry throughout the Southwest. Through diligent effort, she is able to give a name and a face to many women whose efforts preceded the UFW:

As a twenty-three year old member of the Workers’ Alliance and secretary of the Texas Communist Party, Emma Tenayuca emerged as the fiery local leader. Although not a pecan sheller, Tenayuca, a San Antonio native, was elected to head the strike committee...Known as “La Pasionaria,” Tenayuca, in an interview with historian Zaragosa Vargas, reflected on her activism as follows: “I was pretty defiant. [I fought] against poverty, actually starvation, high infant death rates, disease and hunger and misery. I would do the same thing again.”

Ruiz was able to find records of activism and strike organizing going back to the pre-1910 period, and her research informs us of the efforts of many forgotten foresisters. If many of the dominant cultural markers of the Mexican world itself are male-oriented, those markers ignore the work and efforts of millions of women.

To summarize, we can say that contemporary Chicana feminisms split into at least two broad strands—one strand we can take to merge with previous activism, but in a highly evocative way that does more to make a statement. Another, possibly more academic strand, has impacted not only Chicana/o Studies, but many other disciplines, and has built on a rich diversity of poststructuralist and postcolonial studies to make its points regarding such constructs as margins, borders and transgressions of all sorts.

We might trot out such phrases as “empowerment,” and try to make the claim that each of these strands pushes in that direction, but to say so much is to say comparatively little. The difference between these two directions parallels a distinction increasingly commonly made throughout the United States and other industrially developed countries: it is that between “real change,” necessitating community action, and that which more commonly involves an altered style of discourse. To be fair, since so many have no doubt been propelled into action by some of the “border” literature, the point may not be as well taken as it is in some circles.

In each case, Chicana feminisms have involved a complex reappropriation of modes and symbols pertaining to the Chicano/Mexicano community at large, and even, in a few cases, the larger American Latino community. The importance of crucial notions of the family, the signification of the mother/abuela and the strength of symbols such as the Virgin remain unabated, and cross over into activist efforts, as we have seen. Because of the power of the family as a construct and the hope to keep it intact and undiluted, many Chicanas have pressed beyond the “double duty” syndrome of many American women and have undertaken a large number of tasks demanding much work in and outside of the home. Mary Pardo writes, for example, of Gloria, who became a leader in a local neighborhood organization in Los Angeles after taking a look at the problems around her:

Gloria was not working for wages at the time, and she held leadership for four years. Like the women in MELA (Mothers of East Los Angeles), to avoid
domestic disruption she continued to meet her household responsibilities. When I asked her how she managed to balance her household work with her activism, she acknowledged that it was difficult. Her strategy was to take care of household chores very early or very late in the day: "To avoid conflict in the home, I would get up at 5:00 in the morning, clean house, prepare dinner…I would come home from meetings, and be ironing at 11:00 at night."  

Perhaps Gloria’s story is the best summation of all of the spirit of the Chicana feminisms, their intersections with classically Mexican tropes, and their impacts on their communities. Like the women of a number of differing geographical areas around the planet whose efforts and interests have drawn international attention—from Bangladesh to the Bronx, and from Afghanistan to Northern Canada—Chicanas and Mexicanas are forging their own paths. Their use of the material historically available to them in new and exciting ways is organic food for thought for us all.

Endnotes
1. Traditionally, “Chicana/o” refers to those persons born in the United States of Mexican ancestry. It is clear, however, that the distinction between those terms and “Mexicana/o” is becoming increasingly tenuous.
2. An exhibit titled “La Patria Portátil” at the Latino Museum of History, Art, and Culture in Los Angeles in 1999 detailed the place of oleo or chromo folk art in the Mexican home.
8. Ibid.

**Review Essay**

**Anzaldúa and the ‘Bridge’ as Home: Healing the Ruptures of Reason: This Bridge We Call Home: Radical Visions For Transformation**

Gloria Anzaldúa and AnaLouise Keating, eds. (New York: Routledge, 2002).

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Like many scholars trained in the rationalist tradition, I came to this book prepared to be dismissive of any worldview that smacked of goddess worship, or what I would see as a form of naïve essentializing about women and the nature of things. However, as I read Anzaldúa’s “now let us shift…the path of conocimiento…inner work, public acts,” the reflection with which this book concludes, within the context of the other 87 testimonios, memoirs, poems, artworks, and essays that appear in the work, I came to an epiphanic realization. Anzaldúa’s concepts of conocimiento and El Mundo Zurdo represent far less of a leap of faith than Plato’s Theory of Ideas. Plato asks us to believe in those abstractions that emanate from a more perfect world beyond our own. We must accept the “Truth” of the mind/body split and the hierarchical superiority of the mind, which is Reason. We must then order our epistemological, ontological, metaphysical and ethical constructs in terms of those binaries, in spite of the fact that we can never “grasp” the ideal. The sects of Christianity have philosophical ties to Plato. Hence, in their more fundamentalist configurations, they, too, hold to hierarchies, and Truth(s) that come to them directly from God, the source of all knowledge. Each sect takes for itself, the power of appropriation, to speak for God. In the midst of all this Truth and Righteousness, a majority of the human race suffers greatly for imperfection of race, class, gender, and sexual orientation that are either deemed the “luck of the draw,” or, in the case of poverty and sexual practices, sinful situations of their own making. These are the outcomes of the “truths” that, as a nation, we hold to be self-evident.

These “truths” are also the source of the pathological ruptures that Gloria Anzaldúa would heal by encouraging individuals to elevate the spiritual to the level of science and rationality. By observing the ineluctable patterns and transformations of nature, seekers after conocimiento “challenge the old self’s orthodoxies” by creating “new stories” that build “a bridge home to the self” (540). Like the three natural stone bridges at State Beach in California where Anzaldúa used to walk along the bluffs before her recent death from diabetes, these bridges of understanding may be long-standing, but impermanent, and in that sense, unsafe. They must constantly be rebuilt and reformed through dialogical encounters with respected fellow travelers with whom one forms a “new tribalism” (540). This new tribe is, above all else, inclusive, as the contributors to This Bridge We Call Home reflect. All are welcome in the conversations of the transition state (nepantla): women, men, and transgender persons of all colors, ages and sexualities. Anzaldúa describes this vast, new knowledge project thusly:

The new accounts trace the process of shifting from old ways of viewing reality to new perceptions….Together you attempt to reverse the
Cartesian split that turned the world into an “other,” distancing humans from it. Though your body is still la otra and though pensamientos dualisticos still keep you from embracing and uniting corporally con esa otra, you dream the possibility of wholeness. Collectively you rewrite the story of “the Fall” and the story of western progress—two opposing versions of the evolution of human consciousness. Collectively you note the emergence of new gatekeepers of the earth’s wisdom. (562)

Structurally, *This Bridge We Call Home* is divided into seven sections that parallel Anzaldúa’s Seven Stages of *conocimiento*. The stages begin with refections on finding and defining self and personal agency through acts of testimony for alliance building, and then progress to discussions of transformation and change. Interestingly, where *This Bridge Called My Back* (1981) had presented a nearly contemptuous rejection of academic feminism, the current volume recognizes the pivotal role of academe in gaining momentum for change by placing the section entitled “shouldering more identity than we can bear,’…Seeking allies in academe,” fifth in order, just after the section on “shaping our worlds” and just before “Forging common ground.” Sadly, the reports from the academy reflect inadequate acceptance of new knowledge and new faces in the classrooms and the professoriate.

In Section I, “Looking for my own bridge to get over. . . exploring the impact,” the eleven contributors each articulate how the *This Bridge Called My Back* sustains them in their struggle to transcend stereotypes and pre-formed cultural scripts to take agency in their own lives. Contributors include Hispanic, White, and Black women, some of whom are lesbians, and two Hispanic gay men. In “Chameleon,” Iobel Andemicael, a light-skinned young Third Wave woman with an Afro-Colombian mother and absent white father, struggles to overcome what she perceives as her lack of “authenticity” which has led to complete writer’s block. To end what she perceives as the state of invisibility caused by her racial ambiguity, she chooses to join the Black Student Center over the objections of her Colombian relations who see her as white enough to pass. In conversations with her mother and grandparents, she initially resists the cliche idea that persons of mixed race can or should act to form bridges between groups:

You romanticize bridges. It’s exhausting to constantly try to explain people to each other. Bridges may join two places but they themselves are nowhere—over precipices or cold water or highways. . . A bridge is what people trample to get where they are going. (34)

Later in the evening, however, while holed up in the library in a state of desperation over the poetry assignments that she cannot start, Andemicael happens upon a copy of *This Bridge Called My Back* and finds personal empowerment in Donna Kate Rushin’s “The Bridge Poem” where Rushin states:

*I must be the road to nowhere
But my true self
And then
I will be useful. (xxi).

Rushin’s words freed Andemicael from the burden of stereotypes and role-modeling to discover her self-in-process. Her resultant poem epitomizes the personal liberation that Second Wave Feminism would ideally impart to Third Wave as Andemicael finds the language to express her independence and agency. She writes:

*I am my pounding heart, heavy, insistent, stubborn, and young. I am
Not my heart.
I am not invisible, nor should I be. (41)

By way of contrast with Andemicael’s poetic personal journey, section one of *This Bridge We Call Home* contains an incisive essay, “Thinking Again: ‘This Bridge Called My Back’ and the Challenge to Whiteness,” on opposing internalized racism through Whiteness Studies by Rebecca Aanerud of the University of Washington. A reflective piece by Caribbean scholar and gay/lesbian activist M. Jacqui Alexander, entitled “Remembering *This Bridge*,” Remembering Ourselves: Yearning, Memory and Desire,” recalls how the first book represented “an earlier historical moment when the vision of a pan-cultural radical feminist politics seemed more visible in the United States of North America” (82). Alexander reflects on how in the intervening twenty years since the publication of the first *Bridge*, radical activists have become too complacent, too attached to the material advantages and even the more specious discourses of equality and freedom that are the “idea of America” (87). She cautions that social progress must respect contexts and memories of oppressions if we are to continue our momentum as “refugees of a world on fire.” At the moment, this “world on fire” is emphatically our own. Fragile progress toward social justice is being lost, she states, because:

We live in a country apparently bent on inculcating a national will to amnesia, to excise certain pasts, particularly when a great wrong has occurred. The recent calls for this American nation to move ahead in the wake of the 2000 presidential election rest on forgetting. Forget intimidations at the polls and move on. Forget that citizenship is particular and does not guarantee a vote for everyone. Forget that we face the state reconsolidation of conservatism as the fragile seams of democracy come apart. . . Forget in the midst of a “booming” economy that there are more people hungry in New York than there were ten years ago. (94-95)

Section II, entitled “still struggling with the boxes people try to put me in…resisting the labels,” further articulates Alexander’s message of the inseparability of the personal and the political. The reflections in this section all illustrate the gaps between outward appearances and inward subjectivities. In the opening essay to this section, “Los Intercritos: Recasting Moving Selves,” Evelyn Alsultany, an academic of Iraqi/Cuban descent, offers a premonitory warning that applies to all who would approach the writers who follow her in this book: “Ask me who I am. Don’t project your essentialisms onto my body and then project hatred because I do not conform to your notions of who I’m supposed to be” (110). In keeping with this theme and challenge to essentialist stereotypes, three essays counter established notions of queerness from unique perspectives: Hector Carbajal’s “A Letter to a Mother, from her Son”; Marla Morris’s “Young Man Popkin: A Queer Dystopia”; and Jody Norton’s “Transchildren, Changelings, and Fairies: Living the Dream and Surviving the Nightmare in Contemporary America.”

Resistance to the boxes and labels of victimhood is the subject of “Nomadic Existence: Exile, Gender, and Palestine,” by Palestinian expatriates and sisters, Reem and Rabab Abdulhabi. In dynamic e-mail exchanges, they share their love for their troubled homeland, their guilt and relief as exiles, and their determination to continue to represent the dignity and rights of Palestinian women and children both within and
outside Palestine. The dialogue concludes with a statement of gratitude for the inclusion of their nomadic perspective within the book and a description of the psychological distress of women and children who remain in Palestine:

The next generation of Palestinians has been marred by the scars of inhumanity. Statements such as those made by the Queen of Sweden, who questioned whether Palestinian mothers loved their children, further deepen Palestinian feelings of abandonment and alienation. We are, therefore, grateful to have this hospitable environment in this bridge, which allows us to grieve for all those who lost loved ones, to recognize our humanity, the complexities of our lives, and the shifting sands of our respective experiences without being forced to engage in the arrogant exercise of categorical conclusions. (179)

Native American activist and scholar Kimberly Roppolo provides the defining moment of section two with “The Real Americana,” a poem that disrupts and reclaims almost every cliché and slur associated with women of color and women of poverty in America today. A stanza from near the end of the poem will exemplify its power:

I’ll fix
your broken heart
And I’ll break it
in two
again
if
necessary,
because
my children
must survive.
It’s the first commandment
of my Great Mother.
You can call me
a bitch
if
you want to.
Just don’t call me whore,
Christian, or capitalist
because
if you think
I’ll be
your sucker,
you’re dead
wrong
mister. (157-8)

Reclamation and expansion of psychological space for people of various ethnicities and sexual practices drive section III, “locking arms in the master’s house’…omissions, revisions, new issues.” Papers addressing omissions explore the struggles of Native American, Hispanic, Asian, and Muslim women to achieve authentic cultural representation within American society. In, “What’s Wrong with a Little Fantasy?” Story telling from (the Still) Ivory Tower,” Deborah A. Miranda describes the exclusion of writings by Native American women from university curricula and makes the radical and potentially divisive claim that the literature of indigenous Americans defines America, while Arab-Americans Nada Elia and Asian Shirley Geok-Lin Lim assert that Muslim and Asian women have no nuanced, separate identity or acknowledged body of literature within “white” culture. Two contributors to This Bridge Called My Back, Cheryl Clarke and Max Wolf Valerio offer “revisions” of their former essays. In “Lesbianism 2000” Clarke revisits her much-read essay from the first book, “Lesbianism: An Act of Resistance,” and concludes that neither women of color nor the feminist movement itself has yet provided sufficient support and validation for lesbian women. The optimism in her former essay has turned to anger. Anger also defines the current thinking of Native American, TGM, Max Wolf Valerio, who wrote as Anita Valerio in the first book. In, “Now that You’re a White Man: Changing Sex in a Postmodern World—Being, Becoming, Borders,” Valerio describes the sexual and personal power of his newly-found male “privilege” and concludes that feminism is not well-prepared to embrace the gender performances and identities of transsexuals, especially those who transform from female to male.

Two remarkable essays by African-Americans Mary Loving Blanchard and Simona J. Hill point to new issues and new directions for academic feminism. In “Poets, Lovers, and the Master’s Tools: A Conversation with Audre Lorde,” Blanchard acknowledges her indebtedness to Lorde’s famous essay in the first book, but then insists that black feminist writers must co-opt and own the “master’s tools” of language as the only means of making new art:

Gaining agency through my specific use of the master’s tools is important to me in part because, most times, it seems I have to make a choice between making new tools, or retooling these old worn-out tools of patriarchy and having time to write really necessary poetry and love really necessary poets. (256)

Blanchard’s contention that younger feminists must go forward on their own terms and honor their own process is also taken up by Simona J. Hill in her provocative essay, “All I Can Cook is Crack on a Spoon’: A Sign for a New Generation of Feminists.” While serving as faculty in residence for a housing program aimed at creating understanding of women’s issues, Hill was initially offended by a flyer posted on the Women’s Studies House that read, “All I can cook is crack on a spoon.” Hill initially found the message offensive because it seemed to be a racist allusion to the drug dependencies associated (wrongly) with poor inner-city women. But on further investigation and analysis, she came to discover that it was actually a statement of cheeky resistance put forward by much younger Third Wave feminists on her campus. The students described to her how the statement had several meanings in that it represented both a reaction against the traditional kitchen duties of women and a recognition that feminism has done little to address or deal with the problems of poor women. Indeed, some students related the phrase to a general feeling of inertia and lack of direction within the current feminist movement. It is Hill’s hope that this new “in-your-face” attitude exhibited by Third Wave feminists will sustain the progress toward equality for all women.

Passing the torch is difficult, but the time has come. Thus, section IV entitled, “a place at the table’…surviving the battles, shaping our worlds,” consists of thirteen contributions that address primarily activist approaches aimed at ensuring equality and visibility for all who choose to join Anzaldúa’s alliance of El Mundo Zurdo. The contributions address tactics for gaining cultural visibility for women of wide-ranging ethnicities. The
most provocative essay is provided by Chandra Brown, who, in “Standing on This Bridge,” describes how she had to report her brutal rape at the hands of a fellow black male student activist and thus, was forced to choose between her loyalty to her race, and her own integrity and the safety of other women on her campus.

Section IV is “bridged” by two strong contributions, one by Judith K. Witherow, “Yo’ Done Bridge is Fallin’ Down,” and another prepared jointly by Sarah J. Cervenak, Karina L. Cespedes, Caridad Souza, and Andrea Straub, four young feminists taking a course in U.S. Latina feminism at a northeastern university. Their essay, entitled “Imagining Differently: The Politics of Listening in a Feminist Classroom,” describes the conflict between theory and praxis among Latina students. Many of the students in the class, who were mostly Latinas, saw theory as the province of the white male and could not see the relevance of it to their lived experience. Following the pattern of the testimonios in the original Bridge, many students wished merely to speak of their experiences rather than to examine positions critically. This tendency to valorize differences uncritically led to the distinct feeling that they were not listening across their differences. The authors conclude that theory must not be essentialized as white and therefore dismissed, but rather, engaged in by feminists of all colors and used to reflect upon our variegated real-life experiences as Audre Lorde had theorized with her metaphor of the “dark space.” The four authors conclude their theoretically sound and sensitive essay with the following observation:

Complicated and engaged living requires not only that we learn to cherish our feelings but also that we respect those hidden sources of power where new knowledge is birthed, felt, and embodied. It is from this space of recognition that we begin to appreciate each other enough to listen and learn. (355)

By way of contrast, Witherow, in “Yo’ Done Bridge is Fallin’ Down,” has no patience for feminist theory or feminist praxis after a lifetime of working for causes and seeing none of her targets for change met. She states that for her, poverty has always represented the “bottom line,” and that when she began working as a feminist 25 years ago, she was told that the movement would address the praxis and politics of poverty—eventually. She is a Native American lesbian challenged by many health conditions, some of which may be traced back to the malnourishment of her youth. Witherow sees herself and others as having assimilated themselves to white, middle class causes to such a degree that issues of poverty, illiteracy, and the environmental hazards that cause illness, especially among the poor who live near, and work in, mines and factories, are yet to be addressed. For her, there is no “home” or “bridge” of safety to be found:

When you add generations of poverty, illiteracy, and abuse by the system, you don’t need a crystal ball to determine your destiny. What you do need is a nation willing to provide health care to everyone regardless of his or her ability to pay. (288)

These themes of the conflict between praxis and theory and the hazards of assimilation flow over into section V where the academic world is examined under the title “shoULdering more Identity than we can bear’…seeking allies in academe.” More than half of the ten authors in this section reflect directly on the sense of tokenism that they have experienced while rising through the ranks of academe. Tatiana de la Tierra, a “white” Colombian lesbian, Laura A. Harris, a black feminist and self-declared “welfare queen,” Kim Springer, a black feminist, and Korean Jid Lee each remark on how it was possible for them to pass through the graduate ranks in the 1990s while only rarely seeing another candidate of their ethnicity. This isolation continues into their professorial lives as they find themselves having to choose friends and academic allies among white faculty who respect multiple identities and difference. In “The Cry-Smile Mask: A Korean Woman’s System of Resistance,” Jid Lee describes how she affects alternately the appearance of either a smiling or quietly compliant colleague to create an acceptable niche for herself as an Asian professor who is validated by white academy culture. Laura A. Harris flamboyantly describes how she was one of the last poor Americans to be sustained on welfare while she completed her graduate education. Her essay, entitled “Notes from a Welfare Queen in the Ivory Tower,” emphasizes her $80,000 debt in student loans and her absolute refusal to assimilate by forgetting her difficult journey and the trials of others. She writes:

In the academy I refuse to be an American “success” story, to be another exotic animal in its multicultural petting zoo, or to walk quietly and self-contentedly down the halls to teach. I disdain the academy’s class hegemony. I want to use the skills and knowledge of a welfare queen equipped with the privileges I acquired along with my Ph.D. to rebuke the ivory tower’s insidious hierarchies daily. (380)

In “Aliens and Others in Search of the Tribe in Academe,” Tatiana de la Tierra corroborates Harris’s contempt for academic administrative structures by branding them as largely male, white and racist:

Institutionalized racism (and classism and sexism) in the academy translates into privileged white men making decisions that affect everyone within the system….We all know our place within the system; we take our positions and occupy the space allotted to us, nothing more. To transgress is to endanger the little that is ours. (360)

Cynthia Franklin and Sunu Chandy each discuss the exclusion of feminist authors from curriculum by white male professors who generally argue that their writings are “lightweight” and are therefore not worth student attention. In “Fire in My Heart,” Chandy describes how, in the early 1990s, This Bridge Called My Back was kept off the reading list for a Peace Studies program at her university, although no one on the committee had actually read the book and had not attended Gloria Anzaldúa’s appearance at their campus. Cynthia Franklin, in “Recollecting This Bridge” in an Anti-Affirmative Action Era: Literary Anthologies, Academic Memoir, and Institutional Autobiography,” tells the all-too-familiar tale of how, in the late 1990s, a senior colleague in an English department in Hawaii ran for election to the hiring committee on a platform of opposing future appointments of faculty whose applications used phrases such as “of color” or “colonial,” or exhibited other signs of “politically motivated” scholarship. As part of his campaign to trivialize cultural studies, he also ridiculed an entry by Gloria Anzaldúa that is included in the Norton Anthology. Faculty were forced to take sides and to experience the pain of the inevitable divide along lines of age, race, gender, and sexual orientation. Franklin’s essay follows the postmodern practice of writing academic memoirs as a means of narrating “otherness” within the academy. She also strongly supports the growth of Whiteness Studies as an anodyne to the notion that white is not a race and that whiteness does not possess a political agenda.
This section of the book is very revealing for what it does not contain. It does not contain one single submission from an academic of any race, gender, or sexual orientation or combination thereof, who feels supported by her or his university on issues of race, gender, diversity, and multiculturalism. It does not even contain a somewhat positive contribution that would attest to the idea of improving fortunes—a disturbing situation, to say the least. Under these circumstances, it is quite appropriate that Irene Lara closes this section with a ritual, “Healing Sueños (Dreams) for Academia.”

In sections VI and VII, ideas of healing and alliance move the reader beyond mere acceptance into Anzaldúa’s vision of a spiritual commitment to El Mundo Zurdo, that left-handed place where all who honor the diversity of earth’s natural creations gather in alliance to sustain not only each other, but also the earth itself by respecting environmental and ecological needs. Entitled, “yo soy tu otro yo—I am your other I… forging common ground,” section VI consists largely of testimonios expressing difference and desire for alliances. The potentiality for destruction self inherent in initiating gestures of trust is revealed in “Connection: The Bridge Finds its Voice,” by María Proitsaki. Proitsaki retells in poetic form the ancient Greek legend of the stone bridge at Arta that would not stand no matter how often it was rebuilt. The community elders decided on virgin sacrifice as a means of consecrating the bridge. There are many versions of this legend, but in the most popular, the spirit of the virgin cursed the bridge out of outrage for her mistreatment, and her own brother was killed in the collapse of the bridge that followed. Proitsaki’s poem makes the important distinction between alliance and exploitation:

Stone by stone they piled their frustration
On my shiny black hair
Vocal Chords arranged in numbness
This arch is not of glory
You parade on my back. (449)

“The Body Politic—Meditations on Identity” by Elana Dykewoman, and “Speaking of Privilege” by Diana Courvant, a transgender male to female, describe the difficulties of avoiding exploitation of the other and finding common ground even among the multivariant identities within sexual identities. The cultivation of a disposition to perceive and understand the other, however, lies at the core of social change. Dykewoman observes:

But how is it possible to have worked for thirty years in the anti-war, anti-racist, women’s and lesbian movements and still not be able to see the women next to me? Do the people I blur together threaten me? When women look at me, do they still see only one or two things, and expect me to have a certain way because of that? Somewhere our analysis—or our practice—has failed us. (456)

Fortunately, this pessimism is not shared by Migdalia Reyes, “The Latin American and Caribbean Feminist/Lesbian Encuentros: Crossing the Bridge of our Diverse Identities,” who has been a part of a number of conferences with encounter groups aimed at commensurating the many diversities among Latina women in this hemisphere. The greatest challenge of these meetings has been to build trust and heal rifts between more privileged lesbian Latinas in North America and lesbian Latinas from elsewhere in this hemisphere who face quite different cultural pressures.

In “Tenuous Alliance,” Arlene (Ari) Ishtar Lev, a white-skinned Ashkenazi Jewish lesbian, relates her own experiences in creating a multiracial family with her two adopted sons, one African-American and the other biracial in descent. Lev and her partner have managed to include the natural grandparents of their sons in the forging of a strong and supportive extended family in which the affinities of love matter far more than skin color, ethnicity, or sexual orientation. Lev is raising her sons to respect their uniqueness within a context of inclusion. She describes her personal journey from whiteness, to the recognition of her Jewishness and, from there, to alliance-building:

I do know one thing: I became a more effective ally for people of color after I did my homework. The more comfortable I became with my own legacy as a Jew, the more I could let into my heart the pride, and pain, that people of color experience....in our efforts to build coalitions across our difference, we cannot buy into the simplistic racist categories, but must face the challenge of embracing the intricacies, depth and complexities of the racial, cultural, and ethnic legacies we all bring to the table. (478)

The seventh and final section “i am the pivot for transformation’…enacting the vision” combines the practical/theoretical with the spiritual to close the circle of alliance for enlightened living. Helene Shulman Lorenz begins this section with “Thawing Hearts, opening a Path in the Woods, Founding a New Lineage,” an essay addressing the place of “rituals of reframing and restoration” in recouping the spirits of those who strive for change and social justice. As a professor of psychology, she has found that most university curriculum committees are not able to classify or appreciate This Bridge Called My Back because they are not yet ready to appreciate the challenges to established bodies of knowledge that the Bridge books represent. Lorenz artfully understates her point:

To imagine that the older frames of race, gender, sexuality, self, and other, cut across the whole field of knowledge over an entire historical era, that they are connected with colonial impulses, that they serve and reflect power, privilege, and hierarchy, and that they are filled with arbitrary exclusions and absences which need to be renegotiated would indeed be a revolutionary rupture in many disciplinary conversations. (501)

Lorenz counters the psychological “suffocation” of the traditional academy by engaging with her students and colleagues in what she calls “dialogical and cultural encounters” that take place in neutral “bridge” zones where conscientious interlocutors can “reach across unimaginable gulfs of difference” (502). Such conversations are “healing myth for souls in protest against a conversation designed to marginalize and pathologize them” (506).

In “Forging El Mundo Zurdo: Changing Ourselves, Changing the World,” AnaLouise Keating, co-editor of this anthology with Gloria Anzaldúa, offers a concrete five-point set of tactics for overcoming “racialized divisions” in our teaching and in our everyday discourse. Keating explains Anzaldúa’s spiritual concepts of El Mundo Zurdo, conocimiento, and nepantla in terms that allow rationalists, as well as spiritualists, to find a place on the bridge. In Anzaldúa’s view, we are living in a state of nepantla, transition between worldviews, in which we are all experiencing cultural pressures and impingements. Keating states: “Through exchanging stories, through exploring our differences without defensiveness or shame, we can learn from each other, share each other’s words” (530). As a result
of this interconnectedness, we will reach a state of higher consciousness (conocimiento), and those insights will help in the creation of El Mundo Zurdo, “the Left-Handed World,” a visionary place where people from diverse backgrounds with diverse needs and concerns co-exist and work together to bring about revolutionary change” (520). Keating admits that she is “intoxicated” by the visionary place, but is concerned, in her own way, with how to actualize the vision within the academy and the lived experiences of those who strive for social change.

El Mundo Zurdo with its bridges for “dialogical and cultural encounters,” (502) is a creative locus amoenus for all who wish to envision existence beyond the traditional, Western, subject/object divide. This book, like its predecessor, lays out future directions for building bridges of understanding and human equality.

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**REVIEWS**

**Worlds of Knowing: Global Feminist Epistemologies**

*Jane Duran (New York: Routledge, 2001).*

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Jane Duran begins an important project for contemporary feminism. To make progress despite feminist tendencies to promote only the interests of the world’s most privileged women, we must learn coalition across women’s differences. This central concern of the past twenty years must proceed beyond token inclusions—in this case of women of color, but the same holds for other forms of difference that intersect with gender—by building common terrain. Central to recognizing and developing shared starting points for global feminism is recognizing and developing shared ways of understanding, a feminist epistemology or gynocentric style of knowledge, Duran argues. Her book is extremely important in recognizing and carrying forward this project, by attending to women’s patterns of thought in a set of contemporary cultures and emancipatory movements. The fragmented epistemological patterns must be identified and drawn together if global feminism can proceed in a meaningful way. So, global feminism requires attending to the practical needs faced by women and to both traditional and revolutionary avenues of prestige and power that are encoded in different cultures’ subcultures’ analogues for knowledge, belief, and justification. The danger of continuing colonization by defining women’s issues in Western terms persists, but can only be negotiated by concrete efforts to build shared forms of thought. Thus, we won’t ignore and perpetuate but can work out and mitigate the inevitable projection of Western standards by Western feminists. We may achieve more equalitarian relations among women around the world, and ultimately make feminism a truly global endeavor.

Duran’s book is substantially empirical and provides excellent groundwork for global feminist epistemologies. The first of her two major sections of postcolonial investigation addresses four Asian cultures and the presence and potential for gynocentric ways of thinking in each: Northern Indian; mostly southern, Dravidian India; Islamic Bangladesh; and Buddhist Nepal and the Himalayan societies. The second set of investigations addresses cultures in the New World: Mexico and the Mestizaje; indigenous Guatemala; Chicana/os; and the U.S. African diaspora. Each culture is examined through a set of foci, beginning with the dominant androcentric thought, then describing the elements of gynocentrism in the culture, providing a historical overview of the women’s situation, relating current feminist movements, and finally discerning from this series of ruminations some potential and actual feminist epistemic practices.

Duran’s surveys will educate or provide points of contention for almost any reader, and so I heartily recommend that material. Building an account of similarities and differences among the cognitive resources available to women in various situations around the globe is the only way that a global feminist epistemology can proceed. So an explicit epistemology could be invaluable to the general project of global feminism (and an implicit one certainly must be). Moreover, the excellent initial grounding provided by Duran evokes a sense of immersion in the cultures she addresses that allows her reader to engage her and other writers both critically and constructively, and to carry forward the project she begins.

However, the empirical surveys are only the meat that fleshes out, but not the bones of Duran’s formulation of global feminist epistemology. The commonality first recognized by Duran, before her surveys even begin, is relatively uncontroversial. For decades feminists have attended to how reverence in many cultures for sacred and abstract knowledge brings with it denigration of typical women’s understandings of everyday empirical matters, such as finding and fetching water, and growing food. Moving into fresher territory, Duran suggests that written cultures will provide stronger analogues with Western epistemology because of the greater likelihood that the cultures have intersected before, and because modes of literacy affect cognition and conceptual patterns. However, whether disproportionate illiteracy among women might distinguish certain forms of gynocentric thought receives no comment. Instead, Duran derives analogues for identifying gynocentric thought in other cultures from considering how Western feminists have appropriated patriarchal political structures, and looking for ways in which women in other cultures do the same. She identifies two general categories of cultural reappropriation: commandeering knowledge categories usually monopolized by men, and struggling with knowledge categories associated with traditional female roles.

The reclamation of women’s traditional forms of thought brings with it a set of problems that Duran does not address. The most contentious aspect of her work, in Worlds of Knowing as elsewhere, is the use of the feminist versions of psychoanalytic object-relations theory. This theory posits that women, in general, have a more “relational” view of themselves and the world, and by contrast, men’s more abstract and atomized ways of thinking are problematic and central to sexist oppression. Bilurcating human ways of thinking in this fashion raises a number of issues, not the least of which is that to the extent that it appears to refer to a real difference, that difference is largely an artifact of sexism. Political structures discourage and disallow women from meaningful autonomy, which quashes the range of ways of thinking women can have (and likewise discourages men from pursuing any but the most accepted modes of thought). So, the apparent dichotomy between women’s and men’s modes of thought is as much part of the problem of sexism as it is a solution to it.

Of course, Duran repeatedly reminds us, building global feminism requires looking for commonalities among women’s cognitive practices, and the sorts of commonality an observer—
here the feminist epistemologist—is likely to recognize are those reflective of her own culture. Ideology pervades even the most basic philosophical terms, such as “epistemology,” “ethics,” “aesthetics,” even “knowledge,” “belief,” and “justification,” and—of course—“woman.” So, to successfully extend philosophical understandings across cultural boundaries, only the roughest analogies can be employed, and even still the analogies occasionally will be forced. Nevertheless, Duran argues, such awkward moves are necessary, or we risk a dangerous colonial attitude of ignoring cultures that differ significantly from our own.

So, if object-relations theory accurately characterizes Western ways of thinking, it would be a good starting place, or perhaps the only one really available. However, the problems with object-relations theory go beyond accepting the repressive uniformity in Western women’s thought, to assuming that women, even only in the West, have appropriately uniform childhood experiences, especially in regard to persistent intimacy with their mothers. This assumption does not bear out, however, which is another reason feminists largely abandoned object-relations theory.

I suggest that more promising for the project of global feminism might be contemporary materialist epistemologies because they are more closely tied to the details of women’s lived experience and practices. Although these post-Marxist accounts commingled with object-relations theory under the rubric of “feminist standpoint theory” in the 1980s, they provide a distinct set of resources for negotiating the epistemological aspects of identity politics and oppositional politics. These resources might better serve Duran’s project as they are less adled by the problematic assumption of gender uniformity in developmental psychology and resulting patterns of reason. She even seems to recognize this potential in the introduction and the conclusion of the book, where she suggests that human cultures have concepts of knowledge and knowledge acquisition in order to support the ways in which knowledge contributes to human survival. How women function in ensuring human survival may vary across cultures, but this common goal of thought demonstrates the potential for global feminist epistemology—and global epistemologies in general, we might add. However, the epistemological themes she takes up herself do not carry with them the materialist flavor of her framing observations.

Duran never explicitly introduces object-relations theory as part of the lens through which she views global feminism, but it is the central way that she interprets what counts as “gynocentric” in most of her case studies. What she considers distinctive of women’s thinking is a “relational” outlook, particularly for Bengali, Nepalese and Himalayan women, Chicanas, and African-American women. By contrast, cultures more influenced by European colonization, such as northern India, Mexico, and Chicano and African-American masculine culture, involve hierarchies and ideals of knowledge as an abstract totalizing system distinguished from embodiment and sensory understandings.

In addition to Duran’s view that gynocentric thinking is commonly “relational,” she points out that it is frequently ecologically sensitive and agrarian, notably in the cases of Mexican and Guatemalan women. Also, for southern Indian women the strength of shakti, how the purification of ritual manifests the Hindu (overarching) goddess in every woman, is considered a strong presence and influence on abilities that include thinking. These possible rallying points for developing feminist epistemology avoid most of the danger of object-relations accounts that clearly impose Western hegemonic categories, yet they ought likewise to be subject to critical scrutiny.

In particular, I suggest we beware of romanticizing the indigenous, in the way that Duran contrasts these indigenous views of the world with Western masculine, hierarchical, totalizing—and hence colonial—approaches to the world. That view of androcentrism is based on its manifestation in cultures with written language, and will keep feminists from recognizing how gender may be oppressive in other cultures. Indeed when Duran examines indigenous cultures, she finds little of the “static fixedness” of Western masculinity, and the sexist oppression she identifies is mostly a matter of colonization or domination by the written culture. Although it may be the case that cultures without written traditions resemble earlier cultures, and there may have been gynocentric earlier cultures, Duran seems hasty in eliding contemporary indigenous traditions with ancient matrifocal traditions.

Although I suggest some ways in which Duran’s answers seem too easy, it remains for others to account for the extent to which she is correct. Broad strokes are the best Duran hopes for, and indeed the best we can expect in initial forays into global feminist epistemology. The rest of us must proceed beyond, refine, update, and even refute her characterizations.

In a constructive spirit, I suggest that Duran’s characterization of African-American and Chicana thought offers clearly constructive potentials, bridges that can be built to the sounder portions of Western thought. Admittedly, identifying as gynocentric the equalitarianism of the Western African thought that was the background of most American slaves, as Duran suggests, seems peculiar on the surface because the African equalitarianism takes the form of androgyny. Yet, although not literally or exclusively gynocentric, androgynous equalitarianism is compatible with Western ideals, and with Western feminism especially as developed through some forms of lesbian-feminism.

Yet Duran does not take up these issues, keeping instead to the view that gynocentric thought must primarily be distinguished from androcentric thought as it has been constructed in the West. Following her too closely, we might miss what can still be reclaimed from the androcentric traditions of our own cultures and turned to feminist purposes, local and global. Reclamation is rarely straightforward, but, as Duran’s surveys demonstrate well, feminist reclamation of patriarchal terms and strategies is ubiquitous and frequently enough successful. It is also occasionally necessary, I suggest, if progress is to be more than isolated, and if feminism is to become truly global. As Duran herself argues, defensive maneuvers depend on concepts of positive similarity as well as positive difference because defining the colonized as negatively different is a tool of colonization.
The Subject of Care: Feminist Perspectives on Dependency
Eva Feder Kittay and Ellen Feder, eds. (Lanham, Md.: Rowman & Littlefield, 2002).

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Eva Kittay and Ellen Feder have brought together (and both contributed to) an excellent collection of essays on various aspects of relations of care, focused in particular on relations of dependency. The volume as a whole provides a rich resource for thinking about a number of dimensions of dependency, and relations of care for dependents. Eva Kittay aptly describes the multifaceted character of the term care as encompassing “a labor, an attitude, and a virtue” (259). All three of these features of care are central to the essays that comprise this volume, with most emphasis on the labor aspect, and the injustices of the caregiver’s (especially the woman’s) largely uncompensated care work in a number of different domains, including childcare, elder-care, and care for the mentally disabled.

Certain common threads or themes run throughout a number of the essays, which reflect, in part, the enormous influence that Eva Kittay and Martha Fineman’s work has had on other scholars of care and dependency theories. One of the most important of these common themes is the inevitability of human dependency, at least at some points in our lives, and the importance of not excluding such dependent persons from citizenship and the moral community. Another recurrent theme running through several of the essays is a critique of the liberal conception of the independent, autonomous self which denies or ignores the “brute fact” of human dependency and the interdependence of all of us on others and on the earth. A number of essays address the mobility or fluidity of the meaning of “dependency,” which has shifted significantly over time. Several selections explore how normative understandings of dependency (at least of adults) as the consequence of lack of paid employment further devalues the unwaged caring and other labor that is performed mostly by women in the domestic context, and how the price of such devaluation is the state intervention and surveillance that poor dependency workers must pay, especially in the context of non-traditional, non-normative family arrangements.

A number of the authors address the need for the state (and, in some cases, like Fineman’s essay, also the market) to better support those who provide care to dependents, as well as the desirability of bringing justice into caregiving and care into the administration of justice.

There are also tensions, even inconsistencies, in the analyses in the volume. Including, for example, that between whether care has an emotional, affective dimension (Goodin and Gibson) or not (Bubeck); whether care is compatible with liberal understandings of justice (Kittay, Nussbaum) or not (Schutte, Fineman); and whether the concept of being “some mother’s child” (Kittay) is a sufficient image in a just society or not (Nussbaum).

The collection is divided into five parts. Part I comprises three essays under the heading “Contesting the ‘Independent Man.’” The essay by Nancy Fraser and Linda Gordon, entitled “A Genealogy of Dependency,” provides a well-researched and informative history of “dependency,” tracing how the term has shifted meanings from the feudal period, through the industrial revolution, the New Deal, and the contemporary welfare state. Their outline of a typology of four “registers” of dependency: the economic, socio-legal, sociological, and psychological/subjective, is a useful conceptual framework, which they then fill out by describing how each of these registers has shifted its meaning over time. In general, their genealogy details how the term “dependency” has undergone a transformation from an unstigmatized state of economic dependence on others that was shared by wage laborers, paupers, women, and children, to a psychological or subjective state which understands dependency as an individual problem rather than one of social relations, and makes dependency a sexualized and racialized category of deviance or disease used to stigmatize and label dependency as unfit, the welfare mother being paradigmatic. Fraser and Gordon fittingly conclude that although “a genealogy cannot tell us how to respond politically to today’s discourse about welfare dependency…a fitting response would need to question our received valuations and definitions of dependence and independence to allow new, emancipatory social visions to emerge” (33-34).

The second essay by Iris Marion Young, entitled “Autonomy, Welfare Reform, and Meaningful Work,” calls into question the “apparent consensus that the purpose of welfare is to make people self-sufficient” (41), and argues that it “expresses a damaging ideology that operates further to close the universe of discourse about the respect people deserve, the meaning and expectations of work, and aspirations for autonomy” (42). As Fraser and Gordon found in their interrogation of the term “dependency” (43), Young clarifies our understanding of dependency by introducing a distinction between “autonomy,” which she says is a right, and “self-sufficiency,” which she believes is “a normalizing and impossible ideal.”

Ricki Solinger’s essay, “Dependency and Choice,” rounds out this first section by addressing how these two terms have been defined as antitheses to one another in normatively defining motherhood, both in the 1950s, when (white) women’s dependency was promoted and their exercising choice was discouraged, and in the 1980s, when the dependency of poor women (especially those of color) on welfare came to be disparaged, and their choice—of whether to become mothers—was viewed negatively. She deftly uses historical sources to show how these two terms have been manipulated to justify restricting welfare-dependent women’s choices in relation to motherhood. Solinger persuasively concludes that “far from simply referring to the separate arenas of welfare and abortion, dependency and choice interact with one another, depend on each other for meaning, and together shape and justify punitive and constraining public policies” (80).

Part II deals with “Legal and Economic Relations in the Face of Dependency.” Robin West’s “The Right to Care,” makes the simple, but ultimately unpersuasive, argument that individuals “have a fundamental right, in liberal societies that protect individual rights, to care for their dependents” (88). West admits that none of the rights that are in any way connected with women as caregivers “have ever been extended to, or interpreted so as to imply, a right to material support from the state for the caregiving labor itself” (91), but argues that “liberalism ought to be expanded so as to embrace a right to care” (95).

“Subsidized Lives and the Ideology of Efficiency” by Martha McCluskey draws heavily on Martha Fineman’s work (a summary of her essay in the volume is included below) in a sophisticated analysis of the influence of neoliberal ideology—which promotes economic efficiency and individual responsibility—in constructing public subsidies for corporate and capital interests, as publicly beneficial while welfare and other caretaking subsidies as publicly burdensome. McCluskey shows how government employs a double standard in applying...
the term “moral hazards” (government protections which encourage people to take less care to avoid the costs involved in certain risky activities than they would without those protections) to caretaking subsidies but not to corporate and capital ones, which itself rests on several problematic normative assumptions (126). She concludes that the critique of neoliberal ideology is a necessary step in the process of “challenging the supposed economic barriers to caretaking subsidies imposed by the dominant free-market ideology” (132).

In “Dependency Work, Women, and the Global Economy,” Ofelia Schutte also looks at neoliberalism, but applies what she terms an “ethical and existential” critique of social policy in relation to women’s unpaid dependency work in the global context, concluding that canceling programs that assist women caregivers (such as those that have been imposed pursuant to IMF and World Bank structural adjustment and debt repayment programs imposed on third world countries) contradicts the classical liberal goal of liberty for all citizens. Liberty, for Schutte, entails the goal of female independence from patriarchal constraints.

In addition to her fine analysis of the harms that neoliberal policies cause to caregivers in developing countries (who are mostly women), Schutte focuses more than many of the essays in the volume on the costs of caregiving for the caregiver, who may have to sacrifice even her own life’s goals because of the time demands of providing care (what she calls “time scarcity”) (141, 144, 152). Although “neoliberalism offers a temporary package of short-term benefits for women who abandon unpaid care work,” Schutte finds that efforts to improve the status of women in their respective countries are correlated with improved conditions for care work (154).

Part III contains three essays on “Just Social Arrangements and Familial Responsibility for Dependency.” In “Justice and the Labor of Care,” Diemut Grace Bubeck argues that the attentiveness and responsiveness to others that are necessarily entailed in good care work makes those who provide care “vulnerable to exploitation in a very specific way” (160). Understanding women’s work as care in this way, she argues, enables us to understand women’s exploitation and unjust treatment. Bubeck demonstrates, contra Marx, that care work is work which cannot be replaced by industrialized or technological advances, but needs to be done by people; further, that it “requires the exercise of our most distinctive capacities: language and thought and a complex emotional life that allows us to empathize with and understand others and meet their very individual needs” (162). Although I question her distinction between care work and providing a service, and even more so her view that care does not require an emotional bond between the carer and cared for (165), her arguments overall, and especially regarding the necessity of remunerating the caregiver in order to avoid burdening her (167) and the vicious “circle of care” that constructs women as caregivers and thereby maintains them in this social role, are persuasive.

Although a committed liberal herself, in “The Future of Feminist Liberalism,” Martha Nussbaum admits the failures of liberalism in two key areas of social life: “the need for care in times of extreme dependency, and the political role of the family.” She admits that in the area of thinking about the social provision of caregiving and care-receiving, tasks which have been largely relegated as “women’s work” everywhere in the world, that “a Kantian starting point (what she refers to as “the fiction of competent adulthood” (188) is likely to give bad guidance” because of its conception that human dignity and moral capacity are radically separate from the natural world of physical and material needs (188). John Rawls’ theory of justice, which has been of seminal importance in liberal theory, is built on a principle of social cooperation which assumes a conception of persons as roughly equals “and has no explicit place for relations of extreme dependency” (189).

Despite these limitations with liberalism, Nussbaum does not thereby reject it. Instead, like West, Nussbaum offers proposed modifications to liberalism, in this case to substitute an Aristotelian conception of the person for a Kantian one, based on the rationale that the former “sees the person from the start as both capable and needy,” contrary to the latter, which sees only the capabilities (194), and thus reflects greater attention to the inevitabilities of human need and dependency (196). Despite the creative approach to amending liberal theory rather than jettisoning it, I question whether an Aristotelian view of the person is adequate to “fix liberalism,” particularly since Aristotle himself held deeply patriarchal and sexist views of women and saw no problem relegating them to roles as caregivers in the private, domestic sphere.

In the final essay in this section, “Masking Dependency,” Martha Fineman powerfully argues that if dependency is understood, as it should be, as “both inevitable and universal,” that there is a collective obligation in a society to provide for its weaker members, and this includes redistribution (what Fineman calls “market correcting”) for the consequences of previously uncompensated caretaking labor (215). Fineman critiques the normative concept of the family as deeply gendered and oppressive to women, and, as empirical studies show, as breaking down in the face of many social changes, including rising divorce rates, single-parent and non-traditional family units, women having babies outside of marriage, etc. Despite the reality that alternative types of living and parenting arrangements are more and more the “norm” in America, Fineman finds that the traditional archetype of an ideal “family” (defined as both “natural” and private) continues to operate undeterred, and in such a way as to prevent recognition of changes in the form and function of families, the need for the state and market to take a greater role in providing support for dependents and those who care for them outside of the rubric of the archetypal pattern of the “official family” (217) and the way that women “continue to bear the ‘burdens of intimacy’—the ‘costs’ of ‘inevitable dependency’—in our society” (221). One might agree in the abstract with Fineman’s conclusion that these considerations “form the basis for an entitlement to justice by mothers” (227), and yet be critical of the actual possibilities of realizing this ideal from a pragmatic perspective.

Part IV addresses a set of interesting cases under the rubric: “Dependency Care in Cases of Specific Vulnerability.” “The Decasualization of Eldercare” by Robert Goodin and Diane Gibson discusses the twin pressures on community or “casual” care (as opposed to commercially provided care). One of these pressures is the growing lack of people in the community to provide care in view of increasing pressures for labor force participation, especially of women, who have traditionally provided such care. The other is the increasing burden of providing the kind of care needed to be rendered, e.g., to the frail elderly, which is not susceptible to “casual” care but requires more full-time, intensive caring. They focus on the frail elderly, by way of example, but presume that their conclusion that state support and subsidies would go a long way to relieving these pressures on private caregivers of other dependent groups and community care for dependents more generally.

Eva Feder Kittay’s essay, “When Caring is Just and Justice is Caring,” reiterates some of the themes articulated in other essays earlier in the volume, e.g., care as labor; the gendered
realities of caregiving; the vulnerability of caregivers to exploitation; and the inadequacies of the liberal conception of persons to account for dependents, caregivers, or the relations between them. One distinctive contribution of this essay (which is not to discount Kittay’s vast contribution to thinking about dependency and care altogether) is to point out the bias of our political philosophy since Plato towards the intellect and the exercise of rationality as being the reason for giving human beings moral value (262). Another contribution is to propose an alternative conception of personhood, that is, “having the capacity to be in certain relationships with other persons, to sustain contact with other persons, to shape one’s own world and the world of others, and to have a life that another person can conceive of as an imaginative possibility for him- or herself” (266). This understanding of personhood goes a long way toward eliminating the requirements of “rationality,” intellect, education, etc., that are demanded by liberal theories.

In “Poverty, Race, and the Distortion of Dependency,” Dorothy Roberts analyzes the racism and misguided policy rationales that subsidize foster care for dependent children at higher rates than financial support for poor black families. In effect such policies provide the very services to foster families that are denied to parents and thus work against the supposed mandate of the state to support the maintenance of intact families. The result of this skewed funding priority results in poor black mothers frequently having to transfer their parental authority over to the state as the price for state recognition of their children’s dependency. Roberts focuses on kinship care, an arrangement similar to traditional, private African American extended family care arrangement, but regulated by state child welfare agencies, finding that in this form of foster care, “instead of respecting the dependency relations between children and their mothers or kin caregivers, the state appropriates that relationship” (282). In doing so, “the child welfare system reinforces the racist view of African Americans as dependent and in need of white supervision” (289). Roberts persuasively argues that the “assumption that parents are solely responsible for the care of children and that their inability to provide for them warrants coercive state intervention” is “a deep flaw in the philosophy underlying the child welfare system, one which “demonstrates the need for more generous state support of caregiving” (289).

In the final essay in this section, “Doctor’s Orders: Parents and Intersexed Children,” Ellen Feder explores the treatment of “intersexed” infants—children born with ambiguous genitalia—and their parents by the medical establishment. She uses Kittay’s analysis of dependency and dependency work as well as Pierre Bourdieu’s conception of habitus to better understand the treatment received from doctors by parents of intersexed children. Feder’s use of narratives based on interviews with parents of intersexed children provides a fascinating view into the lives of these “dependency workers” and the way that their “transparent selves” have been compromised by the pressure that doctors impose to give their children a normal appearance (rather than identifying with their children’s likely wish to retain physical sensation in their genitals if it would be sacrificed by cosmetic surgery to give them a “normal” appearance). Feder suggests that the clouding of parents’ transparent self is a function of habitus—the tendency of culture to reproduce itself rather than adapt—rather than the insidious motives of either the parents or the physicians involved in recommending corrective genital surgery. She concludes that if parents of intersexed children worked to identify with their children as intersexed individuals, and to promote acceptance of genital variation, “the prevailing habitus would undergo genuine transformation” (315). Yet the studies Feder cites as well as her own research suggest that the possibilities for this transformation are very remote indeed.

Finally, Part V deals with “Dependency, Subjectivity, and Identity.” Kelly Oliver’s article on “Subjectivity as Responsibility” draws on Hegel’s account of subjectivity to examine and reconceive the relationship between dependence and independence, and subjectivity, using the concepts of responsibility and connection (324). She argues in favor of an ethical obligation as lying “at the heart of subjectivity itself” (325). Oliver’s account of subjectivity is compelling, but she doesn’t trace out the implications of her account of dependency for the kinds of issues of dependent care work, the gendered nature of care work, etc., that are the themes of the essays in the rest of the volume.

Elizabeth Spelman’s “Race and the Labor of Love” is a fascinating analysis of the social construction of race and the formation of the racial identity of Black people within a racist society from the perspective of Black scholars and other authors. Its connection to the volume comes from her understanding that “a pernicious form of labor is exacted from blacks” in order to keep the social fabric of life in the United States from being rent” (335). Spelman’s essay is reminiscent of Oliver’s in its description of James Baldwin’s conceptualization of the interdependence of blacks and whites for their identities. Spelman also draws on Judith Rollins’ account of how white employers of black domestics demand that their employees confirm their superiority in subtle ways, from mode of address to mode of dress. She uses the concept of social reproductive shadow work (shadow work being a term used generally to designate work that is unpaid and invisible in part because it is not recognized as “productive” labor in the terminology of the labor market) to describe “the labor it takes to construct, reproduce, and maintain the idea of distinct white and black racial identities and the natural superiority of one to the other” (340). Spelman ends her eye-opening and provocative essay with a critique of how the privileges of being white “are the product of a highly exploitative form of social reproductive work exacted of blacks” (345).

In the final essay in the volume, “Dependence on Place, Dependence in Place,” Bonnie Mann provides a global perspective on dependency relations by pointing to the inevitable human dependence on earth, and how this has been ignored and even opposed by humans intent upon building “a world.” Mann describes her project as an effort “to articulate another understanding of the relation between Earth and world, not as a battle, though it easily becomes that, but as a morally charged relation of dependence” (349). The connection to dependence is, as Mann states, in the hope that this notion can “provide ‘a knife sharp enough’ to cut through the self-involved subjectivism that plagues us” (349). She draws on Kittay’s work on dependency to argue that our failure to treat the Earth with respect and integrity, despite our inextricable relationship of dependence on the Earth, “bespeaks an unfathomable moral and epistemological failure” (358), and that our failure to care for one another, “as all equally dependent on the Earth,” is a second moral failure (358).

One problem I find with Mann’s argument is that her assumption that the “social, political, ethical, and spiritual direction” (363) to be ascertained from our relationship to and dependence upon place, discounts that humans are itinerant and migratory beings, more frequently, and in greater numbers in this age of increasing globalization and modernization. We are not “stuck” in a particular social and geographical “place” as we were in prior generations, although it is certainly the case that we are “stuck,” at least for the foreseeable future, on being planetary beings.
In sum, this volume is rich with new terminology, fresh concepts and ideas, creative analyses and suggested novel approaches to intractable social problems, not only regarding relations of dependency, but also a number of other issues, including racism, sexism, classism, globalization, and environmental degradation. Although the essays mainly deal only with the United States, the text is nonetheless a valuable resource for feminists, both activists and scholars, both in the United States and elsewhere, as well as a useful text to use all or parts of in graduate seminars relating to feminist theory, sociology, economics, social ethics and political philosophy.

CONTRIBUTORS

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ANNOUNCEMENTS

A memorial fund has been established in Gloria E. Anzaldúa’s name to sustain the legacy of this internationally acclaimed cultural theorist, creative writer, and scholar. If you would like to contribute to the Gloria Anzaldúa Memorial Fund, please send checks to:
“Gloria Anzaldúa Memorial Fund”
Elsa State Bank
PO Box 397
Elsa, TX 78543
The Committee on Hispanics has undertaken a number of projects during the academic year 2003-04 with the aim of furthering the Committee’s main goals of promoting Latin American philosophy and raising the profile of Hispanics in the profession. As chair of the Committee, I submit here a report of these activities.

First, we have contributed to all three Divisional meetings by organizing sessions in the main program at each meeting. In all of these, we were mindful of the need to focus on topics of interest to Hispanic and Latinx philosophers, who, of course, are themselves diverse in both the traditions they endorse and the areas of philosophy they cultivate. At the Eastern Division meeting in Washington, we presented a panel discussion on the epistemic practices of Pre-Columbian cultures; at the Pacific Division meeting in Pasadena an Author Meets Critics session featuring María Lugones; and at the Central Division meeting in Chicago a Special Session with some international guests discussing the topic, “Wittgenstein in the Hispanic World.” Although all of these topics proved to be of special interest to Hispanics and Latinx, they also attracted a more general audience of philosophers at the meetings. The presentations and discussions were lively and well attended. We had hoped to begin reaching a wider audience at the divisional meetings, and this evidence is encouraging. The Committee does appear to be achieving this important objective. Many participants stayed until the end of the sessions to make inquiries about our committee and to suggest other activities we might undertake at future divisional meetings.

Secondly, to promote the teaching of Latin American philosophy and thought, the Committee has aggressively pursued enlarging its email list, adding numerous addresses of professionals who teach, or are interested in teaching, the subject. Information concerning new teaching materials and events has been posted periodically at the Committee’s website. In this connection, we now also have a more comprehensive web page. Among its new items are resources, such as samples of syllabi, audiovisual materials that may be used for teaching and presentations, and a list of philosophers competent in different topics of Latin American thought who are willing to travel to give talks on these subjects.

Thirdly, some important plans for the future of the Committee were made at our annual business meeting at the Eastern Division. We invited APA Executive Director Michael Kelly to speak to us, and he provided useful suggestions on some of our main topics. Among these were the possibility of requesting support from major foundations committed to the advancement of the liberal arts. Grants from institutions such as the NEH could be of great help in advancing research and teaching of Latin American philosophy. We also discussed matters of internal organization related to the new prize for an essay in Latin American thought, to be offered for the first time at the Eastern Division meeting in Boston in December 2004. We decided to begin campaigning for private funding to underwrite the prize as an annual award after the initial three years of APA funding. A subcommittee was formed to serve as a jury to select the winning essay for the 2004 prize. Michael Kelly provided valuable input on all these issues.

Finally, I would like to announce that Arleen L.F. Salles will assume the editorship of the APA Newsletter on Hispanics in the spring of 2005. A native of Argentina, Arleen is assistant professor of philosophy at John Jay College of the City University of New York and also teaches in the Master’s Program in Applied Ethics at the University of Buenos Aires. Her research and teaching are focused on ethical theory and applied ethics, but she has extensive experience in editorial work, and I’m sure will continue the tradition of devotion to high standards shown by our current editor, Eduardo Mendieta.

Susana Nuccetelli
Chair, Committee on Hispanics

Dear Friends and Colleagues:

As you will see from the announcement below, the NEH will offer a Summer Institute on Latin American philosophy next year in Buffalo, between June 6 and 30. This is an important event insofar as this is the first NEH Institute devoted to this topic. It is a sign that Latin American philosophy and thought are finally being taken seriously in this country, and that the academic world is finally recognizing the need for the American college curriculum to take Latin American philosophy into account.

We need to make this Institute a success, but we cannot do it without your help. We hope for your participation in the Institute and for your help in identifying college and university teachers who might be interested in coming to Buffalo for the Institute. This is an unusual opportunity that we should let pass. Who knows when there will be another one like this!

Our thanks in advance for your cooperation.

Cordially yours,

Jorge Gracia and Susana Nuccetelli
Let me begin at an unlikely place. Oliver Sacks tells that aphasic patients, due to a lesion to the left temporal lobe, are incapable of understanding words in terms of their conceptual meaning. This deficiency is, however, amply compensated by a hyperdevelopment of their sensitivity to what Frege called the Klangenfarbe, or tonal coloring of language. Despite their cognitive handicap, therefore, they grasp with almost infallible precision that involuntary, totally spontaneous expression that accompanies words. They evidence in this way a form of understanding that is often more subtle and more exact, but which takes place at a different level than that of intellectual interpretation.¹

I begin with this consideration because it brings to the fore a mode of understanding that, beyond its pathological appearance in the example of aphasics, is present in human beings in general but tends to be repressed or ignored or devalued in our culture. As Sacks points out, it is symptomatic of our collective intellectualist attitude that this expressive hypersensitivity be considered derogatively, “almost an inversion of the usual order of things: an inversion, and perhaps also a reversion, to something more primitive or elemental.”² But this cultural symptom merely echoes an attitude inherent to our tradition since Plato. Even in its empiricist incarnations Western philosophy has persistently dismissed sensible bodily experience as impertinent to the kind of knowledge men seek, in what seems like nothing but another acting-out of the ancient human desire to overcome our earthly condition.³ And in the reading of Wittgenstein’s thought that I want to advance, his efforts are directed precisely against that inclination and they aim at a philosophical reorientation that attends to the concreteness of our bodily existence.⁴

As we are told in On Certainty, Wittgenstein wants to regard man as an animal, “as a primitive being to which one grants instinct but not ratiocination. As a creature in a primitive state,” and language as precisely not the result of “some kind of reasoning.”⁵ And he tells us often enough that he is attempting to overcome our craving for generality and that related prejudice—ingrained in our Western consciousness—against the particular case.⁶ His philosophy, I want to argue, is a battle against the systematic repression of modes of understanding and relation to the world, which are constitutive of human nature. His is an attempt, in other words, to lift our prejudice against the elemental, animal, or primitive dimension of our life in language, and thus to recover for our philosophical tradition what I will call the expressive aspect of understanding and linguistic meaning.

Now this fact seems to me decisive in evaluating the pertinence of Wittgenstein’s philosophy to Latin American thinking. This natural duality between an intellectual or theoretical and an expressive or bodily dimension in human nature has an almost constitutional tendency to polarize itself. Functionally this is evidenced in the dismissive attitude of Western philosophy towards the sensible and, generally, in our tendency to rationalize or theoretically explain our lived experience. But also biologically and geographically, this polarization finds a natural manifestation in the temperamental differences between cultures in the Northern and the Southern hemispheres.

I am aware that this claim may sound theoretically objectionable, and even politically incorrect; but experientially these differences seem to me undeniable. Just to illustrate what I mean, let me say that supposedly literary style, “magical realism,” articulated by Latin American writers, such as Gabriel García Márquez, was a well-instituted mode of existence in that continent well before it became known in the world-at-large as a literary style. A mode of existence which in its chaotic intensity and raw everydayness is as unimaginable to Northern temperaments as the systematic ordered regularity of North American life is generally unthinkable in Latin America. And although it is true that claims like these can feed the very stereotypes that breed intolerance and often obstruct mutual understanding between cultures, it is the fragile grain of truth that they express which needs to be redeemed. For the temperamental contrasts that they so crassly express determine different ways of seeing and being in the world that cannot be left aside if we are to talk about the ways of thinking that are natural to each.

The fact that we tend to dismiss these considerations as impertinent to our conception of philosophical thinking reveals a familiar prejudice: that philosophy is about essences, about universal knowledge, and that its sub specie aeterni vision allows us to overcome or hover over our concrete limitations and attain some kind of Aufhebung. But if there is something Wittgenstein has taught us, it is the necessary locatedness of thinking, the irreducible spatio-temporal nature of language, and so the need to consider the constitution of our concepts or categories of reality within a context, as José Medina has rightly put it, “of historicity, agency and normativity.”⁷ Wittgenstein’s rejection of our acontextual, intellectualist, puritanical tradition and its recovery of the expressive dimension of thought makes his philosophy immediately relevant to Latin American culture, insofar as it is directly related to a mode of being that is typical to its own forms of life.

It is indeed that tradition—aversive as it is to the expressive in its separation of style from content in philosophy, and in its attempt to keep itself clean from embodied experience—which leads us to admit, without much resistance, that, as Carlos Pereda has put it,⁸ the philosophical tradition in the Spanish language has been poor, so that it seems reasonable that we seek to attain a proper training outside it. It is the partiality of mind that this prejudice nurtures, under the guise of progress and rationality, that I believe stands behind the three vices that, according to Pereda, burden Latin American philosophy: The “franchise mentality” is nothing other than an expression of our blindness to our own resources and concerns; the “craving for novelty” results from our failure to anchor our interests in our own psyche; and “patriotic fervors,” like all fanaticisms in the world, are an extreme reaction against what is felt as an imposition from outside and a threat to what we also feel, but perhaps can’t even articulate, as most intimately ours. We too are, in other words, party to that prejudice in our cultural and philosophical practices that harks off our own roots.

In this regard then, Wittgenstein’s project is immensely pertinent to the question I want to ask, about the point and nature of philosophy in Latin America. Insofar as it manages to
break the hold of our tradition’s cultural and intellectual imperialism, Wittgenstein’s work opens a new access to a realm of philosophical reflection that incorporates, rather than rejects, modes of thinking and experience that have until now been ignored, but to which the Latin American temperament is naturally suited. Already at the beginning of the XXth century Ortega y Gasset reminded us that abstract, theoretical and scientific intelligence is “only a small island floating in an ocean of primordial vitality,” and he saw the task of our times in the coming to awareness of this fact, and the profound conversion that it would bring to our vision of the world.

I would like to rehearse in what follows and in a couple of very broad brushstrokes, an account of Wittgenstein’s discussion on seeing aspects that suggests how it may be read in this light, as part of that task, which I am claiming is immediately relevant to Latin American thinking. So we move now, from what I wanted to say about cultural diversity, on to Wittgenstein’s project of grammatical tolerance.

II

Wittgenstein’s discussions on seeing aspects are a centerpiece in his battle against the predominance of an intellectualist mode of thought in our tradition. They not only introduce a realm of experience that is not capturable by our conventional philosophical categories, (evidencing the very partiality of thinking that makes us unable to account for our actual experience). They also serve as an occasion for a revised conception of subjectivity that recovers, both in theory and in the actual practice, the primacy of concrete bodily experience for philosophy.

In his writings, Wittgenstein literally forces his readers to involve themselves vicariously in fictitious cases, possible situations, and contrasting examples to loosen up the rigidity of our concepts and cultural prejudices that make us insensitive to the radical expressiveness of language. His is, first of all, an appeal for grammatical tolerance:

if anyone believes that certain concepts are absolutely the correct ones, and that having different ones would mean not realizing something that we realize—then let him imagine certain very general facts of nature to be different from what we are used to, and the formation of concepts different from the usual ones will become intelligible to him.

His appeal to the imagination, here as much as in virtually every page of Wittgenstein’s later writings, has the purpose of leading us inside living contexts that are different from our own, to propitiate a new type of commitment, more sensual, sensible, and imaginative to experience from which different visions of the world may become available to us. But this means that he is attempting to make us see the world in a different way than we are accustomed, not obviously by suggesting new logical or intellectual interpretations or by providing different explanations. As he explains in response to the intellectualist interlocutor of the Investigations who insists in understanding what Wittgenstein is saying in the traditional concepts:

Our interest certainly includes the correspondence between concepts and very general facts of nature. (…) But our interest does not fall back upon these possible causes of the formation of concepts; we are not doing natural science; nor yet natural history — since we can also invent fictitious natural history for our purposes. I am not saying: if such-and-such facts of nature were different people would have different concepts (in the sense of an hypothesis). But: if anyone believes that certain concepts are absolutely the correct ones, and that having different ones would mean not realizing something that we realize—then let him imagine…

We must be clear, Wittgenstein seems to be saying, that our purpose is very different than the scientist’s, who moves in the realm of empirical truths. And, differently from a scientific investigation, ours is not at all an “objective” enterprise, in the sense that natural science claims to be. As philosophers, Wittgenstein explains, we are at most imagining natural histories, for we are not interested in confirming hypotheses about the world, but in seeing the world —the same empirical world the scientist is explaining—in as many ways as possible. As philosophers we are not interested in “the Truth” (whatever that may mean), but in understanding the grammar of our language—the way in which we can weave the world in our concepts—in order to recognize the diverse ways in which we can come to see the truth. The whole discussion on seeing aspects is about precisely what is needed to see the vital world beyond the realm of empirical scientifically examinable phenomena.

Wittgenstein calls to our attention, for example, the strange experience we have when we contemplate a face “and then suddenly notice its likeness to another. (We) see it has not changed; and yet (we) see it differently.” This strange experience involves what he calls “a particular visual experience (Seh erlebnis)” that he connects explicitly to other experience (erleben) we can have of the meaning of a word, when for example, the word “bank” feels differently when it refers to the bank where I keep my money and the river bank that I watch every morning as I walk to school; or when we feel the absurdity or incongruence (the example is obviously Wittgenstein’s) that Goethe’s signature could have belonged to Kant; or even when our familiarity with a word shrinks away after we repeat it many times. Now, the question he explores about the sense of this experience is important not just to understand the phenomenon of “seeing aspects,” but to recognize that concern with this phenomenon is an integral part of his effort to recover lived, bodily experience for a tradition that sometimes seems willing to give it up for the sake of certainty and intellectual knowledge and control.

The experience where “we see that nothing has changed, yet everything looks different” reveals a capacity, or a human talent, that goes unremarked from the scientific perspective. By directing our attention to it, Wittgenstein thematizes a realm of human experience, beyond mere perception, where displacements take place that do not correspond necessarily to changes in the empirical world, though they are able to change our perception and totally transform its meaning. But this new way of seeing involves a radical revision of our concept of the subjective, the first step of which is to combat the Cartesian model, which invalidates every reference to the inner by turning it into something mental or private.

Dissociating himself from that tradition, therefore, Wittgenstein insists that when talking about this “experience,” we are not talking about an inner experience, in the same way that he insists that when we talk of thinking we are not talking about the images or psychological processes that accompany our words. Although he rejects the Cartesian interpretation of subjectivity, Wittgenstein does not discard but returns, again and again, to the “experience of the meaning of a word”; furthermore, he insists in the visual experience that accompanies the seeing of aspects and asks us to pay attention to what we want to say when we speak about “experience,” suggesting that there is something important that we need to recover from our expression. This recovery, it is important to note, depends on the appeal to imaginative reflection that
Wittgenstein’s methods make, but also on his obvious trust in the deep significance of our inclination to speak of our experience beyond the literal meaning of our words. It depends, to put it another way, on his trust in the natural spontaneity and expressiveness of our words beyond our intellectual understanding.

Wittgenstein’s imaginative exercises are successful in showing that the reason why we are inclined to postulate internal mental contents to explain meaning is our blindness to the gestural or expressive dimension in language, our inability to see aspects. (The scientific way of looking at phenomena, he had already told us in the “Lecture on Ethics,” is not the way to see a miracle). So he asks us, for example, to imagine explaining the particular thought we may have, for instance, upon hearing a word, in terms not of an internal dialogue or mental processes, but of a spontaneous inclination to make a gesture. Upon hearing some word I spontaneously frown at you in a significant way and when you ask me, “Why did you look at me that way when you heard that word?”16, I explain myself saying that “I thought of so-and-so” or that I suddenly remembered “that night at the Caffè Florian.” In this way, Wittgenstein discards the mental content suggested by the “inner words” and brings to light the important fact—which we verify imaginatively—that until the moment that I articulate myself in a verbal explanation, the “experience” is expressively full, even if representationally as empty as a gesture.17 This expressive fullness that becomes evident when we pay attention to the gestural goes undetected by the literalist eye which, insensitive to the bodily, seeks only internal states and mental representations.

It is necessary to insist that Wittgenstein is deliberately not denying that there is an “inner activity” to which our mention of “experience” gives voice. But this inner activity has no content, even if it is indeed an experience. The words with which we express ourselves in these cases are signaling an animic directionality, a natural potentiality about which we become gradually aware insofar as it acquires concreteness in the diverse and diffuse consequences of our words, in the ponderable and imponderable evidence that is wholly open to others.18 As Wittgenstein says, the words or expressions (Äußerungen) in which we express our experience are like seeds (Keim)19 or like “acorns from which oak trees can grow.”20

III

The phenomenon of aspect-seeing embodies a mode of experience common to all, that is, however, not captured in our usual perceptual categories. It crosses all traditional conceptual borders—between thought and perception, between reason and imagination, between intellect and feeling—and so requires no less than a total revision of our conventional psychological grammar. The task of finding a place for this experience demands the assumption of our words in their complete expressiveness, “with attachment” as Wittgenstein puts it, in the inexhaustible spontaneity of a human being, in what I want to call our innate power of transcendence, meaning by this not anything mystical but simply our capacity to move beyond the literal and create and share new meanings through a free act of the imagination, but immensely sensitive patients. It was to these (for them) most glaring, even grotesque, incongruities and improprieties that my aphasic patients responded, undeceived and undeceivable by words. This is why they laughed at the President’s speech. “The President’s Speech,” in The Man Who Mistook His Wife for a Hat (New York: Simon and Schuster, 1998, 80-83).

2. Ibid., 81.
10. For various aspects of this reading, see: “Ver aspectos, imaginación y sentimiento en el pensamiento de Wittgenstein,” Apuntes filosóficos, No. 18, Caracas (2001);


12. It is helpful to draw a line of convergence and affinity with Pascal’s distinction between the geometrical spirit (which would correspond to the literalist cravings of the modern philosopher, Wittgenstein’s interlocutor) and the spirit of subtleness, which names the attitude exemplified in Wittgenstein’s appeals to the imponderables of language or the vision of aspects: Cf., “En el espíritu de sutilidad los principios son de uso común y se presentan ante los ojos de todo el mundo. No hay que volver la cabeza sin hacerse violencia, Sólo se trata de tener buena vista. Pero eso sí que es bien necesario, tenerla buena, ya que los principios están tan desleídos y son en tan gran número, que es casi imposible que no se escapen algunos. Y la omisión de un principio conduce al error; así es necesario tener la vista clara para ver todos los principios, y luego el espíritu recto para no razonar falsamente sobre los principios conocidos. (Los sutiles) penetran viva y profundamente las consecuencias de los principios” (Pensées, XV).

13. PI, II, xii, 230b.


16. PI, 217g.

17. It also shows that the explanation I am inclined to give (“I thought of,” or “I suddenly remembered”) arises as spontaneously and groundlessly as the gesture did. We could also say: what contains those words is the same as what contains the gesture. They both arise from a silence that precedes language, and it is to this prelinguistic silence, this potential directionality or objectless intention that the experience refers. (We could see what Wittgenstein is doing here as an attempt to recover the sense of the radical spontaneity of language, the difference between institutionalized language and what Merleau-Ponty calls “authentic language.” Cf. Merleau Ponty: “Nous vivons dans un monde où la parole est instituée. Pour toutes ces paroles banales, nous possédons en nous-mêmes des significations déjà formées. Elles nes suscitent en nous que des pensées secondes; celles-ci à leur tour se traduisent en d’autres paroles qui n’exigent de nous aucun véritable effort d’expression et ne demanderont à nos auditeurs aucun effort de compréhension. (…) Nous perdons conscience de ce qu’il y a de contingent dans l’expression et dans la communication, soit chez l’enfant qui apprend à parler, soit chez l’écrivain qui dit et pense pour la première fois quelque chose, enfin chez tous ceux qui transforment en parole un certain silence (…) Notre vue sur l’homme restera superficielle tant que nous ne monterons pas à cette origine, tant que nous ne retrouverons pas, sous le bruit des paroles, le silence primordial, tant que nous ne décrirons pas le geste qui rompt ce silence” (Phénoménologie de la perception, 214).)

18. Cf. PI, 218i. The experience is not directly related to what I say; it is not the same as the meaning of the words, but it is related indirectly to those meanings through what those words evoke in me, by what Wittgenstein calls their “field (of force)” (Feld, PI, 219c) [cf. Davidson’s “first meaning” in his discussion of malapropisms in “A Nice Derangement of Epitaphs”).

19. PI, 217e.

20. PI, 220d-e.


22. Thanks are due to Michael Hodges and Lorena Rojas Parma for their helpful comments on a previous version of this paper.

Wittgenstein and the Hispanic family
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Here I will use Wittgenstein’s later philosophy to develop a contextualist account of Hispanic identity. I argue that from Wittgenstein’s notion of family resemblance we can derive a non-essentialist and pluralist view of ethnic identity as something that is historically situated, action-based, and value-laden. So the three crucial features of the contextualist familial view of ethnic identity that I derive from Wittgenstein’s philosophy are historicity, agency, and normativity. On my view, an ethnic identity is shaped by history, that is, produced and maintained by historical practices. Secondly, it is crucially dependent on the agency of its members and also on the agency of those with whom they interact. Finally, an ethnic identity has a normative dimension, that is, membership in the group is informed by normative attitudes (although these may be different and even in tension, and although they may remain implicit and go unacknowledged). I will develop my Wittgensteinian familial view of Hispanic identity in two stages. In the first stage I offer a critical examination of Jorge Gracia’s familial account. There I argue that, although drawing on the Wittgensteinian notion of family resemblance, Gracia’s account is not Wittgensteinian enough, and I criticize its metaphysical presuppositions from a Wittgensteinian perspective. In the second, more positive stage of my argument I articulate my own interpretation of the notion of family resemblance and apply it to Hispanic identity. Finally, I draw some conclusions concerning what the philosophical debate about Hispanic identity can learn from the historical, practical, and normative contextualism that informs Wittgenstein’s later philosophy.

1. Gracia’s Familial View: History without Agency and Normativity

In Hispanic/Latino Identity, Gracia argues that Hispanic identity should be understood as the identity of a historical family formed by “a unique web of changing historical relations.” On this familial-historical view, the unity of Hispanics is not a unity of commonality, but a unity of community, “a historical unity founded on relations.” According to Gracia, the origin of the complex chain of historical events that unites “our Hispanic
family” is “the encounter” of Iberia and America in 1492: “Our family first came into being precisely because of the events which the encounter unleashed.” 4 Gracia argues that the term “Hispanic” is the only appropriate name for our historical family because it is the only label that can bring together all those Iberians and Americans who have come to share an ethnic identity as a result of historical events. Rather than discussing the validity of these specific contentious claims, I want to discuss instead the general strengths and weaknesses of Gracia’s familial view.

The main strength of Gracia’s familial-historical view is its capacity to account for change and diversity as fundamental aspects of Hispanic identity. On Gracia’s view, the cultural identity of an ethnic group is neither static nor homogeneous. On the one hand, Gracia’s diachronic view depicts Hispanic identity as something dynamic that is always in the making and can never be fixed once and for all. This picture brings to the fore the contingencies of the past that have contributed to the formation of our Hispanic identity; and it underscores that the future of our Hispanic family remains open: “The future is always open and can be different. We are not trapped in our identity.” 5 On the other hand, Gracia’s familial-historical view emphasizes the nonhomogeneous character of Hispanic identity. On this view, Hispanics share only “family resemblances” and their identity “is bound up with difference.” 6 Gracia’s analysis of ethnic groups as historical families shows that the homogeneity of group identity is a myth, for families are not homogeneous wholes composed of pure elements: “They include contradictory elements and involve mixing. Indeed, contradiction and mixing seems to be of the essence, for a living unity is impossible without contradiction and heterogeneity.” 7 This is particularly true of our Hispanic family that has been constituted through mixing or mestizaje at all levels.

Despite its unquestionable virtues, Gracia’s familial-historical view has also some weaknesses. A critical look at the externalist and realist view of history that animates Gracia’s account of Hispanic identity can help to uncover some of its problematic assumptions. In the first place, it is highly questionable that what gives unity to our Hispanic family is history per se and not the appropriation of that history in and through our practices. However, Gracia’s externalist view of history forces him to this implausible conclusion: “What ties (a group of people) together, and separates them from others, is history and the particular events of that history rather than the consciousness of that history.” 8 But it is far from clear that having a distinctive history is a sufficient condition for the ethnic identity of a group. This externalist view belies the fundamental practical dimension of ethnic identity, which involves agency and is not something that simply happens to us as a result of history. The explicit recognition of this practical aspect of Hispanic identity is essential for the self-empowerment of the group. In the second place, Gracia’s familial-historical view shares with essentialist views the ambition of finding a metaphysical grounding for Hispanic identity that is independent of political viewpoints. However, it seems implausible that history can provide such value-free grounding. Gracia insists that our philosophical justifications of claims about Hispanic identity “should not be based on politics, but on historical fact.” 9 But unless a strong fact/value distinction is invoked, it is not at all clear that history and politics can be kept separate. Gracia seems to be reacting against accounts that have explicitly tied Hispanic/Latino identity to particular social and political agendas such as liberation.10 Although Gracia acknowledges the crucial importance of the project of liberation in Latin America, he does not think that liberation should be considered as a constitutive element of Hispanicity and Hispanic thought in general; for the idea of liberation has not played the same key role everywhere in the Hispanic world, and it is not clear that it will be in the future. This is indeed true, but it should not be a problem for a philosophical account of Hispanic identity that is developed for our here and now rather than for all times and all places. And this brings us to the unWittgenstenian aspect of Gracia’s view. Just as the traditional essentialist views, Gracia’s familial-historical view purports to be a universal theory of Hispanic identity that is independent of specific contexts. By contrast, Wittgenstein encouraged us to look at specific cases for specific purposes. On Wittgenstein’s view, the job of the philosopher is to arrange descriptions or “perspicuous representations,” 11 that is, to provide elucidations by situating things in their historical, practical, and normative contexts. And it is of the utmost importance that, as Wittgenstein himself emphasizes, these descriptions or elucidations are produced for “particular practical purposes.” 12 However, the philosophical standpoint adopted and encouraged by Gracia’s view is not the situated perspective of an engaged critic, but the detached perspective of an observer who looks at the history of our Hispanic family sub specie aeternitatis. This lack of sensitivity to practical and normative contexts is damaging, for it undermines the critical and transformative potential that a philosophical elucidation of Hispanic identity should have.

In my opinion, Gracia’s familial-historical view of Hispanic identity is an important step in the right direction, but a step that could have taken us much further if it had acknowledged agency and normative contextuality as constitutive aspects of identity. An adequate familial account of identity needs to pay closer attention to the role of agency and values in the formation of identity. Gracia’s view gets right one of the three crucial features of ethnic identity: historicity, but not agency and normativity. But these features cannot be separated without distortion. As I will argue in the next section, following Wittgenstein, the historical contextuality of ethnic groups is essentially practical and normative.

2. Heterogeneous Families: Families with History, Practices, and Norms

One of the lessons we can learn from Wittgenstein’s later philosophy is that most of the concepts we use to describe ourselves and the world around us are not applied according to fixed criteria of strict identity. When we use a concept such as “game” or “chair,” we treat all kinds of different things as the same although they are not strictly identical in any respect; that is, in our categorizations different things are treated as instances of the same category even though there is no feature (or set of features) that they all have in common: many different kinds of activities are called games, and many different kinds of artifacts are called chairs; and we can always add new items to the list of things that fall under these concepts (we can always invent new kinds of games and produce new kinds of chairs). Wittgenstein suggested that these concepts are like families, whose members resemble one another in many different ways: some may have similar hair, others a similar nose, others may share a particular way of talking, or a similar laughter, etc. Families are composed of heterogeneous elements; there is nothing in particular that all their members must have: they simply exhibit some similarities, they share certain “family resemblances,” 13 but there is no fixed set of necessary and sufficient conditions that determine membership. As Wittgenstein puts it, what brings together and keeps together the members of those categories that function like families is “a complicated network of similarities overlapping and criss-crossing.” 14 Wittgenstein’s analogy between the strength of a concept and the strength of a thread
illustrates this point: “we extend our concept (…) as in spinning a thread we twist fibre on fibre. And the strength of the thread does not reside in the fact that some one fibre runs through its whole length, but in the overlapping of many fibres.”

As I have argued elsewhere, the network of similarities in which the familial identity of the members of a concept consists must be accompanied by two distinct networks of overlapping and criss-crossing differences: one network of differences that sets apart the members of the family from the members of other families; and another network composed of those differences among the members of the family themselves that lurk in the background and are disregarded for the sake of familial identity. It is important to note that the relationship that holds between these networks is a dynamic one: differences that today set apart one family from another may become inconsequential tomorrow; and, on the other hand, internal differences that are considered negligible today may grow to be important differences tomorrow, even to the point of excluding individuals from membership in the family. At the same time, these dynamic fluctuations between the networks of differences correspond to transformations in the network of similarities that sustain familial identity, for all these networks are mutually dependent and they are shaped simultaneously. Thus the analogy between families and concepts underscores change: a family is a living unit whose members come and go; and, similarly, what is covered by a concept is subject to change and must be left open. Moreover, even when the extension of the concept does not change, even when the membership in the family remains the same, the relations among the members of the family (as well as their relations with other families) change as differences become visible and family ties are relaxed. It is important to note that these networks of similarities and differences that become indicative of familial identity have a history: they result from the continued use of certain associations, that is, from treating things in a particular way in our shared linguistic practices. Therefore, these networks of similarities and differences should not be thought of as unexplained explainers; they acquire diagnostic value simply because of the (criterial) significance they have been given in our practices, because they have come to be seen as symptoms of membership in a group. On my view, the networks of similarities and differences that sustain familial identity call for a genealogical account, that is, a genealogy of their formation through the shared ways of speaking and acting enforced by our practices.

This familial view of identity based on Wittgenstein’s account of categorization suggests two points, namely: that identity can be thought of as something heterogeneous, based on diversity, and as something unstable, subject to fluctuation. These points alone show that the quest for ethnic purity is conceptually misguided. For this quest presupposes the homogeneity and fixity of ethnicity; but when ethnic groups are conceptualized as families, it becomes clear that the homogeneity and fixity of ethnic identities are nothing but myths. Given this heterogeneous character, it is not surprising that all attempts to reduce the shared identity of Hispanics to common properties fail. These attempts have led many to conclude that we should give up Hispanic identity and retreat to national identities (Mexican, Cuban, Argentinean, etc.)—but, as it turns out, these collective identities pose the same problems. This reaction is based on the essentialist assumption that there is no shared identity when there are no common features. But this assumption is a misconception. The unity of Hispanics as an ethnic group cannot be established at the expense of diversity, but on the basis of it. As Gracia puts it, the unity of Hispanics is “a unity in diversity,” that is, it is not a unity of commonality, but a unity of community: the unity of a family.

The familial-historical view I have sketched here calls our attention to the contingencies of the past that have contributed to the formation of our Hispanic identity; and it underscores that the future of our identity remains open and therefore presents us with a task for which we have to take responsibility. According to this view, identifying oneself as Hispanic (or as a member of any other ethnic group) is the expression of a commitment: a commitment to one’s history, to a set of ongoing practices, and to a common future. What is most distinctive about ethnicity is that it involves normative attitudes that inform one’s interests, values, and practices. What characterizes membership in an ethnic group is a relation of normative identification, which is precisely what the metaphor of the family captures so well. Being part of an ethnic group involves being committed to it, that is, it involves seeing oneself as being part of that community or family, no matter how different its members are and how heterogeneous their practices and values can be.

In conclusion, like Jorge Gracia’s familial view, my Wittgensteinian view underscores that contingency, diversity, and instability are fundamental aspects of any cultural identity and of Hispanic identity in particular. But unlike Gracia’s view, my Wittgensteinian approach puts the emphasis on agency and normativity and, far from being merely descriptive, it has a critical and transformative potential. The critical payoff of an action-based and value-laden approach to identity is, I contend, the central contribution that Wittgenstein’s philosophy can make to the philosophical discussion of Hispanic identity.

Endnotes
2. Ibid., 49.
3. Ibid., 50.
4. Ibid.
5. Ibid., 190.
6. Ibid., 33.
7. Ibid., 50.
8. Ibid., 49.
9. Ibid., 67.
12. Ibid., §132.
13. This famous Wittgensteinian notion has often been read very narrowly as referring to purely physical similarities. It is unlikely that this is what Wittgenstein had in mind since he introduces the notion to clarify the meaning of terms, such as “game” and “number,” whose application does not seem to rely on a set of physical characteristics. See PI §66-67. Contrary to this narrow interpretation, I will use the notion of “family resemblance” interchangeably with the notion of similarity to cover all kinds of commonalities that can be indicative of group membership.
15. Ibid., §67.
meaning from the perspective of the uses of words in representationalist view of language and a proposal to rethink there is an attack on the traditional Investigations showing, are discussed; or how in the facts and not of things, or the difference between saying and case, his material lesson emerges when we study, for example, any thinker. By "material lesson," I mean what we learn from Latin America? " can Wittgenstein teach to those of us who do philosophy in point of view, and can be boiled down to the question: "What normative and speculative rather than descriptive or historical lines I shall begin to explore a second perspective. It is a more evaluative, the different forms of presence of Wittgenstein's view, in Latin American culture. This standpoint calls for a in Latin American philosophy, or perhaps, in a moral general standpoint. This stands for one to adopt at least two completely divergent perspectives. The first one leads us to trace the reception of Wittgenstein's thought in Latin American philosophy, or perhaps, in a moral general view, in Latin American culture. This culture calls for a chapter on the history of ideas, selecting, and maybe evaluating, the genealogical approach and the comparative perspective behind my familial view are intended to subvert this model and to be critical of oppressive familial structures in general. In this sense, my familial view connects with ongoing efforts in the literature on identity (especially in feminist theory and queer studies) to rearticulate the very notion of a family and to subvert what is typically understood by "family values." See note 5.

Wittgenstein in Latin America
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The expression "Wittgenstein in Latin America" invites one to adopt at least two completely divergent perspectives. The first one leads us to trace the reception of Wittgenstein's thought in Latin American philosophy, or perhaps, in a moral general view, in Latin American culture. This culture calls for a chapter on the history of ideas, selecting, and maybe evaluating, the different forms of presence of Wittgenstein's thought in this particular geographical area. In the following lines I shall begin to explore a second perspective. It is a more normative and speculative rather than descriptive or historical point of view, and can be boiled down to the question: "What can Wittgenstein teach to those of us who do philosophy in Latin America?"

Firstly, I would like to draw a distinction between the material lesson and the formal lesson one might learn from any thinker. By "material lesson," I mean what we learn from how a thinker approaches, treats, solves or dissolves a certain number of problems or pseudo-problems. In Wittgenstein's case, his material lesson emerges when we study, for example, how in the Tractatus the concept of the world as the whole of facts and not of things, or the difference between saying and showing, are discussed; or how in the Philosophical Investigations there is an attack on the traditional representationalist view of language and a proposal to rethink meaning from the perspective of the uses of words in "language games," or how the idea of a private language is dissolved; or how On Certainty contributes to get rid of a traditional Cartesian concept of certainty by means of an anti-foundationalist reasoning.

On the contrary, the formal lesson of a thinker is not so much a matter of assimilating his or her views for the treatment of one or another problem or pseudo-problem, but of learning some of the thinker's more general ways of reasoning. However, a formal lesson does not only capture a "know how"; it also points to what might be called a form of wisdom. For instance, Wittgenstein makes use of several metaphors to indicate wrong paths in our thinking. These metaphors do not only pinpoint isolated errors—e.g., wrong ways of posing or treating a certain problem; rather, they show radically distorted orientations of making philosophy. For these are:

Like a pair of glasses on our nose through which we see whatever we look at. It never occurs to us to take them off. (PI, 103).

Wittgenstein is not suggesting here that we change a certain pair of glasses for another one (like the pair he is supposedly prescribing us). He is urging us to take off the glasses to pay attention to the huge variety of facts both surrounding us and produced by us, and, above all, to try to pay attention fairly, avoiding the temptations of immobility posed by our preconceptions. Remember that particular errors are often the product of deeply entrenched habits of observation and reasoning. And just like any bad habit, these are not easy to get rid of. These remarks obviously lead to the question “Which are some of the vices that distort Latin American thought and how can Wittgenstein help us to fight them?” I will try to sketch an answer to this broad question in two parts. First, I reconstruct very briefly three recurrent vices in Latin American thought; and second, I pick up two or three of Wittgenstein's proposals, which can be useful in order to attack them.

One of those vices might be described as an enthusiasm for opening local branches of the foreign schools of thought (enfoque sucursalero is the term I use in Spanish). To be sure, philosophical tradition in the Spanish language has been poor. Hence the need to appeal to other modern traditions—especially in the English, French, and German languages—to attain a proper training. But his does not go without serious consequences. Many times a school of thought from some distant land dazzles our young students to the point of making them abandon serious research efforts and spend the rest of their academic lives repeating increasingly empty formulae. Since the Headquarters of Thought are to be found elsewhere—so this position goes—intellectual activity cannot be much more than managing—with ever-decreasing energy—the branch of our chosen school in the peripheral town we happen to live in. As a consequence, after a time we might quit all efforts at thinking; and instead of pursuing reflection, we will arrogantly embrace an enthusiastic “practice of adherence”: one just chooses one's little area of philosophy and remains faithfully a disciplined phenomenologist, utilitarianist, logical-positivist, analytical or postanalytical philosopher, postmodernist, post-postmodernist, neomarxist, neoscholastic, neofrankfurtian, neofunctionalist, etc.

The second vice is a “thirst for novelties,” and can be seen as a reaction against the first vice mentioned above. Instead of building walls around himself, now the individual remains very open—but to whatever comes across his mind. Of course, open-mindedness and curiosity are precious virtues. Knowledge cannot exist without them. But difficulties arise

18. To properly understand my familial account of ethnic identity, two caveats are in order. First, as used in my Wittgensteinian view, the notion of a family should not be understood as a purely biological concept, but rather, as a hybrid notion that contains social and political elements as well as biological ones. Families are not just biological groups, but social structures and legal institutions. It would be a mistake to think that only biological features constitute adequate criteria for familial membership. (Indeed, people can gain and lose parental rights on the basis of nonbiological considerations.) Secondly, we have to keep in mind that there are all kinds of families and, therefore, only a pluralistic notion of “family” can be useful for the analysis of collective identities. My Wittgensteinian approach does not rest on any specific conception of the family, in particular; it is not dependent upon the patriarchal familial model that has been dominant in the West. Far from being complacent with the patriarchal model of family relations, the genealogical approach and the comparative perspective behind my familial view are intended to subvert this model and to be critical of oppressive familial structures in general. In this sense, my familial view connects with ongoing efforts in the literature on identity (especially in feminist theory and queer studies) to rearticulate the very notion of a family and to subvert what is typically understood by “family values.” See note 5.
when open-mindedness degenerates into a loss of a sense of direction, into a lack of any more or less long-term project. Curiosity becomes, in this case, an unhealthy habit, an all-consuming passion. We are no longer interested in understanding the world and our responsibilities in it, but are weighed down by an arrogant obsession with keeping up to date, a leaning toward adopting all the trendy ideas.

We are usually urged in Latin America to liberate ourselves of these two tendencies by recovering characteristics peculiar to us and to stop looking so much abroad to really appreciate what we are and what we have been, and what are and have been the circumstances surrounding us. We are exhorted to decolonize ourselves, to recuperate the historical memory of our many catastrophes, and to act accordingly. It is a pity that these appeals quickly develop into a new vice, namely the arrogance of collective identities, the driving force behind “nationalist enthusiasms” and their—quite more ridiculous than arrogance of collective identities, the driving force behind “nationalist enthusiasms” and their—quite more ridiculous than the appeal to authenticity, to our true colors. “Ecuadorian philosophy,” “Argentinean philosophy”) with all “national philosophies” (“Mexican philosophy,” “Bolivian philosophy,” “Ecuadorean philosophy,” “Argentinean philosophy”) with all their appeal to authenticity, to our true colors.

How can Wittgenstein’s sophisticated reflections contribute to undermine these gross vices of Latin American arrogant reason?

II

Let us remember that, according to Wittgenstein, our wrong ways of examining the world are usually not just superficial mistakes. They rest on deeply entrenched inclinations. That is why only a radical reorientation of our life forms can liberate us from those excruciating tendencies and fixations and let us radically redirect our attention. But, one might ask, “Just how can this be done?” Here’s a possible answer:

(One might say: the axis of reference of our examination must be rotated, but about the fixed point of our real need) (PI, 108).

According to this, everyone must explore his or her real needs. However, as Wittgenstein warns us, we should try doing this without employing one-sided criteria, without preconceptions or stifling loyalties. Our goal should be recuperating our real needs of all kinds: moral, social, material, political, philosophical, scientific, aesthetic, and so on. Once these needs have been identified, our next step should be getting rid of, for example, our unthinking loyalties, the obsession with keeping up-to-date, or the appeal to our true colors. All these tendencies only confuse and distort our beliefs, desires, and emotions. This is why Wittgenstein often recommends us a therapy for approaching a philosophical matter:

The philosopher’s treatment of a question is like the treatment of an illness (PI, 255).

However, one should be very careful not to give in to the tendency of generalizing. There is no such thing as “the illness.” There are many different diseases, each with its own characteristics. Similarly, there is no thing as “the vice” or “the pseudo-logic.” There are rather many and very different vices and kinds of pseudo-logic, of which we have only pointed to the more recurrent cases.

It’s better then if we get rid of that most dangerous fantasy, to wit, the idea that when we solve a problem or eliminate a vice, we solve all the problems and eliminate all the vices. For the struggle against those vices never comes to an end:

Problems are solved (difficulties eliminated), not a single problem. (PI,133).

This is so, among other reasons, because there is no such thing as “the Method” dreamed by Descartes and by many others after him in the Western tradition. But let’s be very careful not to try to mend one mistake with another: methodolatry is not to be counteracted with methodophobia:

There is not a philosophical method, though there are indeed methods, like different therapies. (PI,133).

Given the persistence in Latin American forms of life of vices, such as the unthinking adherence to foreign trends, the obsession with keeping up-to-date, and nationalist enthusiasms, eliminating them is, of course, not an easy task. And as soon as we free ourselves from any one of them, we automatically tend to adopt either of the other two. However, once we have left these vices behind, we suddenly come to realize, almost as a paradox, that what we have lost was, in spite of all our efforts to a large extent, comfortable excuses, potentially harmful inclinations, but without much consistence. Perhaps this can be considered a more or less general meta-lesson: starting to learn always involves starting to drop useless fantasies that we—wrongly—deem extremely important and can restrict and even ruin our lives. Because:

What we are destroying is nothing but houses of cards (PI, 118).

But Wittgenstein’s aid is not only negative in character; it cannot be simply reduced to showing how some therapies work. Against the usual view, one can also find a positive approach to philosophy in Wittgenstein’s writings. It is a conception of philosophy as offering a qualitatively special kind of understanding, the kind that emerges when our reflection does not focus exclusively on the details of a single question but, by taking a wider view, places the question and places us in the more inclusive horizon of relationships with other questions, including many other questions that do not seem at first to be connected with the one we are dealing with:

A main source of our failure to understand is that we do not command a clear view of the use of our words. Our grammar is lacking in perspicuity...The concept of perspicuous representation is of fundamental significance for us. It earmarks the form of account we give, the way we look at things (PI, 122).

To do this, to “command a clear view” of the diverse problems, pseudo-problems, solutions, and dissolutions, it will help in building many structures, picturing things differently, and arranging many orders for our difficulties and our processes of giving and asking for reasons. But all this should be attempted making sure we do not succumb to the kind of simplification that leads us to the dangerous fantasies of abstract singularities which blind us and prevent us from seeing things correctly: the obsession with “the Method”, “the Order,” “the Vice,” and so on. We need then, not “the Map,” but a lot of different maps; not “the Order,” but a sensitive and variable plurality of ways of ordering reality:

We want to establish an order in our knowledge of the use of language: an order with a particular end in view; one out of many possible orders—not the order. (PI, 132).

If I had to put very briefly the attitude Wittgenstein invites us to adopt in order to start fighting all these colonial vices and—no less colonial—kinds of pseudo-logic afflicting our philosophy, and, generally speaking, our lives, perhaps I should say that we are urged to exercise our minds to direct our attention freshly, making use of various techniques and testing,
Rationality in Dussel's Ética de la liberación

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Dussel’s Ethics of Liberation in the Age of Globalization and Exclusion is a remarkable achievement in critical social theory, ethics, and political philosophy. It develops, as the title suggests, a materialist ethical architechttonic. From the standpoint of the ethics of liberation, Dussel attempts a grand synthesis of other ethical theories that range from formalist to materialist thought. Dussel’s long-standing debate with Apel’s discourse ethics holds special place in the text, as do critiques of Kant, Rawls, and Habermas, and communitarian ethics. These are also subsumed, together with Lévinas, Luxemburg, Menchú, and neurobiological theories about our evolutionarily deep-seated tendency to produce and reproduce our lives.

Dussel effects his synthesis from the standpoint of the “other,” defined this time not as the “poor,” but instead as the “victim” of a system of globalization of capital from which most of the world is excluded.

According to Dussel, this new ethics of liberation has the following fundamental characteristics in terms of its structure:

1. It “develops a discourse that is ethico-material (i.e., of contents);”
2. and “formal (intersubjective and valid);”
3. that “takes into account empirical feasibility”;
4. and is “always (developed) from the victims at all possible intersubjective levels.”

In one sense, it marks one more chapter in Dussel’s integration of a Latin American philosophy of liberation built upon a critique and transcendence of Heideggerian “care of Being” to an ethics of liberation of planetary scope with a pulsion towards the Other who lives and dies in exteriority to the Being of the system and of a lifeworld. There is continuity between the earliest texts and this latest offering in ethics by Dussel. It retakes, for instance, an early contrast Dussel had made between life-denying and life-affirming philosophical traditions.

The point of this contrast is, I believe, to show the connection between cultural traditions and philosophical positions, specifically, how the affirmation of the materiality of human life has been suppressed in a philosophical discourse in which reason is grounded upon the negation of corporeality and the “cunning of life.”

It seems to me, however, and I will try to elaborate on this point in this review, that reason, in all its facets, is for Dussel, ultimately, an instrumentality for life, particularly, for human life in community. Whatever is denying of human life in community, specifically, the life of the excluded or oppressed other, is irrational. Since it is an instrumentality for life, it is unlike Kant’s conception of reason because, first, it is neither autonomous (i.e., it does not give to itself its own law) nor detachable from life; and second, it is not a faculty for producing concepts of phenomenal objects or of Ideas beyond possible experience in Kant’s sense. It is not, however, instrumentalist, first, because ends may be determined to be rational in Dussel’s conception of ends (i.e., the good), and, second, because an embodied reason is capable of motivating action by setting up objectives, specifically, the transformation, whether through reform or revolution of social systems, so that the excluded other is included and the oppressed is allowed to exercise his or her subjectivity in freedom.

For this, however, it is necessary to develop a philosophical discourse that gathers examples from many literatures and cultures. Today, such philosophical development is counter-discursive in the sense that it must arise as an alternative to hegemonic social systems:

The Philosophy of Liberation is a counterdiscourse, a critical philosophy that is born in the periphery (and from the victims, the excluded), with a claim to globality [mundialidad]. It has definite [expresa] consciousness of its peripherality and exclusion, but at the same time it makes a claim to global scope.¹

Dussel’s Ethics of Liberation is, in one important respect, a significant elaboration of the epistemological and ontological relationship between, on the one hand, a consensus theory of truth developed on the basis of an ideal speech situation and principles implicit in speech itself independent of their content, and, on the other hand, a materialist critique of the interests concealed in any form of argumentation. Dussel appropriates the most significant elements of critical theory (from its critique of ideology to a reconstructed critique of political economy based upon a rereading of Marx and on dependency theory), while subsuming the universalizing intentions of both that critique and its remnants in formal-pragmatic theories.

The relationship between formal-discursive principles and ethico-material principles frames the meaning of ethics for Dussel, within the context of the social systems that humans produce through their collective action.

It is at the level of the unfolding of conflict between formal systems and ethical-material principles (“i.e., the reproduction and development of the life of each ethical subject in said formal system and his or her discursive symmetrical participation”) that critical theory and praxis become necessary—a theory and a praxis geared toward transformation of the system to widen participation and broaden equality. Formal systems are bound, with their use, to produce non-intentional effects of marginalization and exclusion.

According to Dussel, critique reveals the utopian horizon in which universal ethical-material and formal-discursive principles are glimpsed. But these are denied by the existing system, which marginalizes people from participation in the community of communication. This would be a contradiction at the level of formal-discursive principles of communication, so that the conclusions arrived at in those communities are invalid. This system also denies them by excluding people from the reproduction or development of their human life in community; this would be a contradiction at the level of material principles of labor and consumption, so that the economic system is revealed as practically false or irrational. Finally, people’s lives are made impossible; this would be a contradiction at the level of feasibility principles, so that the system is, from the standpoint of the reproduction of life and its development, impossible to maintain.

This is significantly different from an ethical position that stakes its rationality on elucidating and criticizing the inroads of “self-regulated social systems” into the life-world, which is
the position developed by Habermas and Apel. The ethical and political task has become for them “to prevent the colonization of the life-world by systems, so that we have to maintain alienation under control from the side of communication.”7 For, as Apel claims, “the capitalist market system, as other social systems, and in a certain sense, as all human institutions, constitutes an inevitable and necessary exteriorization and alienation of human interaction and communication; the quasi-naturalist automation of this system makes possible socio-cultural forms of life.”8 This naturalization of human “strategic” activity, specifically of the activity that takes place in the market place amounts in terms of consequences to quite an explosion in the number of issues Apel’s Part B of discourse ethics will have to deal with. (In effect, Dussel’s liberation ethics would become in toto a resident of part B of discourse ethics.)

Apel’s and Habermas’s positions regarding the relationship between systems and lifeworld takes us back, in my opinion, to the theories of the early and mid-twentieth century. José Ortega y Gasset, for instance, argued for a distinction and division of labor between the reason of the sciences and technology, on the one hand, and culture, on the other. But this strategic attempt to limit (through regulation and the like) the power of market capitalism does not touch upon the, in effect, consequent quasi-naturalization of human “instrumental” activity, if we are forced to limit ourselves to this narrow definition of human activity at the level of production. I am referring here to the activity of the global majorities in the factories, the maquilas, the plantations for the world market, and the unemployed “street.”

We have indeed witnessed a transformation of what were the anthropologically deep-seated interests of the early Habermas, into an acceptance by the theory of communicative action and by discourse ethics of the capitalist market “within limits” because, according to Apel in reference to Marx in an essay critical of Dussel, “almost all anthropologists” agree that there is an “anthropological equiprimordiality of the complementary functions of labor and interaction qua exchange.”9 However, this narrows unnecessarily the scope of reason to what has not been “naturalized” yet of human activity. It also misunderstands Marx’s theory on this specific instance. I will refer to this in what follows, since what Apel criticizes in Marx is, after an original reconstruction of Marx’s theory, one of the pillars on which Dussel builds his alternative rendering of the relationship between discursive and materialist aspects of reason.

It has been held by some theorists that Marx’s theory of alienation grounds a theory regarding a human essence that has been existentially distorted by class society. Unfortunately, this very vague theory has been carried over into analyses of Marx’s political economy giving expression to what Louis Gill has criticized as the naturalist definition of value. This definition interprets abstract labor—the exclusive source of value, for Marx—as “the material content of a physiological expenditure of human power.”10 It fails to realize, argues Gill, that, first, Marx’s labor theory of value is “the study of value as a form of social labor” and, second, that, as a consequence, Marx bases and limits his analysis of the value created by human labor to a commodity-producing society; that is, Marx starts “from the commodity and value... from commodity producing society as a historical form. Commodity-producing society is the basic datum; it underlies the whole analysis.”11

Therefore, when Marx speaks of abstract labor, he has in mind, not abstract labor for any society or for society in general, but for a society in which the principal form of production is commodity production. This is an issue, incidentally, that should be analyzed in relation to Dussel’s own analysis of the “economic” Marx in his texts on the subject.

The paradox in the reduction by Habermas and Apel of Marx’s conception of human labor to instrumental action is that they, in fact, naturalize what Marx never intended to naturalize. In fact, Marx takes seriously into account the strategic action of independent producers of commodities as fundamental to the capitalist market. But the question for him is, what the source of value in commodity-producing societies is, not how is a human essence externalized, alienated, and brought back to its metahistorical bosom. The latter is a left-Hegelian question; the former is the question he asks in his economic works. More to the point, he asks, how does the content, human labor, become manifested in the form of value, a question that political economy, Marx claims, was unable to answer.12 For Marx, this question is answered in terms of the nature of commodity-producing society in which the “strategic” action of one buyer of commodities, the capitalist, confronts with the extraordinary power of force and right, the strategic action of an other seller of commodities, the worker, who must sell his or her hide to survive.13

It must be acknowledged that our labourer comes out of the process of production other than he entered. In the market he stood as owner of the commodity ‘labour-power’ face to face with other owners of commodities, dealer against dealer. The contract by which he sold to the capitalist his labour-power proved, so to say, in black and white that he disposed of himself freely. The bargain concluded, it is discovered that he was no ‘free agent’, that the time for which he is free to sell his labour-power is the time for which he is forced to sell it...14

Given the conditions of that society, the transformation of the content of goods into values, whether in the form of labor-power, or the values created by the labor-power in use, expresses an equal exchange only at the level of “strategic” action, not at the level of “instrumental” action where workers have no control over the production process, nor at the level of “communicative” action when workers are excluded from the institutionalized communication communities (unless they are able to become journalists, lawyers, or philosophers) by virtue of the control exercised by the bourgeoisie over the dissemination of knowledge and information.

Hence, a model of rationality that better fits this situation is needed. I think that Dussel offers, in this sense, a significant advance in this area, as he tries to integrate ethical-material and formal-discursive principles into a comprehensive theory of rationality for his ethics of liberation. This model of rationality cannot simply take formal systems as given and quasi-natural.

The relationship of formal-discursive and ethical-material principles is connected to the question of the relationship between, on the one hand, formal automated or self-regulated subsystems, and, on the other hand, the way they shape or mis-shape human life and life choices. For, the marginalization and oppression of peoples is more often than not the effect of those subsystems, whether because they colonize communication or condition the exclusion of people from those communities, but certainly because they may fail to provide sustenance for the majority of people. For Dussel, ultimately, any subsystem or communication structure must, if it is to be rational, produce and enhance human life in community.

James Marsh contends in a critical essay on Dussel’s ethics that the ethical-material and formal-discursive principles should be co-determining and that Dussel sometimes, but not always,
treats them as such. At other times, argues Marsh, Dussel sees the formal-discursive principle as an application of the material principle. Marsh would prefer an ethics of liberation in which the material principle and the discursive principle are co-determining. I will focus on two related points.

First, says Marsh, Dussel “underestimates the role communicative action plays in the justification of the material principle itself.” In the example Dussel uses in his *Ética*, which begins with the assertoric premise, “Juan is eating,” and concludes ethically with the normative statement, “Juan should continue to eat,” there is, says Marsh, a “ratiocinative and communicative” process involved, which “uses communicative action to establish and justify, and not simply to apply the material principle.”

Second, Dussel “confounds … epistemic priority with an ethical one” when he gives ethical priority to the face of the victimized Other. Marsh puts Dussel’s Levinasian position as follows: “I must see the Other in a prediscursive way as an equal and a victim before I begin to dialogue.” However, says Marsh,

... I can only see the Other as equal and as illegitimately marginalized in the context of a hermeneutics and an ethics that is already operative at least prethematically in my encounters with the Other. Indeed Dussel himself talks this way when he talks about the Other’s interrogative speech act calling into question those within the Apelian-Habermasian community of communication, claiming to be inclusive but not really being so. Without the prior validity of the communicative ethic of the community, the interrogative speech act loses its cogency. Indeed, there is a movement from formal to material here.

Marsh thus thinks that the Levinasian strand is in irresolvable tension with the Marxist and Habermasian strands of Dussel’s thought, and he thinks that Dussel does not succeed in meeting the challenge of the naturalistic fallacy. This is a significant challenge, since throughout the *Ethics of Liberation*, the passage from a “judgment of fact” to a “normative judgment” is stressed and carried out, not only in the “positive” cases discussed by Marsh (from the facticity of the corporeality of human life to the ethical imperative to affirm such life in community), but also in the passage from the criterion of negative critical feasibility (i.e., it is possible to transform a system that is victimizing the life of an ethical subject) to the liberation-principle that one ought to transform said system for the sake of the life of that subject.

Marsh sees promise instead in the other claim made by Dussel that the material and formal principles are co-determining. Marsh uses as an example of the co-determination of discursive and material-ethical rationality the indifference towards a homeless person in a NYC subway: the recognition of that person as Other is “mediated hermeneutically and ethnically.” This is a case, he thinks, where the movement is, therefore, from the formal to the material, thus assuming a “prior validity of the communicative act of the community.”

The difficulties regarding the relationship between truth and validity are significant. Indeed, what is valid is always about something, and references to the truth of something are mediated by language, although there can be truth without consensually grounded validity: The disclosure of something may indeed be through the instrument of intersubjective communication, but even if the medium shapes the cognition, it does not follow that the two are co-determining at an epistemological level. Politically, however, the satisfaction of the two, through the achievement of consensus and the material development of life, is ultimately necessary for the attainment of rational legitimacy in civil society.

From Dussel’s viewpoint, there is an anadaialectical moment of affirmation of the life that is negated by the system. This moment is wedged between the negation of life and the negation of the negation, and it makes the latter possible. I believe, however, that this wedge is driven in the struggle. It is not later discovered as rational by philosophical analysis. Rather, if I am to take seriously Dussel’s statement in his *Ética* that “reason is the cunning of life,” the reason is produced by life itself. By way of analogy, it is this anadaialectical moment that is pointed to by Sartre in his “The Republic of Silence” where the prisoner of the Nazi occupier feels in his or her loneliness the presence of comrades in arms in the resistance. I suspect that a similar sentiment may be shared by resistance fighters against today’s occupations by North American “neocon” forces. The resistance does not need for its validation the consensus of the international community, not even an ideal international community; a community of marginals, brought together ideally by the simultaneous negation of their life and resistance to that negation is all that is required.

Discourse ethics and the theory of communicative action become irrational when they are blind to the Other as Other, for instance, the victims of an occupation and those who resist it by the means available to them. As Other, we exclude from the community of communication. The ideological fetishization of discourse (and it must be stressed that discourse becomes a fetish when it becomes the life and the reason for being of the members of a communication community, and not only when it is commercialized by the “non-intentional” subsystem of market capitalism) is revealed by a materialist critical theory.

Dussel’s critical theory incorporates a critique of the negation of the life of the Other (that is, a critical material reason), and of his or her exclusion from the community (that is, a critical or ethico-pre-originary reason). It also includes a discursive critique of the system (through the critical discursive reason of the critical social sciences and the “conscientized” and politically-organized victims of the system). Finally, this materialist critique develops a critique, with a view to the formulation of alternatives, of the unfeasibility for a growing number of victims to live under the current system of domination and exclusion. However, this critique is unthinkable without (a) the recognition of the Other as Other; (b) the struggle for recognition by the Other on behalf of his or her Otherness; and (c) the reality of being in exteriority in a system of domination. This recognition and the project of liberation it implies must ground the ethical principles in the ethics of liberation.

In reference to the so-called naturalistic fallacy, Dussel’s solution to the naturalistic fallacy cannot rely on the co-determinacy of material and formal principles, as Marsh strongly suggests. Such co-determinacy should lead, says Marsh, to an abandonment of the attempt to ground an “ought” on an “is.” Instead, Dussel’s solution relies mainly on the foundation of ethics, on the critical pulsion towards those who are oppressed in, and excluded, from a system. This pulsion carries with it the affirmation of the humanity of the oppressed and excluded, that is, their life in community and a recognition of their capacity to participate in community. This anadaetical or anadaialectical pulsion moves us outside and beyond the community of communication. The movement is both positive and negative. It is an affirmation of human life in community.
and a critique of domination, oppression, and exclusion. But the affirmation is not an affirmation of the system, but rather of the life of the Other as Other. The affirmation of the life of the Other is also, therefore, a negation of the system: “a taking-leave,” if you will, of the system’s encompassing of the Other within a formal-analytic discourse and, therefore, an attempt to arrest his or her transcendence. This recalls, despite its subtitle, Sartre’s famous analysis of the phenomenology of domination in *Being and Nothingness*:

There are indeed many precautions to imprison a man in what he is, as if we lived in perpetual fear that he might escape from it, that he might break away and suddenly elude his condition.29

Similarly, the affirmation of human life in community is, *vis-à-vis* the system, transcendent of it.

In conclusion, by grounding formal-discursive rationality on a critical material reason in which the grounding facticity is not an ontological, but rather, a “metaphysical” (i.e., anadialectical) recognition of the Other as Other, can Dussel bypass the naturalistic fallacy’s reductionism, as well as reveal the deficiencies of the minimalism that accepts the capitalist mode of production and only tries to limit its effects on a dematerialized lifeworld.

**Endnotes**

2. Ibid., 14.
3. Ibid., 102-103, paragraph 70.
4. Ibid., 71, par. 51.
5. Ibid., 530-531, par. 367.
6. Ibid., 529, par. 366.
8. Ibid., 39-40.
11. Ibid., 103.
13. Ibid., 176.
16. Ibid., 63.
17. Ibid.
18. Ibid.
21. Ibid., 63.
22. Ibid.
23. Dussel, *Ética de la liberación*, 202-203, par. 149; and, 205, par. 205.
24. Ibid., 540, par. 375.
25. The term “neocon” is becoming generalized as a term of reference for neo-conservative ideology, usually associated with the Republican Party in the United States. Given the ultraconservatism that has become mainstream in both the Republican and Democratic establishment and, more importantly, the generalized imperialist prejudices in the United States, which disguise the common thievery involved in the impulse to invade another people’s lands for its natural resources, its labor, and its markets, this term adequately characterizes the international projection of the ideology of U.S. imperialism: the globalization of the theory and practice of “empire with imperialism.” See James Petras’ very critical review of Michael Hardt and Antonio Negri, *Empire* (Cambridge: Harvard University Press, 2000); James Petras, “Empire with Imperialism” (October 21, 2001), [http://www.rebelion.org/ petras/english/negri010102.htm](http://www.rebelion.org/petras/english/negri010102.htm) (accessed on December 24, 2003).
27. Ibid., 471-472, pars. 333-334; and, 554-555, par. 388.
28. Ibid., 505-506, par. 346.
FROM THE EDITOR

As the editor of this Newsletter, starting with the Fall 2004 issue, I would like to welcome readers, old and new, to what I hope will be a useful and exciting venue for a number of philosophical interests that can be considered “international.” Our first task, as you will see from this issue, is to publish selected talks from conferences and panels sponsored by the APA's Committee on International Cooperation. In some cases, particularly where conference proceedings will be going into publication in other forms, it will be more appropriate to provide here a summary of past CIC-sponsored events.

Accordingly, you will find in this issue a number of interesting talks from CIC-organized panels on reason and dialogue in the Middle East at the APA's 2004 Central Division Meeting. (Please see the note from the past chair of the CIC, Alan Olson, for some background information about these panels.) In addition, there is a summary of a 2004 conference in Beijing on Davidson and Chinese philosophy, co-sponsored by the CIC.

Hopefully, we can supplement these kinds of publications with other materials in the future. For instance, I would urge readers who have given talks on international topics at APA or other philosophical conferences to submit them to the Newsletter for future publication. This is particularly appropriate if these talks deal with timely issues, as in the case of the discussions on the Middle East found in this issue. In addition, I hope that readers will send the Newsletter announcements of upcoming events that have an international focus, so that we can provide a central source of information on activities of interest to those who work on the international dimensions of philosophy.

Finally, a word about the word, “international.” As the new chair of the CIC, Ernest Lepore, indicates in his note, below, there is an ambiguity (hopefully, a productive one!) in prior uses of this term. On the one hand, “international” refers to all philosophical activities that cross “national” borders—such as the cooperative investigation of figures or issues (e.g., Hegel or cognitive science) by philosophers from different countries. On the other hand, the term also refers to the emerging field of international ethics, broadly construed. In this sense, it primarily concerns a variety of issues in political philosophy (international justice, just war, human rights, development ethics, and so on) that have a global dimension. I hope that this Newsletter will be a venue for interesting new work of both kinds and urge readers to submit materials and announcements of future events that touch on all aspects of philosophy and international cooperation. (All submissions should be sent to me at the address given.)

FROM THE NEW CHAIR

First of all, I would like to extend my thanks on behalf of the entire committee and the APA to Alan Olson for the outstanding job he has done during his tenure as chairman of the Committee on International Cooperation. I hope I can achieve something close to what he has done. Also, I believe it is important that one play to strength; I am much less knowledgeable and involved in political philosophy than many of the members of the committee have recently been. Though I look forward to learning from all current and past members, I know I can succeed if the focus at least initially is on establishing or renewing relations with various groups, including philosophers in Europe, Latin America, the Middle East, and Asia. Currently, there is considerable activity in Europe and Latin America of which I'm personally aware and I believe it would be a good thing for the APA to recognize it by sponsoring sessions that include people from abroad. I will seek to learn whether there is any funding to help people find a way to cover air travel, especially if the APA is able to cover some lodging costs. I will be checking with the Secretaries of the Divisions to see how much they can do to cover such costs for philosophers from abroad, especially from poorer countries, that we would like to invite for such sessions.

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The Committee for International Cooperation wishes to welcome a new chair, Professor Ernie Lepore of Rutgers University, and a new editor of the CIC Newsletter, Professor Omar Dahbour of Hunter College, City University of New York, both commencing their duties during the summer of 2004. We have great hopes that Omar will revive the CIC’s contribution to the newsletters giving all due notice to the activities of the committee, which have been considerable during the past couple of years and which I will briefly enumerate below.

The international conference on “Philosophical Engagement: Davidson’s Philosophy and Chinese Philosophy,” organized by CIC member, Bo Mou (San Jose State University), was held June 8-10, 2004 in Beijing. The conference was sponsored by the International Society for Comparative Studies of Chinese and Western Philosophy (ISCWPh) and the Committee on International Cooperation of the American Philosophical Association (CIC), and was hosted by the Institute of Foreign Philosophy, Peking (Beijing) University. Initially scheduled for 2003, this conference was postponed because of the SARS epidemic, but was finally held in July 2004.

Other activities of the CIC during the past two years have reflected the geopolitical crisis that has engulfed the world since 9/11. The CIC, together with the Karl Jaspers Society of North America, developed a panel devoted to a retrospective analysis of Jaspers’s Die Atom Bomb und die Zukunft des Menschen: Politisches Bewusstsein unserer Zeit (1958) and its implications for today’s crisis at the Eastern Division meeting in Washington DC in 2003. Highly influential in the late 1950s and early 1960s, this book (published in English as The Future of Mankind) was largely devoted to an analysis of the United Nations and the prospects of international peace in the age of weapons of mass destruction. Christopher Thornhill (King’s College, University of London) gave the major paper, entitled “Humanism and Wars: Jaspers between Politics, Culture, and Law.”

The CIC also organized a six-hour panel at the Central Division meeting in Chicago in 2004 which brought together distinguished international scholars from the Middle East, Europe, and the United States to discuss the topic, “Can Reason be a Basis for Dialogue in the Middle East?” Co-sponsored with the Averroes and Enlightenment International Association (Cairo), these scholars included Mona Abousenna (Ain Shams University, Cairo), Bernard Henri-Levy (Paris), Bassam Tibi (University of Göttingen), Anat Belitzki (Tel Aviv University), Sari Nuseibeib (Al Quds University, Jerusalem), Mourad Wahba (Ain Shams University, Cairo), Ovadia Ezra (Tel Aviv University), David Rasmussen (Boston College), Ruth Manor (Tel Aviv University), and a new committee member, Mohammad Ali Khalidi (American University, Beirut). Unfortunately, Professors Henri-Levy and Rasmussen could not, at the last moment, attend the Chicago meeting, but have promised to participate in a continuation of this program being organized for the Pacific Division meeting in San Francisco in 2005 on the related topic, “Philosophy, Religion, and Politics.”

This topic and program, developed in conjunction with a bequest from the Baumgardt Fund, and announced in a “Call for Papers” for the 2004-2005 meetings of the APA, attracted a large number of proposals. As a result, we have scheduled double three-hour sessions, co-sponsored with the Karl Jaspers Society of North America and the Hannah Arendt Circle, at all the forthcoming APA divisional meetings in Boston, San Francisco, and Chicago. At this writing, it is also likely that another panel of international scholars will gather in San Francisco to address specific issues relating to the continuing conflict in the Middle East, perhaps in conjunction with a program on “Global Justice” being organized by CIC member, Gillian Brock (University of Auckland, New Zealand), who organized a highly successful mini-conference on this topic at the APA Pacific Division Meeting in Pasadena in 2004.

It is important to note that the Middle Eastern focus of the CIC has continued conversations on intercultural philosophy which initially commenced at the Twentieth World Congress of Philosophy in Boston in 1998, and also at a special session organized by Jaakko Hintikka and the CIC at the Atlanta meeting of APA in December 2001. The events of 9/11, however, made it impossible for our Palestinian scholars to attend, since they were unable to secure visas. Returning to the topic of “reason and dialogue” in Chicago in 2004, amidst the escalating violence since the commencement of the Iraq war and the Palestinian Intifada, prompted Ruth Manor (Tel Aviv) to observe that “rational dialogue now seems all but impossible.” She also mentioned the urgency of establishing something like “Doctors without Borders”; but the question arises as to what a “philosophers without borders” would do. One possibility, posed by Mona Abousenna and Mourad Wahba, of Cairo, and Bassam Tibi, of Göttingen, would be for philosophers to strive for the reform of education in Arab and Islamic countries by promoting the kind of critical and creative thinking necessary to combat the fundamentalist dogmatism that has so greatly fueled intolerance and conflict in this troubled part of the world.

Causal linkage between the Israeli-Palestinian conflict and the unrest that characterizes the Islamic world generally was also a point of disagreement amongst panelists. Those nearest to the Israeli-Palestinian conflict, namely, Anat Beliztki, Ovadia Ezra, Ruth Manor, Sari Nuseibeib, and Mohammad Ali Khalidi, viewed the successful resolution of the territorial and autonomy dispute between Israelis and Palestinians as utterly critical and in some sense the lynchpin for stabilizing the entire region. Others, such as Mona Abousenna, Mourad Wahba, and Bassam Tibi, believed otherwise, arguing that the phenomenon of Islamism is a global phenomenon driven by a host of issues other than the particulars of the Palestinian-Israeli conflict. Bassam Tibi, who was a principal researcher in the Fundamentalism Project carried out by Martin Marty and Scott Appleby (and published by the University of Chicago Press), argued that Islamism and organizations such as Al-Qaeda have a world-historical agenda and must be understood accordingly.

It should also be mentioned that, following the Atlanta meeting, three international meetings were organized and held on related topics. Two were conducted in conjunction with a project designed to encourage dialogue by examining “Rationality as a Bridge between Arab-Islamic Cultures and the West.” These conferences were launched jointly by the Averroes and Enlightenment International Association and the Zayed International Center for Coordination and Follow-up in Abu Dhabi and held on the topics of “Terrorism and Reason” in January 2003 and “Rationality as a Bridge Between East and West” in June 2003. The proceedings of these two conferences were published by the Zayed Center in 2003. A third conference was held in conjunction with the Paideia Project at Boston University in March 2003 on the related topic, “Paideia and Religion: Educating for Democracy?” with principal focus on Russia, the Middle East, and the U.S. The proceedings of this conference, and a prior conference in 2002 at the Institut für Wissenschaften vorn Menschen in Vienna, are published under the title: Educating for Democracy: Paideia in an Age of Uncertainty (Rowman & Littlefield, 2004).
I might mention, finally, that providing continuity in programming during the three-year period during which the members of the CIC serve their term has certain advantages. Hence the upcoming programs on “Philosophy, Religion, and Politics” are in many ways the result of what has been accomplished since 2001. Indeed, sustained attention to a primary theme or problem of relevance to the international philosophical community seems to provide the kind of attention required to attract international participation—as evidenced by the kinds of proposals we’ve received this year from Japan, South Africa, Denmark, Norway, Germany, France, and Russia, in addition to those from the United States, including individuals from the State Department and the National Endowment for the Arts. The topic being planned and scheduled for 2005-2006, namely, “Philosophy Looks at the Media,” with special attention to the issues of fairness and accuracy, could have similar results.

Cordially,
Alan M. Olson
Boston University

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**SPECIAL SECTION: CAN REASON BE A BASIS FOR DIALOGUE IN THE MIDDLE EAST?**

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**Can Reason be a Dialogical Bridge for Peace in the Middle East?**

**Mourad Wahba**

* Ain Shams University–Cairo

At the outset, one has to define the three terms contained in the title of this paper, that is, reason, dialogue, and peace. Thus, let me begin with the concept of reason and ask: What is reason?

Reason does not perceive facts because there are no facts per se, but facts as perceived. Thus reason, from the beginning, interprets facts. But its interpretation is not confined only to the theoretical level, it is related also to practice due to my definition of creativity as “the ability of reason to establish new relations with the purpose of changing reality.” As evidence, human civilization began with the agricultural age and not with the hunting age, because in the hunting age the relation of man to the environment was horizontal and this meant that man accommodated himself to the environment. But in the agricultural age, this relation became vertical and this meant that man accommodated the environment to his perpetually new needs. Thus we can define reason as “the faculty of practico-transcendental interpretation.” This definition involves a substantial relation between reason and creativity to the extent that we could say that reason is creative by its very nature. This means that when reason stops being creative, it is no longer reason.

Now, the crucial question is: What prevents reason from being creative?

Cultural taboos prevent the human being from practicing critical thinking and transforming the status quo. In this respect, I would like to mention Kant’s famous statement that “the suggestions of David Hume were the very thing which, many years ago, first interrupted my dogmatic slumber and gave my investigation, in the field of speculative philosophy, quite a new direction.” By “a new direction,” I believe that Kant meant the foundation of critical philosophy implied in his three great works, *Critique of Pure Reason, Critique of Practical Reason,* and *Critique of Judgment.*

In this sense, creative reason, by its very nature, is critical and, therefore, non-dogmatic. And I think that it is this realm of reason that the Enlightenment was striving to establish. Consequently, one can assume that unreason, or strictly speaking, irrationalism, begins at the moment one falls into dogmatism and culminates in the moment of jumping into religious fundamentalism.

Now the question is: What is the relation between dogmatism and religious fundamentalism? Let me first define the two terms before identifying their relation. The term “dogma” means opinion and the plural serves to indicate the fundamental ideas that structure thinking and thereby guide and control the action of a person or group. So these ideas have to do more with practical obligations than with theoretical points. In this sense, dogmas are regarded as deriving more from the external authority than from any reasoning or conviction. This root of dogmatism was quite obvious to the Enlightenment and the pejorative sense of the adjective “dogmatic” comes from the external, heteronomous, origin of convictions.

Beginning with the twentieth century, dogmatism took many shapes, such as Fascism, Hitlerism, and Stalinism. What concerns me here is religious fundamentalism. From its origin, fundamentalism was a religious movement that emerged among American Evangelical Christians during the 1920s. Thus, fundamentalism was a label for dogmatic thinking.

Now, we shift to the second concept, namely, “dialogue,” and we ask: What is the purpose of dialogue? The purpose of dialogue is not to win an argument because any argument assumes that its aim is to reach the truth, and truth is an illusory concept for the following reason: the concept of truth is a contradiction in terms because truth is not permanent and, consequently, it is liable to be untruth. This means that we move in a changing reality through creative reason. And if this is so, then, dialogue has nothing to do with grasping the truth, whether it is relative or absolute, but has to do with the purpose of changing reality. To reach this stage, that is, the new concept of truth, dialogue has to proceed without claiming any opinion or any idea as an absolute truth.

In this sense, dialogists explore the manner in which they become partners in a common project and not enemies in contradictory projects, for the simple reason of being involved together in surpassing the status quo for the sake of realizing the pro quo, that is, the common futuristic vision. Consequently, dialogical partners will shift from looking at the histories of the past to the histories of the future, and this shift copes with the cyberspace which is open for creating ideas, for example, computer scientists who perceive the potential of technology and try to envision what it may enable us to do. Norbert Wiener was one of the scientists to realize that computers were more than calculators and began to fret about the relationship humans would have with machines. Douglas Engelbart decided to devote his life to finding a way of using computers to augment human capabilities. Thus we can say that only where there is future, is there history. Within this context, we can state that the dialogists should be involved in making their own future.

Now, let us move to the third concept, that is, peace and ask: What is peace?
We have to distinguish between two meanings of peace. We say that a certain country is currently at peace with its neighbors. When we speak thus, we are using the word peace negatively to mean the absence of actual fighting. But in contrast to this negative meaning of the word peace, there is the positive one when we use it to say that peace exists among people living in civil society under civil government and that is called civil peace based not on the absolute but on the relative, not on dogmas but on civil laws.

With these concepts, let me comment on a vital dialogue, which took place at Tel-Aviv University on December 19, 1980, between Egyptian politicians and Israeli professors. The dialogists were: Haim Ben Shahar (President, Tel Aviv University); Shimon Shamir (Professor, History of the Middle East); Mustafa Khalil (Professor of Engineering); David Vital (Professor of Political Science); Evi Yavotz (Rector, Tel Aviv University); Sasson Somekh (Professor of Arabic Literature); and Boutros Ghali (Former Secretary General of the United Nations).

Let me show how the dialogue proceeded and then pick up the relevance of reason to the peace process. The first dialogist, Haim Ben Shahar, insisted on the priority of thinking about the future or, strictly speaking, about practicing creative thinking for the sake of changing the status quo in order to surpass the ups and downs of the political process and realize the perpetual peace.

The second dialogist, Shimon Shamir, followed the previous idea that we need to change the mental set to maintain a solid foundation for peace. He added that we need changes in perceptions and images for the sake of surpassing the past. But there is one defect in his vision and that is his stress on the historical interaction between Egypt and Israel for more than thirty-five centuries, and his argument was that looking at the past could benefit the peace process. But what is going on now in our area happens in spite of this historical interaction. So looking at the past does not help push things in the right direction.

The third dialogist, Mustafa Khalil, made a drastic statement that could hinder the positive results of the dialogue. At the outset of his comment, Khalil approved of what Shamir had stated regarding the ancient relations between Egypt and Israel. Then, he referred to a negative point concerning the Egyptian concept about Israel, which denies the Jews their national identity, and this denial is due to the Egyptian concept of religion being confined to a personal relation between man and his God. Consequently, there is a dogmatic gap that hinders mutual understanding. But Khalil as a negotiator tried to find a way to dedogmatize the gap through what President Sadat called the “psychological barrier.”

Now, three questions have to be raised:

1. Could the solution to the psychological gap lead to dedogmatization?
2. Who will help solve this problematic, the theologians or the psychologists or both?
3. Can one identify the theologians and the psychologists who could fit into the dialogue for peace?

David Vital, responding negatively to Khalil’s drastic statement, said that the state of Israel is legitimate and should not be a subject for discussion; otherwise, the conflict will become more fanatic and the peace process will not continue.

Now, the crucial question is whether Vital is right in excluding Khalil’s drastic statement from the dialogue. If so, then the legitimacy of the dialogue will be questioned, despite the fact that the new function of the dialogue is to dedogmatize what has been dogmatized. But this function cannot be practiced unless the dialogists have been trained how to dedogmatize the dogma. And this is the real responsibility of those who are involved in the peace process.

Evi Yavotz went back to Khalil’s drastic statement, which is full of dogmatism. He tried to dedogmatize it through dialoguing with the Palestinians to tell them to accept the right of Israel to exist as a religious nation. And while the dialogue is going on, national psychologists will be working to cure those who suffer from the psychological barrier about which Sadat has spoken. Otherwise, wars will continue.

Yovam Dinstein also went back to Khalil’s drastic statement denying the existence of a Jewish people and recognizing Jews only as members of a religious group. Dinstein argued that the paradox here is that in spite of that denial, a peace treaty was signed between Egypt and Israel in 1979. He then proposed that the intelligentsia of both countries should dialogue but away from the limelight of the mass media.

Now, the question is: What about the masses? They will not be included in the dialogue. But this is a drastic situation because the masses play a political role due to the emergence of the new mass media. So one cannot ignore them. In this case, the dialogue has to be practiced via TV.

Sasson Somekh referred to the negative phenomenon whereby cultural exchange with Israel is prohibited by the Egyptian authority. Books with anti-Jewish titles are exposed without bringing about any appropriate reaction and no effect is seen on the political establishment. In this case, dialogue is absolutely necessary and must be practiced by the intelligentsia.

Boutrous Ghali referred to a very important element, that is, extremism on both sides. But he argued that this is one element of the general situation. And Haim Ben Shahar stated that Israeli professors are open to dialogue whereas the Egyptians are not. Thus open dialogue is an absolute necessity, and if dialogue does not work, the peace process will fail and the responsibility for this failure will lie on the shoulders of the intellectuals and not the masses.

To conclude, we have to raise the following question: What hinders reason from playing its real role as the creative basis for dialogue in the peace process? To this question I would say: ignorance of Israeli society, its roots and identity, in the Arab world. Although Egypt and Israel have occupied a central place on the stage of universal history, they remain on bad terms with each other; in other words, they suffer a cultural gap to the extent that they have acquired a dogmatic pattern of thinking that hinders the establishment of a new pattern of dialogue for which I have argued.
The Limit of Reason (or Why Dignity Is Not Negotiable)

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It is often assumed that conflicts can be resolved if men will resort to reason, or that reason, in other words, is a sufficient condition for the success of negotiations. In particular, it is also assumed that the failure of the Israeli-Palestinian negotiations (for example, at the Camp David Talks in 2000) is a direct result of the fact that reason did not dominate those negotiations. I argue here that, by itself, reason is not a sufficient condition for the success of negotiations. I conclude by suggesting that there are two conditions whose fulfillment is necessary for negotiations to succeed. The first is to interpret reason (as the negotiators’ term of reference) specifically in moral terms (as being anchored in a basic human value such as Kant’s dignity); the second is to generate faith among Israelis and Palestinians that only such an interpretation of reason can achieve peace. But to reach this conclusion I introduce, first, a classic example of a failed negotiation (the famous Melian Dialogue) to show that, if different values (e.g., right and might) were to inform a negotiation between two parties, then those negotiations will inevitably fail. And I argue, second, that even if similar values were to be used, a point of reconciliation between the negotiating parties would still not be determinable (i.e., it cannot be determined in advance whether such a point is possible). I make use of the concept of warped space and what I call the “negotiators’ paradox” to explain this latter point. Hence I conclude that we should look beyond a neutral understanding of reason for a determining force that can bring about the success of negotiations.

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Most of us are acquainted with the failed Melos negotiations, as reported to us by the Athenian historian Thucydides. The Athenians were trying to bring all of the surrounding islands into alliance against Sparta. The Melians, truly believing themselves to be an island lying outside the orbit of the unfolding Peloponnesian War, argued fervently in favor of being left alone. The Melian argument based itself on universal human principles and on the notion of right. The Athenians, on the other hand, tried to instill some realism into the debate in as much as they turned that argument upside down. In real life, it is might that determines right, they argued. Later, and to prove their point physically after they failed to do so logically, they forcefully invaded Melos, putting their previous interlocutors to death and subjecting their island to their dominion.

It is hard to tell whether the Melians believed they would be left alone, that is, whether they believed, in fact, the Athenians would be persuaded by their logic. On the other hand, it is easy to surmise how they viewed the Athenian logic, namely, as a typical case of the fallacy of ad bellum. In any event, it would be interesting to answer the question of whether, had they known in advance how things would end up after the debate was through, they would still have held to their principle of sovereignty, or to the principle of being free to choose.

Tactical alliances or convenience agreements to avert worse evils are commonplace rational (and justifiable) acts. Even if advance knowledge is not available, the realistic calculation that a worse evil might befall one can still be claimed to justify such alliances or agreements. It could therefore be argued that, had the Melians applied pure reason to their situation, a justified compromise would have been reached. But is there never a line to be drawn? Had the Melians, cognizant of the inevitable massacre to follow, succumbed to the Athenians’ argument, is it impossible to bring a rational argument to show that they have crossed that line? Or would they simply have been undertaking a justifiable exchange between one condition (holding on to their principle but suffering deaths) and another (taking time out on that principle and saving lives)?

A classic approach to drawing a line between what to consider a rationally exchangeable item and what not so to consider is to measure such an exchange against the background of the alternative. But here we are asking the prior question as to the evaluation itself, since evaluations clearly differ. How could one find or draw such a line in the first place? In the case before us, we can distinguish between two kinds of approaches in answer to this question. From a (physical-life) utilitarian point of view, it could be argued that there is no “good” that is not replaceable, and therefore negotiable. Saving life, even if that life, or life in general, did not have a moral worth, nonetheless has more utilitarian value than holding on to a debatable, even a flimsy metaphysical principle, such as the right to choose. On this basis, and cognizant of the probable consequences, the Melians had only one justifiable course of action, which they foolishly resisted. Kant, on the other hand, might have viewed the matter differently. He argued that, ideally speaking, or in the Kingdom of Ends, everything has either value or dignity. Whatever has a value can be replaced by something else which is equivalent. It is, in other words, a good that is negotiable for something deemed to have the same value. Whatever, on the other hand, is above all value, and therefore admits of no equivalent (hence, presumably, cannot be negotiated), has a dignity. Dignity, Kant argued, does not merely have a relative worth as a means to an end other than itself; rather, it has an intrinsic worth as an end unto itself. Only in a moral framework can a rational being seek to be an end in himself, making morality, and humanity as capable of it, the sole possessors of dignity. For Kant, in other words, the limit of reason’s exchanges, and at the same time its highest achievement, is that ultimate morality of which humanity is capable. This is not exchangeable; it is not negotiable. Dignity is thus above value, not merely sentimentally, but ontically, logically, and, one might also add in this context, politically as well.

We might rationally assume then that a Kantian would have argued in precisely the same terms that Thucydides reports the Melians did (notwithstanding the Athenian charge that it is only the weak who seek to make up for the absence of means by resorting to lofty moral arguments). However, his position would have been based on the principle that human life has a moral content. Depriving it of its content is tantamount to its termination. In this sense, its moral death is more real, if death can be graded, than its physical death. Hence, although for both a Kantian and a utilitarian human life would seem to constitute a red line and to have primacy, each interprets “life” differently. Although human life may be reason’s limit of negotiations in the two perspectives, such reason is clearly informed by different values, and yields two generically different “lines.”

Because of the fundamentally different meanings that may be adduced to human life, one should also expect there to be a crossroad of generically different negotiation paths pursued in the employment of reason (defining different lines of what is deemed justifiable as an item of exchange). Using pure reason but proceeding along one direction or path from this crossroad, one could imagine a long line of tolerance of various levels of human degradation, eventually leading to a
justification of servility. Along this path, only when the added value to itself from a further act of submission or servility is zero would it cease to be rational (and hence, justifiable) to choose a course of action whose ultimate measure is the saving of life. Only at this point would the line of justifiability be deemed to have been crossed. Proceeding along the other path, dignity, or the moral content of life, defines the limit of justification differently. So long as an action upholds or further reinforces this dignity, even at the expense, in extreme cases, of physical life, it is to be viewed as rational (and hence justifiable).

Accepting life as such a defining line or limit, but cognizant of the two inconsistent and perhaps irreconcilable ways in which it is drawn, and the two distinct negotiation paths, should one assume therefore that one could proceed further to identify two distinct and logically incongruous sets of upper and lower limits for each path such that a negotiation between them is predestined to be futile? Or should one assume that, though they be informed by different sets of upper and lower limits or lines, one could suppose that the paths somehow manage to cross one another, making contact or a point of common understanding possible? Is there perhaps, and notwithstanding the incongruity of values, a common baseline below which life, on either interpretation, ceases to have primacy, and could thus become exchangeable? Is there, analogously, a maximum above which its non-replaceability ceases to be justifiable? Generally, and whatever the answer, the existence of such limits or parameters, and the specific forms which they are imagined or assumed to have by the various interlocutors, is a determining condition in the negotiation postures and dispositions of these various interlocutors, regardless of how articulated the consciousness of them is. For example, the Athenian insistence that the Melians give up their neutrality would not necessarily have been conceived as a negotiation demand overstepping the upper limit of justifiability, even though, or because, as the Athenians explicitly argued, it was a demand reinforcing the natural law of inequality, that the weak should succumb to the strong. The Melian insistence, on the other hand, that their political decision must be informed at all costs by their own free choice, basically reflected the belief that free choice is the minimum limit below which negotiations cease to make sense or to be acceptable. From the Athenian perspective, the upper limit of justified demands in negotiations was not being overstepped. From the Melian perspective, the baseline or lower limit of justified intransigence was properly being held on to. In other words, the negotiation path used by each side was different. The approach of each side to the interchange was informed by a different measure, and the upper and lower limits defining these measures were distinct from one another. Their respective worldviews on life were different. The Athenian upper limit and the Melian baseline were each defined in accordance with its own separate measure. Adopting different measures, or negotiating along different paths, it is arguable that a common point would thus have been unlikely, indeed, perhaps altogether a logical impossibility. The Melian dialogue was doomed to be an example of a failed negotiation from the outset, because one path was informed by right and the other by might.

Generally, negotiation theory distinguishes between the (outer-layer) positions/demands and the (real) concerns/needs (or interests) of two parties interlocked in negotiations, and argues in favor of a non-zero-sum, or a win-win formula allowing room for the fulfillment of the two sides’ concerns. A successful negotiation on this view is always possible if one were to properly apply the correct techniques and procedures (and if a specific conclusion to a negotiation is calculated to have better advantages than dropping the option of negotiation altogether). Even so, however, it would seem to be implicitly assumed that the fixed upper and lower limits in such models of negotiation are identical and therefore define the same measures in use by the interlocutors, determining their respective negotiation postures and dispositions. For example, in negotiating a wage increase at a factory both parties would be negotiating over a good which is defined, to all intents and purposes, in the same terms, which each side wishes to possess more of. Each side thus faces the other along the same path, and both operate within the same parameters. The underlying relationship between employer and employed is fixed, and it is not itself, typically, open to negotiations. The language between them is common, in that each side appreciates the worth of the good being negotiated, as well as the generically similar appreciation of it by the other side. It is arguably only within those limits that reconciliation, or the effort to provide a formula addressing concerns, is possible. But what if two generically different measures and different upper and lower limits are in use? Can we still cut through positions, and reconcile between concerns?

Arafat and Barak reportedly clashed at Camp David over how to address the Noble or Holy Sanctuary in Jerusalem (the Dome of the Rock area for the Moslems, and the Temple Mount Area for the Jews). Is it all to be under Moslem (or Palestinian) sovereignty, or is it to have a horizontally two-tiered or layered divided sovereignty? The Clinton formula (a two-layered approach), cutting through stated positions, sought to address the presumed concerns of both sides: the Jewish concern for history, as well as the Moslem concern for existing reality. Nonetheless the clash occurred, and the two leaders walked out of Camp David feeling outraged (Barak and Clinton at Arafat’s apparently irrational intransigence, and Arafat at Clinton’s making what seemed nothing less than a deeply derogatory offer.) Does one conclude that Clinton’s formula, while informed by the right reconciliation principle, nonetheless failed as a successful example of it? Or does one conclude that, while it was a perfect paradigm, it failed because of irrational (i.e., unjustifiable) intransigence? Observers tend to oscillate in their appraisals between these two different explanations. But the problem, I am suggesting, might lie somewhere else, namely, in the obliviousness of the approach to the generically different negotiation measures in use by the interlocutors, and the generically different upper and lower negotiation limits associated with those different measures. The reason for the failure of the Clinton effort, in other words, might well have been that it was a classic example of trying to mix apples with oranges, or that it was a reenactment of the doomed Melian model.

We have more than one knot to unravel here. First: Is it always possible to identify distinctly separate pairs of upper and lower limits for the two negotiation measures or standards referred to, such that, for any reconciliation effort across those two measures, it is always impossible to fuse the different parties’ concerns into one non-zero-sum agreement? Or are we, as we consider the different paths leading away from the crossroad, rather dealing with non-Euclidean (or warped) space where lines keep bending and crossing over one another, such that, for any point of intersection of generically different measures is it still always logically possible to identify a point of non-zero-sum agreement? Our second knot is this: To what extent can we be confident, as we formally distinguish between those two negotiation measures, that we fully understand and agree upon what constitutes the moral as opposed to the utilitarian measure? For example, what has undivided vertical sovereignty over a geographic location to do with dignity, or the moral life, or with free choice? Is there
no mixing of apples and oranges here? Might one not regard the identification of an inexchangeable good, such as sovereignty over a holy area, merely as an irrational obsession rather than as a moral good which can be viewed as a source of justification?

Our first knot (we may call it “the negotiators’ paradox”) may be such as to defy an answer or a solution altogether; indeed, it may even be such as to disturb whatever solution we may already have. The implicit assumption there is that whereas a point of agreement is logically possible when the same parameters are in use by two interlocutors, the same is not true (i.e., it is not necessarily true that this possibility exists) when two distinct sets of parameters are in use by those interlocutors. When two distinct sets of parameters are used, the effort at reconciling concerns would have to be made one case at a time, such that for any specific new case the question would remain open (i.e., it would be indeterminate) whether a reconciliation is logically possible or not. So far, and assuming a Euclidean negotiation space, we do not have a major problem. However, admitting this but arguing from a non-Euclidean perspective, it will not be possible to predetermine, for any such new case, whether it lies at a potential intersection point of the generically different paths. If it turns out that it does lie at such a point, then it would not be an open question (i.e., it would not be indeterminate) whether reconciliation is logically possible, because such a point has already been determined by us to admit of such a possibility. Here, then, we come across the first problem, which is a paradox that favors optimists, in that a point we posited as indeterminable comes out as being determinable. Since, however, the question of whether it is more valid to use a Euclidean or a non-Euclidean perspective is itself indeterminable, it becomes equally indeterminable with regard to any specific point, given different negotiation measures, whether it is a point of intersection, and hence, determinable, i.e., can admit of reconciliation. But now the following further step, leading to a paradox that favors pessimists, can be taken: since we are talking specifically about possible intersection points, our conclusion concerning indeterminability comes to apply to points that lie in or along either one of the two paths, indifferently. In other words, we find ourselves confronted with the paradox that, with regard to any specific point even along one path or in accordance with one measure, it is indeterminable whether that point is determinately reconcilable, although our starting assumption was that it is.

All of the above amply explains why reason is not a sufficient condition for a successful negotiation, as well as why negotiators often end up with headaches but not with solutions. The second knot’s complexity is altogether different. An item or a good might have a special worth or value for a person, sometimes outweighing the worth or value that person considers their (or somebody else’s) life to have. But do all such items or goods belong in the same basket of justification, and is there a clear standard by which we can lighten the basket’s weight by throwing out false items? A young lawyer from Jenin blew herself up over Pesach last year in a partly Arab-owned restaurant which was full of Jewish women, children, and Holocaust survivors, killing over twenty-six people, including herself. For her, the meaning of physical life had expired, and she saw the one last act of her intrinsic self as consisting of nothing other than, in an expression of anger and protest, the termination of this life and those of others belonging to “the enemy.” Hers was neither a religious nor a political cause. It was not an act of negotiation. But the devastating impact of the failure of negotiations had reached her, depriving her of those matters in life, such as her loved ones, which she considered as constituting her own sense of self-worth, or for which her own life had meaning. It was not so much that physical life had become exchangeable. It had become altogether expendable. The expendability of physical life, whether limited to one’s own or spread out to include specified or even unspecified human individuals or groups; and whether for existentialists causes with a small “c” or for grander tribal, social, political, or religious Causes (with a capital “C”); and whether in proactive or defensive contexts—all of these cannot simply fit into one category, making all of them equivalently a source of justification, for no reason but that the definition of life for their actors is not utilitarian but has a moral content. Indeed, most of human history’s bestial acts have been committed in the name and under the cover of the so-called grander causes of life, such as the so-called “family honor,” the racial or national imperative, or God’s supposed calling.

This odd mixture of so-called grander causes should not make us despair of a rational order altogether; it stands clearly in need of being sorted out by a single defining principle which is at once context-free and above passion, which Kant’s dignity and the moral imperative might help provide. Once sorted out in accordance with that principle one might better appreciate the weakness of the utilitarian approach. Because, on the one hand and even from a (physical/life) utilitarian point of view, prizing physical life above all else would seem to be subject to a diminishing margin of utility: at some point along the path of human degradation, it ceases to be clear from the point of view of the underdog why human physical life should be regarded as being more sacrosanct than that of a beetle. And if the underdog in the degrading relationship has reached the point where their physical life comes to be viewed as being equivalent to that of a beetle, it would by no means be irrational for them to suppose that, by the same token, the physical life of their tormentor becomes similarly equivalent, and therefore as expendable as the next beetle but oneself. This is the argument that while an act of terrorism is not justifiable by itself, and is indeed morally repugnant from a human point of view, the only possible source for its justification is the act of dehumanization, admitted under utilitarian grounds, which led logically to it, making it morally part of an inter-beetle affair. We cannot, under utilitarian grounds, justifiably assume that a dehumanized individual or group must nonetheless maintain respect for the life or lives of others, least of all for the lives of those who have shared and continue to share in the perpetration of their dehumanization. Even moral repugnancy ceases to have any meaning in this context, except insofar as it is an outsider’s humane sentiment describing revulsion at the moral contortion of which humanity is capable.

On the other hand, and besides moral contortion, Kant tells us that humanity is capable of something else, namely, dignity. One major feature about dignity is its rational and, therefore, human universality. Insofar as they are rational, human beings partake of it equally. Hence, on its account not a single step of degradation or dehumanization is justified, least of all any such step that may constitute a source of legitimization for the taking of life. If a dehumanizing step (like occupation) were nonetheless to be taken, it would itself be illegitimate, and resistance to it would be justifiable. However, it would be justifiable only insofar as it does not undermine or blemish the principle from whose source it received its justification in the first place, namely, the safekeeping of human dignity. In such circumstances, however, the only life that becomes justifiably expendable is one’s own, in defense of one’s dignity, or, arguably—in such cases as euthanasia—another’s, in defense of theirs. Therefore, it would seem that, for reason to be a mechanism for a successful negotiation, it is a necessary condition that such reason as
used by the respective negotiators be informed by the same human or moral value.

We therefore return full circle to the Melian dialogue with which we started, where the dignity of free agency was not up for exchange, even for the preservation of physical life. In preparation for my concluding remarks concerning the Israeli-Palestinian case, let me quickly indicate why I believe the Melian model to be informed by a Kantian perspective (to show this definitively would require more time and space): free choice, or autonomy of the will as Kant described it, is precisely the instrument by which a rational being chooses or legislates a maxim belonging to a universal law to which he at the same time submits himself. This autonomy (or freedom) is the basis, Kant claims, of the dignity of human beings and indeed of every rational creature. The Athenians, in their negotiating posture, were denying it to the Melians, or were so suffused by the drunkenness of their might as to be entirely oblivious to it; while the Melians, perhaps because of the absence of the means of drunkenness, as the Athenians charged, were not blinded to its worth as an end in itself, as Kant calls it.

Now, to my concluding remarks. I have already stated that the Melian dialogue model is doomed to failure and, even worse, that a reconciliation between negotiators adopting even the same standard or measure is indeterminable, thus making moral reason, though necessary as I have already shown, still not sufficient for a successful negotiation. So long as Israel’s negotiating posture is informed by might alone, it is bound to destroy whatever negotiation effort it engages in. On the other hand, so long as the Palestinians’ negotiating posture is informed by whatever cause that falls short of the Kantian principle of the universality of autonomy and human dignity, then any negotiation effort on their part is bound also to falter. However, assuming mutual respect of humanity’s dignity, a point of reconciliation, though indeterminable, can nonetheless be brought about. Its political form may be expressed by a model of equal citizenship in one state, or in a confederation of states. It may also be embodied in the form of distinct citizenships in two neighboring states. Imperatives less than dignity, and informed by national or religious passions, may help articulate the precise form of that point of reconciliation. The two peoples might feel better off being apart from each other, separated by a border, as solid and as forbidding as any border that can be imagined. However, the state of liberty is not a state of license: less than dignity, and informed by national or religious passions, may help articulate the precise form of that point of reconciliation. The two peoples might feel better off being apart from each other, separated by a border, as solid and as forbidding as any border that can be imagined. However, the state of liberty is not a state of license: less than dignity, and informed by national or religious passions, may help articulate the precise form of that point of reconciliation.

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Here, I want to give two examples of how the acceptance of widely acknowledged presumptions of ethical and political discussions can give principal guidelines for mutual recognition. The first example is taken from Locke’s theory, and can establish the fundamental prohibitions on one’s actions that result from mutual recognition— that is, what things should not be allowed to both sides or should not be done by each side. The second example is taken from Alan Gewirth’s theory, and can establish the elementary requirements from one’s treatment of the other—that is, how should one treat the other, when one recognizes the other as an equal.

When Locke characterizes “the state of nature” in The Second Treatise of Government, he describes the state all men are naturally in as “a state of perfect freedom to order their action...without asking leave or depending upon the will of any other man.” Besides freedom, this state is also characterized by equality “wherein all the power and jurisdiction is reciprocal, no one having more than another; there is nothing more evident than that creatures of the same species and rank, promiscuously born to all the same advantages of nature and the use of the same faculties, should also be equal one amongst another without subordination or subjection.” However, the state of liberty is not a state of license: “though man in that state have uncontrollable liberty to dispose of his person or possessions, yet he has no liberty to destroy himself.” Locke reminds us that even “the state of nature has a law of nature to govern it, which obliges every one; and reason which is that law, teaches all mankind who will but consult it that, no one ought to harm another in his life, health, liberty or possession.”

Here we see that the acceptance of equality and freedom by everyone who possesses some reason does not allow that person to harm any other person, exactly as reason does not allow that person to harm him/herself. However, Locke goes much further. Led by reason, which is the law of nature, and
accepting the presumptions of freedom and equality between all, Locke believes that the conjunction of these presumptions, when one follows reason, also includes components of distributive justice. According to his concept of property, when one makes something his own property, by mixing his labor with natural resources, one has to make sure that “there is enough and as good left in common for others.” A person is not allowed to keep for him/herself more than that he/she can use to any advantage of life, before it spoils. “Whatever is beyond this is more than his share and belongs to others.”

According to Locke, reason requires that equal creatures, even when free, will have more or less the same ability and chances to enjoy common resources, and no one should possess or enjoy anything by dispossessing the other. One should not exploit or deprive the other of something that they both, as equals, should enjoy. Locke’s “Proviso,” which results from reason, does not allow the differentiation between people who live together, and this provision does not allow subjection, subordination, or exploitation of any person by others.

Up to here I have showed how the use of reason, when people accept the presumption of freedom and equality of all, could guide them to mutual recognition, instruct them in what to avoid, and prevent them from evil or malicious actions. Now I want to give another example of using reason to guide people in what to do and instruct them how to treat others, when they accept the presumptions of freedom and equality. While the previous example was taken from an empiricist, Locke, I will now use part of a Kantian rationalist theory, taken from Gewirth.

The main goal of Gewirth’s interest in his right-based theory is to set up a supreme moral principle. His concept of a right is derived from some moral assumptions regarding human actions and their generic features. There, he believes, the necessary content of morality is to be found. According to Gewirth, a human “action” has, in the strict sense relevant to moral precepts, two generic features: voluntariness or freedom, and purposiveness or intentionality. The first feature means that the performance of the action is under the agent’s control, in the sense that she unforcedly chooses to act the way she does. The second feature means that the agent acts for some ends or purposes, which constitute her reason for acting.

The Establishment of the Principle
Considering freedom as the procedural generic feature of action, and welfare as the substantive feature (in the sense of having the general abilities and conditions needed for achieving one’s purposes), Gewirth establishes two main theses. The first is that every agent must accept that he has rights to freedom and well-being. The second is much more crucial: that every agent must accept that all other agents have the same rights he claims for himself, and this means that the existence of universal and equal moral rights must be accepted, within the whole context of action.

The argument for the first thesis is as follows: Every agent must regard freedom and well-being as necessary goods for himself (since they are necessary conditions for actions in general, and without them he is not able to act for his purposes). This forces him to accept:

1. “I must have freedom and well-being” (where “must” has a practical-prescriptive sense). Accepting this obliges him to accept:
2. “I have rights to freedom and well-being.” The agent has to accept this, because rejecting this would require him to reject:
3. “All other persons ought at least to refrain from removing or interfering with my freedom and well-being.” Rejecting (3) requires him to accept:
4. “Other persons may (i.e., it is permissible that other persons) remove or interfere with my freedom and well-being.” By accepting (4) the agent has to accept:
5. “I may not (i.e., it is permissible that I not) have freedom and well-being.” But (5) contradicts (1).

Gewirth says that since every agent must accept (1), he has to reject (5). And since (5) follows from the denial of (2), every agent must reject that denial, so that he must accept (2): “I have rights to freedom and well-being.”

This is the first thesis Gewirth wants to establish. Its main point is that every human action is necessarily connected with the concept of rights. It follows from the assumption that every agent must accept that he has rights, that there are necessary conditions of action.

The argument for the second thesis, the generalization that every agent must accept that all other agents have the same generic rights that he has, is based on the principle of universalizability. Briefly, this principle says that if some predicate P belongs to some subject S, because he has some quality Q (as a sufficient condition), then P logically must belong to all other subjects who have the quality Q. Accordingly, if an agent holds that he has generic rights because he is a prospective purposive agent, then this agent logically must also hold that every other agent has the same generic rights.

According to the previous paragraphs, and following the conclusion of (1) to (5), every agent has to accept:

6. “I have rights to freedom and well-being, because I am a prospective purposive agent.” And considering the principle of universalizability, every agent is forced to generalize his claim, and hence to accept:
7. “All prospective purposive agents have rights to freedom and well-being.”

Here Gewirth turns to the prescriptive aspect of his analysis. He argues that universalized judgments set prescriptive requirements for actions, made by those who maintain them. According to these requirements, every agent must consider the status of others, who might be affected by his actions. Considering them as prospective purposive agents leads the agent to accept a moral principle, formulated as follows:

8. “Act in accord with the generic rights of your recipients, as well as yourself.”

Gewirth calls this the “principle of generic consistency” because it combines the formal considerations of consistency with the material considerations of the generic features and rights of action. He considers this a principle of human rights, since it forces every agent to accept that all other agents have rights equal to his own.

In Gewirth’s theory, as was the case before in Locke’s theory, being rational and accepting the presumption of equality between people, requires the recognition of the other as an agent and hence the acknowledgment of the other’s rights. This requires us to respect others’ rights, desires, welfare, and freedom.

What we have seen so far is that using reason as the source for our actions obliges us to treat others who we consider to be equal to us in the same way we expect them to treat us. If we would accept Locke’s presumptions and recognize each other as free and equal, reason would require that we restrain our actions whenever they strike at the others’ welfare, generic rights, and freedom. Hence many actions done by both sides in the Israeli-Palestinian conflict would have been considered
immoral, and hence should be prohibited. The Palestinians would have stopped the indiscriminate killing of the civilian population in Israel, and Israel would respect, at the very least, the basic rights of the Palestinians to freedom and welfare. This means, as a preliminary step, the dismantling of the barriers inside the occupied territories, dismantling the parts of the wall which are inside the occupied territories, stopping the “pin-point” killing of Palestinians (that kill, together with the targets selected, many innocent bystanders), etc.

If we accept Gewirth’s principle of generic consistency, this will impose more obligations on the Israeli side which concern the basic welfare and basic material needs of the Palestinians. This means, again as preliminary steps, that Israel should provide water, food, and medicines to the needy Palestinians, and enable them to work in Israel, due to the absolute dependence of the Palestinian economy on Israel’s economy which was created during decades of occupation. Definitely to be avoided is a situation where people in Palestinian cities—living under an occupation—will suffer from scarcity of drinking water, while a few miles away Israelis will enjoy a swimming pool in a Jewish settlement in an occupied area.

Of course, after these preliminary steps, both sides should go further toward the final solution, by the mutual recognition and acknowledgement of the right to self-determination of both sides, and establish two states.

This sounds utopian at this moment. One may ask: If mutual recognition is so simple, how come the vast majority on both sides does not understand this? The presumption of freedom, or at least free will, of both sides, is already evident after so many years of violence. Each side knows that the other side has its aspirations to freedom and self-determination and will not abandon the attempts to achieve them. So at least the ambition to realize the natural right to freedom on each side can already be presumed by the other. The same is the case with the presumption of equality. We have learned from Hobbes that “Nature hath made men so equal, in the faculties of body, and mind; as that though there be found one man sometimes manifestly stronger in body, or of quicker mind than another; yet when all is reckoned together, the difference between man, and man, is not so considerable, as that one man can thereupon claim to himself any benefit, to which another may not pretend, as well as he. For as to the strength of body, the weakest has strength enough to kill the strongest.” At least in the Hobbesian sense, that since each side can in certain situations kill the other, both sides are convinced that they are equally vulnerable. Years of killing and bloodshed enable each side to recognize the other’s potential to kill and, at least in Hobbesian terms, as equal to his potential to kill. What, then, prevents people from understanding the trivial conclusions from the conjunction of both presumptions, which are so clear to Locke and Gewirth? Why do people keep on killing each other with no hope or future?

My answer to these questions is very pessimistic. Many people on both sides have chosen not to be rational. They reject Locke’s law of nature, which is reason, or Gewirth’s principle of generic consistency, which is derived from reason. They do not want to accept the conclusions that seem evident to every rational or reasoned person, not even the Hobbesian conclusion that they must reduce mutual threat and violence. Once we presume both sides to be free, we inter alia presume their free choice and their full autonomy and authority to choose what seems to be against their interests, or even what seems to us as irrational or being opposed to reason. And many people, motivated by deep religious or national feelings, choose the uncompromising and irreconcilable options, and are ready to pay the terrible price for their free and conscious choice. A typical example to this irrational choice is the recent referendum made in Israel among the members of the Likud party (which is the biggest party in Israel, and constitutes the major part of the Israeli government). They decided (in a vast majority) that Israel should not withdraw from the Gaza Strip. Right after this referendum there were many victims among the Israeli army and the civilian Palestinian population.

Even though those people on both sides are not the majority, they create an impregnable front against any reconciliation or compromise. The rest of the people, being desperate or apathetic, are either dragged by, or surrender to the extremist minorities, and let them determine the political agenda, and in fact, the future of the coming generations (considering the current generation to be hopeless and futureless). On the Palestinian side, where there are many who feel that they have nothing to lose, the escalation of the situation empowers and intensifies religious and national tendencies. On the Israeli side, too, where there is a lot to loose but so much that has already been lost, the escalation of the situation empowers and intensifies the desire for revenge. In both cases, rationality and reason are significantly weakened, if not absolutely wiped out.

The above description looks like an endless vicious circle, since to be able to be convinced by rational arguments one must be rational and think reasonably in the first place. The option of a rational dialogue presumes rationality as a necessary condition, without which no dialogue can exist. When people choose to deny or ignore rational arguments, there is no way to convince them even to consider the option of peace or reconciliation. If they had chosen to act rationally in the first place, there would have been no need to convince them to prefer the options of peace, reconciliation, and cooperation, since these are the “natural” preferences. Sorrowful as it may be, so long as a significant part of both sides have given up rationality and reason, Kant’s reason, Hegel’s spirit, and even Descartes’s rationality will sorrowfully keep silent. And if this sounds pessimistic, my answer to the questions when and how all this could be changed is even more pessimistic: when both sides will be exhausted to death. Then, both sides, not because of rational choice, but due to the lack of ability to kill each other, will hopefully consider other ways of interaction or other solutions. As far as I can see for the present, at least on the Israeli side, there is enough energy and desire to keep fighting to last for a long time, and there is no sign of people being exhausted. This guarantees at least a few more years of mutual killing before mutual recognition will even be considered. However, there is nothing that I would like more than to be proved wrong in this sorrowful prediction.

Endnotes

2. Ibid.
3. Ibid., 5, § 6.
4. Ibid., my emphasis.
5. Ibid., 17, § 27.
6. Ibid., 19, § 31.
9. Ibid., 138.
**Reasonable (and Unreasonable) Goals and Strategies, and the Hope for Peace in the Middle East**

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I will address the question of reason and dialogue in two directions. One is based on a rather superficial observation and considers the rationality of actions. This lays the ground for the second direction, which addresses the issue of rationality and dialogue through the question of language. I claim that in their fight against the Palestinians, Israel has caused the bankruptcy of language, and thus it contributes to the impossibility of dialogue. At the end, I will make a practical suggestion.

Consider first the view that the circle of violence in the Middle East (and I will restrict my discussion to the Israeli/Palestinian conflict) is fired or enhanced emotionally because of cultural differences of beliefs and values between us, the Israelis, and them, the Palestinians. Reason is thus seen as removed from the conflict and this diminishes or maybe eliminates the possibility of dialogue. In this picture the Palestinians, instead of fighting for freedom by “Western-acceptable” means (what some philosophers may call a “just war”), resort to the extreme and unreasonable use of suicide bombs targeting civilians. The Israelis, instead of limiting their activities to preventing and protecting the population against terror attacks, also use extreme measures, such as targeted killings. This picture accuses both sides of degrees of unreasonableness and allows one to use the lack of reason as an explanation of the actions and strategies of both parties. So the possibility of dialogue and peace seems to rest on somehow calming down the parties and introducing reason to enable reasonable dialogue.

Thus, for instance, much of the debate about the targeted assassination of the Hamas spiritual leader, Sheikh Yassin, centered around the question whether his killing would decrease the Hamas’s violence or not (and whether it is morally justified). The assumption seems to be that Sharon’s goals are the same as Israel’s goals, and that we all want a cease fire and the reduction of terror, and Sharon rather stupidly employs the wrong means that fail to achieve these goals.

This picture is wrong. I will not go into the details why it is unfounded to think that Sharon (and the Hamas) consistently make these strategic mistakes. The point is methodological: that an explanation of the actions of the parties here as unreasonable is a last-resort explanation. Any explanation that (ceteris paribus) presents Sharon as not stupid is preferred.

I believe Sharon’s strategy toward the Palestinians is rational and consistent, in the sense that he is acting efficiently to achieve his goals. His goal is to win more and more land for Israel and to remove the Palestinians from the land. He doesn’t mind this low-level war we now have. Its casualties are less than those from traffic accidents. People live well in Israel. He himself is a military man, with a formidable reputation as a daring, and maybe irresponsible, officer and he likes wars. His goal is to continue fighting the Palestinians, to gain more and more land, and to make as many of them as possible leave the area before Israel is forced to settle down for a ceasefire. Given this goal, Sharon’s strategy seems to work well.

Are his goals, one may ask, reasonable? From a practical point of view, they are. Western history is full of examples of people who took over land and threw out the natives in some way or other. But for the Western world to tolerate such acts today, this strategy has to be delivered wrapped in the appropriate rhetoric. Give the media a good enough story and the Western world will hesitate for enough years so that Sharon can complete the job. So the goals are reasonable in the sense that they are within Sharon’s interests, and they are not unattainable. Yet, through a Kantian move, we may state that the goals are reasonable only if they are moral, and Sharon’s goals outlined above are not moral. The systematic oppression of a people to annex their land, cannot be moral.

Can we convince Sharon and the extreme right in Israel via reason to engage in dialogue? Can we make him change his goals, by appeal to Palestinian rights and morality? I do not think so. The only way to convince him is to cause him to change his strategy by showing that it will not work, that his goals are unattainable. And since the Israeli population does not seem to want to stop him and Palestinian actions are unsuccessful, the responsibility lies on outside powers. The only way this vicious war will cease, I believe, is if the outside world will make it clear that it will not tolerate it any longer. (I will return to this last point later on). This completes the outline of the first picture, which has to do with the surface of actions and their simple or oversimplified explanation.

The second picture is more complex and related to the fact that the progress of the war depends heavily on public opinion. Let me outline the general argument. Israeli leaders need to preserve their popular support within, and they need to gain also the support or neutrality of the international community. Thus, the war involves extreme public relations efforts that are designed to justify Israeli actions and discredit Palestinian ones. These efforts involve a constant flow of background rhetorical noise, whose short range effects are to succeed in getting Bush to declare something or to prevent the U.N. from making a certain decision or getting the Israeli public to approve of this or that measure. Yet its constant and long-range result involves the elimination of language. Language becomes bankrupt—not in the sense that we cannot say a lot, and even mean what we say, but in the sense that our intended audience is deaf to whatever we say. It is immune to whatever arguments we employ. In this sense, the war between Israel and the Palestinians does not only produce a lack of peace talks. It is itself a battle against dialogue. It eliminates the possibility of future dialogue.

In this situation, reason cannot lead to the initiation of dialogue. Like an intimate couple who has lost mutual trust and respect, they may be stuck in a vicious battle that cannot be stopped from within. Society recognizes this situation and places the responsibility on some outside mediators, like the courts, to force the sides to accept some agreement to protect the kids. So again I get to the point that dialogue in the Middle East is possible, but probably only with the pressure of international powers. This is roughly the outline of the second line of thinking. Let us now go a bit further in examining some examples of how the language that is necessary for dialogue becomes bankrupt.

I will start with a personal note. I wish to share my deep frustration, even despair, that not only are we stuck in vicious circles of extreme violence and extreme rhetoric, but also nothing that anyone says seems to matter. Israel is perpetuating a brutal occupation, with its killings, destruction, and humiliation, that is topped by the deadly dance of suicide bombers and targeted killings. The facts are known. Everyone talks all the time. Yet they only hear themselves. We hear only ourselves.

Two and a half years ago at our first Atlanta meeting, I thought that publicizing the facts could make a difference.
Surely, I thought, when the world learns about some of the realities of the occupation, it will not tolerate them and will do something. At least, I hoped, the Western world could make a clear stand, place economic sanctions, insist on international observers, or some other action. Anything. But now the facts are basically known, both in Israel and outside. The occupation is brutal and morally repulsive. The world, not just we in Israel, knows that and makes apparent gestures: world leaders meet, discuss, deny, affirm, threaten, place conditions, bring decisions to a vote and to a veto, and so on and on. A lot is said all the time—and nothing makes any difference. Language, in the Middle East and about it, has become bankrupt.

Though the news reports in Israel are repetitive and predictable, they are always extreme and full of action. They are never boring, like a third-rate Hollywood action movie (except we haven’t gotten to the happy ending). It has all those vicious terrorists, and civilian victims, some villains, and some virtuous, innocent bystanders. There are various plots where civilians or demonstrators or soldiers or occasionally politicians get killed or wounded. The curfews, the demonstrations, or the wall, are the routine stories. The front pages’ top stories are always a new suicide bomb or a targeted killing; but nothing is surprising. The plots are all very predictable. I wonder why people buy daily papers at all.

The factual reports are juiced up by waves of rhetorical noise, equally predictable. On all sides everyone is busy justifying us and discrediting them. Both sides present themselves as morally justified in their actions, acting in self-defense. The Palestinians are fighting against this lengthy and cruel occupation. Their fighters are freedom fighters. In general, the Western democratic tradition admires freedom fighters. The fact that freedom fighters use violence is accepted by our culture. It is conditioned on moral grounds and often on practical grounds as well. The freedom fighters have no other choice. In the case of the Palestinian population, they used much less violent attacks than now for the first twenty years of the occupation (through the first Intifada in 1988) and it got them nowhere closer to protecting their basic human rights. So their move to violence is understandable. Moreover, as history shows, violence may be the only means that actually works in gaining freedom. It worked for the Israelis in their fight against the British Mandate.

But this apparently gentlemanly picture of wars that we like to draw about past wars (whose atrocities we happily forget) does not quite fit the current conflict. So while freedom fighters are normally accepted by our Western moral culture, this particular fight somehow is not. I wonder why the West is so deaf to Palestinian suffering. One may claim that it is not the cultural or religious difference of Palestinians, who are Arabs and mostly Muslims, from Western people, but their actions, that makes a difference here. What makes their fight an immoral freedom fight, one may argue, is the fact that they resort to terrorism. In particular, the strategy employing suicide bombers targeting civilians is unacceptable.

Strangely enough, it is the Palestinians’ extreme measures that provide the basis for Israeli public relations in its attempt to morally justify the extreme oppression of the Palestinian population. Thus, for Israel, all our operations—the road blocks, the killings, the house demolitions, and the uprooting of fields—are claimed to be actions of self defense: for one has to fight terrorism.

“What other alternatives do we have?!” people often ask. For us on the Israeli Left, the answer is clear—start some dialogue. Peace talks. Surely we’ll succeed because we need peace and the elimination of the violence. “There’s nobody to negotiate with” is the usual response. Years ago, the argument used to be that they, the Palestinians, are different from us. “You don’t know their mentality,” I would be told. “You are a naive philosopher; but I know, I grew up in an Arab country. They are out to kill us.” Now I don’t hear this type of response much and not because Israelis are less prejudiced, but because our government has supplied us with other terms to say the same thing. Arafat in particular and the Palestinian leadership were declared by Sharon to be irrelevant.

But this unhappy term was soon replaced by a much more successful one: we are told that they are not peace partners. What the Palestinians are accused of here is not clear. But the upshot of such a claim is clear: that (as much as we want) we still cannot have a dialogue with the Palestinian leadership. The failure of the “irrelevant” attribute and the success of the “no peace-partner” attribute in convincing the public that dialogue is now impossible, is rather amazing. And not only the Israeli public have bought this term, but the U.S. leadership and some European countries did as well. Of course, there are countries, even non-Arab countries in the world that are more critical of the Israeli occupation. There are attempts to condemn Israeli actions in the U.N. and maybe institute sanctions against Israel to force it to bring the occupation to a halt. These attempts are effectively countered by Israeli rhetoric: the countries are accused of anti-Semitism.

Do not get me wrong. If Arafat is no peace partner because he is corrupt and not trustworthy, so is Sharon. Yet peace negotiations are normally held between sides who mistrust each other, and dialogue may still be possible. Similarly, I do not argue that some countries suffer from the rise of anti-Semitism, yet the criticism of Israeli actions by critics who are anti-Semites may still be true. The main effect of accusing some countries of anti-Semitism in this context is to cause them to hesitate in taking any actions against Israel. The public in Israel, normally attentive to what the Western World says about it, may in advance discard any such view now, for they are anti-Semites.

To this list of rhetorical weapons let us add the philosophers’ voices. An Israeli philosopher, Kasher, designed the Israeli military Ethical Code. This Code was created after the first Intifada to respond to the growing “Refusenik” movements, those who refuse to serve in the West Bank and Gaza in preserving the occupation. Kasher in interviews declared the Code was carefully thought out by the experts, so the soldiers need not trouble with complicated moral issues regarding their actions. By following the Code, they can be sure they will be doing the professionally and ethically right thing.

I will give just one example relevant to the present topic. Kasher prides himself in including human life as a value, stating that it is the highest value. However, in outlining its practical application, the Code specifies that the soldier should spare human life except when it conflicts with the success of the military mission at hand (i.e., the “highest” value is subordinate to the success of the military mission).

Currently, Kasher (with the Israeli Defense Force - IDF) is designing an addendum, the Ethical Code for the war against terrorism. This code follows the publication (REF) of a paper justifying Israel’s targeted killing strategy, the assassination of those who we think build bombs, or design them, or even those who we believe aid or enable such a design. Moreover, the killing of the target’s bystander victims is also accepted. Though it is regretted, of course, their death is claimed to be unavoidable and the blame for it lies on the targets themselves, for they are terrorists.
The Light of Reason and the Right of Return
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I have to confess that the title of this panelfills me with trepidation. It is too reminiscent of the patronizing attitude that one often gets from a certain type of superior outsider: “This irrational conflict has been going on for centuries; why don’t you set aside your atavistic passions, see the light of reason, and simply get along?” This is the same type of attitude that casts the Israeli-Palestinian conflict as an age-old religious war that has been raging in the Middle East since Cain and Abel, or at least a continuation of the feud between Ishmael and Isaac. The dominant image is that of two wild-eyed adversaries destroying each other and everyone around them over a dispute that more reasonable folks would have settled over coffee.

I take it that this caricature of the Israeli-Palestinian conflict would be implausible to anyone who has more than a passing familiarity with its history. Even though it is quite prevalent in the media and the Western popular imagination, this attitude toward the conflict need not detain us. A more plausible account is the one provided by my students in Beirut. When I asked them what they thought of the question whether reason could be the basis for dialogue in the Middle East, one of them reacted by saying that the conflict was not a matter of reason or lack thereof, but rather simply that the two sides start from different premises. As she put it, “cultural differences” influence “the way different peoples interpret things and… produce different premises.” Another observed more cynically that these premises are themselves often manufactured to suit the conclusions that one wants to reach in any case. She went on to say: “people want to reach certain conclusions and [so they] build premises to support the conclusions.” What these two students were saying, in part, is that it does not seem to be a question of instrumental rationality, which takes us from premises to conclusion, or means-end rationality, which specifies the route to a particular goal. Indeed, the central disputes in the Israeli-Palestinian conflict often call to mind the old philosophical adage that one philosopher’s modus ponens is another’s modus tollens. To illustrate, it might help to recall the recent and much-publicized interview with the Israeli historian Benny Morris, published in Haaretz earlier this year. In that interview, Morris effectively argues as follows:

If the Palestinians hadn’t been expelled, Israel would not have been established.5

Therefore, the Palestinians should have been expelled.

By contrast, those who think that the creation of Israel led to an injustice to the Palestinians would turn this instance of modus tollens around, converting it into an instance of modus ponens:

If the Palestinians hadn’t been expelled, Israel would not have been established.

The Palestinians should not have been expelled.

Therefore, Israel should not have been established.

Both arguments fit the canons of instrumental rationality, but they are clearly diametrically opposed.

Endnotes

1. These are not the only extreme measures, but it seems that the other measures, like endless curfews, roadblocks, incidental and not so incidental killing, house demolition, destruction of fields—all these seem to be more “normal,” and thus “accepted,” measures used in Western wars.

2. The English translation of the Code can be found on the net at http://www.us-israel.org/jsource/Society_&_Culture/IDF_ethics.html

3. There are other clear examples that show that Israel acts to silence moral criticism: The Palestinian Peace Movement is completely ignored by the Israelis. The shooting of non-violent demonstrators, e.g., against the wall; punishing excessively the small group of conscientious objectors, while allowing others to quietly sneak through the system, so that the general impression is that this is a very small group, etc.


5. The Ethical Code is presented to the soldiers as a moral agent, the U.S. has a responsibility to pressure Israel to end the occupation and cease fire. This means, like sanctions. As a moral agent, the U.S. has a responsibility to pressure Israel to end the occupation and respect the human rights of the Palestinians.

Moreover, the responsibility to act to end the occupation also rests on philosophers, qua philosophers. It is rather surprising, I think, that the recent flourish of applied philosophy enabled the army of occupation to enlist this expertise in aid of its public relations efforts; yet it did not get philosophers to organize in an effort to end this immoral and endless occupation. How come we don’t have a “philosophers without borders” or “philosophers for human rights” organization that will take a public stand and attempt to influence international public opinion? Maybe it is time for us, here and now, not to limit our efforts to an occasional lecture at a philosophy conference, but to organize “philosophers for dialogue in the Middle East,” and make a much more public stand.

Therefore, Israel should have been established.
If instrumental rationality is not the point, then it is tempting to think that a more substantive form of rationality is what is at issue, and that the kind of reason we should be concerned with is that which supplies us with the premises themselves. A look at one of the thorniest disputes in the conflict may help test this hunch. Nothing about the conflict seems to excite greater passions than the question of the Palestinian right to return to their homeland. Many Israelis even refuse to use the expression “right of return,” fearing that acknowledging it as a right may commit them to its legitimacy, and the New York Times is equally wary, preferring to put it in scare quotes in its editorials. It has also been seen as a major stumbling block to the peace talks or rounds of negotiations that have been held so far.

Consider the arguments on both sides.

The Palestinians say that many, if not most, of the 750,000 Palestinians who left their homes in 1948 were driven out in a campaign of mass expulsion, of the type that came to be known, in the latter part of the twentieth century, as “ethnic cleansing.” They were resettled against their will in other parts of historic Palestine or in the neighboring states, principally, Jordan, Syria, and Lebanon. Thus, they claim that they should have a right to return to their places of origin and resume their lives, or those of their parents or grandparents, as though the nakbah (“catastrophe”) that befell them had never occurred.

They base this on several principles derived from morality and international law. The first is a principle that disallows the use of force as a way of changing the circumstances of people’s lives against their will. Such uses of force generate a right to restore the status quo ante—at least until a just resolution can be found. Second, they say that in expelling them, Palestinians were effectively denied the right to determine their own fate in their historic homeland, a denial of the right of self-determination. Finally, they add that the events of 1948 deprived many Palestinians of their rights to property and livelihood, which should be restored to them directly by repatriating them in their homes, shops, orchards, and farmlands.

Most Israelis see matters differently. For them, the war of 1948 was not characterized by a campaign of ethnic cleansing; rather, it was a matter of several Arab armies invading the fledgling state. There was no concerted effort to expel the Palestinians; those who left either did so of their own accord and on the orders of their leaders, or were made to leave in a defensive action by the Israeli armed forces or the Jewish militias that predated the establishment of the state. Second, many Israelis do not accept that the Palestinians are the indigenous inhabitants of the land, and that what is now Israel and the occupied territories was the historic homeland of the Palestinians. They therefore reject the claim of self-determination in that land. As for Palestinian property claims, they are met with a number of arguments on the Israeli side.

Sometimes, they are simply dismissed as illegitimate since they applied under a legal order that no longer exists. At other times, they are met with the claim that they should be traded against the property claims of Arab Jews who emigrated to places like Yemen and Morocco. At yet other times, some will concede that Palestinians may receive compensation as part of a final settlement, but not by returning their original property to them, but rather by means of funds provided by the international community. Finally, to clinch the matter, it is said that any return of Palestinians to the towns and villages in which they and their forebears once resided would “destroy the Jewish state,” which means that it would cease to be a state with a sizeable Jewish majority.

Within this tight knot of arguments and this flurry of claims and counterclaims, one can detect three main types of disagreement. The first is broadly factual in character and can in principle be settled by empirical investigations of a historical nature. In this case, reason may have a small role to play in evaluating the validity of the claims; but it cannot really settle the matter by itself—historical research is needed. As the remarks I quoted from Morris reveal, one of the leading Israeli historians of 1948—regardless of his current ideological or moral stance—now acknowledges that what happened during that year amounts to a campaign of ethnic cleansing. A second type of disagreement has to do with the relative moral priority of certain incompatible courses of action. Here again the Morris argument is of relevance, since it raises the question of which should take precedence—establishment of a state for the Jewish people or not expelling the Palestinian people from their homes. A type of practical reasoning is involved in settling this dispute, which would weigh the urgency of establishing a homeland for the Jews against the need not to cause long-term suffering to others. The third type of dispute involved in this aspect of the conflict entails assessing the legitimacy of some moral principles themselves—for example, the sanctity of private property, the imperative of preserving the national character of a certain state, the permissibility of the use of force to change facts on the ground, and the statute of limitations on ownership rights. These are just some of the moral principles whose legitimacy are in dispute among the two parties to the conflict.

It would take too long to try to say what the outcome of such a process of practical reasoning might be, but it is safe to say that it would not be a complete denial of the right of return of the Palestinians. It seems fairly certain that substantive reason would dictate at least a qualified right of return. However, the mainstream Israeli position, as expressed by successive Israeli governments and as promulgated in the official literature of the Israeli Foreign Ministry, is simply that there is no merit at all in the Palestinian right of return. It is not clear how reason can serve to break this deadlock, given that the positions are so far apart, and that one side does not seem to allow that there is something to talk about.

If we conclude that substantive reason (including morality) dictates positions that are radically different from those adopted by Israeli officials concerning the right of return, and we are committed to a negotiated settlement to the conflict, then means-ends rationality returns to the picture, in the following guise. The question that arises for the Palestinians is: Why insist on a position on the grounds of moral principle when it is clear that there is no chance that this position will be accepted, now or in the foreseeable future, by the other party? To pose the question more generally: How rational is it to adhere to standards of morality when it is clear that those standards are not likely to be met given the prevailing power balance? Again: At what point does it become positively irrational to advocate just claims when the stronger party, backed by the world’s only superpower, declares them to be “unrealistic”—as U.S. President Bush recently did with respect to the right of return?

This is one way of characterizing a standard debate on the Palestinian side, whereby hardliners insist on moral principle and the justice of their cause, while moderates say that politics is the art of the attainable and an insistence on morality in the face of overwhelming power is harmful to the rational self-interest of the Palestinian people. Palestinians frequently see themselves as torn between morality and rationality on the issue of the right of return and other aspects of the conflict, or perhaps between instrumental rationality and substantive rationality. But matters are somewhat more complicated, since
hardliners often respond by saying that what seems rational in the short-term is not always identical with what is rational in the long-term. This raises a kind of paradox of long-term rationality (on the analogy of the paradoxes of collective rationality): what may be a rational strategy to adopt in the here and now may not be so if one takes a long view. The point is not that what seems irrational in the short-term might turn out in retrospect to have been the rational course of action. Rather, it may sometimes be clear from our present perspective that it would be rational in the current political climate to insist on moral principle and wait for external circumstances and the balance of power to change, as opposed to settling for something that delivers something less than optimal justice. Unfortunately for the prospects for dialogue, it is difficult to come up with a counter-argument to this position.

Endnotes

1. I am grateful to my colleagues Bashshar Haydar and Gregg Osborne for very helpful discussions concerning the topic of this paper.
2. Sahar Tabaja, 8 March 2004, online discussion board.
3. The same student went on to say: “I am not sure dialogues are about attaining the truth anyway, it’s more like different groups want to get a larger stake in the final outcome, and in that regard reason is only one tool among many.” Loubna El-Amine, 11 March 2004, online discussion board.
4. The modal and deontic operators make this a more complicated argument than a simple matter of, “If P then Q, not Q, therefore not P,” but I think the broader point about rationality remains.
5. Morris puts it thus: “Ben-Gurion was right. If he had not done what he did, a state would not have come into being. That has to be clear. It is impossible to evade it. Without the uprooting of the Palestinians, a Jewish state would not have arisen here.” Haaretz, 9 January 2004.
6. I would argue that the right of return should be understood both as a collective and an individual right. It is in reality a collection of rights, partly political, partly social, and partly pertaining to individual property rights. It comprises: the right of individuals and groups not to be expelled from their homes, the right of a people to determine its own destiny in its homeland, and the right of individuals to reclaim property that has been lost or stolen.
7. I understand territorial rights in terms of individual title deeds as well as the collective rights of groups of people to reside on and make use of plots of land. Around 6% of the whole land of Palestine was in Jewish hands at the time of the U.N. partition resolution in November 1947.
8. This claim is contradicted by historical research which shows that Zionist forces deliberately emptied the land conquered in 1948 of its Palestinian population and actively prevented the return of refugees by destroying 92% of the 421 villages depopulated in 1948, either wholly or extensively. A new school of prominent Israeli historians (including Benny Morris and others) now endorses this version of events, long denied by official Zionist historiography.
9. There is no direct link between the forced expulsion of the Palestinians in 1948 and the emigration of Jews from Arab countries. Indeed, the latter was partly organized and funded by Israel after the creation of the state, and was in some instances actively encouraged by acts of intimidation carried out by agents of Israeli intelligence.

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**Reason vs. Rhetoric – Who Is To Be Master?**

**Anat Biletzki**

Tel Aviv University

Situated in a session named “Can Reason Be the Basis for Dialogue in the Middle East?”, I will attempt to view a political context philosophically. Indeed, a few years ago some of the speakers assembled here today participated in another APA meeting, in another session, titled “The Possibility of Dialogue in the Middle East.” At that time, we wryly remarked that perhaps it should have been called “The Impossibility of Dialogue in the Middle East”; or, at the very least, it should have ended with a question mark. Subsequently, I will admittedly be pointing here to the soon-to-be realized impossibility of dialogue in the Middle East. But I will be pointing away from reason—or lack thereof—as the cause of this impossibility. In other words, in a certain sense I will be challenging all—or most—of the presuppositions of this session.

First, let us begin with and identify some truisms—philosophical, political, and local truisms. Perhaps some of these truisms are not truisms at all, since they are not trivial, neither are they uncontested. Still, though not truisms, these propositions are popular slogans, clichés, and mantras, often heard, often acquiesced to, and not often submitted to critique.

Philosophical truisms abound in the discussions of reason. First among them is that of reason versus emotion: reason and emotion are two different aspects of the human experience. Reason—brother to rationality and logic—is objective and universal, whereas emotion—sister to passion and affect—is subjective and particular. Reason and emotion are opposed in a very certain sense—objective reason is optimally emotionless and strong emotions are not rationality-bound. Then there is the second pair: reason versus rhetoric. Going back to Plato, the hyperrationalist, and his famous feud with the Sophists, the local rhetoricians, one can, instead of looking at the difference between reason and emotion, talk about the split between Philosophy (with a capital P) and Rhetoric. For it is there that an important tradition starts: the tradition that puts philosophy and rhetoric on two different sides of a fence with several “natural allies” on each side. Thus, philosophy is grouped with logic, with rational method, with universalism, with objectivism, with validity, and with truth. Rhetoric’s family includes emotion, relativism, subjectivism, persuasion, and opinion. Philosophy is viewed as rational conceptual analysis; rhetoric appeals to our irrational passionate affinities. Not surprisingly then, philosophy is housed in the same general area as science (and knowledge in general), while rhetoric is given a place in public human contexts like politics (and law).

Finally, when reason and rationality are grouped together, a natural contender on the “other side” is religion. So we get the third philosophical cliché: reason versus religion.

Political truisms are more local and more parochial; indeed, they are dependent on the political culture in which they abide. Still, if we carefully recognize a certain Western, liberal cultural context we can ascertain the current slogans pointing, first, at the West versus East pair, and then the rationality versus fundamentalism couple. Both of these categorizations are now popularly housed in the “clash of civilizations” ideology. And even when that superstructure is questioned, it is rarely problematized in essence. That is to say, gradations and complexities are recognized within the ideology. Consequently, variations on the clash-of-civilizations truism take the East to be more nuanced, and make place for
enlightened, modernistic, progressive Islam versus fundamentalist Islam.

And the truisms on Israel-Palestine: the “conflict” (a word I will have more to say on shortly) in this area of the Middle East is construed as a war of religions and as a war of fundamentalist extremists. These are both, I will argue, misconceived mantras.

About the philosophical truisms one can argue philosophically. Especially in postmodernist times, one encounters familiar attacks on reason and rationality as themselves being context-dependent and no less suspicious than any other social construct. About the political slogans one can argue by giving counter-examples. The presentation of such counter-examples, while easy on the Popperian mindset, sometimes adopt a demagogic manner. We are reminded of the progressive, rationalistic enlightened aspects and phenomena of Islam, or about the decadent, evil, or reactionary aspects and phenomena of the West.

I will address, henceforth, neither the philosophical statements adumbrated above, nor the political basics so easily accepted at large. Instead, I will engage with the personally significant—personally for those of us who hail from those parts—argument about Israel-Palestine. I submit that this is neither a war of religions nor a conflict between extremists. More so, saying it is not a war of religions does not, as might be expected, pit it as a war of secularism or rationality against religious fundamentalism—with the first being based on the Israeli side and the latter on the Palestinian side. It is, rather, a war over land, a war with colonial roots, being fought with two sorts of weapons—material arms and words.

In both wars—the war of arms and the war of words—Israel is winning. The fact that it is winning the armed conflict is not to be wondered at—Israel has the fourth most powerful army in the world, including, as we all now know, nuclear power. The fact that it is winning the war of words is our concern here, for words buttress both reason and rhetoric. In contrast to the war-of-religions scenario, or even to the religion-versus-rationality formation, we prefer to describe this as a war between two sides who are both rational and reasonable; but Israel is using words, reasonably, to win this war. One might—if one chooses to locate terrorism only on the Palestinian side—say that the Palestinians, some Palestinians, are using force to win this war. But this is also rational. Terrorists, in this sense, are rational—they are using force to win this war.

Let me elaborate on this point for a moment. Our problematization here concerns the far-too-easy dichotomization which results in reason and words on one side of the fence with irrationality and violence, sometimes termed terrorism, on the other. Indeed, Israeli discourse has recently taken to talking about making the Palestinians “internalize” their place. Is such internalization not a case of violence (not to mention the use of force and power, by the state, to target innocent civilians)? Is this not a case of state terrorism? On the other hand (the other side of the divide?), is not the purpose of terrorism to strike terror into the heart of the other? If this purpose is well-defined (and well-executed), is this not a case of rational action rather than what it is usually taken to be—irrational fanaticism?

Where does dialogue come in? Before addressing this question, the question of our session, let me clarify the position from which these things are being suggested. These are not the words of an antirationalist; on the contrary, I do indeed perceive of rationality as a necessary condition—but not the only one—which must be maintained if we are to ground any sort of human intercourse. But as already alluded to, it is not (lack of) reason which is to blame for the breakdown of dialogical politics in the Middle East, between Israel and Palestine. There is reason here to inquire about reason from several different angles. First there is “reason” as belonging to only one of the sides of the dialogue; as I’ve said, I decry this facile dichotomization of the world. Then, there is reason, belonging to both sides of the dialogue, which might serve as the basis of dialogue. That, I submit, is abundantly there but it cannot be turned to as a possible band-aid. Finally, there is the metaquestion: why is dialogue based on reason not our salve?

When and where does dialogue really exist? More concretely, when have Israelis and Palestinians talked? When have we witnessed real dialogue? Yes, one can point to the venerable icons of such dialogue: the Oslo agreements, the Geneva agreements, the Nusseibeh-Ayalon talks (of which hero, Sari Nusseibeh, is here with us), not to mention the innumerable forums and venues of “people to people”, “students to students”, “teachers to teachers”, etc. (One sometimes gets the impression that this is what the world wants to see us, “the locals” do, and this is, therefore, what the world is willing to finance....)

But can this be deemed dialogue, true dialogue? Given the inherent and all-pervading asymmetry of the “partners,” can this be termed dialogue in any real sense of the word? Is there, ultimately, any sense to be made of dialogue between master and slave? Is there any sense to be made of dialogue between victim and victimizer? When there are presuppositions of facts on the ground—is this to be called dialogue? And most important, when the language of dialogue itself assumes the master’s, in this case the occupier’s, language—is this to be called dialogue?

This can be made more concrete and, paradoxically, more ironic. Another current mantra now with us is that peace can only be achieved through negotiations (aka dialogue), not unilaterally. This claim has become so ingrained, so consensually accepted by moderates and “peaceniks,” that now, when Sharon is (supposedly) instigating a unilateral disengagement and withdrawal from Gaza, there are some on the Israeli left (and specifically, the Geneva contingency) who are voicing arguments against the plan—since it does not demand negotiations first, it eschews negotiations and dialogue. But the negotiations which have, with time, become a magic catchword are not, and never have been, a fair and decent procedure between equal partners. They have instead become a fig leaf—that which the Israeli peace camp insists on in order to pinpoint the essence of the requirement for making peace.

So these magic words—in particular “negotiations” and “dialogue”—like many other words, terms, and concepts on our political stage, are no more than rhetoric. Indeed, the conflict itself has become a conflict in rhetoric. At the risk of being facetious I point to even the word “conflict” as a rhetorical tool (since conflicts, almost by definition, involve two basically equal partners; the “Israeli-Palestinian” conflict immediately pits these partners on two apparently equal sides). Our use of words must be addressed before we are to make headway in conducting any real dialogue. Examples are numerous: “conflict,” “war,” “security,” “emergency,” “non-combatant,” “victim,” and now especially “terrorism.”

There are two consequences of this cynical and rhetorical use of words. First, let me reiterate what I began with: there is no lack of reason in the Middle East in general and our problem in Israel-Palestine in particular has nothing to do with rationality. The problem, in metaphysical terms, is evil, pure and simple evil. And if metaphysics is to be banned from politics, then the problem in political terms is power, pure and simple power. It is not rationality which is lacking as the bridge between Islam
and the West, or between Palestine and Israel. It is human understanding and the recognition of human suffering.

Finally, talking about dialogue, not to mention reason, is either very naive or very cynical. It is naïve in the sense that those talking about rational dialogue do believe, bona fide, that such dialogue can be achieved. It is cynical in the sense that, when we say “it is incumbent for philosophers to develop the foundations of rationality,” we should not accept, uncritically, the thought that (lack of) rationality is to blame for (lack of) dialogue. “It is incumbent for philosophers to develop the foundations of rationality” means that we must be critical of these mantras, for they are rhetoric in the mouth of the victimizers and occupiers. Philosophers must not be in the service of the powers that be, whether those powers be Israel or the U.S. (who have both adopted the rhetoric of reason versus terror); they must not renege on their philosophical commitment.

Reason and Peace in the Middle East

Mona Abousenna
Ain Shams University—Cairo

The pivotal question here is: Are reason and peace, in the Middle East, complementary or contradictory? The history of the Arab-Israeli conflict, in the past fifty years, indicates that the relation between reason and peace is problematic. A problematic, by definition, entails a contradiction. The next question, then, is: where is the contradiction between reason and peace in the history of the Arab-Israeli conflict?

In my view, this contradiction is implied in the image of the “self” and the “other” each of the conflicting parties have developed over the years. However, this image implies another one, namely, that of the “perceived.” In this case, we could say that what is perceived is not necessarily the attitude that is being deployed. It follows, then, that the attitudes of individuals and nations arise out of the interpretations that are made by each party in the conflict. For instance, a defensive gesture by a person who thinks he may be attacked is apt to be interpreted by others as a preparation for an attack on them, thus leading them to act defensively, or even to attack. Thus, man is aggressive, or acts aggressively as a result of the belief that the other is aggressive.

The question, now, is: What determines this interpretation? In my opinion, it is the embedded enemy image. In his work, Perpetual Peace, Kant says: “Peace means an end to all hostilities that is an end to the enemy image.” However, up till now, peace is temporary and not perpetual. This means that it is pseudo-peace due to the secret presence of the enemy image, as Kant says, “because the contracting parties have their secret mental reservations with a view to reviving their old pretensions of the past.” This statement implies, first, that war is a mental attitude and, second, that the future is a repetition of the past. In a nutshell, one could epitomize Kant’s statement in two concepts, namely, reason and time.

By “reason,” I specifically mean the faculty that can transcend reality for the sake of changing it. And change is impossible without a future vision or a pro quo that can change the status quo. This pro quo denotes that we have to move from the future and not from the past. Within this context, peace cannot be incarnated if the contracting parties insist on preserving the past value system that implies the enemy image.

Now, the question is: What is the origin of the enemy image? It originates in the concept of the “absolute truth” when threatened by another absolute truth that denies it. In this case, this threatening absolute truth becomes the enemy who should be absolutized either mentally or physically, or both. Thus to analyze the enemy image, we have to criticize the concept of the absolute inherent in the mentalities of the contracting parties which have been inherited and perpetuated in their respective cultures.

In his insightful book, The Jewish Mind (1977), Raphael Patai considers “the Jewish mind as a product of Jewish culture, and Jewish culture as a product of the Jewish mind,” and he concludes that “Jewish religion—unquestionably the most important element in Jewish culture—is likewise considered as a product of the Jewish mind.” In his twin book, The Arab Mind (1983), Patai almost equates both mentalities, the Jewish and the Moslem, through one core trait that characterizes each, namely, the belief that each possesses one fundamental trait that sets them apart from any other and that is the divine nature of their national identity. Within the Jewish context, this absolute truth consists in the belief that the Jews are God’s chosen people, whereas the Moslems consider themselves to be the best nation ever created by Allah. These two mutually exclusive images, or absolute truths, are the root cause of the enemy image that is responsible for the ongoing Arab-Israeli and Palestinian-Israeli conflict. It is the uncritical preservation of this belief that has radically changed the nature of the conflict by allowing Jewish and Moslem religious fundamentalisms to change the nature of the conflict from a secular one over territorial borders into a religious one having to do with the right to exist, and from a conflict for land into a holy Jihadist war.

The question is: How can we transform this enemy image? This can be accomplished, I argue, first, by criticizing the concept of the absolute and, second by secularizing the concepts of absolute truth underlying both Jewish and Moslem cultures regarding their national identity. By “secularization” I mean relativization, that is, by tackling issues of conflict in a relative and not in an absolute way. In this sense, a solution could be offered that attempts to remove the boundaries between the two cultures caused by cultural taboos.

The final question has to do with how this can be implemented. First, the philosophical community should be occupied with clarifying the concept of truth and exposing its inherent contradictions and providing philosophical solutions. Second, a new global system of education, based on creativity, should be developed. However, the concept of creativity should not be tackled on a psychological basis, as traditionally has been the case, but rather on epistemological and civilizational grounds. It is precisely in this sense that philosophers, and not merely educators, must undertake the critical task of defining creativity in terms of critical thinking.

To conclude, I would briefly clarify the relation between epistemology and civilization in the sense that reason is the creator of civilization. Within the concept of civilization, we could reformulate the concept of reason as creative, that is, as capable of changing reality. In this case, we would have to analyze “reason-in-the-world” in the Heideggerean sense rather than as we have it, for example, in Locke’s theory of knowledge. This could be regarded as an epistemological shift that could be one of the concerns of philosophers and, especially, within the American Philosophical Association. Such an effort could go far toward eliminating the image of the other as an enemy or as an absolute evil, and in forging a new image based on partnership and not on enmity.
Summary of a C.I.C.-Cosponsored Conference

Philosophical Engagement: Davidson’s Philosophy and Chinese Philosophy
Bo Mou
San Jose State University

Beijing, China, June 2004

The CIC cosponsored an international conference in Beijing during June 2004 on “Philosophical Engagement: Davidson’s Philosophy and Chinese Philosophy.” It was organized by the International Society for Comparative Studies of Chinese and Western Philosophy (ISCWP) and was also cosponsored by the Institute of Philosophy, Chinese Academy of Social Sciences (CASS), which hosted the conference.

1. Background, theme, and preparation

As different cultural communities and ideological traditions have become closer than ever, the issue of how to bridge the gap between different philosophical traditions, through constructive engagement, has become a significant concern in philosophical circles. Among others, it is especially philosophically interesting and challenging to investigate whether, and if so, how, to bridge a seemingly wide gap between Chinese philosophy and Western mainstream philosophy in the analytic tradition. The two philosophical traditions have been considered by some to be remote, or even opposed to each other; some in each tradition have taken philosophical practice in the other tradition to have merely marginal value. However, more and more philosophers who are familiar with both Chinese and Western philosophies have now realized that some traditional stereotypical understandings of the two major philosophical traditions are mistaken or at least seriously misleading and that they have resulted either from one party’s ignorance of the other party’s philosophy or from one’s failure to recognize the genuine nature of one’s own tradition. They have agreed that Chinese philosophy (or the philosophical dimension of Chinese thought) and Western philosophy (including its analytic tradition) are not essentially alien to one another. They have common concerns with a series of fundamental issues and have taken their characteristic approaches to them. Thus they could learn from each other and jointly contribute to the common philosophical enterprise through constructive dialogue and engagement. It is noted that the key term, “constructive engagement,” in this context means how different forms of philosophical inquiry, via reflective criticism and self-criticism, could learn from each other and make joint contributions to a common philosophical enterprise.

In view of the need for constructive dialogue and engagement between Chinese and Western philosophy, the ISCWP decided to focus on one philosophically significant figure, in this case, Donald Davidson, in terms of how his thought was comparable to ideas from the Chinese philosophical tradition. Accordingly, a conference specifically devoted to this topic was originally planned for July 2003 in Beijing, to be hosted by the Institute of Foreign Philosophy, Peking University. However, due to the SARS crisis in China in early 2003, the conference had to be postponed. And, more unfortunately, Professor Donald Davidson passed away in August 2003. Despite these unexpected difficulties, after a careful evaluation of the whole situation, and with firm support from all the speakers as well as from the co-sponsoring parties, the ISCWP was determined to continue with this project. The new conference host for the postponed conference, which was to be held in June 2004, was the Institute of Philosophy, Chinese Academy of Social Sciences.

2. Results

The conference was held June 8-9, 2004. Many participants subsequently indicated that the conference was highly successful. A formal version of the conference program is enclosed below as an Appendix. In view of the CIC mission on promoting international exchange and cooperation between U.S. and other philosophical circles, it is also worth mentioning that, after the conference, at the invitation of the Institute of Philosophy, CASS, four U.S. philosophers who were conference speakers, Michael Krausz, A. P. Martinich, Samuel Wheeler, and David Wong, gave separate lectures at the Institute on their areas of expertise.

3. Significance and implications

This conference was the first of its kind to investigate in-depth how a major figure in analytic philosophy and some aspects of Chinese philosophy could jointly contribute to a common philosophical enterprise. It also involved the exploration of some fundamental issues and concerns in philosophy from distinct comparative approaches. Through this constructive engagement, the conference showed how Chinese and analytic philosophy are not essentially alien to one another; they have common concerns with a series of fundamental issues.

4. Future plans

At the invitation of the Chinese journal, World Philosophy, I have prepared a special column on the conference for the journal, which includes abstracts of all sixteen papers presented. It will appear in the September 2004 issue. An anthology of the same title as the conference is now in preparation. While it is not equivalent to conference proceedings, it will be closely related. To fulfill its mission, the ISCWP plans to organize similar international conferences in the future and based on their mutual interests and shared goals, the ISCWP may seek further cooperation with the CIC. Finally, again, on behalf of the ISCWP board, I would like to express our appreciation for the CIC’s valuable support and co-sponsorship of the international conference.
International Conference Philosophical Engagement: Davidson’s Philosophy and Chinese Philosophy

Initiator and Academic Organizer: International Society for Comparative Studies of Chinese and Western Philosophy

Co-sponsor and Conference Host: Institute of Philosophy, Chinese Academy of Social Sciences

Co-sponsor: Committee on International Cooperation of the American Philosophical Association

Beijing, China
June 8-9, 2004

PROGRAM

TUESDAY, JUNE 8

09:00-09:30 Opening Session

WELCOME ADDRESS
Ru, Xin (Vice Chair of the Committee on Academic Affairs, CASS, China)
Xie, Dikun (Assistant Director of the Institute of Philosophy, CASS, China)
Representatives of Conference Host

BRIEF REMARKS ON CONFERENCE THEME
Mou, Bo (San Jose State University, USA)
Representative of Academic Organizer

SESSION I: CROSS-CULTURAL UNDERSTANDING AND CONCEPTUAL SCHEMES
Chair: Li, He (Institute of Philosophy, CASS, China)

09:30-10:20
Krausz, Michael (Bryn Mawr College, USA)
“Relativism and Its Schemes”

10:20-11:10
Tanaka, Koji (Macquarie University, Australia)
“Davidson and Chinese Conceptual Scheme”

11:10-12:00
Angle, Stephen (Wesleyan University, USA)
“Making Room for Comparative Philosophy: Davidson, Brandom, and Conceptual Distance”

12:00-12:50
Zheng, Yujian (Lingnan University, Hong Kong)
“Davidsonian Approach to Normativity and Limits of Cross-cultural Interpretation”

Discussant: Audience

13:00-14:00 Lunch Break

SESSION II: MEANING AND INTERPRETATION
Chair: Luo, Xiwen (Institute of Philosophy, CASS, China)

14:00-14:50
Martinich, A. P. (University of Texas at Austin, USA)
“On Two Kinds of Meaning and Interpretation”

14:50-15:40
Chong, Kim-chong (Hong Kong University of Science and Technology, Hong Kong)
“Zhuangzi and Davidson on the Use of Metaphor”

15:40-16:30
Chen, Bo (Peking University, China)
“Debate on Language Meaning and the Skeptic Argument about Meaning: A Case in Comparative Study of Chinese and Western Philosophies”

Discussant: Audience

18:00-19:30 Dinner

WEDNESDAY, JUNE 9

SESSION III: PRINCIPLE OF CHARITY AND CHINESE PHILOSOPHY
Chair: Cheng, Lian (Peking University, China)

09:00-09:50
David Wong (Duke University, USA)
“Where Charity Begins”

09:50-10:40
Fung, Yiu-ming (Hong Kong University of Science and Technology, Hong Kong)
“Davidson’s Charity in the Context of Chinese Philosophy”

10:40-11:30
Ye, Chuang (Peking University, China)
“The Limit of Charity and Agreement”

Discussant: Audience

11:40-13:00 Lunch Break

SESSION IV: RATIONALITY, PRACTICAL RATIONALITY, IRRATIONALITY
Chair: Li, Jian (Institute of Philosophy, CASS, China)

13:00-13:50
Wheeler, Samuel C. (University of Connecticut, USA)
“Davidsonian Rationality and Ethical Disagreement between Cultures”

13:50-14:40
Fang, Wan-Chuan (Institute of European and American Studies, Academia Sinica, Taipei, ROC [Taiwan])
“Ways of Uniting Knowledge and Action”
14:40-15:30
Jiang, Yi (Institute of Philosophy, CASS, China)
“Irrationality in Practical Reason from the Perspective of Chinese Philosophy”
Discussant: Audience
15:30-15:40 Break

SESSION V: TRUTH AND DAO

Chair: Fung, Yiu-ming (Hong Kong University of Science and Technology, Hong Kong)

15:40-16:30
Cheng, Chung-ying (University of Hawaii at Manoa, USA)
“Truth and Meaning in Chinese Philosophy and Davidson’s Philosophy of Language”

16:30-17:20
Mou, Bo (San Jose State University, USA)
“Davidson’s Thesis of Truth Centrality and the Dao—Pursuing Tradition of Philosophical Daoism”
Discussant: Audience

18:00-19:30 Farewell Dinner
The topic for this issue of the Newsletter is Constitutional Interpretation. Our four contributors consider important and timely questions, ranging from general interpretive strategies, to more specific interpretive approaches as they apply to particular issues, to the mechanisms of constitutional avoidance. Here are brief summaries of the contributions.

Though focusing on Justice Antonin Scalia’s views on Constitutional interpretation, Professor Judith Wagner DeCew (Philosophy, Clark University) provides a useful survey of theories of interpretation, from literalism to an extreme legal realism that sees judicial decisions as reflections of judges’ subjective principles and policy preferences. Justice Scalia, though rejecting the former, and convinced of the importance of avoiding the latter, believes that proper interpretation must focus on the meaning of a text, though not on the subjective intentions of its drafters. Professor DeCew maintains, however, that in contrasting his “textualism” with the so-called “Living Constitution” he presents a false dichotomy, and that his preferred alternative is subject to many of the criticisms he levels at others.

Professor John Arthur (Philosophy, Binghamton University) addresses the important issue in Constitutional interpretation of when a statute is subject to strict judicial scrutiny and when it is entitled to deference. He takes this up particularly with respect to institutional racism. Arguing that institutional racism is an interpretive attribution of legislative motives and is not simply about disparate outcomes, Arthur maintains that “legislative motive must... be constructed out of all the relevant raw material, including the statements of legislators, the language of the statute, the historical circumstances of its passage, the purposes it apparently serves, and the alternatives that were available.” He believes that the Supreme Court has, in effect, adopted this approach in Grutter v. Bollinger, the recent affirmative action case from the University of Michigan Law School.

Professor Andrew Altman (Philosophy, Georgia State University), noting that Supreme Court justices sometimes appeal to “international law and foreign legal sources” in interpreting the Constitution, looks at the debate about the legitimacy of such appeals. He examines this issue with respect to questions involving the death penalty on which U.S. and international norms may differ—namely, whether capital punishment is legitimate at all, and whether it can properly be applied to minors. He argues that the “evolving standards” approach to Eighth Amendment jurisprudence opens the door to the consideration of international norms, and holds that they may have a legitimate legal role with regard to the execution of juveniles, though not with respect to the entire institution of capital punishment.

Professor Judith Baer (Political Science, Texas A&M University) explores the phenomenon of Constitutional violations by governments. Throughout American history, she maintains, “all three branches of the national government have participated in... denials of rights,” and similar abuses occur in other countries. Professor Baer inquires as to “what textual, structural, and political factors” facilitate Constitutional avoidance. She identifies four methods for compromising rights: textual qualification (giving a right and then adding clauses that can be used to deny it); authoritative interpretation (giving restricted interpretations of rights, such as freedom of speech, that “read like absolutes”); official exclusion (deciding that some right does not apply to a certain factual situation or class of people); and jurisdictional inhibition (courts sometimes limit their own jurisdictions, thus limiting access to an appeal process).

Finally, thanks are due to Professor Brian Bix (Law, University of Minnesota) for providing an abstract for this issue.

Future Issues of the Newsletter
Topics and editors for upcoming issues of the Newsletter are:

Spring, 2005
INTELLECTUAL PROPERTY RIGHTS IN CYBERSPACE
Submission Deadline: January 15, 2005
Editor: Richard A. Spinello
Carroll School of Management
Department of Operations and Strategic Management
Boston College
Chestnut Hill, MA 02467 USA
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This issue will consider the scope of intellectual property rights in cyberspace from a moral perspective. Although much has been written about this topic by legal scholars, it needs to be more cogently addressed by philosophers who specialize in ethics or political philosophy. Articles should seek to illuminate various dimensions of the intellectual property debate, which ranges from the theoretical (for example, is Locke’s labor desert theory viable when applied to intellectual property?) to the more practical (is it morally acceptable to copy software and other digital works?; do users have an unqualified right to engage in hyperlinking, even if they link to infringing material?; do domain names deserve strong trademark protection?). Proposals are welcome.
LIFE AND THE LAW
Submission Deadline: June 15, 2005
Editor: Samuel Gorovitz
Hall of Languages 541, Syracuse University
Syracuse, NY 13244 USA
315-443-9331; fax: 315-443-5675
Dearing-Daly Professor of Bioethics and Humanities
Upstate Medical University, Syracuse, NY 13210
The Fall 2005 Issue of the Newsletter will be on Life and the Law—more specifically, on issues at the intersection of law, ethics, and health policy. Guest editor Samuel Gorovitz encourages prospective authors to send a brief initial inquiry as soon as possible describing a proposed topic within a few sentences. (Send to VITZ1@AOL.COM). Selected authors will then be invited to submit preliminary drafts, as work in progress, by September 15, 2004. Those drafts will be rigorously reviewed in a seminar at Yale during the fall 2004 term and will be returned without prejudice to their authors, along with critical commentary, in ample time for revisions to be incorporated prior to the June 15, 2005 deadline for formal submission.

Spring 2006
To Be Announced
Submission Deadline: January 15, 2006

New Editor Sought
With the term of the current editor drawing to a close in June 2005, the Committee on Law and Philosophy is now searching for a new editor for the Newsletter on Philosophy and Law. The editor has the responsibility to solicit contributing articles, reviews, and guest editors for each issue of the Newsletter. The term is for five years. The editor is an ex officio member of the Committee on Law and Philosophy. Anyone interested should send a CV and letter of application to Patricia Smith, at patrigsmith@att.net. Application by e-mail is preferred.

ARTICLES

Constitutional Interpretation and Originalism
Judith Wagner DeCew
Clark University
I. Originalism and Alternative Views of Constitutional Interpretation
There are a variety of views regarding the role of judges in constitutional decision-making, and it will be helpful if we distinguish a few of these very roughly. A dominant theme in the American constitutional tradition is originalism, what Paul Brest calls “the familiar approach to constitutional adjudication that accords binding authority to the text of the Constitution or the intentions of its adopters.” One widely accepted justification for originalism is that the Constitution is the supreme law of the land and expresses the will of the citizens; hence the judge’s task is to ascertain their collective will through a strict interpretation of the document. Originalism is often associated with legal positivism, and it reflects views described by U.S. Supreme Court Justice Antonin Scalia, as well as numerous members of the two Bush administrations and the former Reagan administration, including ex-Attorney General Edwin Meese. On this view, judges must apply the law as it is stated to the facts presented to deduce the judgment. The major goal of originalism is to constrain judicial discretion and to avoid judicial activism so that unelected officials are not usurping the legislative function.

One version of originalism focuses on strict interpretation of the constitutional text, construing words and phrases narrowly and precisely. Defenders of this view might well be concerned to articulate the intentions of the framers of the Constitution, yet they believe the text is the surest guide for doing so. Unfortunately, most scholars agree that despite the appeal of the rhetoric in defense of such a view, a strict interpretation of the Constitution is problematic or impossible in many cases. One major concern with strict textualism is that it is too dependent on history. It requires and relies on a difficult or perhaps impossible historical inquiry to understand how phrases such as “cruel and unusual punishment” were used at the time the Constitution was drafted and to determine the perspective of the adopters.

More worrisome, there are many open-ended or vague phrases in the Constitution that cannot merely be applied straightforwardly. For example, what conduct counts as “free speech”? Does “equal protection of the law” grant Allan Bakke admission to medical school or exclude him to protect programs to generate equal opportunity for minorities? And what is protected as “due process” under the Fourteenth Amendment? In none of these cases can the words simply be applied to facts to generate a decision. Even given historical information about eighteenth-century usage of the terms in the text, reading a provision without regard to its current context may yield irresolvable indeterminacies, and the consistency hoped for may be elusive.

A second version of originalism, suggested by Robert Bork, Raoul Berger, and others, urges basing decisions in difficult cases on the intentions of the framers of the Constitution. There are a number of serious difficulties with this view, similar to the problems with strict literalism. Again, it is a substantial historical project to ascertain the relevant intentions. The legal
history of any legislation drafting often yields inconclusive or inconsistent testimony and evidence, making it difficult or sometimes impossible to discern the “true” intention of the framers. And new historical evidence can shed light on or actually alter an understanding of their “real” intent. Moreover, the task in this instance is a particularly complex one: the men who adopted the Constitution were a diverse group, including some delegates to the Philadelphia convention and the majorities in ratifying conventions. Perhaps some members had clear intentions about certain constitutional provisions, yet others may have held different views or may have had no clear intent at all. Hence it is not at all obvious how, or whether it is indeed possible, to determine their collective intent with any reliability.

In addition, this view of adjudication requires ascertaining the adopter’s intentions not only about the meaning of various provisions but also about their scope, including what the adopters intended future interpreters to do. By this point, one may well be wondering why a historian’s judgment about what was intended two hundred years ago should determine the legitimacy of a current interpretation. It is even more difficult to see how to project the adopters’ concepts and attitudes onto a future radically different from their experience. When a case involves an issue that was not or could not have been anticipated by the framers, perhaps because of intervening technological or medical advances, there may be no way of determining their intentions: no information is available. Did the framers intend First Amendment protection for the mass media, for example? In such cases, the theory either cannot be applied at all or must allow the kind of subjective judicial decision-making it is constructed to avoid.

Most other legal theorists believe, therefore, that these narrow methods are unrealistic and often impossible to put into practice. To give content to the ambiguous and vague language of the Constitution and to allow the Constitution and governmental process to adapt to technological and social changes, some more active judicial interpretation of the law is necessary. Yet any such activism feeds worries of a slippery slope. If judges have some discretion in interpreting the law, what constraints are they bound by? A genuine concern is that allowing some judicial discretion will lead to freewheeling judicial innovation, as described and defended by American legal realists in the early twentieth century. We might characterize their view as follows: all law is judge-made law, the judicial decision is the law, and legal rules are merely legal resources, not binding on judges. On this account judges not only do make law, but also should make law and must make law. The most extreme version of this view, that judicial decisions are wholly subjective and personal and that written opinions are merely rationalizations, is intuitively jarring. Moreover, realism seems contrary to two democratic ideals: (i) that making subjective legislative policy is inappropriate for unelected officials on courts and (ii) that ex post facto law is illegitimate because citizens deserve fair warning when their behavior is beyond the bounds of law.

Clearly, many believe a more acceptable view on the decision-making role of the judge will fall somewhere between originalism and extreme realism. There is a wide range of alternative views on the proper domain of judicial intervention. One view requires judicial interpretation to be guided by some set of evolving principles and policies, such as those suggested by Lon Fuller, policies that focus on the current context but that can also be defended as embodied in the Constitution and its history because they focus on the goals and purposes of constitutional provisions. Another example is Ronald Dworkin’s rights-based constitutional theory, which incorporates into law moral principles that he argues are compatible with the institutional values of our government and its history. Alexander Bickel appeals to broad “fundamental values,” and Paul Brest defends a “nonoriginalism” view according to which “the text and original history of the Constitution get presumptive weight but are not treated as authoritative or binding: the presumption is defeasible over time in light of changing experience and perceptions.” John Hart Ely has taken a different route, advocating a process-oriented approach defending politically unrepresented minorities.

These scholars hold views more or less deferential to the legislature, more or less interventionist, but all expect judges to be constrained by rationality and consistency as far as possible and all place some weight on the Constitution as well as subsequent precedents. All endorse the view that, in Thomas Stoddard’s words, “the principles of the Constitution should not be frozen in time, but should grow in meaning as the country evolves.”

Nevertheless, Justice Antonin Scalia has given a spirited new defense of a text-based version of originalism in his recent book A Matter of Interpretation: Federal Courts and the Law, and it is worth examining the viability of his theory of constitutional interpretation. I shall (1) clarify Scalia’s version of originalism, (2) demonstrate that although he makes a strong case against any version of originalism based on framers’ intent, he is not able to avoid pitfalls of the textual version of the theory discussed above, and (3) argue that while he understands and appreciates the difficulties of allowing unconstrained legal realism, he presents an oversimplified dichotomy of the available theories of constitutional interpretation, therefore weakening his defense of his own view. My conclusion is that Scalia’s recent arguments for originalism, despite some merits, do not provide a more acceptable textualist view of constitutional interpretation, and thus the commentators in A Matter of Interpretation are correct that we still do best to endorse a theory allowing a more reasonable amount of judicial discretion in interpretation.

II. Scalia on Originalism

Although many commentators have tended to merge together the two versions of originalism described in section I—first, according binding authority to the text of the Constitution and second, relying on the intentions of the framers of the Constitution—Justice Scalia, to his credit, is careful to distinguish them. Although both initially seem compatible with democratic ideals and the separation of powers, Scalia gives a powerful critique of the latter, the idea that judicial interpretation should be guided by legislative or framers’ intent.

“A government of laws, not of men, means that the unexpressed intent of legislators must not bind citizens. Laws mean what they actually say, not what legislators intended them to say but did not write into the law’s text for anyone...to read.” The difficulties in seeking the intent of the legislature for statutory interpretation, or the intent of the framers for constitutional interpretation, are considerable, despite the fact that it is a popular argument that goes back in some form at least as far as Blackstone. Scalia rejects reliance on drafters’ intent for both statutory and constitutional interpretation. “What I look for in the Constitution is precisely what I look for in a statute: the original meaning of the text, not what the original draftsmen intended” (38).

First, Scalia argues that while legal theorists and judges may believe they are looking for some “objective” intent, there is no denying that ultimately there is nothing more available than the subjective intent of legislators or the Constitution’s framers. Relying on the meaning given by those promulgating statutes or the Constitution is, according to Scalia,
“incompatible with democratic government” (17). He argues even more dramatically that, “Government by unexpressed intent is simply tyrannical. It is the law that governs, not the intent of the lawmaker” (17). “It is simply not compatible with democratic theory that laws mean whatever they ought to mean, and that unelected judges decide what that is” (22).

Second, Scalia stresses the related point that judges may not only unwittingly be looking at unexpressed subjective intentions rather than an “objective” set of intentions, but also the reliance on legislative intentions can be dangerous because it can be used as a “guise” or cover for judges in fact pursuing their own interests, objectives and desires (17-18). Legislative intent is a “subterfuge.” More starkly, Scalia urges that appeals to legislative or the framers’ intent “is nothing but an invitation to judicial law-making” (20).

Third, focusing on legislative or the framers’ intent requires relying on legislative history as an authoritative indication of the text’s meaning. Scalia claims that:

- In the past few decades, however, we have developed a legal culture in which lawyers routinely—and I do mean routinely—make no distinction between words in the text of a statute and words in its legislative history. Resort to legislative history has become so common that lawyerly wags have popularized a humorous quip inverting the oft-recited (and oft-ignored) rule as to when its use is appropriate: “One should consult the text of the statute, the joke goes, “only when the legislative history is ambiguous.” Alas, that is no longer funny (31).

Also, according to Scalia, in 99.99% of the issues reaching the courts “there is no legislative intent, so that any clues provided by the legislative history are bound to be false” (32). Either those drafting statutes or constitutional provisions had no clear intent, or no uniform intent, or they left the drafting to a subcommittee not expressing any genuine intent of all. Clearly Scalia recognizes both problems noted above: the historical one of ascertaining intent and the fact that there may have been no clear intent. Not only is legislative history usually inconclusive, according to Scalia, it is also easily manipulable (36), once again augmenting judicial creativity.

In contrast, for both statutory and constitutional interpretation, Scalia staunchly defends the first version of originalism, reliance by judges on the text of a statute or the Constitution, a version of originalism that he calls “textualism.” He argues, “when the text of a statute is clear, that is the end of the matter” (16). And even if one were looking for the legislative intent, the most likely way to find it would be attending to the text. Thus, for statutory interpretation, judges should look at the letter of the statute. “Congress can enact foolish statutes as well as wise ones, and it is not for the courts to decide which is which and rewrite the former” (20). Decisions that fail to follow the text are “wrong”: “The text is the law and it is the text that must be observed” (22). Scalia says he approves of a remark by Justice Holmes, quoted approvingly by Justice Frankfurter: “...I don’t care what their intention was. I only want to know what the words mean” (22-23). For the distinctive problem of constitutional interpretation, Scalia believes the usual principles of statutory interpretation are to be applied to an “unusual” text (37). The original text is definitive and judges must rely on textual meaning.

Scalia acknowledges that his textualist view of interpretation has been rejected by many as “simpliminded” or “wooden” or “unimaginative” or “pedestrian,” and yet he believes it is none of those. To the contrary, he maintains that, “To be a textualist in good standing, one need not be too dull to perceive the broader social purposes that a statute is designed, or could be designed, to serve; or too hide-bound to realize that new times require new laws. One need only hold the belief that judges have no authority to pursue those broader purposes or write those new laws” (23). Furthermore, textualism is not to be confused with strict constructionism, “a degraded form of textualism that brings the whole philosophy into disrepute. I am not a strict constructionist, and no one ought to be...A text should be construed reasonably, to contain all that it fairly means” (23). Scalia is unwilling to go so far as to say a text should be understood in terms of the needs and goals of our present day society, a view reminiscent of Lon Fuller’s; however, he does emphasize that the text must be given a “reasonable” reading. Thus “the good textualist is not a literalist, neither is he a nihilist. Words do have a limited range of meaning, and no interpretation that goes beyond that range is permissible” (24).

III. Difficulties with Scalia’s Textualism

This overview of Scalia’s recent defense of textualism for both statutory and constitutional interpretation is, on the surface, quite compelling. Relying on the text and its meaning under a “reasonable” reading or interpretation, seems just what is needed to bring more consistency, uniformity, and objectivity to judicial decision-making. For these reasons it also seems that it can help bring the public to have more faith in the law and how it functions.

Nevertheless, underneath the idealistic words, there are numerous problems, some of which Scalia acknowledges and others he never addresses. First, although Scalia does not mention this, the historical problem of ascertaining intention is mirrored in the historical problem of determining or understanding the original meaning of constitutional phrases and the text. Such interpretation will inevitably involve some subjective judgment about whether there was a single original meaning, and, if so, what that was.

Second, one might well ask whether it even makes sense to say that a good textualist can (and presumably should) “perceive the broader social purposes” of a statute or constitutional provision, can “realize that new times require new laws” and yet at the same time hold that “judges have no authority to pursue those broader purposes or write those new laws.”

It certainly sounds like Scalia is trying to have it both ways. Nevertheless, it is doubtful that there is any meaningful way that judges can understand broader social purposes and the need for the law to change with social evolution and technological advances, if they cannot pursue those in any authoritative way. Therefore it does not seem possible for a textualist to be enlightened rather than dull, if he or she can recognize these needs but must ignore them in decision-making. The recognition of broad social purposes and changing times is useless if it cannot be taken into account by judges. This is a particularly acute problem for Scalia since he emphasizes that “with regard to the constitutional interpretation it is the original meaning that should rule, not the current meaning” (emphasis his, 38). On his view it is the “original text and meaning” that has been neglected too often in recent years.

Third, one might question how one is to determine what a “reasonable” reading of a text is, that is neither a strict construal nor a lenient construal. Finding such a mean may be desirable and even ideal, but that does not mean it is easy or even possible. There is certain to be a subjective element in determining what reading is “reasonable” and what is not. Scalia’s disagreements in recent cases with other members of the Supreme Court underscore the point. Similarly, if words truly do have a “limited range of meaning,” then who decides that range? Again, judicial subjectivity seems inevitable.
Fourth, Scalia clearly admits the problem of ambiguity. In discussing various presumptions and rules of construction used in textual interpretation, Scalia raises questions arising for any text. He says, “It is hard enough to provide a uniform, objective answer to the question whether a statute, on balance, more reasonably means one thing than another” (28). He continues, “Every statute that comes into litigation is to some degree ‘ambiguous’; how ambiguous does ambiguity have to be…?” (28). There is no answer to this question, Scalia acknowledges. As a partial response to this concern about ambiguity, Scalia, in his section on constitutional interpretation, suggests the following. “In textual interpretation, context is everything, and the context of the Constitution tells us not to expect nit-picking detail, and to give words and phrases expansive rather than narrow interpretation—though not an interpretation that the language will not bear” (37). This focus on context is again reminiscent of Fuller’s views, though Scalia clearly rejects interpretation allowing for the context of broad social purposes and changing times. The challenge, then, is to find a reasonable and even expansive understanding of the text that the language will bear.

To illustrate how it is possible to find such a textual reading, Scalia uses the example of First Amendment protection for freedom of speech. “That phrase does not list the full range of communicative expression. Handwritten letters, for example, are neither speech nor press. Yet surely there is no doubt they cannot be censored…That is not strict construction, but it is reasonable construction” (37-38). Of course, Scalia is well aware that it is not just the press or handwritten letters that evolved to be counted as “speech” considered under the First Amendment. It is also expressive conduct, as fully established to be protected. “fighting words,” libel, slander and defamation, obscenity and child pornography, treason and sedition, and some privacy invasions have been among the categories of speech deemed not to fall under First Amendment protection. As the Supreme Court decisions have evolved to settle these by precedent—using stare decisis, which Scalia endorses as part of the “proper” role of judges—Scalia might say these were “reasonable” constructions or interpretations of the text of the First Amendment. Yet certainly these have, at least sometimes, also been accommodations for broad social purposes (e.g., the child pornography ban) and for changing times and technology (e.g., invasions of privacy). As a further example, although expressive conduct such as Cohen’s dissent against the draft and the Vietnam War was upheld, it is far from clear that it took only a “reasonable” reading of the text to determine that the Nazis could demonstrate in Skokie, Illinois, and that statutes banning flag burning were unconstitutional under the First Amendment. These more controversial cases arising from Scalia’s own example of First Amendment law ultimately undermine his argument that a reasonable and expansive reading is straightforward. In summary, in First Amendment cases that are far more complex than Scalia’s example of handwritten letters, judicial subjectivity seems inevitable—exactly what Scalia hopes to prevent in his defense of textualism.

IV. Scalia’s Rejected Alternative: The Living Constitution

In focusing on the difference between the original meaning of the Constitution and the current meaning of the text, Scalia is adamant about rejecting the latter as relevant for constitutional interpretation. He is well aware that “what the Constitution meant yesterday it does not necessarily mean today” (39-40). He uses what he calls “The Living Constitution” to describe this primary alternative view of constitutional adjudication that he rejects. He says, “The argument most frequently made in favor of The Living Constitution is a pragmatic one: Such an evolutionary approach is necessary to provide the ‘flexibility’ that a changing society requires; the Constitution would have snapped if it had not been permitted to bend and grow” (41). Nevertheless, this type of constitutional interpretation, on Scalia’s view, has eliminated restrictions on democratic government and abandoned individual liberties rather than protecting them.

More worrisome, he believes, is that the (unnamed) proponents of The Living Constitution view may follow the will of the majority. Scalia charges, however, that those endorsing this broader view of constitutional interpretation do not do so. “They follow nothing so precise; indeed as a group they follow nothing at all. Perhaps the most glaring defect of Living Constitutionalism, …is that there is no agreement, and no chance of agreement, upon what is to be the guiding principle of the evolution” (44-45). This criticism naturally gives rise to the question whether the critique applies to Scalia’s originalism as well. Scalia addresses this at length:

I do not suggest, mind you, that originalists always agree upon their answer. There is plenty of room for disagreement as to what original meaning was, and even more as to how that original meaning applies to the situation before the court. But the originalist at least knows what he is looking for: the original meaning of the text. Often—indeed, I dare say usually—that is easy to discern and simple to apply. Sometimes (though not very often) there will be disagreement regarding the original meaning; and sometimes there will be disagreement as to how that original meaning applies to new and unforeseen phenomena. How, for example, does the First Amendment guarantee of “the freedom of speech” apply to new technologies that did not exist when the guarantee was created—to sound trucks, or to government-licensed over-the-air television? In such new fields the Court must follow the trajectory of the First Amendment, so to speak, to determine what it requires—and assuredly that enterprise is not entirely cut-and-dried but requires the exercise of judgment.

But the difficulties and uncertainties of determining original meaning and applying it to modern circumstances are negligible compared with the difficulties and uncertainties of the philosophy which says that the Constitution changes… The originalist, if he does not have all the answers, has many of them (45-46).

And here, it seems, we learn two distinctive features of Scalia’s textualism. First, he believes most cases are clear and will be easily resolved. In both determining the original meaning of statutes and constitutional phrases, and in figuring out the implications of the original meaning of the text for new contexts, Scalia believes definitive interpretations of the text are usually easy to discern and simple to apply. This view echoes that of formalists and H.L.A. Hart, who all thought most cases were easy ones and judicial discretion was only necessary for fewer “penumbral” cases with vague words or phrases. Textualism is surely more compelling to those who adopt the view that most cases will be easy to decide. Yet this view is clearly rejected by Ronald Dworkin and others who believe it is a distorted vision of how many “hard” cases there really are.

Second, Scalia has set up a dichotomy between his view and one alternative, The Living Constitution. The only
alternative theory of constitutional interpretation that he uses or discusses is a Constitution that evolves either the way the majority wishes or with no principled guidance. And this alternative, he believes, is dangerous. For the people will leave interpretation of the Constitution to the lawyers and courts.

But if the people come to believe that the Constitution is not a text like other texts; that it means not what it says or what it was understood to mean, but what it should mean, in light of the “evolving standards of decency that mark the progress of a maturing society”—well, then, they will look for qualifications other than impartiality, judgment, and lawfully acumen in those whom they select to interpret it. More specifically, they will look for judges who agree with them as to what the evolving standards have evolved to; who agree with them as to what the Constitution ought to be (46-47).

Here is the danger: judges will be selected based on their political leanings, and will be free to write the Constitution anew, and to adjudicate as they wish. Consequently, it is clear that The Living Constitution view of constitutional interpretation is ultimately just legal realism, earlier a target of Scalia’s by that name: “It is only in this century, with the rise of legal realism, that we came to acknowledge that judges in fact ‘make’ the common law…” (10).

If the only alternatives are textualism and legal realism, I suspect few would join with the latter in its extreme form. But that is hardly a strong argument for Scalia’s textualism. Moreover, as editor Amy Gutmann points out, all the commentators on Scalia’s textualism—historian Gordon S. Wood, Harvard Law professors Laurence H. Tribe and Mary Ann Glendon, and legal theorist Ronald Dworkin—“concur with Justice Scalia’s critique of interpreting the law according to either subjective legislative intent or a judge’s favorite moral philosophy” (ix). Given the multiple alternative views to originalism and legal realism surveyed in section I, and the alternatives presented by the four commentators, including diverse versions of textualism, Scalia has presented an oversimplified and false dichotomy of the ways to interpret the Constitution.

V. Conclusion

Clearly the commentators—Wood, Tribe, Glendon and Dworkin—all agree on the problem Scalia has raised. According to Glendon the Court has a freewheeling approach to constitutional interpretation (109) and Wood states “that Justice Scalia is surely right in stressing the extraordinary degree of discretionary power that American judges now wield and the dangers of that power” (62). Some also believe that the problem is worse than Scalia acknowledges. Glendon observes that she is led to “surmise that things here at home may be even worse than Justice Scalia suggests” (110). Wood argues that “the problem with which Justice Scalia is dealing is one deeply rooted in our history, and as such, it is probably not as susceptible to solution as he implies…” (58), and then Wood details the long history in this country over the past 200 years blurring legislative and judicial matters. Wood concludes, “His [Scalia’s] remedy of textualism in interpretation seems scarcely commensurate with the severity of the problem, and may in fact be no solution at all” (62-63).

In addition, the commentators are unpersuaded by Scalia’s defense of textualism for constitutional interpretation because it cannot avoid the subjectivity and raw use of judicial power it is intended to preempt. “Textualism, as Justice Scalia defines it, appears to me as permissive and as open to arbitrary judicial discretion and expansion as the use of legislative intent or other interpretative methods, if the text-minded judge is so inclined” (62-63) says Wood. Glendon concurs that “it is not likely that chaos in the field of constitutional interpretation will diminish any time soon. For if textualism, structuralism, and originalism advance, it can be predicted that selective deployment of textualism, structuralism, and originalism will advance as well” (112). She recommends that a Court following common law patterns of principled decision-making building on precedent will be more promising.

Others urge that Scalia’s focus on the text of the Constitution is correct, but not sufficient to guide judges in constitutional interpretation. Dworkin advocates his well-known views of applying abstract principles to cases not to find substitutes for what the Constitution says, but out of respect for what it says. Tribe agrees that we must “prevent judges from legislating their personal preferences or values under the guise of constitutional interpretation” (Gutmann, x), and, like Dworkin, he argues for a version of textualism that gives the text primacy. He agrees with Scalia “that it is the text’s meaning, not anyone’s expectations or intentions, that binds us as law” (66). However he believes that, “To prevent that interpretive task from degenerating into the imposition of one’s personal preferences or values under the guise of constitutional exegesis, one must concede how difficult the task is; avoid all pretense that it can be reduced to a passive process of discovering rather than constructing an interpretation; and replace such pretense with a forthright account, incomplete and inconclusive though it may be, of why one deems his or her proposed construction of the text to be worthy of acceptance in light of the Constitution as a whole and the history of interpretation” (71-72).

In summary, Scalia clearly understands and articulates the serious problem of judges making law unbounded and based on personal preferences, as at least the extreme legal realists have said they do, should, and must. And he forcefully defends the dangers of relying on a theory of intentions of the framers for constitutional interpretation. Nevertheless, his defense of textualism is susceptible to many of the criticisms concerning historical interpretation, changing times, ambiguity, and subjectivity, that he levels against reliance on framers’ intent and legal realism. Furthermore, his presentation of the dichotomy between his version of originalism and legal realism as The Living Constitution, ultimately weakens his defense of textualism because he has oversimplified the choices and alternatives for the complex process of judicial adjudication and constitutional interpretation.

Endnotes


Institutional Racism and Equal Protection

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The Equal Protection Clause requires that states not deny any person within their jurisdiction the “equal protection of the laws.” What then does that ideal, of equality, require? My suggestion, in a nutshell, is that the key to understanding equal protection lies in the goal that institutional racism should be eliminated, where racism is understood in terms of the motivating attitudes of the legislature.

That suggestion raises a host of questions and potential objections. Some have thought that institutional racism is an oxymoron, since institutions are not the sorts of things that can be racist. Others raise questions about the nature of institutional racism itself, with some claiming that it is prevalent whenever institutions and other practices result in some races doing better, or worse, along some important dimension than another race. Still others suggest different conceptions. This idea—of the Court determining a law’s constitutionality based on motives of legislators—also raises a troubling problem. A skeptic may wonder how is it possible for a court to determine the motives of legislators. Judges are not, after all, mind readers. Besides difficulties in discovering the motives, it is not even clear if there is anything there, in the mind of a legislative body, for them to discover. Legislative bodies are not persons after all, but collections of persons, often with different and conflicting motives. So in claiming that the Equal Protection Clause’s purpose is the eradication of institutional racism, I need to explain both what institutional racism is and how it can be used to respond to this concern. My goal is descriptive and normative, since I claim that what I am proposing both fits with the established practices of the Court and makes political and moral sense. First, then, I want to set the stage by describing very briefly the Supreme Court’s general approach to the Equal Protection clause. As I indicate in the last section, while my recommendation does not comport with the Court’s traditional description of equal protection, it does match what the Court has recently done in that field, especially in the context of affirmative action.

Equal Protection and Strict Scrutiny

The approach to Equal Protection developed by United States courts is the well known doctrine of strict scrutiny, which has roots in the famous footnote four to U. S. v. Carolene Products. Concerned that it had over-stepped its authority in the Lochner era when the Court had struck down over 200 New Deal economic regulations and other laws, the Carolene Products Court suggested a more procedural role in which the Court assures that the political process works properly. Chief Justice Earl Warren later described the Court’s rationale in this context as follows:

The presumption of constitutionality...[is] based on the assumption that the institutions of state government are structured so as to represent fairly all the people. However, when the challenge to the statute is in effect a challenge to this basic assumption, the assumption can no longer serve as the basis for presuming constitutionality.

One way the Court performed this new process-policing role involved overseeing voting rights and requiring redistricting; other cases involved freedom of speech. But securing these basic democratic rights is far from sufficient, said the Court in Footnote Four, since it was also possible that the political
process might reflect “prejudice against discrete and insular minorities” that would also evidence a defect in “those political processes ordinarily to be relied upon to protect minorities.”

To address this failure, the Court said (in *Korematsu v. United States*), required holding that laws “directed” at a racial group are “immediately suspect,” and subject to “strict judicial scrutiny.”

The Courts put that into practice in two stages: first, they determine that the purpose of the law is not only a legitimate one for the government to be pursuing but that it is also a (relatively) important goal. Then, second, the law must be carefully tailored to fit that objective, which means that if the objective could have been reasonably accomplished without disadvantaging a racial minority, then the law or regulation is again struck down. What is the Court doing, as it subjects a law to strict scrutiny in the context of race? My suggestion, as I said, is that its goal is to uncover and eliminate institutional racism as a motive. This general idea is a familiar one. Justice Sandra Day O’Connor wrote recently that without “searching judicial scrutiny into the justification” for a law “there is simply no way of determining what classifications are ‘benign’ and what classifications are, in fact, motivated by illegitimate notions of racial inferiority or simple racial politics.”

The answer to the practical challenge I mentioned therefore begins with legal practice, and the fact that it is not at all unusual for judges to appeal to the motives of legislators in various contexts. We know that judges often interpret statutes in light of the intention of legislators. Suppose, to take the famous example, that a rule has been passed banning all vehicles from a park, and the question arises whether bicycles and motorcycles are included in that ban. Besides the plain meaning of the language, courts also look to the legislative history, including statements of the authors and supporters of a piece of legislation and reports of committees from which the legislation emerged. If the committee that held the hearings on the rule focused on the problem of noise in parks, for example, and legislators offering the law explained its purpose in those same terms, then a court would reasonably infer that the intention of the legislature was to ban noisy vehicles—motorcycles—but not bicycles. But suppose, on the other hand, that the record of the hearings and legislative debates about the statute showed the problem the legislators sought to address was not noise, but the fact that pedestrians had been injured by bicycle and motorcycle riders. Then the court would reach a different conclusion about the intention of the legislature and decide that both motorcycles and bicycles are vehicles.

The motive of the legislature is also weighed when the constitutionality of a law is being challenged rather than the law’s applicability to a given situation. When the Supreme Court considered the constitutionality of a law that required a moment of silence in school, it did so on the ground that the legislature’s aim was the unconstitutional one of establishing religion. “I have little doubt,” wrote Justice O’Connor, “that our courts are capable of distinguishing a sham secular purpose from a sincere one.” The Court again emphasized the importance of motive when it explained that it would strike down a law if the motive of the legislature was to restrict offensive speech, even if the stated purpose was merely to regulate against public “nuisance” and not to censor based on content.

But my real favorite (if only because of the legislators’ audacity) is *Grosjean v. American Press Company*. This case tested the constitutionality of a Louisiana law requiring newspapers with a circulation above 20,000 to pay a two percent sales tax. On its face, there seemed to be nothing wrong with a law that taxes the largest, and therefore presumably the wealthiest, newspapers. But relying on the legislative history, the Supreme Court concluded otherwise. The statute’s constitutional flaw, said Court, was that lawmakers were motivated by the desire to silence criticism of the Louisiana political establishment. It was “a deliberate and calculated device in the guise of a tax to limit the circulation of information...” The Court reached this conclusion in part because when introducing the bill, its legislative sponsors described it as a “tax on lying,” and expressed regret that they could not find a way to exempt the one large paper that had supported Huey Long’s political machine. “We tried to find a way to exempt the *Lake Charles American Press* from the advertising tax, but did not think we could do it” reported Governor Allen. Though a tax on newspapers is not unconstitutional per se, reasoned the Court, one motivated by the desire to silence political enemies clearly is. Racial motivation is also sometimes used as a ground for striking down laws. When Alabama passed a law disenfranchising people convicted of a specific list of felonies and misdemeanors, the Supreme Court struck down the law on the ground that it was motivated by a desire to discriminate against blacks.

It seems clear, then, that whatever the difficulties with ascribing motives to collective bodies and with the concept of racism itself, courts do assume that it is part of their responsibilities to do so. The next question, then, is whether racism is a motive that can, and should, be the object of judicial scrutiny. For that we need a clearer understanding of racism itself, and what is objectionable about it.

**Institutional Racism as an Interpretive Concept**

Most people seem to agree that whatever it is, racism is in some way wrong or objectionable. But beyond that moment of agreement lies widespread controversy and confusion. Some writers think racism is fundamentally about people’s beliefs. Herbert Aptheker, for instance, writes that racism is the “belief in the inherent, immutable, and significant inferiority of an entire physically characterized people.” Leonard Harris writes in a similar vein that the “systematic denial of a population’s humanity is the hallmark of racism.” Others take a much broader view of the subject. Naomi Zack thinks that racism refers to a “multiplicity of morally blameworthy attitudes and dispositions” as well as “specific beliefs, emotions, and actions that instantiate them” and a particular type of “injustice.”

Lawrence Bloom offers a similarly broad view. “All forms of racism,” he writes, “can be related to one of two general themes or ‘paradigms,’ namely *inferiorization* and *antipathy*.” Rather than focusing on beliefs and attitudes, others think that racism is essentially about what people do to each other and the institutions they create which lead to subjugation and inequalities in power. Blackwell’s *Dictionary of Sociology*, for instance, states that the “key test” of whether something is racist “lies in the consequences: if it supports race privilege, then it is by definition racist.” Examples offered of institutions of race privilege include not only school and other forms of segregation, but also “neighborhood schools” and “the right of people to sell their homes to whomever they wish.” These laws and practices are “racist in effect, even if they are not racist in intent.”

My view, which I will not defend here, is that racism is at root an attitude of unwarranted hostility or indifference directed at other persons in virtue of their race, where race is understood to refer to natural characteristics of persons, as opposed to merely cultural, ethnic, and other socially determined differences. Thus, when hostility toward Jews went from the belief that their religion was misguided and
that Jews were at fault for rejecting Christianity to the belief
that the failure of Jews was inherent in them as persons, the
attitude also migrated from religious bigotry to racism (Jews
had come to be seen as a race). Racists, then, are persons who
are afflicted with racism. Racist jokes, books, slogans, etc. are
objects that, it is reasonable to infer, were created by racists. It
follows that, contrary to other views I mentioned, there is no
necessary link with power (a powerless person can be a racist)
and that beliefs in racial differences are not necessarily
the mark of a racist (a social or medical scientist might believe
there are natural differences for good reason, without being a
racist). That is not to deny, however, the obvious truth that
racism has played a major, destructive role in the exercise of
political power.

Given the disagreements about the nature of racism, it is
unsurprising that there is similar disagreement about institutional racism. That term was first used in the 1960s, in a
book by Stokely Carmichael and Charles Hamilton called
Black Power.25 Carmichael and Hamilton begin with the claim
that racism is the use of race for purposes of “subordinating a
racial group.”26 “Institutional” racism, they conclude, involves
acts by the “total white community against the black community” and “relies on the active and pervasive operation
of anti-black attitudes.”27 Others are skeptical of the entire
idea, claiming that institutional racism is incoherent. Anthony
Flew thinks racism is an “essentially intentional” action and
therefore that institutions can never be racist. They are not
persons, he points out, and therefore cannot have intentions.28
On the other extreme is the view that institutional racism is
present whenever there are differences in results, so that any
institution that fosters or allows economic, social, or political
benefits or disadvantages to vary according to race manifests
racism.29 James M. Jones, for example, writes that institutional
racism is any “set of policies, practices, and procedures that
adversely affect some ethnic (or racial) group so that they will
be unable to rise to the level of equality.”30 Examples of institutional racism, he mentions, include different rates of
criminal incarceration, fewer banks in black neighborhoods,
the distribution of jobs among professions, laboring, and
management services, educational achievement, life
expectance and health.31 Such an understanding of institutional racism assumes that there must be a person in
charge who is guilty of racism in order to condemn an
institutional arrangement as racist.

The view I want to defend does not deny the coherence
of the concept, nor does it equate racism with different outcomes. Rather, it is similar to the view of Jorge L. A. Garcia,
but with an important difference. Garcia thinks that institutional racism exists

when and insofar as an institution is racist in the aims,
plans, etc., that people give it, especially when their
racism informs its behavior. Institutional racism begins
when racism extends from the hearts of individual
people to become institutionalized.32

For him, then, institutional racism is present when, but only
when, the people who set up or maintain the institutions are,
in fact, racists. While I do not want to deny that some sense
can be made of institutional racism in that way, by showing
that the institutions are in fact designed or run by racists, I
agree with those who emphasize outcomes at least in the
sense that institutional racism may be present without the
presence of any individual racist—past or present. So I begin
with the idea that institutions can be treated for some purposes
as persons; they can be “personified.”33 We do that in law, for
instance, when we treat a corporation as if it were a person
and then hold it liable for violating its legal duties. The
corporation can be held liable even if no actual person working
for it did anything wrong. The question whether it was negligent
is answered via a two-step process. First we ask whether an
actual person would be liable if he or she had done what it did.
If the answer is yes, then the corporation is liable, and we are
brought to question of damages: what should the corporation
be required to pay, given that it was liable, and how should the
corporation be required to make the payment?

There is nothing mysterious or even particularly
controversial about that process. The corporation is not literally
a person in the sense that you and I are—it was not born of
woman, it feels no pain, and, most importantly for current
purposes, it need not literally have any beliefs or attitudes. In
that sense I agree with Flew. But nonetheless the law does
treat the corporation like a person for purposes of assessing its
potential liability.34

Using that as a model, we can see how we might also
charge an institution with racism. In doing so, we would treat
it as if it were a person, and interpret its actions in that light.
Justice O’Connor hinted at this idea—that the motive of the
legislature is an interpretive construction based on its
“personification”—in the case striking down the moment of
silence requirement. “The relevant issues” she wrote “is
whether an objective observer, acquainted with the text,
legislative history, and implementation of the statute, would
perceive it as a state endorsement of prayer in public schools.”35

Applying this to the Equal Protection Clause would mean
that the test is whether racism is present if we assume that an
action taken by that institution were done by a single person.
In asking that we are treating institutional racism as an
interpretive concept, but we do not suppose that any individual
body or individual in fact had the attitudes of a racist. The
claim that legally enforced segregation manifested institutional
racism means that the best interpretation of the segregation
laws is that they were the product of a racist government rather
than, say, of a fair-minded, non-racist one. Because it is an
interpretive claim that relies on personification, the charge of
institutional racism does not require that the legislature was in
fact comprised of people who were racists, any more than
corporate negligence requires that some individual employee
be proven to have been negligent. Rather than understanding
the charge literally and supposing that institutions actually have
racist attitudes or that actual racists were in positions in the
institution as many have supposed we must do, the idea here is
to “personify” the institution, interpret its actions as if
they had been done by a single person, and then ask if that
person/institution did something that would reflect racism
were it a single individual.

Interpreting the intention of a legislature is therefore
similar to interpreting a movie, which also represents the
collective efforts of many people. In the movie case, we would
begin by assuming the work has a purpose or goal, despite the
fact that we know it was the product of many writers, producers,
actors, and editors all working together in an environment
where no single person was completely responsible for all
aspects of the finished product. Similarly, while we know that
in fact there was no single legislator whose motives we are
interpreting, but instead a legislative body; we nonetheless
treat the legislative body as if it were a single person. The answer
to the skeptic who doubts whether it makes sense to speak of
a legislature’s motives is therefore that the point is not to
discover the true motive of some non-existent mind or spirit
behind the individual legislators, but instead to judge whether
the action of passing the law, taken by the legislature as a
whole, is reasonably interpreted by an objective observer as
motivated by racism, that is, whether the law is an expression
of attitudes of contempt for people in virtue of their race,
reflected in attitudes of hostility and indifference and on the assumption that members of that race are unworthy of equal treatment.

Explicit statements of the motives of legislators who wrote and supported the law are relevant to that inquiry, but not conclusive. That is in part because interpreters must allow for unstated and unconscious racism on the part of lawmakers. But even if there is no evidence of any racism, conscious or unconscious, the possibility remains that the action passing the law could be best interpreted by an “objective observer” as an expression of racism. The final answer to the question of legislative motive must therefore be constructed out of all the relevant raw material, including the statements of legislators, the language of the statute, the historical circumstances of its passage, the purposes it apparently serves, and the alternatives that were available.36 Just as explicitly stated racist motives of one or more lawmakers are not necessary to establish institutional racism, neither are they sufficient. There may be many other lawmakers who voted for the law for different reasons. But more importantly, the key question is how to interpret their collective action, not the motive of persons. That interpretation of the state’s action—passing the statute—is not reducible to any legislator’s actual psychological state. While this account allows for the possibility that institutional racism may be present though no person is racist, it also means—contrary to what some have argued—that institutional racism is not demonstrated merely because there are differences in outcome produced by an institutional arrangement. Different levels of wealth and income, rates of incarceration among different races, and so on do not in themselves constitute (or necessarily prove) institutional racism, though such differences could be part of a larger interpretive argument that does justify the charge.

**Why Motives Matter**

The reason that is often given that judges follow the intention of a legislature is respect for democratically made decisions. Because legislators are elected, and often run on platforms that reflect the values and goals that, they claim, will guide them as lawmakers, it is right for unelected judges to defer to the intention of the legislators when deciding how to interpret the laws. But legislators also have another advantage of judges, besides the fact that they were elected to make these decisions. Legislative bodies pass laws after consultation with various interested groups, and often after extensive legislative hearings. Legislators, therefore, and as a rule, have far more information than courts are capable of gathering when they pass a law. Deferring to the intention of the legislators therefore makes sense not just out of respect for democracy, but also on grounds of greater expertise.

We therefore have reason to think that it is important for judges to look to intentions of a legislature (for reasons of democracy and soundness), but it is also important that courts scrutinize laws for racism, for two reasons.37 We know that racism easily leads to unequal concern for the interests of citizens, and therefore to injustices in the distribution of all sorts of advantages (and disadvantages). But that is only half of the story, since laws motivated by racism also express public contempt for some members of society (segregated bathrooms, schools, and public accommodations are a clear example). Such contempt is doubly damaging: it harms those who are subject to it, often gravely, as public institutions to which all owe allegiance deny the equal value of some members, and it undermines the social solidarity needed for political stability.

Indeed the Warren Court applied strict scrutiny analysis to a range of laws disadvantaging African-Americans, and they did so, I believe, in just the way I have described: as an effort to root out institutional racism understood interpretively. Its most famous case, of course, was Brown v. Board of Education, which declared legally segregated public schools to be a denial of equal protection.38 Subsequent cases struck down laws mandating segregation of other types of public facilities; and in 1967, the Court overturned a Virginia statute outlawing interracial marriage.39 Each of these laws manifested racism in the form of indifference or, more often, explicit contempt for persons, based on their race. Because of the contempt that the racism lying behind the laws expressed, their harm was of a special sort, different from a law that merely provided poorer facilities or denied basic rights. Separate but equal cannot, said the Court, ever be consistent with equal protection.

**Some Implications**

The theory of Equal Protection I am defending has what might seem some surprising implications, cutting across familiar political divisions. The first is that contrary to what is widely thought race, per se, is not a suspect classification since strict scrutiny is triggered only if there is reason to believe that racism explains the action of the legislature. But that idea that racism is likely to explain every instance in which a racial group is disadvantaged, even when the group is in the majority, cannot be right. Why would a legislative majority be motivated by racism against itself? That means, in turn, that because the purpose of strict scrutiny is elimination of institutional racism, there is no Equal Protection basis on which to criticize affirmative action policies passed by majority race legislatures. Whatever the merits of such policies, it is difficult to see how preferences for African-Americans or any other minority in admission and hiring might be motivated by racism. Strict scrutiny should not be triggered by racial classifications alone, as is sometimes said by courts.

Interestingly, however, the Supreme Court has indicated recently that this has now become its own view, albeit not explicitly. In Grutter v. Bollinger, the Court said that “not every decision influenced by race is equally objectionable” and that the purpose of strict scrutiny is precisely to carefully examine “the importance and the sincerity of the reasons advanced by the government decision maker for use of race in that particular context.”40 Though it did not say that the Court was not subjecting racial preferences designed to promote “diversity” to strict scrutiny, it said it was giving “deference to the University’s academic decisions” adding that “good faith on the part of a university is presumed absent a showing to the contrary.”41 But of course “deference” is the opposite of strict scrutiny, and with this decision the Court has in effect rejected its long-standing position that race always triggers strict scrutiny.

On the other hand, on my account a law or other legal rule (such as using SAT scores) could significantly disadvantage members of a racial or other minority—have a “disparate impact” on them—and yet be constitutional. It depends on the details, as always, and how best to interpret the action of the legislature. Or again, those who support affirmative action policies usually also support aggressive legal efforts to use busing and other tools to force desegregation of schools, even when the segregation results from housing patterns and not from legally mandated segregation. On my understanding of Equal Protection, however, segregated schools are not, by themselves, suspicious unless there is reason to believe they are the result of racism. De facto school segregation that grows out of non-discriminatory housing patterns, for example, does not offend Equal Protection, at least not in any obvious way. That means, however, that views normally associated with each other, tolerance for racial preferences plus opposition to
segregation, or opposition to racial preferences plus tolerance of segregation, may each be internally inconsistent. My view of Equal Protection calls for courts to be aggressive where there is suspicion that institutional racism may be present, but restrained when there is no such suspicion. In that, at least, it is internally consistent, and does not require judicial activism. In the end, as I have emphasized, the ultimate question that must be faced is whether the best interpretation of the legislature’s motive is that it manifested institutional racism.

Endnotes

1. While my focus here is on race, the Equal Protection Clause does not expressly limit its reach to racism. Assuming it applies to other groups, my account of racism can easily be expanded to include other forms of “institutional” prejudice such as sexism.


15. Record, Grosjean, 251.

16. Record, Grosjean, 43.


26. Ibid., 3.

27. Ibid., 4 and 5.


31. Ibid., 440-464.


34. People sometimes appear to have moral attitudes toward corporations, feeling resentment or anger when it has been irresponsible, for instance. Whether these attitudes are appropriate or reasonable, even if no official did anything wrong personally, is not an issue I address here, since my concern is with the law and with liability in general. In the law, the idea of treating an institution as a person for purposes of liability is familiar and generally not problematical.


37. Although I do not mean to suggest by these remarks that intentions and attitudes such as racism are identical, the two are relevantly similar. The difference is that intentions are goals and purposes, while racism, I have argued, names a particular attitude people sometimes have toward other persons in virtue of their membership in a racial group. Despite that difference, then, both are motives that can figure in the explanation of actions. When we ask “Why did he do that?” we might hear in response either “He wanted to show he cares” (a motive) or “He loves her” (an attitude). There is nothing surprising, then, in the idea that judges would look for racism as well as intentions.


41. Ibid. at 2339 and 2366.
Nationalist and Internationalist Conceptions of Constitutional Interpretation: Human Rights and Capital Punishment

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I. Introduction

In a number of prominent cases decided in recent years, there has been sharp disagreement on the U.S. Supreme Court over the role that international law and foreign legal sources should play in the interpretation of the Constitution. This disagreement among the justices over interpretive method has been overshadowed by the substantive disputes the cases have involved, covering such contentious issues as the death penalty, sexual orientation, and affirmative action. Moreover, the issue of relying on international and foreign legal sources was not decisive to the rulings in the cases, nor was it central to the reasoning laid out in the various opinions. However, legal scholars have glimpsed in the passing remarks of these opinions a new and potentially important debate over the methodology of constitutional interpretation. Indeed, one may reasonably think that the global economic and political realities of the 21st century—including a densely interconnected world economy and the diminishing strength of state sovereignty—augur a central place for this debate in the coming years. For the debate is essentially one over the degree to which, and the institutional means through which, the U.S. constitutional system should seek to align itself with core legal norms of other states and the international community.

In this article, I focus on the death penalty, the use of which puts the United States out of line with almost all other democracies and a majority of all states. Additionally, offenders under the age of 18 are subject to capital punishment in the United States, running contrary to legal conventions such as the International Covenant on Civil and Political Rights. Although it is not to be expected that the current Supreme Court on any realistic variation of its membership will strike down capital punishment as per se unconstitutional, a genuine possibility remains that Court rulings in the near future will restrict the range of cases in which the death sentence is a legal option. Whether and when this possibility comes to pass may well hinge on how the Court resolves the interpretive debate over the employment of international and foreign legal sources in the interpretation of the Eighth Amendment.

In the next section, I sketch one of the main elements of modern Eighth Amendment jurisprudence, the idea that what counts as “cruel and unusual” is a function of social norms that change over time. Section III then turns to death penalty cases in which the Court has explicitly addressed the use of international sources in the interpretation of the Constitution. One strand of thinking found in these cases is “internationalist” insofar as it regards non-domestic legal sources as having a legitimate role in the interpretations of the Eighth Amendment. Another strand is “nationalist” insofar as it denies international sources any such role, contending that only domestic legal sources are relevant. Section IV turns to the scholarly literature, which reflects the nationalist-internationalist conflict found in the cases. The section seeks to bring out the role that ethical considerations play in the debate. Finally, section V addresses the concept of sovereignty, which is central to the nationalist argument. My view, developed in sections IV and V, is that the nationalists are right in thinking that international norms qua international have no significant role in constitutional interpretation. However, some international legal norms that are not explicit or clearly implicit in the Constitution do protect basic human rights, and nationalists are wrong to think that considerations of sovereignty make it illegitimate for the Supreme Court to interpret the Constitution in a way that gives weight to those rights-protecting international standards. Such a mode of interpretation is, in principle, justifiable.

II. Evolving Standards of Decency

In deciding cases under the Cruel and Unusual Punishment Clause, the Supreme Court has regularly appealed to “the evolving standards of decency” that mark the progress of a maturing society. This “evolving standards” language is the ground upon which the Court has held that certain forms of punishment violate the Eighth Amendment even though the Framers of the Bill of Rights did not specifically intend for them to be banned. Indeed, the Court has made it clear that even if the Framers specifically intended a form of punishment to be permitted, the punishment could still be prohibited under the Amendment for violating “evolving standards of decency.”

The standards in question refer essentially to those norms of positive morality that deem some form of punishment to be inhumane, indecent, or otherwise ethically intolerable. Behind the language of “evolving standards” are four theses: (a) the norms of later generations typically deem intolerable some punishments that earlier generations regarded as unproblematic; (b) the norms of earlier generations do not deem intolerable punishments accepted by later generations; (c) the direction of change involves the imposition of less brutal or humiliating forms of punishment; and (d) such change constitutes ethical progress.

In determining whether there currently exists a positive norm that deems intolerable a given type of punishment, the Court has said that “the clearest and most reliable objective evidence is the legislation enacted in the country’s legislature.” In a liberal society, social standards are generally not tied in such a tight manner to legislation. Liberal freedoms mean that individuals are left legally free to engage in activities which the broader society may view as “indecent” or otherwise morally deficient. However, the death penalty context is different. If there is a social standard rejecting as indecent or inhumane a certain form of punishment, one can reasonably expect that there will be widespread legislation against it, and such legislation is unproblematic. Liberal freedoms protecting individuals to be “indecent” do not protect government, and democratic processes can often be counted upon to outlaw such practices.

Where such punitive practices are not outlawed, some evidence of a social standard condemning them as indecent can be found in the practices of juries. A persistent refusal of juries to impose a given form of punishment when they are given the legal option of doing so provides some evidence of a social standard at work. Of course, such evidence may be more ambiguous than that provided by legislation explicitly prohibiting the practice. Still, if one accepts some version of the “evolving standards” analysis, then jury practice should count as relevant, as does current constitutional doctrine.

However, there is controversy over the role of international and foreign legal sources in determining whether a given form of punishment violates the Eighth Amendment “evolving standards” test. The controversy has surfaced in several death penalty cases. The controversy concerns the question of whether the relevant standards are those of U.S. society alone or of some broader multinational community.
III. National and International Standards

In *Gregg v. Georgia*, the Supreme Court upheld the state’s death penalty statute.7 Despite vigorous dissenting opinions by Justices Brennan and Marshall in *Gregg* and a series of subsequent cases, the Court as a whole has never seriously revisited the issue of the constitutionality of capital punishment. In the 1980s, there was an effort by some lawyers and social scientists to have the death penalty struck down on the ground that it was imposed in a racially discriminatory manner. However, the Court repudiated that effort.8 Many other cases focused on the process of reviewing death penalty convictions in federal court. But since *Gregg*, the substantive issues in Eighth Amendment capital cases have focused on the range of crimes and criminal defendants for which the issues in Eighth Amendment capital cases have focused on determining whether a punishment is cruel and unusual.”12

In a footnote elaborating on the claim of a national consensus, Stevens wrote that “within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved.”21 This footnote drew sharp responses from Justices Rehnquist and Scalia in their dissents. Rehnquist referred to “the defects in the Court’s decision to place weight on foreign laws.” He conceded that some prior opinions did look to the international community for their discussion of evolving standards of decency, but Rehnquist contended that “we have since explicitly rejected the idea that the sentencing practices of other countries could serve to establish the first Eighth Amendment prerequisite, that [a] practice is accepted among our people.”22 He insisted that it is the “national consensus” that counts in determining which standards of decency prevail in the United States and so “the viewpoints of other countries simply are not relevant.”23 Scalia joined Rehnquist in maintaining this position, and both of them proceeded to argue that the evidence of a national consensus categorically opposing the execution of any retarded person was inconclusive.

Justice Stevens’s opinion for the Court was joined by five other justices, suggesting that there is a clear majority now in favor of a multinationalist (or transnationalist) interpretation of the evolving-standards test. Moreover, Justices O’Connor and Breyer, among others, have explicitly endorsed a constitutional jurisprudence that looks to other nations and international conventions for considerations relevant to the understanding of the United States Constitution. 24 What has remained undeveloped in the case law is a discussion of whether and why non-domestic legal sources play a legitimate role in demarcating the constitutional limits that restrict the power of government to impose the death penalty.

IV. Law and Ethics

Shortly after his retirement, Justice Blackmun wrote, “International law can and should inform the interpretation of various clauses of the Constitution, notably the Due Process Clause and the Eighth Amendment prohibition against cruel and unusual punishment... The drafters of the [Eighth]
Amendment were concerned, at root, with the ‘dignity of man,’ and understood that ‘evolving standards of decency’ should be measured, in part, against international norms.\(^{25}\) In Blackmun’s view, limiting judicial inquiry to domestic sources in death penalty cases would fail to show “a decent respect for the global opinions of mankind” and would violate a principle accepted by “the early architects of our Nation,” viz., that the law of nations was to be binding on the new republic. Blackmun proceeded to contend that current international law certainly prohibits the execution of juveniles, citing conventions such as the International Covenant On Civil and Political Rights.\(^{26}\)

Blackmun’s argument revolves around the claim that the framers intended that the United States be bound by international law. However, the claim is a weak reed on which to rest an argument about how the Eighth Amendment is to be interpreted in the twenty-first century. The law of nations, as international law was then called, did not cover the penal practices of states. Indeed, international law at the time did not pierce state sovereignty, so that states were essentially free to do what they chose within their jurisdictions. Even if the framers intended that international law as it then stood be binding on the United States, it is an unwarranted stretch to conclude that they intended that any future development in international law should also bind the country. Moreover, as the critics of the theory of original intent have long argued, there is no good reason why the framers’ intent carries authority after centuries of social, political, and legal transformation.

Moreover, Blackmun’s reference to the Declaration of Independence’s famous words concerning the need to show a decent respect to the opinions of mankind is wholly out of place. Those who signed the Declaration were not enacting legislation or writing a Constitution. They were engaged in an act of rebellion. For strategic and ethical reasons, they found it important to justify to other nations this course of action. However, their decision to do so provides scarce evidence that the framers intended that international law as it then stood be binding on the United States, it is an unwarranted stretch to conclude that they intended that any future development in international law should also bind the country. Moreover, as the critics of the theory of original intent have long argued, there is no good reason why the framers’ intent carries authority after centuries of social, political, and legal transformation.

Harold Koh makes a more practical argument concerning the words of the Declaration. He points to political and diplomatic problems raised when constitutional doctrine on issues such as the death penalty is out of line with the rest of the world, especially with the liberal democratic allies of the United States: “In many European capitals, outrage over American capital punishment has triggered street protest and angry public demonstrations.”\(^{27}\) United States embassies and consulates have been besieged, diplomatic negotiations have been disrupted, and the American “claim of moral leadership in international human rights” has been subverted.\(^{28}\) Countries with egregious human rights records, such as China, routinely cite the American use of capital punishment to deflect attention from their own abuses.

All of Koh’s points about the political and diplomatic problems generated by U.S. death penalty jurisprudence can be granted, and they provide some reason for bringing the country into greater alignment with other democracies when it comes to capital punishment. However, it is difficult to see in his points anything more than policy-based reasons for Congress and state legislatures to consider. There is no argument here that justifies the conclusion that the best interpretation of the Eighth Amendment bars the death penalty or even restricts the legal use of capital punishment to offenders who are at least 18 years old and not mentally retarded.

However, Koh does have a better argument. He contends that in cases in which legal tests involving community standards are pertinent, “the Court has long since recognized that the relevant communities to be consulted include those outside of our shores.” He contends that a series of cases since the 1950s have “made it clear that this ‘evolving standard’ should be measured not just by reference to maturing American experience but to foreign and international experience as well.”\(^{25}\)

However, Koh’s review of the cases also leads him to a very different and—in my view—more accurate observation: “two distinct approaches now uncomfortably coexist within the Supreme Court’s global jurisprudence.”\(^{30}\) One is the nationalist approach articulated by Scalia and Rehnquist. The other is the transnational (multinational) approach defended by Brennan, Blackmun, and Stevens, among others. I think that it is premature to say at this point that there is a settled practice on the Court of using non-domestic sources in applying the evolving-standards test. Stanford still remains good law, and the number of cases discussing international sources is too small for a practice to have crystallized.

If the law is not yet crystallized, questions about the direction in which the Court ought to move become pertinent. These are questions at the intersection of law and ethics. Koh’s diplomatic and political considerations provide some reason for the Court to move in the direction of incorporating non-domestic norms in its application of the evolving standards test. However, I think that such reasons are relatively weak ones. It would seem that Congress is the appropriate branch of government to address such considerations. Diplomatic friction and foreign protests hardly constitute the kind of consideration to which the Court should give serious consideration in an effort to develop a principled and defensible interpretation of the Eighth Amendment.

To develop a stronger argument for the internationalist position on the Eighth Amendment, I think that it is necessary to endorse three key theses: (1) the death penalty, at least as used against a juvenile, is a human rights violation, (2) international sources better reflect the truth of thesis (1) than do strictly domestic ones, and (3) the Supreme Court is justified in taking considerations of human rights in account in applying its evolving-standards test. In short, the Court is justified in looking to non-domestic sources because they provide a more accurate register of what counts as violation of basic rights when it comes to the death penalty.

But a puzzle is generated by this defense of internationalism. If we accept theses (1) and (3), what work is done by thesis (2)? Why must there be non-domestic legal sources protecting human rights to justify the Supreme Court in taking such rights into account? Thus, suppose that international and foreign legal norms did not categorically condemn the execution of juveniles, but a majority of Supreme Court justices correctly believed that any such execution was a violation of a basic human right. Once theses (1) and (3) are granted, it would seem to be beside the point whether there are international norms that reflect the truth about human rights and the death penalty. And if that is so, then it appears that the real normative work in the internationalist view is done by ethical judgments concerning the death penalty rather than empirical assertions about international legal norms.

One might argue, as Brennan seemed to suggest, that the role of international norms is epistemic.\(^{31}\) The Court could justifiably have greater confidence in the validity of rights-norms that have received endorsement from a wide range of other nations than those to which only one—or a few—nations subscribe. However, the premise that greater confidence is
merited in norms that have wide global endorsement than in those that have only a more local acceptance clearly needs significant qualification. There were times when slavery and the subordination of women were the global norm. If one has concluded that executing juveniles—or anyone else for that matter—is ethically indefensible, I seriously doubt that the global consensus does much more than provide a bit of extra support supplementing reasons that by themselves one deems wholly sufficient for the conclusion.

In fact, the internationalist appeal to non-domestic legal sources seems to me to be obfuscatory. The appeal to global legal norms is largely a surrogate for ethical arguments against the death penalty that the internationalists take to be normatively compelling. Without the ethical background premises, the argument from the norms of the international community would carry no weight. This tacit reliance on ethical arguments is revealed explicitly when it comes to a consideration of widespread legal norms that reflect and reinforce unjust relations of domination across a range of societies. For example, legal norms governing marriage and divorce in many countries derive from and perpetuate the dominance of men. Even if a substantial majority of the world’s legal systems had norms with such a character, that fact would hardly be reason to think that any state whose view of gender was more egalitarian should interpret its constitutional norms in a way that tilts toward the globally dominant legal position.

Gerald Neuman has sketched a view focusing on international human rights norms and clearly stating that it is the ethical validity of the norms—not the simple fact of their being international—that makes it legitimate for them to inform the Supreme Court’s understanding of the Constitution: “the interpretive value of international human rights norms and decisions derives from the normative insight they provide.”

However, Neuman fails to explain why the Court—rather than the political branches—is justifiably entrusted with the authority to determine what those insights are and to declare (or make) them binding law. Indeed Neuman himself points to the gap between asserting that human rights law provides insights and claiming that the Court has the legitimate authority to determine what those insights are and to declare the results binding law. Neuman leaves us without any guidance in addressing the question of when, if ever, the Court should refuse to await political implementation (i.e., legislation and/or treaties) and itself enforce international norms as a matter of constitutional law.

Roger Alford argues that non-domestic legal sources should count very little in the Court’s practice of constitutional interpretation. He writes, “international sources offer delocalized, independent moral and political arguments that serve as an index of the correctness of competing claims about essentially contestable concepts embodied in aspirational provisions of the Constitution.” In other words, such legal sources offer controversial ethical claims, untied to any specific country and its history, about concepts that are inherently subject to conflicting understandings. Texts of general political and moral philosophy offer the same kind of controversial claims, and the international sources should count no more than the relatively scanty weight constitutional practice traditionally accords the general principles of philosophers and political theorists.

However, Alford’s main objection to giving international norms more than a little consideration in constitutional interpretation rests on a different idea: “Using global opinions as a means of constitutional interpretation dramatically undermines sovereignty.” This concern with protecting American sovereignty also undoubtedly lies behind the nationalist approach articulated by Justices Scalia and Rehnquist.

V. Sovereignty

Alford argues that the use of international sources poses a problem that he calls (adapting a phrase from Alexander Bickel) “the international countermajoritarian difficulty.” The nub of the problem is that giving the international community a trump against the decisions of the nation’s political system effectively turns the nation into a political subdivision of other states rather than a sovereign state in its own right. Constitutional norms that have the supermajoritarian support of the people of the nation cannot be subject to an international trump without subverting the people’s right of self-determination. For Alford and other commentators, this purported subverting of sovereignty is the fundamental and decisive reason to make sure that international legal sources do not count for much in the interpretation of the Constitution.

However, it seems hyperbolic to characterize a mode of constitutional interpretation that gives international norms more than marginal consideration as “dramatically undermin[ing] sovereignty.” I doubt that U.S. sovereignty would be undermined by Court decisions that accorded significant weight to international norms rejecting the death penalty for offenders who were under 18 years old. If there was a clear and convincing case for the existence of a determinate national consensus that ran contrary to international norms on this issue, then declaring the execution of a 17 year old unconstitutional would be problematic. Even so, it is important to see that the real normative work behind the international view is being done by ethical claims about the death penalty and not by empirical claims about the existence of international norms rejecting the death penalty for juveniles. The Court would not be setting aside U.S. sovereignty in favor of the authority of the international community so much as rejecting the idea that a nation’s sovereignty encompasses the legal authority to violate basic human rights.

Nonetheless, Alford’s concerns about sovereignty raise important issues for the internationalist approach. The “independent” ethical convictions of American judges who look to foreign legal sources may well turn out to be a relatively uncritical acceptance of the presumed international consensus. In death penalty cases, this phenomenon might not be a problem because of the highly questionable ethical status of the penalty, especially as applied to juveniles and the mentally retarded. However, when it comes to freedom of speech, the issue is much murkier. The weight of foreign and international norms is toward a more restricted understanding of the scope of free speech than is reflected in recent American legal history. It is highly debatable whether the international understanding better reflects basic human rights than does the broader American interpretation. Thus, even if one accepted the thesis that the Supreme Court has the authority to protect basic human rights, a Court that relied on international norms may illegitimately impose unduly restrictive notions of liberty in an important range of cases.

Additionally, the thesis that the Court has the general legal authority to protect basic human rights is questionable. Suppose that a new constitutional amendment were adopted, declaring that, notwithstanding any interpretation that may be given the Eighth Amendment, all states and the federal government had the power to impose the sentence of death on persons duly convicted of first-degree murder or treason.
Suppose, further, that the death penalty per se is a human rights violation. In such circumstances, the Supreme Court would be legally bound to apply the new amendment and find in favor of the constitutionality of the death penalty. Authorization of the death penalty would be an expression of the sovereignty of the American people, and the Court—empowered by that very same sovereignty—would lack the legal power to nullify the authorization.

Sovereignty may not, as a matter of ideal theory, encompass the authority to violate basic human rights, but sovereignty needs to be embodied in a system of institutions and practices. Such a system will invariably act in ways that violate basic rights and doing so cannot be sufficient for the system to lose the ethical and legal right to govern by its standing rules unless philosophical anarchism is to be embraced. Short of anarchism, the question is whether, viewed in historical perspective, a given system of political and legal institutions does an adequate job of protecting the basic rights of its nationals and respecting the basic rights of all others. Asserting that the existing system in the U.S. does an adequate job is compatible with the proposition that the death penalty is a human rights violation. However, the assertion is also consistent with the proposition that the American system could be improved by making the constitutional jurisprudence of the Supreme Court more “internationalist” in at least certain kinds of cases.

It may well be true that death penalty cases are ones where going internationalist would improve the system by affording better protection of basic human rights. If so, then giving significant weight to international norms—not because they are international but because they better serve human rights—would be justifiable in the application of the evolving-standards criterion. As the hypothetical scenario of the death-penalty amendment shows, there are limits to how much weight can be legitimately given even to international norms that protect basic human rights. Sovereignty has its claims, and the authority of the Court has its limits.

However, human rights have their claims too, and when the issue is the state’s exercise of the power to execute offenders, those claims are weighty. If the Court took account of international human rights standards in limiting the reach of the death penalty to adults, then its action could be justified on human rights grounds. The sovereignty of the American people would not trump a decision to invalidate the execution of offenders under the age of 18 because there is little evidence that the American people favor such executions or even favor permitting each state to decide for itself whether to have them.

More difficult is the question of whether the Court could justifiably abolish the death penalty by invoking rights-protecting international norms. Here there is a more likely prospect of a clash between sovereignty and human rights. The evidence is not entirely clear, but in the U.S. 38 states, the federal government and military law permit the death penalty, suggesting that some threshold proportion of citizens do favor capital punishment in at least some instances. On the other side, some studies show that support for capital punishment falls well under 50% if life imprisonment without parole is offered as an alternative. The empirical questions are difficult to settle, as are the conceptual question of what constitutes an exercise of sovereignty and the normative question of how much weight sovereignty is to receive relative to human-rights considerations. I am unable to unravel these knotty problems. The point I do wish to make, however, is that the sovereignty-based argument of the nationalists has more bite when it comes to the complete abolition of the death penalty than when it comes to eliminating the execution of juveniles.

VI. Conclusion
Nationalists reject the idea that the international character of international legal norms makes the norms relevant to constitutional interpretations. They are right. However, the international norms that, in the view of internationalists, should inform constitutional interpretation are often rooted in ethically valid considerations of human rights. The rights-based nature of the norms makes it justifiable for constitutional interpretation to proceed in the manner that internationalists recommend. The example of the death penalty shows the insights and the limits of both the nationalist and internationalist approaches.

Constitutional jurisprudence has fashioned an evolving-standards test that allows international death-penalty norms to gain purchase and shape the interpretation of the Eighth Amendment. An interpretation that restricts the death penalty to offenders at least 18 years of age can be justified on this approach. Much less certain is whether an interpretation that abolishes capital punishment can be so justified. However, uncertainty in this matter should not be surprising, as judges and scholars have only begun to address the question of whether and why constitutional interpretation should be informed by international legal sources.

Endnotes
2. As of December 2001, 71 states had retained the death penalty and used it within the previous ten years, and 109 states had legally abolished the penalty or had not used it within the past decade. Almost all of the retentionist states were dictatorial regimes. Aside from the United States, the handful of democracies on the retentionist list included Japan and India. See Roger Hood, The Death Penalty: A Worldwide Perspective, 3rd ed. (New York: Oxford U.P., 2002), pp. 247-49.
3. U.N. Doc. A/6316 (1966), art. 6, para 5. The United States has ratified the Covenant but with a reservation regarding article 6. The reservation means that the U.S. is not legally bound by that article of the convention. The Convention on the Rights of the Child requires all parties to ensure that offenders under the age of 18 are not subject to capital punishment. U.N. Doc. A/44/49 (1989), sec. 37. The Convention has been ratified by all states except Somalia and the United States. It still might be argued, however, that customary international law prohibits the sentence of death for offenders under 18, and that such a prohibition is legally binding on the United States.
11. 487 U.S. 815 at 830.
12. Ibid.
13. 487 U.S. 815 at 869 (Scalia, J., dissenting)
Compromising Rights: How Does A Constitution Mean?

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The United States has responded to the terrorist attacks of September 11, 2001 by violating the Constitution. The “Patriot Act,” passed a week later, temporarily expanded the president’s power to use surveillance, eavesdropping, and other methods to track suspected terrorists. Suspects are held in custody indefinitely without access to courts or counsel. Detainees are subjected to treatment, such as denial of pain medication and medical care, which on its face constitutes cruel and unusual punishment in violation of the Eighth Amendment. A report issued by the Justice Department’s inspector general in June 2003 concluded that the government had overstepped legal bounds in its roundup of illegal aliens after September 11.

All three branches of the national government have participated in these denials of rights. The second Bush Administration lost no time availing itself of the Patriot Act. Less than eighteen months after the attacks, Republicans in Congress joined with the administration in working to make this Act permanent. A confidential draft of “Patriot Act II,” leaked to the press, would allow the government to withhold the identities of detainees and to revoke the U.S. citizenship of Americans who associate with organizations the administration has identified as terrorist. Federal judges have dismissed civil rights groups’ challenges to the increased use of electronic surveillance without a hearing and accepted sealed prosecution affidavits that are withheld from the defense.1

Many constitutionalists have been dismayed and angered by these abuses, but few have been surprised. The United States has a long history of responding to threats with excessive force. Lincoln’s actions during the Civil War, prosecutions of antiwar activists during World War I, internment of Japanese-Americans during World War II, and the anticommunist witch hunts of the Cold War are notorious examples of this phenomenon. But scholars who are cognizant of this historical pattern have not united in opposition to governmental invasions of rights. According to Richard Posner, for instance, “It is true that when we are surprised and hurt, we tend to overreact—but only with the benefit of hindsight can a reaction be separated into its proper and excess layers. In hindsight we know that interning Japanese-Americans did not shorten World War II. But was this known at the time?”2 Even if we concede Posner’s general point that the degree of danger cannot be estimated during an emergency, he ignores another lesson: hindsight can teach us: that we have overreacted to threats in the past and may be overreacting now.

The Japanese internment survived judicial scrutiny, as have most wartime constitutional violations.3 First Amendment jurisprudence begins with a statement that the words “freedom of speech” do not mean what they say. The free speech clause “cannot have been, and obviously was not, intended to give immunity for every possible use of language,” wrote Oliver Wendell Holmes for a unanimous Supreme Court in 1919. “When a nation is at war,” for example, “many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured as long as men fight.”4 These words have been accepted as axiomatic since Holmes wrote them in 1919. Only a few extremists like Hugo Black have insisted that the First Amendment was an absolute,
and he not consistently. The premise that war expands the power of government to suppress speech remains a staple of constitutional doctrine. The counter-argument that freedom of expression is most necessary in emergencies has yet to persuade any branch of the national government.

America is not at war against terrorism, no matter how often the politicians and pundits repeat that we are. Whether or not war requires congressional declaration, it requires at least one identifiable enemy nation. A “war on terror” makes even less sense than a “war on drugs.” In both instances, the sense of the word is metaphorical, not literal. So Holmes’s words do not strictly apply to the present situation. But the absence of a formal war is somewhat beside the point. The government has never needed a war to violate constitutional rights. The loyalty-security cases and congressional investigations of the 1940s and 1950s took place in peacetime. No one claims that national security requires high school athletes to undergo drug tests, Air Force captains to remove their yarmulkes, or Native Americans to be punished for using the drug peyote in religious rites; but these official practices have been upheld by the courts. Public safety is not jeopardized by children’s access to the Internet, but court decisions invalidating “child protection acts” have only sent Congress back to the drawing board.

The United States is far from being the only constitutional republic that denies guaranteed rights. Both Turkey and Brazil, for example, have a constitutional prohibition on torture. But the use of sexual abuse, electric shocks, and beatings on Kurdish separatists, or those who might associate with, know, or encounter any Kurdish separatists, is common enough to have effectively excluded Turkey from the European Union; only since November 2002 has the ruling Justice and Development Party pledged a “zero tolerance” of torture. In Brazil “the use of torture and ill-treatment remained widespread and systematic throughout the criminal justice system, at the point of arrest, in police stations and prisons as well as in juvenile detention centres.”

Another provision in Brazil’s constitution proclaims, “Education, health, work, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute, are social rights under this Constitution.” But want remains the rule, not the exception. Spain guarantees the right “to express and disseminate thoughts freely through words, writing, or any other means of reproduction.” That guarantee did not stop a judge from ordering the precautionary closure of the Basque newspaper Euskaldunon Egunkaria, the only newspaper written entirely in the Basque language, and the arrest of ten supporters of the newspaper.

Violating constitutional rights is so common an official practice that it proved impossible for me to write the paper I intended to write. There was just too much material, even after I limited the study to constitutional systems similar to that of the United States. Official and unofficial sources provide voluminous data. Two international tribunals, the European and Inter-American Courts of Human Rights, report cases. Amnesty International and Human Rights Watch report abuse all over the world. The text of the relevant constitution reveals whether or not the violated right is recognized there. Often it is.

Faced with a mass of material, and reluctant to limit myself either to specific countries or specific rights, I decided to write a different paper. This paper asks neither why rights violations happen nor whether they should happen. I do not try to refute either of the positions Posner takes in his recent article. His statement that emergency leads to overreaction is an accurate summary of American constitutional history; transformed into hypotheses, this summary opens up the possibility of comparative research. Posner’s defense of post-September 11 policy follows from his summary of history; it is a normative argument that I reject. But my approach to this topic asks how rights’ violations happen: what textual, structural, and political factors facilitated these abuses. I begin with a discussion of the early Anglo-American jurisprudence and the history of human rights as exemplified by the founding of the United States government. Finally, I consider the implications for comparative, cross-national, and longitudinal study of rights violations.

The Paradox of Constitutional Government

The idea of a government protecting its people from itself contradicts both logic and history. That “governments are instituted among men” to secure “inalienable rights” may have been a self-evident truth to the signers of the Declaration of Independence, but it is no more a literal truth than its intellectual ancestor, social contract theory, is a factual account of how government originated. Government did not come into being through consent as a way of protecting people from avengers or bullies. More often, the original bullies imposed government on the original victims. A classic definition of a state is “that institution with a monopoly on the legitimate use of force”; states usually legitimize their own power. Social contract theory did, however, provide a model for the construction of more than one real-life government. The Mayflower Compact, the Declaration of Independence, and the Constitution announce the founding of governments based on consent.

But never the consent of all the governed. The Mayflower Compact, signed by adult males, was inclusive for its time, but both the Declaration and the Constitution fell short even by the standards of their time. Neither the treatment of the “merciless Indian savages” in whose homeland whom the new nation had been founded nor the institution of African slavery was reconcilable with the founding documents. With respect to slavery, this contradiction was acknowledged, tacitly at least, by the framers. No delegate defended slavery on moral grounds, but the issue was too volatile and too threatening to the task at hand to be discussed much at the Philadelphia Convention.

The original Constitution did secure the right to self-government in the framers’ limited sense. These limits were of two kinds: the rules about who could participate, and the proscription of certain types of laws. The right to vote had to be inferred from the states’ power to set “the qualifications requisite for electors of the most numerous branch of the State legislature.” The provisions about habeas corpus, bills of attainder and ex post facto laws were phrased not as individual entitlements but as official proscriptions. The adoption of the Bill of Rights had little to do with individual rights. Politically, the amendments were a means to the end of getting the Constitution ratified, a compromise between the Federalists and Anti-Federalists. The Bill of Rights was understood to limit the national government vis-à-vis the states, not the individual. The founding documents of other nations may reflect similar incongruities. Brazil’s constitution, for example, included social rights not in order to establish a welfare state, but to facilitate ratification.

A problematic relationship between the text and context of organic law has characterized the United States from its beginning. Constitutional provisions do not always do what they say, mean what they say, or say what they mean. Nor is there a necessary relationship between the text of a provision and its historical purpose. The First Amendment did not establish freedom of speech and religion, but reserved power
over these matters to the states. “The people of the United States” meant “whomever a state allows to vote for the largest house of its legislature.” Whatever the merits of literal interpretation, the Constitution was not written literally. The process of determining the meaning of words like “people,” “rights,” “deprive,” and “freedom” did not end with the founding; the makers and interpreters of law continue it to this day. And as the Brazilian example suggests, there is no reason to suppose that this ongoing process of constitution-making is unique to the United States.

**The First Constitutional Crisis: 1798-1801**

Alexander Hamilton, writing as Publius, reassured New Yorkers that no explicit guarantees were necessary to prevent the national government from doing what it had no explicit power to do. However sincere Hamilton was, only seven years elapsed between the ratification of the First Amendment and the national government’s first attempt to violate it. In 1798, the Federalist government faced the external threat of invasion combined with the internal threat of opposition. U.S. relations with France verged on a “half war.” The Republican opposition attacked the administration and Congress in language that was not only derogatory, but virulent, insolent, and often personal. The Alien and Sedition Acts were the Federalist responses to these threats. The Alien Act empowered the president to deport any alien he suspected of espionage or treason. The Sedition Act criminalized the publication of “any false, scurrilous, and malicious writing” intended to bring the President or Congress “into contempt or disrepute” or “to stir up sedition within the United States.” This law expired March 3, 1801, the last day of President John Adams’s term.

In other words, throw the foreigners out, and put the opposition in jail. A modern tyrant like Robert Mugabe of Zimbabwe might consider this response routine, if not restrained. But if the Federalists’ effort to silence dissent had been tolerated, absorbed into the system, and become a permissible practice, the United States would not be a democracy, or even a republic, and the disjunction between what the Constitution says and what actually happens would be so extreme as to be ludicrous. These things did not happen. The threat to the Constitution was rebuffed. But this constitutional crisis was resolved in a very different way from the processes by which constitutional questions are ordinarily resolved.

The contradiction between the Sedition Act and the literal language of the First Amendment was obvious: Congress had done something the Constitution forbade it to do. Resolving that contradiction required a shared understanding of both the text of the First Amendment and its context—in particular, its relationship to other sources of law. No such shared understanding existed. The First Amendment combines clarity (“Congress shall make no law”) with ambiguity (“abridging freedom of speech.”) Generations of constitutional law students have cut their jurisprudential teeth on the Free Speech Clause. But language is not the only source of ambiguity; the relationships among constitutional and extraconstitutional sources of law are equally problematic. The Sedition Act criminalized what English common law called “seditious libel.” Only false statements were punishable, and truth was admissible as a defense. Did the First Amendment abrogate the common law of sedition? Some framers and some scholars have thought so, but this opinion was by no means unanimous. An alternative interpretation holds that the clause prohibited prior restraints only. If this reading is accurate, the Sedition Act was reconcilable with the First Amendment.

The principle that libel lies outside the scope of the First Amendment is a staple of modern constitutional doctrine. But in 1798, whether the common law of libel was compatible with the First Amendment was an unresolved and contested question—as, indeed, was whether the federal government had any common law at all. And the writings most objectionable to the government tended to assert opinion, not fact, or to obscure the distinction between the two. How, for instance, could a defendant establish the truth of a statement like this?

Whenever I shall, on the part of the Executive, see every consideration of the public welfare swallowed up in a continual grasp for power, in an unbounded thirst for ridiculous pomp, foolish adulation, and selfish avarice; when I shall behold men of real merit daily turned out of office, for no other cause but independency of sentiment; when I shall see men of firmness, merit, years, abilities and experience, discarded in their applications for office; and men of meanness preferred for the ease with which they take up and advocate opinions, the consequence of which they know but little of—...I shall not be their humble advocate.

Opponents of the Sedition Act lost no time making any and every constitutional argument against it they could think of. The fact that Congress had acted bothered many critics more than the fact that Congress had *abridged speech*. Not only did several states already prosecute seditious libel, but the question of whether Congress had any power not specified in the Constitution would not be resolved for another twenty years. The most famous protests against the Sedition Act, the Kentucky and Virginia Resolutions co-authored by Thomas Jefferson and James Madison on their respective paths to the presidency and passed by the respective state legislatures, declared the act “altogether void and of no force.” The power “to create, define, and punish crimes other than those enumerated in the Constitution...is reserved, and of right appertains solely and exclusively to the respective States, each within its own Territory.” The power to regulate speech was among “the rights, and liberties” reserved to each state by the Tenth Amendment. The Rhode Island and New Hampshire legislatures disagreed. Their resolutions denied that any state had the power to declare a federal law unconstitutional. That power, the lawmakers insisted four years before *Marbury v. Madison*, belonged to the federal courts.

The Alien Law was too much even for the president. Adams refused to sign the blank deportation warrants that his secretary of state, Timothy Pickering, asked for. The law remained a dead letter until it expired in 1800. Pickering did win the cooperation of prosecutors, federal marshals, and federal judges in enforcing the Sedition Act. Seventeen opposition leaders and journalists were prosecuted. All were convicted or pleaded guilty, all were fined, and most were imprisoned. But only one of these prosecutions took place in a non-Federalist state. Even in Federalist states, the convicted men often became local heroes. Representative Matthew Lyon of Vermont, the author of the lines I quoted, was returned to the House, and seated. Seventeen convictions were not enough to silence the opposition. The Republicans won the election of 1800, and the Sedition Act expired.

Thus, the first attack on the Constitution was repulsed. The government did not stop trying to stifle dissent or to get rid of obstreperous foreigners. But in modern times deportation of aliens who are in the country legally requires a hearing. The incarceration of members of opposing parties has been limited to marginal groups like socialists and communists. The constitutional violations that occur now are no longer of a degree and kind that negate republican self-
government as the Alien and Sedition Acts did. But these violations often survive. Many involve constitutional provisions that are as complex and ambiguous as the Free Speech Clause. But the interpretive difficulties are resolved against the defendants at least as often as in their favor. The differences between the fate of the Alien and Sedition Acts and the typical results of twenty-first century cases can be traced in large part to the differences between initial and contemporary modes of resolving constitutional controversies.

Then and now, constitutional controversies progress from the legislature through the executive to the judiciary. The legislature enacts, the executive prosecutes, and the judiciary tries. Once in the courts, a case stays in the courts as it is appealed through the levels of the judiciary. The legislators who support a law, the officials who enforce it, and the jurors who apply it can, and sometimes do, expect a court to resolve the issue; the possibility of a reversal invites them to view their own decisions as less than binding. Appellate courts issue opinions that explain, with varying degrees of candor and plausibility, the reasons for the decision.

Imagining the Alien and Sedition Laws traversing today’s judicial process is an edifying exercise in counterfactual history. What if the Supreme Court, dominated by that staunch Federalist, John Marshall, had been confronted with a Sedition Act case? What if this had happened before *Marbury v. Madison*? Would the case have been decided on the basis of the First Amendment or of federal-state powers? The controversy over these laws was more political than constitutional, and focused not on questions of individual rights but on questions of governmental powers. The president refused to deport aliens. The government could bring prosecutions only where the Federalists were in power. Kentucky and Virginia attempted to nullify the Sedition Act because it encroached on the powers of the states. Rhode Island and New Hampshire accused Kentucky and Virginia of attempting to usurp the power of the federal courts. The minority party’s electoral victory in 1800—the first critical election in American history—resolved the controversy in favor of freedom of expression.

**Margin or Mainstream? Rights, Claimants, and Issues**

Why, and how, were the Alien and Sedition Laws repulsed when so many rights violations have succeeded? The differences between the Alien and Sedition Acts and many recent controversies are instructive. In 1800, the task of constitutional interpretation had not been assigned to, or assumed by, the judiciary. The only part the courts played was in conducting trials and imposing sentences. The issue was played out between the executive and legislative branches of the federal government and between the federal government and the states. Rights disputes were secondary to power disputes, as legal claims were to political claims. Finally, the controversy over the Alien and Sedition Acts did not pit the strong against the weak; the in-group that enacted the law and the out-group injured by it were relatively equal in strength.

The few contemporary cases that do pit the powerful against the somewhat less powerful often are resolved in favor of the aggrieved parties. While *The New York Times* and *The Washington Post* are no match for the federal government, their considerable power surely facilitated the quick resolution of the Pentagon Papers case in their favor. In 2003, a majority party actually did threaten the rights of the minority; this episode did not enhance either the majority’s reputation or its political power. Fifty-one Democratic members of the Texas House of Representatives left the state for four days in May in order to deprive the Republican majority of the quorum needed to enact redistricting legislation that had the potential to create as many as seven Republican districts in the U.S. House of Representatives. Acting on orders from House Speaker Tom Craddick, the Texas Department of Public Safety sent state troopers to bring the Democrats home. But, since most of the AWOL legislators had left the state, the troopers had no power to do this.

A telephone call to the Federal Aviation Administration from the office of Tom DeLay, majority leader of the U.S. House of Representatives, resulted in the FAA’s tracking the private plane of one missing Democrat. The FAA is now part of the Homeland Security Department; as a federal agency, it has no authority over state government. All official records of this episode were quickly destroyed. The Democrats returned voluntarily to Austin after the deadline for the bill had passed. In July, a state court ruled that the DPS had exceeded its legal authority in conducting the search. By then, Governor Rick Perry had called a special session to consider the bill. This time it was Democratic senators who fled, to New Mexico. The majority did not make the same mistake twice.

By contrast, today’s typical rights controversy is resolved in the courts rather than by partisan politics and consists of the strong violating the rights of the weak: in-group against out-group, “haves” against “have-nots,” the state against the individual. This power imbalance is one reason why contemporary plaintiffs lose at least as often as they win. Another factor is that civil liberties themselves have become marginal issues in the United States. The fact that George H.W. Bush could score points against Michael Dukakis in the 1988 presidential campaign by describing the Massachusetts governor as a “card-carrying member” of the American Civil Liberties Union indicates how unpopular a cause the defense of rights has become. Most other human rights groups are too obscure even to provide material for a successful insult. The ACLU, Amnesty International, and similar groups operate on the fringes of American politics, not at the center—regardless of which party controls the presidency or Congress. Democrat Bill Clinton, the interim president between the two Bushes, was no friend of civil liberties either.

Rose Corrigan provides a good example of the marginalization of rights in a recent paper on the enactment of “Megan’s Law,” a New Jersey statute requiring the state to notify residents if a registered sex offender lived in their neighborhood. The legislative record and media accounts contain no discussion whatever of the important and non-polarizing question of whether the law would reduce the incidence of sex crimes. Instead, the issue was framed as a conflict between the protection of children and the rights of criminals; the only group that opposed the law was the ACLU. The outcome was a foregone conclusion.

The easy passage of similar laws and the courts’ friendliness to them illustrates a primary reason for the marginalization of rights: their inevitable association with crime and criminal suspects. Phrases like “how can you defend those people?”, “losing the right to have rights,” and “bleeding heart liberals” abounded in colloquial American English usage. Constitutionalists know that there are sound arguments for “defending those people”: the uncertainty of guilt in virtually all cases, the fact that guarantees that protect the guilty also protect the innocent, the need to limit the power of the government. But these arguments are hard sells to a populace accustomed to thinking in terms of “them” and “us” and susceptible to media hype in notorious cases. Rights have become the purview of a self-selected intellectual elite that has too often responded to questions as Louis Armstrong is said to have replied when asked to define jazz: “if you have to ask, you’ll never know.” In a contest between John Q. Public
...and pointy-headed intellectuals, the intellectuals will lose every time.

Felix Frankfurter’s remark that “the safeguards of liberty have frequently been forged in controversies involving not very nice people” may apply even to rights plaintiffs who are not criminal suspects. Madalyn Murray O’Hair, the late atheist activist and the victorious plaintiff in one of the school prayer cases, comes to mind. The frequent collisions between rights and more salient values, such as religious faith, help explain the continuing unpopularity of the school prayer decisions 40 years after they were issued. The courts have traditionally been the recourse of members of “discrete and insular minorities,” but victory in court does not make the victor more popular. On the contrary, the group, the cause, and even the court often become less popular.

But rights’ issues do not always remain marginalized. The history of slavery provides a useful contrast to the history of the Alien and Sedition Acts. Several provisions of the Bill of Rights are irreconcilable with slavery, at least when the federal government was involved. But the slaves had no access to the political process. Not only were slaves unable to vote, sue in court, or protest without risking their lives, but many were forbidden to acquire the literacy necessary for political participation. Their legal inability to communicate or to acquire property foreclosed the possibility of a successful rebellion. Former slaves and white abolitionists created an anti-slavery movement that progressed from the political fringe to the political mainstream in the first half of the nineteenth century. By the time of the Civil War, the slavery issue had polarized the country. War became inevitable when the Supreme Court invalidated the Missouri Compromise partly on the grounds that Congress’s creation of non-slave states had deprived slave-owners of property in violation of the Fifth Amendment. Another useful exercise in counterfactual history is to imagine that the Court had instead ruled that slavery constituted deprivation of liberty without due process of law, a familiar abolitionist argument. The outcome could hardly have been worse than what actually happened.

Like the Alien and Sedition Laws, slavery was ended by political rather than legal means. The Civil War and subsequent constitutional amendments did not eradicate the legacy of slavery. The ongoing struggle for racial equality has been most successful when rights issues have been polarized rather than marginalized, and when rights claims have support in both parties and all three branches. The fact that all three branches are not and have never been united with respect to abortion rights helps explain why the pro-choice movement still struggles, even though the issue has polarized roughly along party lines. Roe v. Wade did for reproductive choice what Brown v. Board of Education did for racial equal equality: it got the issue on the national agenda.

A similar transition from marginalization to polarization has occurred with gay rights. A generation of political activism has generated significant changes in public attitudes toward homosexuals and has culminated in Lawrence v. Texas, the 2003 Supreme Court decision that legalized homosexual conduct. The fact that President Bush has found it necessary to declare his opposition to gay marriage demonstrates the extent that gay rights has moved from the fringe to the mainstream. But neither the formation of a recognizable interest group nor increased social acceptance is a necessary condition for de-marginalization. Inmates on death row and suspected terrorists are not in gaining public support and are not in a position to contend in the political arena. But the death penalty and antiterrorism policies are no longer relegated to the political fringe. Nor have they remained the exclusive purview of the courts, as most rights issues do.

What appears to be happening in both cases is a political dialectic of the sort described by David Truman and John Kenneth Galbraith back in the 1950s: when one side of a conflict is perceived to have gone too far, countervailing forces emerge to restrain it. The theory of potential interest groups and countervailing power no longer dominates the study of politics. The anticommunist hysteria of the 1950s led Truman himself to question the validity of his theory that potential interest groups would keep the political system in equilibrium, at least as applied to rights issues. But the pluralist model seems to apply accurately to present developments in these two issue areas—although it would be premature to expect any recognizable equilibrium to be reached.

The death penalty has had the support of huge popular majorities since it was reinstated in 1977. Michael Dukakis’s opposition to capital punishment helped seal his fate in 1988. The death penalty was so widely accepted that law enforcement agencies got careless. In the last few years, the discovery that several people in different states were on Death Row for crimes they did not commit has led to more critical scrutiny of death penalty cases, a moratorium in one state, and the discovery that convictions have been obtained with fraudulent evidence and gross procedural irregularities. Moratoriums and administrative investigations have become respectable issues for politicians to be associated with. Whether, and to what extent, John Kerry’s opposition to the death penalty will hurt his chances in the 2004 presidential campaign is not yet clear. Polling statistics suggest that opinion on the issue is fluid; support for the death penalty decreased from a high of 80% in 1994 to a low of 66% in 2000. It is now at 74%.

Opposition to antiterrorist measures is becoming both respectable and bipartisan. After the terrorist attacks of September 2001, few voices were raised in opposition to Patriot Act II and its kin. But after a draft of the Domestic Security Enhancement Act (Patriot Act II) became public, more than 60 local governments across the country passed resolutions opposing it. A coalition of conservative and liberal groups has united in opposition against it. Patriot Act II, prepared in the Justice Department without input from Congress, is in trouble before the lawmaking process has even begun.

This sort of movement from fringe to mainstream, from marginalization to polarization, is likely to remain the exception rather than the rule. Analysis of early and recent rights controversies suggests that rights are made vulnerable both by the inherent complexities of legal language and by the marginal status of many rights claims and claimants. These factors help explain how rights violations occur. But they do not explain how governments take advantage of ambiguity and marginality: the means, mechanics, and techniques for compromising the Constitution. This subject requires independent analysis.

How are Rights Compromised? Contemporary Examples

The strange career of Richard Nixon is a reminder that even democratic governments can get away with violating the Constitution by brute force if they do it secretly. Nixon’s eventual downfall illustrates the risks in getting caught. An easier way to facilitate overt rights violations is to work with provisions even more ambiguous than the First Amendment. Textual qualification is common in the constitutions of many modern democracies. For example, the newspaper Euskaldunon Egunkaria could be closed because Spain’s constitution not only protects freedom of expression but also stipulates that “the seizure of publications, recordings, or other means of information may only be determined by a judicial resolution.” This provision is a permission dressed to look
like a limitation. Israel’s Basic Law has even wider loopholes: “there shall be no violation of rights under this Basic Law except by a Law fitting the values of the State of Israel, designed for a proper purpose, and to an extent no greater than required or by such a Law enacted with explicit authorization therein”; and “when a state of emergency exists” as defined by law, “emergency regulations may be enacted by virtue of said section to deny or restrict rights under this Basic Law, provided the denial or restriction shall be for a proper purpose and for a period and extent no greater than required.”

In the absence of societal constraints, clauses like these not only permit but also facilitate rights violations. How might this tactic work in the U.S.? The Constitution has two qualified rights, both of which include tacit permissions to violate them. Habeas corpus may be suspended “when in cases of rebellion or invasion the public safety may require it,” and the Third Amendment forbids the quartering of soldiers “in time of peace.” When Abraham Lincoln suspended habeas corpus during the Civil War, Chief Justice Roger B. Taney ruled that the suspension power belonged to Congress alone; this ruling went unenforced. George W. Bush has effectively suspended the writ for the suspected terrorists held under the Patriot Act; the administration continues to rebuff their efforts to get legal representation, let alone a hearing.

The Third Amendment has no precedential or doctrinal baggage. But suppose the government wanted to quarter soldiers “in time of war.” American constitutional law has no consensus on what “war” means. The courts have historically been reluctant, if not loath, to confront this issue; at least one case stipulates that congressional declaration is not a necessary condition for war. Quartering soldiers in war requires “a manner to be prescribed by law.” Imagine the task confronting the lawyer for an angry householder with an unwanted guest. This lawyer must argue that an action sanctioned by a statute or court order is not prescribed by law or that a state of war did not exist. How fortunate that the government does not want to lodge its soldiers in private homes.

Most of the rights included in the U.S. Constitution are not qualified in the text. They read like absolutes, as Hugo Black was wont to point out. Limitations on them usually come from government itself. Authoritative interpretation—in the U.S., from federal and state courts—contracts (or may expand) the scope of constitutional guarantees. The First Amendment is a frequent target of this sort of judicial truncation. Consider, for example, Lyng v. Northwest Protective Cemetery. The Supreme Court was asked to decide whether the Forest Service’s intention to build a road through lands sacred to three California Indian tribes constituted a violation of the free exercise clause of the First Amendment. In cases involving enumerated rights, the Court ordinarily would apply “strict scrutiny” and inquire whether the government possessed a compelling state interest that outweighed the burden imposed on the individual’s religion. In Lyng, though, the court insisted that the free exercise clause “is written in terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government. Recognizing the Indians’ free exercise claim “could easily require de facto beneficial ownership of some rather spacious tracts of public property.” Prohibiting construction of the road would result in a loss of timber revenues. Thus, religious freedom for Native Americans is not a right to be infringed only upon compelling justification; it is a private interest to be balanced against competing public interests.

The Supreme Court has been equally creative with the Free Speech Clause. The Schenck line of cases demonstrates the rich possibilities for the truncation of First Amendment rights through interpretation. The wartime limitations established in Schenck morphed over the next fifty years from “clear and present danger of a substantive evil” (1919) to “the gravity of an evil, discounted by its improbability” (1951) to “imminent lawless action” (1969). In 1957, the Court relieved prosecutors of the burden of arguing that Lenny Bruce’s comic routines represented a clear and present danger to the nation. Roth v. U.S. put obscenity outside the scope of the First Amendment: “Implicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance.”

Current obscenity doctrine restricts expression even more than Roth did. Yet obscene material is easily available today in the United States, at least to adults. The amount of freedom of expression exceeds what constitutional text and precedents recognize. Authoritative interpretation has contracted First Amendment rights, but cultural and economic factors have expanded them. This counterexample suggests that the direction of development for constitutional rights is not always downward; exogenous factors may enhance freedom even as endogenous factors compromise it.

The guarantees of the Fourth, Fifth, Sixth, and Eighth Amendments have been read as absolutes by the courts. The longest continuing controversy focused on the extent to which the Bill of Rights applied to the states. Beginning in the 1920s and culminating in the Warren Court of the 1960s, nearly all the guarantees have been incorporated onto the states through the Fourteenth Amendment. The courts have not recognized any extreme situations that permit denying the right to counsel or the immunity from self-incrimination. Congress and the executive, singly or in combination, have accomplished this task through official exclusion: the use of the lawmaking power to identify a factual situation or a class of people which the law then excludes from the scope of the Constitution.

Official exclusion is a form of artificial marginalization; it relegates a group, a claim, or a situation to out-group status. Official exclusion allows many people to be incarcerated without due process because no “crime,” “punishment,” or “trial” is involved. The Patriot Act, the contempt power, and immigration law create this sort of extra-constitutional category. Federal and state governments have also created extra-constitutional categories of people or groups: Native Americans, children, and inmates in mental institutions. A 1975 Supreme Court decision ruled that mental patients were entitled to due process, but the courts have been at least as likely to affirm extra-constitutional categories as to invalidate them.

The structure of the United States government subjects the typical American to no fewer than six political bodies with the power to limit rights—and possibly more, since each state may distribute power among its subdivisions as it chooses. Anyone with the power to act under the Constitution has the power to violate it or to let it be violated. “Multifarious pronouncements by various departments on one question” are not an evil to be avoided by judicial abstention; they are inevitable in this constitutional polity. While these actions are subject to judicial review—unless it is the Supreme Court that has acted—the interval between deprivation and vindication may be long. The detainees in the World War II camps lost control of several years of their lives. For those detained under the Patriot Act, there is no end in sight.

Jurisdictional inhibitions are a fourth mechanism for truncating rights. Not only can government agencies limit rights, but several of them can limit access to an appeal process. In its 215-year history, the Supreme Court has developed several doctrines that limit its own jurisdiction: standing,
political questions, and the like. The potency of these limits becomes clear when we remember that, were it not for a 1968 ruling permitting taxpayers’ suits in some cases, the constitutionality of government aid to parochial schools might never have been subject to judicial review.52 The constitutionality of warrants issued by the Foreign Intelligence Surveillance Court (FISC) is not reviewable even now. FISC proceedings are ex parte actions by the government; there is no defendant to appeal them.

Conclusion
How does a constitution mean? This paper attributes much of the vulnerability of constitutional rights to the ambiguity and complexity of language. Not only do words have a variety of meanings attached to them, but the very logic of language causes difficulties. I have written elsewhere about this problem in the context of feminist theory. Descriptions of situations (e.g., “sexual assault,” “domestic violence,” “muscular dystrophy”) are easily conflated with individual characterizations bearing pejorative connotations (“victim,” “battered woman,” “cripple”). Another example is the common tendency to interpret value judgments (“doctors have more power than nurses,” or “being a stay-at-home mom is my idea of hell”) as negative characterizations of individuals in the criticized roles.53 Similarly, textual limitations (“unless the public safety requires it”) are also permissions, just as ordering Cinderella to be home by midnight allows her to stay out that long. While I know of no language that lacks similar interpretive and logical difficulties, the researcher must demonstrate, not just presume, their existence and their impact. Another lesson of the constitutional crisis of 1798-1800 is that the relationship between a constitution and extra-constitutional authorities is often a contested question. What was true of seditious libel here may also be true of, for example, religious doctrine or pre-existing statutes elsewhere.

I have argued that the marginalization of groups (e.g., indigenous peoples, immigrants), situations (e.g., contempt power, immigration), or issues (e.g., civil liberties) facilitates the compromising of constitutional rights in the United States. Would this factor exist elsewhere; and, if so, to what extent? Comparable states like Canada and Australia also have indigenous peoples and immigrants; comparative studies of the constitutional status of these groups should be instructive. But, while it is reasonable to postulate that in every country some issues and claims have more political salience than others, to presume that the distinction between marginalization and polarization exists everywhere would be to beg an important question; to look for it everywhere would predetermine the results. Often the problem may lie, not in marginalization, but in a conflict between a rights claim and another social value that is held to be equally important.

What about the mechanics of rights violation? My discussion of textual qualification depended on examples from other governments applied to the United States. Authoritative interpretation, official exclusion, and jurisdictional inhibition may well occur elsewhere. If they do, however, they need not come from the same institutions as in the U.S.; nor need they inevitably result in the negation of rights. The discontinuity between law and practice in the area of obscenity should sensitize the scholar to the possibility that official efforts to limit rights may be frustrated by countervailing forces.

This paper has described numerous ways in which governments can get away with violating rights. Are there any ways to prevent this? Two historical examples suggest one promising possibility: extra-governmental review. The U.S. Supreme Court, mindful of its anomalous position in a majoritarian system, has an unfortunate tendency to defer to the legislative and executive branches. The Court has no such reluctance to overturn state laws that invade rights. The European Court of Human Rights (ECHR) hears cases involving alleged violations of the European Convention of Human Rights by EU member nations. ECHR may impose sanctions on noncomplying countries. The court has no actual power to enforce its rulings. However, records of compliance and noncompliance are publicized on the ECHR website. The EU may expel noncomplying members or refuse to admit new members because of poor human rights records. These examples suggest that the most effective remedy for a government’s violation of its own constitution is review that is not only independent but external.

References


Ex parte Merryman. 17 F. Cas. 144 (D. Md.) (1861).
Ex parte Milligan. 71 U.S. 2 (1866).

Felderist 78.


Fleischvork v. United States. 249 U.S. 204 (1919).


Gamboa, Suzanne. 2003. FAA search for Laney’s plane to be probed. Bryan-College Station Station (TX) Eagle. 14 July.


Hanndi v. Rumsfeld. 316 F. 3d 1450 (4th Cir.), No. 02-7338 (4th Cir. en banc) (2003); 124 S. Ct. 981 (2004).


Marbury v. Madison. 5 U.S. 137 (1803).


Miller v. California. 413 U.S. 15 (1973.)


Padilla v. Rumsfeld. 352 F. 3d 695 (2nd Cir. 2003.)

Paris Adult Theater I v. Slaton. 413 U.S. 49 (1973.)


Prize Cases. 67 U.S. 635 (1863).


Scott v. Sandford. 60 U.S. 393 (1857).


Endnotes

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2. Posner 2001, 47. One scholar has made a convincing case that the lack of danger was known at the time the anti-Japanese regulations were adopted. See Irons 1983.


6. For example, Dennis v. United States 1951; Barenblatt v. United States 1959.


9. “No one shall be subjected to torture or ill-treatment; no one shall be subjected to penalties or treatment incompatible with human dignity.” (Constitution of the Republic of Turkey 2001, Part 2, Chapter 2.1.17) “No one shall be submitted to torture or to inhuman or degrading treatment.” (Constitution of Brazil 1988, Title II, Chapter II, Article 5, III)


11. See Constitution of Brazil 1988, Title II, Chapter 2, Article 5, III (torture); Article 6 (social rights).


14. English texts of most of the world’s constitutions are available at http://confinder.richmond.edu. The judicial and activist sources are European Court of Human Rights (http://www.echr.coe.int/), the Inter-American Court of Human Rights (http://www1.umn.edu/humanrts/iachr/iachr.html), Amnesty International (www.amnesty.org), and Human Rights Watch (http://www.hrw.org/).


16. United States Constitution, Art. I, Sec. 2; Sec. 9, Cl. 2 and 3; Sec. 10, Cl. 1. The habeas corpus privilege may be suspended during invasions or rebellions; interestingly, it is not repeated in 1. 10 among the restrictions on the states.


18. Federalist 78.

19. U. S. Statutes at Large, Vol. I, 596-97. The history of the Alien and Sedition Laws is discussed in Levy 1960, Miller 1951, and Smith 1967. These authors do not all agree, but they provide similar factual backgrounds. One point on which the authors do agree is that the Federalists gave as good as they got—and we might remember that one of the scurrilous Federalist rumors, the one about Jefferson and Sally Hemings, has been proven to be accurate.

20. See Bickel 1962, 98-100; Chafee 1948; Levy 1960.

21. Representative Matthew Lyon, Republican of Vermont, quoted in Smith 1967. Lyon was convicted of violating the Sedition Act and sentenced to four months in jail and a $1000 fine. He was re-elected from jail.

22. See McCalloch v. Maryland 1819.


34. Lewis 2003a.

35. Truman 1951, 1959; Galbraith 1956.


37. See note 1 above.


41. Ex parte Merryman 1861. See Corwin 1957, 144-47; Ex parte Milligan 1866.

42. The Supreme Court refused to consider whether U.S. involvement in Vietnam constituted an undeclared and therefore unconstitutional war in Mora v. McNamara 1967 and Massachusetts v. Laird 1970. The Prize Cases 1863 upheld Lincoln’s declaration of a blockade after the attack on Fort Sumter but before Congress declared war. This ruling applied only to civil war; its precedential value in the present is only to establish that war does not require a declaration by Congress.

43. Black 1968.


45. Stephen Feldman has made a much broader argument: that only Christians have received the full protection of the Free Exercise Clause. In Please Don’t Wish Me a Merry Christmas (1997), he shows that Christian appellants sometimes win and sometimes lose in the Supreme Court, but non-Christians have so far always lost there.


47. Roth v U.S. 1957, 484.


51. These four terms—textual qualification, authoritative interpretation, official exclusion, and jurisdictional inhibition—represent my first efforts to assign names to the practices I am discussing. My labels are subject to revision and replacement. Suggestions are welcome.


RECENT ARTICLES OF INTEREST

— ABSTRACTS —


From the fifteenth through the nineteenth centuries England underwent a process now referred to as the enclosure movement, “a conversion into private property of something that had formerly been common property or, perhaps, had been outside of the property system altogether.” Though criticized as harmful to many people, to social relationships, and to ways of life, enclosure is defended as having, through the expansion of productive capability, benefited countless others (though there are recent critiques questioning whether enclosure really did increase agricultural production). We are now in the midst, the author maintains, of what he calls the second enclosure movement—the increasing movement of intellectual products from the public domain to the domain of private property, “the enclosure of the intangible commons of the mind.” For example, property rights have been extended to the human genome, to cell lines, to business methods, to computer codes, and many other things—some of which are “merely” compilations of facts (the “data layer”). Whereas the old idea was that there is a public domain to be protected, with occasional exceptions in favor of property rights, the ability to claim rights in basic facts shows that priorities are being inverted and that “the commons of facts and ideas is being enclosed.” The prevailing idea at the present time is that it is better to have more property rights.

The arguments for increased property rights are based on certain features of the goods involved—that, unlike a commons that is composed of land, the intellectual commons is non-rival (one person’s use does not interfere with another’s) and non-excludable (it is not possible to prevent large numbers of people from gaining access to the good at zero marginal cost). Thus, it is held, rights need to be strengthened in order to provide incentives for innovation. In short, the claim is that the logic of enclosing land applies equally to the commons of the mind. The author is not sure that these arguments, even in their own terms, are compelling, claiming that there are economic consequences that might point in a different direction—for example, that creating more property rights increases transaction costs that may be a barrier to innovation. His primary concern, however, is with whether the incentive argument is appropriate at all with respect to innovation in certain areas. For example, in software development, Boyle contends, “the free software and open-source software movements have produced software that rivals...the capabilities of conventional proprietary, binary-only software...[It] works socially, as a continuing system, sustained only by a network consisting largely of volunteers.” There is, according to the author, a lot to be said for “the distributed, non-proprietary model” as opposed to “commodified innovation.” The author maintains that he is not opposed to a regime of intellectual property, only to its expansion, without adequate rationale, to more and more intellectual areas.


The article uses Joseph Raz’s work as the starting point for a general discussion of the role of “necessity” and “essence” in jurisprudence. Analytical legal theorists commonly assert (or assume) that they are offering “conceptual truths,” claims regarding attributes “necessarily true” of all legal systems. Is it tenable to speak about necessary truths with a humanly created institution like law? Upon closer investigation, the use of “necessary truths” in writers like Raz and Jules Coleman clearly differs from the way such terms are used in classical metaphysics, and even in contemporary discussions of natural kind terms. Nonetheless, theorists making conceptual statements regarding “law” are making significant and ambitious claims that need to be defended—for example, against naturalists like Brian Leiter, who doubt the value of conceptual analysis, and normative theorists like Stephen Perry, who argue that assertions about the nature of law require value-laden moral and political choices between tenable alternatives.


Believing that there is a need for tort reform in the United States, Republicans have proposed solutions calling for new laws at the federal level. Laws have been proposed that would cap medical malpractice awards, limit attorney fees, limit punitive damages, limit damages for pain and suffering, prohibit civil lawsuits seeking to hold food purveyors responsible for obesity and other health problems, prohibit suits against gun manufacturers, and others. Yet these same Republicans profess to believe in federalism—the principle that there is no constitutional authority, either in the Commerce Clause or the Due Process Clause, for the federal government to pass national legislation to solve such problems. (Democrats, on the other hand, who usually favor federal legislation but who oppose tort reform, argue against the Republican proposals on the ground that tort is a matter exclusively for state law.)

The authors maintain that, with a few exceptions, tort reform can be achieved at the state level. For, they point out, though some of the problems in the tort system are national in scope and impact, “every national problem does not ipso facto become a federal problem.” Thus, there are a number of state-based reforms that can be considered. Inflated punitive damage awards can be controlled by limiting punitive damages to certain sorts of cases; by altering the burden of proof required; by allowing juries to say whether or not punitive damages are called for but not allowing the jury to fix that amount; by prohibiting excessive punitive damages under the Eighth Amendment; by making some or all punitive damages payable
to the state; by dispensing with joint and several liability; and others.

There are, though, some federal responses that are acceptable within the framework of federalism. One is altering rules governing the capacity of state courts to claim jurisdiction over out-of-state businesses by requiring more substantial business activities with the state. Another would be establishing a federal choice-of-law rule to prevent plaintiffs from choosing to litigate in states with the most favorable choice-of-law rule. A federal choice-of-law rule might, for example, say that the applicable law is determined by where the product was originally sold, or by where the manufacturer is located or has the largest number of employees. Any of these would make states engage in regulatory competitiveness—which, the authors believe, would be better than either what presently exists or the sorts of federal solutions that are not constitutionally authorized.


In Bowers v. Hardwick the Supreme Court held that the fact that a majority of the Georgia legislature believes that a practice is immoral is a constitutionally adequate reason for subjecting it to criminal liability, whereas in Lawrence v. Texas the Court held that it is not. The author maintains that the Lawrence court is legally correct on this point, basing his argument on the Establishment Clause.

The problem with the Bowers approach, according to the author, is this: On the one hand, it is clear that morals legislation contrary to the First Amendment is unacceptable. Thus, even if a majority in a community think it is immoral not to attend a particular church, an ordinance requiring such attendance is invalid. But it is held by many that morality is based on religion. If this is so, then is all morals legislation invalid? If not, how are we to distinguish the legitimate from the illegitimate? In a community of people who believe it immoral to eat pork, is an ordinance forbidding its sale constitutional? How do we determine when morals legislation amounts to an establishment?

The author answers that if the legislation in question “involves morality simpliciter, i.e., the legislature simply condemns that activity because it is immoral,” then it violates the Establishment Clause, whereas if it has a purpose—that is, serves a secular function—then it is constitutional. The test is “whether a substantial number of religious skeptics would support the legislation.” For if this is satisfied, then the legislation cannot be construed as a religious majority imposing its will on a minority.

By the proposed test, the ordinance banning the sale of pork would not be legitimate. The author applies the test to the Ten Commandments, finding that the enforcement of many of them would be unconstitutional, but that certain of them “should be deemed partially enforceable”—those having to do with the Sabbath (such as Sunday closing laws), parental respect (such as children care for aging parents in certain circumstances), and adultery (in the structure of divorce laws).

The author applies his test to many of the practices that Justice Scalia says we would have to accept (bigamy, same-sex marriage, adult incest, prostitution, masturbation, adultery, fornication, bestiality, and obscenity) if we were not able to enforce morality. He argues also that the statute in Griswold v. Connecticut, though invalidated on the basis of a right of privacy, could have been invalidated on the basis of the Establishment Clause, whereas the statute in Roe v. Wade could not. Finally, the author insists that this approach does not “banish religion from the public square, or even subject religion to an inferior status in the debate on public issues.” For the thesis extends only to legislation that “forces all citizens to act in accordance with the religious dictates of some.”


“Is the First Amendment’s right to free exercise of religion conditional upon governmental interests?” Although religious liberty in England and in some colonies was conditional (that is, it was a toleration subject to certain conditions, particularly that beliefs tending to undermine civil society were punishable), and although John Locke defended such a view in his Letter Concerning Toleration, powerful religious sentiment in this country maintained that religious liberty could not be conditioned in this way. But whereas religious freedom was understood at the time (for example, by Jefferson) in ways that were compatible with government interests, difficulties arose when questions arose about religious practice—acts as opposed to beliefs.

No one doubted that free exercise meant that government was prohibited from penalizing anyone’s religious practice—certainly if that were explicit in a law but also, as Constitutional doctrine has grown, if that is its purpose and effect. But it has always been less clear that free exercise of religion implies a right of exemption from neutral laws having an adverse effect on religious practice. The difficulty is that if religious liberty is a unitary concept and is an unconditional right, it seems to require that governmental interests give way in favor of religious liberty. That is certainly how early religious dissenters saw it—but to others it seems clearly incompatible with social order, for exceptions to virtually all laws would have to be recognized. Thus, if there is a unitary concept of religious freedom and we are not prepared to recognize an unconditional right of exemption, then the right of free exercise must be a conditional right. As the author puts it, more is less—meaning that the more that is packed into the notion of religious liberty, the less opportunity there will be for exercising it.

A better approach would have been to distinguish “between the freedom from penalties on religion and the expansive freedom of exemption from general laws.” What has happened, though, is that the need to temper any right of exemption in the name of governmental interests has spilled over to freedom from penalties, so that the entirety of the right to free exercise of religion is now treated as conditional on governmental interests (compelling or otherwise). Thus, our Constitutional jurisprudence does not recognize any sort of unconditional, natural right to religious liberty. The author believes it is worrisome that religious liberty is whatever survives a balancing test: “the unqualified concept of free exercise is no longer even a part of constitutional debates...penalty cases should be analyzed differently than exemption cases...”
RECENT BOOKS OF INTEREST


FROM THE EDITOR

Carol Quinn
The University of North Carolina at Charlotte

I invite you to enjoy this special issue on gay marriage.

Contributions Invited

The editor encourages contributions to the Newsletter, especially essays that might fall through the cracks elsewhere for being untraditional in scope or content. Pieces may range from opinion pieces to book reviews to short articles. Commentary on issues important to professional life—teaching, research, and service—are especially welcome. Early contact with the editor is strongly encouraged. Please contact Carol Quinn at Department of Philosophy, 9201 University City Blvd., University of North Carolina at Charlotte, Charlotte, NC 28223.

FROM THE OUTGOING CHAIR

Mark Chekola
Minnesota State University–Moorhead

My three-year term as chair of the APA Committee on the Status of Lesbian, Gay, Bisexual and Transgender People in the Profession was finished at the end of June. Mary Bloodsworth-Lugo became chair on July 1.

During the past year, we sponsored programs at all three APA meetings. At the Eastern Division meetings in Washington, D.C., we sponsored two sessions on Queer Theory and Continental Philosophy: I: Making Queer in the Canon, and II: Queer Registers: Body, Performance, and Politics. At the Pacific Division meetings in Pasadena, we co-sponsored a session on Philosophy of the Body and Queer Issues with the Society for Lesbian and Gay Philosophy. At the Central Division meeting, in Chicago we co-sponsored a session on Philosophy of Mind and Queer Issues with the Society for Lesbian and Gay Philosophy.

Committee members present at the APA meetings in Washington and Pasadena met together. At the Eastern Division meeting, I participated in the Inclusiveness Committee’s meeting. A main topic was a statement on inclusiveness that will be proposed for adoption by the board of the APA. Plans are to have it appear on publications and at APA meetings, including on the rooms where hiring interviews are conducted.

During the year, I forwarded to an email list notifications of job openings sent to me by departments and institutions specifically welcoming LGBT applicants.

The Publications Data Project carried out by the Committee has been supplemented with the addition of data on two key journals in Continental Philosophy, Man and World/Continental Philosophy Review and Philosophy Today. With the support of the Inclusiveness Committee Chair Lucius Outlaw, Jr., the report has been sent to the Committee on Lectures, Publications and Research with a request for that committee to review it and to recommend ways in which the issue of the underrepresentation of LGBT scholarship in many of the journals reviewed can be raised within the profession. Though an earlier version of the report was included in last Spring’s Newsletter on Philosophy and Lesbian, Gay, Bisexual, Transgender Issues, I am including a copy of the final report at the end of this column because it has the addition of the Continental journals and because the online publication of the Newsletters, starting with this issue of the Newsletter, will give people easier access to the report.

There are several changes in membership of the Committee to be noted. In addition to my term ending, the terms of Joseph Sartorelli and Kayley Vernallis have ended. Jacob Hale resigned from the Committee, and Talia Betcher has been appointed to finish out the year left in Hale’s term. New members of the Committee as of July 1 include: Mary Bloodsworth-Lugo as chair, Marcos Bisticas-Cocoves, Raja Halwani, and Richard Noonan. Thank you to the former Committee members for their service on the Committee, and best wishes to the new members! In addition, I would like to thank Carol Quinn for her wonderful work as editor of the Newsletter on Philosophy and Lesbian, Gay, Bisexual, Transgender Issues.
FEATURED ESSAY

Andy Wible
Muskegon Community College

Review

*Virtuous Liaisons: Care, Love, Sex and Virtue Ethics*, Raja Halwani, Open Court: Chicago, 2003, 315 pages

Liberals in the population often tell us “live and let live” when it comes to sex. Liberal professional philosophers, such as Alan Soble and Charles Fried, argue that as long as we don’t harm others, then morally we can do what we want. But when we engage in promiscuity, open relationships, and sex work, are we living well? Raja Halwani in his book *Virtuous Liaisons: Care, Love, Sex, and Virtue Ethics* argues against many Aristotelian ethicists such as G.E.M. Anscombe and Roger Scruton, to say yes: Our lives can flourish when engaging in such activities.

But Halwani’s book is not just about loveless activities. The first two chapters of his three-chapter book are about care and love. He argues for the importance of care and romantic love in virtue ethics. Both have an important, but different role in virtue ethics. Care is a virtue and romantic love is an important external good like friendship. A better understanding of care and romantic love allows for a more robust virtue ethics and justification for why a virtuous person can be promiscuous, have an open relationship, or be a sex worker.

Halwani’s first and strongest chapter examines care. His conclusion is that care is best understood as a virtue within neo-Aristotelian virtue ethics. Halwani argues for this position by looking at the inadequacy of Nel Nodding’s ethics of care. Her ethics of care says that right and wrong is determined by the caring relationship involved. Care occurs when there is “engrossment and motivational displacement” toward an intimate. The person who cares adopts the goals of the cared for (motivational displacement) and helps the cared-for achieve these goals.

But do we have a duty to others only if we care for them? Do we have any moral obligations to strangers? Halwani does claim that, of course, we have moral duties to stangers and our caring relations with friends, siblings, spouses and the like can be overridden by the claims of strangers. It is morally wrong to trip the unknown leader of the cross-country meet so your child can win. Halwani then goes on to argue that conflicts between our duties to intimates and strangers are actually rare. Usually feeding one’s children helps the ones we care about and does not conflict with justice and the rights of others. Here I think Halwani is mistaken. It seems better to say that people rarely recognize the conflicts. Peter Singer and Peter Unger make persuasive arguments that the conflict occurs constantly. More of what we do and buy should be directed toward those more in need.

Second, do we have obligations to a person if we care for them? Do we have obligations to evil people that we care about? Halwani rightly agrees with Victoria Davion that we do not. Other moral values should trump care in many instances. We should not help the racist relative support her views, and we should not help our spouse cover up a crime that he or she committed.

Consequently, care cannot be the sole guide of our moral life. Halwani argues that care should instead be one of the virtues that virtue ethics comprises. Putting care with these other virtues helps to overcome the objections above that a care ethics is not sufficient as a moral theory. The other virtues can override care when there is good reason to do so. But why think care should be a virtue? Virtues are dispositions to act and feel emotions correctly and having these virtues allows one to flourish as a human being. Care is a virtue because we are dependent creatures and hence we need intimate relationships. Halwani believes we are damaged goods if we do not have care in our lives. The person who has the disposition to care acts rightly toward others (by feeding them, helping them feel better, etc.) unless there are overriding conflicts with other virtues. Halwani seems right that care is important, but it must not stand alone. It should be integrated into another moral theory, and virtue ethics is one theory that is able to accommodate it. Of course, there still may be questions about whether virtue ethics is an adequate moral theory itself. But Halwani’s main point is that it can and should accommodate care.

Halwani next turns to the related or sub-topic of romantic love. Romantic love is affection and care for the beloved that characteristically involves a sexual component. Care is then a part of romantic love, because love involves caring for the one loved. So, is romantic love a virtue like care? Halwani concludes that romantic love is a longstanding emotion that is enabled by the virtues, and so not a virtue itself.

Halwani defends this position in two ways. He first does so by showing that romantic love is an emotion, and emotions are not virtues. Virtues are dispositions to act or feel emotion, but emotions are the actual feelings. Romantic love is an emotion we have toward another. Yet, we often seem not to have emotions, but still claim that we are in love. Halwani says romantic love is hence best understood as a “longstanding emotion” that need not always exhibit itself (117). Longstanding emotions are therefore dispositional. Not all dispositions are virtues, but romantic love being a disposition certainly counts in its favor for being a virtue.

Romantic love is also defended as an emotion and not a virtue because, like care, it is not always beneficial. People in love often commit immoral acts for their beloved that they would normally never do. People will steal, lie, and even kill for the ones they love. The response could be to put romantic love with the other virtues, as was done earlier with care. Romantic love just needs to be balanced against the other virtues such as practical wisdom. Yet Halwani believes the two are different and says, “Even if we are discussing romantic love as being directed by practical wisdom, its effects on the agent’s rationality and sociality are amiable. They could lead human beings to desire isolation from society so as to create a world for themselves and their beloveds” (120). Halwani is right that isolation could be a bad thing if it keeps them from other important relationships, but it seems that it is practical wisdom’s job to keep this from occurring.

Halwani’s solution is to say rather that romantic love is moral when it is enabled by the virtues. He says, “When romantic love issues from a virtuous character, it is enabled because it is given a truly moral form (147).” Romantic love is an external good like friendship. It is important for flourishing, but it is not a virtue. A virtuous person is made better by using this external good in the right way.

Second, he gives examples of people who are virtuous but do not have romantic love. People are not morally defective without romantic love. A person can be single her whole life, and yet live a caring and moral live. She can get love and care...
through friendships. Halwani says, “what is important about romantic love is shared friendship” (168). He believes our problem is that modern culture does not support these intimate friendships and people are forced into romantic love. A culture that supports intimate friendships would not require everyone to engage in romantic love. The companionship and intimacy would still be present even if the sex is not. Halwani seems correct here, that you can have a flourishing life without romantic love, but I believe there may be circumstances where romantic love is rationed required. It seems if you are single and do meet another adult single person to whom you are attracted, whom you care about deeply, and who reciprocates your feelings, then it would be wrong to not have romantic love for her. You would be irrational and maybe immoral to just have a friendship or nothing at all. It seems other virtues are like this. You could live virtuously without being generous if you never came in contact with another, but once you do have certain types of contact, then that virtue should be upheld. Once again, the way we should think about romantic love is similar to the way we should think about virtues, if not the same.

Halwani’s last chapter provides practical application of the previous theoretical work. Although he is elusive on this point, it helps him to show that romantic love is not a virtue to justify that a person can have sex without love and still be a virtuous person. Promiscuity, open marriages, and sex work are each defended from the virtue-ethics perspective. He begins by examining the virtue of temperance, which is what moderates our desires for food, drinks, and sex. Halwani makes a nice distinction between two concepts of temperance. Temperance (T1) is moderation that is good for the agent. An agent who does not eat too much or too little is being temperate. The second concept of temperance keeps the agent from doing wrongful acts to others (T2). Here an agent who does not eat someone else’s food or does not have sex with a friend’s spouse is temperate.

Halwani believes that the promiscuous person can be temperate in both senses. In regards to T2, it is hard to see how being promiscuous is wrong, for it does not harm others. It is wrong to be promiscuous with the wrong person, such as having sex with a friend’s spouse. But since Halwani assumes the person is otherwise virtuous, this would not be a problem. A virtuous person would see that other values override the desire for sex. A promiscuous person can also be virtuous according to T1. Kristjan Kristjansson argues that promiscuity causes bad habits and will not allow a person to have romantic love. Halwani criticizes this position by showing that Kristjansson relies on biased data from his classes, and even that data does not show that promiscuity causes a person to have a loveless life. For example, there could be a common cause of the promiscuity and a lack of a romantic love, such as deep depression. Kristjansson and others also seem to put too much emphasis on monogamy, according to Halwani. So he uses an example of a man who is promiscuous but virtuous: Firas, in his example, does not let sex control his life, but enjoys sex, and hence engages once a week or so in one-night stands. Firas does have close friendships that supply him with intimacy. He also does not seem to be so damaged that he could not later have a monogamous relationship. Halwani says, “And whatever happened to the old nugget of wisdom that one should experiment sexually before one sexually commits to another” (216)?

Open relationships are argued for in essentially the same way as promiscuity with T1 and T2. One important difference is that another person is involved, and there needs to be agreement about such relationships. If there is agreement of all parties about what is at hand, the open relationship is not interfering with the romantic love of the couple, and if it is done for the right reasons (spicy sex and not for reasons like revenge), then it is morally permissible as part of a rational and virtuous life plan. Halwani does offer one exception—that extra-marital relationships which involve vulnerability and intimacy should not take place—because they are more likely to threaten the romantic love of the spouses. The odd, but I must admit justified, conclusion is that adultery is morally permissible if it is agreed to and the spouse or spouses don’t care about the person they are having sex with.

Sex work (from phone-sex work to prostitution) can get in the way of human flourishing, but like promiscuity and open relationships Halwani believes the problems are due to outside attitudes rather than anything inherent to sex work. Also, arguments that contend sex work is the equivalent of slavery are unfounded. Sex work is not different from other occupations. Like the plumber, the sex worker is using her body to provide services for clients. Halwani supports this position with evidence from actual sex workers who claim they do it mainly for the money. They chose this job over other alternatives. The second type of temperance is respected because sex work, like promiscuity and open relationships, need not involve any morally wrong objectification and so does not violate the virtues of justice and respect. The sex worker and the promiscuous client are in a business relationship. Most of the time the the sex worker wants money and the client wants services only a full-fledged human being can provide. Halwani is correct that sex work need not objectify women or workers any more than other jobs.

But there might be another objection for sex work still going against T2 which Halwani does not consider. The objection goes something like the following. Clients are usually doing something morally wrong when they visit sex workers. Clients are often lying and cheating to spouses about their activities. Hence, sex workers are morally wrong to aid such activity. Halwani says that it is wrong to have sex with a friend’s spouse when being promiscuous, so shouldn’t it also be wrong for a sex worker to have sex with someone’s spouse? An analogy could be made to a pawnbroker who knowingly takes stolen goods or takes goods without inquiring as to whether the goods are stolen. Since pawnbrokers are often confronted with stolen goods, pawnbrokers have a moral obligation to ask such questions. Whether and how such questions could be asked in sex work is an interesting question. “Would you please sign this waiver stating that you are not violating a monogamous commitment?”

The main criticism to his overall approach is that he could have done more to integrate the three chapters. His book is presented more as three different chapters that are tangentially connected. However, the chapters do depend on one another. Care needs to be justified as a virtue for it to enable romantic love as an important moral concept and then it is important for Halwani to show that romantic love is not a virtue to defend his claim that sex without love can be a virtuous. There is a schema there. Halwani just should have been more explicit and reminded the reader of the synthesis throughout the book’s chapters. Without it, one wonders why he presents all this work on love and care, when he concludes by talking about activities where these are absent.

Nevertheless, Halwani’s work is well-researched and well-argued. His analytic approach painstakingly considers position with evidence from actual sex workers who claim they do it mainly for the money. They chose this job over other alternatives. The second type of temperance is respected because sex work, like promiscuity and open relationships, need not involve any morally wrong objectification and so does not violate the virtues of justice and respect. The sex worker and the promiscuous client are in a business relationship. Most of the time the sex worker wants money and the client wants services only a full-fledged human being can provide. Halwani is correct that sex work need not objectify women or workers any more than other jobs.

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incorporated by virtue ethics and that romantic love is crucial to a flourishing life. Then like a spy working from the inside, Halwani supports many controversial sexual lifestyles from a position that usually criticizes them. Hopefully, he will create more acceptance of different sexual lifestyles within that community and supply more justification than the liberal “live and let live” position.

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**ARTICLES**

**Equality, Civil Unions, Gay Marriage: Some Thoughts on Heterosexual Supremacy**

**Richard D. Mohr**

This article is extracted from The Long Arc of Justice: Lesbian and Gay Marriage, Equality, and Rights forthcoming from Columbia University Press, 2005.

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Are gay couples treated equitably by civil-union arrangements that give to same-sex couples rights, privileges, and benefits that are identical to those that legal marriage gives to different-sex couples. No.

A law is inequitable if it degrades, insults, or humiliates some group. A law does not violate equality simply by virtue of its distributing some benefit or opportunity differently between two groups. As important, and what is key here: nor will a law necessarily be an equitable treatment of two groups in virtue of its distributing the same benefits and opportunities to each of the groups.

A differential distribution violates equality only if the distribution draws on or enhances society’s perception that the members of one group are worthy of less moral regard than members of another. So, for example, an affirmative action program which gives some benefits and opportunities to blacks which it does not give to whites would be inequitable only if the differential distribution would be socially read as deriving from or reinforcing social structures that hold white people in lesser moral regard than blacks—an impossibility in current American culture.

On the other hand, an identical distribution will be inequitable if it socially serves as a means of insulting, humiliating, or degrading one of the groups. Such is the case in most separate-but-equal schemes.

To determine whether a distribution insults or degrades a group, one has to look at the social context of the distribution. In some societies, a flicked middle-finger might be a serious insult, in others, it might be a meaningless gesture, in still others, it might be a sign of greeting. More specifically, whether the flicked finger is an insult depends on how the culture reads the symbolism of the gesture. It does not turn on whether the target of the gesture reads it as an insult. Indeed the target need not even know that he has been insulted—he can be insulted nonetheless. Thus we say that a person can be insulted behind her back, or even beyond the grave.

The U.S. Supreme Court got this all backwards in the 1896 case *Plessy v. Ferguson* with which “separate but equal” was established as the law of land for over half a century. The Court was wrong, almost certainly disingenuous, when it claimed that if blacks were insulted by being forced to sit in racially segregated railway coaches, the insult was the result of their sensitivities, not of the Louisiana law’s mandating the segregation. The Louisiana legislature knew how the segregation would be socially read and the law was passed for that very reason. This segregation, like anti-miscegenation laws, gave blacks and whites the same opportunities—blacks could not marry whites or sit in their coaches, whites could not marry blacks or sit in their coaches—but such identical treatments were inequitable because, socially viewed, the identical distributions were still means of society viewing blacks in lower social regard than whites. So the Supreme Court correctly ruled in 1967, when it finally declared anti-miscegenation laws unconstitutional violations of equality.

Now consider states like Vermont which have established licensing schemes which give homosexual couples exactly the same benefits and opportunities as they give heterosexual couples—except for the name “marriage” on the licenses issued to secure the rights and benefits. The licenses for gay and lesbian couples instead have “civil union” written on them. Is this licensing scheme an equitable treatment of gay men and lesbians?

It would not be an equitable treatment of lesbians and gay men, even if it were to give more privileges and benefits to them than to heterosexuals, just as it would still be inequitable to require blacks to sit at the back of a bus even if the bus had a “rear exit only” requirement that gave blacks the opportunity to exit the bus out the back door first. The reason is that the culture reads the ritual of placing blacks at the back of the bus as degrading to blacks.

So too, reserving the sacred sign “marriage” for heterosexuals when homosexuals are offered separate-but-equal civil unions, serves—and only serves—to degrade gay men and lesbians by denying them one of the chief social forms by access to which America marks out membership in full humanity. It is not just a word that is at stake, it is a highly symbolic civic ritual that civil-union schemes deny gay men and lesbians. And the more politicians of all stripes call the *institution* of marriage itself sacred, rather than the love within a marriage or the couple’s sacred valuing of their relationship, the more inequitable the separate-but-equal scheme becomes.

In December 2003, the Massachusetts legislature asked the Massachusetts highest court if a civil-union arrangement that gave lesbian and gay couples all the rights and benefits of marriage, only just not the name “marriage,” would meet the standard for equal treatment laid out in the court’s November 2003 decision giving gay and lesbian couples the right to marry. The Court by a four-to-three vote answered, “No.” To the bewilderment of the dissenting judges, the Court clarified that, as far as equality was concerned, the civil-union scheme was a more inequitable treatment of gay and lesbian couples than the state’s past refusals to grant them marriage licenses, despite all the goods that come along with civil-union status, goods which lesbian and gay couples did not have under the state’s marriage laws. The reason: The state’s past refusal to give marriage licenses to gay and lesbian couples was based on a statute that, when it was drawn into Massachusetts law from the English common law in 1810, was not established with lesbians and gay men in mind. The Massachusetts marriage law did not intentionally draw distinctions on the basis of sexual orientation. By contrast, the civil-union scheme was intentionally drawn to distinguish heterosexuals from gays, and since all the rights and obligations of unions and marriages would be the same under the scheme, the distinction was wholly drawn to differentiate gays from heterosexuals. The differentiation itself is one thick with social significance: “The [civil unions] bill would have the effect of maintaining and fostering a stigma of exclusion that the Constitution prohibits.
It would deny to same sex “spouses” only a status that is specially recognized in society and has significant social and other advantages. The Massachusetts Constitution does not permit such invidious discrimination, no matter how well intended.”

All this is true, but one could press even farther. The law claims—and so does any society that accepts the law’s claim—that marriage is the only legally acknowledged relation between the sexes. Through marriage, the law creates the legal relation between the sexes; the law, in short, creates heterosexuality legally speaking. Without legal marriage, males and females would be as related to each other at law as mangos and tangos. Marriage more generally—religious, social, as well as, legal marriage—needs to be understood as an institution that creates a social status, in particular heterosexual status—and then ratifies that status. Marriage—the legal and social ritual—doesn’t lay value on something that already exists. It draws into being a social form, even as it ratifies that very form. Marriage, in short, is an initiation ritual.

A typical initiation ritual takes a male and turns him into a Man. Biology and non-ritualistic behavior could not do that. So too biology and non-ritualistic behavior could not turn a person into a Heterosexual. Indeed Don Juan, Casanova, and Lothario, those frisky male seducers of endlessly numerous ladies, are now taken as cultural symbols for homosexual denial rather then heterosexual affirmation. Not biology, not behavior, rather marital status is the essence of heterosexuality. And the required ritual of marriage, getting wed—the legally, socially, religiously required ceremony of solemnization—is the initiation rite that both confers that status and endues it with value.

So the social and political stakes in marriage turn out to be much higher than even the Massachusetts court realized. It is not just any old non-material benefit that gay men and lesbians are being denied by civil-union schemes, important as such a non-material benefit might be, say, access in a theater to the even numbered seats which are thought to be particularly dear to the gods, even though the view of the stage is just a little good from the odd-numbered seats. Rather in civil-union schemes, all of the sanctity and holiness associated with heterosexual status per se as created and ratified by the ritualistic solemnizing of marriages would be denied to gays and lesbians by law; and even more than that, as intentionally and wholly designed to symbolically differentiate heterosexuals from gays around the very institution which, in the eyes of the law and society, heterosexuality is established. The separate-but-equal civil-union scheme flags to society that to let lesbians and gays marry would be not just to besmirch the sanctity of heterosexuality, but more so to destroy Heterosexuality itself. Analogously, if a colonial ruler—in the guise of a Platonic Guardian or activist judge—imposed a new order of equality mandating that henceforth both males and females must go through the initiation rituals of Manhood, then for those upon whom the new order is imposed, the new order would destroy Manhood, would destroy what it is to be a Man.

Civil-union schemes then are instruments in the institutionalization of Heterosexual Supremacy just as, in the racist’s mind, letting a black man marry a white woman would not just besmirch Whiteness, but would also destroy the very ritual, pure-blood marriage, by which Caucasians are initiated into Whiteness, are made White, and so further would destroy Whiteness itself, what it means to be White. The parallels here between the justice of gays and blacks is more uncanny than even most lesbian and gay activists realize. In 1967, when the Supreme Court ruled anti-miscegenation laws unconstitutional violations of equality, it did so on the ground that such laws were “measures designed to maintain White Supremacy.” A future court should declare civil-union schemes violations of equality on the ground that they are measures designed to maintain Heterosexual Supremacy.

It goes almost without saying that the enormous political resistance to lesbian and gay marriage lies in the masses’ conception of themselves as heterosexual. If gays could get married, heterosexuals would no longer be Heterosexuals. They would just be people. Horrors.

Endnotes

Gay Marriage and Bisexuality

Kayley Vernallis

As a bisexual woman married to a man, I congratulate those of my gay and lesbian brethren who can now enjoy the legal and social benefits of marriage. A commitment to tolerance, an appreciation of diversity, and recognition of individual rights, are democratic ideals. Let us hope that Canada and Massachusetts continue to lead the way, and that our heterosexist opponents will not triumph.

On a political and theoretical level, however, I am ambivalent about the discourse surrounding gay marriage. I am thrilled, of course, that at least some of my gay and lesbian friends can marry. I do feel less guilty about the fact that I have been able to acquire social legitimacy, immigrate legally, and save thousands of dollars in medical insurance simply because the person I last fell in love with was someone of the opposite gender. Yet during recent public debate about gay marriage, I have experienced a greater sense of invisibility with regard to my bisexual identity. I feel as if I should keep quiet. No one, it seems, wants to think hard about what bisexuality is and how the legal concept of marriage might need to be changed so that it does not discriminate on the basis of bisexual orientation. Is the legalization of same-gender marriage sufficient to protect bisexuals (in regard to marriage) against discrimination on the basis of sexual orientation? Do bisexuals have a right to form marriage unions of three individuals (what I will call bi-marriages)? Do the reasons for extending marriage to homosexuals also apply to bisexuals? Do the moral and legal grounds for extending marriage to gays and then to bisexuals depend upon the presumption of a right to the forms of sexual-flourishing that are distinctive to each kind of sexual orientation? Is bi-marriage a mere extension of marriage, or is it a radical reconceptualization? I cannot answer these questions in this short essay; for they require, among other things, a conceptually sound understanding of bisexuality, sexual flourishing, and of the love-affection-based ideals of marriage currently operating in contemporary culture. I will, however, accomplish two more restricted goals. I will address questions in this short essay; for they require, among other things, a conceptually sound understanding of bisexuality, sexual flourishing, and of the love-affection-based ideals of marriage currently operating in contemporary culture. I will, however, accomplish two more restricted goals. I will address
contemporary marriage, especially those that are relevant to the extension of marriage to homosexuals, and hence to bisexuals as well.

Silence on the topic of bisexuality and marriage can be explained by an array of motives. Some people think that current debates about marriage are irrelevant to bisexuality because bisexuality is not a real sexual orientation. Many heterosexuals and homosexuals believe bisexuals are merely confused individuals or cowards. Bisexuals do not have a right to bi-marriage because bisexuals don't exist. Others believe that there are bisexual individuals, but that it is dangerous to raise the question of bisexual marriage rights because it will encourage conservatives to rally the public around slippery slope arguments: if gay marriage is legalized, then there will be no way to legally forbid bisexuals from forming legal threesomes, or to forbid the forms of polygamy practiced by renegade Mormons; indeed, pet-human marriages will follow; and pretty soon, it will be the end of civilization. The gay and lesbian community is thus complicit in sustaining silence about bisexual marriage rights. Many feminists do not welcome the idea that bisexuals have a right to form bi-marriages, because they fear that there will be no longer be legal grounds to exclude sexist polygamous practices.

Obviously, certain groups have vested political interests in dismissing bisexual marriage and silencing discussion about it. However, I suspect the majority of people who support gay marriage readily dismiss bi-marriage because they think it is psychologically unworkable. For instance, they will note that jealousy and rivalry expand exponentially in threesomes or foursomes, making bi-marriages extremely unstable. In addition, while we are all familiar with cases in which x is in love with both y and z and that y and z are each be in love with x, the chances that y and z would also be in love with each other (even if they are both bisexual) is extraordinarily small. Romantic love seems just too fickle and unpredictable. (Just imagine two of your past lovers getting along, let alone being in love with one another while they are in love with you.) Indeed, one might point out that the near non-existence of marriage-like unions between three people in our culture shows that such unions are such anomalies as to be a kind of reduction of the idea. Let bisexuals demonstrate a solid historical practice of bisexual-based marriage-like unions; then society will consider extending heterosexual and homosexual marriage to include bi-marriage. In response, an advocate of bi-marriage may point out that very powerful social forces work against marriage-like bisexual threesomes, and she will argue that the legalization of bi-marriage will foster informal social support for such unions. But the opponent of bi-marriage will retort that gays and lesbians have been able to form a significant number of marriage-like unions in spite of heterosexism. The failure of bisexuals to form stable marriage-like threesomes must be a function either of the inherent instability of threesomes or of a general lack of character on the part of bisexuals. Some bisexuals' claim to need two concurrent lovers (one of each gender) to "be who they are" is really a selfish refusal to make the kind of the sacrifice in sexual fulfillment that heterosexuals and homosexuals undertake when they forego variety and novelty in sexual encounters in favor of fidelity in monogamous relationships and marriage. Mature bisexuals, it will be claimed, can happily accommodate themselves to homosexual or heterosexual twosome marriages.

A variety of motives conspire to suppress public debate about bisexual marriage. But even some of the knee jerk dismissals of the idea of bisexual marriage exhibit reasoning that goes beyond the simple thought that bisexual marriage would involve a threesome but marriage should only involve a twosome. The attachment to twosomes (at least once we accepted that marriage does not have to be between a man and a woman and that gay and lesbians can form marriages) is explained by the fact that we are confident that a twosome configuration can embody the principles or ideals that we associate with contemporary marriage. The hasty dismissal of bi-marriage rests, at least in part, on the view (perhaps arrived at in a prejudiced manner) that bi-marriage cannot embody such ideals. Whether individuals in bi-marriages can actually live out those ideals or whether respect for bisexual rights might even require us to abandon some of those ideals are questions that must be left for another day. But we can make a useful beginning by showing that bi-marriage can be logically compatible with those ideals. Let's start by setting out some of the ideals or principles we hold in regard to contemporary marriage, particularly those that seem at work in the extension of marriage to gays and lesbians:

1. Marriage unions are the product of adult partners' rational choice, reflecting their individual desires. Marriage decisions should not be in the hands of parents or community.
2. Marriage should be based upon love, affection, and respect between spouses. Feelings of love, affection and respect should be transitive. It isn't morally right for one partner to marry for love while the other partner marries for money.
3. Marriage should involve a serious commitment to long-term shared duties, including significant financial, medical, social and legal responsibilities.
4. Marriage depends upon and supports forms of individual sexual expression and forms of sexual intimacy that support love, affection, and respect between spouses. Sexual expression should also support the long-term stability of the marriage. Sexual exclusivity/fidelity generally best achieves these goals.
5. Marriage does not require procreation, but marriage should provide the kind of emotional and financial stability that promotes positive social and emotional development in children.

I will not defend this list in any detail, but I would like to note in passing a couple of salient points. The fact that the extension of marriage has been proposed for gays and lesbians, and not, say, widowed or divorced parents and their children, or even to individuals who are merely friends, demonstrates that we think of sexual expression and sexual relationships as central to marriage. The extension of marriage to gays is based upon the fact that gay partnerships can manifest the features identified in 1-5 and the belief that it is unjust to deny the right to marry to gays and lesbians simply because their sexual object choice differs from heterosexuals. What is wrong with polygamy, even though it is a stable social form that also supports the raising of children in many places in the world, is that its extant forms tend to support male superiority, reduce women's autonomy, involve sexual relations between adult males and female children (who are not old enough to consent), and so violate the principles of individual choice and transitivity. But there may be legitimate forms of polygamy, perhaps bisexual marriages, which do not violate the principles above. It would be unfair, surely, to outlaw all marriages between more than two individuals simply to eliminate sexist polygamy practices: otherwise we ought to have already abandoned marriage altogether given its history of oppressing women even in monogamous male/female marriages.

Let's now turn to different models of bisexuality to see what forms of marriage they generate and whether they are
consistent with 1-5 above. Let me set out four simplified models.  

*Bisexuals don’t exist. Everyone is either heterosexual or homosexual. Bisexual individuals are usually homosexual individuals who do not have the courage to say so. (non-existence model)

*Bisexuals are individuals who fairly consistently engage in sexual acts with members of both genders. The acts need not involve simultaneous sexual acts with members of both genders but some rough standard of concurrent sexual activity with both genders is required. I have no firm intuitions here, but perhaps one must have had sex with one member of each gender every few years. (behavior-based model)

*Bisexuals are individuals who are sexually attracted to members of both genders on the basis of their gender, and would be disposed to act on their desires in some circumstances, without necessarily acting on either of them. Here an individual might be attracted to an individual partly in virtue of an individual’s having a penis and expectation about the style and tempo of love-making afforded by the presence of a penis and typical gender socialization. (desire/disposition-based model)

*Bisexuals are individuals who are sexually attracted to members of both genders independently of gender, and would be disposed to act on their desires, without necessarily acting on her sexual desires. One is sexually attracted to the individual’s personality or some other non-gendered attribute such as eye-color or physical grace. Whether one’s partner has a penis or a vagina is irrelevant. Indeed, whether one’s partner is affiliated with male, female, trans., or intersex gender is irrelevant. (gender-non-specific model.)

These different models of bisexuality sanction different forms of marriage. If bisexuality does not exist, and there are only heterosexual and homosexual individuals, there is no such thing as bisexual marriage and the extension of marriage to homosexuals will provide all the protection of a person’s rights with regard to sexual orientation. If bisexuality is gender-non-specific then there is no need to recognize some form of marriage as a distinctively bisexual marriage. The extension of marriage to gays provides bisexuals all the protection of a person’s rights that are required with regard to sexual orientation. Laws that permit two individuals to marry without regard to gender will protect a bisexual no matter what the gender of the other marriage partner.

The more interesting cases arise from the behavior and disposition models. If bisexuality is defined in terms of bisexual behavior, then it seems that bisexuals must either cease being bisexuals if they wish to marry and at the same time live up to the ideal of sexual fidelity associated with contemporary marriage or preserve their sexual orientation and reform marriage in such a way that their dual object choice is made compatible with ideals of sexual expression, sexual intimacy, and sexual fidelity. Now, the first option seems problematic. For why should you have to give up your sexual orientation to marry or to be in a sexually exclusive relationship? What if you want to make a life-long commitment that involves some form of sexual exclusivity and receives social and legal benefits? As one person was quoted as saying, “How could someone who wants to be in a long-term committed relationship still call themselves bisexual...without some infidelity coming into the picture?” It seems that bisexuals’ sexual orientation makes them constitutionally unable to fulfill marriage vows. Many bisexuals will feel like failures when confronted with this reality. Many heterosexuals and homosexuals will feel confirmed in their negative judgments about bisexuals as necessarily “bedhoppers.” Given these psychological and political ill effects, bi-marriage is seriously worth pursuing.

A bi-marriage is the legal formation of a threesome marriage. Bi-marriage is the legal joining of three individuals, at least one of who is the opposite gender of the other two. We can assume that the three individuals freely chose to marry, love, and respect one another (x loves y and z, y loves x and z, z loves x and y), are sexually exclusive (they do not engage in sexual activities with anyone not within the marriage partnership), have made a long-term commitment to one another, and can provide a stable home for children. There are several difficulties with this model of bi-marriage, however.

Let’s start with the problems that arise for the behavioral model of bisexuality. First, it is not possible to maintain both the requirement that all members be bisexual and that all members maintain sexual exclusivity within the marriage. Whichever individual is the sole representative of his/her gender in the threesome (the gender-minority individual) cannot maintain bisexual sex and sexual exclusivity. For if x is a woman, and both x and y are men [F(x), M(y), M(z)], then x cannot remain a bisexual after she marries unless she violates the requirement of sexual exclusivity. It seems unfair to require x (a bisexual) to change her sexual orientation to participate in a bisexual marriage. We can solve the problem by permitting x’s pre-marriage orientation to be heterosexual, but it seems odd, I admit, for bi-marriage to logically require at least one of its members to be heterosexual! It seems to go against the spirit of bi-sexual marriage, which was to extend to one group (bisexuals) the entitlements available to heterosexuals and homosexuals. Now, it seems that a heterosexual gets an additional entitlement (she can legitimately have two sexual partners within marriage) that she would not receive under traditional two-person monogamous marriages. If this is not sufficiently odd, consider the problems that arise if we tweak the scenario above F(x), M(y), M(z) permit both x and z to be heterosexual. Here x and y are in transitive relationships with the other members, but z is not. For now z is sexually intimate and in love with x but not y. Exactly the same problem arises if we permit z to be gay. Z is sexually intimate and in love with y but not x. Although sexual exclusivity can be maintained on these scenarios (no one has sex with anyone outside the marriage), we have given up transitivity (the idea that each member loves every other member, and in each case, that love is based upon sexual intimacy). On the behavioral model, the only way to guarantee that the bisexuality of each member, sexual exclusivity, and transitivity can be maintained is if we expand the marriage to four persons (two of each gender). The advantage of this proposal is that no member will need to make a sacrifice in the full expression of her sexual identity and hence all members will be theoretically equal to one another in their choices (so there is more reason to regard all members as chosen autonomously). On the other hand, this four-person model dictates that each member will have two opposite-gender partners but only one same-gender partner. Although this ratio may not reflect some bisexuals’ preferences, the foursome model has the virtue that it does not deny any individual’s sexual/expressive capacities and it increases the opportunity for variety in sexual partners. Assumptions about the potential instability of the model will not be examined here.

How do the problems discussed above in regard to the behavior-based model apply to the desire/disposition-based model of bisexuality? The results are not quite the same. We
found above that it was not possible for all three members of the marriage to be bisexual and to maintain sexual exclusivity. Under the desire/disposition model, it is possible for all three members of the marriage to remain bisexual and maintain sexual exclusivity. However, the person in the gender-minority role (say, the only woman in a marriage with two men) must be willing to forego sexually-based love relations with women to remain in the marriage. There is no logical inconsistency in her remaining in the marriage (since the desire/disposition model does not require you to act on your sexual desires toward both genders to be a bisexual), but one might argue that the choice to forego satisfaction of same-gender desires involves a loss of sexual-flourishing. It involves a kind of sacrifice that heterosexual and homosexual individuals do not undergo when they choose to be sexually exclusive. I cannot develop this argument here but I think it is very significant, and I think part of our sense that the moral and legal grounds for extending marriage to gays and then to bisexuals depends upon this idea of a right to the forms of sexual-flourishing that are distinctive to each kind of sexual orientation. It might be urged by opponents of bi-marriage that since proponents of bi-marriage find it morally acceptable that the gender-minority individual in a married threesome be required to forego sexual intimacy with others of the same gender, there is no need to make special accommodations for “bisexual marriage” at all. For if closing off one class of sexual objects is morally acceptable in the case of a bisexual who is in a gender-minority position in a bi-marriage, it should be morally acceptable for bisexuals in traditional heterosexual or homosexual two-person marriages. However, while it is true that not every member of a bi-marriage can be bisexual and fully flourish sexually under bi-marriage, if a particular gender-minority member is not willing to forego that form of sexual flourishing, she would be at least legally entitled to form a bi-marriage in which she and another woman form the gender-majority, thus guaranteeing that she can be concurrently be sexually active with both genders and achieve sexual fidelity within the marriage. And it is possible that no bisexuals would have to forego full sexual flourishing within marriage if the gender-minority individual is heterosexual (of course that option seemed a little unsatisfying). But without the option of bi-marriage, no bisexuals can preserve sexual exclusivity within marriage and be sexually intimate with members of both genders. As to the problems with transitivity, they are the same as they are on the behavioral model. There can be no more than two heterosexuals, or no more than one heterosexual and one homosexual in the marriage without violating transitivity. Marriages of foursomes will, at least in principle, make it possible that all members of the marriage can be bisexual, sexually flourish through sexual intimacy with members of both genders, be sexually exclusive, and have their sexual/love bonds remain transitive.

Although no real insight is involved in setting out these various options as I have done in this paper, it may be surprising for some readers to see how complicated it can become to enable bi-marriages (and foursome marriages) to jointly satisfy some of guiding presuppositions/principles of heterosexual and homosexual marriage even if we have already extended the notion of sexual exclusivity within marriage from the traditional twosome to include three and four-somes. There are solutions, of course, such as abandoning the principles of sexual exclusivity and transitivity within marriage. Richard Mohr, for instance, believes one of the contributions that gay married couples can make to the institution of marriage is the modeling of deep commitment to one’s spouse while engaging in satisfying extra-marital sexual relations.7 The presumed instability that occurs when the principles of fidelity and transitivity are applied to three and four-somes can be met by making divorce illegal. Perhaps the very ideal of romantic love is inconsistent with stability. That was certainly Mary Wollstonecraft’s verdict in 1792 when she declared: “Love, by its very nature, must be transitory.”8 In contrast, she urged that “the security of marriage” requires that love be replaced by “the calm tenderness of friendship.” Reflecting on the possibilities of bisexual marriage should, at the very least, make us confront the ideals of marriage that inform our current practice.

There is no doubt that the recent extension of marriage to gays has significantly reduced some of the injustice experienced by bisexuals, since such individuals can now marry same-gender partners. But has the recent extension of marriage rights to homosexual couples remedied discrimination on the basis of bisexual orientation? Where is the serious public debate?

Endnotes

1. Of course, this line of reasoning will not satisfy proponents of bi-marriage. A group does not have to model a practice before it is given the right to participate in it. The extension of marriage to cross-race couples presumably did not depend upon the existence of a stable practice of marriage-like unions between blacks and whites. It involved intuitions about treating people equally. In some cases our intuitions about equal treatment require us to make special accommodations for some groups. Equal treatment for physically challenged individuals does not stop at eradicating laws that make it illegal for a disabled person to enter. We now know that equal treatment and non-discrimination involve such things as requiring businesses and government to build wheelchair ramps etc. So ending discrimination against bisexuals in regard to marriage need not require the demonstration of a past practice, and it may require special accommodations, such as making it legal for three or four people to marry.

2. This is a quite interesting question, in part because it invites a sort of Foucaultian response. Foucault insists that we see oppression not as a force from above that interferes with something’s natural state or development. Rather, social forces, including oppression, are also productive and historically conditioned. Sexual orientation, for Foucault is socially constructed. Indeed, homosexuality as an identity did not appear until the 1800s. How might a Foucaultian explain the fact that repressive forces have produced gay and lesbian marriage-like unions but not bisexual bi-marriage-like unions?

3. I think that this is a mistake. I think that bisexuals who commit to monogamous relationships do make a greater sacrifice than homosexuals and heterosexuals do when they commit to monogamous relationships. See my “Bisexual Monogamy: Twice the Temptation but Half the Fun?” “Bisexual Monogamy: Twice the Temptation but Half the Fun?” The Journal of Social Philosophy (vol.XXX, no.3, Winter 1999).

4. I realize that these models are quite problematic. For instance, no mention is made of the way in which societies socialize individuals into sexual orientations. Except for gender-non-specific bisexuality, the framework presented presupposes that gender is somehow prior to and more basic (natural) than sexual orientation. But this view has been seriously challenged by writers such as Monique Wittig, who defines woman as someone in a heterosexual relationship with a man. These models fail to take account of how individuals’ self-identifications and the attributions of others shape and define one’s gender affiliation as well as only sexual orientation. All of these complexities, and proper corrections, need to be taken up at some point—but unfortunately not in this brief paper.

5. Presumably trans and intersex individuals will be able to marry another individual of male, female, trans or intersex even under the current extension of marriage to gays and
The Institution of Marriage

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This essay examines Claudia Card’s argument against same-sex marriage. Although she believes the current trend to ban same-sex marriage is discriminatory, Card is skeptical about whether marriage is a better way of life for lesbian, gay, bisexual or transgender persons. She raises four specific problems. First, the social and economic advantageous associated with marriage may pressure some individuals to marry. Second, same-sex marriages will further marginalize nontraditional (i.e. non-monogamous) relationships. Third, since divorce regulations can make dissolutions extremely difficult and expensive, some spouses may feel trapped in a loveless and potentially violent relationship. Finally, the legal right to access granted to spouses can make it very difficult for victims of abuse to defend themselves in a court of law. When marital regulations provide legal shelter for abusive spouses, Card claims that the gay and lesbian community is better off without marriage. Indeed, instead of marriage contracts, she suggests that couples who want a contractual relationship should create their own renewable contracts.

In what follows, I offer brief responses to Card’s first two points. The thrust of this essay is to take issue with Card’s renewable contracts and her treatment of state regulations. Specifically, it is unclear how these renewable contracts will actually work or how they would differ from traditional marriage contracts. In addition, I am uncertain as to where Card stands on the regulation issue: is regulation in intimate partnerships necessarily harmful or can it protect spouses from abusive partners?

Proponents for same-sex marriage argue that lesbian and gay couples should have the same rights as heterosexual couples to receive spousal benefits. Approximately 1,400 legal rights are conferred upon married couples in the United States. Typically these are comprised of about 400 state benefits and over 1,000 federal benefits. But Card argues that marital privileges pressure some individuals into marrying for reasons other than love: “When spousal benefits are major, they offer privileges pressure some individuals into marrying for reasons other than love.”3 When economic and other social benefits are associated with marriage, partners (but especially women or those who lack independent income) may be pressured into marrying for economic security and an improved way of life. For Card, “marrying under such conditions is not a totally free choice.”4 So, same-sex marriage advocates who demand access to spousal benefits are introducing new pressures and ulterior motives to the gay and lesbian community.

I agree with Card’s overall point: basic benefits, such as health care coverage, should be available to everyone and not just married persons. To be sure, as long as these benefits are not made universal then the pressure to marry will remain. But it seems to me that the discriminatory nature of marital benefits is not specifically lesbian or gay in nature, nor does it concern the problems associated solely with marriage as a social institution. The widespread need for affordable insurance premiums and adequate Social Security or pension plans is a broad social issue and need not be connected to the advocacy of same-sex marriage. That is, granting married persons certain rights and benefits as opposed to those who are not married is a symptom of a much larger issue, namely, the nation’s controversial distribution of certain social goods.

Turning her attention to Richard Mohr’s discussion about the marital requirement of monogamy and how it goes against the experience of some gay men in relationships,5 Card implies that the push for legalizing same-sex marriage would further marginalize non-traditional relationships where sexual exclusiveness is not expected. In other words, same-sex marriage would reinforce the idea that monogamy is the only acceptable or legitimate type of relationship. Those who choose not to live in more “appropriate” partnerships would be excluded from social acceptance.

However, I am not entirely convinced that legalizing same-sex marriages will necessarily promote greater homogeneity. Perhaps the legal status of same sex relationships will have a liberalizing influence on our culture rather than an increase toward conservatism. A proponent of same-sex marriage, Angela Bolte concurs:

The legalization of same-sex marriage would bring what had once been determined to be ‘other,’ that is, what had been determined to be separate and inferior, into the mainstream. In other words, legalizing same-sex marriage would allow one form of difference to be included in what is deemed acceptable. By broadening the definition of what is considered acceptable, other forms of difference could become more acceptable.6

And so, it is not obvious that legalizing same-sex marriage would necessarily reinforce traditional heterosexual understandings of what it means to be a “couple.” Of course, I do not want to imply that same-sex marriages will automatically eliminate homophobia and heterosexism. However, because attitudes can and do change, granting lesbians and gay marital status can be a positive step toward greater social justice and acceptance of diversity (or difference).

Card goes on to argue that the more serious problems associated with marriage are the difficulties of a nonamicable divorce and the right to access granted to a spouse. Given the financial costs and in some instances custodial difficulties (e.g., shared property, alimony, child-support payments, difficulty regarding access to children, etc.) many couples may prefer to remain in a loveless marriage than to undergo the stressful process of divorce legislation. If spouses can financially devastate one other or cause great suffering and harm by taking away children, property, and other assets, then there is an ulterior incentive to stay in an emotionally disastrous union. When couples stay together because they rather not deal with the difficulties of a nonamicable divorce, their relationship can easily sour. And staying in a loveless marriage, where resentment and hate grow, increases the potential for domestic violence and even murder. In light of such intrusive and complex divorce regulations, Card believes that “it would be better to deregulate marriage than to regulate same sex unions.”7
Furthermore, the right to access facilitates violence in the home. According to Card, “Legal rights of access that married partners have to each other’s persons, property, and histories make it all but impossible for a spouse to defend herself (himself), or to be protected against rape, battery, stalking, mayhem, or murder by the other spouse.” When the state assumes that spouses have only the best intentions for one another, a victim of abuse may find it terribly difficult to prove that she or he feels terrorized or threaten by their spouse. We can easily imagine the difficulty of convincing a husband, for instance, of threatening to kill his wife or stalking her while she is away from home. But when certain forms of abuse take on no visible sign, it can be almost impossible in a court of law to persevere a spouse, even though the victim feels trapped, and her life becomes intolerable and filled with fear. Card notes, “Without clear and convincing evidence of abuse, one whose spouse will not agree to divorce may be trapped in a relationship from which, eventually, the only avenue of exit appears to be murder.” Unmarried victims do not have the same burdens of justification as married spouses. In legal terms, unmarried partners have less access to one another (and cohabitation is not required). This greater degree of autonomy, Card argues, affords the victim with more legal protection from abuse and violence: “Because it is enough that they choose to deny access, it matters less that they probably cannot prove abuse.” It is important to note that Card is not arguing that marriages are violent. Rather she is pointing out how the rules of marriage (i.e., the difficulties of a nonamicable divorce and the right to access) can facilitate abuse when they provide a legal shield for violent partners.

To illustrate the state’s lack of concern for victims of bad marriages, Card shows that it is easier to retain a marriage license than a driver’s license. Compared to the regulations for obtaining a driver license, Card points out that the “prerequisites for marriage licenses are astonishingly lax.” A marriage license—a life long contract that gives the legal right to cohabitation and access to each other’s person, property, and histories (including financial statuses) — requires no criminal history checks, no demonstration of marriage laws, and no knowledge of relationship skills. History of criminal violence does not bar one to have relatively unprecedented access to another person. In other words, there are no legal checks to mitigate violence or terrorism in the home, and “the consequence is that married victims of partner battering and rape have less protection than anyone except children, the very elderly, and the severely dependent.” Marriage, it seems, is an institution where you enter at your own risk. And this is brings us to the crux of Card’s argument: the rules of marriage are such that it is far too easy to enter but extremely difficult to leave.

To remedy this problem, Card proposes renewable contracts. Instead of marriage contracts, with its lifetime or open-ended commitment, couples that want a contractual relationship (in order to ensure a fair division of assets upon dissolution) should make a renewable contract that defines the relationship on their own terms. The renewal would be warranted once the partners make the case to each other that they should continue the relationship. According to Card, “this practice would shift the burden of justification from breaking up to continuing, and justification would address the other partner (or partners) rather than the state...This is such a drastic change from marriage that many would, rightly I think, refuse to call it marriage.” Because they are easier to terminate than marriage contracts, Card’s renewable contracts would offer hope to abused partners.

At first blush, Card’s proposal seems promising. I like the idea of partners “customizing” their unique relationships. But I am unclear as to how these renewable contracts would actually work or how they would be an improvement over the current system. Consider for instance that without state regulation, some partners may be duped into a contract that is, unbeknownst to them, not in their best interest. Of course, these contracts are renewable and so one can eventually leave the unfair partnership. But while the contract is in effect, what can one do? Without some third, neutral party or standard measure, these contracts could be just as disastrous, if not more, than state-sanctioned marriage contracts. Perhaps couples could hire legal assistance to draft fair and well-informed contracts. However, this would require some expense on the part of the couple. Not all would be able or willing to accommodate this requirement. But suppose a team of lawyers were employed to write up a renewable contract. For the contract to have legal worth and effectiveness, the civil courts would have to officially recognize and enforce its conditions. This being the case, the civil courts are not going to accept just any contract. It would have to abide by certain already existing laws and procedures. Indeed, it seems to me that these contract lawyers would have to follow some kind of standard or model and I suspect it will be marriage itself. This certainly seems to be the case with domestic partnerships and civil unions. Most domestic partnerships laws, like marriage, require the partners to (officially) live together and to share certain financial costs. Although domestic partnerships and civil unions entail fewer social and economic benefits than marriage, they nevertheless tend to be modeled after existing marriage contracts. Whether it is Card’s “renewable contracts” or “domestic partnerships” or “civil unions,” it seems to me that there is no fundamental difference between these forms of legalized partnerships and marriage contracts.

While I agree with Card that marital regulations can make divorce a difficult option for some married couples, it seems to me that eliminating state regulations might bring more harm to individuals. In the event of a divorce or dissolution, sometimes a third (neutral) party is necessary to resolve agonizing and complex disputes concerning child-custody arrangements, property allocations, and the fair distribution of assets. Sometimes couples cannot solve these matters on their own especially if one of the partners poses a threat to the other’s safety, is deceptive or just plain vindictive.

Card’s concerns about spouses feeling overwhelmed by the emotional and financial costs of divorce and about the increase in violence when couples stay together in a loveless marriage are certainly warranted. That being said, I fear that couples would still be at significant risk of harm if marriage contracts and divorce proceedings were not mandated by a third overriding legal party such as the state. While divorce regulations may be cumbersome and expensive, it is unclear whether a lack of state/federal regulation would outweigh the potential benefit that third party intervention could bring to the issue of fair and equitable dissolutions.

Currently many same-sex couples have no legal access to employee-based health benefits, no enforceable standard for child custody arrangements in the event of a terminated union, no tax benefits, no enforced property settlements; and in the event of a death (and no stated will), lesbian and gay couples have no inheritance rights or Social Security survival benefits and no legal right to sue for wrongful death on behalf of a partner. Consider the following true story: Louise Rafkin’s partner of six years died suddenly. Devastated by her lost, Rafkin was also shocked to discover just how the powers that be recognized—or not as the case may be—her relationship. Though Rafkin was registered at her partner’s work as her
domestic partner, Rafkin was not legally allowed even the basic courtesies. To make arrangements for her body, Rafkin needed to get written permission from a member of her partner’s family, the closest of whom lived several states away. Because her partner’s will was not located, Rafkin was stripped of all dealings with any aspect of her partner’s property. California’s probate law dictates that upon death all arrangements and inheritance are left to a spouse. So, without a legal “spouse,” all powers and inheritances are awarded to the parents. Rafkin’s partner’s estate fell by default into the hands of her father, a man who lives in the Middle East and who not only showed no interest in attending the funeral services, but also never inquired about the arrangements made for his daughter remains. He made it clear that he did not recognize Rafkin as his daughter’s partner or heir. Indeed, with a probate lawyer by his side, the father asked Rafkin to make a list of what in the house was his daughter’s. Rafkin has been ensnared in a lengthy and costly court battle ever since. Because of the insurmountable harm inflicted on her emotional and financial self, she now vows to fight for the legalization of same-sex marriage.

Rafkin’s experience, I think, shows that gay and lesbian partners may need some degree of state protection. I am not proposing that governmental regulation is always fair and effective in intimate partnerships. Laws are not perfect. They have failed to protect spouses and their children from abusive partners, and they have discriminated against same-sex parents seeking legal custody of children (sometimes their own biological children). Again, Card’s insistence about the limitations of marital laws is more than reasonable. Be that as it may, it seems to me that regulation is necessary to provide some degree of legal protection from, in this case, homophobia and heterosexism. Rafkin’s story shows that when gay and lesbian couples are left to their own devices in a homophobic world, with no state protection, they run the risk of emotional, physical, and financial harm. Indeed, it seems that Card herself recognizes this risk and the need for legal protection when she explains how the lack requirements for retaining a marriage license may facilitate spousal abuse. As I understand it, Card’s discussion calls for more regulation when it comes to people retaining marriage contracts. In this case, it appears that Card’s position on regulation is favorable.

This brings me to my second point. On the one hand, Card argues that marriage laws are too stringent and dangerously intrusive in terms of a quick dissolution or when the state grants spouses virtually unlimited access to one another. On the other hand, she goes on to claim that the state does very little to protect spouses from potentially abusive partners. When the regulations for entering a marriage are dangerously complaisant, Card implies that the state fails to mitigate the potential for “terrorism in the home.” So, it is not clear to me where Card stands on the regulation issue: can it protect potential victims or is it necessarily “evil”?

I have argued that it is unclear how Card’s proposed renewable contracts would actually work or how they would fundamentally differ from traditional marriage contracts. In addition, I have shown that Card’s position on state regulation in intimate relationships is seemingly inconsistent: at one point she argues against regulation on the grounds that it hinders a quick dissolution (or divorce) and limits autonomy; yet, she goes on to imply that more regulation is needed when people seek out marriage contracts. As I see it, Card’s analysis reminds us of the long time difficulty of finding the proper balance between individual freedom and governmental interference for the sake of protecting individuals from harm.

Endnotes

1. Claudia Card, The Atrocity Paradigm: A Theory of Evil (Oxford University Press, 2002), Chapter 7. It is important to note that her argument is against marriage in general and not exclusively same-sex marriage.

2. Among these are joint insurance policies for home, auto, and health; inheritance automatically in the absence of a will; benefits such as annuities, pension plans and Social Security; joint adoption and joint parenting.

3. Card, 152.

4. Card, 150.


7. Card, 149.

8. Ibid.

9. Ibid.


11. This point leads Card to conclude that the institution of marriage is evil: “Institutions are evil when it is reasonably foreseeable, by those with power to change or abolish them, that their normal or correct operation will lead to or facilitate intolerable harmful injustices” (140).


13. Ibid.


15. I would like to thank Victoria Davion for bringing this point to my attention.

16. Card favors domestic partnership arrangements. However, she is uncomfortable with the cohabitation requirement.


18. Although she claims that such regulation would be “at the cost of considerable state intrusion into our lives.” (159)
“Same-Sex”: Oppression at the Speed of Light

Jason Matherly

The all-pervasiveness of utility possesses a singular look: invisibility. What we cannot produce a use-value for we must pass over in silence. Contemporary life, operating outside of representation, requires of us the perpetual production of that very thing absent from us. Production of the other, production of meaning: total saturation. And in the absence of uselessness, of meaninglessness? Life today possesses the lacklustre sheen of a ceremonial gesture.

Thus it happens that the debate surrounding the institution of marriage presents a particular interest, since it embodies the ceremonial condition both in its being a ceremony as such and in its symbolic situation with reference to language. On the one hand, we have a religious context in which marriage is the symbolic union under God, gendered in the name of the Father. On the other hand, in the legal sphere, we have the language of “same-sex” to concern ourselves with. It is, of course, a term charged with the question of gender—but no more so, perhaps, than the rest of our linguistic cache. In any case, we find ourselves ultimately faced with a central, daunting concern: gender and identity as related to power. But these symbolic circumstances are, of course, necessary to be spoken of in terms of the ceremony.

That which signals our debt to the Law, that which “religion has taught us to refer to as the Name-of-the-Father,” is that mechanism which governs operations of the symbolic order, structuring interactions including those of gender ideals. With regards to our contemporary social structure, strangled and strangling with symbolic-production, this presents a singular problem: how is one to identify a reference to that beyond language which constitutes the pact without which love cannot be realized? Although there exists in the guise of marriage a unifying bond, it is emptied of its significance in our inability to obtain such a reference—but it is of course at once flooded with that which we produce therein. Where it was an acceptance of the Name-of-the-Father, it is today the production in which we come to a simultaneous affect of sanity and psychosis, not to mention neurosis and perversion. Precisely, it is the production of effects—special effects.

“The genitalia,” writes Jean Baudrillard, “is but a special effect.” Likewise sexuality, gender identity, even sexual difference. Where social, psychological, and cultural law was once placed in a structural context, today we find ourselves embedded in a deterritorialized reign of power. And this mode of oppression is distinctly reflected in the demands of ceremonial “rights,” found, for example, quite literally in the sphere of governmental law.

The legal language of “same-sex” holds not so much a particular linguistic value as it does a general image, and therein lies the very object of our desire. On a cursory level, we may ask why this should be a particular matter of homosexuality when, after all, a biological male identifying as a female lesbian can marry a biological female who also identifies as lesbian. But neither can it be merely a matter of gender, since it is the image we desire and the challenge of reversal which seduces us.

No longer a matter of raw psychoanalysis, no longer a matter of raw production—today the issue becomes one of bodily fragmentation and the speed of information. As Paul Virilio points out, “it is not the medium which is the message, but merely the velocity of the medium.”

The current debate over same-sex marriage is being carried out on waves moving faster than any other debate of its kind has ever been. And just as the body playing out life in real-time upon the screen becomes little more than a fragmented image of a body “operating within the space of an entirely virtualized geographical reality,” the debate becomes less a “real” debate than an impression of a debate glimpsed as a speed trail left at 186,282 miles per second. Perspective, it seems, just is not what it used to be.

And so, regardless of any outcomes—which it seems are now neither here nor there—we find ourselves at an unfixable point, out in space. True, the underlying forces of power are always inevitable and invisible, but one can still imagine, perhaps, a balancing act being carried out with the use of critical eyes. The hope—if hope we must resort to—is that those eyes are not blinded by the speed of things.

Endnotes

4. Ibid, 16.

Parable of America

Dr. Samuel Bolivar George, III

Once upon a time, there was a small village in our land; the village was named “America.” Because the village was so small, there was only one church, America Baptist Church.

One fine day at choir practice, Steve asked why all the baptisms at ABC were by full immersion. “Surely some people are too scared of the water to go all the way under,” he said. The choir members suggested Steve go to the Board of Deacons.

Unfortunately, the deacons were not pleased with Steve’s question. They said only deviant people even considered such things. Baptisms were always by full immersion and that was the way it had always been. In truth, one of the deacons had been sprinkled as a child in another village, but it was a secret he was determined to keep.

“I don’t want to be fully immersed, I want to be sprinkled,” declared Steve. “No one else wants to be sprinkled,” replied the deacons, “so why must you be so difficult?” Steve started asking the people at ABC and discovered about 10% agreed with his views on baptism and other things. The choir members suggested Steve go to the Board of Deacons.

Steve and his friends decided if they did not fit in with the way things were done at ABC, they would form their own church, to be named America Methodist Church. There was only one church, America Baptist Church. Unfortunately, the deacons were not pleased with Steve’s question. They said only deviant people even considered such things. Baptisms were always by full immersion and that was the way it had always been. In truth, one of the deacons had been sprinkled as a child in another village, but it was a secret he was determined to keep.

“I don’t want to be fully immersed, I want to be sprinkled,” declared Steve. “No one else wants to be sprinkled,” replied the deacons, “so why must you be so difficult?” Steve started asking the people at ABC and discovered about 10% agreed with his views on baptism and other things.

Steve asked the Town Council if he could buy the community center from the town so that AMC could renovate it and make it their beautiful new sanctuary. Sadly, though, all of the members of the Town Council were also members of ABC; they declared that Steve did not have the right to submit a bid on the property.

Steve and his friends were upset they had been denied their opportunity. Leslie suggested talking to the American
Civil Liberties Union, which they did. With the help of the ACLU, Steve and Leslie and the other prospective members of the AMC sued the Town Council for the right to purchase the property. Although Steve was no longer alone, he was being called “unpatriotic,” “ungodly,” and many other unkind things. Some people would no longer talk to him in public, and he started receiving hate mail.

During the trial, people said many things. The chair of the deacons claimed that it would weaken the institution of baptism at ABC if Methodists were allowed to sprinkle. Leslie answered that the folks of ABC were quite welcome to continue to practice baptism as they saw fit, but the folks of AMC should be entitled to do it their own way. The judge listened carefully to what both sides said and eventually ruled that Methodists were entitled to the same rights as every other person in America and that Steve and Leslie and the others had the right to bid on the abandoned community center.

Elections for Town Council were held not long after the judge issued her ruling. Steve decided he would run for election on a pro-AMC platform. However, the Mayor declared he thought that America should have only one church and proposed that the Town Council pass a “Protection of Baptism” act that would designate America as a sprinkling-free zone and turn the old community center into a Sanctity of Baptism Memorial. Many people who personally agreed with baptism by immersion thought that the Mayor and Town Council were going too far in trying to contradict the judge and restrict the rights of the Methodists. However, 56% of the people who went to the polls agreed with the Mayor, and to this day, America has only one church.

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**Brief Refutations of Some Common Arguments Against Same-Sex Marriage**

**Benjamin A. Gorman**

In recent months, there has been a renewed interest in the question of whether or not same-sex couples should be allowed to marry. The ruling of the Massachusetts Supreme Court, the same-sex marriages performed in California, New York, and Oregon, and the recent vote in the U.S. Senate, have all served to bring this issue into the national consciousness. This renewed interest has spurned a national debate. I have seen and heard a number of arguments proffered by conservatives on television, radio, and in the print media, each attempting to show why same-sex marriage should not be allowed. There have been a number of philosophy papers published on this topic, which all seem to deal with interesting philosophical issues relating to the acceptability of same-sex marriage. Unfortunately, these discussions do not deal with the issue as it is seen in general society. Since it is my opinion that there is no good reason why same-sex marriage should not be allowed and that there is no adequate reason for same-sex couples to be treated any differently than my wife and me, I feel that it is necessary to refute some of the arguments that are circulating in the general public.

Here I will discuss several of the arguments that I have heard, and I will attempt to show why each of these is inadequate. This paper will be broken into several small sections. In each, I will deal with a different argument against same-sex marriage and show why it is faulty. In a brief final section, I will discuss some conclusions that can be drawn from the discussion.

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**I. The “Religious” Argument**

One argument I have heard deals with the religious nature of marriage. The argument runs something like this: marriage is a religious institution; it deals with the union of a man and a woman before the eyes of God; most churches do not recognize same-sex marriage and the Bible states that homosexuality is a sin; therefore, same-sex marriage should not be allowed.

There is a kernel of truth in this argument. Marriage is, in fact, a religious institution. This seems to be an obvious statement. Where this argument goes wrong is that it does not seem to recognize that marriage has more than one meaning. If marriage were only a religious institution, then the only way to get married would be by a religious figure. This, of course, is not the case. People can be married by a justice of the peace or by a judge. Neither of these is a religious figure, yet the state recognizes marriages performed by them. So it seems that, at least according to the state, marriage is more than a religious institution. We can say, then, that marriage is (1) a religious institution and (2) a legal institution.

More needs to be said about what it means for marriage to be a religious institution. We can imagine a church (say, Church X) that refuses to recognize interracial marriage. If the state tried to force Church X to change its position on interracial marriage, Church X might appeal to the first amendment and say that the state has no right to force it to recognize interracial marriage. We can certainly tell Church X that we do not like its practices, but the state has no standing to require that it recognize interracial marriage. Similarly, the state has no means to require that a given church recognize same-sex marriage. We may not like it, but we have no room to complain. The state cannot force a religious institution to change its basic tenets.

Although the state cannot demand that a given church recognize same-sex marriage, it does not follow from this that the state should not recognize same-sex marriage. Think again of the interracial couple that wants to get married. Although the state cannot require Church X to recognize their marriage, it can be demanded, however, that the state recognize it. It is apparent that it would be an overt act of discrimination for the state to deny an interracial couple the right to marry. The fourteenth amendment requires that each person enjoy equal protection under the law. This protection includes protection against discrimination. From this it follows that the interracial couple can demand that the state permit them to marry. Otherwise, they would not be receiving equal protection.

Since it has been shown that the state must recognize the marriage of an interracial couple, it seems that we can make the same argument regarding same-sex marriage. The state cannot compel a church to recognize same-sex marriage, but the state can be compelled to recognize it. Any limitation on the right of a couple to get married seems to be an overt act of discrimination. This includes a same-sex couple. Unless we are willing to allow the state to discriminate against people simply on the basis of their sexual orientation, we must demand that the state sanction same-sex marriage.

The point, then, is this: when one is speaking of marriage as a religious institution it might be acceptable to say that same-sex marriage should not be allowed. However, when one is speaking of marriage as a legal institution, it must be said that the state should recognize same-sex marriage. Otherwise we are supporting state-sanctioned discrimination. For the remainder of this paper I will be discussing marriage as a legal institution.
II. The “Society is Against It” Argument
Another argument that has been presented is that the citizens of the United States do not want to allow same-sex marriage. According to this argument, since most Americans do not support same-sex marriage, it should not be allowed. While I am not sure that most Americans do not support same-sex marriage, we can imagine a world where most Americans do not. The question to be asked, then, is this: in the possible world where most Americans do not support same-sex marriage, would that be an acceptable reason to prohibit same-sex marriage? The answer to this question is no. Imagine a possible world where most Americans support discrimination against ethnic minorities. Would it be acceptable for the government to discriminate against ethnic minorities if that were the will of the people? I hope that everyone reading this would say that it would be unacceptable for the government to act in such a way. Simply because the majority of people want to discriminate against a particular group does not mean that such discrimination should be performed. It would be unjust for a government to discriminate against a group of people based on accidental factors. Similarly, even if the majority of people supported discriminating against same-sex couples (which I think is not the case), that is not an acceptable reason to allow such discrimination. Thus, we cannot discriminate against same-sex couples based on the supposed will of the people. To do so would be unjust.

III. The “No Benefit” Argument
It has also been argued that there is no reason to for same-sex couples to get married because they can gain no additional benefit from it. It is argued that monogamous same-sex couples can have commitment ceremonies, can get the necessary legal documents to allow for hospital visits in the case of accidents and terminal illness, can include each other in their wills, and can even create legal agreements to allow for a distribution of wealth and possessions if there should be a split. Given this, the argument claims, there can be no added benefit for a same-sex couple to be married. A same-sex couple can have all of the same rights as a heterosexual couple. Thus, there is no reason to allow same-sex marriage.

I suspect that the easiest way to refute this argument is to appeal to the interracial couple again. Would it be acceptable to say to an interracial couple that they can have a commitment ceremony and all of the necessary legal documents to make it as if they were married, but not actually married? Would this solution be sufficient to avoid discriminating against the interracial couple? I think that we would all agree that the answer is no. If we treat people differently based on their accidental properties such as race, age, or sexual orientation, we are treating them unjustly. It does not seem to matter that you can find a way to make it as if you were married, but not actually married. To deny same-sex couples the right to marry is simply discriminatory. That they can get legal documents and have commitment ceremonies does not seem to be enough.

I suspect (though I am not positive) that there is something to be added to a relationship by getting married. Some people claim that being married is really no different from being in a monogamous relationship. The only difference is that there is a piece of paper stating that both people agree to be monogamous. I suggest, however, that being married in the eyes of the state might add something to a relationship. Further, prohibiting same-sex marriage has the effect of saying that same-sex relationships are not as meaningful and important as heterosexual relationships. Ultimately, however, none of this matters. Prohibiting same-sex marriage is discrimination, and discrimination is unacceptable.

IV. The “Procreation” Argument
Another argument I have heard deals with the purported purpose of marriage. It is claimed that the purpose of marriage is to have children. Since same-sex couples cannot have children, they have no reason to be married. There are two obvious flaws with this argument. First, many same-sex couples do have children. Second, having children is not the only purpose of marriage. Even if these were both true, the argument can still be refuted. Let us grant, for the sake of argument, the following two premises: (1) same-sex couples cannot have children, and (2) the purpose of marriage is to have children. From these premises it follows that only couples that can have children should be allowed to be married. Imagine two heterosexual people, both of whom happen to be infertile. Is it acceptable to say that they should not be permitted to get married since they cannot have children? I'll go out on a limb and say that everyone would agree that an infertile heterosexual couple should be allowed to get married even though they cannot have children. The obvious implication here is that we cannot deny a same-sex couple the right to marry simply because they cannot have children.

It might be argued that there is a difference between being an infertile couple and being a same-sex couple. One might argue that the infertile couple does not choose to be infertile, but a same-sex couple chooses to be in a relationship that does not allow for procreation. There is increasing evidence that sexual orientation is not an active choice, but rather something that you are born with. So an easy response to this objection is to say that a same-sex couple does not choose to be in a relationship that does not allow for procreation.

This response is not, however, necessary to show that it is wrong to discriminate against same-sex couples based on their ability to have children. Even if we grant that a sexual orientation is a choice; that is still not sufficient to show that they can be prohibited to marry. Imagine for a moment that a heterosexual couple decides before they get married that they do not want to have children. Imagine further that the man has had a vasectomy and the woman has had tubal ligation. We now have a situation were a couple has actively chosen to be in a relationship where there is no possibility of having children. Would it be acceptable to prohibit this couple from marrying simply because they choose be in a relationship where there is no possibility of having children? I suspect that the overwhelming response to this question would be that it is discriminatory to prohibit such a couple to marry.

If we are not willing to discriminate against a heterosexual couple based on their inability to have children, even if this inability is based on an active choice, then we cannot discriminate against a same-sex couple based on their ability to have children. Thus, the conclusion to be drawn is this: even if we grant that the purpose of marriage is to have children and that sexual orientation is a choice, we still have no basis for not allowing a same-sex couple to be married.

V. Conclusion
It seems worth noting that the arguments against same-sex marriage which I mention share a common theme. That theme is intolerance. Similarly, my refutations share a common theme. That is this: we should not discriminate against people. Thankfully, we, as a society, are finally getting closer to the point at which we do not discriminate against people based upon their race, sex, or ethnicity. It is time for us to do the same with regard to sexual orientation. It is unjust to unfairly discriminate against anyone, and prohibiting same-sex marriage constitutes unfair discrimination.
In the preceding pages, I have sketched simple refutations for some of the more common arguments against same-sex marriage. I do not claim to have conclusively proven that same-sex marriage should be permitted (although I certainly believe that to be the case). I do think, however, that I have shown that many of the common arguments against same-sex marriage are fundamentally flawed; they are based upon prejudice and discrimination.
Once again, the Newsletter on Philosophy and Medicine is pleased to bring our readers an issue chock full of interesting papers. Presentations from the Pacific Division session on “Research Ethics and Human Vulnerability” sponsored by the Committee on Philosophy and Medicine are presented here as a group of papers. This collection of papers by Robert E. Goodin, Kenneth Kipnis, and Dorothy E. Vawter and Karen G. Gervais forms an important contribution to the literature on vulnerability in research. Also in this issue are papers on presidential privacy, race and ethnicity, and gender. These papers by Timothy F. Murphy, John R. Stone, and Jennifer A. Parks raise timely and challenging issues for bioethics in unusual terms. In sum, this issue offers a particularly fresh and engaging collection thoughtful papers on interesting issues.

Robert E. Goodin’s piece on “Vulnerable Research Subjects” discusses two senses of vulnerability, one as a reason for action, another as a disqualifying condition. Goodin explains how both concepts factor into our thinking about biomedical research as well as medical treatment. He also discusses how subject vulnerability was transformed into the research ethics focus on informed consent and how the prominence of that principle has obscured other important concerns in the ethical conduct of research. Instead of focusing so closely on informed consent, Goodin proposes the concept of “autonomy interests” as a guide for research involving subjects who cannot provide informed consent.

In his paper on “Vulnerability in Research Subjects,” Kenneth Kipnis provides a novel approach to thinking about research subjects who are vulnerable. He explains seven different ways in which research subjects may be vulnerable. Kipnis suggests that rather than addressing specific subpopulations, rules for the ethical conduct of research should be sensitive to the varieties of vulnerability and focus on compensating strategies to address how the individual subjects may be vulnerable.

Dorothy E. Vawter and Karen G. Gervais challenge Kipnis’s approach in their paper “Reflections on Kipnis’ Concept of Medical Vulnerability.” Although they acknowledge that some of Kipnis’s suggestions are already incorporated into study design, they see others as aspirational standards. Furthermore, they object to some of Kipnis’s suggestions as subject inducements plans and where Kipnis finds subjects to be vulnerable because of their impaired ability to comprehend risks and benefits, Vawter and Gervais argue that measures should be taken to minimize the distorting influence of the therapeutic misconception rather than providing compensation. Their most pointed criticism is that Kipnis’s calls for the maximization of therapeutic benefit undermines the crucial research agenda.

Timothy F. Murphy takes us off to another subject in his discussion of “Medical Confidentiality and Presidential Families.” This is a timely piece that addresses questions raised about the Reagan family’s lack of open discussion about details of President Reagan’s illness and their treatment decisions in the period after he lost decisional capacity. Murphy offers several important distinctions to help us address the scope of privacy and access to information about public figures.

John R. Stone raises the white issue in his paper on “Race/Ethnicity, Health Disparities, and Bioethics.” In his words, philosophy and bioethics are certainly “white-dominated” fields. In his paper, Stone explains how seeing issues of racial and ethnic disparities can have a different significance when seen through the eyes of whites or the eyes of people from groups that have suffered health disparities and who have been the historical subjects of discrimination. Stone identifies structural and policy issues that whites may overlook and discusses how sensitivity to racism and ethnic bias can make a difference in our analysis and approach to health disparities.

In her paper, “A Call for Gender Equity in Medical Tort Reform,” Jennifer A. Parks discusses President Bush’s proposal to limit monetary awards for pain and suffering in medical tort cases. Parks takes the silicone breast implant cases as her illustrative example and uses it to discuss the justice of the Bush plan. She presents a compelling case that Bush’s petition encourages corporate negligence, places undue burdens on plaintiffs, and disadvantages women.

We want to be able to provide our readers with similarly rich issues in the future. So, we remind you to please send along your announcements, letters, papers, case analyses, poetry, and stories. Please feel free to volunteer a book review. Your contributions and queries should be sent to Rosamond or Mark at the addresses below. Please include your phone and fax numbers and email address.

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FROM THE CHAIR

Philosophical Reflection and the President’s Council on Bioethics

David DeGrazia
George Washington University

When President Bush appointed the President’s Council on Bioethics in January, 2002, some within the bioethics community expressed dismay about the PCB’s membership. The new committee was long on conservative credentials and short on expertise in bioethics, according to the critics. How could the PCB, they rhetorically asked, represent expertise in bioethics when only a minority of its members could boast scholarly credentials in this field? Weren’t the appointments more a reflection of the President’s conservative agenda than a reflection of the face of American bioethics? Representing such concerns, Jonathan Moreno—a well-respected philosopher-bioethicist at the University of Virginia and one of the more liberal scholars invited to serve—rejected the invitation. Charges of a political agenda driving committee membership resurfaced last year when two PCB members, Elizabeth Blackburn and William May, were quietly dismissed and replaced by scholars holding views more in line with Chair Leon Kass and the President himself.

Behind Kass’s energetic leadership, the PCB has so far published five reports: Human Cloning and Human Dignity (October 2003), Being Human: Readings from the President’s Council on Bioethics (December 2003), Monitoring Stem Cell Research (January 2004), and Reproduction and Responsibility: The Regulation of New Biotechnologies (March 2004). Having read three of these publications, I have found them well-written, erudite, very intelligent, and relatively courageous in exploring difficult ethical terrain and frequently challenging liberal “received wisdom” in bioethics. Coming from me, this is no trivial compliment because my moral judgments tend to be more in line with this liberal mainstream than with the President and PCB majority opinion. Even those far more critical of the PCB than I am must acknowledge that its work is addressing some of the most important forward-looking bioethical issues of our day. Apparently agreeing with this sentiment, the American Society for Bioethics and Humanities has set up a panel, consisting mostly of PCB members, to discuss the report Beyond Therapy in the ASBH’s annual meeting next October.

While biotechnological enhancement is an important, timely issue, embryonic stem cell research (ESCR) is, if anything, even more pressing. After Ronald Reagan’s death last June, following years of suffering from Alzheimer’s disease—which many researchers believe ESCR holds special promise in treating—Nancy Reagan reinvigorated political discussion by publicly calling upon President Bush to relax restrictions he imposed on ESCR in the U.S. In an effort to draw a principled, pro-life line that was reasonably responsive to consequentialist concerns about research progress, Bush had on August 9, 2001 issued an executive order restricting federal funding for ESCR to research using stem cell lines created prior to the time of his order; no further embryos, not even those left over in fertility clinics and destined to disposal, could be “sacrificed” for federally funded research. Will Bush revise his position and, with it, American public policy? More importantly from an ethical standpoint, should he?

Confident in philosophy’s ability to illuminate such difficult problems as those identified here, the APA’s Committee on Medicine and Philosophy has established a panel entitled “The President’s Council on Bioethics: Political Legitimacy and the Report on Stem Cell Research,” for the upcoming Eastern Division Meeting in Boston. Alfonso Gomez-Lobo of Georgetown University, a member of the President’s Council who has recently published on ESCR, will open by discussing ethical issues raised by this research—presenting his own views rather than attempting to speak for the entire PCB. Hilary Bok of Johns Hopkins University, a respectful critic of the PCB report in question, will challenge some of its reasoning. Leslie Francis, of the University of Utah, and Timothy Murphy, of the University of Illinois in Chicago, will take up questions concerning the PCB’s political legitimacy and representation of American bioethics in addressing such issues as ESCR.

The Committee on Medicine and Philosophy looks forward to an open, vigorous yet respectful, and rewarding discussion of these issues by the panelists and members of the audience.

OBITUARIES

John Fletcher, In Memorial

Franklin G. Miller, Ph.D.
National Institute of Health

John Fletcher was one of the pioneers of bioethics, who helped create the way of thinking and the set of practices that we call bioethics. His reach within bioethics was wide and deep. John created an institutional presence for bioethics within the NIH Clinical Center—a daunting task which he pursued for 10 years, starting in 1977. Then he founded and developed a leading bioethics center at the University of Virginia. Perhaps his most important contributions were in scholarship relating to the ethics of reproductive technologies, conceptualizing and editing one of the major textbooks in clinical ethics, and zealously promoting hospital ethics programs, including ethics committees, ethics consultation services, and ethics education.

John carried his religious vocation into the world of bioethics, leading the way for others and building communities of professionals dedicated to promoting moral reflection and moral conduct in the areas of medical research and medical care. What was it about John that moved people to share his passion for bioethics? It wasn’t his scholarship, though he was a very productive and influential scholar. It wasn’t his teaching, though John was a talented teacher. It was the strength of his personality, which had a gravitational force that drew others into his orbit and to the shared vocation of bioethics. I certainly would never have come to bioethics as a career at age 42 had I not been drawn in by the force of John’s personality, and by his dedication and commitment to make a difference in the climate of clinical medicine and research. John’s greatest strengths lay in reaching out to others to encourage them to join the bioethics movement and to contribute as teachers, ethics consultants, ethics committee members, and as scholars. He was a valued mentor to many bioethicists and clinicians interested in ethical issues.

For those of us in the second generation of bioethicists, it is hard to imagine what it was like to bring bioethics into the
clinical setting. In the words of David Rothman, John Fletcher was one of the "strangers at the bedside" who opened up the medical world to scrutiny from a moral perspective grounded in the rights of patients and research subjects. He made it less strange for those who followed in his footsteps.

John, I believe, would not want us to look back on his life with rose-colored glasses. Like all of us, he had his weaknesses alongside his strengths. As Kant famously said, "Out of the crooked timber of humanity, nothing straight was ever made." John had a keen sense of his own fallibility. He learned how to navigate as an ethics consultant, called in to help resolve emotionally charged moral disputes, by jumping in, trusting his judgment, and making mistakes. Reflecting on mistakes was an opportunity for learning how to do it better. John invited criticism; he listened to it, and took it to heart. John liked to quote a saying of Paul Ramsey, another bioethics pioneer with whom he often disagreed, "The room for improvement is the biggest room in the house."

John will not be forgotten by those who had the good fortune of feeling the gravitational force of his charismatic personality and witnessing his visionary leadership.

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**James Rachels, In Memorial**

**Gregory Pence**

*University of Alabama at Birmingham*

James Rachels died from cancer on September 5, 2003 at age 62. A native of Georgia, Jim was graduated from Mercer University and earned his Ph.D. at the University of North Carolina. He then taught at Duke University, the University of Richmond, and on the graduate faculties of both New York University and the University of Miami. At NYU in the early 1970s, he was associated with a small group of philosophers who started the seminal New York chapter of the Society for Philosophy and Public Affairs, a group that included Tom Nagel and visiting scholars Peter Singer and Derek Parfit. In 1977, Jim became chairman of Philosophy at the University of Alabama at Birmingham, rising three years later to become Dean of Arts & Humanities from 1978-1983, then had a one-year stint as acting Academic Vice President, after which he became University Professor.

Jim had a special talent for elucidating complex philosophical issues in deceptively clear language. His early book, *Moral Problems*, was one of the first anthologies in the new field of applied ethics and in its first three years sold over a hundred thousand copies. According to his publisher, McGraw-Hill, his most well known book, *The Elements of Moral Philosophy* this year will sell more copies than any other philosophy text, and will be used in one third of ethics classes in North America. McGraw-Hill will posthumously publish Jim’s newly completed *Introduction to Philosophy*.

Jim's paper, "Active and Passive Euthanasia," was the first piece published by a moral philosopher in the New England Journal of Medicine (1975). Today it is still one of the most-reprinted articles in ethics, having been reprinted to date over 300 times. As the New York Times said in its extensive obituary, the piece "ignited" a debate over euthanasia, and "helped start an applied ethics movement in philosophy." This seminal piece, along with others by Judith Thomson and Peter Singer, gave philosophers issues to talk about in class that had philosophical heft.

His book *The End of Life: Morality and Euthanasia* (Oxford, 1986) defended humane, humanistic treatment of standards of death and dying. His *Created from Animals* argued that modern ethics should pay more attention to similarities between human and non-human animals, rather than rigidly separate the two. In *Can Ethics Provide Answers?* (1997), he reprinted a dozen of his 60 essays from many journals, ones he thought would stand the test of time. He also edited seven books and served as a referee for several academic journals.

Although his writings defended radical positions, in person he was neither confrontational nor an activist, preferring to let his writings do this work. More than anything else, he loved doing philosophy and being a philosopher. In the last months of his life and on the last day of his life, he was writing philosophy, finishing last bits and pieces. Near his last day, he told his sons that, for the first time in his life, he had no unfinished projects in philosophy.

He is survived by his wife of forty years, Carol, and his two sons, David, an English professor at VMI, and Stuart, a philosophy professor at the University of Alabama in Tuscaloosa, his two grandchildren, and in Georgia, his parents and two sisters.

The UAB Philosophy has started the Rachels Visiting Scholar Endowment Fund to honor Jim's life. Contributions for it may be sent to: Philosophy, 900 13th Street South, Birmingham, AL 35294-1260.

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**ARTICLES**

**Vulnerable Research Subjects**

**Robert E. Goodin**

*Australian National University*

My concern here is with the vulnerabilities of people who are “objects of medical interventions.” I mean for that term to extend to “patients” in the case of therapeutic interventions as well as to “subjects” in the case of experimental interventions. The latter are the official focus of my discussion, but reflecting on cognate cases of vulnerable patients in therapeutic settings sheds useful light on the case of vulnerable research subjects.

It is the vulnerability of agents to other agents that most concerns me here (although I shall also, of course, be tangentially concerned with the various conditions that make them vulnerable to one another1). In general, one agent is “vulnerable” to another insofar as the interests of the former are sensitive to the actions and choices of the latter.2 In a therapeutic setting, the patient’s vulnerability is largely (if not exclusively) to the attending physician. In an experimental setting, the subject’s vulnerability is (again, largely if not exclusively) to the researcher.

I. Vulnerability’s Two Faces

Considerations of vulnerability might enter into bioethical reflections in two quite different ways.

First is a broadly “consequentialist” way, as in Goodin’s *Protecting the Vulnerable*.3 By definition, if Sam is particularly vulnerable to Dr. Sue, then Sam’s interests are highly sensitive to Dr. Sue’s actions and choices. It therefore automatically follows that for any ethical theory which attaches moral importance to promoting people’s interests, there is a moral
reason for Dr. Sue to be particularly attentive to how her actions and choices will impact Sam’s interests. (Of course that reason is defeasible: there might be other stronger reasons for Dr. Sue to do something else.) That moral reason is stronger the more strongly—and, we might add, the more uniquely—Dr. Sue’s actions and choices are capable of affecting Sam’s interests.

On this broadly “consequentialistic” account, Sam’s vulnerability (the potential impact of Dr. Sue’s actions and choices on Sam’s interests) is a reason for Dr. Sue to do something. Perhaps we might characterize that as a “responsibility” (or even perhaps a “duty”), derived from those consequentialist considerations concerning Sam’s vulnerability to her. But for now, we can just leave it, more non-committally, as a “moral reason.”

A second way in which “vulnerability” might figure is as an exception or “disqualifying condition” within a broadly “deontological” conception of bioethics. On this model, we must above all respect the human dignity and moral autonomy of those with whom we deal. For medical practitioners and researchers, this is done by (among other things) securing “informed consent” from patients or subjects for procedures performed on them. Of course, there are many ways of telling a deontological tale. But because my concern here is with how vulnerability enters the picture, I shall focus on what I will call a “hard-line” version of the deontological ethic that makes informed consent a necessary if not sufficient condition of permissible medical interventions.

“Vulnerability” enters into that sort of a consent-based deontological model as a disqualifying condition. “Vulnerabilities” of various sorts render agents incapable of giving meaningful consent to having those medical or experimental procedures performed on them. In the limiting case, vulnerable agents might not be able to consent at all—theyir vulnerability might be such as to deprive them of agency altogether. Here, however, I am going to focus on less extreme cases. These are cases in which vulnerable agents are still capable of giving what seems to be consent, but in which we are unsure of the moral value of that consent. The worry is that their vulnerability renders their putative consent “tainted,” rather like a coerced confession in a criminal court or an agreement obtained by force or fraud in the law of torts. Where agents are sufficiently vulnerable, their putative consent might count for naught.

II. If Not Consent, What?

What follows when someone is not capable of meaningfully consenting to, or meaningfully withholding consent from, some intervention?

Well, within a hard-line deontological ethic in which consent is the only right-maker, the upshot would be clear. If we do not have the permission of the person (or his or her authorized agent) to intervene in ways impinging his or her moral prerogatives, then we have no right to so intervene. This is as true of someone whose capacity to consent is compromised as it is of someone who is capable of consenting but who willfully withholds consent: in neither case do we have any right to so intervene, if consent is the only right-maker. Why a moral agent does not consent does not matter; the sheer absence of consent is all that matters in morally blocking our action.

I hasten to add that this is a much harder-line deontological ethic than is embodied in any actual code of medical ethics. It seems so extreme as to preclude surrogate decisions for incapacitated patients, by anyone except perhaps their legally authorized representatives. In that and many other less extreme ways, this hard-line deontological ethic is very unlike any actual code of medical ethics operative anywhere in the world. Still, when excavating the true moral groundings for the ethical codes operative among us, it pays to begin by first exploring the limiting cases like this.

This hard-line deontological ethic that treats consent as the only right-maker is especially interesting to explore in the context of the ethics of human experimentation, because at first brush, that looks like the ethic dominating thinking. The first “Directive for Human Experimentation” embodied in the Code laid down by the Nuremberg Tribunal specifies that:

The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or any other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision.

In short, at least at first brush: No consent, no experiment—on pain of something akin to practicing Nazi medicine. And insofar as the notion of vulnerability points to conditions invalidating consent, it thus provides what Ken Kipnis calls “a checklist of circumstances that...can invalidate the permissibility of research.”

But of course experimental settings are hardly the only ones in which doctors find themselves confronted with people who are vulnerable. Let us shift our focus to a therapeutic setting—a comatose patient who will die without urgent surgery, let’s say. There, “no consent, no intervention” would not be a sensible policy; certainly it is not the practice generally adopted in Emergency Rooms. There, after quickly checking the patient’s wallet and trying to contact the next of kin for instructions, the attending physician properly proceeds with whatever treatment “best medical practice” dictates in the circumstances— “as if” s/he had the patient’s informed consent, even though s/he does not.

So too, upon reflection, should the experimenter. Indeed, the provisions of the US Code of Federal Regulations governing “Informed Consent of Human Subjects” now makes explicit provision for granting an “exception from informed consent requirements for emergency research.” In certain tightly circumscribed conditions, experimental procedures that “hold out the prospect of direct benefit to the subjects” may be permitted on people from whom consent could not possibly be obtained ahead of time. One example was an experiment locating defibrillators in airports, to be used by laypersons on people having heart attacks before medics arrived, to see if that helped save lives: it was accepted by those authorizing that experiment that it was simply infeasible to obtain reliably informed consent from people in the midst of a heart attack; and since there was good reason to think that heart attack victims could benefit from those interventions, the experiment was authorized despite the fact that informed consent could not be obtained.

Our concern here is with a medical researcher confronted with vulnerable subjects, and our question is, “What, then, follows from the fact that some subjects are “vulnerable” in ways that undermine their capacity to give or withhold meaningful consent for experiments to be practiced upon them?” The proper conclusion is not that we ought necessarily exclude them from our experiments—any more than in the “waived consent” cases we should exclude those who could...
benefit substantially from participation in the experiments, just because they cannot give informed consent. Rather, what follows is that we should apply “special scrutiny” to the conditions of their participation. Note, for example, the phrasing of the World Medical Association’s Helsinki Declaration: “When obtaining informed consent for the research project the physician should be particularly cautious if the subject is in a dependent relationship to him or her or may consent under duress.”12 Just as Emergency Room physicians performing emergency procedures on comatose patients are supposed to think in terms of what those patients would “have good reason” to consent to, so too ought experimenters confronted with subjects whose seeming “consent” is compromised by their vulnerability pay special attention to whether those subjects would “have good reason” to consent, were it not for those vulnerabilities.14

This is sometimes expressed in terms of “hypothetical consent.” That can be an evocative way of calling to mind the reasons people might have for consenting. But what it provides us with is a window onto the agent’s reasons, not a warrant of any kind of consent at all, as generations of students have been rightly rooted in the agent’s will. Hypothetical consent is no kind of warrant, then, that actual consent based on hypothetical consent is the only moral warrant that there can be. Rather, it provides us with negative results in a consequentialist framework: we have good medical reason to believe, wrongly) refuse to consent.

If the prime moral directive is to respect the other’s moral agency and moral autonomy, then actual rather than merely hypothetical consent is the only moral warrant that there can be for intervening into the sphere of someone else’s proper moral prerogatives. For us to acquire a right to operate on (or experiment on) people whose actual consent is morally questionable, we have to move away from that hard-line deontological model toward a more consequentialistic one, which takes due account of vulnerabilities in its own peculiar way.

III. Consent in Consequential Context

I take it that neither of the polar forms of ethics, deontological or consequentialistic, is altogether tenable in a health-care context. A hard-line deontological ethic would, as I have just been arguing, deprive us of the ability to treat emergency room patients clearly in need of medical attention but incapable of consenting to the procedures. Conversely, a hard-line consequentialistic ethic might risk turning us into Nazi physicians, practicing procedures on people who clearly (but, we have good medical reason to believe, wrongly) refuse to consent.

In searching for a hybrid, my own inclination is to build on consequentialist foundations, grafting consent-based considerations onto that. Here, in brief, is the strategy I would propose.

Recall the consequentialist story I told above, in which Sam’s vulnerability to the actions and choices of Dr. Sue gave moral reasons for Dr. Sue to be particularly solicitous of Sam’s interests in her actions and choices. All we need to get an element of consent into the picture is to recall that among those interests of which Dr. Sue is supposed to be solicitous are Sam’s “autonomy interests.” Sam, like all moral agents, has an interest in being and being seen to be a self-governing agent capable of embracing and acting on reasons of his own. The reason Dr. Sue should, where possible, seek Sam’s consent to any procedure—even where she is sure it is one that best promotes all of Sam’s other interests—is that securing Sam’s consent is the only way also to protect his autonomy interests.

This way of building autonomy interests in, alongside Sam’s other interests, has several advantages. It explains, in a way the hard-line deontological model cannot, why it might be all right to perform procedures on people incapable of consenting or whose consent is tainted by vulnerabilities of various sorts (their autonomy interests are not actually being overridden, insofar as they are not actually in play). It explains, perhaps better than any plausible variation on the hard-line deontological model can explain, why it is wrong for physicians to help kill anyone who genuinely wants to die, without further enquiries.16 (Presumably even those of us who would approve of physician-assisted suicide would ordinarily want the physician to ensure, for example, that the patient had a terminal illness rather than was merely “tired of living” or just was having a bad day.)

There are many details left to be worked out with this hybrid model, to be sure.17 I do not want to belabour them here, however. Instead, I want merely to point out that something like that sort of hybrid is—contrary to what seems to be the common supposition—what actually lies at the heart of contemporary strictures surrounding the ethics of human experimentation.

What the bioethics profession generally seems to remember as the rule of “the Nuremberg Code” is the first Directive, quoted earlier—the one that says “the voluntary consent of the human subject is absolutely essential.” That is why we hear, so often, that “the Nuremberg Code’s foundational concern” is with “the concept of consent.”18 That consent-based principle was undoubtedly of signal importance to the Nuremberg Tribunal. After all, they listed that as their first Directive, and they elaborated on it at far greater length than any other item on their list. But what seems often to be forgotten is that the Nuremberg Tribunal did go on to list nine further Directives, only one of which has anything to do with the consent of the research subject.19

The other forgotten eight Directives of the Nuremberg Tribunal that are more consequentialistic in form are these:20

1. The experiment should be such as to yield fruitful results for the good of society, unprocurable by other methods or means of study...

2. The experiment should be so designed and based on the results of animal experimentation and a knowledge of the natural history of the disease or other problem under study that the anticipated results will justify the performance of the experiment.

3. The experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury.

4. No experiment should be conducted where there is a priori reason to believe that death or disabling injury will occur...

5. The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment.

6. Proper preparations should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death.

7. The experiment should be conducted only by scientifically qualified persons. The highest degree of skill and care should be required through all stages of the experiment of those who conduct or engage in the experiment.
8. During the course of the experiment the scientist in charge must be prepared to terminate the experiment at any stage, if he has probable cause to believe... that a continuation of the experiment is likely to result in injury, disability, or death to the experimental subject.21

Thus, while consent is of signal importance (as per Directive 1), consent is supposed to come only after a whole raft of consequential requirements have already been met.22 Essential though people’s consent may be to the ethical legitimacy of experimenting on them, those other background conditions are also equally essential. Consent is capable of transforming illegitimate experiments into legitimate ones, only when it is given against the background of all those other consequential conditions having also been satisfied.

Upon reflection, this is surely unsurprising. After all, we would not let a surgeon perform an operation—even with the patient’s consent—unless there was some reason to think that the operation would do some good. (Presumably even with purely cosmetic surgery, we have to have good grounds for thinking that it will succeed, at least on its own terms, for it to be justifiable.) By the same token, we would not let an experimenter perform an experiment, even with the subject’s consent, if there were not evidence from animal experiments and so forth to suggest that the experiment might succeed. A subject’s fully-informed consent to experimental procedures that are unnecessary, incompetent, or gratuitously dangerous morally counts for naught. That—as much as the better-remembered principle that “the voluntary consent of the human subject is absolutely essential”—is the law of Nuremberg.

Of course, we would not want to proceed without first (if possible) obtaining the consent of the patient or subject, as well. We do not want to operate or experiment on unwilling subjects. But consequentialist-style considerations constitute a prior hurdle. We do not want to perform operations or experiments on people without good reason to think that they will work, either.

Why then, might we ask, is the issue about “consent” so much better remembered among medical ethicists? Well, recall for whom medical ethicists are principally writing: people at the medical coalface, which is to say, practitioners at the bedside. This is evident in, for example, the AMA’s “Principles of Medical Ethics”: well over half of the nine guiding principles clearly pertain to relations between the doctor and his or her own specific patients. It is all the more evident in the Physician’s Oath prescribed by the World Medical Association’s “Declaration of Geneva,” which has the physician avowing that “the health of my patient will be my first consideration.”23

From the point of view of medical practitioners at the bedside—face-to-face with patient in therapeutic settings or subjects in experimental ones—the belief that “voluntary consent is absolutely essential” is indeed the thought that they should hold most firmly in mind. That is not because those other Nuremberg Directives (and their therapeutic equivalents) do not matter. It is merely because that is not where they matter. The bedside is not the place to meet those other requirements. They should have been (indeed, they have to have been) taken care of elsewhere, in planning the experiment or treatment regime.

The bit of the Nuremberg Code that is uniquely the responsibility of a physician who is face-to-face with a patient or experimental subject is the bit about obtaining “voluntary consent.” And given that it is practitioners at the bedside to whom codes of medical ethics are principally addressed, it is only right that that principle should be accorded heavy emphasis—heavier emphasis than it would be, if we were addressing instead (or even equally) planners of health care systems or designers of medical experiments.

IV. Vulnerabilitries against Vulnerabilities

When cashing out our morals in the currency of vulnerability, it is important to remember that those research subjects who we nervously deem “vulnerable” in ways that might compromise their consent to the experiment are often “vulnerable” in other ways, too. Often, they are vulnerable in the sense of suffering from medical conditions that make them suitable subjects for the experiment. Such people are vulnerable, too, in the sense that existing medical treatments of their condition are less than completely satisfactory (we would not be doing the experiment, certainly not on them anyway, otherwise); and the new trial treatment might be an improvement.

When experimental treatment is expected to have positive therapeutic effects for the experimental subject as well, we are in the happy position of being able to justify the procedure on therapeutic grounds alone, and to treat any experimental payoffs as wholly unintended by-products. Often we are not in this happy state, though: realistically, we know that the benefits will be wholly or principally for other patients who come later, suffering from the same condition, rather than the patient upon whom the experiment is being performed. Still, even in this less happy scenario, we have a case of vulnerability-versus-vulnerability—the vulnerability of the experimental subject, versus the vulnerability of those who stand to benefit from the experiment. In any systematic application of our duty to “protect the vulnerable,” those potential gains to vulnerable agents must be borne in mind, alongside all those other concerns about risks of vulnerable people being ill-used in research.

For a particularly striking example, consider the continuing controversy over the exclusion of elderly people from clinical trials of drugs and medical procedures deployed commonly on the elderly. The issue is nicely set out in 1997 Editorial in the British Medical Journal:

 Practitioners face a difficult paradox in prescribing for the elderly. Those aged over 65 comprise only about 14% of the population in most industrialised countries, yet they consume nearly a third of all drugs. Ample evidence indicates that, even in healthy elderly people, aging impairs the way the body handles drugs. In ill elderly people these changes can be exaggerated considerably.

In an ideal world data from premarketing and postmarketing surveillance studies would describe how a drug is likely to affect older patients differently from younger ones. Unfortunately, rather than being oversampled in clinical trials, to reflect their distribution in the drug consuming population, elderly people are inadequately represented.24

In some cases, the design of the trial literally excludes people over a certain age, for no scientifically justifiable reason.25 Other times the elderly are not formally excluded but are radically underrepresented in clinical trials. A recent RAND study analyzing patient and trial characteristics for 59,300 patients enrolled in 495 National Cancer Institute trials from 1997 through 2000 found, tellingly, that while 61% of cancer patients were elderly, only 32% of participants in clinical trials were elderly.26 Clearly, this is bad science. Insofar as the elderly are major users of those drugs and procedures, and insofar as the elderly do not react to them in the standard way, physicians clearly...
need those clinical trials to give them more information about the reactions of the elderly. And that is the way the issue is typically presented. The AMA’s Code of Ethics instruction on “subject selection for clinical trials” says, for example, that “Inclusion and exclusion criteria for a clinical study should be based on sound scientific principles.”27

The reasons that the elderly are so often excluded or underrepresented in clinical trials of drugs, even those to be used predominantly by the elderly, are many and varied. The BMJ Editorial points to some:

The “old old” are a messy lot physiologically. They are far likelier than the young to have coexisting medical problems, for which they are likely to be taking other potentially interacting drugs. They also have the distressing property of being more likely in the middle of a trial to suffer an infarct of the heart or brain or simply to drop dead. They are bad news for the drug development process.

Yet another reason is that the elderly often count among those who would qualify as “vulnerable” in various respects, from whom we therefore cannot obtain meaningful consent. They are more likely to suffer cognitive impairments associated with the aging, they are more likely to be institutionalized, and so on. In addition to the pragmatic and scientific issues, then, there are also these ethical issues in obtaining meaningful informed consent associated with conducting clinical trials on the elderly. Ethical worries about their vulnerability, too, get in the way of including the elderly in experiments, in ways we scientifically should.

Instead of construing this as an issue of “ethics” versus “good science,” however, we can see it as an issue of “ethics versus ethics.” Indeed, the ethical considerations on both sides can be seen to be broadly of a cloth, insofar as both involve an attempt to “protect the vulnerable.” On the one side, we need to protect vulnerable research subjects from ill-usage in the experimental procedure. On the other side, we need to protect vulnerable patients from being prescribed drugs that have not been adequately tested on populations relevantly similar to their own. Saying that “vulnerabilities are involved on both sides” does not, of course, automatically tell us where exactly the balance should be struck. But the problem of weighing the competing considerations is nonetheless rendered far more tractable by getting them both on the same scale.

Of course, there can be no thought of press-ganging subjects into experiments literally against their will. Kipnis is surely right to say that “the wrong committed by experimenting on an unwilling subject is of far greater seriousness than the wrong committed by unjustifiable exclusion.”28 But that is not what is being contemplated, here. What is in view here is an attempt to “both right and good” constitutes an interestingly different hybrid. It bears pondering how many more situations, other than medical experimentation, might manifest that same structure.

V. Conclusion
The problem I have been wrestling with is why we should hesitate to experiment or operate on people who are vulnerable in ways compromising their capacity to consent—but why it might be all right to go ahead, despite those hesitations.

My own preferred solution is to introduce “autonomy interests” into a consequentialist model, which imposes a general duty on all doctors (and all others) to protect the interests of those who are especially vulnerable to their actions and choices.

Other philosophers do doubt would prefer more deontological foundations. To them, I offer this closing observation. If you think the Nuremberg Tribunal got it broadly right, then for an experiment to be permissible it has to be both “right” and “good.” That is to say, the researcher not only has to have the consent of the experimental subject; she also has to have good grounds for thinking that some good will come of the procedure.

To those taught to see deontology and consequentialism as mutually exclusive alternatives, this requirement that the experiment be “both right and good” constitutes an interestingly different hybrid. It bears pondering how many more situations, other than medical experimentation, might manifest that same structure.

References


Endnotes

1. These are the sorts of things catalogued most ably, for the experimental case, in Kipnis 2001; see further Kipnis 2003.
2. Goodin 1985, ch. 5.
3. Goodin 1985, 62-70, discussing doctor-patient relations alongside lawyer-client ones as instances of “professional responsibilities” more generally.
4. Goodin (1985, 62-70) raises doubts about the parallel voluntaristic account of professional responsibilities of doctors toward their patients: there it is argued that the reason doctors have special responsibilities toward their patients is not because of any voluntarily self-assumed obligations but, rather, because patients’ vital interests are particularly vulnerable to their doctors’ actions and choices. Similar issues are raised as regards researchers and experimental subjects in H. Schuch1994.
5. An alternative deontological ethic might for example make its prime directive “respect for persons,” which is ordinarily manifested by securing their informed consent before undertaking any medical procedures on them, but which can also be manifested in various other ways as well. But if we do not necessarily have to secure a person’s informed consent to a procedure, vulnerability compromising that person’s capacity to give meaningful consent is then not necessarily a problem. To see why vulnerability might be a problem, in deontological terms, we therefore need to focus on versions of deontological ethics that prioritize informed consent.
6. Because, in Hobbes’s (1651, ch. 14) terms, the “sign” does not, in the case of such agents, “sufficiently argue their will.”
7. A hard-line deontological analysis would accommodate the latter case by literally equating the consent of a legally authorized representative with the consent of the person whose agent it is: when the agent consents, the person whose agent it is thereby consents. In the absence of that formal legal authorization, however, there seems to be no way on a hard-line deontological ethic for that transfer of agency to be affected. There is no plausible story that could be told about how, “when the surrogate decision-maker has consented, the person on whose behalf the decision is being made has thereby consented.”
13. World Health Association 1964, Principle 10 (emphasis added). That Principle goes on to say that, “In that case the informed consent should be obtained by a physician who is not engaged in the investigation and who is completely independent of this official relationship”; and the next Principle goes on to say that, “In case of legal incompetence, informed consent should be obtained from the legal guardian in accordance with national legislation. Where physical or mental incapacity makes it impossible to obtain informed consent, or when the subject is a minor, permission from the responsible relative replaces that of the subject in accordance with national legislation.”
14. Thus, for example, under each of the dimensions of “vulnerability” he discusses, Kipnis (2001, 178-9) proposes “measures researchers might take to address” the limitations those vulnerabilities imply for capacity for meaningful consent. In some cases, those measures are designed to make vulnerable people’s consent more meaningful (in the case of cognitive vulnerabilities, e.g., with “plain language consent forms” or “supplementary educational measures”) and other times involve measures to make sure that vulnerable agents’ interests are protected, albeit not through the agency of those agents themselves (in the case of cognitive vulnerability again, through “the proper use of surrogates and advocates”).
15. My favorite version remains Ronald Dworkin’s (1974, p. 18): “Suppose you and I are playing poker and we find, in the middle of a hand, that the deck is one card short. You suggest that we throw the hand in, but I refuse because I know I am going to win and I want the money in the pot. You might say that I would certainly have agreed to that procedure had I not been aware of the possibility of the deck being short been raised in advance. But your point is not that I am somehow committed to throwing the hand in by an agreement I never made. Rather you use the device of a hypothetical agreement to make a point that might have been made without that device, which is that the solution recommended is so obviously fair and sensible that only someone with an immediate contrary interest could disagree. Your main argument is that your solution is fair and sensible, and the fact that I would have chosen it myself adds nothing of substance to that argument.”
16. “If I consent to your killing me, you would not thereby be permitted to do so. That some deed is okay with me does not always mean it is okay,” as Kipnis (2001, 176) observes. The best story hard-line deontologists can tell here, presumably, is akin to Mill’s (1859, ch. 5) argument against slavery contracts: respect for autonomy does not oblige us to respect autonomous choices to extinguish autonomy, whether by selling oneself into bondage or by killing oneself either. That would oblige physicians to engage in the cruel prolongation of a terminal patient’s autonomous existence, however painful and ultimately pointless, contrary to the patient’s clear and rational preference for a more dignified end of his choosing. Many hard-line deontologists will reply “quite so” to that proposition, of course; but the reference to “dignity” in that case description might give pause to at least some deontologists who see respect for persons as being linked as much to “human dignity” as it is to “moral autonomy.”
17. Especially, perhaps, the worry that other interests can outweigh autonomy interests too easily and often, if autonomy is seen as just one interest among many. Unless we make autonomy interests lexigraphically prior to all others, we will be unable to satisfy those who demand that no medical procedures could ever be performed without the consent of a person who is actually capable of granting or withholding consent.
19. Nuremberg Tribunal (1949, Directive 9) requires that, “During the course of the experiment the human subject should be at liberty to bring the experiment to an end if he has reached the physical or mental state where continuation of the experiment seems to him to be impossible.”
20. “Forgotten” in the literature of medical ethics, if not the practice of IRBs, where it is standard practice to subject proposals first to a consequential-style risk-benefit calculus and then an informed consent test.
Vulnerability in Research Subjects

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The concept of “vulnerability” was basically grandfathered into the literature of research ethics, without certification. Though the Nuremberg Code emphasized the necessity of the candidate-subject’s informed consent, it ruled out essential research on children and those with cognitive impairments. In general and to the waived-consent experiments discussed above (US Code of Federal Regulations 2001 and 1996 respectively).


22. Note that I describe these considerations as “consequential” or “consequentialistic in form” —by which I just mean “outcome-oriented.” Why those should matter is, of course, easily analyzed in terms of consequentialistic ethics. But it is of course possible to incorporate them into a deontological ethic as well (as, for example, duties of beneficences are within Kant’s ethics). The task of those preferring to construct a hybrid model from a deontological starting point would be to find some such way of these consequential considerations within that sort of ethic.


Cognitive: Does the C-S have the capacity to deliberate about and decide whether to participate in the study?

Situational: Does the C-S have the time and composure needed to understand and choose whether to participate in the study?

Juridic: Is the C-S liable to the authority of others who may have an independent interest in that participation?

Deferential: Is the C-S given to patterns of deferential behavior that may mask an underlying unwillingness to participate?

Medical: Has the C-S been selected, in part, because he or she has a serious health-related condition for which there are no satisfactory treatments?

Allocational: Is the C-S seriously lacking in any important social goods that will be provided as a consequence of his or her participation in research?

Social: Does the C-S belong to a socially disvalued group?

It is useful to return to the idea of consent, so central to the Nuremberg analysis. As with other performatives, to grant consent is to exercise an ethical power. We have the ability, merely by enacting the proper words under the right circumstances, to alter the systems of obligations and permissions that envelope us. Ordinarily it is a wrong for you to take my lawnmower. But if I say “You can take my lawnmower,” an action that would have been wrong can become unexceptional. In giving permission, an act can become permitted. So the granting of consent by an informed candidate research subject (C-S) vulnerability can be distinguished, each paired with a distinct question and compensating strategies. Foreshadowing, here are the seven.
appreciate their situations and deliberate. Still others with unexpected, exigent medical conditions (women having miscarriages, for example) may lack the time and composure needed to become informed, though they are not mentally disabled. These two vulnerabilities—“cognitive” and “situational”—each represent a limit on the ability to provide informed consent. Several strategies exist to compensate for cognitive vulnerability: plain-language consent forms, advance directives (where incapacity is anticipated), supplementary educational measures, and the proper use of surrogates and subject advocates. Situational vulnerability can be addressed by community consultation and notification procedures in the context of waived consent trials for patients in emergency circumstances.

However, the five other vulnerabilities are different. For even if informed consent is present, it may not suffice to affect the permissibility of research. When consent is given, something that wasn’t permitted thereby becomes permissible ...usually. So if a doctor asks to examine a patient who now says “OK,” this typically brings it about that the physical examination becomes OK. To consent is—characteristically but not always—to exercise a power to alter ethical relationships. Consent can change the system of obligations, permissions, and prohibitions within which we live.

Though we usually think that to give informed consent is to grant permission, and to grant permission is to bring it about that some formerly prohibited act becomes permitted, informed consent in research is often insufficient to bring about permissibility. The science may be bogus; the people selected for a burdensome trial may be different from those who can benefit from the results; the risks and burdens may be excessive; there may be dangers to third parties; those conducting the study may not be up to the job; the political, organizational, economic, and social settings may not offer the integrity and resources required by the trial; and so on. While non-vulnerable participants can be wrongfully placed in harm’s way, subject vulnerability was never intended to pick out all of the areas where researchers and IRBs have to be careful. Vulnerability is only one chapter of the research ethics story.

We can now examine the second route to vulnerability. Consider the following cases (Kipnis, 1992):

Riley#2 finds that he has a life-threatening but curable illness. Dr. Hathaway offers to administer treatment that will cure him, but only if Riley#2 agrees to pay him $10,000. Riley#2 consents and is cured. Does Riley#2 owe Mr. Hathaway $10,000?

There are at least three ways of thinking about these cases. Some—notably libertarians—treat the cases identically. Neither “rescuer” is responsible for the other’s precarious situation. Neither has a legally cognized duty to intervene. Neither makes anyone worse off. Both have offered assistance—at a price, of course—and a deal is a deal.

A second group sees a powerful argument for lifeguards and universal health coverage. Just as we tax ourselves to support municipal fire fighters, those facing other life emergencies should not have to purchase vital assistance in the marketplace. An economy is ethically flawed if it treats certain vital goods as commodities. Although this approach is revealing, it dodges our question: Do the Rileys owe their debts even in flawed economies?

Finally, some will scrutinize the terms of the two contracts. While it may not be unjust to have to pay $10,000 for $10,000 worth of medical care, that same sum is excessive payment for modest assistance in getting out of the water. Though both Rileys can knowingly and voluntarily enter into their respective agreements, the terms of the first contract appear to be exploitative and unconscionable, the price reflecting the fatal consequence of refusing the offer rather than the minor costs of providing the service.

Both Rileys are vulnerable: precariously situated and at the mercy of their respective Hathaways. Each expects death as the consequence of rejecting the offer. But each is capable of informed consent, appreciating exactly what they must understand, and choosing reasonably enough under the circumstances. Though there is vulnerability in both cases, only Mr. Hathaway—not Dr. Hathaway—is taking unfair advantage of it. I do not think it would be exploitation if Mr. Hathaway had asked Riley#1 to pay—not $10,000—but only $10, to clean clothing he would soil in the rescue. Vulnerability makes it disturbingly easy to impose agreements that unjustly allocate benefits and burdens. These transactions must be scrutinized carefully.

This second type of vulnerability does not limit informed consent. Where the candidate-subject is (1) juridically subordinated (like students, employees, soldiers, and inmates); or (2) deferential (like certain children, students, military enlistees, employees, and third-world woman); or (3) seriously lacking in opportunities or material resources (like prisoners and the Tuskegee subjects); or (4) without safe and effective medical options (like many in cancer research); or (5) socially disvalued (like prisoners, children, women, and minority groups), it is possible that the research should not be done even with informed consent, and certainly not until compensating measures are implemented.

**Juridic vulnerability** calls attention to the formal authority relationships that often characterize social structures. The most striking examples are prisons and the military, where wardens and officers have legal authority over prisoners and enlistees. But the category also includes children under the authority of their parents, psychology students subordinated to their college professors, institutionalized persons (including institutionalized children and their parents) subject to the authority of custodians, and certain third-world woman who may be legally subject to their husbands. Related issues can arise when the candidate-subjects are engaged in illicit activities. This catalogue is not exhaustive.

In these cases researchers must ask: “Is the C-S liable to the authority of others who may have an independent interest in that participation?” The worry is that the “consent” of the C-S might be merely a reflection of the wishes of those in authority. This distinctive vulnerability—the juridic fact of their subordination to the authority of another—can call into question the validity of their consent. This is especially a concern when those in authority are also those who are conducting, commissioning, or somehow benefiting from the research.

In its Final Report on human research in the military, the Advisory Committee on Human Radiation Experiments (ACHRE) recommended that officers be specifically excluded from recruitment sessions and that an ombudsman be present to insure that the voluntariness of participation is adequately stressed. Likewise, children can be questioned separately from their parents and confidentially. The task for the researcher is to devise a consent procedure that will adequately insulate...
the C-S from the hierarchical system to which he or she is subject.

While juridic subordination directs our attention to objective features of the formal hierarchical context within which the C-S functions, **differential vulnerabilities** are, instead, subjective responses to certain others. To be sure, the two are often present together. With respect to officers, enlistees are generally both differential and juridically subordinated. But when, in the presence of intimates and friends, one is exorted to stand up on behalf of a popular cause, one may care deeply about the opinions of those others even though they do not occupy formal positions of authority. Researchers need to understand these powerful social and cultural pressures and devise consent procedures that take them into account. Those involved in subject accrual need to be selected with care, perhaps with the advice of local informants or consultants in psychology and anthropology. The conversational setting may require attention. The challenge is to devise a process that eliminates as much as possible the social pressures that a candidate-subject may feel even if, in reality, they are not being imposed.

**Medically vulnerable** candidate-subjects are those who are under consideration because of serious health-related conditions for which there are no satisfactory remedies. Metastatic cancers can fall into this category, as can severe spinal cord injuries, Parkinson’s disease, multiple sclerosis, Alzheimer’s disease, end-stage AIDS, and so on. Also included are illnesses for which there are treatments that are not suitable for particular patients. Rescue therapy for cancer, requiring transfusions, is not a suitable treatment for most Jehovah’s Witnesses.

What makes these patients vulnerable is their medically exigent state. Having run out of options, they will be willing—even eager—to undergo risks that would ordinarily be foolish. The classic problem with research on medically vulnerable patients is an apparently ineliminable “therapeutic misconception” affecting the majority of these subjects. The patients know there are no satisfactory standard treatments and that, based on pre-clinical research, scientists are testing a drug that might be safe and effective. Despite warnings to the contrary, many of these subjects are eager to enter trials on the chance they will benefit from access to a drug that works. But Phase I clinical trials are not supposed to be about efficacy: They are primarily designed to assess safety. The research subject is vulnerable—so the story goes—because he or she is driven by a false but persistent hope for a cure and, accordingly, is likely to enter the study out of an unreasonable expectation of success. But even if the unproven drug is, in reality, both safe and effective, it is often unlikely that a medically exigent research subject can benefit from it. Since the primary purpose is to assess safety, patients may receive theoretically sub-therapeutic dosages. But instead of receiving increased dosages when tumors progress without adverse reactions, patients are typically removed from the study and denied possible benefits. And even if efficacy appears, the trial can end, leaving improving patients in the lurch.

A fairer division of benefits and burdens would require that trials be designed to assure patients that they WILL have a chance of benefitting from participation IF it turns out that the drug is safe and effective. To fail to do so is to take unfair advantage of these research subjects’ vulnerability. One way to do this would be to guarantee to subjects that there are only five ways in which they will come off the study. Either (#1) they choose to leave the study; or (#2) they seriously fail to comply with the protocol and are removed; or (#3) significant adverse reactions are seen in response to the drug and the trial ends; or (#4) they die; or (#5) they are stabilized or cured. While candidate-subjects should be assured that (#5) is unlikely, the study design takes seriously the medically exigent patient’s overriding interest in maximizing the possibility of therapeutic benefit. It is a less exploitative arrangement. Under this “maximum therapeutic benefit” standard, the primary concern would still be the scientific validity of the research design. But, having satisfied that requirement, the patient’s powerful interest in improvement would have to appear prominently on the researcher’s radar screen.

If the internal benefit of research is a safe and effective therapy, the external benefits are the various other compensations that research subjects receive. But a C-S in a state of **allocation vulnerability** is seriously lacking in other socially distributed goods: money, housing, medical care, childcare, burial benefits, opportunities to benefit the community, and so on. The question for the investigator is: “Is the C-S seriously lacking in important social goods that will be provided as a consequence of his or her participation in research?” (On occasion, it may also be pertinent to ask whether the C-S is seriously burdened with social evils that will be relieved as a consequence of participation. This issue is especially pertinent for research on prisoners.

Now if Job-Seeker is destitute and hungry, and Business-Owner offers him a good job at a decent wage, and Job-Seeker accepts (notwithstanding that it is the only acceptable option), we would not concern ourselves with the voluntariness of the acceptance so long as the terms of employment were fair. But if Business-Owner offers subsistence compensation, and the work is dangerous, and there are no workers’ compensation benefits, communities are likely to invalidate the agreement. We will do this, not because Job-Seeker had no other choice, but because the bargain was unconscionably exploitative. As with medical exigency, the vulnerability is to be found in Job-Seeker’s precarious position: economic in this instance. But this allocational disadvantage should direct our attention to the substance of the bargain: Is it fair to the party in the weaker position? The minimum wage, job safety regulations, and workers’ compensation benefits are all broadly-supported means of reducing such exploitation.

In biomedical research, the vulnerabilities associated with allocational disadvantage arise in many ways. The researcher needs to ask whether the deprivation has led to acceptance of an exploitative offer. While allocations are often the result of impersonal socio-economic forces, the basis for ethical concern is compounded when someone with juridic authority over the C-S is distributing the goods in question. Prisons and the military, for example, may function in this way. It is difficult to distinguish between just and unjust compensation packages. Of the seven types of vulnerability, allocational disadvantage is probably the most problematic. We often assume that if a bargain is satisfactory to both parties, others should not interfere. But participation as a subject in medical research can impose risks and burdens that properly attract community attention. While we do not want to see people treated unfairly, we are not very confident applying the concept of the just price.

I suggest we consider the standards that we routinely apply to other comparable remunerative activities. Although the point has been urged before, it is hard to grasp why research subjects should not normally be entitled to medical treatment for the injuries they suffer; why they should be asked to subsidize the research enterprise in that unusually burdensome way. Surely if we extended broad community standards into this aspect of research, we would begin by securing a right to some version of “workers’ compensation.”
Social vulnerability points to the ways in which entrenched prejudice and stereotypical thinking can compromise the care and consideration that would ordinarily be present. The question for researchers is “Does the C-S belong to a socially undervalued group?” The worry is that stigmatizing perceptions will adversely affect the process of developing, implementing, and reviewing the protocol. Although more needs to be said about the appropriate responses to this type of vulnerability, the involvement of members of these socially disvalued groups in the review and implementation process could provide some needed protection, along with corrective education as needed. Projects that needlessly single out the members of such groups for study might well require added scrutiny during the review process.

Finally, the sensitive understanding of vulnerability—the many precariousnesses that afflict the human condition—exposes a certain universality in these themes even while grounding a broader case for kindness and sensitivity. None of us is without some cognitive limitation. Everyone is subject to juridic authority, not all of which is wisely benevolent. Socialization itself entails patterns of deference. All of us face an eventual and too real prospect of medical exigency. And no one is immune from extreme and exigent need and the harms that can flow from prejudice and other deficits in the systems we count on to provide us with essential services and protections. Nor are researchers the only ones who need to learn how to engage the vulnerable with sensitivity and honor. The topic surely has an importance extending beyond the boundaries of research ethics.

**References**

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**Reflections on Kipnis’s Concept of Medical Vulnerability**

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Kipnis makes several significant contributions to understanding and responding to various types of vulnerability in research participants. Most importantly, he replaces the federal regulations’ “subpopulation” approach to identifying and responding to vulnerability with an “analytic” approach. Distinguishing seven types of participant vulnerability, namely, cognitive, situational, juridic, deferential, medical, allocational, and social vulnerability, he recommends a special protection for each (Kipnis 2001; Kipnis 2004a). His analysis of medical vulnerability and its remedy is provocative and problematic.

We consider the adequacy of Kipnis’s assessment of the source and scope of medical vulnerability and his recommended special protection for medically vulnerable participants. Moreover, we weigh whether his proposal to maximize therapeutic benefit is more appropriately incorporated in modified regulations for the protection of vulnerable research participants or is best viewed as an aspirational guideline for researchers and IRBs.

**Background**

Human research participants routinely are assured several core protections. For example, IRBs engage in prior interdisciplinary review of the study protocol, the consent process and consent form, and they assess whether the risks that have been minimized are consistent with sound research design and whether the risks are reasonable in light of the benefits.

Researchers and IRBs often go beyond the core protections and provide one or more special protections as well. More rigorous recruitment and consent procedures are two of the most common types of special protections (see examples in list below). Without being exhaustive, the following list shows the range of special protections that can be used to mitigate vulnerability.

- Assign recruitment responsibilities to someone independent of the study
- Support the consent process with additional educational activities, use consent advocates or surrogates, strengthen disclaimers in the consent process and materials, formally assess competence and comprehension
- Require additional levels, frequency, and types of review of the study and its conduct
- Increase representation by those who are to participate in the research in the design and/or review of the study
- Minimize risk through the conduct of more preclinical studies, use of clear stopping rules and data safety monitoring boards (DSMBs), and compensation of participants in the event they are harmed
- Increase benefits by insisting on the prospect of therapeutic benefit, and direct adequate attention to the merits of the study question and design
- Cap the level of risk for research involving children, per regulation

Depending on the study design, the vulnerability of the participants, and the investigational interventions, among other factors, any number of these special protections may be appropriate.

**Kipnis on Special Protection for Medically Vulnerable Participants**

Prospective research participants are medically vulnerable, Kipnis maintains, when they have serious health-related conditions for which there are no satisfactory treatments, putting them at increased risk of being exploited for research purposes. What makes them vulnerable is “having run out of options, they will be willing—even eager—to undergo risks that would ordinarily be foolish.” An “ineliminable ‘therapeutic misconception’” drives their “false but persistent hope for a cure,” and they are “likely to enter (studies) out of an unreasonable expectation of success” (Kipnis 2001, 2004a).

Kipnis maintains that participants need to be protected from researchers’ inattention to medical vulnerability and “agreements that unjustly allocate benefits and burdens” (Kipnis 2004a). He urges researchers and IRBs to be more responsive to participants’ “overriding interest” in a chance at therapy. Particularly provocative is Kipnis’s suggestion that IRBs and researchers attend to the arrangement of benefits and burdens between a researcher and her study participants—“to the substance of the bargain.” This introduces a set of considerations different from those that IRBs customarily attend to. In Kipnis’s view, researchers and IRBs should be more vigilant and purposeful in their efforts to protect prospective participants from exploitation. It is the unfair taking advantage
of participants deprived of therapeutic options that Kipnis believes needs to be remedied.

Special recruitment and consent protections are insufficient in Kipnis’s view. The risk of the therapeutic misconception by medically vulnerable participants is so high, serious, and inevitable, that it is futile to expend effort to mitigate it. He advocates, instead, a sole special protection for medically vulnerable participants—namely, maximizing therapeutic benefit—not only within a study, but possibly long-term after the completion of a study. He asks, “given the interests and aspirations of both parties (and the poor bargaining position of one), is there a fair division of the benefits and burdens of cooperation?” (Kipnis 2001) His objective is to make the cooperative relationship between researcher and participant as well as the arrangement of benefits and burdens between them, fairer, kinder, and more sensitive. (Kipnis 2001, 2004a).

Critique

Kipnis’s proposal exceeds the bounds of common IRB practices and the regulatory requirements that the risks of a study be minimized and be reasonable in light of any expected benefits. But how should we understand his recommendations? Is he, for instance, offering a new regulatory standard for protecting medically vulnerable participants?

We believe Kipnis’s recommendation is best understood as aspirational, rather than a minimum requirement of the sort that comprise regulations. He acknowledges that promising therapeutic benefit after the completion of a study does not transform a study in which the risks are unreasonable, into a study in which they are reasonable (Kipnis 2004b). But it can enhance the fairness of the relationship between researcher and participant. It has the potential to make the “arrangement” of interests fairer and less prone to exploitation. Considering and adjusting the arrangement of interests between the researcher and study participants is an activity different from adjusting the arrangement of risks and benefits within a study. Kipnis’ recommendation to maximize therapeutic benefit is more a type of inducement or compensation than a protection.

It is well recognized that efforts to sweeten invitations to clinical research raise the prospect of unduly inducing people to participate. Kipnis does nothing to reassure us that his open-ended call for maximizing therapeutic benefit avoids problems of undue inducement and protects against the therapeutic misconception and exploitation. Requiring or even allowing offers of therapeutic benefit at the end of a study, depending on the study, may be counterproductive (Dresser 2002). When there is little prospect that a therapeutic benefit will become available after a study, promises of possible future benefit may encourage medically vulnerable persons to agree to participate in studies they would not otherwise agree to. Such promises can easily exacerbate rather than mitigate the therapeutic misconception. If the prospective participant interpreted “I might get better” when told “You will undergo these risks, but therapeutic benefit is unlikely and not to be expected,” surely she will infer, “I will benefit” when promised; “If there is benefit later, you will receive it.”

Recommendation that investigators promise participants a potentially therapeutic study intervention either within studies or after the studies have been completed, is reasonable in some cases (Freeman 1999). Kipnis’s error lies in generalizing from his reflections on one particular study (a phase I dose escalation study of an angiogenesis inhibitor—which boasts an unusually low toxicity—in cancer patients lacking other options) to all studies involving medically vulnerable participants (Kipnis 2001, 2004a). Kipnis himself lists a wide range of circumstances in which people may be medically vulnerable: metastatic cancer, severe spinal cord injuries, Parkinson’s disease, multiple sclerosis, Alzheimer’s disease, end-stage AIDS, and rescue transfusions for Jehovah’s Witnesses. His examples of an angiogenesis inhibitor in cancer patients and transfusions in Jehovah’s Witnesses provide important clues that issues of vulnerability and special protection involve attention to multiple considerations, including characteristics of the particular disease, the particular intervention(s) being studied, and the study design. The diversity of medically vulnerable people and types of studies involving them suggest the implausibility of just a single special protection for this category of vulnerability.

Moreover, we disagree that efforts to mitigate the therapeutic misconception are futile. Instead we join Appelbaum and Dresser, among others, who maintain that there are ways to avoid and minimize the force of the therapeutic misconception (Appelbaum 1987; Dresser 2002). In our view, therefore, Kipnis is unwise to reject and abandon special protections directed at recruitment and consent for medically vulnerable participants. It is important to embrace these and many other special protections depending on the particulars of a given study.

Kipnis’s proposal to maximize benefits is problematic for practical reasons as well. It is so stringent a standard that it makes many otherwise acceptable studies infeasible; it needs qualification. Requiring that the therapeutic benefits be maximized—without further qualification—may have the unintended effect of raising the bar on what research can and will be conducted. It may make the conduct of some research prohibitively expensive and so burdensome for sponsors, researchers, and funders that it will not be conducted. From where shall researchers find the funds to cover the costs of long-term continued use of investigational interventions after a study is complete? Might the obligations differ depending on whether the researcher is an individual clinician or a manufacturer? What sorts of competing interests of the researcher, in Kipnis’s view, might be compelling enough to limit the obligation to maximize therapeutic benefit for participants in her studies? Moreover, researchers may not be permitted to promise an unapproved FDA-regulated product off-study without prior approval from the FDA—an approval that may be difficult to obtain so far in advance. Alternatively, if Kipnis is calling for radical changes in the institutions and infrastructures surrounding and supporting clinical research, he needs to offer more detail and justification for such radical recommendations.

Finally, unqualified calls for maximizing therapeutic benefit in clinical research, taken to their logical extreme, threaten to dissolve research into therapy and undermine the research enterprise as a whole. This encourages rather than discourages widespread dissemination of unproven interventions, avoidable harms to patients, and unwarranted expenditures. We are not as sanguine as Kipnis about making research resemble therapy as closely as possible.

It must be explicitly acknowledged that medical exigency can justify a departure from the norm separating research and therapy. The conjoining of these two different purposes is justified when 1) illness is severe and 2) no safe, effective, and otherwise satisfactory treatments are available (Kipnis 2001).

The story of surgical research illustrates the drawbacks of conjoining research and therapy. Surgical research traditionally has been exempt from meeting the same scientific and ethical standards as other types of clinical research. This carve-out
allows surgical researchers to focus on delivering therapeutic benefit and to direct less attention to issues of study design and participant protection. Surgical studies on the whole undergo less review by peers, IRBs, funding agencies, and DSMBs. Until recently these practices have received little challenge. For a variety of reasons, however, professional surgical organizations and surgical researchers are now calling for more rigorous surgical trials (Prehn 2004). There is even growing support for the use of placebo controlled surgical trials (Freeman 1999; Miller 2004; Moseley 2002; Vawter 2003, 2004). Although some people worry that participants in such trials are especially vulnerable and in need of special protection, we remain concerned for the participants in surgical activities that prematurely resemble therapy more than research. Participants in placebo-controlled surgical trials may often be better protected, not less. Placebo-controlled trials are more likely to have received independent peer review, be well-designed, have clear stopping rules, be closely monitored, be adequately funded, and to have been reviewed and approved in advance by more than one IRB. All this suggests that rigorously designed surgical trials with reasonable risk/benefit profiles are more likely to have appropriate special protections in place for their participants, than research activities that seek to maximize therapeutic benefit and resemble therapy.

We remain unsupersueded that the core issue concerning medical vulnerability is to develop fairer, kinder, and more sensitive relationships between researchers and participants. The value of familiarity with medical vulnerability is to facilitate selecting the appropriate set of protections (routine and special). When potential participants are vulnerable, researchers and IRBs should consider whether and how the vulnerabilities alter the reasonableness of the study’s risks and benefits. The kind of attention that should be directed to benefits is increasing (not maximizing) the full range of potential benefits (not only direct therapeutic benefits) consistent with sound research design, as necessary to render the risks reasonable, consistent with the study’s feasibility, and to incent and compensate participants as appropriate.

References

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**Presidents and their Right to Privacy**

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Barron H. Lerner, a physician and medical historian, faults the family of Ronald Reagan for keeping healthcare decisions by and about the former President from public scrutiny. He says their decision not to go public with the details of the late President’s final years “deprived Americans of the opportunity to learn how the family confrontes questions crucially relevant to Alzheimer’s patients and their families.”1 The public did not get to know, for example, whether Mr. Reagan executed an advance directive, why the family went ahead with a hip replacement in a demented man of advanced years, or whether there was, at the very end, a decision to forgo treatment. Lerner says that “frank acknowledgement of the difficult choices the family faced could open a broader public discussion about the value, and quality of life, for Alzheimer’s patients during ‘the long goodbye.’”

The health of presidents always attracts public attention, if only because some presidents and candidates have actively concealed or misrepresented details of their health. In 1972, George McGovern’s first vice presidential candidate, Thomas Eagleton, disappeared from the Democratic ticket when the public reacted unfavorably to the not-initially-revealed disclosure that he had received electroshock treatment for depression.2 Since that time there has been increased scrutiny of candidates’ health, and their medical records, sometimes to little avail. Paul Tsongas apparently fudged the full extent of his cancer while campaigning for the presidency.3

Perhaps the most notorious concealment of ill health involved the disability and extended convalescence of Woodrow Wilson.4 John F. Kennedy concealed a variety of ailments that seriously affected his health and required constant medication.5 Lyndon Johnson had health problems that played a significant role in his decision not to run for a second term, though he did not say as much in public.6 Sometimes circumstances have brought presidential ailments into plain view. Jimmy Carter was hospitalized for hemorrhoids, which by his own admission interfered with key diplomatic initiatives.7 Ronald Reagan was hospitalized, of course, following an assassination attempt.

The disclosure of healthcare records prior to election or even while in the White House has at least one very strong rationale to recommend it: the identification of disorders could interfere with job performance, especially weighty and time-sensitive military decisions. Of course, disclosure of records to run for political office remains a voluntary decision. There is nothing in the Constitution that requires a health report in order to serve in political office. People who do not wish to disclose their medical records to run for the Senate, the House of Representatives, or the White House do not have to do so. They risk, of course, voters becoming suspicious that they might be concealing something, but in the end that decision is still theirs to make.

The information Lerner is looking for far exceeds the standards of disclosure that are expected in political life today. Lerner is not suggesting that there may have been evidence of deteriorated mental status while Reagan held office, though some have made exactly that hard-to-substantiate allegation.8
If it were true that any president’s mental faculties were slipping away in the White House, the public would certainly have a *prima facie* right to know. As far as the Constitution is concerned, a sitting President forfeits the expectation of privacy in regard to any medical condition that would trigger the application of the 25th amendment which provides a mechanism for succession should the President be unable to discharge the powers and duties of the office. To comply with that provision, both Ronald Reagan and George W. Bush transferred temporary presidential authority to their vice presidents, while undergoing medical procedures. By contrast, Lerner wants the details of President Reagan’s decline and healthcare well after the man left office. This interest in presidential health healthcare out of office is something new, and bioethics ought to pay attention.

In medical ethics, there is a strong presumption of privacy unless patients waive their rights to it or there are compelling reasons that justify disclosure of certain information to specific parties. The exact reasons for breaching confidentiality are a matter of debate, of course. In the 1980s, the HIV epidemic added new wrinkles to the questions physicians faced in warning third parties about dangers from the psychiatric disorders and communicable diseases of their patients. Not all the public’s interest in medical records involves danger to others, however, and attempts to breach medical confidentiality are more dubious than others. For example, in 2003, the U.S. Attorney General unsuccessfully subpoenaed medical records from hospitals in an attempt to determine the scope of a certain kind of abortion procedure. Medical confidentiality exists in order to protect people from unwanted scrutiny regarding their diagnoses and treatment, and that should be true for politicians or anyone else who is famous by the standards of the day. Former presidential families do not owe the public the details of former presidents’ diseases and deaths unless they choose otherwise. There is no specifically identifiable person who will suffer if this disclosure is not made.

It is almost certain that President Reagan or his family was offered the opportunity to obtain information about advance directives. The federal Patient Self-Determination Act (PSDA) of 1991 requires that healthcare institutions make exactly that offer, and former presidents would be no exception as they enter healthcare institutions. As is well known, the PSDA has made some progress in extending advance directives across patient populations, but its influence is not widespread. Like many other Americans, the Reagans might simply have forgone the opportunity to put instructions in place that would guide later medical decisions. Even if they did, advance directives are not panaceas because unanticipated medical states can occur, leaving an advance directive confusing if not altogether irrelevant. Some advance directives, for example, stipulate acceptable and unacceptable medical treatments, which guidance may or may not apply to a patient’s actual condition. For this reason, knowing the details of President Reagan’s advance directive (if any) might not tell an especially useful story.

Even without disclosing the details of the former president’s healthcare, the Reagan family has made considerable contributions to the awareness of Alzheimer disease. In 1994, President Reagan addressed his illness in a public letter in which he said, among other things: “I now begin the journey that will lead me into the sunset of my life.” No other president has ever written a public valedictory letter in which he confronted the illness that would destroy him, and he specifically said he wrote the letter to promote awareness of the disease. And, in helping push for federal funding of stem cell research, former first lady Nancy Reagan might well help provide the political impetus necessary to change the 2001 decision of the Bush administration that puts tight restrictions on federal funding of stem cell research. That research might open doors to new Alzheimer treatments.

Yet Lerner thinks that’s not enough. He says the Reagans might have helped with a “broader public discussion about the value, and quality of life, for Alzheimer’s patients.” By all accounts, President Reagan’s illness was profoundly disabling. How would the details of the decline help the public at large estimate—as Lerner puts it—the value of life for Alzheimer patients? And what, precisely, does that mean: to estimate the value of life for people with Alzheimer disease? How to make treatment decisions? If that’s the goal, the details of Reagan’s decline might not be especially helpful. Decisions about the healthcare of people with Alzheimer disease are highly personal decisions, and there should be no lazy assumption that the resources available to the Reagans would be available to all families of Alzheimer patients. Celebrities only go so far as role models.

Information about advance directives and chronic, long-term care is too important for Alzheimer patients, or for any patients with chronic, debilitating illness, to leave to the Reagan family. The healthcare system as a whole has a responsibility to shoulder the main freight of equipping patients and their families to deal with these matters. We should respect the privacy of presidential families because it is important to respect the privacy of all families. We can only be “deprived” of something if we have a reasonable right to it. We have no such right to the healthcare decisions of politicians, actors, or anyone else in the public eye. If some famous families want to come forward with the details of various disorders, that’s fine, but it is a decision that should rest with them, as the A.M.A. reminds physicians through its *Code of Ethics*. No one should carp when people exercise the hard-won right of medical confidentiality that allows them a sanctuary to make decisions in keeping with their values and sense of dignity.

**Endnotes**

\[ \text{Race/Ethnicity, Health Disparities, and Bioethics} \]

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This work-in-progress mainly addresses how bioethics should respond to health disparities and related issues of racism and ethnic bias. I argue that bioethics should evolve from a self-understanding as primarily a field of ethical analysis to one that also includes change-agency (action). I explain that as a white-dominated field, for bioethics to adequately address issues of race/ethnicity, most bioethicists must face their whiteness.

These words are a modification of remarks I was invited to make in response to papers that were presented during the panel on Race and Health at the annual meeting of the Association for Professional and Practical Ethics, 2004, Cincinnati, Ohio: Annette Dula’s “As the Disparities Grow Worse...” and Segun Gbadegesin’s “Beyond Race or Culture: Toward a Global Bioethics for Equity in Health Care.” In different ways, Dula and Gbadegesin provoke bioethicists to consider whether we have the individual and collective will to make a difference about unjust and/or unwise policies and practices that perpetuate inferior health of disadvantaged racial and ethnic minorities.

I agree with Dula that we should be very concerned about backlashes to, and suppressive actions against, reports of health and healthcare disparities. Dula’s implied question is whether bioethicists ethically can remain silent when public agencies distort the truth about issues of bioethical importance like health disparities. Also, I agree with Gbadegesin that race is a social construct and that we must address ethical issues in health surrounding socially-designated race and ethnicity to ameliorate and eliminate inequities in the health arena. Furthermore, I agree with Gbadegesin’s statements here and Dula’s elsewhere that bioethicists should express themselves through social action.

Annette Dula, Segun Gbadegesin, and I agree on many issues regarding race, health, and bioethics. We agree that much needs to be done about racial/ethnic health disparities. However, Dula and I noted in “Wake-up Call: Health Care and Racism” in response to the Institute of Medicine report on healthcare disparities, that:

- “Mainstream health care institutions and professionals have seldom led social reform.”
- “Many whites mistakenly believe that racial prejudice no longer exists, that ethnic stereotypes have little negative effect, and that racist practices by individuals and professionals cause little harm.”
- “White individuals and white-dominated institutions may deny that they are racist or have racist practices because they fear negative publicity and legal reprisal.”

- “A strong response [to healthcare disparities] takes moral courage—a rare commodity.”

These comments are as relevant to bioethicists as they are to healthcare institutions and providers.

Ethical issues related to health and healthcare disparities vary in their complexity. In one sense, the ethics of health and healthcare disparities are clear. These impairments in minority health violate ethical principles such as fairness, care, beneficence, do-no-harm, and respect for persons. Bioethicists can do important work in further analyzing the moral issues of health disparities, including examination of structures, policies, and practices.

However, there is a large set of other ethical issues that relate to action. What should be done and how? “Should” relates to what is possible, effective, efficient, and ethical. “How” relates to strategies. I and I wrote in the Hastings Center Report that “seriously addressing biased attitudes and actions requires that institutions divert limited energy, costly time, and precious resources from other important programs.” How much energy and time should institutions and practitioners devote to eliminating health disparities? How should such decisions be made? And what role should bioethicists play? How much of our time should be spent on eliminating such inequities. Is working on injustice optional?

As a white guy at a historically Black institution (Tuskegee University) and at a Bioethics Center whose primary goal is to address inequities, disadvantages, and other bioethical issues involving underserved minorities, disadvantaged communities, and vulnerable populations, it is clear to me that bioethics should include understanding and action. Understanding includes analyzing bioethics issues and writing and talking about how these issues should be addressed to affect needed changes. Given a principle of moral humility about limitations of our perspectives, such understanding in significant part should evolve through collaborative inquiry that involves diverse individuals, including race/ethnicity, culture, gender, sexual orientation, and locale. As I suggested earlier, one form of bioethical backlash can be much greater analytical attention to health disparities. What is done with such analyses is, however, very important. The usual format is presentation at academic meetings and in peer-reviewed publications. Of course, such publications and presentations are a form of action. This is action in a very passive sense.

If analysis involves speaking and writing in venues that are more likely to evoke changes in policies, structures, and practices, then “action” is more active. We might call this “activist action.” Activist action would be an important and needed step for bioethicists to take.

Professor Gbadegesin stated that “bioethics cannot afford to stop at scholarly analysis.” Yet, bioethics has always stopped with analysis regarding racial and ethnic inequities. White bioethicists do not suffer these injustices. Our personal freedom and privilege do not suffer if the inequities continue. Prof. Gbadegesin seems to have something else in mind. That is, to retain its heart and soul—its integrity—bioethics cannot stand by while these injustices persist.

Bioethics has addressed many problems internal to institutional settings. While valuable work, this focus recalls the old joke about the child who searches for his lost nickel under the streetlight because that’s where the light is. However, he lost his nickel down the street. In bioethics we’ve targeted patient, patient-professional, and researcher-participant issues, but we’ve largely ignored structural and policy issues that foster and sustain inequalities and inequities. We have done little to change those structures and policies.
Of course, some bioethicists have provided valuable structural and policy analyses, but this work is very preliminary. For the most part, such commentators have addressed broad issues of social justice. Racism and ethnic bias have not been prominent in such accounts. Most such commentators are white.

What will it take for us to address bioethics issues in racial and ethnic health disparities seriously and adequately through understanding and action? We must face racism and ethnic bias, prejudice, and stereotypes in ourselves and in our white-dominated institutions. As white bioethicists, we must face the possibility of our own racial and ethnic ignorance, insensitivity, unearned privilege, prejudice, bias, stereotypes, and moral cowardice if we are to make progress in understanding and acting to make a difference about health and healthcare disparities.

Facing—accepting—believing—that our white racial identities may include many attitudes and ways of thinking and acting that we abhor, is an important step in the personal journeys that we white bioethicists must take if we are to act successfully to address the many inequities that racial and ethnic minorities experience. Such journeys are often difficult, painful, embarrassing, frightening, and humiliating. However, these journeys can also be exhilarating, rewarding, and empowering.

For bioethicists to enact and facilitate social change regarding race, ethnicity, and health, we must find constructive ways to discuss racism, ethnic bias, power imbalances, distrust, and lack of trustworthiness with each other and diverse others. Bioethicists need to become “race talkers” and “ethnicity speakers” in their journeys to affect social change.

In 2002 at the annual meeting of the Association for Practical and Professional Ethics, I was arguing that white bioethicists must face our whiteness in addressing inequities related to race and ethnicity. A black participant observed that I was speaking as a white guy in transition. He remarked that what we really need is change, not self-indulgence.

If in facing our whiteness, including racial and ethnic biases, we mainly target our needs for intrapersonal transitions and growth, then we are merely self-indulgent. However, my focus on personal journeys and growth about whiteness is something else. If white bioethicists are to eliminate injustices in health related to race and ethnicity, we need to address who we are and how we have grown up in America. It is typical of white racial identity for whites to fail to understand themselves as embedded in the flow of racist and “ethnist” atrocities that our genetic or cultural forebears perpetrated and perpetrate. We generally consider ourselves outside of this historical river. White privilege only reinforces this position. We don’t consider ourselves injured by all this—though we are. However, if we face what it means to be white or member of a disadvantaged minority, and if we really care about eliminating injustice, then our inaction challenges our integrity. Hopefully, motivation ensues.

We can work effectively with people of other racial and ethnic designations if we do not understand and eliminate the biases, stereotypes, negative attitudes and behaviors that beset us? Do we actually think that—as Annette Dula might say—Black folks (and other minorities) don’t get it that we are clueless not only about our prejudices, biases, and related ways of acting, but also about what it is to be Black or Asian or…(you name it) in this country? Of course Black folks and other minorities get it. For example, these “others” get it that white bioethicists—often avoid touching “other sorts of people,” looking them in the eye, or appreciating our unearned privileges.

Bioethicists should include action for change as part of our activities. However, to become effective change agents regarding racial and ethnic inequities, bioethicists must address many negative aspects of our white racial identities. This is a necessary but insufficient step in making changes. Analogous changes must occur in institutional, agency, and governmental practices.

Dr. Gbadegesin argued that bioethicists should become social change agents. In supporting his view, I offer three reasons. First, structural problems that limit access to care and practices that lead to biased and unequal healthcare, not to mention health losses due to inequitable disadvantages in social determinants of health, have far greater adverse effects on our people—African Americans and other minorities who are our people—than ethical lapses involving those who generally get fair treatment in the healthcare system. Second, bioethicists have special training, education, knowledge, and relationships that can help us to become effective social change agents. Third, bioethics as a field is strikingly hypocritical if we collectively espouse the right thing and do little to achieve it.

I am not saying that every bioethicist must be a social change agent in the direct sense. Social change takes analysis, strategy development, and action. However, part of our work should aim ultimately at needed change. If almost all of us are just doing analysis, this is wrong.

Ordinary people on the street often assume that bioethicists try to insure ethical practices and policies. We might think that they simply misunderstand. We have taken our job to be analysis—a necessary step toward needed action. Analysis is often intellectually daunting, but it is safe. As the work of Drs. Dula and Gbadegesin show the lost nickel is over there in the unsafe dark.

To eliminate racial/ethnic health disparities and improve minority health, such efforts must involve the communities and populations that experience those disparities. These communities and populations should have a strong voice in how to address disparities and in evaluating actions to ameliorate disparities. Some reasons for greater inclusion of community members are epistemological and ethical. If we grant that researchers, community outreach personnel, health professionals, and bioethicists do not and cannot encompass the perspectives and interests of community members, much less what is “good for them,” then a concept of epistemological humility drives inclusion of community members. Interestingly, some epistemological reasons are also ethical. For example, my African American colleagues often point me to an issue of ethical significance that I have missed because I lack their perspective. Also, as I argued at some length elsewhere, fairness and other ethical considerations mandate major community representation and voice in deciding how to address health disparities. Such work with communities includes public health measures, direct healthcare services, and biomedical and public health research.

Many ethical issues arise in work with communities to address inequities. For example, what is fair involvement of communities and when? Who should have a voice, and how should they be selected? How are fair processes insured? These issues need analysis, strategy, and action.

Bioethicists have done little work in the area of community involvement. Community involvement is essential in social action to make needed changes—essential morally and practically. However, to understand ethical issues in community work, bioethicists must look beyond their institutions. Bioethicists must learn about community outreach, partnering, collaboration, and community-institutional decision making. Simultaneously, bioethicists should turn the spotlight back on
their institutions to address how institutions treat minority communities. When we take these steps, we will be venturing into the dark.

Endnotes


A Call for Gender: Equity in Medical Tort Reform

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This paper will consider ethical issues arising from medical tort litigation. I will argue that deep changes are required to ensure fairness in litigation and in order to hold morally responsible those corporations that take unnecessary risks with consumers’ lives. Such changes are urgently called for given President George Bush’s recent petition for a $250,000 limit on pain and suffering awards in medical tort cases. Bush proposes to limit damages in cases of medical liability to, as he phrases it, eliminate “junk and frivolous lawsuits.” The proposed limit is meant to curtail the rising cost of malpractice insurance for medical practitioners, the increasingly defensive practice of medicine (where physicians order unnecessary tests and referrals for their patients to protect against malpractice suits), and the sharp rise in health care costs. By limiting damage awards for pain and suffering in medical tort cases, he reasons, savings of between $60-108 billion per year can be achieved (2004). 3

Bush’s proposal overstates the cost to the health care system of medical tort litigation. He fails to address the staggering health care costs associated with a for-profit medical system, where the insurance industry, at great cost to the public, generates billions of dollars a year in profits. 3 Not only will Bush’s proposed cap be ineffective in reducing costs to the health care system: it may also increase the likelihood of wrongdoing at the corporate level, since corporations that manufacture medical devices/products may find it even more profitable to rush untested products to the market. Most important, for our purposes, Bush is calling for changes that may exacerbate gender inequalities already present in the current system of tort law. The cap he proposes may worsen gender inequalities if it is applied without other radical changes to the structure of medical tort litigation.

In considering gender inequalities, I will take as my starting point the silicone breast implant debate, which is an example par excellence of gender issues in tort law. While my paper specifically treats this debate, I herein pursue the broader question of how to best assess the risks to women caused by a wide range of medical technologies, including (but not limited to) breast implants and other cosmetic surgeries, hormone replacement therapy, and reproductive technologies (such as the now-infamous Dalkon Shield, diethylstilbestrol, and in vitro fertilization). For the ways in which we think about the silicone breast implant controversy—including what was done well and what was done badly in the courts—can go a long way toward indicating how medical torts should be litigated in court, and changes that may be necessary to ensure women’s equal treatment before the law.

In the 1990s, experts testified in court that there are no grave health risks associated with silicone breast implants, contradicting claims made in a class action suit brought by thousands of women against one implant manufacturer, Dow Corning. According to the plaintiffs, who had very similar medical complications (lupus, scleroderma, and other serious connective tissue disorders), the implants themselves caused these life-threatening conditions. 4 Downplaying the veracity of these experiences in deference to expert testimony is problematic, given that, at the time, silicone breast implants had been virtually untested for serious medical harms. Furthermore, there are procedural concerns about appealing to scientific evidence in the courtroom, including how judges and juries are to differentiate “junk science” from reliable scientific reports. Simply discounting the experience of plaintiffs in light of so-called scientific testimony therefore seems both imprudent and unjust.

I will argue that we need to change litigation practices so that women are no longer at a disadvantage in civil litigation. As I will indicate, women are disadvantaged in tort law by the following conditions: a) most tort litigation involving women centers on medical torts, while torts involving men are usually occupational torts; b) it is far more difficult to prove causation in the area of medical torts; c) data that could prove causation is not available precisely because of manufacturers’ failure to adequately test medical products before making them available on the market to women; and d) this leads to a double bind for women, wherein they must prove the company’s negligence but cannot because of such negligence. The current structure of tort law means that companies committing medical torts are rewarded for their irresponsibility, since it renders women largely incapable of proving it. Bush’s proposed cap may serve to encourage further corporate negligence, since a limit on pain and suffering awards means that companies could take even greater risks in rushing medical products and devices to the market, with full knowledge that the profits would likely outweigh costs of any resulting litigation.

After outlining the ways in which women are unfairly disadvantaged in medical torts, I will make several recommendations to remedy this unfairness. I will argue that we should ease the burden of proof in medical torts by weakening the causation requirement, thus allowing the focus to be less on causation and more on the company’s irresponsibility regarding adequate pre-market testing. 5 These changes in litigation would alter manufacturers’ behavior by forcing them to adopt more rigorous testing and risk assessment standards; if more rigorous standards were in place, fewer untested or risky technologies would be available for public consumption.

The Genderedness of Tort Law

Injuries committed within medical areas of tort law are not merely injustices against “the people;” they tend to be more particularly committed against women. As Thomas Koenig and Michael Rustad have argued (1995), any tort reforms should be mindful of the differential impact on women. They claim that remedies to tort law involve a gendered element,
since there is a bifurcation into “his” and “her” areas of tort law based upon gender roles. Women and men use tort remedies in response to different problems: men primarily for workplace injuries (including accidents caused by farm and industrial machinery, vehicles, chemicals, and asbestos) and women for medical malpractice litigation.

So, for example, women use tort law as a remedy for harms experienced from cosmetic surgeries, from childbirth from other reproductive-related activities, and for neglect in nursing homes. These are gender-based injuries, and hearken back to my earlier claim that many medical technologies have resulted in harms specifically to women. Koenig and Rustad further claim that “Women are also far more likely than men to be awarded non-economic damages in medical products liability litigation.” Thus any changes to tort law that pertain to medical devices/products, and that attempt to govern how they are litigated in court, will differentially impact women, and may result in their inability to recover for injuries. And changes to tort law are imminent given Bush’s recent attempts to place limits on punitive damages and the size of non-economic rewards that are awarded by juries. But by being aware of the social and political elements of tort law, we can better appreciate how such changes may harm, not just the individual women who litigate, but all women who may be subjected to the questionable technologies. Furthermore, social and political awareness allows one to see individual women’s complaints as part of broader issues in women’s health care (for example, the extent to which women’s health is put at risk to achieve, not just individual, but culturally-defined “goods”). While one could rightly argue that all our values are culturally defined, encouraged, or prescribed, it is important to consider the extent to which serious health risks to women are considered “worth it” for the goals of beautification, reproduction, and aging avoidance. These imperatives are not equally imposed upon men because they are particularly “feminine” values; indeed, women (and womanhood) are defined by them.

Gender is clearly an issue in the silicone breast implant debate, and generally within law. Indeed, gender stereotypes may also play into women’s attempts to seek justice through the law: for, in the implant example, notions of the “good girl” and “bad girl” played into jury decision-making regarding liability verdicts. Consider that out of seventeen implant cases brought to court between 1970 and 1994, plaintiffs prevailed in eleven of them. Of the seventeen cases, twelve were brought by women who had the implants for augmentation purposes; only six of those twelve resulted in awards for plaintiffs. But in cases filed by women who had implants for post-mastectomy purposes, four out of five cases were victorious. The difference in plaintiff awards suggest that, in the minds of jurors, women who sought out breast implants for augmentation purposes were less deserving of compensation than were their cohorts who used the implants for post-mastectomy purposes. But by removing the causation requirement, moral judgments could be placed where they belong: on the manufacturers who make products available. Yet placing such an onus on manufacturers may prove difficult given their political and economic clout.

Corporate Power and Implant Litigation

Businesses like Dow Corning have the power to make alliances with other corporations and organizations to solidify and strengthen their political power. Such power includes the ability to dominate the market, to finance scientific reports and other analyses that advance their corporate viewpoint, to maintain huge lobbying power, and to generally refuse to cooperate with governmental or legal policies. For example, after May 1991 when the Food and Drug Administration (FDA) notified manufacturers that they had to submit their safety data by the following July or have their products removed from the market, the breast implant industry responded with a lobbying campaign that ran well over a million dollars. At their own expense, the American Society of Plastic and Reproductive Surgeons (ASPRS) flew 400 women from 37 states to Washington, D.C. to lobby Congress to keep the implants on the market. And while spending more than a million dollars on lobbying may seem extraordinary, “compared to the $330 million a year that implant surgery generated for plastic surgeons, it could be characterized as a modest investment.”

Beyond this lobbying power, manufacturers exert control over independent government agencies like the FDA, and there is often a circulation of individuals who move from the regulated to the regulators. As Koenig and Rustad indicate, agencies like the FDA or Federal Aviation Administration (FAA) often make determinations regarding the safety of products by heavily relying on information and data from the very agencies that they regulate (50). As they claim, “...the FDA must rely on the regulated industry for data. In the past few years, the failure of companies to provide crucial data to the FDA for a series of drugs—Merital, Oralflex, Zomax, and Selacyn—has been disastrous for consumers.” If the FDA must depend on research data from the very companies it is regulating, then its independence should seriously be questioned. And the additional problem of employees who shift from the regulated to the regulators arises.

Medical Torts, Scientific Evidence, and Problems in Proving Causation

Medical product manufacture has been so badly governed that little testing is required or completed prior to the marketing of medical products. As I am arguing, this poses particular problems for women, who constitute the main litigators in this area. When women litigate over injuries caused by medical products, the scientific evidence provided in court becomes hotly contested. And since judges and juries are often unable to make determinations regarding the scientific validity of experts’ claims, a mechanism has been put in place to aid judges in determining which evidence should be admissible in court.

The precedent-setting 1993 Daubert case put forth a new test for determining the admissibility of scientific evidence in court, and turned trial judges into “gatekeepers” who are to keep unreliable scientific evidence from being heard by jurors. This gate-keeping role requires judges to determine a variety of things, including whether the claim that a party seeks to introduce, can and has been, tested, whether the claim has undergone peer review and publication, and whether the claims are generally accepted within the scientific community. According to the Federal Rules of Evidence, judges may appeal to independent scientific experts to receive guidance in making such determinations, since judges often lack the expertise themselves, and they are otherwise left depending on the adversarial parties’ “expert” witnesses. Indeed, this approach has been used by judges who dealt with the issue of breast implants and connective tissue disorders: based on the rules, judges called in “neutral” and “objective” experts to testify as to the connection between implants and grave health risks. However, note that this move, while laudable, still raises problems concerning the possibility of neutrality and objectivity in expert testimony.

But most important in considering the handicaps that women face as plaintiffs in medical tort law is that the burden of proof may be impossible to meet because of the causation standards that are in place. As I am arguing, the causation
requirement places a burden on women litigating medical torts that does not equally apply to men litigating occupational torts. That men fall under occupational areas of tort law may mean that they have greater success in bringing suits to court, since their lawsuits will tend to be more individualized, and causation is more easily determined. For example, suppose that a man who works for the Best Corporation is hurt on the job site: he falls several feet off a ladder, and his back is so badly affected that he is no longer able to work. Imagine further that this worker sues the Best Corporation for negligence because he discovers that his fall was caused by a rung in the ladder breaking, and that the company had failed to meet safety standards by testing their equipment to prevent such malfunction. In such a case, the individual plaintiff may have a greater chance of winning his case, since causation is more easily determined (the Best Corporation’s failure to test their equipment caused the worker’s fall). By contrast, consider the problems facing women who are involved in medical torts: drugs, for example, are distributed on a mass scale and are often untested. The result is that, as Roger Cramton points out, “Thousands of strangers may be injured by the dissemination and use of a single product.” Thus, one finds with medical torts a much greater likelihood that class action suits will ensue, where thousands (or sometimes millions) of claims flow from mass exposure to one product. Where mass torts are concerned, proving causation becomes a serious problem because, unlike the plaintiff in the occupational tort case, plaintiffs involved in a class action suit usually have difficulty determining whether exposure to the product in question caused the alleged injury. Furthermore, unlike the victim who has an immediate physical injury that resulted from his fall, the victims of harmful medical products usually suffer from diseases that have a delayed onset, sometimes a generation after the product was used. As Cramton claims, Often there is scientific uncertainty as to whether the exposure caused the alleged harm or whether the condition was the result of the individual’s conduct (smoking, for example) or the presence of background substances in the natural environment. Frequently, expert witnesses will be able to testify about causation only in terms of statistical probabilities based on scattered or inconclusive epidemiological studies. That men’s lawsuits more often concern occupational torts also means that they are bringing suits within an area that has clear standards to which corporations are held. Health and safety standards are outlined so that companies are very clear as to what minimal guidelines must be met to avoid liability. Best Corporation, for example, is liable for failing to ensure that their equipment was in good working order. But medical torts, where standards are overseen by the FDA, are notoriously poorly governed, with few to no guidelines in place that determine whether manufacturers are responsible for failing to meet minimum standards. This means that, in the case of silicone implants, it is difficult for women to prove that manufacturers failed to meet minimum industry standards, since no standards were in place at the time implant surgeries were performed.

The problems regarding gender and causation have resulted in strong disagreements between scholars over the role that causation should play in litigating toxic torts. As I will indicate in what follows, some scholars have argued against the decline of causation, claiming that the courts must maintain high evidentiary standards. Others have contended that causation is the wrong focus in tort law because it acts as a stand in for the real issue, corporate negligence.

The Debate over Causation: To Strengthen or Weaken?

In “The Breast Implant Fiasco,” legal scholar David Bernstein (1999) argues that corporations like Dow Corning are imperiled by opportunistic and mercenary class action suits that are often based on sensationalism (especially in the media), “actions by politically motivated individuals and organizations that result in the downplaying of objective scientific inquiry,” public outrage at corporate irresponsibility, and the use of “junk science” to meet the attorney and clients’ financial goals. Bernstein argues for modifications in tort law that would make it more difficult for plaintiffs to bring suits (including class actions suits) against corporations that have allegedly harmed them. His argument is based on a “trickle down theory:” that the benefits of strict tort laws that set high evidentiary standards will serve big business and trickle down as direct benefits to consumers. Current laws, he argues, leave defendants in the position where “…in order to avoid potentially ruinous litigation, manufacturers would be deterred…from producing anything that could potentially have any toxic effects, bringing the United States economy to a virtual halt.” The kinds of modifications he supports include: 1) setting up tribunals of experts to determine what constitutes safe, responsible corporate practices; 2) giving corporations consideration in court for risks they reduced (in the implant case, argues Bernstein, Dow Corning reduced risks to women by bringing silicone implants on the market, thus giving women an alternative to direct injection of silicone into their breasts); 3) exempting defendants from liability if they follow the safety practices of government agencies; and 4) a loser-pays system, where, if plaintiffs lose they would pay all court costs (thus avoiding “nuisance suits and speculative litigation”). Bernstein asserts that the purpose of tort law is to determine whether Company A was the cause of Plaintiff B’s injury and, if so, to compensate Plaintiff B for that injury. But if we cannot determine that Company A was the probable cause of her injury, then Plaintiff B should receive nothing and, furthermore, Plaintiff B should be held liable for all incurred court costs.

Judith Jarvis Thomson’s work, while predating Bernstein, takes a similar view on the role that causation should play in tort law. Thomson claims that...there is yet another way in which causation is important to us in imposing liability: not only do we (ideally) wish liability to be imposed only on those who actually caused the injury, we also are reluctant to attribute causality unless we can see the evidence for it as causally connected with the injury.” Like Bernstein, Thomson argues that causation should remain foundational to tort law. Although two persons may commit the same careless act, if person A causes no harm to another while person B does harm, then only Person B should be held liable in tort law. The bare difference between the two cases, according to Thomson, is that person B’s action caused harm to another while person A’s did not. Although we may consider the acts morally equivalent because both acted negligently—both were in breach of a duty of care that is owed to others—there is an important legal difference since only person B’s negligence caused harm to another.

As I am arguing, the issue of causation in tort law involves not just legal, but moral considerations. Indeed, moral considerations are at the heart of the dispute between theorists who support, and those who reject the centrality of causation to determining liability. Bernstein provides the following example to indicate the importance of the causation requirement:

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Negligence alone has never been an appropriate basis for finding a defendant liable in the absence of proof of causation. Even extremely reckless behavior, manifesting a gross indifference to human life, does not by itself create tort liability. For example, let us posit the case of a truck driver who is driving through a school zone at 2:35 p.m., just after school lets out. This driver is driving 90 miles per hour, is very drunk, is on tranquilizers and anti-depressants, is legally blind, and is driving a truck that he knows has shoddy brakes. Miraculously, he doesn’t hit any children, and makes it safely to his next stop. What can the current tort system do to punish our driver, and prevent him from engaging in similar behavior in the future? Nothing. As this example shows, despite the general expansion of the American tort system over the past few decades, liability is still based on causation of injury, not just misbehavior.26

Note that Bernstein commits the “is implies ought” fallacy. He assumes that because the tort system currently emphasizes causation, not misbehavior, it ought to be set up in that way. But many critics have rejected this view, asserting that even radical changes to the tort system could be accommodated. For example, Margaret Berger argues that “it is not antithetical to underlying theories of tort law to abolish proof of causation as an essential element of a cause of action. The contrary is true—eliminating causation furthers tort law’s corrective justice rationale that liability is linked to moral responsibility.”27 Berger and other critics thus argue that causation serves as a stand-in for morally responsible corporate behavior, but that given what is at stake, tort law should encourage the morally responsible behavior itself.

Like Berger and others,28 I argue that supporting or strengthening the causation requirement in tort law fails to address the moral question of corporate negligence. But more importantly, causation in medical tort law results in a “catch-22” for women. The courts’ demand that women prove causation paradoxically renders women dependent upon the non-negligence of companies. That is, if women (like those embroiled in silicone implant litigation) are to prove that a defendant’s product caused their injuries, they must rely on that defendant having both tested the product prior to placing it on the market, and on having published the results of those tests. In this way, companies are rewarded for their own negligence while women, who must prove the company’s negligence, are rendered powerless to do so because of it.

As many commentators have pointed out, the women involved in silicone implant litigation lacked any rich scientific data to support their claims because companies manufacturing the implants did not do any research before putting the implants on the market. Indeed, only after women became seriously ill and started making claims about lethal harms did the silicone implant industry commence their scientific reviews. Prior to their claims of deadly medical harms caused by the implants, women experienced problems with them, including discomfort, contracture, implant leakage, and hardened breasts, all which failed to produce serious scientific investigation. Though the manufacturers involved in silicone implant and other litigation are “typically in the best position to create the necessary data...its incentives are the reverse.”29 Dow Corning, for example, had little incentive to produce data on silicone-gel breast implants prior to marketing them, since any negative data could be used to prevent their marketing. Even though they risked litigation by rushing their product to the market, Dow stood to gain more from implant sales than what they might have lost due to successful litigation against them.30 So if the women in the implant litigation appealed to bad science, it is, in part, traceable to the failings of the corporations themselves.

**Sindell v. Abbott Laboratories: A Test Case for Eliminating Causation?**

I have argued thus far that the emphasis on causation in medical tort law imperils corporate responsibility and leaves women caught in a double-bind of having to rely on research data from the very companies they are suing for negligence. In considering how the relaxation of the causation requirement in tort law might be accomplished, consider the precedent-setting *Sindell v. Abbott Laboratories* case (1980). This case concerns medical torts, and recognizes the great disadvantage at which women are placed if causation is not significantly softened.

Between 1941 and 1971, drug companies engaged in the manufacture, promotion, and marketing of a harmful drug called diethylstilbestrol (DES), a synthetic compound of the female hormone estrogen. The drug was marketed to prevent women from miscarrying their pregnancies; but the serious physical effects of the drug were experienced many years later by the daughters who were exposed to the drug prior to their birth. DES daughters suffered adenocarcinoma, a rapidly-spreading, lethal form of cancer. Judith Sindell was one such DES daughter who in 1980 brought a suit against Abbott Laboratories and other companies that manufactured and marketed the drug. While Sindell could name the drug, DES, as the harm-causing agent, she was unable to name the manufacturer of the product consumed by her mother; yet she sought compensatory and punitive damages for herself from defendants she held jointly liable.31 Sindell argued that it was unfair and prejudicial to require that the plaintiff prove that Abbott Laboratories (or the other companies named) was the defendant that caused her illness, since the harms done to her occurred *in utero* and manifested themselves a generation after the time her mother took the drug. That Sindell’s mother could not name the manufacturer of the DES she took during pregnancy is also unsurprising given that “DES was produced from a common and mutually agreed upon formula as a fungible drug interchangeable with other brands of the same product; defendants knew or should have known that it was customary for doctors to prescribe the drug by its generic rather than its brand name and that pharmacists filled prescriptions from whatever brand of the drug happened to be in stock.”32

The court agreed that the plaintiff would be unfairly burdened if proof of causation was required, and shifted the burden of proof from Sindell to the defendants, requiring them to prove that they could not have caused her illness.33 The case was complicated by the fact that two hundred companies had manufactured DES at the time during which the plaintiff was harmed, and that any one of them could have produced the drug that harmed her. Yet Sindell named only five companies of the two hundred, and defendants argued that “there is no rational basis upon which to infer that any defendant in this action caused plaintiff’s injuries, nor even a reasonable possibility that they were responsible.”34 The court concurred with the plaintiff, however, and took the view that, while one manufacturer’s product may not have injured a particular plaintiff, “we can assume that it injured a different plaintiff and all we are talking about is a mere matching of plaintiffs and defendants.”35

The *Sindell* case was precedent-setting because it severely loosened the causation requirement. Indeed, the plaintiff was not required to show that any of the defendants she named were more than likely the cause of her harm. Following the decision in *Sindell*, critics like Judith Jarvis Thomson argued...
the moral and legal problems surrounding the “decline of cause,” claiming that “if cause declines in law, law to that extent departs from morality.”36 Yet, I want to argue the opposite case. If we do not considerably relax (or remove) the causation requirement in tort law, we will be departing from morality by failing to hold companies morally responsible for their reckless, wrongful, or harmful activities, and by barring plaintiffs (women) from seeking legal remedies for grievous harms committed by manufacturers.

In fact, the Sindell case may not go far enough in assisting women embroiled in implant litigation or other medical tort cases. Whereas in Sindell there was no disagreement that diethylstilbestrol caused the plaintiff’s illness, there is serious controversy over whether silicone gel implants caused the plaintiffs’ ill health. All parties involved in Sindell agreed that DES causes adenocarcinoma, and that Judith Sindell’s cancer was caused by the DES her mother took while pregnant. By contrast, there has been little agreement about the causal connection between connective tissue disorder and silicone gel implants. In the Sindell case, what I will call first-order causation was established; it was only the second-order causation issue—which manufacturer produced the drug that harmed the plaintiff—that was unsettled. Thus, a weakening of the causation requirement aka Sindell would not offer a sufficient legal remedy for women involved in implant litigation. As I will argue below, the courts may need to go beyond Sindell to ensure fairness for women involved in this (and other) product litigation.

The Decline of Causation: Some Implications

As I have indicated, critics like Bernstein and Bush would argue that, in light of the unprecedented awards to women in breast implant litigation, we ought to go the other direction to make it even more difficult for plaintiffs to receive massive settlements. They argue that by strengthening the causation requirement, taking a “loser pays” approach, limiting jury awards, and allowing bodies like the FDA to protect corporations from litigation, we prevent these corporations from going bankrupt and ceasing technological development, thus protecting against their “bringing the United States’s economy to a virtual halt.”37 I disagree. That plaintiffs wield such power over manufacturers—and that the demise of a company (like Dow Corning) could mean doom to the entire U.S. economy—is undermined by the reality that, in this case, the breast implant market still exists. Not only has class action litigation over breast implants not caused a collapse of this particular market, but it may have perversely futhered the demands of the market by bringing to light the alleged lack of causation between silicone implants and connective tissue disorders. Indeed, since 1992 there has been a 700% increase in the number of breast implant surgeries, and the numbers are still rising. Bernstein’s slippery slope argument rings false in a market-oriented, risk-assuming culture where corporations exert great influence, both economic and political.

By minimizing the “causation” discourse in the court, we allow room for a different discourse, one that goes beyond the question of scientific expertise to include considerations of corporate (ir) responsibility. While scientific expertise may still be invoked to determine whether a defendant corporation failed to exercise due care, the decline of a causation requirement would certainly allow for deeper considerations of corporate negligence. A minimization of the causation discourse allows the negligence discourse to establish a different burden of proof that would be easier for plaintiffs to meet. I want to go further than that, however, by making the claim that we must give plaintiffs space in medical tort cases to provide their narratives.

But what does this “narrative” look like? Clearly I cannot argue that women should be given room to testify in court as to the harm caused to them by their implants, since I have already argued that the causation requirement should be minimized or eliminated in tort law. Women should, however, be given the opportunity in court to speak to their experience of illness and the lack of scientific data available to help them determine the cause of that illness. In other words, while I am not saying women should be free to claim that silicone implants caused their lupus, I am saying that they should have the opportunity to testify as to what information was available to them when they discovered their lupus, and to indicate the extent to which the manufacturers in question studied the risks of implants prior to their availability on the market.38 In cases where women testify that no scientific data was available, and that the state of affairs exacerbated their fear, panic, and worry (thus causing further deterioration of health), manufacturers would be held liable for causing that state of affairs because of their negligence in failing to properly study the product before its manufacture, and because of the risk at which they put consumers’ lives.39 Opening up the court to plaintiff’s voices would also prevent the aforementioned double bind into which women are placed when they are required to show probable cause, since such a requirement makes them dependent on the research data of the very companies under litigation.

If the causation requirement is to be severely relaxed or abandoned, then it may be necessary to revisit the issue of awards for punitive damages and/or pain and suffering. If plaintiffs are not required to prove probable cause, thus increasing their chances of winning their cases, then Bush’s call to limit awards to plaintiffs may be called for. I would urge that manufacturers be required to pay damages, including fixing the problem their product created, and fulfilling community service requirements, since they should be held responsible to the communities that they harm. Furthermore, Bernstein may be right in this instance that we should prevent lawyers’ “fishing expeditions” by altering the system of contingency fees between plaintiffs and lawyers. But I would not support these stricter measures absent the kind of change to medical tort litigation that I am calling for.

Thus, as I have been arguing, we need tort reform that maximizes, not minimizes, manufacturers’ direct responsibility to the public. In the case of medical products and technologies, where women are particularly at risk, it is appropriate to make corporations responsible for preventing wrongs or harms to women, even if that means certain technologies are not made available at all. While this claim may upset those who take a more liberal stance on the dissemination to the public of new technologies, and those who focus on individual rights above all, I respond that individuals do not have a right to access potential new technologies: indeed, it makes no sense to even talk about such a right. I say this for two reasons: first, because all rights are qualified by law (that is, the law provides us with, and if there is no right by law then no right exists)40 and second, because we cannot have a right to something that does not yet exist. I may desire the development of reproductive technology such that ectogenesis (a “glass uterus”) is available to me, but it makes no sense for me to say that my rights are violated if science does not produce this technology. And furthermore, as David Kessler states, “To argue that people ought to be able to choose their own risks, that government should not intervene, even in the face of inadequate information, is to impose an unrealistic burden on people when they are most vulnerable to manufacturers’ assertions.”41
Where We Are, and Where We Are Going

In 1992 Dow Corning stopped producing silicone implants; and during the class-action litigation, it filed for bankruptcy. The company just came out of bankruptcy, having settled $3.2 billion worth of implant claims. But the silicone breast implant fiasco is far from over.

Despite the continuing complications and failure rates associated with implants, on May 10, 2000, the FDA announced that silicone saline-filled implants manufactured by Mentor Corp. and McGhan Medical Corp. will be allowed to remain on the market. The companies are required to provide literature that implant surgeons must give to women so that they can make informed choices prior to implant surgery. Complications of which women must be notified include risks of pain, infection, capsular contracture, deflation and leakage. The FDA claims that, given the addition of safety information, implants should remain on the market because women want them (Medical Industry Today, 2000). But the FDA itself is now cautious about claims concerning these implants: they emphasize that “Women should understand that breast implants do not last a lifetime,” and that “there is a possibility that a substantial number of women who get these implants will require additional surgery to remove or replace their implants because of complications” (Medical Industry Today, 2000).

As I argued earlier in this paper, the FDA and other powerful bodies should not allow cultural values—or individual values as expressed by women who desire the implants—to determine what is made available at the social level. Some technologies ought never to have been available to women in the first place, and some (like silicone implants of any kind) ought not to be available now. There is no good argument, other than market demand and the capitalistic push for more products and more technologies, for the continued provision of these implants. On the contrary, despite disavowals of mortal harms caused by silicone breast implants, the non-life-threatening (though still serious) harms caused by them are well-documented. Additionally, the FDA is currently supporting the logically inconsistent position of allowing implants (even those that are silicone gel-filled) for women who have undergone mastectomies and are enrolled in clinical trials while denying them to women who seek breast enlargement for purely cosmetic reasons. One would think that if the implants are deemed unsafe for consumption, they would be ruled unsafe for all consumers, but particularly for women who have survived breast cancer and are being put at additional and unnecessary medical risk.

The implant situation is likely to worsen, not improve, in the near future, as companies lobby to have all restrictions lifted, thus making implants—filled with saline or silicone—freely available to any woman who wants them. The recent avowals that silicone breast implants are not lethally harmful is widely endorsed by the scientific community and is being used to justify widening availability of them. “I have rehearsed some of the justice-based reasons that would warrant the amendment of the causation requirement. The primary reasons are that tort law could reasonably be used to deter corporate wrongdoing and irresponsibility, and that women are unfairly disadvantaged in cases of medical torts by the high standards of the causation requirement.”

Conclusion

In this paper, I offer a rationale for a radical revision of medical tort law. While my focus has been on silicone breast implant litigation, I expect that my arguments will bear on other areas of concern, including hormone replacement therapy, reproductive technologies, and cosmetic surgeries. What was done well and what was done badly in implant litigation may give us cues for future cases (and they are sure to arise) where harms are controversial, highly contested, and civil courts are uncertain about what counts as “good science.” My hope is that the negligeable discourse for which I have argued will take hold in tort law, thus encouraging manufacturers to lessen or eliminate negligent behavior. I have rehearsed some of the justice-based reasons that would warrant the amendment of the causation requirement: primarily, because tort law could reasonably be used to deter the corporate wrongdoing and irresponsibility that results in poor health outcomes and even death, and because women are differentially harmed in cases of medical torts by the high standards of the causation requirement. With these changes in place, there may be moral grounds for considering Bush’s proposed $250,000 cap in medical tort awards; but it would be unethical to implement it without first correcting these problems.

References


Bush, George W. “President Bush Calls for Medical Liability Reform: Remarks by the President on Medical Liability.” Baptist Health Medical Center. Little Rock, Arkansas (January 26, 2004).


“FDA Clears Saline Breast Implants, Despite Risks.” Medical Industry Today (Friday, May 12, 2000).


Summers v. Tice [33 Cal. 2d 80, 199 P.2d 1 (1948)].


Endnotes

1. In a recent speech given in Little Rock, Arkansas, Bush made these and other comments concerning the current state of medical liability. See Bush, 2004.

2. Bush’s claim—that his proposed cap could save $60-108 billion per year—is based on a 1996 study by Harvard economists Daniel Kessler and Mark McClellan (see Kessler and McClellan, 1996). Their study attempted to measure the cost of “defensive medicine” that is attributable to lawsuits; they determined that, with caps on medical tort damages, health care costs can be reduced between 5 and 9 percent. Yet more recent studies found no strong relationship between the threat of litigation and medical
costs: for example, the estimated savings have been denied by nonpartisan agencies like the Congressional Budget Office (see Beider and Hagen, 2004) and the General Accounting Office (see US General Accounting Office, 1999).

3. For some excellent critiques of the American health care system, see Kuttner (1999) and Fisk (2000).

4. Note that while scientists claim there is no connection between such potentially lethal diseases and silicone breast implants, there has been no question (either by scientists or the courts) that these implants cause other harms. For example, suits have been successfully brought against implant manufacturers for capsular contracture of fibrous tissue surrounding the breast (hardening of tissue surrounding the implant), muscle pain, and infections caused by the implants, as well as ruptured implants.

5. I will herein focus entirely on tort cases involving corporations, since the current debate about medical tort law focuses almost exclusively on implications for individual physicians. Yet a $250,000 cap has important implications for patients who are in conflict with corporations, since setting this cap without making deep changes to the system of medical tort litigation will serve to even further disadvantage plaintiffs, and to encourage even more risk-taking on the part of corporations.

6. Koenig and Rustad cite the following statistics: “Males are 29 times more likely than females to be injured by a fall from a scaffold or ladder. Males are six and a half times more likely than females to die from firearms accidents. Five times as many males as females drown. Females are only one-fourteenth as likely as males to drown in boating” (35). Furthermore, as they indicate, even where men are harmed by household products, the products usually correspond to gendered tasks, such as lawn fertilizer, industrial glue, and saws (39).


8. Here I want to make a distinction between “harm” (that is, physical harms) and “wrongs.” For I do not want to argue that a woman who has not experienced any physical problems in connection with her silicone breast implants has been harmed; I would want to claim, however, that she is wronged by the corporations who made them available on the market without adequate testing and information. If I have implants but do not suffer any ill effects, then I am not harmed by the manufacturer; but certainly I am wronged by them.

9. As evidence of harms to women, consider Lucinda Finley’s (1993) claim that, “Many modern product liability disasters have involved products used almost exclusively by women, often in connection with reproduction—the anti-nausea drug thalidomide, which produced horrifying birth defects; the drug DES, which causes cancer and infertility; the IUD Dalkon Shield, which was sometimes fatal and frequently caused sterilizing pelvic inflammatory disease; breast cancer devices, which can cause serious auto-immune system diseases such as lupus or can permanently disfigure a woman; the acnec-treatment drug accutane, which if taken during early stages of pregnancy produces serious birth defects” (11).


13. Ibid.


15. For example, Newspapers report that three FDA employees who reviewed Monsanto’s new bovine growth hormone drug had previously been working with the firm. The Government Accounting Office (GAO) investigated the issue of conflict of interest. Although the GAO concluded there was a technical conflict of interest, it cleared the FDA employees (Koenig and Rustad, 49 n.206).


18. Ibid., 816.


20. For another detailed account of the problems in tort litigation as they relate to silicone breast implants, see Angell (1996).

21. David E. Bernstein, “The Breast Implant Fiasco.” California Law Review 87 (March 1999): 504. Bush echoes Bernstein’s “trickle down theory” in claiming that a cap on pain and suffering awards in cases of medical torts would benefit everyone. As he sees it, the large sums awarded by juries to plaintiffs are having a devastating effect on the health care system, by driving up costs of malpractice insurance for doctors, by encouraging the practice of “defensive medicine,” and, as a result, causing a sharp rise in health care costs. Bush does not, however, hold the insurance industry responsible, and he does not address the way in which the for-profit American health care system encourages litigious behavior.

22. Bernstein, 505.

23. Here Bernstein creates the fiction that Dow actually cared about risks to women in marketing their implants. Yet there is weighty documentation that Dow marketed their breast implants with full knowledge that they might be harmful to women. See, for example, Byrne (1996), and Altman (1996).


30. Indeed, since scientific research takes time to complete (sometimes years), and the harms associated with products often don’t surface until years after consumers use them, companies have an incentive to take risks with consumers lives in the meantime.


32. Ibid.

33. This move was based on a preceding case, Summers v. Tice (1948). The plaintiff, Summers, was accidentally shot in the eye by defendants, Tice and Simonson, but since the defendants shot at the same time, Summers was unable to name the liable party. The court allowed Summers to hold the two defendants jointly liable, and required Tice and/or
Simonson to prove that they could not have been the cause of the accident.


35. Ibid., 19.


38. Note that this same issue arose in the Sindell case. There was much discussion in the court surrounding the degree to which the defendants had failed to discover or warn of the dangers of DES.

39. One may wonder what grounds a manufacturer would have for determining if it has done enough research before placing a product on the market. If, for example, a woman claimed she became HIV positive because of her implants, would the manufacturer, who had not studied the connection between HIV positivity and silicone implants, be responsible because it did not test for it? Where do we draw the line on manufacturer responsibility? In such cases, we can appeal to principles of reasonableness and foreseeability—whether it is reasonable to expect the manufacturer to have tested for it, and the foreseeability that such a harm would be caused by the product.

40. Here I am merely suggesting that, while we can speak of “natural rights” or “inalienable rights,” such rights are empty apart from laws that define and enforce them.


42. This raises a whole other issue concerning whether doctors will present the literature to women upon consultation in their medical clinics. If physicians are not completing informed consent procedures with women prior to implantation surgery then they, too, are responsible for post-implantation harms experienced by the women. This is a controversial issue that I cannot possibly address within the confines of this paper.
Welcome to the Fall 2004 edition of the *APA Newsletter on Teaching Philosophy*. We have assembled here articles, reviews of books, notes and information of interest to teachers of philosophy.

The first article, “Integrating Modern Arab Thought in Postcolonial Philosophies of Culture,” by Elizabeth Suzanne Kassab is intended for persons who teach courses in philosophy and culture, and who are interested in extending their reach to the cultures of the postcolonial world. Professor Kassab notes that although the cultures of Asia, Africa, and Latin America that were subject to imperial conquest throughout the nineteenth century are vastly different, common themes in the twentieth-century controversies among their intellectuals are fascinatingly similar: modernity versus traditionalism, foreign borrowing versus native cultural heritage, feminism versus traditional social roles for women. The course described is intended to introduce “students at American colleges to a non-Western universe of discourse on culture that is heavily influenced by, and strongly preoccupied with, the West but that is centered around questions that are quite different from those of the West. Students are invited to explore these questions, to identify their specific and common elements, and to reflect upon the common stock of experience and thought that they constitute.” The course is divided into units on Arab, Latin American, and African philosophies of culture, and each unit is further divided into overlapping themes and topics that bring similar questions to the diverse cultural situations of the three areas. A discussion of each unit is followed by a valuable bibliography of works in English by important participants in these cultural and philosophical debates.

The second article, Josef Velazquez’s “The Play’s the Thing,” offers a delightful exercise designed to encourage student writing about elementary issues in philosophy. The key notion is to give students scenarios or situations in which they have to analyze, report upon, or respond to, philosophical questions. In that way, the student cannot simply take ideas out of a textbook, for her words must be appropriate to a specific situation and a specific audience. The author begins with a description of thirteen “subtypes” of this kind, and concludes with several scenarios that give flesh to the subtypes. The author grants that these “fanciful scenarios are mere boondoggles or window dressings. On the other hand, . . . if the paper topics are a little bit fun and a little bit nutty, the students will feel freer to let themselves go.” And, perhaps, letting go is, for some, the first step toward seriousness.

The third article, “A Lack of Sympathetic Understanding in the Classroom,” by Lee A. McBride III, reports upon the author’s experience as a graduate student of philosophy and as a teacher to undergraduates at his university. He makes some valuable suggestions concerning the sources of the limitations and failures he believes to be endemic to education in philosophy, where teachers tend to be concerned only with transmitting content and skills. Drawing from an article by Steven M. Cahn, where three purported errors in teaching are identified, and from the ideas of William James, John Dewey, and Jane Addams, the author develops the notion that the sympathetic understanding of students’ beliefs, ambitions, and values is in fact an important condition of success in inspiring undergraduates with a love of learning. He grants that the notion of sympathetic understanding is difficult to define and even more difficult to apply, yet he nevertheless insists that teachers must be in “sympathy with the mental movements of their students,” and “acquire the mental tact to see signs of promise and nourish them to maturity.” The article concludes with some suggestions for fostering a needed reorientation of the graduate education of philosophers.

As you may know, back editions of the *APA Newsletter on Teaching Philosophy* have long been made available at the APA’s website, and, up to now, can be accessed by the general public. The American Philosophical Association has now decided upon a proposal to put current editions online at its members-only website, and to discontinue, at least temporarily, the print version. The reason for this move is budgetary, of course; the justification for it is that almost every year fewer APA members order copies of the *Newsletters* when they renew their membership. Some effort has been made to index the articles that appear in the *Newsletter on Teaching*, but it appears that, for technical reasons, this is not possible.

We welcome readers’ comments on these and other matters surrounding the format, content, and usefulness of our *Newsletter*. We remind the readers that all articles published here are subject to review by a committee of four persons, including the editors, whose names are listed at the end of this letter. Some articles that have appeared in its pages have been anthologized and are now available in *Teaching Philosophy: Theoretical Reflections and Practical Suggestions* (Lanham, MD: Rowman and Littlefield, 2004), edited by Tziporah Kasachkoff. The previous version of the book (which appeared under the title, *In the Socratic Tradition*) has been used in a graduate-level course intended to prepare philosophers for careers in teaching. An article by Martin Benjamin describing the course appeared in the Fall 2003 edition of this *Newsletter*. 
We also encourage our readers to suggest themselves as reviewers of books and other material that they think may be especially good for classroom use. The names of the other books and materials we have for review are listed in section IV of the Newsletter.

The following guidelines for submissions should be followed:

- The author’s name, the title of the paper, and a full mailing address should appear on a separate sheet of paper. Nothing that identifies the author or his or her institution should appear within the body or within the footnotes/endnotes of the paper. The title of the paper should appear on the top of the paper itself.
- Four complete copies of the paper should be sent.
- Authors should adhere to the production guidelines that are available from the APA and that are published in the issue of the APA Newsletter on the front inside cover. The most important features of those guidelines are the following:
  
  Adhere to the Chicago Manual of Style.
  
  Use as little formatting as possible. Details like page numbers, headers, footers, and columns will be added later. Use tabs instead of multiple spaces for indenting. Use italics instead of underlining. Use an “em dash” (—) instead of a double hyphen (—).
  
  Use endnotes instead of footnotes. In writing your paper to disk, please do not use your word processor’s footnote or endnote function; all notes should be added manually at the end of the paper.

Examples of proper endnote style:


If a bibliography is included, please use the following format:


All material submitted to the Newsletter should be available on a windows-readable computer disk, but do not send the disk with the submitted paper. The editors will request the disk when the paper is ready to be published.

All articles submitted to the Newsletter are blind-reviewed by the members of the editorial committee. They are:

- Tziporah Kasachkoff, the Graduate Center, CUNY (tksachkoff@gc.cuny.edu), co-editor
- Eugene Kelly, New York Institute of Technology (ekelly@nyit.edu), co-editor
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Articles

*Integrating Modern Arab Thought in Postcolonial Philosophies of Culture*

Elizabeth Suzanne Kassab

Columbia University

While current Latin American, Asian, African American and Native American debates have slowly made their way into the curricula and publications of U.S. higher education in philosophy, Arab debates have continued to be absent in general. They still remain unknown, misconceived, and unexamined. My specific concern here is with debates within the philosophy of culture. Arab questions of culture have been often approached, if at all, in a particularistic manner, that is, in a way that reduces them in the main to a monolithic Islam. They have rarely been put in the cultural decolonization context to which they belong. One way of breaking this cultural reductionism and of showing the relevance of this decolonization context is to examine the Arab debates on culture from a comparative perspective, in conjunction with other postcolonial debates like those of Latin America and Africa. Such a comparison enables us to explore the systemic nature of these postcolonial debates on cultural selfhood and thus to break the isolation to which Arab debates and their studies have been confined.

The many commonalities found in the cultural debates carried out in these linguistically, religiously, culturally, and racially different regions clearly indicate that these problems cannot be due, at least not solely and not deterministically, to the specific language, religion, culture, or race of a given region; but that the global economic, political, and historical conditions of colonialism and neo-colonialism have had and continue to have a crucial role in producing them and shaping them. The comparative perspective both shows the particular forms that debates surrounding cultural decolonization take in each region, given its particular historical, economic, social, political, and cultural elements, and clarifies the specificities and particular challenges of each setting. In a course on “Postcolonial Philosophies of Culture” I will discuss here, I integrate modern Arab thought in a discussion of postcolonial philosophies of culture.

The course itself allows a conversation to emerge among these debates in the different regions of the former colonial world. They all concern the issues of cultural malaise, cultural critique and cultural self-determination that have been at the center of anti- and post-colonial debates. Most of these debates, whether in Africa, Latin America, India, or in the Arab world, have been conducted in reaction to the political and cultural West. Rarely, if ever, have they been connected to one another. Given the overwhelming impact of the West on these societies, the fixation on it in their cultural debates is to a great extent understandable. But this fixation has also been limiting, isolating, and often sterile, as many participants in these debates have come to conclude. It has prevented a fruitful exchange between people with comparable colonial
and postcolonial experiences. A whole learning potential has been thereby left untapped. My course aims at bringing together some of these postcolonial debates on culture, and offers a comparative perspective within which such an exchange can become possible. It introduces students at an American college to a non-Western universe of discourse on culture that is heavily influenced by and strongly preoccupied with the West but that is centered around questions that are quite different from those of the West. Students are invited to explore these questions, to identify their specific and common elements, and to reflect upon the common stock of experience and thought that they constitute.

The course devotes four weeks to each set of debates, and allocates a major theme to each week. The themes are selected from the debates themselves. They are closely connected to the historical contexts from which the debates emerge. Hence the regional rather than the topical organization of the course material: by dwelling four weeks in each region, students are to acquire a sense of the main preoccupations of its thinkers in connection with the major events marking it in the course of the twentieth century. It is from the examination of these regional debates that students are to draw the commonalities and specificities of their topics. It is important to add here that this course is not meant to be a comparative Aarea study. It is not supposed to be a study of "the" Arab world, or "Africa," or "Latin America." It is to be a study of central debates on culture in these areas in a comparative perspective.

The fourth week of each section is devoted to feminism, not out of political correctness, but because in all three regions the contribution of feminists in elaborating and indeed leading the discussions on culture has been outstanding. This is due, on the one hand, to the particular way in which women have been affected by anti-colonial and postcolonial struggles and debates, be it in cultural protectionism, in nationalism, or in the ideals and policies of modernization. It is also due, on the other hand, to the number of components that feminism and postcolonial thought have in common:

(a) The critique of essentialism: the essentialist view of "womanhood" and gender in general has been from the very beginning a major issue of concern for feminists; that of a culturally defined womanhood has been attacked by postcolonial feminists both for its cultural and gender essentialism.

(b) The rejection of certain forms of universalism: postcolonial thinkers and the feminists among them in particular have denounced the Western hegemonic views of progress, modernity, and emancipation that are presented as universal views, while being Eurocentric in reality.

(c) The importance of historicization and contextualization: part of this denunciation was the linking of ideas and views to the particular environments, backgrounds, and interests.

(d) The necessity of "double critique": postcolonial feminists, like postcolonial thinkers, in general find themselves struggling on two fronts, that of the home culture and that of the external aggressor.

(e) The struggle for "talking back": having been defined by others—by women, by men, and by heterosexuals, non-heterosexuals, and colonized cultures by colonizers, the urge is felt to talk back to the outside definer and to tell one's own story and identity.

(f) The quest for empowerment: after having been deprived of enabling means, both feminists and postcolonial societies seek ways of appropriating various means of empowerment.

Most but not all of the readings are philosophical texts written by professional philosophers. Thinkers other than professional philosophers also participate in these debates and their presence confers on the course an interdisciplinary nature. However, students are invited to examine the texts philosophically, that is, to assess critically the concepts and the arguments presented in them. The selection of the readings is based on a number of considerations. First, their authors are chosen from among the major participants in the debates. Second, their contents present the major arguments made in these debates. Third, they are accessible to students and are available in English translation. Finally, they combine historical contextualization with conceptual analysis, providing the readers with valuable background information. These considerations are to serve the main objectives of the course, namely:

(1) To bring forth the main cultural issues of each set of regional debates in a contextual manner; for only such a contextualization can make it possible to identify these issues adequately.

(2) To put these issues and debates in a comparative perspective:
   (a) To avoid their reduction to the religion, language, culture, race, character, ethos, or whatever other such essentialistic element, of the region;
   (b) To allow for the common postcolonial political, economic, cultural, and intellectual structures and challenges to emerge.

(3) To examine these issues and structures philosophically.

Admittedly, these are ambitious objectives for one course to achieve, and the task of achieving balance between them in each class meeting is a demanding one, but nevertheless necessary. For how can we examine philosophically the modes of thinking about culture under postcolonial conditions if these conditions and these modes are not first made clear? Once this groundwork is done, further courses can then devote more time and attention to the philosophical questions contained in them.

I would like here to share my experience of teaching this course in the fall of 2003. I gave it in the form of an advanced seminar for graduates (and some students in their senior year) from a wide variety of disciplines, as well as ethnic, racial, and national backgrounds. Many were from the Columbia interdisciplinary Human Rights program in the School of International Affairs with minors in philosophy, gender studies, and economics. Others were Ph.D. students in anthropology, English, and Middle East studies. I required that students send me by email two days before each class meeting a summary of, and at least one question about, each assigned reading. One third of the final grade was to be based on this homework. The rest was based on class participation and a final paper. The homework was returned to them with my brief comments at the beginning of every class. This way the students and I could come to the class meeting with the assumption that the texts were read and examined. No presentations were made and the entire session was devoted to the discussion of the central questions emerging from the readings.

I prepared the discussion agenda of each class on the basis of my own reading notes as well as the written feedback of the students. Some of the frequently recurring questions were the following: What does it mean to have a thought of one's own? What is the link between having an identity of one's own and a philosophy of one's own? How are universality
Week One:
Topic: Cultural Decline and Cultural Renewal in the First Half of the Twentieth Century

Week Two:
Topic: Post-1967 Critique: Liberation, History, and Democracy

Week Three:
Topic: Critique in Islamic Thought

Week Four:
Topic: Feminism and Arab Culture

and particularity in philosophy to be understood? What is the connection between certain forms of universality and colonial conquest? What are the relations between capitalism, modernity, and Western philosophy? What are the pitfalls and temptations of cultural essentialism and cultural authenticity? How are we to compare and not to compare local and Western thoughts? Is local thought necessarily traditional? What is the difference between traditional and philosophical thinking? How is the sense of a gap between ideas and realities in postcolonial settings to be understood, analyzed, and remedied? What are the importance and limits of contextualizing and historicizing ideas? What does intellectual decolonization imply? What is the role of language in intellectual emancipation (native languages versus the colonial language)? What is enlightenment for postcolonial societies? What does critique entail in a postcolonial situation? And how does the gendering of cultural questions radicalize critique? Finally, I asked that students submit a draft of their papers three weeks before the end of the classes, in order for me to comment on them and offer suggestions. I provided them with an extensive supplementary reading list and required that their paper include a comparative element.

Arab Philosophies of Culture
The Arab section starts with discussions of cultural decline and cultural renewal in the first half of the twentieth century, then moves on to the critique of these earlier views after the 1967 defeat of the Arab armies by Israel. The third week deals with issues of critique in Islamic thought, and the last week examines Arab feminist views of cultural matters in connection with Islamism, nationalism, and orientalism.
Latin American Philosophies of Culture

Compared to that of the Arab world, the colonial experience of Latin America has been much longer and much more far-reaching. Large areas of the Americas started to come under Spanish colonial rule in the sixteenth century, and after the wave of independence movements in the nineteenth century, it soon came under more or less direct U.S. hegemony. The colonial and imperial impact has been extensive on almost all levels: those of population (massive genocide and forced population transfers through local and transatlantic slavery), economy, politics, religion, culture, education, and language. Given this massive violation of the physical and cultural integrity of the region, the most pressing questions raised in connection with culture are those of identity, exploitation, and racism. The Latin American section of the course starts with the early twentieth-century debates on cultural and philosophical identity, and moves in the second week to the later debates on colonialism, imperialism, and modernity. The third week is devoted to the issues of liberation theology and philosophy, and the last week deals with the feminist perspectives on liberation, authenticity, and community.

Week Five:

**Topic:** Identity, Culture and Philosophy: Early Twentieth-Century Ideas and Later Reactions


**Week Six**

**Topic:** Colonial Experience, Cultural Imperialism, Modernity


**Week Seven**

**Topic:** Theology and Philosophy of Liberation: Critical Perspectives

Week Eight:
Topic: Feminist Perspectives on Liberation, Authenticity and Community


African Philosophies of Culture
While the main concern of the Latin American debates is the nature and possibility of a Latin American thought and culture that are not imitative of the West, that of the African debates is the very possibility of thought and culture for Africans. Metaphilosophical questions raised in the Latin American discussions are also found in the African ones: Is there an African philosophy? What would make it specifically African? How would its specificity be determined? Would it still be philosophy? What is philosophy? But the salient question in the African debates seems to be: Has there been and can there be thought and culture in Africa? Obviously, the question arises from century-old claims made by Western colonialists, anthropologists, travelers, and missionaries about the “primitive” nature of the African mind.

The systematic colonization of Africa began in the early nineteenth century, but the slave trade had started to disrupt its socioeconomic and political fabric by the sixteenth century. The arbitrary division of the continent, violating the integrity of tribal, ethnic, and political communities, produced a legacy of intra- and inter-state tensions that lasted into the post-independence period, which was characterized by neocolonial domination. The colonial interference was to influence life on the continent on all levels: economic, political, cultural, educational, linguistic, and religious. It did not involve, as in Latin America, a large-scale policy of settlement, except in some areas such as South Africa. Hence, we do not find, as in Latin America, the phenomena and ideologies of mixing races. And contrary to the case in Latin America, some local languages and religions survived. So the question in the anti- and postcolonial struggle in Africa is whether these languages and religions can serve as a basis for a distinct African thought, or an “ethnosophistry.” The first week’s readings turn around this issue of ethnosophistry. The second week is devoted to the discussion of the pitfalls and challenges in recovering a positive sense of African selfhood. The third week deals with issues of tradition, modernity and language in relation to cultural decolonization. The fourth week examines the African feminist views of these cultural issues.

Week Nine:
Topic: Cultural Identity and Philosophical Identity: The Debate on Ethnosophistry


Week Ten:
Topic: Egyptianism, Négritude, and Postcolonial Identity


Week Eleven:
Topic: African Tradition, Modernity, Decolonization, and Language

The Play’s the Thing

Josef Velazquez
Stonehill College

Introduction

I will describe a style of paper topic that I have developed for general education courses. Perhaps a good name for this style would be mise en scene. The general idea of this style is to put the student in a situation where he or she has to do something with philosophy—or, even better, has to do some philosophy. What this style attempts to avoid are papers which are more or less just summaries of this or that philosopher’s ideas, with perhaps a few comments attached, but comments that do not really go very far or press very deeply. And the main idea of the mise en scene style is to put the student in a situation where he or she will have to argue a point, come up with objections and then answers to those objections, evaluate one theory in comparison to another, and, in general, get involved in the cut and thrust of actual philosophic thinking. At a second level, the style also sometimes involves asking the student to create (and then defend) philosophical theories of his or her own.

I have taken the various topics from my files and divided them up into a series of subtypes. In the next section I will describe each of these subtypes briefly. Then, in the final section, I will include some examples of actual paper topics.

Before I start, though, I want to add a word of qualification. I am afraid that what I am recommending here might seem so ambitious that it will be beyond the abilities of an average student. And I do not know what to say about this except that I have employed this sort of topic in a range of institutions (Fordham University, Ateneo de Manila, Stonehill College, University of Massachusetts–Boston, Bryant College) with what seems to me to be a successful outcome each time. Of course, our beginning students will do philosophy in a beginning way only. No topic, no matter how much it tries to encourage creativity, will turn an average student into Jacques Derrida. But my experience has been that beginning students can actually do a little philosophy in a beginning way—just like, perhaps, a beginning art student can be gotten not only to talk about art but actually to draw or paint in a beginning way. And it seems to me that actually drawing or actually arguing philosophically is, no matter how beginnerish it might be, an important educational experience.

Finally, I want to say that I am indebted here to my first philosophy teacher, Fr. Edward Gannon S.J., who also tried to make us beginners actually do a little philosophy. Everything I am saying in this essay is due to his example.

I. Subtypes

Subtype I: Answering the Arguments: The simplest subtype involves giving the student a series of arguments to respond to. In most cases, I use little stories that magically transform the student into a famous philosopher, and put him or her in front of some large gathering. The student arrives at the point when his or her presentation has just ended and when the audience begins asking questions and raising objections. What I do is to write the questions and objections myself, and the assignment is for the student (in his or her new persona as the famous philosopher) to answer them.

Another variation has a famous philosopher giving a speech or writing a letter. The speech or letter has its arguments laid out in an itemized or numbered format. This is the part that I
write. And then the student (who has been magically transformed into a contemporary of the philosopher) has the task of writing a response to each of the numbered items.

I use this subtype only after we have carefully studied the philosopher in question in class. This way the student has a basis from which to work. The same holds true, by the way, for all the subtypes from 1 to 5.

Subtype 2: Meet the Philosopher: Here the student gets to meet and talk with whatever philosopher we have been studying. There is some sort of magic or science fiction story that is designed to make this possible. Or, to be more accurate, there are actually two sorts of scenarios I use here: in one, the student actually converses with the philosopher, while in the other the student and the philosopher write letters back and forth (generally three letters: a first letter in which the student asks questions and expresses his or her doubts, a second in which the philosopher responds to those questions and doubts, and a third in which the student responds to the philosopher’s responses).

The point of this is to get the student to take his or her doubts and objections about a philosophy and to press them more deeply. For now the student cannot just explain his or her objections and then stop. Rather, the student must now try to see how the philosopher in question might be able to answer those objections. And then the student must go still one step further and attempt to evaluate these answers and see if they really hold up.

Subtype 3: You are the Expert: In this subtype, I try to put the student into the role of an expert who must help another person come to some overall evaluation of whatever philosophy we have been studying. For example, the student might be talking to a younger brother or sister who is thinking of adopting a certain ethical philosophy. This younger brother or sister, though, has decided, before proceeding, to ask his or her older sibling (i.e., the student) for some wise advice.

My students seem (for whatever reason) to like the idea of writing overall evaluations. And the idea in this subtype is to try to give such overall evaluations a little more nuance and complexity by adding an interlocutor who will bring up questions, notice the other side of an issue, and so on.

Subtype 4: Straightforward Conflict: In this subtype, I create two characters who are on opposite sides of an issue and who start to argue about it. For example, I have a topic in which Gilbert Ryle, sent back from purgatory, and the Catholic President of Stonyhill College argue, over lunch, about the theories in Ryle’s The Concept of Mind. (This topic also includes a student named Olga who is at lunch with the two gentlemen previously mentioned; she is there to give the students a character whom they can use as a mouthpiece to express their own opinions.) As another example, I have a topic where Immanuel Kant and his (fictional) fiancée Ingrid exchange a series of letters about whether love is more important than duty (Ingrid’s opinion) or whether duty is more important than love (Immanuel’s opinion).

The students, of course, will be writing for both (or all three) characters, i.e., the students’ task is to continue the argument for both of the sides. I have this subtype in a variety of formats: letters, conversation, formal speeches and rebuttals, and also guest experts on a talk radio show.

Subtype 5: Pamphlets: I sometimes ask the students to write a series of pamphlets for and against a certain issue—sort of like the pamphlets one gets from the Jehovah’s Witnesses. I usually ask for four pamphlets: pro, con, pro, con. The pamphlets are linked in the sense that the later pamphlets will not only be putting forward new points, but will also be responding to the points of the earlier pamphlets.

I have actually used this subtype with fairly theoretical issues, i.e., the debate between the utilitarians and the intuitionists, and also Nietzsche’s criticisms of democracy and Christianity.

Subtype 6: Essays Beforehand: I often propose a topic to my students before we actually talk about it in class. For example, I will provide a short statement of what consequentialism is or what a moral sense theory says. And then I will ask my students to write an essay either for or against.

My thinking here is that the best reasons either for or against a topic will all be discussed during class, and so, if I assign a topic like this after we talk about it in class, all the best reasons will already be “stolen,” as it were. But, if I assign the topic before we talk about it in class, the students will have a chance to discover these basic reasons for themselves (and they will also come to the class discussions with something ready to say).

I also usually provide a suggested outline that is designed to help the student construct a complete case—nothing elaborate, just something like: (i) reasons for your view, (ii) reasons against the opposing view, (iii.a) objections an opponent might make to you, (iiib) how you would answer those objections.

Sometimes I set this up where the student writes a speech explaining (to some famous imaginary audience) what his or her opinion is, and then writes both questions from the audience and his or her answers to those questions.

Subtype 7: Write Your Own Dialogue: I think it is important to get the students not only to think more critically about other people’s theories, but also to begin creating theories of their own. This subtype, along with the few that come after it, is designed to help the students begin doing that.

In my introductory course, I usually have the students read one of the early Socratic dialogues (Euthyphro or Laches) where Socrates and some other person try to define one of the virtues. After we work through this dialogue together, I ask my students to write a dialogue of their own, structured like the one we just read. I let them choose which virtue they want to write about and which characters they want to use.

Subtype 8: Write Your Own Mythology: I have also been having my introductory students read a few of the little essays from Roland Barthes’s Mythologies. In these essays, Barthes provides a semiotic reading of a variety of ordinary objects and events. He argues, for example, that the astronaut is such a central figure for the modern imagination because the astronaut plays for us the sort of self-transcending and spiritual role previously played by the mystic and the monk. And, after we have worked through a few of Barthes’s essays as well as a few classroom examples, I ask my students to write a little essay like one of Barthes’s essays, but on an object or event of their own choosing.

Subtype 9: Write Your Own Theory: Sometimes I just ask my students straight out to create their own theory of something. One version of this which I use frequently has to do with sitcoms. In my introductory courses, I discuss a couple of theories of drama, and apply each of the theories to the sit-com Seinfeld, talking about how each theory would explain why we enjoy watching a show where the characters constantly get themselves into embarrassing and painful situations. After this, I ask the students to create their own theory of why we like to watch these shows. As part of this, I also ask them to include a
Another version I sometimes use in my ethics classes asks
the students to create their own theory about the basis of
ethics. For example, after we have talked about Aristotle and
Mill and happiness as a basis of ethics, I might ask my students
to suggest an alternate basis, and to explain why their basis is
better than the happiness basis we have discussed. I usually
have many students who are uncomfortable with the idea
that we should guide our conduct on the basis of happiness
consequences. This topic encourages those students to take
their discomfort one step further and to develop an alternate
idea of how else we might guide our conduct.

Subtype 10: Commentaries about Life: This subtype comes in
two parts. In the first part, I ask the students to define something
like maturity, or excellence, or happiness. Unlike subtype 7
above, I am not here asking the students to write a Socratic
dialogue, but just to tell me in a regular essay format what, for
example, they think real maturity consists in, or what attitudes
and qualities they think form the foundation of true human
excellence. Then in the second part, I ask the students to
discuss two of the major obstacles to the development and
practice of maturity or excellence or whatever particular item
I am asking about.

Sometimes I use this subtype as an “essay beforehand”
(subtype 6), and sometimes I use it after we have studied a
philosophy where the item in question is constantly lurking in
the background (for example, I might ask about excellence
after we have read Nietzsche).

Subtype 11: Interviews about Life: As a variation of the last
subtype, I have recently begun trying out topics in which the
student interviews friends and family members about what
something like maturity or excellence really is. I ask the student
to report his or her interviews, provide a critical commentary
on them, and then come, in the end, to his or her own definition
of the item in question.

This subtype is an imitation of the technique Aristotle
sometimes uses in his ethics where he collects a whole variety
of opinions and then works through them to arrive at his own.

Subtype 12: Explaining Paradoxical Behaviors: In this subtype
I find some odd or paradoxical behavior and ask my students
to find an explanation for it. For example, I sometimes ask
why people find sex jokes funny? Sex should, it would seem,
be satisfying or frustrating or guilt inducing—but why funny?
Or why do people find scatological jokes funny? Sometimes,
I also ask about why some people like to get heavily drunk
(why try to enjoy life by the method of becoming unconscious
of it?) or about why joint drunkenness is such an important
bond between men (why, of all things, is doing drunk stupid
things together the most important of bonds?).

I do not, of course, mean to imply by this that every human
being likes scatological jokes or likes to get drunk. But I think
it not only is universal behaviors, but also odd and paradoxical
behaviors, which are useful in leading us to insights about
human nature. For example, Freud started off by looking at
hysteria, and Bataille by looking at the potlatch rituals of the
Pacific Northwest. And just like these odd behaviors led Freud
and Bataille to some interesting insights, so I hope that trying
to explain the odd behaviors in these topics will, in some small
way, help my students to interesting insights, too.

I use this subtype only after we have talked in class about
some theories that try to explain paradoxical behaviors. For
example, it is only after we have talked about Aristotle’s theory
of catharsis and Bergson’s theory of laughter that I will ask my
students to try their hand at explaining sexual or scatological
jokes.

Subtype 13: Miscellaneous: I have used a miscellany of other
ideas, too. Perhaps the most successful have been asking the
students to write: (i) short stories about someone who experiences the “existential awakening”—how this awakening
occurs and what happens to the person afterward; (ii) soliloquies in the voice of a young parent who has been given,
by a Greek goddess, the choice of whether the new born
child will live a life of faith, diversion, or existential heroics;
(iii) dialogues in which a young girl, pregnant out of wedlock,
meets her two favorite aunts (proponents of different moral
theories) to ask for advice on whether she should keep the
child.

Subtype 14: The Ace in the Hole: I have a topic that I use as an
ace in the hole. Whenever I am making a list of topics and feel
I need one more option but cannot think of anything, I just pull
this one out of the file, figuring that, however relevant it may
or may not be, at least it will be entertaining.

This topic is about how morality connects with freedom.
What happens is that Don Juan (through a demonic messenger)
sends the student a letter arguing that immorality leads to
freedom and that morality is a sort of slavery. Don Juan then
pleads with the student to become his worthy successor on
the path of total freedom. This first letter I write myself.

At this point the student and Don Juan exchange a series
of letters in which the student tries to prove that morality does
give us freedom while Don Juan tries to prove the opposite.
Both the student’s letters and Don Juan’s letters are, of course,
written by the student.

II. Examples

I have chosen the following examples to illustrate the
“mechanics” of the more unusual or magical scenarios—how
to operate a time machine, summon a demonic messenger, or
perform whatever other violation of the laws of nature might
be necessary to set up the problem of the subtype. On the
one hand, of course, such fanciful scenarios are mere
boondoggles or window dressings. On the other hand, though,
they are also a good way to encourage the students to write
more creatively; if the paper topics are a little bit fun and a
little bit nutty, the students will feel freer to let themselves go.

All the paper topics reproduced below originally contained
a couple paragraphs of directions and suggestions. I have
omitted this material in the interests of saving space.

Debating with Camus—or Angels and Pen Pals

One day, as you are sitting in the cafeteria, pushing the remnants
of your spaghetti around with your fork, an angel appears, and
sits down in the seat across from you.

You are startled and don't know what to do or think, but he
seems friendly and so you shake his hand and say, “Hi. I’m Bob.”
His hand is very smooth and cool.

“Actually,” Bob says, “Let me come right to the point
because my boss doesn’t know I’m here and I could get in a lot
of trouble if he noticed me appearing to you like this—without
authorization from the higher ups, I mean. But the thing of it is
that I really need your help.”
“Oh,” you say, getting more and more confused all the time.

“You see,” Bob hastens to explain, “With the expanding population, our workloads have gone way up. If you just think of the tremendous population in China alone you can imagine how busy we’ve gotten.”

“Yes of course,” you respond.

“And it’s not just the living people we have to worry about, we also have responsibilities for the souls in purgatory. And I’m sure you don’t need to be told just how busy that place is getting.”

“I can only imagine,” you reply.

“Well, to get right down to it,” Bob continues, “I’ve got a long list of souls in purgatory that I’m supposed to correspond with. You know, we write them letters the way you would write to someone who was stuck in the hospital for a long time. And, well, I’m having trouble keeping up with all those letters.”

“And what do you want me to do?” you ask, wondering, as soon as the words are out of your mouth, whether this was such a wise thing to say.

“It’s like this,” Bob replies, a truly angelic smile beginning to light up his face, “I’ve got a philosopher on my purgatory list, and philosophers are the most work of all. Never satisfied with cute cards or short letters about what the weather’s like and how you are doing. No. They always want to write long letters full of arguments and ideas. And I know you are a philosophy student and so I wonder if you wouldn’t mind taking over ‘philosopher duty’ so to speak. I’d really appreciate it if you could.”

Thinking of all the times your guardian angel has helped you out, you say, “Okay; who is he?”

“Albert Camus,” Bob answers, “I know you are reading about him in school and so why don’t you write him a long letter explaining your thoughts about his book and asking him all the questions that came to mind during class?”

“Okay,” you say.

“And one more thing,” Bob continues, “Don’t be afraid to criticize his theories. Those philosophers really like to argue, even in Purgatory. I’m sure nothing would cheer poor Albert up so much as a chance to debate his ideas with a nice young person like yourself.”

“Okay,” you say, “But how will I deliver the letters to Purgatory?”

“Don’t worry about that,” Bob says, “I’ll get my assistant — his name is Harry — to handle the deliveries. Just leave the letters you want to send under your pillow at night, and Harry will pick them up and deliver Camus’s replies to the same place.”

“Sort of like the fairy godmother,” you say ...

Your task in this topic is to write the letters back and forth between yourself and Camus.

(Assignment: three letters: from student to Camus, from Camus to student, from student to Camus.)

Amy Beth

It happens one evening when you are visiting home. Your little sister Amy Beth—she’s only seventeen—takes you aside and confesses that she has been reading Albert Camus’s essay “The Myth of Sisyphus.” You are a bit surprised to hear this, but she points out that she is seventeen and that this is certainly old enough to graduate from MS. and Vogue to something a bit more serious.

“Okay,” you say, “But what exactly do you want to talk about?”

“Well,” Amy Beth replies, “The way I see it I have three choices in life: the life of faith, the life of diversion, or the life of the absurd heroine.”

“What do you mean by the absurd heroine?” you ask.

“Why, Camus’s three part solution of revolt, liberty and passion,” she replies. “Haven’t you been reading carefully?”

“Yes. Yes. I remember of course,” you tell her. “But what did ...”

“And so,” Amy Beth cuts in, “What I want to know is which of these three lives is the best life. Faith? Diversion? The absurd heroine with her revolt and liberty and passion? I know that you are reading Camus in college and so I thought you could tell me which is best.”

“And you have to decide this weekend?” you ask.

“Look,” Amy Beth says, “I’m in a bit of a hurry here. I’m already seventeen and I don’t even know which direction my life should take. Are you going to help me out with this or not?”

“Okay, okay,” you say, “Let’s take these options one at a time and look at the pros and cons of each, shall we?”

“I knew you would help,” Amy Beth says enthusiastically ...

(Assignment: write the conversation.)

Regular Essay Format

This topic is in regular essay format. What you will do in this topic is write a reply to Camus in which you analyze the weaknesses in his suggestions for how to live, and then put forward an alternative suggestion of your own.

I think this essay should have three parts.

In the first part you should talk about Camus’s true solutions of revolt, liberty, and passion, and you should explain why you are dissatisfied with each of these solutions.

In the second part, you should make your own suggestions about how to live. You are here proposing your own alternatives to Camus’s ideas. You should, of course, give reasons why your alternatives are good ones.

In the third part, you should imagine what objections or questions Camus might have if he read your paper, and you should explain what these questions or objections are and also how you would answer them.

What a Drag It is Getting Old

This topic is set in the future. And in this topic you have become middle aged (yes, it happens!) and now have college-aged children of your own. One day, you receive a letter from your son or daughter who is away to school at Oxford (hey, you might be middle aged, but at least you have smart kids). The letter talks about many things, but the part which is important for us here is the part which says:

... and, please, you have to help me out. My philosophy teacher has me all confused. First he talked about John Stuart Mill who said that morality is based on the greatest happiness principle. And the arguments he gave for this sounded really convincing. But then this professor turns around and talks about Kant who contradicts practically everything Mill says, and who developed a morality that was based on duty instead of happiness. And the thing of it is that Kant’s arguments sounded really convincing too.
Well, I didn't know what to believe. And so I went up to my professor after class and asked him which of these two theories was true. And—can you believe it?—he said he didn't know (the fool).

And so I stayed confused. And that's why I am writing to you. Could you please help me out? Could you tell me which of these theories is the true one? Which one I should adopt and follow?

Your task here is to help your poor bewildered child out. (Assignment: three letters: first from parent to child, second from child to parent (with objections), third from parent to child (with answers)).

**Love and Duty—the Secret Letters**

It is a little-known fact (little known because I just made it up) that Immanuel Kant was once engaged to a (very very beautiful) young lady named Ingrid. And one day Immanuel received from Ingrid a letter which closed with the sentence, “Nothing, my dear Immanuel, is more important to me than my love for you.”

Now, from a personal point of view, Immanuel was, of course, quite touched and gratified by this. From a philosophical point of view, however, he was a bit—well, a bit displeased, actually. For he believed (as you know) that nothing should be more important than our principles (i.e., our duty), and that no emotion, no matter how seemingly wonderful, should take precedence over these principles.

And so he wrote Ingrid a reply (very patient, very gentle) explaining why he thought this was so. He explained, in other words, why duty rather than love should always be our basic motive, and why love is actually better if it is based on duty.

Ingrid, however, was (alas alas) not convinced, and she wrote a (somewhat spirited) reply to Immanuel in which she disputed his philosophical arguments. Love, she insisted, was more basic and important than duty.

And then Immanuel wrote, etc., ...

Now your task in this topic is to write the letters between Immanuel and Ingrid.

Assignment: four letters, beginning with Immanuel's first response.

**Better than a Bug**

Have you ever read Franz Kafka’s story “The Metamorphosis”? This is the story that begins with the wonderful sentence “Gregor Samsa awoke from a night of uneasy dreams to find himself transformed into a giant insect.” Well, this paper begins in a similar way because in it we will imagine that you awake one morning, from a night of uneasy dreams, to find yourself transformed not into an insect but into (yes, you guessed it!) Rene Descartes. Not only that, but you find yourself at a podium in front of a large audience. It seems that you have just explained your first proof for God’s existence to the Philosophical Society of Rotterdam. And boy are they hot! A thousand hands are in the air, each pumping urgently up and down, a stinging objection no doubt lurking behind each one. But you say to yourself, “Hey, I’m Rene Descartes, philosopher extraordinaire. These objections will be child’s play to me.” And so you begin calling on people one by one, listening to what they have to say, and giving them calm, rational, and utterly overwhelming answers.

And these are the questions the audience asks you.

Bearded man in the front row: I do not agree with that step in the proof where it says that everyone has an idea of God. For example, atheists do not have this idea since they do not believe in God. And with a mistake in this beginning step, I am afraid that your proof will not work.

Student from the back left: I would like to amplify on that first point. For I do not think that anyone really has an idea of God. My reason is simple: I do not think that the human mind is powerful enough to really grasp this idea or fully comprehend what it means. You define God as infinitely perfect. But how could we ever grasp an idea of something infinitely perfect? How could we ever have any idea of what it means to be all wise or infinitely merciful? No. As far as I can tell, all we can do is repeat the words “infinitely perfect,” but we can’t really have any idea what these words mean.

Etc. (The rest of the objections omitted in order to save space.)

Assignment: the list has eight objections altogether; the student answers seven of the eight.

**The Best Laid Schemes...**

(Note: The next topic is from a series involving Ethyl (a friend of the student's) and her time machine. Through a series of mishaps, the student gets beamed by Ethyl's time machine into a variety of philosophically difficult situations.)

It happened again, though this time it was your own fault.

You had snuck into Ethyl’s house late one night, crept stealthily down the stairs into the basement where she keeps the time machine, and typed those magic, long hoped for words into the space on the screen marked “destination.” (For the ladies, we will imagine that you typed the words “Sir Lancelot’s bedroom,” for the gentlemen, we’ll imagine “Messalina’s bedroom” or someplace equally interesting). Then you closed your eyes and punched the “send” button, certain that you would, in just seconds, materialize into the arms of the bravest knight or most lascivious empress who ever lived.

And you do see (through closed eyelids) the flash of light, and you hear the howl of wind. But when the light dies down and the wind stops, you don’t feel, as you had hoped, a torrent of passionate kisses. In fact, it feels like you are sitting on some sort of folding chair. And when you (cautiously) open your eyes and peek around, you realize that you are (once again) at the speaker’s table of the Athenian Philosophical Association. “Did Ethyl know I was going to sneak into her house?” you ask yourself, “And did she set up this little trap to punish me?” But there is no time to really think about this because the master of ceremonies is pointing to you and introducing you to the crowd.

“Good afternoon ladies and gentlemen,” he says. “I am pleased to introduce to you today the world renowned Dr. [Your Name]. Some of you may remember Dr. [Your Name] from the wonderful presentation he/she gave last month on the issue of relativism. Well, Dr. [Your Name] has traveled all the way from the twenty-first century to be with us again today—sent to us by the great goddess Ethyl herself.

Dr. [Your Name] has established him/herself as one of the leading philosophers of the distant future. Among his/her many books are: *The Anti-Callicles, Protagoras and Other Relativists, Ethyl Debates Socrates, The Root Of Virtue*, and the world famous novel *Ethyl My Master*.

Today, Dr. [Your Name] has come to speak to us about an exciting new idea from the future, something called “intuitionist ethics.” Dr. [Your Name] is going to tell us a little about what this new theory is, and then he/she is going to tell us whether, in his/her opinion, this is a theory we should adopt and follow.

And then, after his/her presentation, Dr. [Your Name] has agreed to answer whatever questions or objections you, the audience, might have.
And so could you please join with me in welcoming Dr. [Your Name]!"

At this point, the audience, remembering your last appearance, breaks into wild cheering and applause, and you (with some trepidation) rise to speak...

(Assignment: write speech, write questions from audience, write answers to the same.)

(Note: I pass out a brief summary of intuitionist ethics along with this paper topic.)

**A Lack of Sympathetic Understanding in the Classroom: Remarks from a Graduate Student Instructor**

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**Introduction**

It was not until I began to consider this topic seriously that I realized how limited my experience of graduate student instruction really is. I am just one graduate student, in one department, at one university in the middle of America. So, please be aware that I am speaking from this limited perspective.1

This is my attempt at pointing out an important element that is missing from our graduate training; namely, sympathetic understanding. In the first section, I detail the extent of the training that many philosophers receive in the area of teaching and discuss the antipathy toward undergraduate students that tends to arise within this system. In the second section, I introduce the notion of sympathetic understanding. As I see it, this notion is best articulated in the works of William James, Jane Addams, and John Dewey; so I draw from their works throughout this paper. In the last section, I discuss the role of sympathetic understanding in the classroom and the benefits that arise from it.

**1: Training Philosophers to be Teachers**

As a doctoral student in philosophy, I have learned a great deal from my graduate training. I have learned the intricacies of several philosophers’ theories. I have learned to do research and write professional papers. I have played the role of teaching assistant and led recitation sessions. And I have even had the opportunity to teach my own courses. But, I have never received formal training from my department on the topic of teaching.

I should mention that at least twice a year my university offers general teaching improvement workshops to all graduate students. The workshops cover topics such as: how to incorporate diversity into the classroom, the proper relationship between students and instructors, and, most frequently, how to incorporate technology into your courses. These workshops do offer constructive suggestions, yet, due to the generality of the presentation, I have found them to be terribly uninformative.

Do not get me wrong, I am not trying to say that my department does not have a screening process—they do not let just anyone teach their courses. In our department, graduate students must act as teaching assistants for two semesters before they are allowed to teach their own courses. And as teaching assistants, the observant graduate student learns a lot about teaching. We are handed syllabi, study guides, quizzes, and exams. These come in very handy; they are the models upon which we build our syllabi, our study guides, and our exams. As teaching assistants, we are also shown how our professors set up certain problems and formalize certain arguments. Again, these insights are extremely helpful. With no shame, I admit that the four or five arguments that I write on the board when I cover Descartes’ *Meditations* come straight from the notes of one of the professors that I assisted. And, finally, as teaching assistants, we are shown what our professors take to be the most important philosophical issues in a handful of classic texts. Not only does this experience give the teaching assistant an idea of which texts to select for his or her courses, it gives the teaching assistant an idea of the type of philosophical questions that deserve to be addressed.

Yes, we are taught many things. But notice that we are not taught how to facilitate class discussion. We are not trained to be attentive to the mental responses and movements of our students. We are not taught to sense whether or not we are getting across to our students. The emphasis, for us, is placed on making sure that the students can distinguish and reproduce certain concepts and arguments.

In certain respects, my department is quite Aristotelian. Like many other departments, my department assumes that we graduate students will seek out excellent teachers and mimic their virtuous traits. The hope is that, if we act like our excellent teachers long enough, we too will come to perform the actions of excellent teachers as excellent teachers perform them.2 And, once we have come to perform the actions of excellent teachers as excellent teachers perform them, we have made it. We are, then, excellent teachers. This system works to an extent, but I am of the opinion that it is not adequate to produce excellent teachers. Let me explain.

In an article entitled “How to Improve Your Teaching,” Steven Cahn lists three common strategic mistakes made by teachers. The first of these mistakes is “overestimating our audience’s background knowledge, reasoning skills, powers of concentration, and interest in the subject.”3 This tendency was also noticed by Jane Addams. In *Twenty Years at Hull-House*, she warns that it is the habit of us scholars to allow our desire to say the latest word upon any subject to overcome any sympathetic understanding of our students which we might otherwise establish.4 The common result is that the instructor insensibly drops into dull philosophical jargon, further alienating his or her students.

Many graduate students tend to forget what it is like to be eighteen or nineteen years-old and in your first philosophy course. Having spent the last two or three years buried in the esoteric passages of Aristotle, Kant, Heidegger, and the like, we tend to forget the vast mental territory we have crossed. We tend to forget that the overwhelming majority of our students do not share our background knowledge, our reasoning skills, our powers of concentration, or our level of interest in the subject. And, unable to make a connection with their students, many graduate instructors start to think less of their students; that is, they gain a certain antipathy toward their undergraduate students.

As I see it, this first strategic mistake often leads to the second strategic mistake; that is, underestimating our audience. Philosophy often breeds elitism. I was introduced to this sentiment during my very first interactions with a group of graduate students at my university. You see, I was visiting the university and the department enlisted a group of seasoned graduate students to take me out to lunch. The lunch was nice, but when the conversation drifted onto teaching responsibilities, the tenor of the conversation turned ugly. I
distinctly remember saying that I was looking forward to teaching my own courses. To which, one of my peers, dripping with condescension, said, “you’ve obviously never taught your own course before.” Actually, I had already taught my own courses, but that is not important. The conversation quickly spiraled into an undergraduate bashing session. I heard: how the students are stupid, how they are unmotivated, how they never speak in class, how they do not read, and (my favorite) how some people just are not cut out for philosophy. In all of this, the sentiment that seems universal is that the majority of undergraduate students are hopeless.

Thus not much is expected from the undergraduates. Many graduate instructors have long since given up on trying to facilitate class discussion. Many of my peers have reverted to “spoon feeding” their students. Some graduate instructors merely lecture at their students, but I have noticed that many of my peers are now leaning heavily upon the overhead projector. The graduate instructor reveals argument and counter argument while their students struggle to listen as they reproduce transparency after transparency verbatim.

The last strategic mistake is “the failure to do justice to our intellectual opponents.” As I see it, all competent philosophy instructors come to the classroom with particular philosophical interests and proclivities. As professional philosophers, we are engaged in various research projects, promoting very particular philosophical perspectives. The question is: whether or not we force our views upon our students in the classroom. In my experience, I have found that graduate instructors are notorious for pushing their own agendas in the classroom. To these instructors, there is the truth and there is everything else. Opposing views are mere foils and straw men, which are erected just for the purpose of tearing them down. In their zeal to defend, say, Thomistic virtue ethics they caricature Kantian, utilitarian, and pragmatist ethical positions. In this sort of situation, the student is placed in a precarious position. On one hand, the student can go along with her instructor and sing the praises of the instructor’s favorite philosopher. But, should the student disagree with her instructor, she is perceived as a foe and, in many cases, made to feel like an idiot. In other words, there is an antagonism that develops between the student and the instructor.

I am quite aware that, in writing this section, I have focused on the negative. It was not my intention to give graduate instructors a bad name; I am sure that there are scores of remarkable graduate instructors. But my own experience indicates that the three strategic mistakes that Cahn enumerates may be more common than some think, especially in courses taught by graduate instructors. These mistakes, I will try to show, may well derive from a lack of sympathy.

2: Sympathetic Understanding

I find it hard to explain sympathetic understanding. At base, it has to do with the process of sympathetically coming to understand the perspective of another being. To say anything more definite than that is difficult. Perhaps a few examples will help.

In his essay “On a Certain Blindness in Human Beings,” William James discusses “the blindness with which we all are afflicted in regard to the feelings of creatures and people different from ourselves.” He describes a trip he took to the mountains of North Carolina. Riding through the backcountry, James came across several coves crudely carved out of the wooded mountainsides. The settlers apparently cleared an area by cutting down trees, yet did not bother to remove the stumps. In the middle of these clearings, the settlers built bucolic log cabins surrounded by zigzag fences, to keep the pigs and cattle out. With his New Englander eyes, James saw only unmitigated squalor, an affront to Nature’s beauty. Aghast by these eyesores James asked his driver “what sort of people are they who have to make these new clearings?” To his surprise, his driver said: “All of us. ...why, we ain’t happy here unless we’re getting one of these coves under cultivation.” It was only then that James realized that he was blind to the inward significance these coves held for these settlers. He realized that the settlers looked on their coves as symbols inundated with moral sentiments, which sang a very paean of duty, struggle, and success.

The moral of the story is that all of us are restricted from knowing the innermost sentiments of people different from us. Thus we have trouble recognizing the value these sentiments hold for these people. And, not recognizing these values, it is easy for us fail to take into account their most important sentiments. The common result is intolerance. This is where sympathetic understanding comes in. To combat our blindnesses, we must acquire as much sympathetic understanding of other people’s values as possible. That is, we must strive to appreciate other people’s perspectives.

Let me give you another example. In 1889, Jane Addams and Ellen Gates Starr opened a settlement house in Chicago called Hull-House, which was a great asset to the community. The women of Hull-House worked very closely with many of the poor recent immigrants. In this capacity, Addams and the women of Hull-House were charity workers. One of the insights that Addams gained while working among these folks was the idea that she could not just solve their problems, dust off, and go home. She recognized that charity is tricky business. She recognized that an uninformed charity worker with good intentions could easily cause great damage, making the conditions worse than they were when she arrived. To guard against this, the effective charity worker has to inquire thoroughly into the context and conditions at hand. Addams held that, after thoroughly evaluating the situation, the charity worker should attempt to gain a sympathetic understanding of the experiences of these people. That is, the effective charity worker has to try to understand the problem from the perspective of the downtrodden. Addams tells us that this sort of understanding is attained only “by mixing on the thronged and common road where all must turn out for one another, and at least see the size of one another’s burdens.” The claim is that once the charity worker gains a sympathetic understanding of their experiences, he or she is then in a position to work with people, not for them. And to work with these folks, it is paramount that charity workers go forward in “the heat and jostle of the crowd” and “walk many dreary miles besides the lowliest of [God’s] creatures” so that they may acquire a sympathetic understanding of their plight.

In both of these examples, I have tried to show that sympathetic understanding is based on the idea that there are several ways of seeing the world. The problem is that we have trouble understanding the other’s point of view; we are blind to what others find to be important. Thus it is paramount that each of us continuously strive for sympathetic understanding.

3: Sympathetic Understanding in the Classroom

What does all of this have to do with teaching? Let us return to Cahn’s pedagogical suggestions. Remember the first two strategic mistakes: we should avoid both overestimating and underestimating our students. I do find these suggestions to be insightful. But I must ask: How are we to recognize whether we are over- or under-estimating our students? This I take to be one of, if not, the hardest aspects of teaching.
According to William James, teaching, in principle, is fairly simple. In his *Talks to Teachers* James says that the science of teaching is not unlike the science of war. In war, you simply work your enemy into a position from which the natural obstacles prevent them from escaping. And, at just the right moment, you fall on them in numbers superior to their own, hacking their regiments into pieces, and taking the remainder as prisoners. In principle, teaching is just as simple. You must simply work your pupils into a state of interest in the subject matter so that all else is banished from their minds. Then, strikingly, you reveal the next intellectual nugget to them, filling them with devouring curiosity to know the next few steps in connection. James, then, says: the principles being so plain, there would be nothing but victories for the masters of the science, either on the battlefield or in the classroom, if they did not both involve the task of understanding the mind of their opponent. James perceptively points out that the minds of “our own enemy,” our students, are working away from us just as eagerly as the mind of the opposing commander on the battlefield. (I am sure I do not have to convince any of you who have taught early Monday or late Friday courses.) In this light we see that to grasp just what the respective enemies want and think, and what they know and do not know, is a difficult task for generals and teachers alike. But, for James, this much is clear: it is sympathetic concrete observation and skillful forecasting that are the only helps here.

According to James, to recognize whether we are over- or under-estimating our students we must try to see the subject matter from two different angles and gain a stereoscopic view of “our enemy.” We must try to represent to ourselves the curious inner workings of our students’ minds. As Dewey puts it:

The teacher is distinguished from the scholar, no matter how good the latter, by interest in watching the movements of the minds of others, by being sensitive to all the signs of response they exhibit.

In other words, teachers must be in sympathy with the mental movements of their students. It is only thus that we become open to our students’ perplexities and problems. It is only thus that we can discern the causes of their perplexities and problems. It is only by these means that we acquire the mental tact to see signs of promise and nourish them to maturity. Along these same lines Dewey says:

[The best teachers] have a quick, sure and unflagging sympathy with the operations and process of the minds they are in contact with. Their own minds move in harmony with those of others, appreciating their difficulties, entering into their problems, sharing their intellectual victories.

Sympathetic understanding is, thus, something that excellent teachers must have. It is only through this sort of process that one begins to comprehend the various troubles and frustrations of their students. Only then do we begin to realize the steps we need to take as instructors to make the material relevant and accessible.

Of course, it is hard to imagine how exactly one would go about training another to gain sympathetic understanding. The “devil” is, indeed, in the details. Perhaps a good place to start would be convincing senior professors that philosophical pedagogy should be part of the graduate curriculum; that they should be teaching their graduate students how to teach philosophy. What is needed is a forum to share and discuss general and course-specific pedagogy. This could take many forms. One could institute something as weighty as a mandatory teacher training course in the graduate curriculum or something as minimal as a teaching mentor system. In these types of settings, potential graduate instructors could be taught methods and techniques that would help them to be more attentive, challenging, self-critical, and charitable to their students and texts once they enter the classroom. Of course, mere pedagogy will not guarantee sympathetic understanding or good instruction in the classroom. Instructors must develop their own ingenuity in meeting and pursuing their students in various concrete situations in order to achieve a truly sympathetic understanding. Nevertheless, I think that philosophy departments have a duty to introduce their graduate instructors to this most vital aspect of teaching and mark it as something at which all instructors ought to aim.

**Endnotes**

1. I should add that I have yet to teach a class larger than forty students.
8. Ibid., 843.
9. Ibid.
ON THE PROFESSION

Announcement of Woodrow Wilson Practicum Grants

Ms. Jessica Lautin of the Woodrow Wilson National Fellowship Foundation informs us that one of the recipients of a Woodrow Wilson Practicum Grant for Fall 2003 was Nathaniel Hansen, a doctoral student at the University of Chicago. Working with teachers at University High School in Fresno, California, Mr. Hansen will design learning modules that incorporate the teaching of philosophy concept into the humanities curricula for the ninth and tenth grades. He will receive one of ten stipends of up to $2,000.00. Ms. Lautin writes that Mr. Hansen’s work is a superb example of the way increasing numbers of young academics are integrating their discipline with public outreach. The Practicum Grants, which are supported in part by the Rockefeller Foundation, give graduate students a chance to apply their skills and knowledge in new settings and to discover their professional potential both outside and within the academy. The Woodrow Wilson National Fellowship Foundation’s website is http://www.woodrow.org.

REVIEW


Reviewed by Yakir Levin
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Descartes’s so-called real distinction between mind and body1 has two aspects, ontological and epistemological. The ontological aspect finds expression first and foremost in his substance dualism, the view that mind and body are separate substances that can exist independently of each other. But the ontological aspect also finds expression in Descartes’s internalism, the view that intentionality is a feature which the mind has in and of itself—i.e., that nothing external to the mind is required for determining mental content. Clearly, substance dualism entails internalism. If mind can exist as it is without the existence of any body or external reality, then things external to the mind are not required for determining mental content. In addition, substance dualism supports the epistemological aspect of the Real Distinction, the view that mind and body require completely different types of account. At the same time, Descartes’s conviction in the epistemological aspect of the real distinction constitutes at least part of his rationale for endorsing substance dualism. It is Descartes’s conviction that mechanistic accounts of the external world are inapplicable to fundamental mental capacities that, among other reasons, led him to substance dualism.2

While substance dualism can ground internalism, it is not the only possible basis for such a view3 nor is it the most plausible basis. Indeed, there is a wide consensus among contemporary philosophers, internalists included, that substance dualism cannot be true. Contemporary philosophers are also fairly unanimous in their rejection of the traditional Idea idea, the view that the primary bearers of mental content are intrinsically contentful items that wear their interpretation on their sleeve. Such a rejection is, in particular, part of nearly every internalist’s stock-in-trade. However, if internalists leave behind the Idea idea, their position becomes incoherent. For if no intrinsic features of the bearers of mental content can determine this content, then something external to these items must determine the content they bear. This external something cannot be a thing internal to the mind. It cannot be an interpreting module of the mind, since such a module must itself involve intentionality, which will immediately set internalism off on an infinite regress. Neither can the external something under consideration be some relation between different bearers of content. A relation between bearers of content merely yields a more complicated bearer. Thus, if the Idea idea is rejected, mental content must be determined by something external to the mind. But this is inconsistent with internalism.

If internalists can avoid the anti-internalist conclusion of these rather compelling considerations, it is only, it seems, by reverting to the Idea idea. Taking this course, however, is not really an option, since the Idea idea is indeed hopeless. This being the case, internalists must bite the bullet and respond to the considerations at issue in one of two ways. The first way is by taking the conclusion of these considerations to reflect a fundamental incoherence in the idea of mental content. This response is tantamount to eliminativism, the view that the idea of mental content, and perhaps the whole idea of the mental as well, should be dispensed with. The second alternative way is by switching to externalism, the view that mental content is constrained or determined by the world. The main purpose of G. McCulloch’s very rich, especially penetrating, and most insightful The Life of the Mind is to defend and develop the externalist response (unless otherwise indicated all references are to this work). Externalism, however, comes in many varieties.4 The version McCulloch comes up with is distinctive in its radicality. If we paraphrase his own paraphrase of a famous slogan by Hilary Putnam, in McCulloch’s externalism (Yakir, it is not clear what is meant here): Content just ain’t in the head; content is in the mind and thus the mind just ain’t in the head (11-12). Another distinctive mark of McCulloch’s externalism is that, although it takes mind to be part of the external world, it nevertheless seeks to secure for mind a special place in the world by preserving the epistemological real distinction. As he puts it, “understanding...minds involves a methodology and knowledge that is radically different from the methodology and knowledge involved in the physical sciences” (73). It is this blend of externalization of the mind and the epistemological real distinction, which, for reasons that will become clear later, McCulloch calls phenomenological externalism. But this blend, I shall claim, does not really resolve the problems of internalism that motivated its development by McCulloch in the first place.

To achieve The Life of the Mind’s main goal, McCulloch proceeds along three complementary and partly intertwined routes. Part of the first route consists of an attempt to undermine two central eliminativist moves—that of Paul Churchland (Chap. 3) and that of W.V. Quine (91-93), both of which derive eliminativism from one or another version of externalism. Churchland’s move might be particularly damaging to McCulloch’s attempt at defending the externalist response to the anti-internalist considerations outlined above. For not only does McCulloch accept much of the substance of Churchland’s brand of externalism, but he uses Churchland’s argument for this brand to motivate the type of externalism...
he himself opts for. Indeed, in McCulloch's view, Churchland's argument—a combination of scientific realism with an argument to the effect that externalism is required “to make sure our experiences and thinking are about the things that science tells us they are responses to” (66) —embodies a major motivation for externalism. But this motivation does not make sense unless we take ourselves to be subjects of experience and thinking, which is exactly what eliminativism denies. Thus, a major motivation for externalism is inconsistent with Churchland's and Quine’s externalism-based eliminativisms, which is McCulloch's main objection to these eliminativisms.

The other part of McCulloch’s first route consists of a criticism of Donald Davidson’s eliminativism (94-108). While Davidson self-consciously departs from Quine in some crucial respects—most notably in rejecting Quine’s behavioristic externalism—he shares some of Quine’s main doctrines—namely, that of the primacy of sentences and that of the primacy of the so-called radical case of interpretation—deriving from them a similar eliminativism. McCulloch’s main argument against Davidson’s eliminativism seeks to show that it must assume the very behavioristic externalism that Davidson rejects. The other side of the same argumentative coin is an attempt to show that Davidson could not have reached his eliminativism had he not ignored the epistemological real distinction endorsed by McCulloch. Ironically enough, the epistemological real distinction has an echo in Quine’s overarching concern with linguistic behavior and interpretation, which results in his behavioristic externalism and eliminativism (chap. 4). Indeed, McCulloch’s major argument for the epistemological real distinction is inspired by some of Quine’s leading remarks on meaning and intentionality. So, McCulloch’s aim in discussing Quine’s and Davidson’s eliminativisms is not only to undermine very central eliminativist positions, but to show that his own endorsement of the epistemological real distinction is “much more accommodating [than views that avoid this distinction] to Quine’s overarching concern with linguistic behavior and interpretation...as well as to much (though not all) that can be found in Davidson” (94). This is particularly important to McCulloch with respect to Davidson because of “the influence of Davidsonian themes on the approach taken in (The Life of the Mind)” (106).

The second route along which McCulloch proceeds consists of an illuminating reconstruction and defense of three important lines of argument in the literature that provide, in his view, a major support for externalism. These lines of argument are: (1) Putnam’s famous twin-earth considerations (41-48); (2) John McDowell’s well-known considerations about the sense and reference of proper names, which McCulloch’s views "as complementing, and possibly giving a way to generalize, [Putnam’s twin-earth considerations]" (48-53); and (3) Churchland’s aforementioned argument which, in McCulloch’s view, is also related to Putnam’s twin-earth considerations (56-63).

As part of his defense of Putnam’s twin-earth considerations, McCulloch argues against important neo-internalist responses of Jerry Fodor and Colin McGinn to these considerations (Chap. 6). In McCulloch’s analysis, the main problems with both of these responses stem from the fact that they do not respect the epistemological real distinction. So the aim of his discussion of Fodor and McGinn is not only to lend further support to externalism, but also to strengthen his case for the epistemological Real Distinction. In addition, this discussion is supposed to show that externalism can accommodate the epistemological real distinction only if the primary bearers of content are outward, public, things such as doings and sayings. But in McCulloch’s view there is another, crucial reason why the primary bearers of content must be doings and sayings: “Since communication is both a public event and a sharing of thoughts, the bearers of thought-content themselves have to be public” (105).

Both the first and second routes, then, involve the epistemological real distinction. But McCulloch’s main argument for this thesis constitutes the third route he takes (chaps. 1 and 4). The basic step in this argument is the claim that conscious intentional states are phenomenological—i.e., there is something it is like to be in those states. “To say [this]...is not to say that [content] reduces to things like raw feels, or ‘purely qualitative’ aspects of the mind (if there are such things...)” (10). Neither is it to say that “distinct contents have associated with them distinct identifying qualia or raw feels” (29). To say that content is a phenomenological notion is rather to say that conscious intentional states are essentially tied to the point of view of their subject. This means that “coming to understand how [someone] S thinks, [must involve]...learning to see the world in S’s way, taking S’s intentional objects as one’s own” (82). It means, in other words, that to understand others we must interpret them—i.e., be “in a position to share their modes of presentation: the interpreter’s objects are presented to the interpreter in the interpreter’s ways” (120). According to the second crucial step in McCulloch’s argument, however, to share others’ modes of presentation requires, to paraphrase Quine, that weicker with them as brothers. It requires that we immerse ourselves in their form of life. But, and this is the third crucial step in McCulloch’s argument, “not even omniscience with respect to physical science in all its glory will teach [one] to bicker with others as a brother” (83). In other words, “access to [the phenomenology of content] is not given by physicalist accounts, or indeed by any other account which fails to be interpretational” (120). Thus, understanding of mental content is drastically discontinuous with understanding of physics, which is what the epistemological real distinction claims.

Combined with the anti-internalist considerations outlined above, the three routes McCulloch takes make a rather strong case for a two-faceted externalism. In this externalism, mental content is world-dependent. But this externalism also holds that the primary bearers of mental content are outward facts, namely, doings and sayings that convey the points of view of subjects of intentional states and are in this sense phenomenological. In light of this, it should now be clear why McCulloch calls his view phenomenological externalism. But it should also be clear why, in addition, he characterizes it as behavior-embracing mentalism (chap. 5).

If the primary bearers of content are doings and sayings, then intentionality requires embodiment. Thus, an important implication of McCulloch’s phenomenological externalism is that it rules out the possibility of vat-brains, or disembodied subjects with conscious intentional states (chap. 7). But McCulloch’s phenomenological externalism also has a not so happy consequence. It is a major aspect of the epistemological real distinction embraced by this position that the content of intentional states cannot be read off nonintentional features of these states and/or of any other states. This aspect is especially salient in the context of the distinction that McCulloch introduces in chapter 6 between (standard) behavior-embracing mentalism and (his own) tripartment. But if content cannot be thus read off, what determines it? On the one hand, the assumption that the content at issue is a primitive feature of intentional states as these are environmentally embedded is tantamount to something like the hopelessly Idea idea of states that bear their contents on their sleeve. On the other hand, the assumption that the content of given mental states (e.g., one’s own) with a specific environmental embedding is determined by intentional features of other mental states (e.g.,
the mental states of others) sets phenomenological externalism off on an infinite regress. Thus, it appears that McCulloch's phenomenological externalism faces the same problems of internalism that motivated its development in the first place.

Notwithstanding this objection, The Life of the Mind is to be highly recommended for its breadth, depth, and masterly treatment of issues that are at the very center of contemporary philosophy of mind. After all, to quote Dr. Johnson, seldom is any splendid story wholly true.

Endnotes

2. Ibid., 126-131.
4. Ibid., 289.

Books Received


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