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Editor's Note: Issue I

It is with great pleasure that I bring you the first issue of our undergraduate journal, *Acta Cogitata*.

In the vast and ever increasing sprawl of the marketplace of ideas, it is sometimes difficult to find an appropriate home for one's ideas, voice, questions, and thoughts. This journal is a new vaulting point for some of the best and brightest ideas from the ground floor of professional philosophy. An idea's greatness is not determined by its point of origin, but rather the attention it garners in the public domain and, one hopes, its proximity to the truth. It is my sincere belief that students of philosophy, regardless of their institutional accolades, will find this journal's offerings both interesting and thought-provoking. It is also my great hope that our authors will continue these projects, now with access to readers – readers who can help shape the future of these interesting projects and bring new thoughts, new ideas, and new questions to bear on these matters.

Publication marks an author's work as a noteworthy contribution to a discussion, and publication rewards the efforts of those who take seriously adding their voice to the many who struggle with difficult and interesting ideas on a daily basis. I am extremely pleased that our inaugural authors have chosen to share their outstanding work with this journal and that in return this publication is able to recognize their efforts.

After this first issue, I fully expect the number of articles we can publish to grow. The journal's inaugural authors have set a high bar, but I know there are a great number of undergraduate authors out there with ideas and thoughts to share. It is a joy to think of the many terrific papers that should find their way to *Acta Cogitata* over the years to come.

Enjoy!

Dr. W. John Koolage

Mission and Purpose Statement

Acta Cogitata is dedicated to providing a venue for undergraduate authors of original philosophical papers to have their work reviewed and, possibly, published. Publication acknowledges the work of outstanding undergraduate authors, rewards their efforts, and provides a home for some thought-provoking projects. In line with this purpose, *Acta Cogitata's* authors retain their copyright so that they may continue to develop these projects. The journal, however, does not publish work that has previously been published elsewhere.

The journal accepts philosophical papers from all areas of philosophy and seeks to promote philosophical discourse in any area where such discourse may be illuminating.

The journal is published annually, in October.

Contents

- 5 A Neglected Argument in “The Will to Believe”
Alexander M. Lawson, Hamilton College

- 16 Queerness Without Binary
Jeffrey Davis, Eastern Michigan University

- 28 The Ethical Character from Plato to James: Strict and Stable to Flexible
Erga Lemish, Southern Illinois University – Carbondale

- 35 The Claims of States to Cultural Property
Zac Robbins, Youngstown State University

A Neglected Argument in “The Will to Believe”

Alexander M. Lawson, Hamilton College

Abstract

In “The Will to Believe,” William James develops two distinct arguments for the legitimacy of holding a belief on what he calls unintellectual grounds. The first of these arguments (which I call the ‘indeterminacy argument’) attempts to distinguish between intellectual and unintellectual grounds as objective epistemological categories. The second argument (which I call the ‘subjective argument’) abandons that attempt and instead distinguishes between public and private, and subjectively intellectual and unintellectual reasons. Although these arguments differ, and both are present in “The Will to Believe,” the indeterminacy argument has received far more critical attention than the subjective argument. This disparity is unfortunate because the subjective argument presents a greater challenge to James’s opponents than does the indeterminacy argument. In this paper I will draw from “The Will to Believe” and other related works by James to outline both arguments. I will also criticize both to show why the subjective argument is more successful than the indeterminacy argument at proving James’s thesis.

A Neglected Argument in “The Will to Believe”

William James’s famous essay, “The Will to Believe,” is commonly understood to argue that there are certain questions—such as the question of God’s existence—that we must answer but which cannot be answered on purely intellectual grounds. Our answers to these momentous questions, then, may legitimately rest on unintellectual grounds. “The Will to Believe” certainly does contain this argument, but it is neither the only nor the best argument in that essay. Towards the essay’s end James develops a second argument that makes a far better case for adopting beliefs on unintellectual grounds. In the interest of intellectual integrity, and to give James his due, all criticism of this controversial essay should account for both arguments.

James spends the majority of his essay defending the first argument (which I call the ‘indeterminacy argument’) because of his particular intellectual opponent, William Kingdon Clifford.

Clifford held that beliefs maintained on unintellectual grounds were morally reprehensible because they were a kind of selfishness. An unattached person may believe whatever she likes, but when she lives in a community her beliefs are accountable to others because they affect those others. Maintaining beliefs without evidence is selfish because it means influencing others without good reasons.

The indeterminacy argument deftly responds to this charge. If empirical evidence or basic logic answer a question, then we should rely on that answer. However, some questions do not have such a reasonable answer. In these cases, James points out, the only criteria for picking one answer over another is something like an *a priori* light of reason. These criteria are too subjective to yield universal truths so philosophers who rely on them always come up with conflicting answers:

For what a contradictory array of opinions have objective evidence and absolute certitude been claimed! The world is rational through and through,—its existence is an ultimate brute fact; there is a personal God, —a personal God is inconceivable; there is an extra-mental physical world immediately known, —the mind can only know its own ideas; a moral imperative exists, —obligation is only the resultant of desires; a permanent spiritual principle is in every one, —there are only shifting states of mind; - there is an endless chain of causes, —there is an absolute first cause; —an eternal necessity, —a freedom; —a purpose, —no purpose; -a primal One, —a primal Many; a universal continuity, —an essential discontinuity in things, an infinity, —no infinity.
(1897, 16)

James claims, then, that empirical evidence and basic logic are much better tests of a belief's universal validity because they do not yield such contradictory answers. These are the grounds that he calls "intellectual" and Clifford would agree.

Thus, when multiple rival theories consistently explain all of the empirical evidence, there is no objective test to decide between those theories. Intuitive subjective criteria have popped up—like simplicity or the desire for the existence of the divine—but they hold no more sway over disagreeing parties than do the contradictory arguments based on competing *a priori* truths. In these cases the evidence is indeterminate, and the difference between the two alternatives is meaningless, according to Charles Sanders Peirce's pragmatic maxim.

With no intellectually worthy reason for picking one rival theory over the other, Clifford might think that we should remain agnostic in such cases to avoid selfish beliefs. James agrees that we should withhold judgment in cases that may provide decisive evidence in the future, but he disagrees with Clifford over the cases in which no such decisive evidence will come. He can disagree because Clifford's argument only holds if our unintellectual belief can influence other people in our community, and that is not the case here. When two rival theories explain all of the evidence and make all the same material predictions, then adopting one or the other will not affect our publicly influential behavior, so that belief ceases to be selfish in Clifford's sense. Because of this, James holds that we may adopt beliefs for unintellectual reasons, like simplicity or the desire for the existence of the divine. James extends Peirce's maxim by pointing out that a choice between meaninglessly different options is no choice that should affect anyone but the chooser.

The indeterminacy argument led Richard Rorty to interpret "The Will to Believe" as an argument for privatizing religion. Rorty followed the argument to its logical conclusion: that religion justified in this manner cannot influence public action—such as conscientious objection, or voting to ban gay marriage—because any religion which would influence an adherent's public action can be held accountable to the rest of the public. Religious belief maintained on unintellectual grounds which influences public action is exactly the kind of thing that Clifford deemed selfish.

James agreed with this extension of his argument. His own formulation of "the religious hypothesis" at the end of "The Will to Believe" is particularly anemic, and he claims that its chief benefit is to allow believers to take moral holidays. In *Pragmatism*, he writes of a religion which says little more than that humanity can move the world towards salvation, but that salvation is not guaranteed. This characterization of religion impels its adherents to act morally, but gives no clue as to what moral action is. In order to find out how to act, adherents must consult secular—and therefore publicly debatable—moral theories.

Many religious people could do without the victory won by the indeterminacy argument. A God who is only materially effective by acting through us is conceivable enough for most religious people, but when we strip that God of any moralizing power and give it all to Kant, Mill, and Rawls, it is hard to see why we need God at all. James seems to need God to feel a sense of purpose and that is fine, but such a God reminds us of those who call themselves "spiritual but not religious," and such a belief does not do much for organized religious communities with books full of morals and miracles.

