

Stellenbosch Socratic Journal

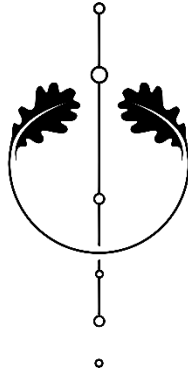
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Editorial Board

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Foreword

Shirah Theron

In 2021, The Socratic Society of the Department of Philosophy at Stellenbosch University gave birth to the Stellenbosch Socratic Journal. This year, we are proud to present its second issue. This annual serves not only as an opportunity for homegrown student philosophers to publish their questions and ideas, but strives to spark creative theoretical and pragmatic philosophical dialogue. The student-founded and student-run Socratic Society fosters insightful philosophical discussion and critical debate on a wide range of relevant issues by hosting events featuring speeches or screenings, often followed by vigorous discourse.

The Stellenbosch Socratic Journal (SSJ) aims to inspire students to find their unique philosophical voice and to submit their work for publication in this formal academic setting. We believe that this formal academic platform not only serves as a showcase for the work of Stellenbosch philosophy students, but also serves as continuous stimulation to encourage and enable these innovative thinkers to engage with the work of their peers and develop and exchange their ideas with others. Postgraduate philosophy students at Stellenbosch University are encouraged to submit papers on any theoretically interesting topic. We also welcome the submission of papers from third-year philosophy students who have produced exceptionally outstanding work. The content of the SSJ is not constrained to any one branch or field of philosophy, and proudly directs attention to the wide range of topics and concepts Stellenbosch philosophy students work on in an ever-changing environment.

The Stellenbosch Socratic Journal adheres to the same procedures and standards as set out for the typical academic journal. Two anonymous student reviewers, at either Masters or Doctoral level, independently peer-review each conditionally accepted submission and offer constructive criticism to assist the author to bring their work to the highest level of performance and effectiveness. The SSJ editorial board, a group of postgraduate Stellenbosch Philosophy students representing a variety of specialisations, facilitates this process.

In this second edition, we are delighted to present the writings of our students at various academic stages, from undergraduate to PhD level, representing an expansive range of philosophical interests.

In the first paper, **Shirah Theron** analyses whether non-consensuality can be used as a determiner for paraphilic disorders by examining the diagnostic criteria of paraphilic disorders in the DSM-5-TR. Is it the case that consent not only becomes the standard for permissible and legal sexual activity with other persons, but also, when the diagnostic criteria are taken at face-value, for sexual pathology in the DSM-5-TR when the patient acts on their sexual urges?

Many individuals have started to doubt the institution of policing and its justification, given the prevalence of police brutality against black people that appears to be increasing globally at an alarming rate. The public's awareness of police brutality is a growing phenomenon and many academics have examined policing and racism through the prism of a critical theory of race. **Paul Joubert** investigates, through the use of the theoretical tools from the theory of instrumental reason, as described by Horkheimer and Adorno, the manner in which the institution of policing utilises instrumental reason in order to subjugate humans, particularly black people, to an inscrutable end.

The right to abortion remains a deeply debated subject within the field of moral philosophy. This debate recently reignited, capturing public imagination, when the United States Supreme Court overturned *Roe v. Wade* – the landmark ruling that established the U.S. constitutional right to abortion. **Summer Carne's** paper conducts a deep-dive into Thomson's arguments for the moral permissibility of abortion, while acknowledging her most well-known critiques and commentaries by John Finnis and Phillipa Foot.

Marking the halfway point of the collection of publications for this second issue of the SSJ, is **Pieter Conradie's** paper that allows us to experience a sense of leisure by discussing two uses of the concept GAME in relation to the repression of desire. The first use refers to the common use of the term: board games, sports, and riddles, while the second refers to sexual prowess. Conradie makes the claim that the purported emancipation of desire in an evolved capitalist society transforms desire into another consumable good under rational control, following Herbert Marcuse's concepts of surplus repression and the performance principle. In a series of interludes, Conradie imagines societies with alternative expressions of desire. In doing so, he seeks to describe, as well as to perform, a world free from excessive rationality.

The Broad-Based Black Economic Empowerment Act of 2003 was introduced in South Africa as a means to further reduce the structural patterns of disadvantage that disproportionately impact the black majority of the population in the wake of Apartheid. The moral theory of John Rawls seeks to provide a kind of distributive justice that is founded upon fairness. **Shannon Stodel** investigates the application of the criteria and principles, as presented by Rawls in his theory of 'Justice as Fairness', to the enactment of the Broad-Based Black Economic Empowerment Act (BBBEE) to evaluate whether or not it satisfies his stipulated conditions.

For Wittig, sex is a political category that establishes heterosexual society – not in a binary way, but in a way that particularises women as "the sex" while men are universal subjects in Being. In the penultimate paper of this second issue of the SSJ, **Tamlyn February** discusses Monique Wittig, Judith Butler's critique of Wittig, to articulate their own theory of gender performativity, and the more primary point that Butler does not argue for full-scale revolution. Rather, their emancipation strategy from heterosexual society is more radical, as it aims to trouble all identities, and the notion of identity itself, to make space for the legitimacy and recognition of "impossible" identities.

Finally, **Jaco Louw** expands on how it remains a contentious topic whether the philosophical counsellor should have a method in their practice to help the counsellee resolve philosophical problems. Some philosophical counsellors claim that there should be no rigid adherence to method(s), as this will render philosophy too dogmatic. To unpack this issue, Louw discusses what he calls "dissentient philosophical counselling" by introducing African conversational philosophy via its method of conversationalism, as well as a

peculiar version of Pyrrhonian scepticism, especially regarding the notion of *bios adoxastōs* (life without dogma).

I wish to highlight that the editorial board of the SSJ deserves high praise for their hard work and unwavering support that made this second issue possible. Thank you to each and every author and reviewer for devoting so much time and effort on delivering such thought-provoking content. A special word of thanks to our Socratic Society and Stellenbosch Socratic Journal convenors, Dr. Andrea Palk and Prof. Vasti Roodt, for their invaluable guidance and assistance throughout this process. May the Stellenbosch Socratic Journal continue to prosper and expand throughout the coming years and serve to nurture creative and critical thinking, free and robust dialogue and build towards the shared understanding of crucial topics within our society.

May the SSJ always bring about recognition of the views of others, especially those different from our own. Happy reading!

Non-Consensuality Pathologised: Analysing Non-Consensuality as a Determiner for Paraphilic Disorders

Shirah Theron

Abstract

The fifth text-revised iteration of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR) defines paraphilia as “any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners”. Paraphilic *disorders* specifically denote a paraphilia that is “currently causing distress or impairment to the individual or a paraphilia whose satisfaction has entailed personal harm, or risk of harm, to others”. A diagnosis of paraphilic disorder either demands the personal distress and/or impairment of function that is caused by the atypical sexual urges and fantasies to be present, or the status of non-consent of the other person that these sexual fantasies and urges are directed towards when acted upon by the patient. This paper discusses how consent not only becomes the standard for permissible and legal sexual activity with other persons, but also, when the diagnostic criteria are taken at face-value, for sexual pathology in the DSM-5-TR when the patient acts on their sexual urges. After a close investigation of various possible interpretations of the element of non-consensuality in the diagnostic criteria for paraphilic disorders, this paper concludes that the DSM-5-TR does not offer a clarifying explanation on how mental health professionals should understand its approach to diagnosing paraphilic disorders, leaving us with an ambiguous, unclear and unsettled conceptualisation of what it would mean to fulfil its diagnostic criteria.

About the author

Shirah Theron has just submitted her Philosophy MA thesis, titled “Pornography Conceptualised as an Addictive Substance”, for examination at Stellenbosch University is already working on her PhD proposal. Her general research focuses on sexual ethics and philosophy of sex, and she wishes to do further research in the fields of psychology and sexology. She serves as the President of the philosophy department’s student society, as well as the Editor-in-Chief for the departmental academic journal, the Stellenbosch Socratic Journal. Shirah strives to make a worthwhile change in her community, particularly relating to advocating Krav Maga techniques for the purposes of self-defence with the mindset: “We work together to empower each other”. Furthermore, she still absolutely adores cats.

1. Introduction

The Diagnostic and Statistical Manual of Mental Disorders (DSM) is widely acknowledged as the “leading clinical manual of contemporary psychiatry” (Adriaens, 2015: 160), and is utilised by mental health professionals as a guide to diagnose and treat mental disorders. Its latest edition (DSM-5-TR) was published in May of 2022 (with its original fifth edition published nine years ago in 2013) and has been amended multiple times leading up to this revised fifth release. This resulted in the continued expansion of the concept of ‘mental disorder’ (Boysen and Ebersole, 2014), including the latest diagnostic criteria for paraphilia and paraphilic disorders. According to the DSM-5-TR (American Psychiatric Association, 2022), paraphilia refers to “any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners”, whereas paraphilic disorders specifically denote a paraphilia that is “currently causing distress or impairment to the individual or a paraphilia whose satisfaction has entailed personal harm, or risk of harm, to others”.

But what exactly is being pathologised in paraphilic disorders? In other words, what exactly is it *about* paraphilic disorders that make them mental disorders rather than merely deviations of societal norms?¹ The DSM definition of mental disorder emphasises that discrepancies between the individual and societal norms are not to be considered disorders, as the “symptoms must be caused by a dysfunction in the individual to constitute a disorder” (Wakefield, 2011: 198). This paper discusses the conceptualisation of mental disorders and focuses on the diagnostic

criteria for paraphilic disorders in the DSM-5-TR (APA, 2022). As I will show, consent not only becomes the standard for permissible and legal sexual activity with other persons, but also, when the diagnostic criteria are taken at face-value, for sexual pathology in the DSM-5-TR when the patient acts on their sexual urges.

A diagnosis of paraphilic disorder is either based on the personal distress and/or impairment of function that is caused by the atypical sexual urges and fantasies, or based on the status of non-consent of the other person that these sexual fantasies and urges are directed towards when acted upon by the patient. This paper aims to specifically investigate and identify various possible interpretations of the element of non-consensuality in the diagnostic criteria for paraphilic disorders. I will conclude that the DSM-5-TR does not offer a clarifying explanation on how mental health professionals should understand its approach to diagnosing paraphilic disorders, leaving us with an ambiguous, unclear and unsettled conceptualisation of what it would mean to fulfil its diagnostic criteria.

2. The DSM's contribution to understanding mental disorders

There is robust consensus among philosophers and mental health professionals that the concept of mental disorder is at the foundation of psychiatry (Varga, 2011: 1). Due to a variety of socio-political factors, many psychiatrists believe that only a completely objective and value-free definition of mental disorder is truly apt in making a successful diagnosis (ibid.).² Questioning the nature of mental disorders is crucial, since there is a real possibility of wrongfully classifying

¹ Jerome Wakefield explains this using the example of adultery. Adultery is “negatively socially valued”, but the fact that it deviates from some societal norm does not *make* it a disorder. He adds that, “the desires underlying adultery, while disapproved, are conceded to be within the normal range of human biological design and not a dysfunction of sexual desire” (2011: 198).

² What makes some definitions of mental disorders more objective than others lies beyond the scope of this paper, as this paper focuses on the element of non-consensuality in the diagnostic criteria of paraphilic disorders in the DSM-5 and DSM-5-TR (APA, 2013, 2022). However, I do not deny the importance of questioning the objectivity of medical definitions that change through time and society.

various kinds of social deviance or behavioural variations as a 'disorder'. However, these deviances and variations may be "better conceptualised using other categories, such as 'non-pathological individual differences', 'lifestyle choice', or 'crime'" (Stein, Palk & Kendler, 2021: 1).

The Diagnostic and Statistical Manual of Mental Disorders is used to better understand the concept of mental disorder, which is fundamental for mental health professionals to correctly diagnose their patients. Even at the time of the most recent publication of the DSM-5-TR in 2022, the question of whether and how the DSM should define a mental disorder "remains as controversial as ever" (Bingham & Banner, 2014: 537). There have been grave consequences of the misapplication (and misuse) of the concept of 'disorder'. A "crucial controversy", as Adriaens terms it, of the DSM-1 and DSM-2 was the pathologisation and classification of homosexuality as a mental disorder (2015: 164-167). This is a pivotal example of how culture-relative notions have greatly influenced how far 'mental disorder' can expand over its conceptual plane. Only in the late 1970s, was it understood that it is a *homophobic* society that "transforms homosexuality into a disease" (Adriaens, 2015: 166).

As seen in the example above, it is of great importance to understand the concept of mental disorder appropriately, as it is crucial for "constructing 'conceptually valid' criteria that are good discriminators between disorder and non-disorder" (Wakefield, 1992: 373-374). This is to say that each mental disorder listed and described in the DSM must "satisfy the definition of mental disorder" (First & Wakefield, 2013: 663). Each mental disorder must have one or more elements of dysfunction and harm present. These dysfunction and harm-components are key in determining the presence of a mental disorder in the patient, because almost all symptoms and characteristics of the mental disorders listed in the DSM can occur under some

circumstances in a normally functioning individual (ibid., 665).

Furthermore, if the diagnostic criteria of mental disorders are not carefully evaluated and revised when considering new neuroscientific findings or novel medical conceptualisations, the potential for diagnostic false positives will increase (First & Wakefield, 2013: 665). As previously mentioned, both the harm-component and dysfunction-component must necessarily be present to meet the requirements for a mental disorder and a successful diagnosis thereof. The mental disorder's definition refers to the dysfunction-component as the "failure of biologically designed functioning of psychological mechanisms or processes" (ibid., 664). In addition to this, it is the dysfunction that must also cause harm to the patient, usually in the form of "distress or social role impairment that is sufficiently serious to warrant clinical attention" (ibid.).

The DSM has been expanded to include more disorders,³ but in doing so has left much open to interpretation. The concept of dysfunction, for example, is extremely difficult to define. Stein, Palk and Kendler (2021: 7) posit that "[s]ymptom severity, excessiveness, and duration" may be very helpful in categorising the dysfunction of mental disorders and assist in diagnosis. The DSM does attempt to be somewhat specific in its diagnostic criteria with regards to a mental disorder's indicators, but it is also crucial to remember that "biological difference does not point to dysfunction" (ibid.). This leaves the possibility that, despite the availability of particular factors that categorise dysfunction, the true nature of dysfunction is not clear-cut and remains very demanding to delineate.

Determining an internal dysfunction is particularly challenging, due to our lack of access to objective

³For more on this, see Boysen and Ebersole (2014).

biomarkers for dysfunction. We are not⁴ (yet!) able to uncover objective evidence of brain and neurological dysfunction in a laboratory that points towards psychological and mental disturbance – as if the symptoms that are observed in the laboratory themselves constitute the disorder (First & Wakefield, 2013: 665). Due to the absence of such clear biomarkers, the dysfunction must instead be “inferred from the symptomatic presentation *together* with the contextual circumstances” (ibid., 665, own emphasis). And again, given that almost every psychiatric symptom that is characteristic of a mental disorder can occur in some context of a normally functioning person, the criteria based on the symptoms of the mental disorder must be constructed in such a way as to indicate that the symptom “cannot reasonably be considered normal”,⁵ so that mental health professionals can better distinguish and identify the dysfunctions from what is considered normal functioning.

3. Questioning what it means to fulfil the diagnostic criteria of paraphilic disorders in the DSM-5-TR

Paraphilia is constructed from two Greek roots: *para* meaning beyond and *philia* meaning love, reflecting that paraphilias are construed not only as sexual disorders but as “disorders of loving” (Zinik & Padilla, 2016: 45). In the DSM-5-TR (APA, 2022), there are eight listed paraphilic disorders, along with “other specified paraphilic disorder” and “unspecified paraphilic disorder”.⁶ These eight disorders are “voyeuristic disorder”, “exhibitionistic disorder”, “frotteuristic disorder”,

“sexual masochism disorder”, “sexual sadism disorder”, “pedophilic disorder”, “fetishistic disorder” and “transvestic disorder” (APA, 2022: 779-802). The DSM-5-TR distinguishes between paraphilia and paraphilic disorder. Paraphilia refers to “any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners”,⁷ whereas a paraphilic disorder specifically denotes a paraphilia that is “currently causing distress or impairment to the individual or a paraphilia whose satisfaction has entailed personal harm, or risk of harm, to others” (APA, 2022: 780). All eight of these disorders satisfy at least one of Criterion A and Criterion B.

In the diagnostic criteria for each of the listed paraphilic disorders in the DSM-5-TR (APA, 2022), Criterion A specifies the “qualitative nature” of the paraphilia, such as an erotic focus on inanimate objects or a focus on exposing the genitals to unsuspecting strangers. This criterion usually stipulates a timeframe of about six months. Criterion B specifies the “negative consequences” of the paraphilia, such as the harm it causes others or the impairment and distress it causes to the patient (ibid.). According to the DSM-5-TR, fulfilling Criterion A denotes a paraphilia, but only when the patient fulfils *both* Criteria A and B can they be diagnosed with the paraphilic *disorder*. It is thus Criterion B that contains the dysfunction-component and harm-component which turns the paraphilia into a paraphilic disorder. Furthermore, Charles Moser notes that, “[o]nce the distress or impairment

⁴ First and Wakefield also mention that such “diagnostically specific abnormal brain imaging findings known to be the result of brain pathology, would obviate the need for inference, but such tests are unavailable at this time” (2013: 665).

⁵ With regards to non-consensuality, as its presence in Criterion B is the focus of this paper, none of the possible interpretations discussed in this paper is particularly typical, but the issue remains that the DSM-5-TR (APA, 2022) does not specify which one (or more) of these three interpretations we should take on when working on diagnosing a paraphilic disorder in a patient.

⁶ I wish to add that Wakefield mentions: “Many other paraphilias, from asphyxophilia to zoophilia, can be diagnosed within a ‘wastebasket’ category of ‘paraphilia not otherwise specified’ (paraphilia NOS) that encompasses any condition judged by the clinician to be a paraphilia that does not fall under any of the specific categories provided by the DSM” (2011: 195).

⁷ Colloquially, we have come to refer to these as sexual ‘kinks’ and/or ‘fetishes’.

resolves, then the DSM-5[DSM-5-TR] would label the symptom-free individual with the paraphilic disorder diagnosis for *five more years!* After 5 years, the symptom-free individual may be classified as having a paraphilic disorder in full remission, never reverting back to a paraphilia per se” (2019: 683, own emphasis). Therefore, if the distress and/or impairment caused by the paraphilic disorder is resolved (for whatever reason), the patient will remain diagnosed with the paraphilic disorder (for at least five years).

Since this paper focuses on paraphilic disorders in the DSM-5-TR, I look at both Criteria A and B – but specifically Criterion B, since this criterion must be present (or fulfilled) for a paraphilic disorder to be diagnosed. Criterion B for voyeuristic disorder (spying on others in private activities), exhibitionistic disorder (exposing the genitals), frotteuristic disorder (touching or rubbing against a non-consenting person) and sexual sadism disorder (inflicting humiliation, bondage, or suffering) states the following: “The individual has acted on these sexual urges with a non-consenting person, or the sexual urges or fantasies cause clinically significant distress or impairment in social, occupational, or other important areas of functioning” (APA, 2022: 780, 783, 785, 790). It is understandable that Criterion B for sexual masochism disorder (undergoing humiliation, bondage, or suffering), pedophilic disorder (sexual focus on children), fetishistic disorder (using non-living objects or having a highly specific focus on non-genital body parts) and transvestic disorder (engaging in sexually arousing cross-dressing)⁸ differs from the Criterion B for voyeuristic disorder, exhibitionistic disorder, frotteuristic disorder and sexual sadism disorder and does not include the explicit factor in Criterion B of acting on sexual urges with a non-

consenting person. This latter set of paraphilic disorders (when acting on the sexual urges) require an active approach to another person. The first set of paraphilic disorders (when acting on the sexual urges) involve either being on the receiving end of the sexual approach (such as with sexual masochism disorder), or by definition involve non-consenting persons (such as with pedophilic disorder, for children are unable to grant valid consent), or do not usually involve another person altogether (such as with fetishistic disorder and transvestic disorder).

I now focus on the first section of Criterion B, namely that the “individual has acted on these sexual urges with a non-consenting⁹ person”. I interpret this as a section of Criterion B that can stand alone, since it is placed before an ‘or’. Criterion B can therefore be fulfilled either in the case of the patient acting on their sexual urges with a non-consenting person, *or* in the case in which the patient has not acted on their sexual urges, but the sexual urges or fantasies cause clinically significant distress or impairment in social, occupational, or other important areas of functioning. Either one or both have to be present in order to fulfil Criterion B. Granted, if this is not how the writers of the DSM-5-TR (APA, 2022) wished Criterion B to be interpreted, it would mean that more clarification is needed for Criterion B in the next iteration of the DSM.

Wakefield states that he is aware of several possible answers to the question of what role non-consensuality plays in judgments and diagnoses of paraphilic disorders (2011: 207). He notes that non-consensuality is a form of harm that fulfils the “harm” criterion for disorder, but that this is independent of whether there is a dysfunction in the desires aimed at the non-

⁸ I wish to make clear that dressing as the opposite gender does not constitute a mental disorder. In the case of transvestic disorder, it specifically pertains to cross-dressing that involves sexual arousal and that those feelings, urges, and behaviours cause impaired functioning and clinically significant distress/harm to the patient's life.

⁹ It is possible that the idea of using non-consensuality as a sufficient criterion for a paraphilic disorder may have come about due to a misinterpretation of the DSM's text. For more on this, see Frances, A., Sreenivasan, S., & Weinberger, L. E. (2008), and Frances, A., & First, M. B. (2011).

consenting person: “Non-consent would then be seen as a moral and legal concern, but not by itself a determinant of whether a psychiatric disorder exists” (Wakefield, 2011: 207). This is, however, only one possible interpretation of Criterion B, since the DSM never stipulates that non-consensuality is not itself a determinant of a paraphilic disorder diagnosis. Matters involving sexuality are controversial, but as Hinderliter points out, the importance of “careful wording in drafting definitions and diagnostic criteria in the DSM should *not* be [controversial]” (2011: 27, own emphasis). Wakefield further notes that in the context of paraphilic disorders, “activity with non-consenting partners could easily be seen as a fundamental category of paraphilia, although according to Frances and First it was never conceived or intended that way” (2011: 207). However, this explanation has not been stipulated as such in the DSM-5-TR (APA, 2022) either, and thus remains open to interpretation. In the following section, I argue that since the DSM is not specific enough in its conceptualisation of including the element of non-consensuality in Criterion B, it leaves a lot of confusion and uncertainty about how to diagnose a paraphilic disorder when the patient acts on their sexual urges.

4. Interpreting non-consensuality and acting on sexual urges in Criterion B

The first problem that arises when one involves a non-consenting person as part of a criterion in paraphilic disorders, is the concept of non-consent itself. What does it mean to be a ‘non-consenting person’ during a sexual act? Anderson points out this potential ambiguity: “Is it sex for which consent has been explicitly declined, or sex that has not received explicit consent (which includes the former)?” (2016: 60). The standard for consensual sex (i.e., whether affirmative and/or explicit consent is necessary or not), has followed

various trends in societal history. We would hopefully view “respect for a person’s non-consent as essential to fostering people’s sexual integrity” when determining the standard for consensual sex (ibid., 59). Essentially, if we do not act according to this view, we commit sexual assault and/or rape.

I put forward the act of rape as the classic paradigm of the violation of consent. Today, rape continues to refer to the act of sexual penetration of any person, without their consent (Bryden, 2000; Plaut, 2006; Danaher, 2018). There are simple and complex cases when it comes to conceptualising sexual consent. Theories of consent and what it means to give consent extend over giving sexual consent explicitly, voluntarily, affirmatively and/or non-verbally (Dougherty, 2015). Alan Soble, for example, investigates the sufficiency of sexual consent based on the notion of free¹⁰ and informed¹¹ consent as derived from the central principle in the practice of Western medicine (2022: 1-3). He argues that the satisfaction of the free and informed consent principle requires that “each person knows their own reasons for the sexual encounter and the reasons of the other person(s)” (2022: 8), and that we should not overlook the importance of reflecting on *why* we wish to engage sexually with someone.

Others question whether it is, in fact, non-consent that should determine a case of rape, or whether rape should be conceptualised on the basis of coercion – as coerced sex (Anderson, 2016). Anderson argues for the (re)conceptualising of rape as coerced sex, for it can, according to him, “replace both the force and non-consent elements” of rape, since those elements “fail to capture what is distinctively problematic about rape for women and why rape is pivotal in supporting women’s gender oppression”. I would argue, however, that the non-consent and/or force element of rape is indeed problematic and harmful *enough* and that non-consent therefore serves as the marker for rape and

¹⁰ As in, “voluntary, uncoerced”.

¹¹ As in, “knowledgeable understanding; the absence of lies, fraud, deception; no important information withheld”.

sexual assault. Further, if one takes Anderson's suggestion seriously, it would mean that rape could not be uncoerced in any scenario.¹²

This still leaves the questions regarding consent unanswered. If a person were coerced into having sex, does that mean that they *appeared* to consent to having sex, but since the consent was not voluntarily given, the consent becomes invalid? For consent to be considered valid, it must be given voluntarily and "without undue influence or coercion" (Nair, 2016: 762). Or, if a person is not coerced into having sex and they do not give consent, but sex is forced upon them regardless, is this not rape? Virtually all modern scholars contributing to the literature on rape want to "modify or abolish the force requirement as an element of rape" (Bryden, 2000: 322). This paper maintains that rape is a violent act that does not require physical force, physical or verbal resistance from the victim, nor the use of a weapon (Easteal, 2011). It nevertheless remains crucial to understand non-consent *and/or* force as elements of rape in order to apply the concept of rape. The DSM-5-TR (APA, 2022) does not elaborate on the exact meaning of its authors' stipulation in Criterion B when specifying that patients act on their sexual urges with *non-consenting* persons. In other words, it is unclear what exactly a non-consenting person would look like. To avoid ongoing confusion, the authors of the future iteration of the DSM will need to provide conceptual clarity regarding these matters.

Even if it is unclear exactly what is meant by 'non-consenting person' in the DSM-5-TR (APA, 2022), more questions arise regarding its applicability to certain scenarios when diagnosing paraphilic disorders. Can

we assume that, since "acting on sexual urges with a non-consenting person" is grouped under Criterion B, the patient experiences sexual arousal specifically due to the non-consenting state of the person? Is it the case that if the person were *not* a non-consenting person, the patient (unless the patient experiences clinically significant distress as stated in the second section of Criterion B) *cannot* be diagnosed with the paraphilic disorder? In such a case, it would mean that the element of a non-consenting person is arousing to the patient (when acting on sexual urges), and it is this arousal of non-consent in the patient's acting on their sexual urges that converts the paraphilia to a paraphilic disorder. That is to interpret the patient's actions not only as 'seeking out' non-consent¹³ in persons when acting on their sexual urges, but also to conceptualise their actions as rape and/or sexual assault.

The issue with conceptualising the sexual acts committed by a patient diagnosed with a paraphilic disorder as rape and/or sexual assault, is that, "[t]here has never been a diagnostic category in any edition of the Diagnostic and Statistical Manual of Mental Disorders (APA, 1952, 1968, 1980, 1987, 1994, 2000, 2013) that describes an individual who is persistently aroused by coercive sex and repeatedly commits acts of rape" (Zinik & Padilla, 2016: 45). In other words, the conceptualisation of such a disorder would attempt to turn rape into a mental disorder. Richard Wollert strongly argues that "[r]ape is a crime and prison is the proper placement for rapists", and that paraphilic coercive disorder (PCD) "does not belong in the Appendix or anywhere else in DSM-5" (2011: 1098). I feel compelled to argue hypocrisy on the part of the authors of the

¹² If we take it that coercion in this case refers to the use of force and/or intimidation to obtain compliance, one can imagine an example where Person A does not consent to have sex with Person B, but B proceeds to sexually penetrate A without using any force or intimidation. This is still an example of rape since consent was violated.

¹³ Even though the role of morality and the law in cases of paraphilic disorders and/or sexual crimes lies beyond the scope of this paper, I also wish to add here that Moser states: "Technically,

exhibitionism, frotteurism, and voyeurism are paraphilias only if the individual has eroticized the non-consensual aspect of the activity. An interaction with a non-consenting individual, when the perpetrator is not aroused by the non-consensual aspect of activity, is a crime, but does not appear to satisfy the diagnostic criteria of a paraphilic disorder and should not be diagnosed. The same behaviour with a consenting individual is not indicative of a paraphilia and should not be used to support a paraphilic disorder diagnosis" (2019: 684).

DSM in rejecting the proposals for paraphilic rape and PCD, but including non-consensuality as an element for a diagnosis of paraphilic disorder. If mental disorder diagnoses for rapists have been denied on the grounds that it would “have serious potential for misuse” (Knight, 2010), it follows that non-consensuality cannot be used to diagnose paraphilic disorders.

If the argument could be made that the above interpretation of ‘seeking out’ non-consent is a *misinterpretation* of “acting on sexual urges with a non-consenting person” as stipulated in Criterion B, and it is rather the case that the patient is *not* specifically sexually aroused by the person’s state of non-consent, it can then be interpreted as the patient not caring for the status of consent of the person. Whether the person consents or not is not important to the patient, and it is then this indifference and apathy (and not the experience of arousal and ‘seeking out’ of a non-consenting person specifically when acting on their sexual urges) that causes a paraphilia (when acting on sexual urges) to convert to a paraphilic disorder in the patient. Unfortunately, the DSM does not make this explicit, so we are left to speculate. Wakefield makes the point that, “...the failure to be turned off by a partner’s non-consent does not appear to be a paraphilia. At most, it would seem that some individuals are less affected than others by a victim’s protests and may lack the empathy and moral sense that overrides sexual assertion in most individuals. They may be terrible, unempathic, immoral people, but that is *not* a paraphilic disorder” (2011: 207, own emphasis). If it is the case that these patients are merely acting immorally and not due to a paraphilic disorder, the future iteration of the DSM must, once again, make this point clear. The potential difficulty with interpreting Criterion B’s element of non-consensuality as the patient’s *disregard* for consent, is that if the person *just so happens* to consent, the patient cannot be diagnosed with a paraphilic disorder when acting on their sexual urges (Moser, 2019: 684). The result is that we are only able to look back in retrospect at the status of consent of the person. That is to say that, again, it is not the person’s non-consent that forms part of the criterion that

must be fulfilled in order to diagnose disorder in the patient, but rather a different interpretation of the element of non-consensuality.

Referring to the interpretation regarding the patient’s disregard for consent, I argue that, if *that* is what the authors meant, they should rather state that the element of non-consensuality concerns the indifference and disregard for status of consent of the person by the patient, and not the ‘non-consenting person’ itself that converts the paraphilia to a paraphilic disorder, for there is a difference between these two interpretations. As Wakefield posits, “[a]rousal by coerciveness is not clearly distinguished here from arousal despite coerciveness, or arousal enhanced by coerciveness” (2011: 207). Another similar interpretation would be to read that it is not exactly the indifference or disregard for status of consent of the person by the patient, but that the element of non-consent does not interrupt or stop the patient from experiencing sexual arousal (Knight, 2010: 423). Nonetheless, the DSM does not stipulate these details and it therefore, again, remain open to various readings and interpretations.

There remains one last possible interpretation of the element of non-consent in Criterion B. If it is neither the case that the patient experiences sexual arousal *specifically* with a non-consenting person, nor the case that it is the *indifference and disregard* for status of consent by the patient that leads to a paraphilic disorder diagnosis, nor the case that the element of non-consent does not *interrupt or stop* the patient from experiencing sexual arousal that leads to a paraphilic disorder diagnosis – then we are left to look elsewhere for what the element of non-consent actually refers to in Criterion B. The other option that has not yet been considered, is that the element of non-consensuality lies solely with the non-consenting person themselves. Perhaps the authors of Criterion B meant to state that paraphilic disorder diagnoses can be made purely based on the person’s state of consent – external to the patient. However, this would mean that when the patient acts on their sexual urges, it is the non-consenting person that would be the key player in diagnosing

a paraphilic disorder in the patient – and not anything in particular about the patient. Even though this is unlikely, it is worth noting that other mental disorders in the DSM can reach diagnosis even when the patient is unaware of personal harm or dysfunction, while persons around the patient are experiencing it. An example of such a diagnosis would be aphasics with anosognosia, where the patient is unaware that they are unable to communicate (Nikolinakos, 2004). Therefore, this interpretation of Criterion B is perhaps not completely far-fetched for the DSM.

Even though mental disorders are determined by both internal and external factors, the case mentioned above is far removed from the internal factors of the patient themselves. Such a diagnosis that hinges on the state of consent of the person can lead to false positive diagnoses and great misuse, since the diagnosis of the patient would be fully dependent on the person/victim's own recollection of their state of consent. Although it may intuitively seem that this interpretation is too far-fetched as it appears to struggle to reconcile with the necessary harm-element and dysfunction-element of mental disorder, I would argue that the non-consent and/or force element of rape and sexual assault is indeed problematic and harmful enough to contribute to the harm-element in a paraphilic disorder diagnosis. However, the widely held view remains that it is the dysfunction that must lead to harm for a diagnosis to be made. If we are to take up the above-mentioned external-view interpretation of non-consent in Criterion B, it would mean that the paraphilic disorder diagnosis needs to be made backwards – *via* the harm-element in order to identify the dysfunction-element. Such an interpretation would make for a shaky approach to diagnosing paraphilic disorders, because it would run the risk of arbitrarily attributing a dysfunction to the harmful component. Therefore, the conceptualisation of non-consensuality in Criterion B of paraphilic disorders remains ambiguous, unclear, and unsettled.

5. Conclusion

After considering all the possible ways a diagnosis of a paraphilic disorder can be reached, the conceptualisation and inclusion of the element of non-consensuality in Criterion B of paraphilic disorders in the DSM-5-TR (APA, 2022) remain open to various interpretations. With regards to non-consensuality, as its presence in Criterion B is the focus of this paper, determining whether non-consensuality itself is the key-factor in the dysfunction-component in some paraphilic disorders in the DSM-5-TR will depend on how the element of non-consent is conceptualised. Is it the seeking out of non-consensuality, or the disregard for status of consent, or the non-consensuality not inhibiting sexual arousal in the patient? Or are the paraphilic disorder diagnoses to be made purely based on the person's state of consent that these sexual fantasies and urges are directed towards – external to the patient? The DSM-5-TR does not specify which one (or more) of these interpretations we should use when diagnosing a paraphilic disorder.

Once aware of these various interpretations, it must be determined whether more than one of the interpretations need to be implemented in the sixth edition of the DSM to bring about more clarity about what needs to be the case to reach a successful diagnosis of a paraphilic disorder. Moreover, it must also be determined which of these interpretations can potentially be used simultaneously and which are contradictory. However, it remains the case that, due to the structure of Criterion B for paraphilic disorders, the element of non-consensuality is the *only* element that is mentioned and used as a marker for when the patient acts on their sexual urges. Therefore, it is crucial to understand how and when non-consensuality is applicable in determining successful paraphilic disorder diagnoses.

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Violent Rationality: Police Violence as Instrumental Reason

Paul Joubert

Abstract

Amidst the seemingly rapidly increasing international prevalence of police violence against black people, many have begun questioning the institution of policing and the rationale behind its existence. This public consciousness of police violence might be a new development in recent history, but many scholars have investigated policing and racism through the lens of a critical theory of race. This paper will analyse the mode of rationality supporting police violence among the perpetrators, identifying it as instrumental reason as described by Horkheimer and Adorno. The concept of instrumental reason will be discussed in the context of the Frankfurt School, after which police violence will be described in general, and connections between the theory and real-world examples will be drawn. The theoretical analysis will be used to attempt to provide insight into the function of police rationality. It will be shown, using the theoretical tools from the theory of instrumental reason, the manner in which the institution of policing utilises instrumental reason in order to subjugate humans – particularly black people – to an inscrutable end.

About the author

Paul Joubert is a bit of a syncretist and is interested in a wide array of topics including Xenofeminism, transhumanism, epistemology, and the philosophy of society, social organisation and transformation, identity, science, technology, and climate change. Currently, they have found a productive approach to all these issues in the field of cybernetics and complexity theory, and are researching an eco-cybernetic epistemology for the post-anthropocene. Paul is currently completing their Honours degree in Philosophy at Stellenbosch University and formatting the layout of this journal. In 2023, they will pursue a Master's in Philosophy at Stellenbosch University under the supervision of Prof. Minka Woermann. In their free time, Paul makes experimental electronic music, takes film photos, cooks for their friends, and downloads too many PDFs to ever read. If Philosophy doesn't work out, Paul plans to become a programmer.

1. Introduction

Amidst several compounding global crises and periods of involuntary solitude providing time and space for reflection, the year 2020 seemingly proved to be a political awakening for many. While it has quickly become trite to call the events since the start of the COVID-19 pandemic “unprecedented” (and indeed, that description seems to have all but disappeared from pandemic-discourse), the resulting heightened awareness about collective circumstances have not been felt this directly in perhaps several decades (at least in Western media). The exact mechanism that led to this awareness is up for debate, but the change in global discourse is undeniable.

One notable experience that has entered mainstream discourse is that of police violence. In the United States especially, given their media hegemony, but also in South Africa, both media and the public have become much more aware of the violence faced by communities, in particular by communities of colour, at the hand of the countries’ police forces. Importantly, along with this awareness came a suspicion of the police, both in specific circumstances as well as the institution of policing in general. Following the death of George Floyd, many have started vocally questioning the role of police; several mainstream media outlets and users of social networking platforms have started to engage in conversation about the alleged purpose — and actual functions — of policing. Human rights and prison/police abolitionist organisations and charities, most notably Black Lives Matter, have seen resurgences in activity.

Critical theory scholars across disciplines have often discussed policing.¹ There is thus a wealth of theoretical approaches to be taken, even when just considering the Marxist lineage. It might thus be useful to

return to the theoretical foundations of critical theory, and gauge what insights it might present to contemporary study. In this paper, I draw from the work of the “original” Critical Theorists, namely, the Frankfurt School – specifically, Horkheimer and Adorno’s investigation into the function and modes of reason on which the reigning conception of reality operates.

It is especially in a time of mass unrest that the work of the Frankfurt School seems all the more important, given the originating circumstances of the Second World War. The “critical” attitude and the overwhelming sense of suspicion of structural circumstances present a set of theoretical tools that seem uncannily prescient and prepared for current circumstances. Further, their candour about their normative ambitions and critique of purported objectivity offers a refreshing honesty that, combined with their theoretical insights, seems almost uniquely appropriate for what many have described as a return to the circumstances preceding the Second World War and the rise of the reactionary right.

2. Enlightenment and instrumental reason

Policing is an inherently violent institution: its origin and function has from inception been to enact “legitimate(d)” violence upon citizens (the military being usually reserved for non-citizens). This core fact is obscured by an “eclipse of reason”, a phrase which serves as the title for Horkheimer and Adorno’s 1947 book (Bohman, 2019, sec. 2.1). This alludes to a foundational realisation by the aforementioned philosophers: that, in the oft-cited phrase, “myth is already enlightenment; and enlightenment reverts to mythology” (Horkheimer & Adorno, 1989: xvi). This is a central thesis of *Dialectic of Enlightenment* (1944) – a text which circulated among the friends and colleagues of

¹ See, for example: Marenin (1982); Neocleous (2000); O’Neill (2010); Schinkel (2010); Johnson (2014); Campesi (2016); McMichael (2016); Khatib (2018); Martin (2018); McDowell and Fernandez (2018); Rae and Ingala (2018); Brucato (2020); Jackson (2020);

McQuade (2020); Durán and Shroulote-Durán (2021); Jenkins, Tichavakunda and Coles (2021); Williams (2021).

the Frankfurt School as an attempt to understand, stated plainly, “where it had all gone so horribly wrong” – in which Horkheimer and Adorno traced their circumstances back to the Enlightenment (and enlightenment more generally) and explained the ways in which enlightenment undermines its own project. They show, as they painfully witnessed, through “deep historical treatment ... the genesis of modern reason and freedom and how they turn into their opposites” (Bohman, 2019, sec. 2.1). Indeed, they “set [themselves] nothing less than the discovery of why mankind, instead of entering into a truly human condition, is sinking into a new kind of barbarism” (Horkheimer & Adorno, 1989: xi), and wanted to “prepare the way for a positive, emancipatory notion of enlightenment” (Held, 1980: 148).

Importantly, Horkheimer and Adorno explicitly did not want to establish a “systematic” philosophy (thus the subtitle “Philosophical Fragments”), arguing that it is systematisation, the attempt to subsume all things into a single coherent all-encompassing philosophical system, which leads to domination. Instead, they offer a *critical* philosophy that aims to pick apart the systems that claim to explain everything. As such, their thought can be difficult to understand because of this extreme reluctance to make specific recommendations (ibid., 150).

Any emancipatory project, however, should probably begin with a diagnosis and explanation if it were to have any chance to succeed. Horkheimer and Adorno identified enlightenment as sprouting from the “mythic” fear of nature and the consequent drive to dominate it. Enlightenment “gives itself an absolute status over and against its objects, thereby constantly collapsing into new forms of the very conditions of primeval repression which it earlier set out to overcome” (ibid., 151). In this drive to overcome the alleged domination of nature over humanity, it allows humanity’s

domination to run wild.² The lack of regulation and reflection subsequently allows for the extension of domination over nature to the domination of other human beings (Horkheimer & Adorno, 1989: 4). The Frankfurt School theorised in a Marxist lineage and thus saw capitalism and the rapid rise of industry as a core feature of this domination, which continually reaches out and searches for new domains to dominate and exploit (Held, 1980: 154).

Horkheimer and Adorno identified the philosophical expression of this enlightenment-myth as that of positivism. Positivism, they argued, posited the mythical belief of “a purely rational, ideational world as the only true reality” and the claim that this reality can only be accessed through the mechanisms *it* provides, namely, science (ibid., 160; Horkheimer & Adorno, 1989: x, 7, 16, 23). This claim of the “structure of knowledge, and, therefore, of reality is as rigid for any positivist as for any dogmatist” (Held, 1980: 165). Scientific rationality is thus completely ignorant of the scientific observer’s interpretive role and the dependence of the nature of reality on the object–observer relation (ibid., 164). Because of its assertion of an objective, independent, and codifiable reality, scientific reason can only ever be descriptive; it obscures from possibility any question of normative value, i.e., whether something *should* be a certain way. It thus reduces to a purely *instrumental* mode of reason, meaning that it is always only utilised to achieve a pre-established goal – a goal about which positivist science claims there is definitionally no reasoning to be done (ibid., 169; Horkheimer & Adorno, 1989: xii, 4).

Adorno (2004: 309) also discussed instrumental reason or rationality in the context of the legal system. He identifies the negative dialectic of law as its opposing functions as both that which protects life as well as that which destroys it through violence. The instrumental rationality of the law forcibly reduces that for

² This is quite similar to the later Marcuse’s reassessment in a preface to a new edition of *Eros and Civilization* (1966) of his “surplus

repression” theory, where he asks whether humanity’s destructive drives have perhaps been allowed to run wild.

which it cannot account into a manipulable form (ibid.), just as positivistic science does to phenomenal reality and as capitalism does to the objects in commodity exchange (Horkheimer & Adorno, 1989: 7). For the legal system to be universal, “legal norms cut short what is not covered, every specific experience that has not been shaped in advance; and then they raise the instrumental rationality to the rank of a second reality *sui generis*” (Adorno, 2004: 309).

All science and technology, as well as law, is thus subjugated to an inscrutable pursuit that is handed down through history like a myth, tradition, or religion. Instrumental reason thus inevitably recreates the conditions of oppression and subjugation of the past, but even worse, it forecloses any imagination of alternative presents or futures. In the following section, I discuss the manifestation of this foreclosure of alternative thinking in institutions of policing.

3. Police violence

As mentioned in the previous section, policing is an inherently violent institution, and this fact is obscured by instrumental reason. For the purposes of the systematic exposition of this argument, the interaction of rationality and the institution of policing can be considered in two intersecting domains: the *internal* and *auxiliary* structures of policing; and at two levels of abstraction: the *individual* and the *structural*. This section will give an overview of the various drives and processes to be found in each quadrant of the aforementioned map, and give explanatory examples in each case. This will take place in the order: internal individual then structural, followed by external structural then individual.

3.1. Internal individual

A common slogan of the Police Abolition movement is “All Cops Are Bastards” (ACAB), which is meant as a reflection of a police officer’s complicity in the system they operate (Ritzen, 2020). Many officers, however, object to this characterisation with the refrain that “they are just doing their jobs” – the Nuremberg

defence. This indicates that, on the internal individual level, many police officers conceive of themselves as a cog in a machine they cannot control. Much of this can be spoken of in the language of lack of agency (and the need for collective action), but it reveals their inability to think in modes other than that of instrumental reason. It is accepted that their job has to be done, and that they are playing a predetermined role in a play that has already been written. This resignation to the already-existing is also an abdication of responsibility: if a police officer commits an act they would not have considered moral under other circumstances, they can disclaim moral responsibility and rid themselves of moral anguish by the same “just doing the job” refrain.

A further manifestation of instrumental reason is the culture found among police officers. Since they can disclaim personal responsibility, they can revel in the process of performing the acts required of them. This leads to many departments having a culture that glorifies violence and indulges in the despicable. In the US in particular, where a “gun-culture” is widespread, an almost childlike excitement can be observed when officers are presented with the newest equipment, or “toys” used to enact violence. This culture is a direct result of instrumental reason, since individuals can engross themselves in the process, the “means” to an end that is considered by them to be irrelevant to their lives. This is particularly seen when police are equipped with military gear (Apuzzo, 2014; Campbell, 2020; Kommenda & Kirk, 2020; Musgrave, 2014), and trained by experts in military combat, including, for example, from the Israeli Defence Force (Cohen & Shahshahani, 2019; Domingos & Khoury, 2020; Garwood, 2016; Kuzmarov, 2010; Leichtman, 2014; Miller, 2019; Mummolo, 2018). Officers have various platforms outside of their day-to-day operations which enable cultural and other engagement, one of which is the institution of police unions. Police unions have proven to be a significant force for maintaining the status quo and for inculcating a certain perspective among members (Dharmapala, McAdams & Rapaport, 2022; Greenhouse, 2020; Ingraham, 2020a;

Mathis, 2019; Scheiber, Stockman & Goodman, 2020). A more horrific example of a cultural structure which encourages revelling in the violent acts of the job is the existence of police gangs. These gangs share many attributes with more well-known criminal gangs, such as some requiring taking of a life as part of the initiation process, and having gang-insignia tattoos or other identifying signs (Castle, 2021; Diaz, 2022; Dickinson, 2021; Lockhart, 2019; O'Connor & Daunt, 1999; Valdez, 2021).

On the other side of police culture is the collective feeling of being “on edge”, or what has been described as “siege mentality”. Police officers operate in – and are often trained to operate in – a state of mind where they are constantly at risk of attack for which they must constantly be vigilant. This heightened state of being “on edge” and suspecting danger to lurk around every corner creates volatile situations where outbursts are frequent, and where police officers are prone to “read” situations as dangerous when they are not: it has become a common refrain in police justification of violence against unarmed people that they mistook a benign object for a weapon (Barker, Eder, Kirkpatrick & Sundaram, 2021).³ Related is the “epidemic” of police officers “overdosing” on “fentanyl” (a potent synthetic opioid painkiller which plays a large part in the “opioid epidemic”): several viral videos show officers presenting an array of violent reactions to touching or breathing what they believe to be fentanyl, despite the physical impossibility for an overdose-amount of fentanyl to enter the body by the means they claim (Paz, 2021). The ultimate ends of this culture into which officers are inculcated are inscrutable, and the truth of whether danger truly lurks around every corner is not questioned (Beauchamp, 2020; Paoline, 2003).

³ The siege mentality and “being on edge” also permeates through to officers’ personal lives, in which they are known to be disproportionately guilty of gender-based violence against their spouses. (See: Johnson, Todd & Subramanian, 2005; Lonsway, 2006; Oehme et al., 2011; Blumenstein, Fridell & Jones, 2012; Valentine, Oehme &

3.2. Internal structural

The internal structure of police forces is an institutionalisation of the aforementioned violent culture. The internal bureaucracies divide labour in such a way that individuals never have to grapple with their personal role in the function of the institution, which allows the individuals representing the institution to earnestly present themselves as “the good guys”, the solution to the problem of “crime”. The internal structure enables the development of brutally efficient techniques and tactics that allow for ever more and faster domination, including e.g., techniques of crowd control and digital surveillance. Instrumental reason creates, through the separation of “fact” from “value”, the organisational structure and knowledge-building that enables domination.

3.3. External structural

Auxiliary to the institutions of policing are of course the structures that enable it, namely, governmental or state structures, as well as manufacturers of weapons and other technology. Funding and government support for policing is ever on the rise, given that the solution to any problem is conceived of in terms of the tools at hand, which for the state is policing (Ingraham, 2020b). This is also compounded, especially in the US but also in South Africa, by the interaction of privately owned prisons (and security), which in the US has been pointed at as the cause of their incredibly high rates of incarceration. Other private and for-profit organisations such as weapons manufacturers instrumentally aim for ever-increasing profits, ignoring any value reasoning that might give pause to their actions.⁴ A similar but more contemporary example is that of technology corporations such as Amazon, Microsoft, and Google, which offer their services to law

Martin, 2012; Donnelly, Valentine & