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EDITORS' INTRODUCTION

Volume III, Issue 2 of *Florida Philosophical Review* is the sixth issue of the journal of the Florida Philosophical Association, marking the end of our third full year of publication. This issue emerges from a call for papers for essays by graduate students. The student works included here represent training received both within and outside of Florida and the United States. Student contributors are from the University of South Florida, Villanova University, the University of Kentucky, and the University of Essex (U.K.). Their work represents a wide range of issues and problems in philosophy as well as a rich variety of philosophical styles and points of emphasis. However, the student work included here converges on two themes. The first is a common focus on the history of philosophy. The student contributions found in this issue engage closely the texts of Plato, Locke, Hegel, de Tocqueville, Heidegger, and Habermas. Secondly, one can also discern here a desire to utilize historical philosophical texts to better understand our contemporary social world. In particular, Kevin Aho forwards an interpretation of Heidegger that emphasizes community, Farhang Erfani both utilizes and critiques Hegel and de Tocqueville to develop a conception of democracy consistent with fighting oppression in contemporary pluralistic societies, and Eric Smaw reads Locke as a backdrop to contemporary debates over human rights, advocating the establishment of an international criminal court. Lasse Thomassen's review of two recent translations of Habermas's work also indicates an interest in philosophical texts that can assist us in meeting the "challenges of pluralism" in contemporary societies. Because of its fit with these themes, we have also included here an article by a faculty member at Sante Fe Community College in Gainesville, Florida. Glenn Kirkconnell's essay examining the relevance of Kierkegaard's notion of earnestness to the post 9/11 Western world provides several points of dialogue with the other essays included in this volume.

In the first essay, "Why Heidegger is not an Existentialist: Interpreting Authenticity and Historicity in *Being and Time*," Kevin Aho, who recently completed the defense of his dissertation at the University of South Florida, forwards a non-standard interpretation of Heidegger's *Being and Time*. As the title of the essay suggests, Aho argues that the common conception of Heidegger as an existentialist is mistaken since the authentic human being is defined by her historicity, and as such can never be an isolated individual ("like Kierkegaard's knight of faith or Nietzsche's overman"). There is, Aho contends, significant emphasis placed on heritage and community in the works of Heidegger; for Heidegger, "human beings can never rebel against or overcome their own socio-cultural and historical world because they are always already interwoven to a specific historical situation." Heeding such central emphases in Heideggerian texts, concludes Aho, leads to an

understanding of Heidegger quite different from the common existentialist framework into which he is generally placed.

In his “Democratic Struggle: Tocqueville’s Reconfiguration of Hegel’s Master and Slave Dialectic,” Farhang Erfani, an instructor and graduate student at Villanova University (and previous contributor to *Florida Philosophical Review*) compares two philosophical methods of coping with political struggles. The first, epitomized here by Hegel’s master and slave dialectic in the *Phenomenology* (but shared, Erfani contends, by Plato, Marx and others), is to attempt to eliminate such struggles by striving for a “reconciled polis.” The second, illustrated here by Alexis de Toqueville’s *Of Democracy in America*, forwards democracy as a way of “domesticating, rather than eliminating,” political strife. Erfani contends that we can continue no longer to be either Hegelian or Toquevillean because Hegel’s position is not consistent with valuing pluralism, diversity and perspectivalism and Toqueville’s position is inaccurate with respect to “the growth and spread of equality.” On the other hand, Erfani contends that Tocqueville is still worthy of our attention at least in part because his work is consistent with the insights of theorists such as Claude Lefort, Ernesto Laclau, and Chantal Mouffe who argue that neither individuals nor communities are accurate conceptions of political agency, and that society is “the result of a contingent and temporary balance of opposing forces.” In the end, according to Erfani, we ought to use democracy to fight against oppression because differences and conflicts never end and such struggles may be more peacefully and effectively fought in a democracy than in idealizations of international unity.

Continuing this issue’s discussion of community and democracy, but extending it to international politics, Eric D. Smaw, a Ph.D. candidate at the University of Kentucky, draws on John Locke’s conception of human rights. In “Jasper’s Kangaroo Court of International Injustice,” Smaw argues for ratification by the United States of the Rome Treaty to establish a permanent International Criminal Court. Central objections to such ratification include William F. Jasper’s contentions that an International Criminal Court would be tyrannical and that it will not provide safeguards consistent with the United States Constitution for American citizens who might be subject to the court. Smaw, however, argues that the International Criminal Court would be effective and accountable and that it would not, in fact, be subject to the criticisms and problems that Jasper foresees. According to Smaw, even in a worst-case scenario involving judicial misconduct and the indictment and conviction of innocent Americans, the United States would not be morally obligated to follow the Court’s directives and would have diplomatic and military avenues of redress open to it. Smaw concludes that in the absence of cogent reasons for objecting to an International Criminal Court, the principle of consistency requires the United States to ratify the Rome Treaty and continue its participation in international politics.

In the fourth essay, W. Glenn Kirkconnell, an adjunct instructor at Santa Fe Community College in Gainesville, Florida and recent (2002) recipient of the Ph.D., writes on Kierkegaard’s

views of death and their contemporary significance in “Earnestness or Estheticism: Post 9/11 Reflections on Kierkegaard’s Two Views of Death.” Looking specifically at Kierkegaard’s *Three Discourses on Imagined Occasions* and his *Stages on Life’s Way*, Kirkconnell contrasts the religious person’s attitude toward death with the esthetic person’s view of death, arguing that the depth and maturity of a person is reflected (or created) by her attitude toward death. In particular, Kirkconnell suggests, earnestness toward death is required for spiritual maturity. An opportunity for such earnestness and maturity was offered Americans (and other westerners) in the aftermath of the tragedy of September 11th, 2001. According to Kirkconnell, however, this was a missed opportunity and Americans have largely continued to hold an esthetic, rather than earnest, notion of death as implicated in ongoing practices of denying rather than respecting aging and mortality.

The final essay included here is by a graduate student at the University of South Florida working toward the M.A. in Philosophy. Jason St. John Oliver Campbell writes on Socrates’ indirect critique of Apollo’s directive to know thyself. Arguing that Socrates could not directly provide criticism of Apollo without at the same time compromising his piety, Campbell contends that the dialogue taking place in Plato’s *Charmides* is a *direct* attack on Critias’s reasoning, but it is also at the same time an *indirect* attack on Apollo’s reasoning. This is the case if Critias’s reasoning is associated with that of Apollo. In the end, Campbell attempts to show that there are inconsistencies in the attempt to associate self-knowledge with temperance, leading to the claim that the sciences cannot account for knowledge.

The issue concludes with a review of Jurgen Habermas’s *On the Pragmatics of Social Interaction* (2001) and *The Liberating Power of Symbols* (2001) by Lasse Thomassen, an instructor and graduate student at the University of Essex (U.K.). Despite their differences, in both works, Thomassen suggests, Habermas argues for the “the necessity of a communicative or intersubjectivist” approach to social action and cooperation.

Cumulatively, the contributors to this issue raise several important issues concerning the philosophical bases for personal growth and social cooperation on local, national, and international levels and reinforce the importance of familiarity with the history of philosophy in grappling seriously with these issues. We hope that these essays stimulate your own thinking about both the interpretation of philosophical texts and their relevance to contemporary social issues.

Our next issue of *Florida Philosophical Review* is the proceedings issue of the annual meeting of the Florida Philosophical Association. Among the works to be published are the award-winning graduate and undergraduate student papers from the 49th Annual Meeting of the Florida Philosophical Association. Congratulations to undergraduate student Dave Monroe (University of North Florida), who was awarded this year’s Edith and Garret Schipper Award for his essay, “Bergman’s *Persona* and the Mystery of Plot” and to Jason Turner (Florida State University) who won the 2003 Florida Philosophical Association Graduate Student Award for his essay, “The

Supervenience Argument.” Also to appear in the Summer 2004 issue is the Presidential Address, “Philosophy: Any Defensible Province of its Own?” by Robert D’Amico of the University of Florida, and selected papers and book symposia from the Fall 2003 conference.

We invite submissions of papers from faculty, graduate, and undergraduate students of philosophy from Florida and elsewhere. As you can see in this and previous issues of *Florida Philosophical Review*, our contributors are not limited to faculty and students from Florida colleges and universities. The authors of articles and book reviews in *Florida Philosophical Review* come from a wide variety of backgrounds and philosophical schools of thought.

Our Winter 2004 issue will include a section on metaphilosophy. We invite papers exploring the nature of philosophy, philosophical methods, and the contemporary relevance of philosophy for Volume IV, Issue 2, to be published December 2004. The deadline for submissions is July 1, 2004. We also invite reviews of recently published books related to metaphilosophy for this issue. All essays, prepared for anonymous review, should be submitted to fpr@mail.ucf.edu.

Thank you to all of those who have contributed to, read, and otherwise supported *Florida Philosophical Review*. We look forward to your continued support and encourage you to become one of our authors and/or reviewers.

Shelley Park and Nancy Stanlick, Editors

Florida Philosophical Review: The Journal of the Florida Philosophical Association

December 31, 2003

Why Heidegger is not an Existentialist: Interpreting Authenticity and Historicity in *Being and Time*

Kevin Aho, University of South Florida

Introduction

It is common to find Heidegger's *Being and Time* located under the genre of 20th century existentialism with the works of Sartre, Camus, and Jaspers, along with his 19th century counterparts, Kierkegaard and Nietzsche. This is due in large part to Heidegger's conception of "authenticity," a way of being that faces and affirms the finitude and contingency of life in a godless world. Existentialism resonates to Heideggerian authenticity in the way it appears to sever human beings from the normative comforts and stability of public life, leaving us alone to choose and create our own singular meanings and values against the background of nothingness. In this essay, I examine the merits of the existentialist interpretation of authenticity and contend that such an interpretation fails to recognize the fundamental role *historicity* plays in Heidegger's conception of authenticity. For Heidegger, historicity determines the structure of existence in such a way that the authentic human being is never an isolated individual; it can never rebel against or overcome its own socio-historical situation because a human being is always already a historical being.

The argument of this paper is twofold. First, I explore the popularized interpretation of existentialist authenticity and explain why it is easy, but mistaken, to locate Heidegger's philosophy of authenticity within the confines of existentialism. Second, with a significant debt to Lawrence Vogel's research,¹ I introduce the relevance of historicist authenticity as a response to the existentialist interpretation, explaining the importance that Heidegger places on community and heritage within the context of authenticity. I then provide some critical comments concerning the problems that historicity poses in terms of providing a trans-historical foundation for authenticity. I conclude by turning to Heidegger's later writings on the relationship between disclosive truth (*aletheia*) and modern technology in an attempt to unearth such a foundation.

Heidegger and Existentialist Authenticity

Nietzsche's posthumously published *The Will to Power* perhaps best exemplifies the experience of nihilism that profoundly influenced European existentialism in the early 20th century. The philosophic term "nihilism" signifies a sense of negativity and emptiness. There is no truth

sustaining us, no foundational substance, no soul, no God. Humankind must abandon all hope in philosophy, religion, or science to provide a grounding sense of comfort or stability. Nietzsche's is the "most extreme form of nihilism . . . [because] every belief, every considering-something-true, is necessarily false; there is no true world."² The very idea of "truth" is an error. "There is no truth; there is no absolute nature of things nor a 'thing-in-itself.'"³ The truths that we impose on the world are merely "fictions" which we need to subdue temporarily the purposeless, chaotic movement of existence. For Nietzsche, the Western tradition's emphasis on truth, rationality, order, and permanence is illusory. With Zarathustra signaling the "death of God," there is nothing left to support and stabilize humankind. We are left alone in a world empty of form and meaning. Nietzsche challenges the European to face and affirm her mortal predicament as an individual, to create solitarily her own unique truths and values independent of those inherited from European history.

As I argue below, Heidegger's ethic of self-possession that emerges in the Second Division of *Being and Time* resonates strongly to the existentialist ethic. But the originality of Heidegger's existential analytic resides in his unique conception of human existence as *Dasein*. For the existentialists, human existence is interpreted in terms of a concrete, autonomous subject able to sever itself willfully from its socio-cultural and historical conditions. In this sense, existentialism is still unashamedly humanistic, operating within the tradition of subjectivity inherited from Descartes. However it is a mistake to place Heidegger within this tradition.⁴ Heidegger cautions against the error of interpreting *Dasein* in terms of subjectivity early on in *Being and Time*. "One of our first tasks will be to show the point of departure from an initially given [I] and subject totally fails to see the phenomenal content of *Dasein*" (BT 46, 43).⁵

For Heidegger, the claims of the existentialists remain confined within a tradition that focuses on human beings and neglects the hermeneutics of the *sum*, the interpretation of the meaning of being. *Dasein* does not refer to a human being in the traditional sense: an *animal rationale* (Plato/Aristotle), a self-encapsulated *cogito* (Descartes), a self-overcoming subject (Nietzsche), a radical subject (Sartre), etc. Rather, *Dasein* refers to the fact that human beings are always already structured by "being-the-world." "These determinations of the being of *Dasein* must now be seen and understood as *a priori* as grounded upon that constitution of being which we call being-in-the-world" (BT 53, 49). Interpreted in terms of being-in-the-world, we are not detached, autonomous subjects but beings who are already concretely engaged in a particular historical situation. And we "exist" in terms of already having a unique understanding of what it means to be human in such a situation. We are not born with this understanding; we grow into it through a process of socialization whereby we acquire the possibility to interpret ourselves in terms of the shared acts and practices of our history. This understanding of being discloses itself pre-reflectively in the flow of

our everyday lives. Consequently, we can never explicitly articulate our understanding of being because we always already dwell in it; our understanding remains “vague” and “average.”⁶

For Heidegger, our public world constitutes the background of social acts and practices into which we are “thrown” (*Geworfenheit*). As a result, “the they” (*das Man*) already determines our understanding of being, controlling the context of meaning and intelligibility for us. In this sense, the world of others provides the possibilities for who we are and what we are to become. “I ‘am’ not in the sense of my own self, but I am the others in the mode of the they. In terms of the they, and as the they, I am initially ‘given’ to ‘myself’”(BT 129, 121). Hence, human beings are never isolated subjects, separate and distinct from the public world. Structured by being-in-the-world, we are always already “being-with” (*Mitsein*) others, and others exercise an elemental control over us.

Dasein stands in subservience to the others. It itself is not; the others have taken its being away from it. The everyday possibilities of the being of Dasein are at the disposal of the whims of the others. These others are not definite others. On the contrary, any other can represent them. What is decisive is only the inconspicuous domination by others that Dasein as being-with has already taken over unawares. (BT 126, 118)

Consequently, we are essentially a “being-with-one-another,” a “they-self”(BT, 127, 119).⁷ Everyday and for the most part others take possession of us; this results in a way of being that is permeated by “publicness,” “averageness,” “leveling”(BT 128, 120). As a “they-self,” we are “lost,” “tranquilized”; we are “disburdened” of our being. “The they accommodates *Dasein* in its tendency to take things easily and make them easy” (BT 128, 120). As a “they-self,” we are structurally *inauthentic*. Heidegger’s response to inauthenticity is revealed in his account of *authentic* “being-towards-death,” a response that resonates strongly to the themes of existentialism.

The existentialist interpretation of Heideggerian authenticity is due in large part to his interpretation of human temporality. For Heidegger, the meaning of being that discloses itself in human acts and practices *is* temporality, and the primary temporal mode is “futural” (*zukünftig*). As futural, we are always on the way, always ahead of ourselves. For this reason, we are fundamentally a “potentiality” that can never attain completeness or “wholeness”(BT 236, 219). “This structural factor of [Dasein’s] care tells us unambiguously that something is always still outstanding in Dasein which has not yet become “real” as potentiality-of-its-being. A constant unfinished quality thus lies in the essence of the constitution of Dasein” (BT 236, 219). We are “unfinished” because our existence is defined by always pressing forward into future social possibilities, possibilities that ultimately end with death.⁸ As long as we exist, we are literally no-thing. Only in death do we finally become something. In this sense, our existence is interpreted as a kind of nullity, a “groundless ground,” because the social projects that give our lives a sense of permanence, stability, and identity

are ultimately penetrated by the constant possibility of our own death. For the existentialists, the conception of “being-towards-death” is crucial because it is only by a relation to our own death that we can grasp our own singular temporality. Death is the only event that is our own, severing us from our public bondage to others. Heidegger confirms: “No one can take the other’s dying away from him. . . . Every Dasein must itself actually take dying upon itself. Insofar as it “is,” death is always essentially my own” (BT 240, 223).

The common, *inauthentic* response to our awareness of impending death is “flight” back into the illusory stability of our daily routines as a “they-self.”

The fact that factually many people initially and for the most part do not know about death must not be used to prove that being-toward-death does not “generally” belong to Dasein, but only proves that Dasein, fleeing from it, initially and for the most part covers over its ownmost being-toward-death. (BT 252, 233)

Such flight is common because the primordial possibility of death is revealed in the “ground-mood” (*Grundstimmung*) of “anxiety.” Anxiety reveals to us our potentiality for death, by causing the withdrawal of all of our stabilizing worldly routines. “Anxiety in the face of death is anxiety “in the face of” one’s ownmost nonrelational and unsurpassable possibility for being. That which this anxiety is “in the face of” *is* being-in-the-world itself” (BT 232, 176). With the experience of anxiety, we now have a reference to death as a constant possibility. And with this reference we are free to “act” authentically in the world, going about our daily tasks “without illusions . . . but rising from the sober understanding of the factual possibilities of Dasein” (BT, 310, 286). We act authentically only if we securely grasp our own precariousness, the fact that our being is penetrated by nothingness. Only then do our acts become “mine.” With the experience of anxiety, one becomes an individual and is no longer a “they-self.” “Anxiety fetches Dasein back out of its entangled absorption in “the They.” Everyday familiarity collapses. *Dasein is individuated*, but as being-in-the-world. Being-in enters the existential “mode” of not-being-at-home. The talk about uncanniness means nothing other than this” (BT 189, 176).

The inauthentic response to anxiety is “flight” back into the public world, becoming “lost” once again in “the they.” The *authentic* response is “resoluteness” (*Entschlossenheit*). “Resoluteness” means letting oneself be summoned out of one’s lostness in ‘the they’”(BT 299, 275). Resoluteness enables us to be ready for anxiety, to face our own finitude and accept the fact that our everyday social routines are already inauthentic because they give our lives a false sense of permanence and stability.⁹ In this sense, when we are resolute we possess ourselves. We can be interpreted as a singular, authentic individual, liberated from “the they” as we begin to understand our life projects for what they are and are freed from the worry of establishing stabilizing foundations. This

individuating quality of “being-towards-death” appears to sever us from our inauthentic social world. And Heidegger’s account of the authentic self begins to look much like existentialist authenticity. Lawrence Vogel explains:

Heidegger surely invites this existentialist interpretation and so makes him vulnerable to the charges that his philosophy is radically individualistic, egocentric, voluntaristic, and decisionistic. . . . The individuating power of being-towards-death drives a wedge between the self and nature and between the individual and the community. Heidegger’s insistence that anxiety and authenticity do not take us out of the world but lead to a more primordial engagement does not resolve the tensions between being-unto-death on the one hand and being-in-the-world and being-with-others on the other.¹⁰

Before critically dismantling the existentialist interpretation of the authentic self, we can conclude this section by highlighting several important similarities between Heidegger and existentialism. First, Heidegger, like Kierkegaard, Sartre, and Nietzsche, acknowledges the nihilistic predicament that faces humankind, that there is no trans-historical, universal truth that can provide a secure foundation for existence. As a “being-towards-death” our life is fundamentally unstable. Second, Heidegger interprets everyday being-with-others as “inauthentic,” a source of mass conformity where others take over the burden of choosing our lives for us. Although Heidegger contends that he is not making any moralizing claims about being-with-others, it is difficult not to interpret the “leveling” influence of others negatively, as it is for the existentialists.¹¹ For Heidegger, being-with-others is essentially “thrown,” “ambiguous,” “tempting,” “tranquilizing,” “alienating,” “entangled,” “fallen,” etc.¹² Third, the inauthentic person “loses herself” in the possibilities prescribed by others, whereas the authentic person takes possession of herself by severing her ties to the “the they” and, like Nietzsche’s “overman” and Kierkegaard’s “knight of faith,” claims and creates her ownmost factual possibilities. It is this ethic of individual self-possession, without any reference to a stabilizing criterion of values that is particularly instructive to the existentialist tradition.

Interpreting Heidegger’s conception of authenticity exclusively within the confines of our temporal finitude as “being-towards-death” fails, however, because it does not give an account of the other half our temporal constitution, namely, our “historicity.” For Heidegger, authenticity is not an individual affair. Rather, the possibilities for authenticity are communal; they are made available by a shared heritage.

Heidegger and Historicist Authenticity

Although Heidegger insists that “anxiety individualizes and discloses human beings as ‘*solus ipse*’” or alone selves (BT 176, 188), this does not mean that the resolute individual emerges as a self-contained ego or subject severed from her fallen world. Rather, resoluteness provides a more primordial awareness of our being-in-the-world.

As *authentic being a self*, resoluteness does not detach Dasein from its world, nor does it isolate it as a free-floating ego. How could it, if resoluteness as authentic disclosedness is, after all, nothing other than authentically *being-in-the-world*? Resoluteness brings the self right into its being together with things at hand, actually taking care of them, and pushes it toward concerned being-with with the others. (BT 298, 274)

This existential “solipsism” is so far from the displacement of putting an isolated subject-Thing into the innocuous emptiness of a worldless occurring, that in an extreme sense what it does is precisely to bring Dasein face to face with its world as world, and thus brings it face to face with itself as Being-in-the-world. (BT 188, 176)

For Heidegger, authenticity does not entail an existential rebellion that overcomes one’s entanglements in a conformist world. Rather, it involves an “appropriation,” a primordial recognition of our own historical past. In this sense, the personal choices of the authentic individual are never original; they are never our own. The possibilities for our decisions and actions are always already socially constituted, through the language, public practices, and cultural institutions that we grow into as historical beings.¹³ Anxiety does not force us into a precarious freedom, leaving the authentic individual alone to create her own values. Rather, anxiety opens us up to our “fate,” our “destiny,” our rootedness to a shared community with a shared past.

[I]f fateful Dasein essentially exists as being-in-the-world in being-with others, its occurrence-with is determined as destiny. With this term, we designate the occurrence of the community of a people. Destiny is not composed of individual fates, nor can being-with-one-another be conceived of as the mutual occurrence of several subjects. (BT 385, 352)

The anxious awareness of “being-towards-death” certainly individualizes us in the sense of reminding us of our ultimate finitude, but such individualizing does not sever us from our socio-historical situation. The authentic individual is always already an authentic being-with-others.

Again, the individualism of the existentialist reading presupposes the metaphysics of subjectivity, where the free subject transcends her current social situation and takes radical responsibility for creating her own values and meanings against the background of nothingness. Heidegger's account of human historicity prevents his interpretation of authenticity from succumbing to the charges of subjectivism.¹⁴ Because we can never disengage ourselves from our shared heritage, we are never radically free. Our freedom takes place against the background of social acts and practices unique to our heritage. Vogel explains:

While being-unto-death individuates Dasein it does not subjectivize him; "the Self" is not an internal, subjective being radically distinct from external, objective projects and situations. Rather than transporting Dasein from the actual world to other possible worlds where one would be a different person by engaging in other life projects, authentic Being-unto-death leads to the appreciation of one's finite freedom: to a recognition of the compelling situation of the actual historical world and to an urgent commitment to what is most unique about one's way of being-there. Only as a member of a shared community with a shared heritage does one not seek to own up to one's fate in relation to a wider destiny "we" all face.¹⁵

Rooted to a shared heritage, the authentic individual must come to understand what her own unique heritage will offer as possibilities (for future actions and choices.) Her heritage provides possible paths that she can take. As resolute, it is up to her to determine critically which paths are to be followed, which qualities of her communal past are to be "appropriated," "retrieved," and "repeated." "Resoluteness that comes back to itself and hands itself down then becomes the retrieve of a possibility of existence that has been handed down. Retrieve is explicit handing down, that is, going back to the possibilities of the Dasein that has been there" (BT 385, 352). Though the possibilities for the resolute individual are conditioned by the historical situation that she has inherited, this does not mean that Heidegger is succumbing to a form of "hard" historical determinism. The resolute individual is not merely hard-wired by history, rather she is free to "decide," to seize the possibilities that history offers her, to engage her heritage thoughtfully in order to decide "in a moment of vision" what is worth retrieving and repeating.

[R]etrieve is not convinced by "something past," in just letting it come back as what was once real. Rather, retrieve responds to the possibility of existence that has been-there. But responding to the possibility in a resolution is at the same time, as in the Moment, the disavowal of what is working itself out today as the "past." Retrieve neither abandons itself to the past, nor does it aim at progress. In the Moment, authentic existence is indifferent to both these alternatives. (BT 386, 353)

Because the past that she seeks to retrieve critically and repeat is a shared, communal past, the future possibilities towards which her choices and actions project are never her own possibilities. They are the possibilities of a people, of a “generation.”

It is true that Dasein is delivered over to itself and its potentiality-of-being, *but as being-in-the-world*. As thrown, it is dependent upon a “world,” and exists factually with others. . . . The resoluteness in which Dasein comes back to itself discloses actual possibilities of authentic existing in terms of the heritage which that resoluteness takes over as thrown. . . . The fateful destiny of Dasein in and with its “generation” constitutes the complete, authentic occurrence of Dasein. (BT 383, 352)

Hence, the existentialist reading of Heideggerian authenticity forgets that we are constituted by a *twofold* structure of temporality: (a) our own futural finitude as a “being-toward-death” and (b) our historical “thrownness” as a communal, historical being-in-the-world.¹⁶ As we have seen, the existentialist interpretation of authenticity only acknowledges the first condition, but Heidegger makes it clear that any analysis of the *way of being* human must include an analysis of our “historicity.”

The being of Dasein finds its meaning in temporality. But temporality is at the same time the condition of the possibility as a temporal mode of the being of Dasein itself. . . . Historicity means the constitution of being of the “occurrence” of Dasein as such . . . *Dasein is determined by historicity in the ground of its being*. (BT 20, 17, my emphasis)

By situating authenticity within the context of a shared history, we can see how Heidegger resists the radically individualistic quality of existentialist nihilism, but another form of nihilism persists.

Vogel argues that one of the risks of Heidegger’s position is that it simply replaces the arbitrariness inherent in existentialist nihilism with the arbitrariness inherent in “historicism,” the fact that we are inevitably determined by the limitations of our current historical situation.¹⁷ This historical situation is itself groundless because it is forever in a state of flux; it does not offer a foundation, an enduring, trans-historical perspective that will universally determine decisions and commitments *as* authentic. The flux of history merely offers a context of contingent worldliness within which we may appropriate apparently random possibilities. Hence, Heidegger appears to succumb to a version of nihilism in the form of “historicism.”¹⁸ As historical beings, we have no privileged access to *the* primordial origin or foundation that provides us with a measure for distinguishing authentic from inauthentic possibilities.

Charles Guignon addresses this problem by suggesting that *Being and Time* can be read as a reaction to the developments of historicism. According to Guignon, the standpoint of 19th century historicism interpreted history as a series of disconnected epochs with no inner unity, no enduring values or goals, no *telos*.¹⁹ Guignon interprets Heidegger as rejecting this nihilistic conception of history by attempting to unearth trans-historical values and meanings that have been obscured by the Western tradition. Guignon argues:

Being and Time attempts to combat the “groundlessness” of the contemporary world by uncovering enduring values and meanings within the framework of ‘worldliness’ and human finitude. The “question of Being” is no exercise in arcane speculation; its aim is to restore a sense of the gravity and responsibility of existence by recovering a more profound grasp of what it is to be.²⁰

Heidegger’s effort to undo the history of Western metaphysics must be understood in terms of his contrast between “heritage” (*Erbenschaft*) and “tradition” (*Tradition*). For Heidegger, anxiety opens us up to the possibility of “retrieving” a shared historical community, a “heritage” which contains the primordial “wellsprings” of our current “tradition.” Our heritage is our authentic past, and it has been distorted and “covered over” by the conformist fads and fashions of our tradition. Our tradition conceals the trans-historical values and guiding determinations of our heritage that lie below the crust of the prevailing status quo. Hence, “The tradition deprives Dasein of its own leadership in questioning and choosing”(BT 21, 18).

The tradition that hereby gains dominance makes what it “transmits” so little accessible that initially and for the most part it covers over instead. What has been handed down it hands over to obviousness; it bars access to those original “wellsprings” out of which the traditional categories and concepts were in part genuinely drawn. The tradition even makes us forget such a provenance altogether. Indeed it makes us wholly incapable of even understanding that such a return [to Dasein’s heritage] is even necessary. (BT 21, 19)

For Heidegger, the tradition “dominates” us by focusing only on the interpretations of the past made accessible by the current social trends of the conformist public, trends that we cling to for a source of security, as a flight from our own “groundlessness.”

The experience of anxiety destabilizes the illusory hold of permanence that our current tradition has over us, a hold that presently determines our understanding of being, the way beings are revealed or show up for us *as such*. Consequently, the tradition of Western metaphysics must be critically dismantled or “de-structured” in order to uncover the primordial *arche*, which in turn,

provides history with a unified *telos*, a “guiding determination.” “The deconstructing is based upon the original experiences in which the first and subsequently guiding determinations of being were gained” (BT 23, 20). With Guignon’s reading, authentic historicity demands that we appropriate and retrieve the primordial and enduring wellsprings from which our current possibilities emerge and from which we derive our traditional way of being-in-the-world, a way of being that currently conceals its own origins.²¹

However, Vogel argues that Guignon’s claim is problematic because the content of our possibilities belong to our own particular heritage, not to the heritage of humanity as a whole. Therefore, we cannot appropriate *the* single, univocal past. Heidegger’s “hermeneutic circle” demands that our retrieval of the past is always already conditioned by our understanding of being, an understanding rooted to *a* particular heritage, and there is no way for us to overcome the limitations and distortions that such a heritage imposes on us. Hence, there is no privileged access to *the* primordial “wellsprings” of our heritage.²² The de-structuring of the history of metaphysics merely discloses regional, local origins, in Heidegger’s case, the Greek beginnings of our current, Western understanding of being, an understanding which in no way stretches across the fabric of humanity as a whole. Heidegger’s conception of historicity appears nihilistic by yielding to a form of relativistic *provincialism*, where each historical community has its own relative heritage, its own “fate” and “destiny.” Our historicity appears to offer an account of authenticity that remains fundamentally regional and groundless in the sense of unifying humankind.²³

Vogel attempts to overcome the problem of provincialism by offering his own “cosmopolitan” reading of Heideggerian authenticity. This reading contends that Heidegger’s brief account of “liberating solicitude”²⁴ in *Being and Time* offers a universal, ethical way of being that frees others or “lets others be” in terms of choosing their own possibilities and commitments without the paternalistic control of “the they.” For Vogel, this is a foundational standpoint that regards humanity as a whole in terms of ends with equal moral worth in which authentic being-with lets others “become who they are.”²⁵ However, for Heidegger, interpreting authenticity from the standpoint of morality would be an ontic endeavor and would therefore depart from his project of “fundamental ontology,” an inquiry into the being of beings.²⁶ This departure requires Vogel to take tremendous interpretive leaps with Heidegger’s project. Vogel acknowledges the dilemma:

I have admitted that the cosmopolitan reading requires that Heidegger’s thin treatment of authentic being-with-others be developed in such a way that allows for a criticism of his official position that morality is an [ontic] inauthentic mode of existence. My favored interpretation of authenticity, then, demands that certain underplayed strains in *Being and Time* be accented and turned against the more dominant voice of the text: that is, so to speak, Heidegger to be read *against* Heidegger.²⁷

Yet we can bypass the problems of Vogel's "cosmopolitan" interpretation and remain faithful to Heidegger's original contribution by locating the trans-historical ground of authenticity in terms of his conception of disclosive truth (*aletheia*). Heidegger's later writings on technology provide the clue.²⁸

According to Heidegger, the Greek word *techne* captures the original sense of technology as a mode of "revealing" or "unconcealing." As such, *techne* is a manifestation of "truth" in the primordial, disclosive sense of *aletheia*, referring to the being of beings, the way beings "show up" or "come out of concealment" *as such*.²⁹ With the Greek conception of *techne*, the artist or craftsman helps that which is "brought forth" to "reveal itself."³⁰ Originally *techne* was conceived in terms of a harmony or rapport with nature, of gently "releasing" that which is "brought forth" to become the very thing that it is.³¹ For instance, the pre-modern craftsman makes "the old wooden bridge" that "lets the river run its course."³² This is opposed to *techne* in the modern age, where "the hydroelectric plant" turns the river into a reservoir, where beings are forced to come out of concealment in only one way, *as* a potential resource, a "standing reserve" waiting to be "set upon," "challenged," and "enframed" (*Gestell*).³³ The mode of revealing of modern technology is "inauthentic" because it violently "drives out every other possibility of revealing" and fails to let beings "come forth" in their own depth, *as* "mysterious."³⁴

The technological worldview excludes this sense of mystery, offering a horizon of disclosure that is tyrannical, where beings "come forth" solely *as* resources available for use. Heidegger refers to this exclusion as "flight from mystery" which is tantamount to "erring." "Man's flight from the mystery toward what is readily available, onward from one current thing to the next, passing the mystery by—this is erring."³⁵ As "erring," the horizon of modern technology is a form of "untruth." It conceals the mystery, the full, incomprehensible disclosure of things. In the light of Heidegger's later writings, authenticity is to be interpreted ontologically in terms of disclosive truth, of freedom understood as *Gelassenheit*. *Gelassenheit* is a "letting-be [which] exposes itself to beings *as such* and transposes all comportment into the open region. The essence of truth reveals itself as freedom, [a] disclosive letting beings be."³⁶ Modern technology conceals this disclosive "letting-be" by forcing all beings to show up in terms of an objectifying worldview. As a consequence, "untruth" reigns in the technological age because beings show up in only one way, *as* resource.³⁷ Today we fail to recognize that the technological mode of revealing is not our only possibility. As a result, we have forgotten how to be authentic or more specifically, how to "dwell" in the modern age.

It appears that Heidegger's concept of "dwelling" offers a trans-historical foundation for disclosive authenticity understood in terms of *Gelassenheit*. Dwelling is unlike the technological mode of revealing because it refers to an original way of being that is "open" to other possibilities for revealing rather than "blocking off" these possibilities in terms of a totalizing technological

worldview. As a consequence, “[dwelling] promises us a new ground and foundation upon which we can stand and endure in the world of technology without being imperiled by it.”³⁸ Dwelling opens an original horizon of disclosure that does not confine, restrict, or “block off.” This horizon *is* “the Open.”

[The Open] does not block off because it does not set bounds. It does not set bounds because it is in itself without all bounds. The Open is the great whole of all that is unbounded. It lets the beings ventured into the pure draft draw as they are drawn. . . . The Open admits.³⁹

By dwelling in the Open, we are authentic, letting beings come out of concealment in all of their plenitude and depth.

In *Being and Time*, Heidegger claims that the anxious awareness of our own finitude destabilizes the illusory hold of permanence and stability that our current technological tradition has over us, a hold that presently determines the way beings are disclosed. This technological disclosure is perilous because it is *total*; it forces beings to show up in only one way, and it “rules the whole earth.”⁴⁰ The resolute “retrieval” of our shared heritage allows us to see that the “wellsprings” of this horizon of disclosure originated in ancient Greece and is only one of *many* possible ways for beings to come out of concealment that have emerged throughout the course of Western history. And the original Greek understanding of *techne* offered a more primordial way of revealing that was not yet trapped within the totalizing horizon of *Gestell*.⁴¹ Heidegger continues this train of thought in his later writings by reintroducing authenticity in terms of “mortals” who “dwell.” As mortals, humans embody the anxious awareness of being-towards-death. “They are called mortals because they can die. To die means to be capable of death *as* death.”⁴² Hence, mortals are not trapped within the tradition of *Gestell*; mortals dwell in the Open, in the original horizon of disclosure, a horizon that contains within it the possibility of modern technology yet escapes its “captivity” by remaining open to other possibilities. Heidegger confirms that this is what he meant by authentic resoluteness all along. “The resoluteness intended in *Being and Time* is not the deliberate action of a subject, but the opening up of a human being, out of its captivity in that which is, to the openness of Being.”⁴³ Dwelling requires human beings to reacquaint themselves with the Open. By dwelling we no longer force beings to show up in terms of a technological grid, rather we experience beings in their truth by freeing them, “allowing every mode of comportment to flourish in letting beings be.”⁴⁴

Notes

¹ I am thankful to conversations with Charles Guignon who initially introduced me to Lawrence Vogel's work, particularly, the book *The Fragile "We": Ethical Implications of Heidegger's Being and Time* (Evanston, Illinois: Northwestern UP, 1994), to which much of this paper is indebted.

² Friedrich Nietzsche, *The Will to Power*, trans. Walter Kaufmann (New York: Random House, 1967) 14.

³ Nietzsche, *The Will to Power* 14.

⁴ Jean-Paul Sartre is probably the most famous commentator who makes this mistake. In *Existentialism and Humanism* he writes, "The [existentialists], amongst whom we must place Heidegger as well as the French existentialists and myself . . . what they have in common is simply the fact that they believe that existence comes before any essence—or, if you will, that *we must begin from the subjective.*" Cited in Richard Kearney and Mara Rainwater ed., *The Continental Philosophy Reader* (New York: Routledge, 1996) 66.

⁵ All references to Heidegger's *Being and Time* (BT) are from Joan Stambaugh's translation (Albany, NY: SUNY Press, 1996). The original German pagination is followed by Stambaugh's pagination.

⁶ We "already stand in an understanding of the 'is' [being] without being able to determine conceptually what the 'is' means *This average and vague understanding of being is a fact*" (BT 5, 4).

⁷ Being-with-others is a fundamental structure of Dasein. Heidegger refers to such structures as *existentials*.

⁸ Hence, death is interpreted as our "greatest ownmost" possibility (BT 251, 232).

⁹ For Heidegger, it is important to understand that inauthenticity is not some sort of deficient mode of being or something that can be avoided altogether. Inauthenticity, the mode of being of the "they-self," is a fundamental structure of Dasein's being, what Heidegger refers to as an *existential*. It "belongs to Dasein's positive constitution" (BT 121). Authenticity is only a derivative mode, an *existentiell* mode, of our essential way of being as a "they-self." Heidegger explains, "Authentic Being-one's-self does not rest upon an exceptional condition of the subject, a condition that has been detached from the Anyone; *it is rather an existentiell modification of the Anyone—of the Anyone as an essential existential*" (BT 130, 122). See Charles Guignon, "Heidegger's 'Authenticity' Revisited, *Review of Metaphysics* 38 (1984) 329.

¹⁰ Vogel 38.

¹¹ Heidegger writes, "[T]he inauthenticity of Dasein does not signify a "lesser" being or a "lower" degree of being. Rather, inauthenticity can determine Dasein even in its fullest fullest concretion, when it is busy, excited, interested, and capable of pleasure" (BT 43, 40).

¹² I am paraphrasing Vogel's negative assessment of inauthenticity. See Vogel 13.

¹³ Vogel 45.

¹⁴ This is a charge that is leveled against Heidegger by many commentators including Frederick Olafson. See Olafson's *Heidegger and the Ground of Ethics: A Study of Mitsein*, (Cambridge: Cambridge UP, 1998). Again see Vogel's assessment of these charges, 50-54.

¹⁵ Vogel 50.

¹⁶ Heidegger explains that the meaning of the being of Dasein is temporality itself. "The being of Dasein finds its meaning in temporality. But temporality is at the same time the condition of the possibility of historicity as a temporal mode of being of Dasein itself"(BT 20, 17).

¹⁷ Vogel 54.

¹⁸ One of the difficulties about the use of the term *historicism* is that it does not become accepted until it reaches the end of its formative phase in the years after World War I. Herbert Schnädelbach, *Philosophy in Germany 1831-1933* (Cambridge: Cambridge UP, 1984), explains, "Although the term historicism may be traced back to very early in the nineteenth century, it first came into general use around the beginning of our own century; like many 'isms', it was first used to denounce—it signified something to be overcome, something which was in crisis, something outmoded." Walter Schulz further clarifies this definition. "Historicism is the comprehension of history as the fundamental principle in human knowledge and in the understanding of the human world. This means fundamentally—that all being can and must be understood in terms of 'historicity'. [It reveals] the radical breakdown of supra-temporal systems of norms and the increasing knowledge that we must understand ourselves as historical beings right to the inner core of our humanity." Cited in Carl Bambauch, *Heidegger, Dilthey, and the Crisis of Historicism* (Ithaca, NY: Cornell UP, 1995) 4.

¹⁹ Vogel 55.

²⁰ Guignon 322.

²¹ Guignon 336.

²² Vogel asserts that "Guignon's claim that the aim of the question of Being is to uncover enduring and trans-historical meaning, values, goals, and ideals that were present in a most primordial relation between Dasein and Being sounds too anti-historical and metaphysical, and does not accord with Heidegger's own criticism of the philosophical appeal to trans-historical foundations in ethics." Vogel 56-7.

²³ Of course Guignon's position can be defended by contending that Heidegger's foundational ontology is, quite simply, ethnocentric and is only concerned with the origins of Western history.

²⁴ Heidegger recognizes "negative" and "positive" modes of "solicitude" (*Fürsorge*), of encountering others ontically. In the negative mode, we are "deficient" in the sense of being "indifferent" to others, "passing one another by, not 'mattering' to one another . . ." (BT 129, 121). The positive mode has an "inauthentic" and an "authentic" dimension. The *inauthentic* dimension is revealed

when one “dominates” the other by controlling in advance which life-possibilities (goals, careers, projects, decisions, etc.) are to be significant for the other. “In such solicitude the Other can become one who is dominated and dependent, even if this domination is a tacit one and remains hidden from him (BT 122, 114). The *authentic* dimension is “liberating solicitude” which is revealed when we “free” the other so that she may choose her life, allowing her to become what she is. “[This kind of solicitude] pertains essentially to authentic care—that is, to the existence of the Other, not to a “what” with which he is concerned; it helps the Other to become transparent to himself in his care and to become *free for it*” (BT 122, 115).

²⁵ Vogel explains: “This kind of interpersonal relationship seems to be precisely what Heidegger describes under the name ‘liberating solicitude’ an orientation toward others ‘made possible by’ an authentic self-relation. We must explore the possibility that the individualizing power of anxiety—the mood that reveals the ultimate groundlessness of one’s own existence—does not thrust authentic Dasein ‘beyond good and evil’ but is the basis for a correlative mood that discloses the dignity of others in their struggles to ‘become who they are.’” Vogel 71.

²⁶ For Heidegger, ethics, like the other sciences, is an ontic endeavor because it is concerned with our relations and comportments with other beings (*Seiendes*) and overlooks the being (*Sein*) of beings. Heidegger explains. “Dasein’s ways of behavior, its capacities, powers, possibilities, and vicissitudes, have been studied with varying extent in philosophical psychology, in anthropology, ethics, and ‘political science’, in poetry, biography, and the writing of history, each in a different fashion. But the question remains whether these interpretations of Dasein have been carried through with primordial existentiality” (BT 16, 14).

²⁷ Vogel 105.

²⁸ I am arguing that the early and later writings do not constitute two different Heideggers. His later works never stray from the initial question of the disclosive understanding of being in and through which beings come out of concealment. Rather, his emphasis shifts from: (a) the existential analysis of the relation of the understanding of being to our own factual being to (b) the inner-movement of the understanding of being in general as it moves through different epochal stages in human history towards its eschatological endpoint in the technological age, when being falls into complete oblivion.

²⁹ Heidegger confirms, “*Technē* is a mode of *aletheuein*.” “The Question Concerning Technology,” *The Question Concerning Technology and Other Essays*, trans. W. Lovitt (New York: Harper and Row, 1977) 13.

³⁰ According to Heidegger, the Greek word for “bringing forth” is *poiesis*, and *poiesis* has two domains. The first is *physis*, the Greek word for “nature,” which is unaided “bringing forth.” The second is *technē*, that which “is brought forth [by human beings], by the artisan or artist.” (The

bringing forth of *physis* is *poiesis* in the “highest sense” and occurs independently of human beings.) See “The Question Concerning Technology” 10-11.

³¹ Consider Julian Young, *Heidegger's Later Philosophy* (Cambridge: Cambridge UP, 2000) 37-38.

³² See Heidegger, “The Question Concerning Technology,” 16, and “Building, Dwelling, Thinking,” in *Basic Writings*, ed. David Farrell Krell (Harper: San Francisco, 1977) 330

³³ Heidegger, “The Question Concerning Technology” 5, 19.

³⁴ Heidegger, “The Question Concerning Technology” 27.

³⁵ Heidegger, “The Essence of Truth,” in *Basic Writings* 135.

³⁶ Heidegger, “The Essence of Truth” 128-30.

³⁷ Yet, Heidegger wants to make it clear that truth and untruth are not mutually exclusive. Because any given horizon of disclosure allows beings to be revealed *as such* in one way while simultaneously concealing other ways of revealing, disclosive truth is also “untruth;” it is a revealing/concealing. Heidegger confirms: “Truth and untruth are, in essence, not irrelevant to one another but rather belong together.” “The Essence of Truth,” 130

³⁸ Heidegger, *Discourse on Thinking*, trans. John M. Anderson and E. Hans Freund (New York: Harper and Row, 1966) 55.

³⁹ Heidegger, “What are Poets For?” *Poetry, Language, and Thought*, trans. A. Hofstadter (New York: Harper and Row, 1971) 104-5.

⁴⁰ Heidegger, *Discourse on Thinking* 50.

⁴¹ Heidegger identifies three fundamental epochs in Western history. First was the Greek epoch, where beings were disclosed *as “physis,”* the primordial “bringing forth” of nature itself. Second was the epoch of the Middle Ages, where beings were disclosed *as “ens creatum,”* by God. Third was the Modern/Technological epoch where beings were disclosed *as “objects”* that could be “controlled and penetrated by calculation.” See “The Origin of a Work of Art,” in *Basic Writings* 201.

⁴² Heidegger, “Building, Dwelling, Thinking,” *Basic Writings* 328.

⁴³ Heidegger, “The Origin of a Work of Art,” *Basic Writings* 67.

⁴⁴ Heidegger, “The Essence of Truth” 130.

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Democratic Struggle: Tocqueville's Reconfiguration of Hegel's Master & Slave Dialectics

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True union, or love proper, exists only between living beings who are alike in power and thus in one another's eyes living beings from every point of view; in no respect is either dead for the other. This genuine love excludes all opposition.

Hegel, "Love"

Under democracy the state of servitude has nothing degrading because it is chosen freely and adopted temporarily, because public opinion does not stigmatize it, and because it does not create any permanent inequality between servant and master.

Tocqueville, *Of Democracy in America*¹

Introduction

The theme of "master and slave" was not Hegel's invention, although his name is now forever associated with it. What is unique about Hegel's approach is that he systematized what was already a common theme for his time. As a literary genre, the struggle between masters and servants had dominated the French eighteenth century plays. Notably, Marivaux and Beaumarchais had popularized this struggle in their works, in which, with a great deal of satire and comedy, the master is shown as entirely dependent on the servant. In fact, in every play of this genre, the master and the servant are driven by the plot to switch roles, often because the master is in some sort of trouble—love affairs, financial issues, religious matters—and the servant assumes the master's position, only for the duration of the play, in order to succeed where the master had failed. In Beaumarchais' *Le mariage de Figaro*, published a few years before the French revolution, Beaumarchais shows that the master, Monsieur Le Comte, needs his servant, Figaro, without whom he is lost. But in this case as in all others, not only are the roles reversed, but the master is always blind to his own dependency. Though Figaro is often tactful—because he lives under the constant threat of violence from Monsieur Le Comte—he sometimes criticizes his master for being oblivious to the true nature of their relationship. For instance, in Scene 5 of Act III, the climax of classical plays, Monsieur Le Comte

asks his servant how long it will take him to change his clothes. Figaro responds that “it will take some time.” Monsieur le Comte comments, impatiently, that “[d]omestics here...they take longer to get dressed than the masters.” Figaro replies: “[t]hat is because they don’t have servants to help them.”

These plays were all the more ironic because, by the end of the plot, the masters and the servants always went back to their previous roles, thus perpetuating the injustice and the exploitation. The servants’ redemption was only momentary, and useful to the masters, who conveniently forget the episode. The servants enjoyed knowing that they were more knowledgeable and perhaps even more intelligent than their masters who fully depended on them, and the masters enjoyed prosperous lives at the expense of their servants. Neither Beaumarchais nor Marivaux took this relationship any further.² They cleverly pointed out the absurdities without showing where this exhausted model would lead; Hegel, however, took the model of the relationship between master and servant to its unpleasant conclusion. Hegel’s famous master and slave dialectics underlines the fact that the relationship as such is untenable, exhaustible and already exhausted. The relationship leads nowhere but to more violence, as demonstrated by the uprisings of the French revolution. For Hegel, the conflictual relationships between masters and slaves, between the haves and the have-nots, between lordship and bondage, was just the beginning of a difficult and bumpy road. To be politically divided, to be at odds against one another, and even to have a fragmented self are nothing but different symptoms of a more fundamental problem: our incapacity to cope and to come to terms with our freedom. Or to be even more precise, as long as we do not understand ourselves, we are doomed to such struggles.

In this essay, I will propose that there are at least two different ways of coping with struggles: one is to eliminate them—and this is the way that Plato, Hegel, Marx and many others chose—and the other is to institutionalize them—this is Tocqueville’s democratic way, which others, today, are also adopting. I will first outline the main elements of Hegel’s approach, with a specific focus on the *Phenomenology of Spirit*. My goal is to emphasize that, for Hegel, the goal must be a reconciled *polis*, which can only happen if and when the history-long struggle between masters and slaves has ended. I will then turn to Tocqueville’s *Of Democracy in America*, which was published about thirty years after Hegel’s *Phenomenology*. Tocqueville is also aware of struggle between masters and slaves, but he prefers embracing democracy as a means of domesticating, and not eliminating once and for all, political strife.

Hegel: On Overcoming Struggle

In this first part, I will briefly retrace the Spirit’s road in the *Phenomenology of Spirit*. This road is marked by the Spirit’s struggle for recognition, reconciliation and freedom—goals that prove to be

remarkably difficult to achieve.³ In Hegel's view, the difficulty (contrary to Kant's assumption) lies in the fact that a theory of knowledge, an epistemology of the human mind, would not suffice in positing freedom and self-understanding. Hegel shares Kant's goal but believes that a clear picture of the categories of the mind falls short of our expectations because it begins with the end; it begins with the mind or Spirit, whereas for Hegel, the kind of awareness that Kant needed for his theory is the result of an arduous process. Or better yet, Spirit, if we were to give it a short working definition, is the *process* that leads to self-awareness and self-understanding. And to dismiss the arduous task of learning that Spirit must endure is to ask for the impossible, which is "the attainment of the end without the means. But the *length* of this path has to be endured, because, for one thing, each moment is necessary."⁴

More importantly, the very "habit of picture-taking"—Kant's way—is a bankrupt enterprise like any "formalistic thinking that argues back and forth in thoughts that have no actuality."⁵ That is to say, a thought that freezes and isolates the human mind in time, a thought that depicts its *a priori* qualities fails at understanding the reality or the "actuality" of Spirit as a temporal process. In fact, it would even be a mistake to read Hegel's Spirit (*Geist*) as just an individual human mind. Although Hegel's view encompasses mind, his "concept of spirit is roughly a view of people in the sociohistorical context as the real of subject of knowledge."⁶ Spirit depicts the unfolding of life—not just of the mind—in time and space. Hegel illustrates this in a key metaphor in the "Preface" of the *Phenomenology*:

The bud disappears in the bursting-forth of the blossom, and one might say that the former is refuted by the latter; similarly, when the fruit appears, the blossom is shown up in its turn as a false manifestation of the plant, and the fruit now emerges as the truth of it instead. These forms are not just distinguished from one another, they also supplant one another as mutually incompatible. Yet at the same time their fluid nature makes them moments of an organic unity in which they not only do not conflict, but in which each is necessary as the other; and this mutual necessity alone constitutes the life of the whole.⁷

If the goal of philosophy is to understand life through concepts, then we must first understand what a Concept is.⁸ From Plato's forms, to Descartes' essences, to Kant's formal categories, Hegel opposes *time* as the fundamental Concept. If there is a sub-stance to reality, if reality stands over anything, it is time. And because time is the antithesis of permanence, much of traditional metaphysics becomes questionable. In this instance, we must see that the fruit in itself is no concept; in fact it is nothing in itself. Those who see the fruit as an "abstract lifeless unity cannot cope with [the] sheer unrest of life."⁹ A fruit is only a moment in the process that is constantly self-negating and self-refuting. To put it in more technical terms, a fruit is only a temporal phenomenon, not a

noumenon. The task of philosophy should consequently no longer be “labeling all that is in heaven and earth ... pigeonholing everything,” or depicting life in a style of “painting that is absolutely monochromatic.”¹⁰ Or as Findlay says, “it is senseless to talk of an ‘absolute’ or ‘objective’ reality without connecting it with the procedures through which such a reality could be established as real by us.”¹¹

Even though Hegel is overcoming philosophy’s traditional metaphysics, there is of course something very Platonic in his mission statement. Recall that the ultimate task of Plato’s guardians was to learn dialectics, which is also a Hegelian term. What the dialectics of Plato and Hegel have in common is their dedication to understanding difference. After years of education, Plato considered the main task of the philosophers not to understand this or that form but rather to appreciate what makes any form what it is and how it is different from all others.¹² Resisting the Parmenidean Oneness of Being, Plato philosophized about the space between forms; he analyzed the “not” as much as the “is.” This is why, as Hegel put it, philosophy’s true focus should not be on a phenomenon or an “accident as such, detached from what circumscribes it, [but as] what is bound and is actually only in its context with others, [and more importantly on how it attains] an existence of its own and a separate freedom—this is the tremendous power of the negative.”¹³ Plato and Hegel translated this task in a poignant metaphor: to do philosophy is to learn to die, to know how to face negation—a task that we traditionally resist. For Hegel, negation was understood in terms of time—we must learn that each moment is the death or the negation of a previous one, itself on its way to being negated. If we learn to accept this fundamental contingency of life we could perhaps learn to accept that the “life of the Spirit is not the life that shrinks from death and keeps itself untouched by devastation, but rather the life that endures it and maintains itself in it.”¹⁴ Let me add that although the main difference between Plato and Hegel’s dialectics resides in Hegel’s appreciation of time as the fundamental differential concept of negation, they both agree that the just state is a reconciled state; a state that is free of strife, of conflicts¹⁵—a thought that Tocqueville and proponents of radical democracy will challenge.

Having grounded his thought in a dialectics of time through negation in the “Preface,” Hegel proceeds to retrace the steps of the development of Spirit. It would be impossible and unjust even to summarize the *Phenomenology* in its entirety in such a short space. For the purposes of this essay, I will focus on three important steps of Hegel’s narrative: Spirit before socialization, i.e., consciousness, Spirit in social struggle in the case of the master/slave dialectics, and finally Spirit in reconciliation with absolute knowledge at the end of history.

Hegel begins with consciousness in its most primitive element: the “here and the now.” Spirit finds itself dwelling in the natural world, in the “immediacy of my *seeing, hearing* and so on.”¹⁶ Consciousness is then nothing but a bundle of untreated and unreflected sense perceptions. But as naive as consciousness is, as unaware of itself and of time as it is, it soon realizes that the “now” is

never what it seems to be. For instance, even if “now” is the evening, shortly “now” will be night. “To say anything *more* about what confronts us in Sense-awareness is at once to pass beyond it, to dissolve it into a series of concepts or universals” (Findlay 88). In other words, consciousness’s naïveté cannot persist in the light of change; it cannot be satisfied with the “now” which always escapes it. Even if consciousness were to refuse to see the “power of negation” in the world, the latter is nothing but a performance of negation, in its simplest form:

Even the animals are not shut out from this wisdom, but, on the contrary, show themselves to be most profoundly initiated into it; for they do not just stand idly in front of sensuous things as if these possessed intrinsic being, but, despairing of their reality, and completely assured of their nothingness, they fall to without ceremony and eat them up.¹⁷

Following the animals’ lead, consciousness learns that senses give us no access to the real—sensed objects have no “intrinsic being,” and they are many things and nothing at the same time.¹⁸ As Jean Hyppolite puts it, each of these objects “vanishes in the other, and this movement of vanishing is the only reality of forces that has sensuous objectivity.”¹⁹ Put in Hegelian jargon, an object is nothing “in-itself”; it possesses no reality. It is only at the disposal of consciousness, which alone exists “for-itself,” meaning that it alone is aware of itself.

By appreciating the deception of the natural world and consciousness’ power of bestially annihilating it, consciousness embarks on an exploitative journey: it understands a “native” truth about itself²⁰—it becomes conscious of its superiority as a for-itself, hence becoming self-consciousness. The world becomes its playground, the scene in which it tries to satisfy itself. What consciousness *desires* in the world of objects, of objectivity, is finding its own place. “The end point of desire is not, as one might think superficially, the sensuous object—that is only the means—but the unity of the I with itself. Self-consciousness is desire, but what it desires, although it does not know this explicitly, is itself: it desires its own desire.”²¹ Running the risk of oversimplifying Hegel’s thought, one could say that consciousness in its previous stage was a child discovering the world and that at this further level of maturity, it finds itself desiring the world and all its objects much like a young adult or teenager. It fails to see that what it needs is truly to understand its place and itself in the world. This selfish desire for understanding and recognition cannot be satisfied because objects do not have the capacity for reciprocity—objects do not provide self-consciousness with the “gratification” that it desires.²² Ultimately, Hegel warns us, “*Self-consciousness achieves its satisfaction only in another self-consciousness.*”²³

But as mentioned before, Spirit must learn this truth by itself. Unsatisfied with the natural world, it turns to the social world, where there are other self-consciousnesses, which it treats like a natural object. Spirit has not learned to cope with the *Other* self-consciousness’s freedom and

subjectivity. So when two self-consciousnesses meet, they have much to learn about each other. “Each is indeed certain of its own self, but not of the other.”²⁴ Because Spirit, so far in its natural solitude, has only dealt with objects, in the most destructive fashion, it treats the other in the same way: each self-consciousness seeks the death of the other one. However, as Hegel points out, this “trial by death does away with the truth which it was supposed to issue from it, and so, too, the certainty of self-generally.”²⁵ And it is indeed death, or fear of death, that will separate the two consciousnesses: the one who fears death most surrenders and reduces itself to the object status—it becomes the slave. The master is the consciousness who feared death least and now can own the other self-consciousness the way he owned the world beforehand.

From the beginning, however, this relationship is doomed to failure. Each sought an “adequate mirror” to better understand himself, but instead preferred, especially in the case of the master, to create and reinforce his own image by force.²⁶ The master, who apparently won the battle, has not achieved his goals of (a) recognition, since the relationship is “one-sided and unequal”²⁷ and (b) independence, since now his slave works for him. Pure physical survival has not satisfied the master:

Unlike animals, men desire not only to preserve in their being, to exist the way they exist; they also imperiously desire to be recognized as self-consciousness, as something raised above pure animal life. And this passion to be recognized requires, in turn, the recognition of the other self-consciousness.²⁸

So we could say that it has not satisfied the slave, either. In fact, in the long run, the slave is the winner. Forced to labor for his master, he rediscovers the truth about the negation of the world. He realizes that “it is precisely in his work wherein he seemed to have only an alienated existence that he acquires a mind of his own.”²⁹ The roles are reversed: the master needs the slave because he depends on the slave and the slave now has a higher consciousness because he masters negation; he has a “mind of his own.”³⁰

This unsatisfactory relationship is nothing but the beginning for Spirit. Having begun on this false-premise of domination, of mastering others like natural objects, Spirit continues its path, seeking self-understanding and recognition, without learning to accept the other’s subjectivity and freedom. Every step or moment of its development is marked by a self-refutation—much like the original metaphor of the bud—that leads it to a higher level of self-consciousness. The key, of course, is not to deny or resist these moments of negation. On the contrary, Spirit fails at every step because it still refuses to see the fundamental role of time and negation. Even when it turns itself to family life, the ethical life or the political life, Spirit still wants to drink “from the cup of substance.”³¹ Refusing to see the contradictions of its various positions, Spirit pursues the logic of domination to

its extreme—which Hegel saw in the “Terreur” following the French revolution. Hoping to avoid its own death, Spirit dwells in negation and dictates the death of others, which is: “the coldest and the meanest deaths, with no more significance than cutting off a head of cabbage or swallowing a mouthful of water.”³²

Before beginning the section of the master and slave dialectics, Hegel had announced that this is the “turning-point” in the history and the story of Spirit.³³ But this is the turning point that Spirit missed, or rather misunderstood. From its first instant of socialization, Spirit failed to achieve its goal of self-understanding. It saw itself as a free being but could not engage others in their freedom; it instead preferred a history-long struggle in an unsuccessful search for self-affirmation. In 1807, as Hegel was finishing the *Phenomenology*, the world had not overcome its violent desires. The French revolution had given birth to the *Terreur* which in turn gave birth to Napoleon. Germany was fundamentally divided and even France, as we know now, went through more turmoil. More wars and struggles, more exploitations and violence followed Hegel’s *Phenomenology*. Very much like in the *Phenomenology*, we still operate within the master and slave paradigm—we seek mastership. Without changing the direction of our path, we instead intensify the degree of violence with each epoch. Again, as in the *Phenomenology*, we exhaust our resources in strife only to find newer and more powerful ways to keep the struggle alive. As I am writing these words, the United States has conquered Iraq, trying to affirm its identity through violence and domination. The outcome was easily predictable: America won the war and now owns Iraq, only to find itself once again unsatisfied, with more enemies and more to fear. In other words, the self-destructive pattern of “trial by death” and seeking identity through violence has clearly not ended, but Hegel hoped that we would realize its futility. He thought that we should see this exhaustion as a symptom and accept that we should move into a “new era.”³⁴

Having described this essential failure, all the way to Kant’s philosophy, which lacks “an actual existence,”³⁵ Hegel begins to prescribe. His prescription is to change the course of history, or perhaps even to end history as we know it. As Kojève put it:

Man was born and history began with the first Fight that ended in the appearance of a Master and a Slave. That is to say that Man—at his origin—is always either Master or Slave; and that true Man can exist only where there is a Master *and* a Slave.... And universal history, the history of the interaction between men and of their interaction with Nature, is the history of the interaction between warlike Masters and working Slaves. Consequently, *History stops at the moment when the difference, the opposition, between Master and Slave disappears*: at the moment when the Master will cease to be Master, because he will no longer have a slave; and the Slave will cease to be Slave because he will no longer have a Master (although the Slave will not become the Master in turn, since he will have no Slave).³⁶

That was precisely Hegel's—and Marx's—goal: to end the pattern of struggle. At the “turning point,” Hegel had warned us that only when consciousness becomes Spirit, only when it learns to be “an absolute substance which is the unity of the different independent self-consciousnesses which, in their opposition, enjoy perfect freedom and independence” could the violence and struggle end.³⁷ In other words, consciousness becomes a Spirit when it learns to find its freedom in *association* with others, instead of asserting it in a struggle against them. Only when the master and the slave become aware of the futility of their wars, they can finally “let go of their antithetical existence ... in a reconciling *Yes*.”³⁸ The goal for Hegel is therefore a community of affirmation, a political community in which struggle is eliminated. This is no commonplace political community. History is so far marked by failed politics in the Hegelian sense where true politics is the absence of struggle. This reconciled community, according to Hegel, is one that has “absolute knowledge.”

This is the point—the possibility of reconciliation through absolute knowledge—where Hegel and Tocqueville take fundamentally different roads. Whereas Tocqueville would agree that history is marked by violent struggles, he would not advocate a political philosophy that is reconciled through rationality and knowledge. For Hegel, Spirit's lack of success in understanding itself and its violent upshots are avoidable; a Spirit that knows itself would be at peace with itself and others. Our multiple failed efforts at mastering the other's freedom teach us about the impossibility of this task and the irreducibility of another human freedom. To know this *limit* means, for Hegel, having an absolute knowledge, which is often misunderstood as eternal knowledge. It is instead the knowledge of one's finitude.

The political implementation of absolute knowledge moves Hegel closer to social contract theorists.³⁹ Much like Rousseau,⁴⁰ Hegel advocates freedom through political belongingness and participation. In this sense, Hegel's community is similar to Rousseau's and Locke's inasmuch as it requires voluntarism. But in its form Hegel differs from most social contract theorists since he advocates monarchy.⁴¹ Even though every member of the Hegelian community rationally participates in the political community, given that absolute knowledge means the recognition of one's limits, Hegel does not espouse radical equality. The recognition of one's limits translates, for most citizens, as their inability all to be kings—only a few can embody rationality at the fullest. Hence the need, *contra* Rousseau and Locke, for monarchy.

But my goal here is not to focus on the *form* of Hegel's proposed state. What matters is his philosophical position according to which the best state is one where, like in love, we are one with each other. This unity excludes opposition, struggle and unavoidably, dissent! So it should be no surprise that by the end, Hegel's politics looks totalitarian; he knows that to eliminate political struggles, and for individuals to enjoy their freedoms in the most rational sense, to have true unity, individual wills must be in line with the will of the state. As he put it:

Plato in the *Republic* makes everything dependent on the government and makes disposition into a principle, which is why he places the main emphasis on education. This is completely at variance with modern theory, which leaves everything to the individual will. But this [modern conception] gives no guarantee that the will in question will also have the right disposition compatible with the state's continued existence.⁴²

In other words, we cannot revert back to Plato's total control, nor can we leave the people to themselves. This is where Hegel is trapped and his proposed enlightened monarchy becomes "literally a reactionary" solution.⁴³ That, in my view, is due to the fact that he—like Marx—tried to eliminate conflict, rather than to cope with it.

Tocqueville: On Democratizing Struggles

Tocqueville's *Of Democracy in America* was published in 1835, three decades after Hegel's *Phenomenology*, but a world of historical events separates them. Whereas Hegel knew of Napoleon in his glorious days, Tocqueville had witnessed the fall of the Emperor, the debacle of the Empire, the return to the Monarchy, to Republicanism and back again to Napoleonism. Understandably, Tocqueville was less optimistic about politics and the rationality of the governors as well as that of the governed.⁴⁴ The guillotine had claimed the lives of a few members of his family and his birth no longer guaranteed political success; his family longed for a restoration of the old ways. Even though he will part from his aristocratic heritage to a certain extent, we must not forget that, contrary to Hegel, Tocqueville "was born into a tight cocoon of aristocratic reaction. He remained all his life an aristocrat, as he phrased it, 'by instinct,' and the most intimate of his lifelong friends were fellow nobles."⁴⁵ He had much to gain in maintaining the gap that separated his kind from the many, in calling for the reconciliation of the classes and in restoring a Hegelian monarchy, but his voyage to America convinced him once and for all that the age of aristocracy was over. "An aristocracy, in order to last," he came to admit, "needs to found inequality in principle" while democracy is the promise of equality.⁴⁶ More importantly, beyond democracy's egalitarianism, he realized that democracy's philosophical originality lies elsewhere. "It has demonstrated to me that those who regard universal suffrage as a guarantee of the goodness of choices make a complete illusion for themselves. Universal suffrage has other advantages, but not that one."⁴⁷ In other words, democracy operates against the entire philosophical tradition that founds politics in the good, in the rational. Political philosophers of course knew that and rejected democracy for this very reason. Tocqueville's approach is therefore unique because he embraces democracy despite this weakness. I will try to show what these "other advantages" are, especially in the case of violence. But I must once again

emphasize that it is not the opposition of the two *forms* of government—Tocqueville’s democracy vs. Hegel’s enlightened monarchy—that I find particularly enlightening. I am more interested in their different philosophical foundations. With Tocqueville, politics is no longer grounded in the rational participation of citizens; nor are struggles forever resolved through a philosophical reconciliation. Instead, Tocqueville values democracy’s inclusiveness and its domestication of conflicts through law. I must first say a few words about Tocqueville’s general argument in *Of Democracy in America*.

His masterpiece began as a kind of travel diary, which he turned into a book for his fellow friends, the Aristocrats. It was only the wide and unexpected success that encouraged the young author to write a second volume, which was somewhat different in tone to the point that some argued that the two volumes present two different democracies.⁴⁸ One does not need to go that far, but it is true that Tocqueville’s main audience was initially the potential and actual legislators—the few, the aristocrats, his friends—and he wrote to remind them of the importance of democracy as a “duty imposed on those who direct society.”⁴⁹ In a tone much like Marx’s in the *Communist Manifesto*, Tocqueville told his friends that

A great democratic revolution is taking place among us: all see it, but all do not judge it in the same manner. Some consider it a new thing, and taking it for an accident, they still hope to be able to stop it; whereas others judge it irresistible because to them it seems the most continuous, the oldest, and the most permanent fact known in history.⁵⁰

Marx (and Hegel) had of course also seen the growing opposition between the masses and nobility, and Marx thought that the conflict would become unbearable and exhausted to the point that—through a revolution—the masses would take over and create a harmonious society. In a sense, Marx was right that the specter of the masses was haunting the bourgeoisie—Tocqueville and his kind. But he was wrong in thinking that all the elite would take it “for an accident.” Tocqueville belonged to the second category that reluctantly accepted democracy as “the most permanent fact known in history.” For him, democracy meant the growing “equality of conditions.” This is not—at least not at first—material equality.⁵¹ It represents political equality; thanks to the democratic revolution, natural political privilege was slowly abolished. But even though Tocqueville accepts the democratic revolution, he confesses that it gives him a “sort of religious terror.”⁵² In the face of democracy, he felt a genuine “sense of dislocation and loss,” but he also knew that the trouble was long in the making.⁵³ “When one runs through the pages of our history,” he remarked, “one finds so to speak no great events in seven hundred years that have not turned to the profit of equality....The noble has fallen on the social ladder, and the commoner has risen; the one descends, the other climbs. Each half century brings them nearer, and soon they are going to touch.”⁵⁴ Tocqueville’s merit, in my view, is that he not only acknowledged that the gap which separated the few from the many was

gradually disappearing but that he insisted that “all those in the centuries we are now entering who try to base freedom on privilege and aristocracy will fail.”⁵⁵ He admittedly retains, especially in Book I, a certain paternalist tone:

The most powerful, most intelligent, and most moral classes of the nation have not sought to take hold of [democracy] so as to direct it. Democracy has therefore been abandoned to its savage instincts; it has grown up like those children who, deprived of paternal care, rear themselves in the streets of our towns and know only society’s vices and miseries.⁵⁶

But his remedy, as we will see, is far from the Platonic model of recreating a society based on rational ideals. Given its savage instincts, he certainly wished to “instruct democracy, if possible to reanimate its beliefs, to purify its mores, to regulate its movements, to substitute little by little the science of affairs for its inexperience, and knowledge of its true interests for its blind instincts.”⁵⁷ But living after the French revolution and the *Terreur*, he could not find a philosophical position from which to shape the citizens. The very ideal of the philosopher educator molding the masses from on high had become impossible for at least two reasons. First, Tocqueville had witnessed the difficulties and the undesirability of social engineering. Second, he knew that “the natural instincts of democracy bring the people to keep distinguished men away from power, an instinct no less strong brings the latter to distance themselves from a political career” and that “it is impossible, whatever one does, to raise the enlightenment of the people above a certain level.”⁵⁸ In sum, he had given up on “philosophers as kings” and on “prescribing some ideal form of government for the world.”⁵⁹ His prescription will not be spectacular, nor will it guarantee perfection; it will strive for justice for the majority, reducing conflicts and encouraging citizens’ political participation.

Any political regime requires a few favorable factors for its success. Tocqueville listed, in order of importance, three “causes tending to the maintenance of democracy”: accidental causes, such as historical epochs or geographical locations, good laws and finally healthy habits and mores.⁶⁰ The first cause is apolitical since we have very little control over it. Good laws are certainly important, and they were the focus of Plato, Hegel, Machiavelli, Montesquieu and Rousseau, but Tocqueville focuses on mores and habits as the ultimate foundation of democratic success. And the right habit in a democracy means believing in accepting and embracing autonomy. After all—and this is in Tocqueville’s view democracy’s greatest advantage in the case of violence—because citizens produce their own however imperfect laws, because laws are their very own creation, citizens in a democracy are compelled to obey them without force. So those who focus on creating good laws alone will sooner or later need to enforce them on the unwilling body politic. This is not to say that democratic citizens are more rational or that they believe in the perfection of their own laws. Quite to the contrary, they submit to the law “in the first place as an evil that is imposed by themselves,”

and more importantly, “as a passing evil.”⁶¹ They know that they can change the legislators and the laws and, in the meantime, accept the majority’s decisions. This transfer of the origin of legislation from the Aristocrats to the masses already reduces traditional political violence to a great extent. Philosopher Kings needed ruses—such as the “noble lie” or even violence in the case of Hegel—to impose what they knew to be better laws. This is no longer a structural necessity in a democracy. The obvious disadvantage of democracy is that it may make bad laws. In fact Tocqueville lamented the masses’ lack of enlightenment and the potential tyranny of the majority. “The majority being the sole power that is important to please,” Tocqueville noticed,

Moralists and philosophers [and certainly career politicians] are not obligated to wrap their opinions in veils of allegory; but before hazarding a distressing truth, they say: We know that we are speaking to a people too much above human weaknesses not to remain always master of itself. We would not use language like this if we did not address men whose virtues and enlightenment rendered them alone among all others worthy of remaining free.⁶²

Such demagogical tactics would not have worked with the old aristocracy. Whereas the democratic masses can be seduced, Tocqueville believed that “an aristocratic body is too numerous to be captured, [and] too small in number to yield readily to the intoxication of unreflective passions. An aristocratic body is a firm and enlightened man who does not die.”⁶³ But that is pure nostalgia, and Tocqueville knows it. Despite all the dangers, violence is reduced in a democracy because citizens operate within the boundaries of the law. This is well illustrated in the master and servant relationship. Against Hegel who thought that only a perfect state can eliminate political conflicts, Tocqueville shows that the imperfect and unavoidable state of democracy can do as much.

In the age of democracy, masters and servants are, according to Tocqueville, brought closer to each other. Almost by the end of Book II—in chapter V of Part 3, entirely dedicated to the topic—Tocqueville tells us that “we have never seen in history a society in which equality reigned as much [as in America] and therefore no society which was free of masters and slaves.”⁶⁴ Of course, Tocqueville realizes that there are different classes and different degrees of wealth in America. But what interests him primarily is how the relationship between the two is “policed” by democracy. Democracy’s promise of equality has spread even to such traditional relationships.

When conditions are equal, men constantly change place; there is still a class of valets and a class of masters; but it is not always the same individuals, and above all not the same families, that compose them; and there is no more perpetuity in command than in obedience...at each instant the servant can become a master and aspire to become one; the servant is therefore *not another man* than the master.⁶⁵

Whereas in Aristocratic societies “the poor man is domesticated from childhood,”⁶⁶ in a democracy, where superiority by birth is abandoned, domestics no longer consider themselves in strife with the master. On the contrary, the two live “contractually,” and, as a “race,” the old-fashioned relationship is abolished. Because masters and servants have, politically speaking, the same weight, the servants consider themselves equal to their masters in a fundamental way.⁶⁷ Perhaps more importantly, the servants believe that in the future, their children, if not themselves, could become masters through work. Since there is no natural difference between the two, and because the two classes get closer by the day, in Tocqueville’s view, the struggles between masters and servants have been tamed. The former do not exploit the latter through violence anymore, and it is only a free contractual agreement that connects the two parties. The sheer absence of violence in their relationship—which has been replaced by laws and contracts—makes the relation of subordination less cruel and no longer permanent. In contrast, in Aristocracies, “The master...often exercises even without his knowing it a prodigious dominion over the opinions, habits, and mores of those who obey him, and his influence extends much further than his authority.”⁶⁸

This is a very honest confession for an Aristocrat. In sum, given that masters and servants are no longer ontologically different thanks to the democratic revolution and given the fluidity of democratic life, the two are much closer to each other—even physically—and thus exploitation is minimized. Their relative position is purely temporal and could be reversed in the next generation.⁶⁹

There is of course a certain naïveté in Tocqueville’s assessment, to which I will come back in the conclusion. But he also recognized that his theory applies only to the northern states, because in the South masters still owned slaves and controlled them through violence. In the north, where it is believed that there is no “natural inferiority,”⁷⁰ relationships are regulated and fall under the law that the citizens—masters *and* servants—chose and therefore respect and follow.

But in his typical nostalgic pattern, as soon as Tocqueville recognizes the value of democracy, he reminds the readers of the lost advantages of the old aristocracy. In the case of the master/servant relationship, aristocracy was superior to democracy in producing art, literature and philosophy. Tocqueville insists that the Southern man, because he has a slave, is more educated and has developed his mind much more:

In Southern states the most pressing needs of man are always satisfied. Thus the American of the South is not preoccupied by material needs of life; someone else takes charge of thinking of them for him. Free on this point, his imagination is directed toward other greater objects...[he] loves greatness, luxury, glory, noise, pleasures, above all idleness.... [In contrast, the Northern man] since childhood has been occupied with combating misery, and he learns to place ease above all enjoyments of mind and heart. Concentrated on the small

details of life, his imagination is extinguished, his ideas are less numerous and more general, but they become more practical, more clear and more precise.⁷¹

With democracy, “genius becomes rarer and enlightenment becomes more common. The human mind is developed by the combined small efforts of all men, and not by the powerful impulses of some of them.”⁷² But there is perhaps a lesson in this loss: bringing modesty to politics and striving for justice for the majority. Tocqueville’s politics lacks the grandeur of Hegel’s; the Tocquevillian “general will” is not always right; in fact it often errs. But this may be the price that we have to pay and the danger that we must face after the democratic revolution. This is why Tocqueville confessed that democracy left him with both hope and fear.⁷³ The fear is quite understandable, for we all know that democracy makes great mistakes.

To counter this tendency he hoped for a “new aristocracy.” His nostalgia becomes finally productive: “I shall admit without difficulty that in a period of equality like ours it would be unjust and unreasonable to institute hereditary officials,” for that is no longer acceptable. But nothing prevents their substitution with “aristocratic people.”⁷⁴ Not a new class of old aristocrats, but a new kind of active republican citizen, dedicated to the welfare of all—“there is no question of reconstructing an aristocratic society, but of making freedom issue from the bosom of the democratic society.”⁷⁵

In his view, old-fashioned aristocracy represented a certain guarantee of freedom vis-à-vis the Kings, but only for their own interests. Moreover, old aristocracy was in power thanks to violence and inequality—it was the “daughter of conquest.”⁷⁶ What is required in democratic regimes is securing the boundaries of freedom in order to prevent democracy from harming itself and its citizens. So the task of enlightening the masses that Tocqueville mentioned in the “Introduction” of his work is becoming clearer. Without having an elite that guides society despite itself, Tocqueville calls for a new citizenry that is non-exploitive, non-violent. He calls for a citizen body that is truly autonomous.

He knew that philosophers always sought “to make great things with men [but] I should want them to think a little more of making great men.”⁷⁷ Such great men, without a class or hereditary rights, are the ones who set the example without recourse to violence. They do not eliminate political differences and struggles but domesticate them. Here he has the kinds of Jefferson and Madison in mind, who institutionalized and encouraged political competition. So we can see that in a way Tocqueville shares Hegel’s goal of reducing conflict, of bringing people closer to each other. But contrary to Hegel, his *polis* is imperfect. It is never fully reconciled and it does not embody rational or philosophical beauty. “I let my regard wander over the innumerable crowd composed of similar beings,” Tocqueville wrote in the concluding lines of his work, “in which nothing is elevated and nothing lowered. The spectacle of this universal uniformity saddens and

chills me, and I am tempted to regret the society that is no longer.” But that is “born [from] my weakness,” he acknowledges, for “equality is perhaps less elevated but it is more just and its justice makes for its greatness and its beauty.”⁷⁸

Conclusion

I find Hegel’s analysis quite brilliant; his paradigm sheds a fascinating light on history as driven by struggle, and it seems that we are still operating within his framework. As globalization and capitalism progress everyday, the struggle between the haves and the have-nots, the conflict between the new masters and the new slaves spreads and grows in violence. With that in mind, Tocqueville’s position seems a bit naïve. After all, according to him we are political children of the democratic revolution but the Hegelian struggle has not been tamed. So should we be Hegelian or Tocquevillian?

I believe that we can no longer be Hegelian, because of Hegel’s emphasis on epistemologically and philosophically grounding politics. Politics as the embodiment of an ideal seems impossible for we who value pluralism, diversity and perspectivalism—for we who live after the democratic revolution and after the totalitarian experiences of the twentieth century. Equally important, from a philosophical perspective, such a state would neutralize the general population, who become pawns or puzzle pieces for a greater cause that only the very few enlightened can see. We value the spread of political autonomy, not its opposite.

But even though it seems that we are closer to Tocqueville, I do not believe that we can entirely be Tocquevillian, either. His predictions regarding the growth and the spread of equality have proven to be inaccurate. In the case of the master and the servant relationship, it is true that violence between masters and servants, between the bourgeoisie and the workers, has been somewhat reduced, but this was no easy task. It was the fruit of extremely difficult and sometimes violent negotiations, starting in the late-nineteenth century. Furthermore, workers in industrialized countries—especially in America—do not vote for laws that are favorable to their cause. Tocqueville was aware of demagoguery, but he fully neglected ideological blindfolds. Employers convince American workers that labor laws hurt them; unions are increasingly maligned and isolated; the wealth and power gap seems to grow by the day. Tocqueville believed that in America, a servant’s child could be a master and vice versa. Even though such myths are very much still part of the “American dream” and that it is true that there is a greater degree of flexibility in America than in many other countries, it is simply not the case that the children of workers will—by working hard—one day become owners. Finally, we should not forget that the relative amelioration of the workers’ conditions in industrialized countries is due to colonialism and now to globalization—Asian sweatshops do not seem to have benefited from the age of democracy yet.⁷⁹

Despite these criticisms, I do believe that Tocqueville is worth our attention. His work lacks the precision and the clarity of a political platform, and thus cannot be appropriated as a whole. Conservatives and progressives alike regularly quote him and his writing lends itself to such large uses. In my case, I find him particularly helpful once positioned along with “radical democrats.” Against the liberal vs. communitarian dilemma, radical democrats propose that we change the political equation altogether. Thinkers such as Claude Lefort, Ernesto Laclau and Chantal Mouffe no longer think of political agency in terms of individuals or communities—neither category alone can account for our current historical problems. They instead embrace a much more fragmented view of society; or better yet, for them the very ideal of “society is impossible.” They have given up on the necessity of an Archimedean (or Hegelian) perspective and believe that a society is the result of a contingent and temporary balance of opposing forces. In other words, they believe that no society is ever reconciled because different interests—that of the workers and the owners, for instance—are in nature incompatible. Their differences are not rationally eradicable. The very idea of democracy—which they consider as radical in the sense that it is never fully determined—is to provide a political and legal terrain for these unavoidable struggles. I cannot here even begin to give a fair account of their work,⁸⁰ but I hope that this essay shows that Tocqueville’s analysis reinforces their position. *Contra* Hegel, radical democrats agree with Tocqueville that democracy does not, cannot and should not eliminate conflicts. They also agree with Tocqueville that democracy’s potential is far from being exhausted. We ought to use democracy and its means to fight oppression and not wait for an impossible national or even international unity that would end all struggles. Struggles, differences of interests, and political conflicts never end; but they can be more peacefully and perhaps more effectively fought in a democracy.⁸¹

Notes

¹ Translation slightly modified.

² For a more complete analysis of this genre, see Sarah Mazza, *Servants and masters in eighteenth-century France: the uses of loyalty* (Princeton: Princeton UP, 1983).

³ On the notion of “difficulty” in Hegel’s narrative, see J.N. Findlay, *Hegel: A Re-Examination* (New York: Collier Books, 1958) 81-82.

⁴ Hegel, *Phenomenology of Spirit* trans. A.V. Miller, (Oxford: Oxford UP, 1977) ¶29. How one understands the concept of “necessity” here shapes one’s understanding and appreciation of Hegel’s work. If the necessity is teleological—i.e., if the necessity is part of a preordained harmony—then Spirit is determined and the difficulties that it faces are theatrical; they are necessary for the performance of Spirit, but the goal is already fixed. But if we understand necessity historically, then it takes a different and more free form. To put it in terms of one’s life-story or narrative, necessary moments are what make us who we are. The person that I have become is the end of a process of necessary moments, such as being born in a specific country, in a specific epoch, speaking a certain language, going to a university, etc. To write about Hegel in English, it was *necessary* for me to know English, to have studied Hegel, etc.

⁵ Hegel, *Phenomenology* ¶58.

⁶ Tom Rockmore, *Cognition: An Introduction to Hegel’s Phenomenology of Spirit* (Berkeley: University of California Press, 1997) 4.

⁷ Hegel, *Phenomenology* ¶2.

⁸ I here substitute “Concept” for “Notion” in Miller’s translation. I am grateful to my friend Shannon Mussett for pointing out that the German word “Begriff” is better translated as Concept. See also Jean Hyppolite, *Genesis and Structure of Hegel’s Phenomenology of Spirit* (Evanston: Northwestern UP, 1974) 33-34.

⁹ Hegel, *Phenomenology* ¶46.

¹⁰ Hegel, *Phenomenology* ¶51.

¹¹ J.N. Findlay, *Hegel: A Re-Examination* (New York: Collier Books, 1958) 85.

¹² This concept of the dialectic as understanding difference was already present in the *Republic*. But it is even taken furthering the *Sophist* where difference or negation is considered as one of the fundamental forms.

¹³ Hegel, *Phenomenology* ¶32.

¹⁴ Hegel, *Phenomenology* ¶32.

¹⁵ I realize that the differences between Hegel and Plato are far greater. A crucial difference that I have neglected to address is the origin of knowledge. For Hegel, one begins with the sensuous world, the world of objects. As Rockmore puts it, “the starting point lies in experience, or the so-

called world of appearance, which we only surpass to explain what is given in experience, but that cannot be explained within it” (52). By bringing Hegel and Plato closer to each other, I do not wish to collapse such important metaphysical differences. But from a political perspective, Hegel is Platonist in so far that he values a harmonious state.

¹⁶ Hegel, *Phenomenology* ¶101.

¹⁷ Hegel, *Phenomenology* ¶109. For more regarding the role of animals in Hegel’s *Phenomenology*, see Marc Peterson, “Animals Eating Empiricists: Assimilation and Subjectivity in Hegel’s Philosophy of Nature,” *The Owl of Minerva*, Vol. 23.1 (Fall 1991) 49-62.

¹⁸ Hegel’s very simple example is “salt [which] is a simple here, and at the same time manifold; it is white and *also* tart, *also* cubical in shape,” etc. (*Phenomenology* ¶113). Sensual objects are always other things, and they are nothing enduring in themselves.

¹⁹ Hyppolite 124.

²⁰ Hegel, *Phenomenology* ¶167.

²¹ Hyppolite 160.

²² Hegel, *Phenomenology* ¶175.

²³ Hegel, *Phenomenology* ¶175.

²⁴ Hegel, *Phenomenology* ¶186.

²⁵ Hegel, *Phenomenology* ¶188.

²⁶ Findlay 94.

²⁷ Hegel, *Phenomenology* ¶191.

²⁸ Hyppolite 169.

²⁹ Hegel, *Phenomenology* ¶196.

³⁰ This is of course the crucial point for Marx, who saw the master and slave struggle as a symbol of the struggle between the bourgeoisie and the proletariat. The latter, like the slave, made the bourgeoisie depend on its workforce. More importantly, in Marx’s view, the workers too have a mind of their own; they understand the dialectical nature of the world better than their masters. As Kojève puts it, “it is the Slave, and only he, who can realize a progress, who can go beyond the given and—in particular—the given that he himself is”, in *Introduction to the Reading of Hegel* (Cornell: Cornell UP, 1980) 50. See also John Russon’s *The Self and Its Body in Hegel’s Phenomenology of Spirit* (Toronto: Toronto UP, 1997) 61-72.

³¹ Hegel, *Phenomenology* ¶467.

³² Hegel, *Phenomenology* ¶590.

³³ Hegel, *Phenomenology* ¶177.

³⁴ Hegel, *Phenomenology* ¶111.

³⁵ Hegel, *Phenomenology* ¶668.

³⁶ Kojève 43-44 (emphasis added).

³⁷ Hegel, *Phenomenology* ¶177.

³⁸ Hegel, *Phenomenology* ¶671.

³⁹ See Patrick Riley, *Will and Political Legitimacy: A Critical Exposition of Social Contract Theory in Hobbes, Locke, Rousseau, Kant and Hegel* (Iuniverse, 1999) 163-200.

⁴⁰ I have elsewhere shown that Rousseau is the transitional figure between the Hegelian and Platonic politics of reconciliation and Tocqueville's politics of democratic indeterminacy.

⁴¹ Findlay 326-337.

⁴² Hegel, *Political Writings* (Cambridge: Cambridge UP, 1999) 217.

⁴³ Findlay 324.

⁴⁴ For more about the historical details of the time, see Cheryl Welch *De Tocqueville* (Oxford: Oxford UP, 2001) Chap. 1. I should also add that Tocqueville is also a historical thinker. But unlike Hegel's historical approach, Tocqueville uses factual history as a platform for understanding his time. In this sense, Tocqueville is closer to Montesquieu and Aristotle than to Hegel.

⁴⁵ Welch 9.

⁴⁶ Alexis de Tocqueville, *Of Democracy in America*, trans. Harvey C. Mansfield and Delba Winthrop (Chicago: University of Chicago Press, 2000) 383.

⁴⁷ Tocqueville, *Democracy in America* 190.

⁴⁸ Seymour Drescher, "Tocqueville's Two Democracies," *Journal of the History of Ideas* 25 (1964): 201-216.

⁴⁹ Tocqueville, *Democracy in America* 7.

⁵⁰ Tocqueville, *Democracy in America* 3. See also Daniel Rodgers, "Of Prophets and Prophecy," in *Reconsidering Tocqueville's Democracy in America*, ed. Abraham Eisenstadt (New Brunswick: Rutgers UP, 1988) 202-205

⁵¹ For Marxists, of course, Tocqueville was delusional. Marxists always associated democracy with the bourgeois ideology. In their view, democracy always gave partial and illusionary freedom and only a revolution that would end all struggles would create true equality.

⁵² Tocqueville, *Democracy in America* 6.

⁵³ Welch 25.

⁵⁴ Tocqueville, *Democracy in America* 5-6.

⁵⁵ Tocqueville, *Democracy in America* 666.

⁵⁶ Tocqueville, *Democracy in America* 7.

⁵⁷ Tocqueville, *Democracy in America* 7.

⁵⁸ Tocqueville, *Democracy in America* 188-189.

⁵⁹ Gordon S. Woods, "Tocqueville's Lesson," *New York Review of Books* XLVIII.8 (May 17, 2001): 47.

⁶⁰ Tocqueville, *Democracy in America* 265, 295.

⁶¹ Tocqueville, *Democracy in America* 231.

⁶² Tocqueville, *Democracy in America*, 239 and 247-248. Tocqueville also adds: “How could the flatterers of Louis XIV do better?”

⁶³ Tocqueville, *Democracy in America* 220.

⁶⁴ Tocqueville, *Democracy in America* 546. I have significantly modified this translation based on Tocqueville’s original text in French.

⁶⁵ Tocqueville, *Democracy in America* 549.

⁶⁶ Tocqueville, *Democracy in America* 547.

⁶⁷ Tocqueville, *Democracy in America* 550.

⁶⁸ Tocqueville, *Democracy in America* 548.

⁶⁹ Tocqueville, *Democracy in America* 551.

⁷⁰ Tocqueville, *Democracy in America* 330.

⁷¹ Tocqueville, *Democracy in America* 360.

⁷² Tocqueville, *Democracy in America* 674.

⁷³ Tocqueville, *Democracy in America* 675.

⁷⁴ Tocqueville, *Democracy in America* 667. I have again significantly modified the translation.

⁷⁵ Tocqueville, *Democracy in America* 666. See also, Pierre Manent, *Tocqueville and the Nature of Democracy* (London: Rowan & Littlefield, 1996) 53-67.

⁷⁶ Tocqueville, *Democracy in America* 383.

⁷⁷ Tocqueville, *Democracy in America* 672.

⁷⁸ Tocqueville, *Democracy in America* 674-75.

⁷⁹ I am very grateful to my friend and colleague Gregory Hoskins for pointing out some of these difficulties in Tocqueville’s work.

⁸⁰ For instance, see Laclau and Mouffe’s *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics* (London: Verso, 1985) and Chantal Mouffe, *The Democratic Paradox* (London: Verso, 2000), for their view of “agonistic” politics where conflicts are preserved. Claude Lefort’s position was developed in his *Le travail de l’oeuvre Machiavel* (Paris: Gallimard, 1972) and in his *Democracy and Political Theory* (Minneapolis, University of Minnesota Press, 1988). I have tried to show how the concept of antagonism is necessary in radical democracy, see my “The Uncanny Proximity: From Democracy to Terror,” *Florida Philosophical Review* II. 2 (Winter 2002): 5-22.

⁸¹ A shorter version of this paper was presented in April of 2003 at the Pennsylvania Political Science Association’s annual meeting at Villanova University.

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Jasper's Kangaroo Court of International Injustice: A Response

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Introduction

Nearly fifty years after the Nuremberg and Tokyo trials, members of the 1998 Rome Conference voted on a treaty to establish a permanent international criminal court in which to prosecute people who commit the most egregious violations of human rights. Prior to the Rome Conference, international criminal tribunals were *ad hoc* and the status of human rights was hotly contested. While the newly established International Criminal Court effectively resolves many of the legal problems associated with *ad hoc* international criminal tribunals, such as the lack of permanent, universally applicable procedures for conducting international criminal trials, it does not settle philosophical questions regarding human rights. In order to determine whether human rights are justifiable, for example, one must conduct a philosophical investigation of human rights. Nevertheless, while many of the philosophical questions regarding the status of human rights continue to be debated, the legal trend regarding the establishment and enforcement of international human rights laws seems to be moving towards universalism. This is evidenced by the plethora of international conventions on universal human rights, the growing number of states that are signing and ratifying treaties on universal human rights, and the increasing willingness of the international community to punish, or at least sanction, states that violate international prohibitions on genocide, war crimes, and crimes against humanity.

In what follows, I present a combination of philosophical, political, and legal perspectives on universal human rights and on the newly ratified Rome Treaty. I begin with a philosophical analysis of John Locke's justifications for universal human rights. The point of this analysis is twofold: first, it serves as a philosophical history of Locke's justifications for universal human rights, and secondly, it serves to illustrate the impact that John Locke's conception of universal human rights has on both domestic and international politics. I then move into a brief discussion of the international politics surrounding the establishment of international human rights laws and the problems associated with *ad hoc* international criminal tribunals. On many of the political issues regarding the establishment and enforcement of international human rights laws I am in agreement with the United Nation's Lawyer's Committee for Human Rights. For example, like the United Nations Lawyer's Committee, I argue that the International Criminal Court will effectively remedy many of the political problems associated with establishing and enforcing international human rights laws. Third, I present William

F. Jasper's pragmatic objections to the International Criminal Court and to the United States' involvement in international politics. Contrary to what Jasper argues, I argue in favor of the International Criminal Court and in favor of the United States' involvement in international politics. Hence, contrary to what Jasper concludes, I conclude that the United States ought to ratify the Rome Treaty and continue its involvement in international politics. Lastly, while I do not offer a philosophical justification for universal human rights nor for the International Criminal Court here, I do suggest one principled reason why the United States ought to support the International Criminal Court and continue its involvement in international politics.

John Locke and the Philosophy of Human Rights

Modern legal theory conceives of human rights as civil, political, social, and/or economic claims which no state, government, or private citizen may infringe without due process of law. This general conception of human rights was formulated initially by modern philosophers.¹ John Locke is one of many modern philosophers who became famous for such a conception of human rights. In fact, John Locke became so famous for his conception of universal human rights that, according to Michael Morgan, the publication of the *Second Treatise* lifted him to the status of a celebrity.²

Locke opens the *Second Treatise* by describing a state of nature in which all humans are born with human rights to freedom and equality.³ According to Locke, all humans are born with human rights to freedom because they have the ability to reason.⁴ For Locke, this entails that each human is morally obligated to respect the natural freedom of all other humans. Although he alludes to this position as early as Chapter Two of the *Second Treatise*, it is not until Chapter Six that we find an argument for it. Locke argues that God gave humans the ability to reason so that they could ascertain the law of nature. In addition, God allowed humans to have their own wills so that they could act in accordance with the law of nature.⁵ Since God did not give children the ability to reason they cannot ascertain the law of nature. Therefore, children should not be allowed to act according to their own wills, but rather, they should be subject to the constraints of their parents. Once children have reached the age of reason, however, they are able to ascertain the law of nature, and therefore they ought to be at liberty to act according to their own wills.⁶ Hence, for Locke, humans are free in the state of nature because God gave them the ability to reason.

Locke also argues that all humans are born with human rights to equality. By this, Locke means that all humans have equal right-claims or, to use Locke's terminology, "titles" to their natural freedom.⁷ He argues that God did not appoint rulers among humans. This is illustrated by the fact that neither the law of nature nor the law of God grants the right to rule to any particular human or to any group of humans.⁸ Hence, since God did not appoint rulers among humans, all humans are naturally equal. Or, as Locke puts it, nothing is more evident than that humans who are born into

the same species, rank, use of the same faculties, and born to the same advantages of nature, are also equal, unless God, by a clear and manifest fiat, had declared otherwise.⁹

Locke's conception of universal human rights has had a significant influence on the domestic politics of many nations, particularly the United States and France. Locke's ideas influenced some of the greatest American and French human rights advocates of the eighteenth century, most notably Thomas Jefferson and Marquis de Lafayette.¹⁰ In addition, Locke's ideas influenced the development of modern international human rights laws. In fact, David Forsythe, after defining liberalism in a way that is consistent with John Locke,¹¹ argued that the "international law of human rights is based on liberalism."¹² He meant, of course, that international human rights law is based on Lockean liberalism.

Gone Universal: The Politics and Practice of Human Rights

While philosophizing about universal human rights began as early as the eighteenth century, the work of establishing and enforcing international human rights laws did not begin until the mid-nineteenth century, and, even then, the laws that ultimately withstood scrutiny were uncontroversial. For example, David Forsythe, in *Human Rights and International Relations*, points out that under the Geneva Convention of 1864 warring states were obligated to allow humanitarian aid—primarily medical assistance—to wounded, sick, or captured soldiers; and in the 1920s an International Labor Organization was created in order to develop and supervise labor regulations designed to protect workers.¹³ These two provisions represented the extent of international human rights law at the turn of the century.

The lag-time between philosophizing about universal human rights and enforcing international human rights laws resulted from an unyielding assumption about absolute state sovereignty over citizens.¹⁴ While states were willing "to sign general statements of principle,"¹⁵ they resisted efforts to "interfere with what they . . . regarded as sovereign jurisdiction."¹⁶ But the atrocities of World War II would change this way of approaching the issues of establishing and enforcing international human rights laws forever. Nazi Germany's systematic extermination and relocation of millions of Jewish people forced theretofore unconcerned world leaders to articulate, codify, and create mechanisms for enforcing international prohibitions on genocide, war crimes, and crime against humanity, irrespective of citizenship, religion, race, sex, or ethnicity. The international tribunals at Nuremberg and Tokyo were particularly successful at facilitating this process for they helped to define genocide, war crimes, and crimes against humanity.¹⁷ Moreover, the Nuremberg and Tokyo tribunals established precedents that forever shattered the assumption of absolute state sovereignty over citizens. Even more, they gave rise to subsequent international conventions that

were dedicated to codifying international human rights laws and establishing a permanent international court in which to prosecute those who violated international human rights laws.

Unfortunately, however, the promise of establishing international human rights laws rarely coincided with the practice of enforcing them. Since the Nuremberg and Tokyo tribunals there have been numerous violations of universal human rights but only two international criminal tribunals designed to prosecute the perpetrators: The Yugoslavia Tribunal of 1991 and the Arusha Tribunal of 1994.¹⁸ The problems of impunity, judicial inefficiency, and the lack of permanent, universally applicable procedures for prosecuting those who violate international human rights laws were among the foremost justifications for the International Criminal Court. The newly established International Criminal Court has the capacity effectively to remedy the problems of judicial inefficiency and the lack of permanent, universally applicable procedures for prosecuting those who violate international human rights laws because it is a permanent court that has its own judges, prosecutors, investigators, and its own procedures for conducting an international criminal trial. However, as I indicate below, many American intellectuals, particularly William Jasper, have serious reservations about the International Criminal Court. In particular, they question whether the International Criminal Court could avoid being used as an avenue for those who dislike the United States to indict, convict, and incarcerate innocent Americans.

The Rome Conference: Establishing the International Criminal Court

In 1998, the Lawyer's Committee for Human Rights proposed eight fundamental principles that, ideally, would ensure that the International Criminal Court operates independently, fairly, efficiently, and effectively. The Lawyer's Committee proposed the following principles:

1. **The Principle of Universal Jurisdiction:** The court should have universal jurisdiction over genocide, war crimes, and crimes against humanity, for such crimes are exceptionally egregious and of particular concern to the international community as a whole.
2. **The Principle of Automatic Jurisdiction:** The court should have automatic jurisdiction over genocide, war crimes, and crimes against humanity.
3. **The *Ex Officio* Proceedings Principle:** The prosecutor should be able to initiate proceedings *ex officio*.
4. **The Principle of Non-Interference:** The International Criminal Court should be able to proceed without the involvement of the Security Council.
5. **The Due Process Principle:** The International Criminal Court should ensure the highest standards of fairness and of due process.

6. **The Protection Principle:** The International Criminal Court should ensure the protection of women, children, victims, and witnesses.
7. **The Compliance Principle:** All states should cooperate and comply with the International Criminal Court.
8. **The Principle of Independent Finance:** The international court should be financed out of the regular United Nation's budget, that is, independently of States.¹⁹

More importantly, however, the Lawyer's Committee offered four pragmatic justifications for the International Criminal Court. According to the Lawyer's Committee, the International Criminal Court would: (1) efficiently address offenses of universal human rights and provide relief for the victims of such offenses; (2) counter judicial systems that are unable or unwilling to enforce international criminal laws; (3) provide a remedy for the limitations of *ad hoc* tribunals; and (4) provide a central enforcement mechanism for international criminal law.²⁰

Since the United Nations Lawyer Committee's work, members of the international community attended an international conference in Rome and voted to approve a treaty that established a permanent international criminal court, giving it automatic universal jurisdiction over war crimes, genocide, and crimes against humanity. According to the treaty, the International Criminal Court will be a complementary court, acting only when states are unwilling or unable to enforce international criminal laws—in particular, international prohibitions against war crimes, genocide, and crimes against humanity. The Court will consist of a Presidency, an Appeals Division, a Trial Division, a Pre-Trial Division, an Office of the Prosecutor, a Registry, and eighteen elected judges. Of the 160 states represented at the conference, 120 voted in favor of the treaty, twenty-six of which ratified it immediately. Among the 26 states that immediately ratified the Rome Treaty were Italy, Norway, Belgium, Canada, France, Greece, the Netherlands, Switzerland, Germany, and Spain.²¹ Twenty-one of those who attended the conference abstained from the vote, and only seven states voted against the treaty, including the United States, China, Iraq, Libya, Yemen, Israel, and the Sudan.²² The Rome Treaty went into effect on April 12, 2002 after the 60th state ratified it. Currently, more than 80 states have ratified the Rome Treaty; unfortunately, the United States is not among them.

Beyond Rome:

William Jasper Challenges the International Criminal Court and International Politics

Since Rome, there has been vehement opposition to the International Criminal Court, most notably from the United States and China. Many American intellectuals and politicians object to the International Criminal Court—for example, Ron Paul, Lee Casey, David Rivkin and many others.

In this paper, however, I will focus only on William Jasper's objections to the International Criminal Court and, related to this, his objections to the involvement of the United States in international politics. In "Court of Injustice," William Jasper articulates several reasons why the United States should not ratify the Rome Treaty. In addition, he argues that the United States ought to withdraw its membership from the United Nations and cease its involvement in international politics.

According to Jasper, the International Criminal Court is nothing more than an international kangaroo court of injustice, one that will soon become a tyrannical monster. He cites James Madison's warning that "the accumulation of all powers, legislative, executive, and judicial, in the same hands, whether one, a few, or many . . . may justly be denounced as the very definition of tyranny."²³ He continues: "since the ICC . . . combines all of these powers,"²⁴ it is the tyrannical monster that Madison warned us about.

Jasper also objects to the International Criminal Court on the grounds that it will be unjustly "brought to bear against common American citizens."²⁵ He argues that once Americans are indicted under the International Criminal Court they will face criminal proceedings that are foreign and contrary to the core principles of the Constitution of the United States and the Bill of Rights, in particular, Article III, section 2 of the Constitution, and the guarantees of a speedy and public trial found in the Bill of Rights.²⁶ This, he argues, illustrates that the International Criminal Court will have the power to repudiate American law. He writes:

In the Declaration of Independence, our Founding Fathers charged King George with combining with others 'to subject us to Jurisdiction foreign to our Constitution, and unacknowledged by our Laws,' as well as 'depriving us, in many cases, of the benefits of trial by jury,' and 'transporting us beyond the seas to be tried for pretended offenses.' The ICC confronts us with the prospect of returning to that tyranny.²⁷

Third, Jasper objects to the International Criminal Court on the grounds that it has no standards of judicial accountability. He argues that there are no *real* provisions for impeaching judges or prosecutors who engage in politically motivated misconduct.²⁸ This means, in effect, that International Criminal Court prosecutors, acting for politically motivated reasons, could indict and try innocent Americans while International Criminal Court judges, also acting for politically motivated reasons, could rule against them with impunity.²⁹ This problem is exacerbated by the fact that the crimes over which the International Criminal Court has jurisdiction are defined in vague terminology. Again, anti-American prosecutors and judges could use this vague language against United States peacekeepers and United States military personnel whose work sometimes requires them to act forcefully. This represents another way in which Americans could be subjected to unwarranted and unfair criminal indictments and prosecutions.³⁰

Finally, Jasper objects to the International Criminal Court on the grounds that there are no limits to its power and jurisdiction.³¹ He writes: “once the treaty comes into force, it would extend the court’s jurisdiction over the nationals of countries that are not party to the treaty.”³² This means, in effect, that the International Criminal Court will have the authority to judge the acts of United States officials even though the United States has not ratified the Rome Treaty. Jasper writes: “Never before has a treaty put itself over those who have not been included in it.”³³ When considered collectively, according to Jasper, these problems illustrate that international politics are subversive to American sovereignty. Moreover, they illustrate why the United States should reject the Rome Treaty, withdraw from the United Nations, and cease its involvement in subversive international politics altogether. Or, to put it in a slightly different manner, “The only *genuine* constitutionalist position for *genuine* Americans to take is to support efforts like Congressman Ron Paul’s American Sovereignty Restoration Act, H.R. 1146, to withdraw United States membership in the United Nations and cut all United States funding to the entire subversive U.N. apparatus.”³⁴

William Jasper’s Kangaroo Court of Injustice: A Response

It is important to point out that many of Jasper’s arguments in “Court of Injustice” are logically fallacious. His references to the International Criminal Court as a “kangaroo court” and a “tyrannical monster” along with his references to the “genuine constitutionalist position” for “genuine Americans” illuminate just a few of his *ad hominem* fallacies. Although many of Jasper’s arguments are fallacious, he does however articulate several arguments against the International Criminal Court that merit substantial consideration. The arguments to which I will now turn my attention are: (1) that the International Criminal Court fits the very definition of tyranny insofar as it accumulates legislative, executive, and judicial powers in the hands of one body; (2) that the International Criminal Court will subject citizens of the United States to foreign criminal proceedings that are contrary to the principles of the U.S. Constitution and the U.S. Bill of Rights; (3) that the International Criminal Court has no provisions to prevent or remove those who engage in judicial misconduct or politically motivated indictments and prosecutions; (4) that the International Criminal Court’s jurisdiction over non-signatories represents a break with commonly practiced international law; and finally, (5) that international politics, in particular the politics of the United Nations, are subversive to the sovereignty of the United States and that the United States should withdraw from the United Nations and cease its participation in subversive international politics.

First, Jasper objects to the International Criminal Court on the grounds that it fits the very definition of tyranny insofar as it accumulates legislative, executive, and judicial powers in the hands of one body. This objection seems to follow from Jasper’s confused understanding of the Court’s

role in international law. First, there is no international legislature. Contrary to what Jasper seems to think, bilateral and multilateral treaties concluded among sovereign nations create most international law. Peremptory norms and international comity are other sources of international law. The International Criminal Court does not create international treaties, international comity, or preemptory norms of international law. The sole function of the International Criminal Court is to adjudicate violations of international criminal law, particularly violations of genocide, war crimes, and crimes against humanity. Secondly, there is no international executive. The only international body that even resembles an international executive is the Security Council. Although the International Criminal Court and the Security Council are both bodies of the United Nations, they operate independently of each other. Contrary to what Jasper implies, the Security Council does not act on the determination of the International Criminal Court, but rather, it acts on the determination of the Security Council members, primarily the five permanent members.

Further, Jasper objects to the International Criminal Court on the grounds that it would subject United States' citizens to criminal proceedings that are contrary to their Constitution and Bill of Rights. However, there is nothing novel about citizens of the United States facing foreign criminal proceedings that are contrary to the principles of the Constitution of the United States and the Bill of Rights. The well-known case of *Fay v. Public Prosecutor* (1994) in which a citizen of the United States living in Singapore was found to be guilty of vandalism and sentenced to caning illustrates that United States' citizens sometimes face foreign criminal proceedings that are contrary to the principles of the Constitution of the United States.³⁵ Just as foreigners who commit crimes on American soil are subject to the jurisdiction of American courts, Americans who commit crimes on foreign soil are subject to the jurisdiction of foreign courts. More importantly, however, the State Department is perfectly aware of the fact that citizens of the United States will sometimes face criminal proceedings that are contrary to the principles of the Constitution of the United States and the Bill of Rights. In fact, the official policy of the United States for cases in which their citizens feel that they have been subjected to unfair judicial proceedings in foreign countries is simply to have the citizen exhaust the remedies for redress in the country that has jurisdiction over the case.³⁶ The government of the United States will step in only if there has been a gross denial of justice according to international standards, not according to United States standards.³⁷ This is commonly practiced international law.

Jasper's third objection concerns what he perceives to be procedural problems with the International Criminal Court. Jasper objects to the International Criminal Court on the grounds that it does not have provisions for preventing judicial misconduct or for removing officials who engage in judicial misconduct or politically motivated criminal indictments and prosecutions. While this is a legitimate concern, it is certainly not one that should prevent the United States from ratifying the Rome Treaty. First, the possibility of judicial misconduct is a potential problem for all judicial

systems, even our own. However, just as the American justice system has safeguards that are designed to prevent judicial misconduct and politically motivated indictments and prosecutions the International Criminal Court also has safeguards that are designed to prevent judicial misconduct and politically motivated indictments and prosecutions. Some of the International Criminal Court's safeguards are as follows: First, the International Criminal Court's universal jurisdiction is limited to crimes against humanity, war crimes, and genocide. Accusations regarding such crimes must be authorized by states in order to proceed. This represents the highest standard of pre-trial scrutiny, one that the United States was instrumental in defining. Secondly, the International Criminal Court is a complementary court. That is, it acts only when national judiciaries are unwilling or unable to enforce international criminal law. This provision gives the United States the opportunity to investigate accusations against its citizens before the International Criminal Court can intercede. If the United States conducts an honest investigation and finds that prosecution is unwarranted according to United Nations' standards then, ideally, the Court cannot intercede. Third, the International Criminal Court has a Pre-trial Division that is responsible for scrutinizing accusations brought before the court. In part, the point of having a Pre-trial Division is to filter out politically motivated indictments, false accusations, and indictments that are based on judicial misconduct. Even if a politically motivated indictment or an indictment that is based on judicial misconduct passes pre-trial scrutiny, the Security Council can delay a trial up to one year, giving the country of the accused time to investigate the accusation. Again, if the country of the accused conducts an honest investigation and finds that prosecution is unwarranted according to United Nations' standards then, ideally, the International Criminal Court cannot intercede. Fourth, the judges elected to the Court are to be highly respectable and of impeccable credentials. Therefore, ideally, they will have no problems adjudicating cases according to United Nations' standards. And, finally, there are procedures for removing Court officials who engage in judicial misconduct or politically motivated indictments and prosecutions. Ideally, these safeguards would protect peacekeepers, military personnel, and other citizens of the United States from judicial misconduct and from politically motivated indictments and prosecutions.

Now, let's consider the worst case scenario: Imagine that the United States military is engaged in a conflict on foreign soil and that some of its members are accused of and indicted for committing war crimes. Further, imagine that the United States conducts an honest investigation and finds that the allegations against its military personnel are false but that the International Criminal Court's Pre-Trial Division, acting for politically motivated reasons, nevertheless submits the case for prosecution and that the Court's prosecutors and judges, also acting for politically motivated reasons, convicts the American military personnel of committing war crimes. Moreover, imagine that the United States submits the case to the International Criminal Court's Appeals Division but that the Court's Appeals Division, also acting for politically motivated reasons, refuses

to accept that Court officials have engaged in judicial misconduct. Under these circumstances, it seems that the American military personnel would have no avenues for redress. Even worse, it seems that the United States would be obligated to accept the International Criminal Court's ruling against its innocent military personnel. This scenario represents the worst of American fears with respect to the International Criminal Court.

To respond to these fears, it is important first to understand the ways in which the United States would be obligated to respect the International Criminal Court's ruling. There is a common distinction in the philosophy of law between legal obligation and moral obligation.³⁸ Since the United States is currently a member of the United Nations, and since the Rome Treaty gives the International Criminal Court automatic universal jurisdiction over war crimes, as a matter of international law, the United States would be legally obligated to respect the Court's ruling, irrespective of whether or not it ratifies the Rome Treaty. On the other hand, if the United States were to withdraw its membership from the United Nations, and if the United States stopped participating in international law altogether, then, although the International Criminal Court has universal jurisdiction over war crimes, the United States would have grounds for arguing that it is not legally obligated to respect the Court's ruling.

Note also that even if the United States withdrew its membership from the United Nations and stopped participating in international law, and if its military personnel were guilty of committing war crimes and if the United States was unwilling to prosecute them, then, although the United States might not be *legally* obligated to respect the International Criminal Court's ruling, the United States would nonetheless be *morally* obligated to respect the Court's ruling. Here's why. In part, Locke's arguments for universal human rights are intended to illustrate that each human is morally obligated to respect the universal human rights of all other humans. Humans who fail to respect the universal human rights of others *ipso facto* give others—in this case, the International Criminal Court—justifiable reasons for acting against them. In the *Second Treatise* Locke writes:

And thus it is, that every man, in the state of nature, has a power to kill a murderer, both to deter others from doing the like injury, . . . and also to secure men from the attempts of a criminal . . . who having renounced reason, the common rule and measure, God hath given to mankind, hath by the unjust violence and slaughter he hath committed upon one, declared war against all mankind; and therefore may be destroyed. . . . And upon this is grounded the great law of nature, 'who so sheddeth mans blood, by man shall his blood be shed.' And Cain was so fully convinced, that every one had a right to destroy such a criminal, that after the murder of his brother, he cries out, 'Everyone that findeth me, shall slay me.'³⁹

Therefore, if the military personnel of the United States were guilty of committing war crimes and if the United States was unwilling to prosecute them, the International Criminal Court would be morally justified in acting against them and the United States would be morally obligated to respect the Court's ruling.

Nevertheless, given the hypotheses that the United States military personnel are, in fact, innocent and that officials of the International Criminal Court have engaged in judicial misconduct, the United States would not be morally obligated to respect the Court's ruling. Such a ruling would be contrary to the principles of fairness that the United Nation's Lawyer's Committee articulated for the International Criminal Court.⁴⁰ More importantly, however, the United States would not be morally obligated to respect the Court's ruling because such a ruling would be contrary to the rule of law insofar as it was politically motivated and not grounded in established legal rules, principles, and procedures.⁴¹ Hence, since the United States is currently a member of the United Nations, and since the Rome Treaty gives the International Criminal Court universal jurisdiction over war crimes, if a case such as the one hypothesized above were to occur, the United States would be legally but not morally obligated to respect the Court's ruling.

Lastly, there remains the question of how the United States should respond if a case such as the one hypothesized above were to occur. First, the United States should pursue all of the International Criminal Court's remedies for redress. This is consonant with the official policy of the United States for cases in which its citizens are subjected to unfair foreign judicial proceedings. If this fails, the State Department should explore its diplomatic options for seeking redress. This is also in accord with the official policy for cases in which citizens of the United States experience gross denials of justice in foreign courts. Finally, if legal and diplomatic avenues for redress fail, the United States would be justified in defying the International Criminal Court's ruling on moral grounds. In other words, the United States would be justified in exercising its "right to resistance." This is in accord with what John Locke argues in Chapter Eighteen of the *Second Treatise*. In short, Locke argues that whenever a governing body extends its authority beyond its legal perimeters those who are governed by that body have a right to resist it.⁴² For cases such as the one hypothesized above, resistance might entail that the United States refuse to extradite the accused—assuming that they are not already in the International Criminal Court's custody. Secondly, resistance might require that the United States seek the help of its allies and Non-Governmental Organizations in an effort to pressure the Court into releasing its citizens—if they are in the Court's custody. Third, it might require the United States to withdraw its funding from the United Nations as a way of pressuring the International Criminal Court to release its citizens. And finally, in extreme cases, it might entail that the United States use force to resist the Court. All of these options would be morally justified in cases such as the one hypothesized above.

Now, let's return to Jasper's final two objections. Jasper objects to the International Criminal Court on the grounds that the Rome Treaty extends the Court's jurisdiction over citizens of non-ratifying countries. According to Jasper, "never before has a treaty put itself over those who have not been included in it."⁴³ This claim is false. First, the Vienna Convention on the Law of Treaties obliges all states to adhere to peremptory norms of international law, irrespective of whether or not they have ratified the treaty creating the peremptory norms.⁴⁴ This means that states that have not ratified a treaty that creates peremptory norms of international law are nonetheless obliged to adhere to the peremptory norms of the treaty. Secondly, the United States has prosecuted violations of important international treaties despite the fact that the perpetrators were citizens of non-ratifying countries. For example, in case of the *United States v. Wang Kun Lue*, the United States prosecuted Wang Kun Lue under the Hostages Treaty despite the fact that he was a citizen of a country that had not ratified the 1979 Hostage Convention. In this case, the Court found that the Hostage Treaty requires all countries that have ratified the treaty to take "effective measures for the prevention, prosecution, and punishment of *all* acts of taking hostages,"⁴⁵ irrespective of whether or not the perpetrators are from ratifying countries.

Finally, Jasper calls for genuine Americans to support Constitutionalism, arguing that international law is subversive to the laws of the United States and that, for this reason, the United States ought to withdraw from the United Nations. Again, Jasper's objection seems to follow from a confused understanding of international law. First, contrary to what Jasper seems to think, ratified international treaties are consonant with United States law. Article II, section 2, of the Constitution of the United States gives the President the power to make treaties provided that two-thirds of the United States Senate concurs. This represents only one of several ways in which treaties may become American law. In addition, Article VI of the Constitution of the United States says that ratified treaties are the supreme law of the land. This means, in effect, that international treaties that are ratified by the Senate are consonant with, not contrary to, American law. Secondly, the United States accepts customary international law, that is, international comity, as a part of American law. This means that if some element of a treaty becomes commonly practiced international law then that practice becomes a part of American law, irrespective of whether or not the United States ratifies the treaty in question. Justice Gray states this in *Paquete Habana*.⁴⁶ Here, Jasper fails to illustrate that international law is subversive to American law. Therefore, his conclusions that the United States ought to withdraw from the United Nations and that the United States ought to cease its participation in international politics are unjustified. In the absence of cogent reasons for the withdrawal of the United States from the United Nations and international politics, the United States ought to continue its participation in the United Nations and international politics.

Conclusion

In the final analysis there is, at least, one principled reason why the United States ought to ratify the Rome Treaty and continue its participation in international politics, namely, that the Principle of Consistency requires it. First, the United States has a long history of supporting international criminal tribunals. In fact, American judges and attorneys played key roles in the Nuremberg, Tokyo, and Rwandan trials. Moreover, the United States had supported the establishment of the International Criminal Court until the provision giving the Security Council the power to veto cases remanded to the Court for adjudication was rejected. Secondly, the United States has a long history of participating in international politics, particularly politics concerning international human rights. In fact, American diplomats, ambassadors, and United Nations' delegates, in particular, Eleanor Roosevelt, played a key role in convincing the United Nations to adopt the Universal Declaration of Human Rights. Because the United States has a long history of supporting international criminal tribunals, and because the United States has an even longer history of participating in international politics, in the absence of cogent reasons for non-ratification of the Rome Treaty and withdrawal from international politics, the United States ought to ratify the Rome Treaty and to continue its participation in international politics.

Notes

¹ My definition. This definition represents a general 17th century notions of human rights. For example, cf. John Locke, *Second Treatise of Government*; Jean-Jacque Rousseau, *The Social Contract*; and Karl Marx, *On the Jewish Question*. Although Hartvig Frisch, in *Might and Right in Antiquity* (New York: Arno Press, 1976) identifies various discussions of natural rights prior to modern philosophy, Isaiah Berlin, in *Two Concepts of Liberty*, in *Readings in Social and Political Philosophy*, ed. Robert Steward (Oxford: Oxford UP, 1996) notes that the notion that all humans have right-claims to certain freedoms, which no state, government, or private citizen may infringe without due process of law is a particularly modern notion of human rights, one which begin with modern social and political philosophy (92-94).

² See the editor's introduction to the *Second Treatise of Government* in *Classics of Moral and Political Theory*, ed. M.L. Morgan, (Indianapolis: Hackett, 1992) 734.

³ John Locke, *Second Treatise of Government*, 2.4-5. Here, Locke actually uses the term "natural" rights. However, for the sake of consistency, I will use the term "human" rights.

⁴ Locke 6.63.

⁵ Locke 6.58.

⁶ Locke 6.58.

⁷ Locke 6.61.

⁸ Locke 1.1.

⁹ Locke 2.5.

¹⁰ Locke 733-734.

¹¹ David Forsythe, *Human Rights in International Relations* (New York: Cambridge UP, 2000) 31.

¹² Forsythe 217.

¹³ Forsythe 24.

¹⁴ Forsythe 24. See 17-19 in which Forsythe's discusses the Westphalian system of international relations, that is, the notion that states have absolute sovereignty over its citizenry, and how this notion often clashed with that of international human rights, particularly when such rights were imposed on states that did not recognize them.

¹⁵ Paul Lauren, *Power and Prejudice: The Politics and Diplomacy of Racial Discrimination* (Boulder: Westview Press, 1996) 28.

¹⁶ Lauren 28.

¹⁷ The Lawyer's Committee for Human Rights, "Crimes Within the ICC's Jurisdiction and Essential Elements of Their Definitions," *International Criminal Court Briefing Series* 1.3, 1997.

¹⁸ For examples of human rights violations that have gone unpunished visit www.OAS-Castillo/chapterV.cub.html.

¹⁹ The Lawyer's Committee for Human Rights, "Principles of Fairness for the ICC." <http://www.lchr.org/icc/princ.htm>.

²⁰ Lawyer's Committee.

²¹ Lawyer's Committee.

²² Lawyer's Committee.

²³ William Jasper, "Court of Injustice." In *The New American*, <http://www.thenewamerican.com> 2.

²⁴ Jasper 2.

²⁵ Jasper 2.

²⁶ Jasper 2.

²⁷ Jasper 2-3.

²⁸ Jasper 3. My emphasis.

²⁹ Jasper 3.

³⁰ Jasper 5.

³¹ Jasper 6.

³² Jasper 7.

³³ Jasper 7.

³⁴ Jasper 7. My emphasis.

³⁵ See *Fay v. Public Prosecutor*, [1994] 2 SLR 154.

³⁶ M.M. Whiteman, *Digest of International Law* (Washington, D.C.: U.S. Govt. Printing Office, 1973) 906.

³⁷ See Article II of the General Claims Convention 43 Stat., Pt. II, 110, 112. cf. *Chattin v. United Mexican States*, 4 U.N. Repts. of Intl. Arb. Awards 282 (Mexico/U.S.A. Gen'l Claims Comm'n).

³⁸ See John Finnis, "Natural Law and Natural Rights," and H.L.A. Hart, "Positivism and the Separation of Law and Morals," ed. Keith Culver (Orchard Park: Broadview, 1999).

³⁹ Locke 2.11.

⁴⁰ The Lawyer's Committee for Human Rights, "Principles of Fairness for the ICC."

⁴¹ See Joseph Raz, "The Rule of Law and its Virtue," *Reading in the Philosophy of Law*, ed. Keith Culver (Orchard Park: Broadview, 1999) 13-27.

⁴² Raz. See also Locke's *Second Treatise* 18.206, in which he writes: "But they may be questioned, opposed, and resisted, who use unjust force, though they pretend a commission from his, which the law authorizes not."

⁴³ Jasper, "Court of Injustice" 7.

⁴⁴ See the Vienna Convention on the Law of Treaties, <http://www.un.org/law/ilc/texts/treatfra.htm> cf. Articles 53, 64, and 71.

⁴⁵ See *U.S. v. Wang Kue Lue*, 134 F.3d 79 (2nd Cir. 1998). My emphasis.

⁴⁶ See Justice Gray's opinion *Paquete Habana*, 175 U.S. 677 (1900).

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Earnestness or Estheticism: Post 9/11 Reflections on Kierkegaard's Two Views of Death

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Introduction

For Søren Kierkegaard, the depth and maturity of the person is reflected (or perhaps is created) by that person's attitude towards death. Nowhere is this clearer than in the *Three Discourses on Imagined Occasions*, particularly when seen in contrast to its "accompanying" work, *Stages on Life's Way*. In these books, Kierkegaard presents his thoughts on the significance of death as part of his overall strategy to distinguish the truly religious view from the esthetic alternatives so often accepted as true religiousness among his contemporaries. Since there are similar confusions today (and likely always will be) it is valuable to examine Kierkegaard's distinctions and consider their implications. In this paper I intend, first, to examine the "earnest thought of death" as it is presented in these two works, and the dialectic between these two views; then, to further explore the esthetic view, following the hints given in the *Stages*; and finally, to suggest some ways in which the earnest thought of death is of particular relevance today.

Kierkegaard's Two Views of Death

After having written eighteen "upbuilding discourses" distinguished primarily by the scriptural text each treats, Kierkegaard produced *Three Discourses on Imagined Occasions*. That is, here in his "religious" authorship he introduced a fictional element: "*imagined occasions*." Why is this collection unique in this respect, and why just these "occasions"? One apparent reason is that there is something paradigmatic about these particular occasions in the life of the religious person, such that the fictional element conveys the message as much as the text itself. Furthermore, the fact that this work was released within a day of the massive *Stages on Life's Way* implies that each occasion comments on one of the three stages. The Hongs have offered two contradictory explanations as to how this correspondence runs. In 1988, in the historical introduction to the *Stages*, they cite Emmanuel Hirsch's explanation of the correspondence between the two books. It is clear enough that the discourse set "On the Occasion of a Wedding" comments on Judge William's "reflections on marriage." At first, Hirsch proposed that the other chapters correspond in serial order (one to one, three to three); but Hirsch later came to believe that the chapters correspond in a crisscross

pattern (one to three). In their introduction to the *Stages*, the Hongs endorse Hirsch's later claim of a crisscross correspondence between the chapters of the two books; however, in the 1993 historical introduction to the *Three Discourses on Imagined Occasions* they assert the serial correspondence that Hirsch rejected.¹

If it were easy, it wouldn't be Kierkegaard; however, it seems to me that Kierkegaard has used the sort of puzzle so beloved by Hamann; rather than presenting the reader with a direct correspondence, he has opted for the more obscure crisscross structure.² Quidam's demonic "shut-upness" in chapter three of the *Stages* contrasts with the first discourse set at a confession; we can see clearly enough that Quidam can only be cured by opening up, as the worshipper confesses his or her guilt to God and before neighbors, and accepts forgiveness. It is less clear, though in many ways more illuminating, to examine how the meditation "At a Graveside" contrasts with the world-view of "In Vino Veritas."

"At a Graveside" begins with a call to, and a meditation on, recollection.³ We the living may recollect the dead one, that one's life and manner among us. The dead, however, recollect nothing, even if we visit the grave to recollect every day. So it is even more important that, while we still live, we each recollect God while we can. When we recollect one who in life recollected God, we will recollect the serious yet joyful, humble yet confident person the deceased was. "In Vino Veritas" likewise begins with observations on recollection, a similarity that acts to connect the two works.⁴ In its emphasis on continuity, Afham's essay resembles *Repetition*, and in its discussion of artistry and forgetting it recalls "Rotation of Crops" from *Either/Or*.⁵ But what is possibly more significant is when Afham writes that "The only subject matter for recollection is mood and whatever is classified under mood."⁶ This is utterly opposed to Kierkegaard's views from the discourse "At a Graveside," where he distinguishes between mood and earnestness.⁷ This is not to say that Kierkegaard rejects Afham's interests and concerns. In fact, he is presenting a different route to Afham's goals. "In Vino Veritas" suggests that one gains continuity by being able to recollect the mood one had in the past attached to a certain event or place, and even by being able to recollect before the event is past, so that the present and future experience of the soon-to-be-past event can be essentially the same. But even so, it is hard to see how anyone could base his or her personal sense of continuity on something as inherently mutable as mood. By contrast, Kierkegaard asserts that it is one's recollection of God that gives one's life continuity.⁸ This is what gave his hypothetical dead man his "quiet joy" throughout his life, despite all the changes time brought. While the esthete Afham believes one can escape the disintegration of the self by learning to recollect the "ideality" of (that is, the mood evoked by) the events of one's life, Kierkegaard believes that what rescues the individual and grounds his or her life is the recollection of God. He writes: "The person who is without God in the world soon becomes bored with himself—and expresses this haughtily by being bored with all life, but the person who is in fellowship with God indeed lives with the one whose presence gives

infinite significance to even the most insignificant.”⁹ It is the lifelong recollection of God, or at least the striving always to better recollect God, that gives one’s whole life meaning, a single unifying meaning. So it is as Afham said, that a person who has pursued one idea through his or her whole life has perhaps less to remember but more to recollect; but his mistake was to misunderstand what it was one should recollect. And what will empower a person to recollect God properly is first to recollect the reality of death, to think death through while it is still absent and thought is still possible.

This sort of thinking death is not the same as recollecting in Afham’s sense. It is not to have mournful feelings or morbid thoughts, to read Poe or play dirges or even to attend a funeral. While Afham considers mood to be the essential, Kierkegaard vigorously argues against this. It is one thing to be in a somber, sober mood at a funeral; it is quite another to take the thought of death and finitude to heart, and be built up by it. The reader is invited to consider death, to meditate upon it; not just in the general sense that all living things die, but in the quite personal sense that you will die, any time now, and that will be the end of it. It is quite possible to meditate on death, become melancholy over it, sorrow cynically or depressedly over it. It is even possible to reflect on one’s own inevitable death with such thoughts that one will “rest from one’s labors” or “finally find peace,” and thus possibly even anticipate the end of one’s life with a certain pleasure. But in all this, one has not seriously thought through that *you* are going to *die*; not just anyone, and not just rest or escape one’s burdens, but that *all* one’s hopes and projects and desires will be cut off permanently by death. As long as there is any abstraction, impersonality, or unclarity in thinking about death, the awareness of it remains at the level of mood: an esthetic awareness. But when one considers with stark clarity what one’s own death means, one can become earnest. One can begin to see the ultimate futility of all one’s finite attachments, which will be cut off by death, and also begin to see how urgent it is that one seek the “one thing needful” while there is still time. One must personally appropriate the thought of one’s own death; to learn from another is no use, nor to know everything and never let it apply to one’s own life. There is no objective or second-hand consideration of one’s own death, unless one has retreated into the unclarity of mood and is avoiding the clarity of earnestness. There is relatively little said in the discourse about God and the nature of the God-relationship; by contrast, there is quite a lot said about the many evasions of earnestness one might invent, and how the earnest thought of death can shake one out of any mere mood and impel one to earnest action and decision. This is really a discourse about the break with the esthetic and the move to a higher existence, one that recognizes the final refutation of finitude which death presents. It is also a discourse on decisiveness, which recognizes the fact that death has made temporality precious by limiting the span of time each individual has to decide and act. This is the beginning of the journey to a higher existence, and ultimately towards a mature God-relationship.

The banqueters in “In Vino Veritas” are also drawn together, as Victor Eremita says, by “the earnest thought of death.”¹⁰ However, for them it leads in an opposite direction. Where meditation at a graveside led to sobriety, here it is the prelude to drunkenness. In the discourse, the thought of death leads one to contemplate seriously one’s relationship to eternity; for the banqueters it leads only to greater immersion in frivolity and estrangement from eternity. And the reason is fairly obvious: the earnest thought of death at the graveside is *your* thought of *your* death; for the banqueters, it is the thought of the death of everything else. The banqueters end by tasting their own infinitude, or as the Seducer says, they feast on the bait of the gods (woman) while avoiding all real relationships to any actual other. Almost at once, the banquet hall itself is destroyed by waiting workmen, while the banqueters themselves flee into the darkness to resume their meaningless lives another day. When the eternal does make its appearance (in the form of the ethical injunction contained in the Judge’s essay on marriage), it appears comical, accidental and even criminal, as the essay is stolen by the revelers and read as an amusement. That is, for these esthetes, for whom death is something that happens to others, even the eternal seems to be a joke.

We have two understandings of the “earnest thought of death” offered in the conjoined works *Stages on Life’s Way* and *Three Discourses on Imagined Occasions*. In the esthetic view, one reflects on the passing of all things, but in a rather detached way, as if one could watch even one’s own death from a distance and draw out all the melancholy enjoyment it offered. In the religious view, worldly concerns shrink into insignificance as one contemplates one’s own mortality, and in this contemplation finds oneself in the presence of God. At the same time, this world takes on greater significance.¹¹ The esthete, who is without God in the world, becomes bored with life. It seems meaningless and tedious, even interminable. And that is one thing that the earnest thought of death shows life *not* to be. It is terribly terminable, even terminal. No one gets out alive. And when you realize that your life is ticking away, each moment becomes valuable. As Kierkegaard writes:

Indeed, time also is a good. If a person were able to produce a scarcity in the external world, yes, then he would be busy. The merchant is correct in saying that the commodity certainly has its price, but the price still depends very much on the advantageous circumstances at the time—and when there is scarcity, the merchant profits. A person is perhaps not able to do this in the external world, but in the world of spirit everyone is able to do it. Death itself produces a scarcity of time for the dying. Who has not heard how one day, sometimes one hour, was jacked up in price when the dying one bargained with death! Who has not heard how one day, sometimes one hour, gained infinite worth because death made time dear! Death is able to do this, but with the thought of death the earnest person is able to create a scarcity so that the year and the day receive infinite worth—and when it is a time of scarcity the merchant profits by using time. But if public security is unsettled, the merchant does not

carelessly pile up his profits but watches over his treasure lest a thief break in and take it away from him; alas, death also is like a thief in the night.¹²

The “earnest” thought of death does not have this effect for the banqueters. And how could it, when they themselves do not take death earnestly? How can they help but see life as interminably boring, when they do not see it as terminal? To the banqueters, death is not the end. Constantin makes this point when he compares death to unhappy love, and the repeated refrain of the women who have sworn they will die of broken hearts—and yet live.¹³ Eremita makes the point again when he discusses the significance of woman for man—primarily, he says, the significance of her leaving, even dying, so that his life can have significance.¹⁴ For them, death is something experienced by some person, but has significance for another. A dead body is amusing; a dead wife can awaken genius in her mournful husband; to die of love is something that one promises or threatens to another. Kierkegaard writes that “To think of oneself as dead is earnestness; to be a witness to the death of another is mood,”¹⁵ and it is as something that happens to others that the banqueters discuss death.

It is clear that Kierkegaard’s discourse “At a Graveside” offers a fruitful contrast to the esthetic essay “In Vino Veritas.” The contrast becomes even more interesting when Kierkegaard’s discourse is compared to the much earlier esthetic writings contained in the first volume of *Either/Or*. Kierkegaard has himself invited this comparison, by using Victor Eremita and Johannes the Seducer (both from *Either/Or*) as characters in the *Stages*. In fact, the first two chapters of the *Stages* are reexaminations of the material as well as the characters from both volumes of *Either/Or*. The full sense of the *Stages* is best seen when compared to the earlier work, which gives a fuller presentation of the esthetic and ethical spheres even if the later work does clarify those descriptions.

For A (the anonymous young esthete whose papers are collected in the first volume of *Either/Or*), death is something that makes the busy men of the world laughable.¹⁶ Death is something that renders all life meaningless and insufferable, so that to be the one left alive is the greatest misfortune.¹⁷ His own death is something he dreams of almost romantically, as if he were a disembodied witness to his own funeral.¹⁸ In short, death is revealed, not only in the “Diapsalmata” but throughout the book, as something which one witnesses happening to others, which one imagines happening to oneself though in a detached way, and which one experiences as a sadness, a mood, which serves just as well to break up the boredom of a meaningless existence which must make its way “without God in the world.”

The esthete considers death objectively, from a third person perspective. While this may evoke a strong mood or emotional reaction, the esthete never really allows death to “get to” him or her. The religious person, by contrast, considers death personally, subjectively. He agrees with Afham that the essential is not the direct, but where Afham believes the essential ideality lies in the

poetic and in mood, Kierkegaard argues that it lies in the “ennobled” view—“that is, here again it is the inner being and the thinking and the appropriation and the ennobling that are the earnestness.”¹⁹ Whereas the esthetic and objective way leads to unclarity, lethargy, and beckons one to become lost in mood, the earnest thought of death summons one back to the urgency of life’s task and to the true reality before God, which life’s finitudes and illusions otherwise obscure.²⁰

Kierkegaard’s Polemical Strategy

What did Kierkegaard gain by offering two conflicting views of death, and what did he gain by pairing them in “In Vino Veritas” and “At a Graveside” in this way? And what do we gain by reading these texts together?

To answer these questions, we must first recall the religious situation in Kierkegaard’s Denmark. Kierkegaard was a dialectical and polemical writer, developing his ideas in response to (if not in opposition to) the writers of his day. Furthermore, he was a man with a mission: to reintroduce Christianity into Christendom. He did not need to encourage church attendance or other religious practices, as these were generally required by law.²¹ His goal instead was to clarify the concepts of Christianity, and to make it clear to all where their own spirituality did not come up to Christian standards. An example of the muddle Kierkegaard faced can be seen in the work of one of Denmark’s (and for that matter, Kierkegaard’s) favorite poets: Adam Oehlenschläger.²² Three of his greatest poems, “The Golden Horns” (1802), “The Death of Hakon Jarl” (1802), and “The Life of Jesus Christ Repeated in the Annual Cycle of Nature” (1805) deal primarily with spiritual and religious themes. Clearly, his audience (the cultured elite and their bourgeois followers) expected and appreciated such spiritualism. At the same time, the poems tend to equate Christianity, nature pantheism, and Norse paganism. If anything, orthodox Christianity is seen as an alien invader on Danish cultural soil, and as a religion suited for the mediocre rather than for the intuitive genius who is portrayed as the source of all human achievement.

“The Life of Jesus Repeated in the Annual Cycle of Nature” has a particularly interesting history. Initially, the Primate of Denmark denounced the work as pantheistic. It is after all unclear whether the poem better suggests that the life of the historical Jesus is reflected in the annual cycle or that the life of the Christ of faith really is the cycle of the year attributed to a single heroic figure. The work was only saved from a potentially disastrous condemnation for heresy when the young cleric J.P. Mynster (later Primate himself) rushed to its defense with a favorable review.²³ The subsequent Primate, H.L. Martensen, had an almost identical episode where he too was called upon to defend a poet of literary fame and questioned orthodoxy (the Hegelian and accused pantheist J.L. Heiberg), an act by which he likewise assured himself of passage into the ranks of the cultured and influential.²⁴ The third great church leader of that time, the reformer and political agitator N.F.S.

Grundtvig, was himself also influenced by this mixing of Christianity with Denmark's mythological past.²⁵ Kierkegaard thus faced the daunting task of disentangling pagan and Christian concepts and attitudes, when the popular culture and intellectual currents of the day conspired to keep them confused. An essential part of his strategy was to depict the poet, who was generally regarded by the intellectual elite of his day as much more "spiritual" than the royally appointed priests, as not really all that "spiritual" after all. The various pseudonyms of volume 1 of *Either/Or* and "In Vino Veritas" display the poet, complete with his pagan/Christian spirituality, in all his nihilistic and despairing glory. This includes their romantic, intoxicating discussions of death. It may seem as if someone who spends so much time and effort obsessing about love, death and other critical topics is indeed a very serious and profound fellow, who surely must realize what life is all about. And it may seem as if the relatively prosaic and uneducated "simple man," who knows only the earnest thought that one day he will die and meet God, really doesn't know very much at all. In fact, Kierkegaard is saying that the opposite is true: the brilliant and imaginative esthetes are in fact superficial and worldly (in every sense) while the one who may be remembered only by a few, but who lives with the earnest thought of death, is actually spiritual, enlightened, profound, and everything the salon circles in Copenhagen would have said they were seeking.

Just as Kierkegaard desired that *Either/Or* should be read in contrast to the two discourses which "accompanied" it, so too the real contrast is not between the three "stages on life's way" depicted in the pseudonymous work.²⁶ The starker and more meaningful contrast is between the *Stages* and the *Three Discourses on Imagined Occasions*, and the hints this gives for understanding the rest of the authorship as well. Kierkegaard has presented these two disparate works together, forcing the reader to make (or fail to make) the effort to see the connection between them, and to puzzle out its nature. In the process, the reader may be led to consider what his or her own view of death is, and what this might say about his or her own self.

Many of Kierkegaard's potential readers would have held views which they would have considered spiritual or religious, but which he believed were merely esthetic. Others (particularly the "simple" person described in the *Postscript* and addressed in the discourses) might have held truly religious views, but were so demoralized by the praise given to the spirituality of poets and philosophers that they felt ashamed of their own unsophisticated piety. By offering his discourse on the earnest thought of death he is not only offering an "upbuilding discourse." For those readers who needed it, he is indirectly offering a standard to distinguish between the religious and the esthetic counterfeits of his day.

Living with the Earnest Thought of Death

How might an earnest thought of death affect a person living, say, here and now? On September 11, 2001, millions of Americans reportedly said to themselves, "Everything has changed." What, exactly, did they mean? Clearly, many things hadn't changed: al Qaeda had been attacking Americans and others for a while, we had already experienced terrorism in Oklahoma and even a previous attack on the Twin Towers. What changed, when those towers fell, was Americans' sense of normalcy. Life suddenly was revealed as shockingly fragile. Human accomplishments, even great monuments, were revealed as fleeting. Suddenly, it was demonstrated that nothing, including you, lasts forever. For a culture that had systematically sheltered itself from the reality of death, which so celebrated human achievement, which relied so confidently on technology to solve all problems, and which in short expected every day to be just like or even better than the day before it, this was stunning. It was, from a Kierkegaardian perspective, an extremely teachable moment. It was an apocalyptic moment. It was a moment when earnestness appeared in many lives for the first time. Anecdotal evidence suggests that people's reactions, in the days immediately following September 11th, reflected this brush with earnestness: people made decisions and commitments they had delayed before, suddenly realizing that if they delayed that marriage or career change or other risky choice too long the chance could disappear. Petty concerns that had seemed to be crucial prior to September 11th (e.g. sex scandals and drinking Presidential daughters), suddenly seemed utterly absurd. If Jerry Falwell had said on September 10 that feminists, homosexuals and pagans were weakening America and might draw God's wrath down upon the nation, it would have seemed perfectly normal; we expected and, to some degree, accepted that divisiveness, that "us versus them" sort of theology. When he said it on the 12th, it already sounded like a sad anachronism. Something new had happened and the old responses simply didn't fit.

This reading of Kierkegaard suggests that what had happened is that the genuinely religious was making an appearance. As Marcus Borg reminds us, death is the great teacher of wisdom in virtually every great religion (and perhaps some personal ones, such as Socratic uncertainty).²⁷ Death reveals important lessons to anyone who will heed, through the uncertainty of "when" coupled with the certainty of "if" one will die, together with the utter finality when it does come. One learns the absolute essential equality of all persons, as one sees all come to the same end, whether noble or humble. One sees the absolute importance of living life so that one focuses on activities which are intrinsically good and valuable, and the essential triviality of those actions that have value only if you should be lucky enough to live to finish them. Death shows the earnest person how precious each moment truly is, and how important it is not to delay what is truly important. It can help us realize how trivial the social demands for conformity to cultural standards are, as we see these brought to

nothing by death. While Kierkegaard has articulated these insights within a Christian framework, they are largely shared by Jewish, Buddhist, and many other traditions.

It is hardly surprising, though, that in a culture so unused to earnestness for so long, the moment passed largely unheralded and untapped. As recently as November 2003, American/Western culture continues to be obsessed with youth, denying the realities of age and death.²⁸ We use cosmetics and plastic surgery to hide the effects of age, which were once seen as deserving of respect. We even act as happy children, with adults riding scooters or even carrying adult-version baby bottles. Even after the harsh demonstrations of recent events, our youth-obsessed, death-denying culture continues. From a Kierkegaardian perspective, this is simply not earnest. We cannot remain children forever, nor should we seek to do so. Each of us must live up to our responsibilities, must strive to realize the good, and must above all remember that one day all of this will end and each one will pass into eternity, leaving one's toys and one's cosmetically enhanced body behind and taking only one's self, one's character. This is a disquieting thought, and few wish to dwell with it.

As philosophers, we should dwell with it, and encourage others to do so. Politicians called on us to return to normalcy as quickly as possible, and in a sense Kierkegaard might agree. His notion of earnestness has no patience with moping or worrying, or sinking into anxious paralysis. It is about living life; but in living life, one must not ignore its finitude. Earnestness calls forth life of purposeful action, not frivolousness. As Kierkegaard says of the earnest deceased:

He was a citizen of the town here; a hard worker in his modest occupation, he disturbed no one by disregarding his civic obligations, disturbed no one by misplaced concern about the whole. So it went year after year, uniformly but not empty. . . . He recollected God and became proficient in his work; he recollected God and became joyful in his work and joyful in his life; he recollected God and became happy in his modest home with his dear ones; he disturbed no one by indifference to public worship, disturbed no one by untimely zeal, but God's house was to him a second home—and now he has gone home.²⁹

This earnest man was not, apparently, a philosopher in the academic sense, but he was a "lover of wisdom" in the truest sense. His honest appraisal of himself and life, and of the reality of death and the possibility of being asked for an accounting of how one has spent one's limited share of time, inspired him in all he did. He did not, as other "inspired" people, lose sleep contemplating Alexander's conquests and thus seek fame and accomplishment. He simply lived with the social relations and personal talents he developed or found himself to have and did what was right and best with these. Doubtless, when the English fleet bombarded Copenhagen during its war against Napoleon, a man such as this took shelter as any sane man would, but he did not panic as if the

world was ending, or find the nearest English traveler to shoot in blind rage. He would have responded to this crisis as he did to the rest of his life: by living. Since the thought of death was nothing new to him, he was ready to respond to the threat as it happened, and to live again after it had passed.

We cannot go back to “normal,” if that means avoiding the earnest thought of death. The Western obsession with indefinitely prolonging youth is an obvious esthetic falsehood. It is less obvious that many forms of apocalypticism are likewise esthetic, though the earnest thought of death can reveal this. Earnestness takes death seriously, so any “religion” which seeks to make the Afterlife or the Apocalypse a time for worldly wishes to come true is merely esthetic.³⁰ A religion which fails to recollect that each individual will have to stand before God (and instead teaches, for example, that true believers are raptured into Heaven while only those with flawed beliefs are “left behind”) turns death (or the death of the world) into a spectator sport; while earnestness teaches that *you* are going to *die*.

Even in the secular realm, there are numerous ways one can seek to evade the lessons of earnestness, either in despair or defiance. It is not just consumer culture that seeks to ignore and hide death, and not just shallow religion that seeks to ignore its reality. Gordon Marino points out that even Freudianism, which makes its goal the facing of stark reality without hiding behind comforting delusions, generally ignores the reality of death and the lessons it teaches.³¹ Here is a life philosophy that claims to face the harsh realities of life and lead to a healthier, more vigorous, harmoniously functioning self, yet its adherents do this largely by overlooking the greatest universal reality (Freud’s “death instinct” notwithstanding). If this understanding of human nature cannot deal with death, it suggests the further question of whether any life-view that is not truly religious can do so. Kierkegaard himself clearly believed in a life after death, even as he staunchly refused to describe it or allow it to become a source of wish fulfillment.³² Indeed, it is hard to imagine how secular culture could see death as anything other than ultimately “sinister.”³³ A view that seeks meaning in fulfillment in this life will have to see death as the ultimate denial and frustration of life. To Kierkegaard, this shows that this life is not in fact the final goal or truest standard. The “before God” which he urges the reader to recollect is what gives life meaning, and allows one to dwell with the earnest thought of death. On the other hand, the earnest thought of death is clearly not the exclusive property of any one tradition, or even of theism alone. Buddhism, a non-theistic religion, has long recognized the importance of death and its lessons on the nature of life. Clearly other life-views could also appropriate this earnestness, possibly without even defining themselves as “religious.”

As odd as it may sound, the earnest thought of death can be comforting and empowering, by Kierkegaard’s description. It teaches one to accept finitude (and the risk that goes with it) as an unavoidable part of life. It also teaches that finitude makes the time one does have (and one’s own

little corner of the world) all the more precious. The earnest thought of death teaches that one cannot grasp life forever, but neither should one waste what one has. It can teach one how to avoid some of the counterfeits of earnestness that seem serious, but which never really think death through. The earnest thought of death is true, which should be enough to recommend it to all “lovers of wisdom.” Anxious times make earnestness all the more necessary, and can make some people more receptive to its lessons. But it does not come easily to anyone, and must be recollected constantly even if once “learned.” It is not so much a fact or a doctrine as it is a discipline, or a virtue: one particularly worth cultivating when life suddenly seems much more uncertain, and much less frivolous than it did before.

Notes

¹ Søren Kierkegaard, *Stages on Life's Way: Studies by Various Persons*; ed. and trans. with intro. and notes by Howard V. Hong and Edna H. Hong (Princeton, NJ: Princeton UP, 1988), xi; also Søren Kierkegaard, *Three Discourses on Imagined Occasions*; ed. and trans. with intro. and notes by Howard V. Hong and Edna H. Hong (Princeton, NJ: Princeton UP, 1993) x-xi.

² W. M. Alexander, *Johan Georg Hamann: Philosophy and Faith* (Martinus Nijhoff, The Hague, 1966) 51-53.

³ *Three Discourses on Imagined Occasions* 71-3.

⁴ *Stages* 9-11.

⁵ William Afham's essay, unlike the discourse, discusses and defines the concept "recollection." Recollection is said to be "ideality" which "wants to maintain for a person the eternal continuity in life" (*Stages* 10). Remembering concerns itself with details, but recollection "draws on the eternal." "Only the essential can be recollected" (*Stages* 12). One who has had one idea through his whole life is able to recollect; one who has grown old with many small and partial thoughts has nothing to recollect, nothing essential or unifying in his or her life, though perhaps that one has quite a bit to remember. Recollection is an art, says Afham: the art of experiencing the essential and poetic in what is remembered, and even in what is present (*Stages* 12-13). Thus, one may develop the "art" to recollect one's home even though one has never left it, to forget the immediate reality in order to experience its ideality.

The setting of "In Vino Veritas" certainly recalls Plato's *Symposium*, and the topic of recollection suggests Plato as well. See Robert E. Wood, "Recollection and Two Banquets: Plato's and Kierkegaard's," *The International Kierkegaard Commentary, v. 11: Stages on Life's Way*; ed. Robert L. Perkins (Mercer UP, Macon, GA, 2000) 49-68. However, it may be the differences between Plato and Afham that are most instructive. For Plato, the primary objects of recollection are eternal truths: geometric principles that underlie physical reality, universal concepts that underlie the diverse variety of physical objects, the Good that underlies the multitude of human opinions on morality and value. Afham affirms that "In recollection, a person draws on the eternal" but not that a person recollects the eternal (*Stages* 11). He affirms as Plato would that recollection requires reflection, but adds that it also requires proficiency in illusion (*Stages* 12-13). A recollection must be happy, says Afham, and so the "exhilarated mood of the participants, the hubbub of the conviviality, the effervescent zest of the champagne" are the objects of his interest (*Stages* 9, 15). Plato would have said that recollection aims at the truth behind illusion, that one ought to strip away illusion, and that in fact it can be unpleasant and painful (as when his mythical prisoner escapes from the cave and stumbles into the true light of the sun). For Plato, sensations such as taste or hearing are not objects of recollection, but are at best occasions for recalling the fundamental principles that underlie and unite them. While Afham too claims that recollection concerns itself with the ideality of the thing recollected, it seems to be more the sort of ideality which Constantin's young friend lost

himself in when he was set adrift on the sea of the infinite to become a poet. See Søren Kierkegaard, *Fear and Trembling/Repetition*, ed. and trans. with intro. and notes by Howard V. Hong and Edna H. Hong (Princeton, NJ: Princeton UP, 1983) 221-22. For him too the “idea” is also intoxicating, emotional, turbulent even. Just as for the banqueters the “idea” carries them further and further from the world, from woman, from believing in the reality of love, and finally leads all their separate ways from one another, so too does the young man’s idea give him a poet’s existence, ultimately estranged from the girl and all other finite relationships (like the Seducer, he would use the word “entanglements”). And just as Afham says that one recollects with the help of the eternal, so too does Constantin affirm that his young friend who is so adrift upon the idea, the newly minted poet, is not truly religious but only has a religious resonance which never actually breaks through. That is, the poet does not fully and consciously relate to the eternal, but only as an inexplicable underpinning for his idealized understanding of actuality (*Repetition* 228-230). As Constantin writes:

If he had had a deeper religious background, he would not have become a poet. Then everything would have gained religious meaning . . . Then he would have acted with an entirely different iron consistency and imperturbability, then he would have won a fact of consciousness to which he could constantly hold, one that would never become ambivalent for him but would be pure earnestness because it was established by him on the basis of a God-relationship. . . . Then with religious fear and trembling, but also with faith and trust, he would understand what he had done from the very beginning and what as a consequence of this he was obligated to do later, even though this obligation would have strange results. It is characteristic of the young man, however, precisely as a poet, that he can never really grasp what he has done, simply because he both wants to see it and does not want to see it in the external and the visible, or wants to see it and does not want to see it. A religious individual, however, is composed within himself and rejects all childish pranks of actuality. (*Repetition* 229-230)

It is clear that the poet more closely resembles Afham’s vision of recollection in his relationship to the idea. Even Constantin, with his limited understanding of earnestness or the eternal, knows that the truly religious person who has allowed the eternal to really get hold of him or her will behave very differently from one who has followed the poet’s call. To an external observer (particularly an uninformed one) the poet will seem to be more spiritually aware than the common shopkeeper or craftsman who is Kierkegaard’s model of the earnest one who “recollects God.”

If one compares Constantin’s descriptions of his young poet friend versus the religiously earnest person, it is pretty clear which one most resembles Socrates as Plato describes him. The one who seeks the idea in Plato’s sense will be calm, sober, and have the “iron consistency.” It is also fairly clear, if one compares the young poet’s writings to Afham’s (cf. *Repetition* 221-22; *Stages* 10, 17-

18) that Afham is closer to the poet than to Socrates, Plato or Kierkegaard, personally and in his view of recollection. He may have realized much that is important about recollection, but like other Kierkegaardian pseudonyms he has misunderstood much as well; and the misunderstandings are perhaps more instructive than the understanding.

⁶ *Stages* 21.

⁷ *Three Discourses* 73-6.

⁸ *Three Discourses* 72.

⁹ *Three Discourses* 78.

¹⁰ *Stages* 28.

¹¹ *Three Discourses* 82-85.

¹² *Three Discourses* 83-84.

¹³ *Stages* 53-55.

¹⁴ *Stages* 59-63.

¹⁵ *Three Discourses* 75.

¹⁶ Søren Kierkegaard, *Either/Or*, v. 1, ed. and trans. with intro and notes by Howard V. Hong and Edna H. Hong (Princeton, NJ: Princeton UP, 1987) 25.

¹⁷ *Either/Or* v. 1, 29.

¹⁸ *Either/Or* v. 1, 40.

¹⁹ *Three Discourses* 74.

²⁰ *Three Discourses* 83-84.

²¹ Bruce H. Kirmmse, *Kierkegaard in Golden Age Denmark* (Indianapolis, IN: Indiana UP, 1990) 27-28.

²² *Kierkegaard in Golden Age Denmark* 86-97.

²³ *Kierkegaard in Golden Age Denmark* 92, 108-117.

²⁴ *Kierkegaard in Golden Age Denmark* 145-152, 181-184.

²⁵ *Kierkegaard in Golden Age Denmark* 199-202.

²⁶ Søren Kierkegaard, *The Point of View for my Work as an Author: a Report to History*, trans. with intro. and notes by Walter Lowrie, ed. and preface by Benjamin Nelson (New York: Harper & Row, 1962) 11.

²⁷ Marcus Borg, "Death as the Teacher of Wisdom" *The Christian Century* (Feb. 26, 1986) 203-06.

²⁸ Laurie Zoloth, "The Care of the Dying in America: The Ethics and Theology of Hair Dye, Botox, and Prozac (presented at the 2003 meeting of the AAR on November 23, 2003 in Atlanta, Ga).

²⁹ *Three Discourses* 71-72.

³⁰ Borg 206.

³¹ Gordon Daniel Marino, *Kierkegaard in the Present Age*, preface by Phillip Rieff (Milwaukee, WI, Marquette UP, 2001): 80-81.

³² Marino 63-64.

³³ Julia Watkins, "Kierkegaard's View of Death;" *History of European Ideas* 12.1 (1990): 68.

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**Plato's Meta-Justificatory Argument Against the Apollonian Conception of Self-Knowledge:
An Analysis of the Epistemological Methods of Justification in Plato's *Charmides***

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Introduction

In the *Charmides*, Socrates sets out to critique the Apollonian conception of self-knowledge, illustrated by Apollo's precept, *know thyself*, inscribed on the portals at Delphi (164d4-164e2). Socrates *cannot* jeopardize his piety through mounting an attack *directly* against Apollo. Thus, the Socratic elenchus begins with Charmides and his mentor Critias discussing the nature of temperance (*σωφροσύνη*). The focus of this essay is to illustrate how Socrates is able to attack the Apollonian precept *indirectly* through syllogistic logic associating Critias' reasoning with that of Apollo, then undercutting Critias' argument, thereby *indirectly* undercutting Apollo's precept also.

Charmides as the Exemplar of Sôphrosynê

The beautiful (*καλός*) form of the male physique enchanted the Ancient Greeks.¹ Likewise, Socrates, in the *Charmides*, enchanted with the defining characteristics of temperance, sets out to investigate the affairs of young men and philosophy (153d3-5). He arrives at the *palaestra* (wrestling school) after returning from battle and is greeted by Chaerephon,² who ventured to ask the Delphic oracle if any man were wiser than Socrates.³ The duo exchange pleasantries wherein Chaerephon introduces Socrates to Critias, Plato's mother's cousin, and a group of men. The group's attention, including that of Socrates, shifts, however, once Charmides, Plato's uncle, enters the palaestra. Socrates, awestruck by Charmides' beauty (155d-d4), retains his composure only through an investigation into the nature of temperance.

Plato has purposely selected allegedly the two most notorious members of his family as interlocutors, i.e., both Charmides, of whom this dialogue is entitled, and his mentor Critias were associated with the Thirty-Tyrants (c. 404-403 B.C.), established via the Spartan democracy, subsequent to Athens surrender to Lysander.⁴ Moreover, Charmides, indicative of Ancient Greek psychological *and* physiological fascination with male anatomy, serves as the archetypal embodiment of *both* aristocracy and temperance. Therefore, Socrates rightfully selects him as an excellent candidate for a discussion of the nature of temperance.

The word 'enchantment' is appropriate in this analysis of the *Charmides* for two very important reasons. First, Charmides' physique and beauty *denote* his embodiment of excellence⁵

(ἄοετή), that is, the mere fact that *he is so beautiful* immediately necessitates him as an exemplar of *sôphrosynê* (σωφροσύνη), moderation, to the Ancient Greek, which Socrates clearly understands (157d5-8). And secondly, the *connotative* implication of the word ‘enchantment’ directly relates to the charm of Charmides, viz., his beauty, but also to the charm required to cure him of his headache—possibly alluding to a prior night’s excess.⁶ Plato, then, has established that the direction of this dialogue will tend toward the charm necessary for the health of the soul rather than the charm, i.e., the appeal, of one’s body (158b-c).

The Socratic elenchus begins with Socrates asking Charmides to define temperance. Charmides has been sufficiently schooled under the apprenticeship of Critias and proceeds with extreme caution (158c6-d6). His response to the question that Socrates poses demonstrates a preoccupation with his appearance and with safeguarding the reputation of Critias.⁷ Socrates, however, is unconcerned with this desire—the nature of the response, which escapes Charmides, relates to the knowable component of temperance with its identification and subsequent definition (158e10-159a4), that is, the nature of temperance in-and-of-itself. Charmides, as the embodiment of temperance, must be able to identify those aspects of *his* nature, which, when exhibited, induce others to identify *him* as temperate. The Socratic elenchus with respect to the *Charmides* concentrates on the epistemological justifications for (ἐπιστήμη) knowledge claims pertaining to the nature of temperance and the self. Therefore, Charmides as the exemplar of temperance (157d5-8) must be able to articulate its nature with the necessary epistemological justifications to convince Socrates that he, in effect, possesses that which he is said to embody.

Four Levels of Socrates’ Attack on the Apollonian Conception of Self-Knowledge

In his 1896 article, “Self-Knowledge,” John I. Beare identifies Socrates’ apprehension about pronouncing the impossibility of self-knowledge as analogous with temperance—for such an act would indicate his impiety.⁸ While Beare’s reasoning is correct, insofar as the dialogue ends in *aporia*, it would be literary negligence not to indicate the four levels of Socrates’ attack on the Apollonian conception of knowledge. They are as follows:

1. Socrates’ initial attack on the Apollonian conception of epistemology.
2. Socrates’ discussion of First-order sciences and their distinction from the science of the self.
3. Socrates’ discussion of Second-order sciences and their distinction from the science of science.
4. Socrates’ meta-justificatory argument against Apollonian epistemology.

Plato's incorporation of these four levels into the dialogue suggests that he implicitly attacks the foundational belief that knowledge, i.e., wisdom, and knowledge of self are synonymous (165a). Thus the enquiry into the nature of knowledge begins with the specific suggestion that knowledge is wisdom.⁹ In no regard, however, is it my intention to assert that these four levels of the Socratic attack on knowledge—used to question the coherence of the traditional conception of knowledge—are in any respect exhaustive.

When scrutinized closely, the four levels of the Socratic attack on Apollonian epistemology provide a critique of the traditional conception of Ancient Greek epistemology. This would indicate that Plato's Socrates, while not having the answer to the nature of temperance in-and-of-itself (165b5-165c) does recognize that the structure of the traditional theory of epistemology is fundamentally flawed in equating temperance with self-knowledge (165a). As in the *Republic*, Book IV (533c), the approach to a philosophical argument is to do away with any hypothesis and attack the premise.¹⁰ Thus the four levels of Socrates' attack on the Apollonian conception of the acquisition of knowledge are based on textual evidence and in no way formulated *ad hoc*.

An Analysis of the Syllogistic Argument

The portals to Apollo's temple at Delphi bear the inscription, "*Know thyself*," which serves as the foundation for *pious* epistemological claims (164d4-164e2). Critias agrees with the inscription as any pious citizen would, that to exercise temperance is to know thyself (165a). Furthermore, he continues to demonstrate his understanding of the historicity behind the inscription by explaining that citizens misunderstood the inscription to be an adage rather than a divine precept from the god Apollo (165a4).

Critias, associated with the bloodthirsty Thirty-Tyrants, explains to Socrates that temperance, which he (Critias) possesses, is self-knowledge. His justification for this claim is based on his own piety. Critias' response to Socrates falls short of sufficiently demonstrating his knowledge—and this is Socrates' concern, namely, how easy it is to profess knowledge without an understanding of the claim. Socrates' attack on this epistemological premise is necessary in educating the citizens of Athens about the structure of knowledge, i.e., how it is that we come to know what we know. A direct attack on the incoherence of Apollo's precept, however, would sufficiently demonstrate Socrates' impiety. What Socrates will need to disprove is the incoherence of a transcendental method of self-knowing.¹¹

In depicting Critias, a tyrant, as agreeing with Apollo's precept (165a), Socrates may now attack the traditional precept via an attack on Critias, without directly questioning Apollo's divinity. Thus, if Critias' view of epistemology is analogous to Apollo's precept (165a) and Socrates demonstrates the incoherence of Critias' epistemological claims (170c9-170d2), then Socrates has demonstrated, indirectly, the incoherence of the Apollonian method for the acquisition of

knowledge. Although the dialogue does end in *aporia*, Socrates' discussion with Critias and Charmides demonstrates to the reader that the Apollonian conception of epistemology is fundamentally flawed, while *simultaneously* conserving Socrates' piety.

The First Level of Socrates' Attack

The process by which Socrates unravels the inconsistencies within Critias' argument for self-knowledge as associated with temperance unfolds over an intricate dialogue that prefaces the discussion of First and Second-order sciences. As in the *Apology* (22d), Socrates demonstrates that he is wiser than Critias for he does not claim to know what he does not know (165b5-165c), whereas Critias proclaims justification for his explanation of temperance by appeal to divinity (165a)—possibly, as Critias would venture to guess, trumping Socrates' prior refutation (164c4).¹² This association of self-knowledge on the one hand, and temperance on the other, will be the undoing of Critias' argument for the remainder of the dialogue.¹³

The process, however, is superbly complex, as Socrates knows the paradoxical nature of associating temperance, as a *form* of science, with knowledge—for this would indicate that temperance is the science of a *particular* (165c4). If so defined, temperance cannot account for itself-as-such (170d). For example, the science of shape and form is *justified* by geometry, which justifies the geometrical claims that the sum of the interior angles of a triangle total 180° or the bisector of a 180° line divides such a line into two identical halves.¹⁴ However, despite the fact that geometry *can* account for and justify such claims it *cannot*, within itself, justify the axioms used to justify those prior claims. Therefore, the science of geometry cannot justify those standards (axioms) that serve as the basis, i.e., justification, for all geometrical claims. This is a preface to the meta-justificatory argument against self-knowledge. Such an undertaking requires careful attention to detail, as I explain below.

Critias' critical error was his association of temperance with self-knowledge, as I have suggested above. In making this association, he may have intended to bolster his argument by appeal to an accepted definition, established as a precept from the god Apollo at the portal to the Delphic oracle, which *should have* conquered Socrates' former refutation. The introduction of Apollonian epistemology offers Socrates the opportunity to spearhead a philosophical attack, however, not only on Critias but more importantly on those citizens who blindly swallow divine doctrine and profess knowledge of that which escapes them (*Apology* 22d). Therefore, the first level of Socrates' attack on traditional epistemology concludes once he identifies the paradoxical association of self-knowledge with temperance.

The Second Level of Socrates' Attack

The second level of the Socratic attack on the Apollonian method for the acquisition of knowledge appears with the discussion of First-order sciences. First-order sciences are the sciences *of*, as Socrates demonstrates repeatedly (166a3), e.g., the science *of* health (165c11), the science *of* building houses (165d4), the science *of* art (165d6), and, notoriously, the science *of* the self (165d7). Critias, fueled with unbridled determination, scolds Socrates for not conducting the investigation of temperance in the appropriate manner (165e3-166a2) and challenges Socrates to offer a geometrical analogue to the correlation of house and house-building (165e5). Surprisingly, Socrates agrees that he can furnish no such instance (168a3). Nevertheless, in later passages Socrates does succeed in doing just this, though indirectly.¹⁵ What is Socrates trying to do? Socrates needs first to explain the relationship between *any* science and that of which it is a science.

Critias is looking for a relationship in the science of geometry analogous to the association of a house to house building (165e5) which Socrates will not *directly* provide (168a3). I offer the following as such an analogy: A house is to house-building as an isosceles triangle is to triangles. What is Critias seeking? He is seeking an association of a particular (a house) to the science governing, i.e., *justifying* that particular (house-building). The association of a geometrical particular (a *particular* isosceles triangle) to the science governing it is provided in the example. The axiomatic principles of triangles indicate that *all* triangles are defined (*a priori*) as three sided enclosed figures with interior angles totaling 180°. A particular isosceles triangle *is* justified as such—by the axiomatic principles of triangles, just as a particular house is justified by the science of house building.¹⁶

Socrates asks Critias to identify what it is that temperance is the science of, other than itself (166b4). Critias replies that it is, exclusively, the science of itself *and* other sciences (166c2). In other words, temperance has progressed from the science of self (165e) to the science of *itself* (166c2). This implies that temperance is both the particular and the whole (the justification for the particular) simultaneously. This seems correct, but where does it leave us? The answer is surprisingly redundant: $q \rightarrow q/q \therefore q$, which Socrates later proves (170d).¹⁷ Critias is correct, however, in distinguishing the First-order science (*of*) from the Second-order science (*itself*).

Critias, believing that he has stumbled onto an important development, augments his prior formulation of temperance to include the science “which is not of anything except itself and the other sciences and that this same science is also a science of the absence of science” (167b10-167c2). In a two-part rebuttal (168a5 and 170c9-170d2), Socrates demonstrates sufficiently that if Critias were to possess such knowledge it would equate merely to knowing *that* he knows.

To clarify, I turn my attention, briefly, to the history of philosophy. Descartes' *cogito ergo sum* in-and-of-itself, without the proof of the external world or God, simply states that he knows that he knows, despite any secondary forces acting against him. This is by no means a trivial point for

Descartes' meditations. Not until idealistic metaphysics culminate with Hegel's *Aufhebung*,¹⁸ however, does the philosophical community realize the importance of history in defining the self. It would be a travesty for me to criticize Critias with such an anachronistic attack. My intention is not to do so. For Socrates to say that Critias' argument condenses to knowing only *that* he knows involves immense foresight. He has demonstrated that the First-order science equating the science of self with temperance—justified via the science of *itself*—leaves the knower knowing only *that* he/she knows, which has been shown to be redundant.

The Third Level of Socrates' Attack

The discussion turns toward the Second-order sciences in a very unassuming manner. Socrates asks Critias by which science a man is made happy (174a8) to which Critias, after some inquiry, asserts that a man is made happy through the knowledge of good and evil (174b11). It is as though an epiphany dawns on Socrates (174b12) once he realizes that Critias is not arguing for the knowledge of all sciences, or for an amalgamation of particular sciences, as the definition of temperance—but simply for the knowledge of this particular science, namely, the science of good and evil. If Critias is correct, the governing Second-order science of good and evil will account for, i.e., justify, those First-order sciences mentioned earlier in this discussion. A house derives its characteristics from the science of house building, just as an isosceles triangle derives its characteristics from the axiomatic principles of geometry. Thus, the science of good and evil must be *the* science whereby all other sciences derive their characteristics (174c9). If individuals attain knowledge of a First-order science, it follows that they could have done so due only to the governing Second-order science of good and evil. No person could make epistemological claims in the absence of the Second-order science of good and evil. For Critias, then, it is the Second-order science of good and evil which remains constant throughout the plethora of First-order sciences. This argument may seem coherent, but as Socrates will demonstrate, it is riddled with inconsistencies.

The Fourth Level of Socrates' Attack

Socrates' rebuttal of Critias' equation of temperance with the science of good and evil is the last level of his four-part attack on the Apollonian conception of the acquisition of knowledge. Socrates' final question, leading to the final destruction of the traditional conception of Apollonian epistemology, is whether the science of medicine, rather than the art of medicine, would make us healthy (174e2). Clearly, Socrates understands the function *and* the limitation of Second-order sciences, for he has challenged Critias to demonstrate how it is possible for the science of science to create anything, if its sole role is foundational.

I have suggested here that the science of geometry is analogous with a Second-order science because it governs, through axiomatic principles, shapes and forms, which would serve as analogies for First-order sciences.¹⁹ Furthermore, I have suggested that the truths of Second-order sciences are known *a priori*. For example, the fact that *all* triangles are defined (*a priori*) as three sided enclosed figures with interior angles totaling 180° and that the bisector of a 180° line divides such a line into two identical halves are known independently of observation. Our epistemological claims necessarily begin, however, with *a posteriori* observations of *particulars* that occupy space and time, in most instances, unlike the divine. Thus, Socrates concludes, we come to know the world through *a posteriori* observations, which are justified by Second-order sciences; however, in-and-of-itself, Second-order science, that is, the meta-science, cannot lend itself to knowledge of anything concrete because Second-order science is limited to the knowledge of the *a priori*. Therefore, temperance as synonymous with Second-order science is useless; it remains an abstraction without observable features. Socrates concludes, then, that temperance will be of no use when it is the craftsman of no useful thing (175a5).

Conclusion

It has been my intention to elucidate those processes by which Socrates develops his attack on traditional Apollonian epistemology without committing an impious act, thus sufficiently safeguarding his *sôphrosynê*. He demonstrates Critias' *post hoc ergo propter hoc* formulation of knowledge claims as deriving from the god Apollo. From this starting point, the Socratic attack on traditional epistemology catalyzes once it is demonstrated that Critias has associated self-knowledge with temperance. After demonstrating the inconsistencies that emerge from the postulated equivalency of temperance and self-knowledge, Socrates begins a multifaceted attack on the sciences and (alleged) justifications for them that, as Socrates concludes, cannot account for knowledge. It is, therefore, through his meta-justificatory argument for Second-order science that Socrates is able to detail the limitations of the Second-order science by proving that the sole role of Second-order science is as a justification for the First-order science. Therefore, temperance could never be a Second-order science since it is of this world.

Notes

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- ¹ Plato, *Symposium*, trans. Paul Woodruff (Indianapolis: Hackett, 1989) 210b. In Ancient Greece, homosexual relationships were commonplace. It was understood that intelligence and strength were characteristics of men (*Symposium* 181c4). And, therefore, the greatest expression of love would be that of a lover (*erastēs*), usually an older man for his adolescent beloved (*erōmenos*). The mere structure of a man's physique served as justification of his excellence.
- ² Chaerephon, Socrates' disciple, makes only a brief appearance in the *Charmides*. At the time of Socrates' trial, in the *Apology*, Chaerephon has already died.
- ³ Plato, *Apology*, trans. G.M.A. Grube (Indianapolis: Hackett, 1981) 21a3.
- ⁴ Jon Moline, *Plato's Theory of Understanding* (Madison: Wisconsin UP, 1981) 48. In the siege of Athens in c. 404 B.C., Sparta conquers Athens wherein Lysander empowers the oligarchic rule of the Thirty Tyrants, with which both Critias and Charmides were affiliated.
- ⁵ It is stated in the dialogue (159a) that if temperance were present in Charmides he should have no qualms with explaining its definition. However, if he were unable to do so, his lack of ability would sufficiently demonstrate its absence in him.
- ⁶ Joanne B. Waugh, "Questioning the Self: A Reaction to Carvalho Press and Schmid," *Does Socrates Have a Method?* (Philadelphia: Pennsylvania State UP, 2002) 290. Waugh implies that Charmides' headache may indicate his participation in a night's excess. However, Charmides' *sôphrosynê* remains unaffected.
- ⁷ Plato, *Charmides*, trans. Rosamond Sprague (Indianapolis: Hackett, 1992) 158c6-159d6. Charmides has identified that the circumstance in which he is involved leaves him in a precarious situation. If, on the one hand, he professes his temperance, he demonstrates the lack thereof. If, however, he denies his temperance, he makes Critias a liar.
- ⁸ John I. Beare, "Self-Knowledge," *Mind*, New Series 5.18 (1896): 227-235.
- ⁹ W.G. Runciman, *Plato's Later Epistemology* (New York: Cambridge UP, 1962) 10-11. The interchange between knowledge and wisdom is simply one of preference. This is not the case, however, if we are equating wisdom with the knowledge of self. Furthermore, this would also indicate that knowledge, as mentioned, is not synonymous with self-knowledge either.
- ¹⁰ Gwynneth Matthews, *Plato's Epistemology* (New York: Humanities Press, 1972) 118.
- ¹¹ Joseph Flanagan, *Quest for Self-Knowledge: An Essay in Lonergan's Philosophy* (Buffalo: Toronto UP, 1997) 231. Flanagan is discussing the association between the religious experience and the acquisition of knowledge. The knower transcends his/her former conceptions of truth to realize greater truths. Flanagan's explanation of the transcendental method of self-knowledge is similar to Critias' formulation, both relying on the metaphysical realm for justification of epistemological claims.

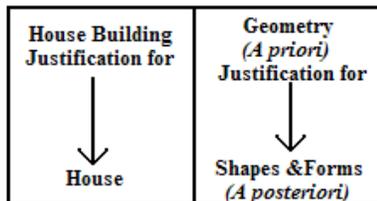
¹² This is an attempt by Critias to appeal to the authority of Apollo's precept. He explains to Socrates that at the entrance of the temple Apollo's reminder to remain temperate greets its visitors, (165a) which establishes a foundation for his revised definition of temperance as a science of some sort (165c).

¹³ Once Critias has connected temperance with the sciences, he has inadvertently categorized it as either a First-order science or a Second-order science, each of which has its limitations. If in fact temperance is argued to be a First-order science, the complication arises as to how is it justified (by what standard of justification). If, however, Critias argues that temperance is a Second-order science, which he inevitably does, the complication that arises is the following: what use can it possibly serve as an *a posteriori* phenomenon, if by definition it is the justification for observation through *a priori* principle? As the discussion progresses, this inconsistency will be further clarified.

¹⁴ This example is intended to demonstrate the distinction between the science *of*, as distinct from the science *which*. If temperance is the science of, it cannot account for itself—for to be the science of, it must be a science of particulars. Moreover, if the question of justification arises, as it usually will, the fundamental problem of begging the question destroys the argument. Thus the justification must come from outside of the science itself, and, therefore, the science in-and-of-itself cannot account for itself.

¹⁵ See Plato, *Charmides* 170c-d.

¹⁶ The following figure depicts the analogy between the relation of a house to house-building and the relation of particular shapes and forms to geometry.



¹⁷ Plato, *Charmides* 170d. To know what one knows but does not know = to know that one knows but does not know. The only difference between these two statements is that, in the first instance, one knows what one knows, but this insight does not advance my philosophical investigation.

¹⁸ The notion of *Aufhebung* implies a culmination or pinnacle of metaphysical idealism, enveloping all natural and metaphysical sciences.

¹⁹ See note 16 on the association of shape to geometry.

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Review of Jürgen Habermas, *On the Pragmatics of Social Interaction: Preliminary Studies in the Theory of Communicative Action*. Trans. Barbara Fultner (Cambridge: Polity Press, 2001). Pp. 192. ISBN 0-7456-2551-7 (Hardback £50.00)

and

Jürgen Habermas, *The Liberating Power of Symbols: Philosophical Essays*. Trans. Peter Dews (Cambridge: Polity Press, 2001). Pp. 130. ISBN 0-7456-2552-5 (Paperback £14.99).

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On the Pragmatics of Social Interaction and *The Liberating Power of Symbols* stand at each end of Jürgen Habermas's attempt to develop a theory of communicative action, universal pragmatics, and discourse ethics.

On the Pragmatics of Social Interaction is a collection of preliminary studies of communicative action and universal pragmatics from the 1970s leading up to the publication of *The Theory of Communicative Action* in 1981. The volume is a translation of parts of the companion volume to *The Theory of Communicative Action, Vorstudien und Ergänzungen zur Theorie des kommunikativen Handelns*, which was published in German in 1984. Another, well-known essay from the latter volume has previously been published as "What Is Universal Pragmatics?" in *Communication and the Evolution of Society*.

In addition to a useful introduction by the translator, *On the Pragmatics of Social Interaction* contains three essays by Habermas. First, his Gauss Lectures from 1971 where he lays out the parameters of his programme of universal pragmatics through an engagement with, among other things, speech act theory. Habermas wishes to build a normative critical theory on this foundation. This is by far the most interesting (and longest) essay of the volume. Second, there is an essay on the philosophy of action, in particular on the role of intentionality. Third, the volume is closed by an essay on the notion of pathology within the programme of a universal pragmatism of language. In this essay, Habermas seeks to show how a universal pragmatics of language can serve to detect systematic pathologies of communication.

On the Pragmatics of Social Interaction serves as a good introduction to Habermas's theory of communicative action and universal pragmatics of language. The first essay of the volume, which should be read together with "What Is Universal Pragmatics?" and his later writings on discourse ethics, is particularly helpful in this regard. The volume also gives the reader an idea of Habermas's disputes with other theorists, among them Ludwig Wittgenstein, Wilfrid Sellars, and Edmund Husserl. It is through an engagement with these, as well as other thinkers, that Habermas develops his own approach.

The Liberating Power of Symbols is also an example of Habermas's engagement with other theorists, containing essays from the 1990s. Here Habermas engages with, among others, Ernst

Cassirer, Karl-Otto Apel, Karl Jaspers, Georg Henrik von Wright, Michael Theunissen, and Gershom Scholem. Whereas in *On the Pragmatics of Social Interaction* Habermas uses his critique of his theoretical opponents actively to develop his own approach, in *The Liberating Power of Symbols* he is reading his opponents more passively simply to point out the weaknesses in their arguments in light of his own project. In particular, Habermas tries to show the superiority of the communicative and intersubjective paradigm in general, and of discourse ethics in particular, in dealing with the challenges of pluralism in contemporary Western societies.

In both volumes, Habermas tries to show the necessity of a communicative or intersubjectivist approach. Habermas distinguishes communicative rationality—aimed at reaching mutual agreement—from instrumental rationality, from the arbitrary decision by a subject, and from contextualism. Thus, Habermas aims to show the universality and unavoidability of communicative action and of the presuppositions of communicative action. With our first utterance, he argues, we put forward the implicit claim that we could, if necessary, vindicate the validity claims implied in our speech act before a universal communication community (which is not to say that the result will in fact be a universal vindication of our validity claims). Thus, from the very outset, social action is intersubjective. We should, then, be able to avoid the problem to which Habermas refers as the philosophy of consciousness, namely, how to make the move from a state of ‘private’ consciousness to a state of mutual agreement and cooperation.

Habermas seeks to reconstruct the different aspects of what he believes to be the universal and unavoidable structures of communicative action. This, in turn, serves as the foundation for social critique. Hence, for Habermas, the philosophy of language has moral and political implications. As an answer to the problem of how to organize our lives together peacefully, Habermas reconstructs universal procedures (of public deliberation, and so on). It is in this way only, and not by relying on a substantive ethos, that we can integrate the plurality of conceptions of the good in modern, complex societies. In short, by showing the universality and unavoidability of certain structures of communication, Habermas believes to be able to include the other without violating her otherness.

Habermas has changed his position in some respects since the original publication of the essays in *On the Pragmatics of Social Interaction*. For instance, he no longer uses the term ‘ideal speech situation’ to refer to a situation of perfect symmetry among participants in discourse. In order to avoid the connotation of a normative ideal, Habermas now refers to this as presuppositions about rational discourse that we inevitably make when engaging in argumentation. This is just one example that Habermas’s work is an ongoing research *programme*.

Another point on which Habermas has changed, or at least clarified, his position concerns the role of experience in the vindication of cognitive claims to truth. Habermas believes that validity can only be established discursively, that is, through the testing of validity claims in discourse. The criteria of truth, for example, is then a rational consensus and not, for instance, correspondence to an external reality. This is the reason why Habermas refers to his theory of truth as a consensus theory of truth. However, in *On the Pragmatics of Social Interaction*,

Habermas has not taken the full consequences of this. Thus, he sometimes, but not always, refers to experience not mediated by discourse as the criteria of truth.

A general problem that the reader may find with Habermas's programme is that Habermas conceives of intersubjectivity, that is, of our being together in the world, in terms of rationalistic, and often linguistic, communication. This is also a problem in the two texts under consideration here. Rational communication becomes divided from the body, passions, desires, religious feelings, and so on, all of which are confined to a secondary status, and Habermas cannot answer adequately how to reconnect rational communication to the non-rational and non-linguistic.

Neither *On the Pragmatics of Social Interaction* nor *The Liberating Power of Symbols* are major works, but they serve as companion volumes to *The Theory of Communicative Action* and to *Between Facts and Norms* respectively. Thus, they will be of interest to those who wish to get a taste of Habermas's more important, but also less accessible, works. The two volumes will also be of interest to those trying to compare Habermas's interpretations of, for instance, Wittgenstein and Husserl with those of, say, Stanley Cavell and Jacques Derrida. In addition, for those interested in Habermas's work from a more scholarly point of view, *On the Pragmatics of Social Interaction* will provide a source for the development of Habermas's theory of communicative action, universal pragmatics, and discourse ethics.

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