Aside from that massive shortcoming, the indeterminacy argument also suffers a serious logical malady. James takes pains to establish that we hold all of our beliefs for unintellectual reasons, and that Clifford has merely targeted those beliefs in which the unintellectual reasons played a decisive role after we had considered the intellectual reasons. James sees no difference in the unintellectual choice to disbelieve something without disconfirming evidence and the unintellectual choice to believe something without confirming evidence. The only difference is that Clifford made his unintellectual choice before he began collecting evidence and James appears to have made his afterwards.

The original mistake, however, was to distinguish between intellectual and unintellectual reasons in the first place. If, as James argues, Clifford decided that some reasons are intellectual for unintellectual reasons, then the indeterminacy argument falls apart because all reasons are unintellectual. Simplicity is just as intellectual a reason for believing something as is empirical evidence. The indeterminacy argument forgets this and claims that no non-empirical reasons count as good reasons (a mistake that the Logical Positivists would make in the coming decades).

We can see this problem clearly in James's own troubles with Peirce's pragmatic maxim. Peirce seemed to think that by keeping all disputes rooted in observable practical effects, we could avoid overly metaphysical debate. James, though, understood that practicality covered more than the objective world, and that observable effects need not submit to a single interpretation. In his evaluation

of the Hegelian Absolute, James calls it a useless concept because it has no practical effects, except that it provides comfort to its adherents. That comfort, however, is a practical difference for the Hegelians and therefore meaningfully differentiates an idealistic world from a materialistic one. The maxim that Peirce intended to distinguish between real differences and meaningless differences eventually makes all differences that anyone cares about real, and thus fails to move us past any actual metaphysical debate.

Peirce's maxim may be better interpreted as a method to resolve disputes, rather than as a criterion of the rightness of any belief. By referring all disagreement to concrete particulars, he made all disagreement either resolvable or unreal. Concrete particulars are important because they are accessible by anyone and so serve as public evidence in an argument—everyone we know of accepts them. This, however, does not make an argument that refers to concrete particulars any more intellectual for one party or the other than an argument that does not. We may base some beliefs on mental concepts which cannot be demonstrated publicly but which we think everyone should accept. Likewise, we may disagree about what is actually concrete and particular. Blind people, for instance, do not have access to the sorts of empirical reasons to which I would appeal to differentiate between an American flag and a Russian flag. Different parties may also interpret the same physical event differently, drawing contradictory conclusions from it.

It seems that all reasons are unintellectual in the sense that we accept any reason as valid simply because we do—there is no grand epistemological criterion by which to distinguish intellectual reasons from unintellectual ones. James and Clifford both agreed that empirical evidence provided intellectual reasons, but they should not have thought that this agreement could illuminate what it was about empirical data that is intellectual. Failing to find such a criterion by which to judge a reason intellectual or unintellectual, the indeterminacy argument fails because there is no way to distinguish

between beliefs held for unintellectual reasons which contradict intellectual reasons and beliefs held for unintellectual reasons but harmonize with intellectual reasons.

The second argument (which I call the 'subjective argument') avoids these particular pitfalls. In the subjective argument, James claims that beliefs might create their own empirical evidence. This means that a belief adopted for unintellectual reasons could create intellectual reasons for maintaining that belief. James gives examples of this kind of belief in "The Will to Believe," but the best example comes in another essay, "The Sentiment of Rationality," which he published in the collection *The Will to Believe and Other Essays in Popular Philosophy* alongside "The Will to Believe." In this example James hikes through the Alps and comes upon a crevasse over which he must leap.

Being without similar experience, I have no evidence of my ability to perform it successfully; but hope and confidence in myself make me sure I shall not miss my aim, and nerve my feet to execute what without those subjective emotions would perhaps have been impossible. But suppose that, on the contrary, the emotions of fear and mistrust preponderate... why, then I shall hesitate so long that at last, exhausted and trembling, and launching myself in a moment of despair, I miss my foothold and roll into the abyss. (1897, 96-7)

James's confidence before he takes the leap is based on some empirical evidence—he knows that he can jump, after all—but that evidence is far from decisive. The decisive piece of evidence is the leap itself. He may remain agnostic about his success until that simple bit of empirical testing is done, but adopting the belief that he will succeed before he performs the decisive test actually influences the results of that test as will refraining from adopting any belief. If James believes in his success, then the decisive empirical test of that belief may yield different results than it would have had he not believed in his success. The empirical evidence might prove the belief true because James had already adopted it.

This argument differs from the indeterminacy argument in two ways. First, the evidence is entirely determinate, or at least determinable. Will James make the leap? Have him attempt it and we can find out. Such a question does not fall under the purview of the indeterminacy argument because we can test it empirically. Second, it does not attempt to give a definition of what someone should

accept as an intellectual reason. It only points out that we can influence a particular class of reasons—those furnished by empirical evidence, which both James and Clifford accept—by maintaining beliefs that have little empirical foundation. Stated differently, a belief held for non-public, non-intellectual reasons can create both public and intellectual evidence for itself.

One of James's examples of this kind of belief from "The Will to Believe" is of a man who tries to figure out if a stranger likes him or not before introducing himself to that person. In such a situation, the introduction itself will play a part in the stranger's opinion of the man, and a confident introduction will likely play out better than a timid one. Thus, the man's belief that the stranger does or will like him can make that fact come about.

James extends this exact reasoning to religious belief. If we try to determine whether or not God exists on intellectual grounds before we become theists, then we might never meet God. On the other hand, an unproven belief in God can actually make it easier to commune with God, and such communion is the best evidence of theism that there is.

The subjective argument does not saddle theists with an ineffective God whose only message is "don't worry, you can make things better." By providing a path to contact with God, the subjective argument shows how religious people can weave complex theological doctrines that make specific demands upon their adherents. The Jews obey Kosher law because God told Moses to, and Christians eat whatever because God told Peter to forget Kosher law. The subjective argument legitimizes specific moral codes because God dictated those codes to people.

The subjective argument has its own problems, however. Although it is a program for further empirical testing, it does not promise that everyone will get the same results. If all it took to commune with God were the right attitude, then we could all adopt that attitude and record what happens.

Obviously, were everyone to try this, we would not all get consistent results. In this case, the belief may have created its own intellectual evidence while failing to produce public evidence.

In order to explain this disagreement, James distinguishes between live and dead hypotheses:

A live hypothesis is one which appeals as a real possibility to him to whom it is proposed. If I ask you to believe in the Mahdi, the notion makes no electric connection with your nature,—it refuses to scintillate with any credibility at all. As an hypothesis it is completely dead. To an Arab, however (even if he be not one of the Mahdi's followers), the hypothesis is among the mind's possibilities: it is alive. This shows that deadness and liveness in an hypothesis are not intrinsic properties, but relations to the individual thinker. (1897, 2-3)

The correct attitude will only yield positive empirical evidence for religious belief if that belief is a live hypothesis for the person adopting the attitude. That people may adopt the correct attitude but reach no consensus about the resulting evidence shows that the belief in question is a live hypothesis for some and dead for others. For James, the particularity of the individual thinker will determine the nature of the hypothesis.

Although James gives no indication of how the individual thinker's particularity would affect the liveness or deadness of a hypothesis in "The Will to Believe," he addresses the problem more squarely in the *Principles of Psychology*. There, it seems to be a matter of attention: "The practical and theoretical life of whole species, as well as of individual beings, results from the selection which the habitual direction of their attention involves...each of us literally *chooses*, by his ways of attending to things, what sort of universe he shall appear to himself to inhabit" (1890, 424). Again: "A man's empirical thought depends on the things he has experienced, but what these shall be is to a large extent determined by his habits of attention. A thing may be present to him a thousand times, but if he persistently fails to notice it, it cannot be said to enter his experience... On the other hand, a thing met only once in a lifetime may leave an indelible experience on the memory" (1890, 286). These passages suggest that empirical experience of God may exist as stimuli for everyone, but only enter conscious experience for some because of individual variations in habits of attention.

Unlike the vague differences between live and dead hypotheses, differences in attention have a solid explanation: prior training.

Any one of us can notice a phenomenon after it has once been pointed out, which not one in ten thousand could ever have discovered for himself. Even in poetry and the arts, some one has to come and tell us what aspects we may single out, and what effects we may admire, before our aesthetic nature can 'dilate' to its full extent and never 'with the wrong emotion'... In short, *the only things which we commonly see are those which we preperceive*, and the only things which we preperceive are those which have been labeled for us, and the labels stamped into our mind. (1890, 443-4)

This stamping process may be very simple, as in learning to attend to the shape of a tree's leaves to identify it. It may also be very complex, as in learning to attend to the musical overtones produced by a well-tuned chord. The habits of attention produced in this latter case require some advanced training and personal skill.

For James's account of the division between live and dead hypotheses to make sense of interpersonal differences in religious experience, that experience must be the result of some combination of training and skill. The tendency of groups to maintain their religious traditions across generations supports this explanation. Parents teach their children to attend to those parts of experience pertinent to the beliefs of a particular religion, and thus the children's experience, trained in this way, confirms the religion itself. This also explains the tendency of disbelief to reproduce itself. Communication with disbelievers draws our attention to some bit of experience that informs their disbelief and may reproduce it in us.

For James, habits are only plastic in the first thirty years of life, and habits of attention are no exception. Once an individual has settled into the habit of attending to some things rather than others, he can only change that habit through "*as strong and decided an initiative as possible*" or because of an "indelible experience" (1890, 123, 286). Such effort rarely comes when the habits of attention entail no negative consequences, so adult conversion experiences are often the result of some indelible

experience. The intransigence of habits in adults makes some hypotheses "dead" rather than merely unchosen.

When coupled with the distinction between live and dead hypotheses, the subjective argument leads to relativism. This yields the possibility of private empirical evidence which may influence our beliefs but which cannot be publicly demonstrated. For many, this will disqualify the argument because relativism is such an unwanted result in philosophy. Still, it is an interesting argument for relativism and one that is not commonly addressed. Those who wish to refute relativism should account for it in their arguments.

We should also remember that the subjective argument has no logical connection to the distinction between live and dead hypotheses. Although that distinction is necessary in James's defense of his own theism, it is not necessary for the example of the leap in the Alps. The difference between the two cases is the difference between public and private evidence. In the case of theism, the resulting empirical evidence is only accessible to the individual who has the proper training and chooses to believe in God. That individual cannot demonstrate the reasons for his belief to other people if they do not share his habits of attention. In the case of the leap the evidence is public, so anyone could watch James make the jump and then know that his belief in his ability is warranted. Thus the subjective argument does not lead to relativism when the choice to adopt a belief justifies itself by bringing about public evidence for that belief.

"The Will to Believe" contains two similar yet distinct arguments for James's right to maintain religious beliefs. The indeterminacy argument takes up most of the essay and has been widely discussed. The subjective argument only appears late in the essay, and it has received far less attention. This is regrettable because the subjective argument is more successful than the indeterminacy argument at showing that we may adopt beliefs on insufficient evidence. However, when James extends the subjective argument to cover cases like theism, he must introduce the distinction between live and dead

hypotheses. This distinction creates the possibility of non-public empirical evidence. It allows him to do far more work with the subjective argument, but that work is far more open to criticism.

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Queerness Without Binary

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Abstract

Under the tentative definition Maren Behrens offers in “Born that Way? The Metaphysics of Queer Liberation,” “queer” refers to acts, practices, and identifications that stand in opposition to the prevailing ideology of sex dichotomy, gender dichotomy, and the primacy of heterosexuality. In this article, I will be arguing that this definition risks reifying these respective structures as necessary to the existence of queer identity. If “queer” is only defined by its relation to gender dichotomy, sex dichotomy, and the primacy of heterosexuality, then the term is dependent on the existence of these structures in order to make sense. I maintain that queer identity can exist without sex and gender dichotomy, as well as the primacy of heterosexuality, as a committed, devotional practice of impression fluidity and critical curiosity. By impression fluidity, I mean a dynamic transformation and rearrangement of romantic and sexual performances, appearances, and behaviors that communicate gender or biological sex, in accordance with the queer agent’s current social desires. By critical curiosity, I mean the preliminary developmental process of exploring and acclimating to unfamiliar romantic and sexual performances, appearances, and behaviors. In this way, queer becomes a volitional identity that is taken upon for the purpose of liberation from body ignorance.

Queerness Without Binary

“Queer” Explication

The term “queer” has seen significant revision in usage and definition over the last twenty years. Originally a derogatory term, denoting a troubling strangeness or deviation from the standard established by society, “queer” has been mostly reclaimed by the sexual minority and academic communities. “Queer”, in a broad conception, often functions as an umbrella term that refers to everything in the LGBT spectrum, thus granting sexual minority status. This political form of the term acts as a kind of short-hand reference for the sake of expediency. Yet this does not seem to be the only form of “queer” besides the pejorative conception. In certain conceptions of the sexual minority acronym, “Q” (for “queer”) is added along with LGBT (etc.). This seems to imply that “queer” is not merely an umbrella term that refers to all sexual minorities, but is in itself a distinct identity that is parallel with being a gay man, a lesbian, a bi-sexual, a trans-sexual, and so on. It is this form of “queer”

that I am chiefly concerned with, since the definition offered would attempt to explicate what being queer means to one's self and one's community.¹

In the article "Born that Way? The Metaphysics of Queer Liberation," Maren Behrensen offers a tentative definition of queer as "acts, practices, and identifications that stand in opposition to the prevailing ideology of sex dichotomy, gender dichotomy, and the primacy of heterosexuality" (Behrensen 2013, 5). She explains that the term "queer" is utilized in a fashion that questions whether or not sexual or romantic identification is stable in the same way that the term "identity" seems to connote. The term can be used to describe a type of person, but can also refer to acts or behave as an obfuscation of a person's romantic and sexual interests (Behrensen 2013, 2).

This definition and implicit usage ties into the overall political project of queer liberation. The basic aims of this political project, according to Behrensen, are as follows: "increase the visibility of LGBTQI-persons and their social and political influence. Defend their rights. Protect them from violence" (Behrensen 2013, 2). Behrensen follows this up that progress made within the political, legal, and moral realms has managed to achieve a portion of this project, but that this is not enough. Behrensen argues that "[w]hat queer liberation aspires to also is—metaphysically rather strange—freedom to choose one's sexual character and one's sexual identity" (Behrensen 2013, 3). This metaphysical position would accommodate a more complex account of sexual identity development, where an agent is both compelled towards a particular sexual object preference and also freely chooses one's own sexual object preference and identity.

This explanation for sexual character and identity would directly contrast with the typical accounts of sexual development, which can be typically categorized as either biologically determined or socially determined. Rather than having sexual character and identity being determined by biological

¹ Thank you to Dr. Peter Higgins for explicating the distinction between "queer" as umbrella term and "queer" as identity.

impulses or social adjustment, one could have a self-chosen sexual identity, built through adherence to maxims. According to Behrensen, allowing for the possibility of volitional type of sexual character and identity is essential to the project of queer liberation since it encourages making queers a recognizable and accepted type of person, thereby making “queer” a self-actualized or a self-authored state (Behrensen 2013, 5). By adopting this metaphysical position, positive valuation of queer lives can become integrated into queer liberation, rather than simple resistance to moral criticism of queer acts (Behrensen 2013, 5).

The Problem of Conceptual Obsolescence

The project of establishing sexual identity as a volitional practice is something that I applaud. I am in complete agreement with Maren Behrensen regarding the problematic implications of solely biological or solely socially determined explanations of sexual identity and character development. Whether the Kantian approach to the question of sexual development is ultimately successful remains to be seen and is not my focus in this article. Instead, I am focusing instead on the definition of “queer” itself and its problematic reliance on binary structures such as sex and gender dichotomy, as well as the primacy of heterosexuality.

By defining something in virtue of it challenging something else, one makes it functionally dependent on whatever it is challenging. If x is defined as “against y ,” this means that in order for x to make sense or remain coherent, y must be necessary. If y ceases to be a present component, then x is rendered obsolete and loses its function. For example, if I defined the identity of “Democrat” as engaging in political behaviors that challenge Republican political behaviors, *being* a Democrat would only make sense insofar as there were Republican political behaviors. If there were no Republican political behaviors, a person who had the identity of Democrat would, at least on a definitional level, cease being a Democrat, since the position is defined as *mere* opposition. There would be nothing for them to oppose, therefore the function of the identity would cease.

In the case of Behrensen's definition of queer, someone is queer in virtue of opposing the binary structures of sex/gender dichotomy and the primacy of heterosexuality. If these structures were to vanish somehow, either through gradual social progression or sudden, inexplicable consensus, "queer" would cease to have coherence. The term and the identity that it defined would become obsolete, since the sexual practices, appearances, and behaviors that it would be challenging, no longer existed. These sexual practices, appearances, and behaviors would still have value perhaps, in and of themselves, but since this value isn't explicitly or implicitly mentioned in the definition, then we cannot say that they would still indicate a status of "queer" as such, at least under Behrensen's conception.

It could be argued that this kind of conceptual obsolescence is unproblematic. After all, if the astounding came to pass and these oppressive structures were suddenly left behind, would we even want or need to keep such identity designations as "queer", "lesbian", "trans-sexual", etc.? Perhaps it is the case that these are identities and preferences that can only describe deviations from an unjust heterosexual standard; in the brave new world that accepts and encourages non-dichotomous gender, these terms would perhaps become antiquated identity indicators, akin to terms like "viceroy," "housecarl," or "tsarina".

However, the disanalogy between the identity indicator of "queer" and the identity indicator of "housecarl" illuminates a relevant point: "housecarl" is a social identifier that signifies participation within a particular political body, possessing political significance and authority (however limited that may be); "queer", on the other hand, is a social identifier that signifies a state or way of being in the world, as a person in the world, distinct from whatever political positions a person might possess. Thus, we can conclude that there is a distinction between positions which have an explicit function of direct participation within the political realm (such as "housecarl") and positions which are states or ways of being a person in the world, which have an implicit function of direct participation within the political realm (such as "queer"). The obsolescence of a state of being may indeed be desirable for the project of

social activism and equality. But the ethical considerations of eliminating a state of being that is so tied to identity through political action must be considered carefully. These ethical considerations lead outside the boundaries of this paper, but should be kept firmly in mind.

Since “queer” is a state of being, a way of operating in the world, which is only incidentally political due to the norms and preferences expressed by mainstream society, it doesn’t seem to follow that “queer” is *merely* political in definition. In other words, a state of being is more than simply what values you are politically committed against or what political values you hold in contrast to others. Sure, a negative conception of a state of being might be useful to provide an identity boundary from which to elaborate upon or an easy reference for establishing affiliations. But it will ultimately be incomplete, as the positive propositions that make up a person’s belief and value structure will not be accounted for within the identity. Establishing that one is not a fan of Garth Brooks, for example, allows one to possibly rule out an entire sub-culture affiliation (crossover country fans) and search for others that are more compatible. But the search must eventually end in some kind of positive value claim (“I enjoy U2, despite Bono’s banal lyrics.”) if one is to be firmly affiliated at all.

Defining “queer” solely as the opposition to sex/gender dichotomy and the primacy of heterosexuality risks establishing a kind of complementarity between the two concepts. Because “queer” is necessarily dependent on the presence of these binary structures in this definition, albeit through antagonism, we seemingly get two inseparable halves of a conceptual whole. On the one hand, we have the oppressive structures which dictate the mainstream conception of sex and gender, and on the other hand we have “queer” structure which is antithetically positioned to this mainstream conception.

This complementarity makes “queer” a fundamentally reactive identity, always looking towards the values of gender dichotomy in order to establish its own agenda. This places the identity in an inescapable dilemma: as long as “queer” is defined in necessary relation to gender dichotomy, the

authenticity and integrity of any values, behaviors, appearances, or sexual practices will be placed under suspicion. "Queer" would become a contrarian identity of "misfits" at best or a manipulative political tool at worst.

The Commitment of Queerness

If queerness is to escape its dependence on oppressive structures, what values, preferences, and behaviors must be held as necessary? It is tempting to place the identity in the liminal space between identities, overlapping some qualities, rejecting others, a kind of "queer-in-the-gaps" argument. Yet this liminal approach still suffers from a similar form of dependence that Behrensen's definition has. Granted, it may not be as insidious as the complementarity with sex/gender dichotomy, but it still necessarily relies upon the presence of other structured identities (such as gay, lesbian, heterosexual, etc.), eliminating the possibility that "queer" is an identity truly parallel with other sexual minority identities.

Rather than placing "queer" necessarily in between other structured identities or using "queer" as a way to fill in the gaps that arise between positioned identity affiliations, perhaps "queer" can be thought of as a series of devotional commitments. The idea of being committed to an identity of sexual minority is not necessarily a foreign one, at least in a minimal sense. Being gay means for males one is nominally committed to finding people who appear as males preferable to people who appear as females in romantic or sexual interactions. Similarly, being lesbian means one is nominally committed to finding people who appear as females more preferable than people who appear as males in romantic or sexual interactions.

Queer identity is distinct from lesbian, gay, or bisexual identities, however, in the sense that the principal commitments entailed by those identities are determined by sexual object preference. Regardless of how one dresses, behaves in public, or speaks, the fundamental quality of being gay is feeling or acting upon a romantic or sexual preference for people who appear male, just as the

fundamental quality of lesbians is feeling or acting upon a romantic or sexual preference for people who appear to be female, and so on. Queer identity is also distinct from transsexual and intersexual commitments, insofar as it seems that a dominant principle of transsexual and intersexual communities is integration within another larger community (be it mainstream society or sexual minority society). It is important to note, however, that this principle of integration is not universally agreed upon within the transsexual or intersexual community as a core goal and remains a focus for debate, which I will leave to better scholars to explore. Regardless, queer identity is not solely motivated by sexual object preference (as it can also encompass non-sexual behaviors and appearances) nor is it solely motivated by an impulse toward integration (as it can also be a way of calling into question gender dichotomy and hetero-patriarchy, as well as raising the political consciousness of those around the queer agent).

The devoted commitments of queerness could be said to involve two main principles: (1) Queerness is primarily committed to impression fluidity, which is the dynamic transformation and rearrangement of romantic or sexual performances, appearances, or behaviors that communicate gender or biological sex, in accordance with the queer agent's current social desires. (2) Queerness is secondarily committed to critical curiosity, which is the preliminary developmental process of exploring and acclimating to unfamiliar romantic and sexual performances, appearances, and behaviors. Under this conception, queerness would become a volitional practice of consistently acknowledging and celebrating the uncomfortable ambiguities of the human body in presentations of gender, biological sex, and sexual gratification.

The First Commitment: Impression Fluidity

Impression fluidity is defined as the dynamic combining and re-combining of romantic or sexual performances, appearances, or behaviors that communicate gender or biological sex, in accordance with the queer agent's current social desires. This practice would involve taking traditionally gendered appearances, behaviors, or sexual performances and adapting them into a style of being that flouts or

rearranges traditional continuity or coherency. These practices would be dictated by the queer agent's current social desires, adapting as necessary to each social context, according to their own judgment of how to appear. Examples of gendered appearances, behaviors or sexual performances would include wearing a dress, moving in a way that implies the presence of certain primary or secondary sexual characteristics, or reaching orgasm through sexual penetration. Since this obviously consists of a wide range of social behaviors, performances, and preferences, the queer agent would thus be identified by an external commitment to ambiguous social impression of the body. This ambiguity may be subtle, as in the case of an intersexual body who dresses according to what society imagines their sex to be and utilizes movement styles and behaviors that suggest a wholly different gender or sex. It may also be a clear and distinct presentation, as in the case of a person wearing an evening dress who also wears a fully developed beard and short, cropped hair.

Devotion to impression fluidity would work towards the overcoming of social intimidation of conformity. Rather than regard the informal and formal standards of appearance, behavior, and sexual performance as impartial absolutes, one would see them as not only arbitrary limitations, but also producers of styles to be adapted, transformed, subverted, and assimilated into a syncretic queer identity. Impression fluidity could perhaps be the "craft" of the queer agent, with each gendered social presentation potentially providing material for the ceaseless assembling and re-assembling of style, according to the social desires of the queer agent. Note that this practice would have to be necessarily devotional in order to be sufficient for queer identity. A heterosexual white male that decides to wear a dress in public during Halloween, will not qualify as "queer" because (1) he would not be fully committed to the project of rendering his own gender, biological sex, or sexual practice communication ambiguous and (2) the reason why he bought the dress is likely not for identity presentation, but rather for satirical purposes.

It could be argued that this ambiguity is reliant upon sex/gender dichotomy in and of itself, thus shifting the term “queer” back into a dependent relation with sex/gender dichotomy by proxy. If we had no conceptions of what behaviors or appearances are exclusively “male” or exclusively “female,” then we would be unable to introduce ambiguity in those realms, simply because ambiguity seems to rely upon knowing what to include or exclude from a particular category. However, even in a society that had no conception of what behaviors or appearances are exclusively “male” or “female,” there would still be something to base ambiguity in body presentation upon. There is a common epistemic assumption that all human bodies are recognizably anatomically standard and are controlled in accordance with these standards. I posit that these anatomical standards need not be merely based in gender norms; they could conceivably cover basic physiological assumptions about motion, comfort, or maintenance. These assumptions may resemble gender norms in content, but they are not synonymous with them. Thus, impression fluidity would not be completely reliant on gender dichotomy for ambiguity. Rather, it aims to show that ambiguity comes not only from complex social structures, but also basic epistemic assumptions about others in the world.

The Second Commitment: Critical Curiosity

Critical curiosity is the preliminary developmental process of exploring and acclimating to unfamiliar romantic and sexual performances, appearances, and behaviors. This process would not be identical for all agents, as it would depend on the agent’s own personal body of knowledge considering sexual acts, as well as sexual presentations of character or identity. Each engagement of critical curiosity would only be coherent as part of the developmental chronology of the queer agent. If the queer agent did not usually wear makeup and lipstick in public, a devotion to critical curiosity might manifest as re-tooling their own aesthetic to incorporate foundation, mascara, and a nice shade of lipstick. Similarly, if the queer agent typically engaged in the dynamic or “giving” portion of sexual

activity, a devotion to critical curiosity might manifest as working to experience the static or “receiving” portion of sexual activity.

Devotion to critical curiosity would reflect a curiosity about the totality of a particular identity or social exchange. It would aim toward educating the queer agent about the different angles, perspectives, or situations that each identity or social phenomenon possesses. Critical curiosity is distinct from impression fluidity, as it is not concerned with gathering behaviors, appearances, and sexual performances in order to construct an ambiguous style. It is concerned with the agent’s own personal development as a queer in society. Critical curiosity could certainly be the instrument of the “gender terrorist,” who seeks to destroy and subvert social assumptions of gender. Yet critical curiosity, as a concept, would more accurately complement someone who would perhaps approach the problems of oppressive structures in a more monastic sense. Through discipline, courage, integrity, and open curiosity, the queer novice employs critical curiosity in order to discover the diverse variety of dynamics and sensations that go along with appearances, behaviors, and sexual performances, thus becoming more confident in their own identity and growing in skill and understanding.

It is important to note that this curiosity would ultimately be limited by a sense of ethical awareness. As far as which particular ethic is best suited to the task of determining harm, that is outside of the scope of this paper and well into the primary project of ethics itself. Regardless, the “critical” part of critical curiosity would function as a method to discern the social consequences of sexual/romantic acts and dynamics, as well as whether or not these consequences were ethically harmful or beneficial. The queer agent would not be obligated to *adopt* oppressive social behaviors for the sake of development, but rather to explore them in an ethically responsible way. An example of this could be the power-play present within many consensual BDSM scenes or consensually and safely re-organizing the financial burden of a household. This would allow a further understanding of what fuels power

inequity, how it functions within the world, and perhaps with enough patience, how best to address it as a queer agent.

Conclusion: Liberation through Devotion?

I argued that “queer” should be thought of as a series of commitments: (1) the commitment to impression fluidity, which is a dynamic combination and re-combination of romantic and sexual performances, appearances, and behaviors that communicate gender or biological sex, in accordance with the queer agent’s current social desires; and (2) the commitment to critical curiosity, which is the ability to transform one’s behavior, appearance, and sexual practice in a way that inverts or reverses previously established behaviors, appearances, or sexual practices. What I have described thus far might seem too tall an order for a single person to conceivably fill. The gaze of others, factors of informal and formal sanctions, intimidation, humiliation, and physical harm seem to erode the possibility of realistically adopting this conception of queer identity. Yet the commitments to impression fluidity and critical curiosity are meant precisely as projects to assist the queer agent in realizing their queerness in public, *in the face of* such opposition. Impression fluidity need not begin obviously; it can be as subtle as a new movement style or a particular shirt that shows off different characteristics of one’s body. Critical curiosity also does not need to be extreme when beginning; it can be as simple as putting on nail polish or masturbating in a different way. The whole point to approaching queer identity as devotional commitment is for the sake of liberation, not merely from the tyranny of oppressive social structures, but also from the arbitrary restrictions we place on ourselves, because we do not believe our bodies to be sufficient to the purpose. The necessary value of queerness is liberation from body ignorance. By “body ignorance,” I mean ignorance of what our bodies are actually allowed to perform and appear as and, conversely, what our bodies are actually prevented from realizing.

Of course, this introduces a new tension: sufficiency. Where is the sufficient level of commitment to be recognized or count as queer? Who gets to decide this? As with every skill or study,

it is difficult to point to a precise point in a person's development and state with absolute certainty that *this* is the point of mastery, where they ceased being a novice or student and began being a status proper. However, do we need mastery in order to count as queer, to graduate into queerness? Affiliation and status attainment does not only come from mastery. They can also come from shared struggle, shared values, and a mutual progression in sympathetic understanding. Given that a person authentically endeavors upon these commitments, the relevance of how far along one is in that sympathetic understanding seems diminished. The commitments to action seem satisfactory enough to count one among the queer community, as long as they are maintained and actually performed.

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The Ethical Character from Plato to James: Strict and Stable to Flexible

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Abstract

In this paper I examine the historical direction taken in ethics in relation to one's personality and character, from a stable and static view to one that incorporates movement and flexibility. I begin by examining Plato and Aristotle's understandings of character, using such concepts as Virtue and the Good as abstract and static ideals towards which development should lead. I then briefly examine Augustine, Kant, and Mill's theories of what defines an ethical character, showing that the strict view was applied to varied and even opposing views of the ethical. Finally, I examine three very different views, those of Kierkegaard, Nietzsche and James, which view character development and ethics not as a process aiming towards a set goal, but defined and expressed moment to moment. The ethical character is flexibly determined, through choice and decision making, the expression of the will to power, and the focus on the concrete and existent.

The Ethical Character from Plato to James: Strict and Stable to Flexible

In this paper I would like to examine the historical direction taken in ethics in relation to one's personality and character, from a stable and static view to one that incorporates movement and flexibility. I will begin by examining Plato and Aristotle's understandings of character, using such concepts as Virtue and the Good as abstract and static ideals towards which development should lead. I will then briefly examine Augustine, Kant, and Mill's theories of what defines an ethical character, showing that the strict view was applied to varied and even opposing views of the ethical. Finally, I will examine three very different views, those of Kierkegaard, Nietzsche and James, which view character development and ethics not as a process aiming towards a set goal, but defined and expressed moment to moment. The ethical character is flexibly determined, through choice and decision making, the expression of the will to power, and the focus on the concrete and existent.

The good person, according to Plato, is one that is virtuous and just. Similarly, the good life is one in which virtue and justice prevails. This virtue is the excellence of a person, their highest and finest quality, their final end. The use of reason is the highest excellence of humans, governing in the just soul over passions and appetites. With the governance of reason, then, there is harmony in the soul.

Aristotle, too, picks up on and emphasizes the question of a person's excellence. Like Plato, he concludes that it is reason. Aristotle, however, adds an important aspect to it – that of action, and a dynamic interaction between potentiality and actuality. Further, for him the virtuous character comes into existence through habit. Like the emergence of the ethical character, Ethics itself, in effect, is the study and practice of habit. Lastly, he differs from Plato in his view of a person's final end – that of happiness, or doing-well. Combining the ideas together, happiness comes about through action in accordance with reason.

According to these thinkers, whether it be the good, justice, reason or happiness, with the emphasis on action or without, the excellence of a person comes about through their meeting or inability to meet a set abstract concept of excellence. This concept is defined separately from them, and their success is in the degree of alignment with it. Perhaps the best expression of this comes about metaphorically in Plato's myth of the cave, where the absolute forms, and most importantly the form of the good, are unveiled to the person coming out of the cave. Even though they exist within the person (as potential), initially they are viewed as external to it (the good as the sun).

The role of action is tricky here, as is the emphasis on habit. These might be interpreted in different ways, and seem to be critically necessary for the development of an ethical character, but for the relevancy of the current argument they too imply a direction towards a set ideal. That is, action directed towards a stable concept of justice, habit cultivated in the direction of becoming a virtuous character. The person is situated at one point, the ideal at another in the future or ahead of them, and action and habit function as means, or tools, to reach that set point.

Next, Augustine, Kant, and Mill are examined very briefly to represent other forms of stable and set concepts related to the ethical character. Augustine, and other philosophers that regard God as the highest good, are appealing to a concept external to the individual. The idea of an omnipresent, all-powerful God is, to some degree, a stable and strict view of that good. Other strict views can be found in Kant and Mill's theories. For Kant, it is the categorical imperative and universal moral laws that define the ethical realm. The emphasis is on intention, and the ethical is that which is done out of a sense of duty, and against an initial inclination. For Mill, on the other end of the spectrum, the emphasis is on the consequences of action, and the ethical is that which produces the greatest amount of happiness for the greatest amount of people. In either case, by defining the ethical as subject solely to intention or consequences, these views hold a stable perspective on what is right/wrong or good/bad and disregard any other measure of these concepts (including those that previous philosophers regarded as absolute goods).

As interpretations of the ethical character continued to evolve, the emphasis, in some cases which I would like to examine, shifted from stable and external conceptions to dynamic and internal ones. Choice, Kierkegaard argues, lies at the center of the ethical realm and the development of the ethical character. The choice, as he presents it, is between two states, that of "either" and "or," or between not choosing and choosing to choose. Kierkegaard approaches the either/or question from a personal perspective, giving it concrete relevancy. "It is always important to choose rightly," he writes, "even as between things which one may innocently choose; it is important to test oneself, lest some day one might have to beat a painful retreat to the point from which one started" (314). He further stresses the importance of making the right choice, writing that "I hope that I may be successful in choosing the right course; at all events, I shall endeavor to make the choice with real earnestness, and with that I venture, at least, to hope that I shall the sooner get out of the wrong path" (315). Though what a person chooses is important, what Kierkegaard mostly emphasizes in his notion of "choice," and which emerges

in this passage, is the process of deliberation itself. When confronted with life's dilemmas, it is not the decision itself that defines the ethical, but choosing the process of questioning, of pondering over the question, examining it. Further, through choosing the process of "or," and choosing to actively engage in life, the ethical character, or the self, emerges. Through this process, he writes, "you can win what is the chief thing in life, win yourself, acquire your own self" (316).

To further examine this last point, choice and personality, in Kierkegaard's view, are clearly intertwined. "The act of choosing," he writes, "is essentially a proper and stringent expression of the ethical" and "thereby the personality announces its inner infinity, and thereby, in turn, the personality is consolidated" (318). In addition, there is one other important aspect to choosing "or" – that of despair. Through choosing one despairs, and through despairing one finds oneself, one's eternal validity. "Choose despair," Kierkegaard writes, "for despair itself is a choice; for one can doubt without choosing to, but one cannot despair without choosing." Further, it is not only despair that is chosen, but through despair another choice is made, that of choosing the self (322).

Another view of what defines the ethical character is found in Nietzsche's concept of the "will to power." This view, similar to Kierkegaard's, emphasizes an internal and dynamic perspective. The "will to power" lies within a person, the source of that which creates and values. The good, for Nietzsche, is "everything that heightens our feeling of power, our will to power, the power in man itself." The will to power is also directly related to happiness, "the feeling that our power is growing – that resistance is being overcome" (356). Viewing the source of value as subject to the will to power, similar to Kierkegaard's concept of choice, is defining the development of the ethical character as one that occurs from one occurrence to the next, or from moment to moment, and focuses on the now. Perhaps Nietzsche's concept of the "superman," if viewed metaphorically, stresses this point on the role of choice and the will to power. It might serve as a trigger for reaching to the will to power, evaluating it, and challenging its strength. The message is clear: choose now. Choose now, both as an active choice to

live your life, to live right this moment, but also for each now that exists, give it its fullest weight as if this moment was forever to return. "To ask yourself the question," Nietzsche writes, "before each and every event, 'do you wish this to happen again, and perhaps an untold number of times?' would place the greatest weight upon your actions!" (360).

Value comes about through the will to power, Nietzsche argues, people being their own creators of values. Similar to Kierkegaard's emphasis on choosing to choose as the ethical, not just the choice itself, so does Nietzsche make such a distinction in relation to value. "Valuing is creating," he writes, and "valuing is itself the treasure and the jewel of all valued things" (354). It is the process of valuing, then, that is important, not just that which is given value. Through the will to power, valuing, and the focus on the now, emerges a depth of being, a sense of self. "If mankind," he writes, "is still lacking a goal, is it not lacking – itself?" (355).

Comparing Kierkegaard's concept of choice and Nietzsche's will to power with previous conceptions of the good and ethical – such as virtue, happiness, and God – it is clear that the movement is from the external and stable view, of a set and abstract concept towards which a person should lead their lives, to an internal and dynamic view, in which the focus shifts inward and examines the now. Comparing them to Kant and Mill's views, of considering solely intention or action and consequences, it could be argued that the two later philosophers argued for internal concepts as well. While this might be the case, it is the strictness and absoluteness of each of these views that separates them from Kierkegaard and Nietzsche's.

Lastly, the third philosopher which I would like to examine as representing the movement towards an internal and dynamic view of the ethical character is William James. James emphasizes that the ethical realm is conceptualized and constructed by actually existing minds, and therefore has no absolute existence separate from them. "There is no such thing," he argues, "as an ethical philosophy dogmatically made up in advance" (369). Both moral relations and the moral law, he further argues,

cannot exist in emptiness, since “their only habitat can be a mind which feels them.” Measures of “goodness, badness, and obligation,” then, “must be *realized* somewhere in order really to exist; and the first step in ethical philosophy,” he writes, “is to see that no merely inorganic ‘nature of things’ can realize them” (371). Clearly, James rejects the idea of an absolute good, such as virtue, God, or the measure of consequences of action, in as much as it exists independently of minds to perceive it. People are the creators of these measures, he argues instead, similar to Nietzsche’s argument of people as creators of values, and as long as they are there to perceive there would also exist a multitude of such measures.

Once there are existing minds to perceive the world, there are also claims and demands made upon it. Good, according to James, is that which satisfies demand, and the highest good is that which is most inclusive, or satisfies the greatest amount of demands. In addition, and also similar to Nietzsche, James’s view focuses on the here and now, the ethical and the development of the ethical character deriving from concrete situations and occurrences.

When synthesizing Kierkegaard and Nietzsche’s concepts of choice and the will to power, as well as James’s emphasis on existing minds and concrete situations, it is possible to make an opposite argument to the one suggested in this paper. That is, focusing on choice, the will to power, and existing minds as the ethical, is just as stable and strict as the concepts of earlier perspectives to which they are compared, such as reason, virtue, happiness, or God. The difference, however, can simply be made clear: it is not specified what these concepts consist of, and therefore they could be exclusive, as well as inclusive. Reason as the highest good, for example, specifically consists of reason. What does choice consist of? Habit? Habit combined with virtue? Similarly, what does the will to power consist of? Reason? Reason combined with virtue? Etc. In relation to James’s view, it is not as strict as earlier concepts, since through his rejection of absolutism it could be implied that his own perspective cannot be absolute.

In this paper, I examined the direction taken in ethics in relation to personality and the ethical character from an external, stable and strict view towards an internal, flexible and dynamic one. I began with Plato and Aristotle's conceptions of absolute and abstract ideals, towards which development should lead. I then examined three additional stable and static conceptions of the ethical, those of Augustine, Kant and Mill. Lastly, I presented three very different perspectives and their view on the ethical character, which emphasize an internal and dynamic interaction, those of Kierkegaard, Nietzsche and James.

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The Claims of States to Cultural Property

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Abstract

This paper will question whether States have a right to the antiquities unearthed within their borders. The property claims to these antiquities fall into two categories: (1) claims based on cultural identity and (2) a claim based on territory as found in the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention. This paper argues that the cultural identity argument States make is usually inapplicable to cultural property and that territory based claims fail to provide good stewards and leave a puzzle as to what counts for the cultural heritage of states.

The Claims of States to Cultural Property

In 1988, the J. Paul Getty Museum paid \$18 million for a statue of Aphrodite. Standing over seven feet tall, with rippling fabric clinging to the body of the goddess, Getty curator Marion True called it “the greatest piece of classical sculpture in this country and any country outside of Greece and Great Britain.”¹ It was apparent even then that the statue had been looted.² The illegal and clandestine excavation occurred in Morgantina, an archaeological site in Sicily. In 2007, under legal pressure, the Getty Museum returned the statue to Italy. The repatriation of the Getty Aphrodite has been celebrated as a victory against looting and unethical collecting. The case had two salient features: (1) that the Getty Museum had no right to the statue, and (2) that it was assumed that the Italians did.

This paper will question whether States have a right to the antiquities unearthed within their borders. The property claims to these antiquities fall into two categories: (1) claims based on cultural identity and (2) a claim based on territory as found in the United Nations Educational, Scientific and

¹ Jason Felch and Ralph Frammolino, *Chasing Aphrodite: The Hunt for Looted Antiquities at the World's Richest Museum* (New York: Houghton Mifflin Harcourt, 2001), 95.

² Jason Felch and Ralph Frammolino, (in *ibid.*), catalogues the questionable acquisitions of the Getty and includes internal documents that make it difficult for the Getty to deny that they knew the statue had been looted.

Cultural Organization (UNESCO) Convention. First this paper will look at the cultural identity claims of the State, and then examine those based on territory, and finally offer an alternative grounding for the claim that some cultural property is rightfully claimed by the State.

Identity Claims

In 2006, the Metropolitan Museum of Art returned the Euphronios krater to the Italian government. Acquired by the Met in 1972, it is the only complete example of the Greek vase painter Euphronios and considered to be one of the finest surviving pieces of Greek vase work. When its return to Italy was imminent, Rocco Buttiglione of the Italian Culture Ministry said the aim of his ministry was “to give back to the Italian people what belongs to our culture, to our tradition and what stands within the rights of the Italian people.”³ Iana Valenti following the return of the Getty Aphrodite expressed a similar view: “There is a deep sense of patriotism in every one of us. The return of this statue is very important. It is like a piece of our culture, a piece of our country.”⁴ These statements typify the claims made by individual States on antiquities. They assert that due to the influence these peoples have had on their current culture, they have a property claim on these antiquities. However, these property claims based on cultural identity do not stand up to criticism. A request by the Italian government to impose import restrictions in the United States, will give a clearer picture of how the State utilizes this claim of cultural property to claim ownership of antiquities within its borders.

In 2001, the United States Treasury Office granted an Italian request to impose import restrictions on Italian archaeological material representing the pre-classical, classical, and Imperial Roman periods. In reference to antiquities and their importance the request had this to say:

³ Kwame Anthony Appiah, “Whose Culture is it?,” in *Whose Culture?* Ed. James Cuno (Princeton: Princeton University Press, 2009), 76.

⁴ Ralph Frammolino, “The Goddess Goes Home,” *Smithsonian Magazine*, November, 2011, accessed February 10, 2013, <http://www.smithsonianmag.com/history-archaeology/The-Goddess-Goes-Home.html>.

The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting...These materials are of cultural significance because they derive from cultures that developed autonomously in the region of present day Italy that attained a high degree of political, technological, economic, and artistic achievement... Furthermore, the cultural patrimony represented by these materials is a source of identity and esteem for the modern Italian nation.⁵

Here Italy puts forward two claims: (1) artifacts which have originated from the region of present day Italy come from cultures that were insular or autonomous, that is separate from and developed independently of cultures outside of modern Italy; and (2) that these materials are part of Italian identity. These claims are interrelated; if the first claim is not true then other states could also claim that antiquities found in Italy are sources of their identity. First, we will look at the idea that these cultures “developed autonomously” in Italy and then, examine whether contemporary Italians have a special identity claim to the antiquities found there.

The Getty Aphrodite is instructive in examining whether the cultures of Italy were insular. An insular culture would be isolated from intellectual, artistic, ideological, and technological exchanges. The culture would develop independently of all others; its development and achievements would be unique to the place it occupied. There are examples of insular cultures such as tribes in Western Australia before 1984, various tribes in South American jungles, and a handful in the Asian jungles. No disputed antiquity has come from a truly insular culture. The Aphrodite is shown with wind-blown garments rustling and clinging to her. Phidias, an Athenian, introduced this innovation in sculpture. The two objects discussed so far, the Euphronios krater and Getty Aphrodite, were culturally Greek objects. The Greeks were not insular nor were they a single culture. They were, as Plato said, much like frogs or ants littered around a pond. If a State pursues the claim that its history represents an autonomous

⁵ Bureau of Educational and Cultural Affairs, Italy 2001 Designated List Federal Register Notice, January 23, 2001, accessed February 19, 2013, <http://eca.state.gov/files/bureau/it2001dlfrm.pdf>.

culture line it will turn out to be false. History will show insular cultures to be an exceptionally rare circumstance.

There is obviously a problem with identity claims without the idea of insular cultures. If the culture was not territorially contained within a State then claims of identity are valid across political borders. For example, at its greatest expanse the Roman Empire contained almost all of Europe, North Africa, and the Middle East. What makes the Italian identity claim to a Roman antiquity more compelling than a British one? This exposes the problem of appropriating ancient cultures into present-day national identities. Ancient cultures did not share current political borders and to impose Italianness on Rome is to work backwards, retrospectively. As James Cuno pointed out, "Italy has been a republic only since 1946. It was a kingdom for less than hundred years before that...and thus has been a unified nation for less than 150 years. It has been a 'nation' only since the age of nationalism."⁶ To say that a Roman antiquity more thoroughly represents an Italian identity than a Turkish or British one is to draw a distinction that does not exist. As Kwame Anthony Appiah, writing about yet another example, states,

We don't know whether the terra-cotta Nok sculptures, made sometime between about 800 BC and AD 200, were commissioned by kings or commoners; we don't know whether the people who made them and the people who paid for them thought of them belonging to the kingdom, a man, to a lineage, or to the gods. One thing we know for sure, however, is they didn't make them for Nigeria.⁷

Like the Nok sculptures, any Roman antiquity in Italy was never intended for the *nation-state* of Italy. Any link that justifies a special identity between Italy and Rome is a fictive one. Thus, any property claim based on an identity claim between Italy and Rome is also fictive.

⁶ James Cuno, *Who Owns Antiquity? Museums and the Battle over our Ancient Heritage* (Princeton: Princeton University Press, 2008), 129.

⁷ Kwame Anthony Appiah, "Whose Culture is it?," in *Whose Culture?* Ed. James Cuno (Princeton: Princeton University Press, 2009), 74.

A possible objection is that while a single culture may not fully determine the work (given cross-cultural pollination) couldn't a legitimate claim be made that the object is a locally social product, which owes the majority of its existence to the territory in which it was made?⁸ This objection is just a weaker claim to cultural identity. It replaces the cultural identity of nations with a local identity. It still argues that the people who occupy Sicily are more *Greek* than I am and therefore have a rightful claim to what the Greeks once produced there. Imagine one day in my yard I find a treasure trove of 1,000 year-old Native American artifacts. Would the fact that they are a local product of a territory I now live in make my property claim through identity more compelling? I've never seen the culture or interacted with it. The culture that made these artifacts has only contributed to local identity through interesting factoids in history books. The Getty Aphrodite and most disputed antiquities follow this pattern as well. The Getty Aphrodite was buried for hundreds if not thousands of years. Her main purpose in life was part of a religion long lost. The fact that these antiquities were sometimes local products does not mean they share any connection with the locality as it is now.

This section has looked at the property claims made by Italy based on identity. These claims were supported by two faulty assumptions: (1) the cultures of Italy were native to and distinct from cultures in other States' territory and (2) there is a special identity that only Italians can share with cultures and their artifacts that had previously occupied Italy's political borders. The next section will examine territorially based claims to ownership of antiquities.

⁸ This objection of course will not always apply as well. Some disputed antiquities were not products of where they were found such as the Getty Bronze. See Jason Felch and Ralph Frammolino, (*ibid.*), 4-26.

Territorial Claims

The UNESCO Convention of 1970 was the first international treaty regarding cultural property. It aimed to define cultural property, reduce looting, preserve archaeological knowledge, and encourage interstate cooperation. In its definition of cultural property the Convention has 11 categories, one of which includes “rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest.”⁹ It is certainly difficult to believe that the fossil of a *Tyrannosaurus Rex* is American; it is even more difficult to think that a certain sample quartz is one too! In fact, the Convention’s categories are so numerous and broad it is hard to think of anything that could not be considered cultural property. The UNESCO Convention also recognizes five categories that form the cultural heritage of each State. The first of these categories is the most interesting:

Cultural property created by the individual or collective genius of nationals of the State concerned, and cultural property of importance to the State concerned created within the territory of that State by foreign nationals or stateless persons resident within such territory.¹⁰

The cultural heritage of the State is not defined by those within the culture nor its citizens; its sole marker is *territory*. Following this would make Thomas Paine’s works in the 1790s the cultural property of France. The second category of cultural heritage of the State is “cultural property found within the national territory.”¹¹ Once again cultural property is defined by territory, not by the make-up of the State’s national identity. It will be argued that antiquities are too important to reduce to blanket territorial property claims, even if the owner, the State, is usually a good steward.

The Getty Aphrodite and the Euphronios krater are objects whose value to the culture of the world is immeasurable. Appiah has stated:

⁹ United Nations Educational, Scientific and Cultural Organization, Paris, 10/12-11/14 1970. *The UNESCO Convention*. Article 1, Section A.

¹⁰ Ibid. Article 4, Section A.

¹¹ Ibid. Article 4, Section B.

Where objects have this special status as a valuable ‘contribution to the culture of the world,’ the rule should be one that protects that object and makes it available to the people who will benefit from experiencing it. So the rule of ‘finders, keepers,’ which may make sense for objects of less significance, will not do...Since these articles seldom have current owners, someone needs to regulate the process of removing them from the ground and decide where they go. It seems to me reasonable that the decision about those objects should be made by the government in whose soil they are found.¹²

Appiah is correct that these objects are too valuable to be owned by the people who find them.

However, it is *not* reasonable that they therefore belong to the government of the territory. Appiah is also correct that decisions about these objects must be made, someone or some thing must be their steward; but it should not be the State. States often make bad stewards for artifacts because not all States are created equally. Different States have differing amounts of resources, political stability, and political will to preserve antiquities, which are all in constant flux. To be a good steward of antiquities, consistent funding for their care is required and access to them should be prioritized. States will not always want to or be able to provide funding and rarely consider the importance to provide access for others. Recent comments by Senators John McCain and Tom Coburn illustrate a problem with the State as a steward: “\$2 million to repair damage to the roofs of museums in Washington, D.C., while many in Hurricane Sandy’s path still have no roof over their own heads.”¹³ A State’s commitments are broad and its resources limited. If it is to fix the roof of the Smithsonian now, it would be politically impossible to fund it properly if Social Security wasn’t meeting its bills. Antiquities are expensive to care for and manage. They require climate control, storage or display, cataloguing, and security. These requirements are resource heavy and are a continuous cost. With purse strings dependent upon so many external

¹² Ibid. Appiah, 76-77.

¹³ Molly Redden, “The Smithsonian’s \$2 Million in Sandy Aid is Not Pork,” *New Republic*, January 15, 2013, accessed February 19, 2013, <http://www.newrepublic.com/blog/plank/111936/sandy-aid-bill-smithsonian-2-million-not-pork>.

factors States are not the best stewards for these objects. It should not be political borders that determine whether an important antiquity is preserved or not.

Basing claims on territory also presents another puzzle. Borders are constantly in flux. Say Tibet gained independence tomorrow, would China be obligated to return the antiquities it has excavated from the new borders? This presents unnatural shifts in what makes up a cultural heritage. Up until tomorrow, Chinese cultural heritage contained all things in Tibet, but tomorrow that heritage will be moved over to those in Tibet. Taking a territorial based approach leads to arbitrary situations. On the one hand, the UNESCO Convention recognizes that antiquities are important to a cultural heritage. On the other, cultural heritage in the UNESCO Convention can be made by the bullet.

To decide ownership based on territory does not provide a reasonable system. It leaves the stewardship of antiquities that have global importance to entities not designed to and not best able to handle them. Antiquities and the knowledge they can impart can't be left in State-run museums under leaky roofs that might not be mended. The UNESCO Convention proposes a system that does not secure the best stewardship for these objects. These are objects of special concern and need special treatment, treatment that is not secured by 'finders, keepers' on the International level.

Can the State have any Cultural Property Claims?

So far it has been established that a State's property claim through identity does not ground a right to antiquities. Further, territorial claims to antiquities do a disservice to these antiquities and give us unnatural shifts in whose cultural heritage an object represents. This paper will end by defusing a possible objection and giving an example of something that appears to be the cultural property of a State.

Is there a legitimate piece of cultural property that belongs to the State? Yes, an example of which would be the Constitution of the United States. What features separate this object from the

Getty Aphrodite? While this is not intended to be exhaustive, some features that differentiate it can be pointed out. The most striking and sensible difference is that the United States still exists. We're not dealing with a forgotten antiquity buried for millennia and a product of a culture long dead. And secondly, there is no fictive link between the Constitution and the United States. It is a product that explicitly is a part of the State. Products explicitly for or from the State, while the State still exists, can be considered cultural property of it. If the Getty Aphrodite had satisfied these two conditions, then it would have been the *rightful* property of Italy.

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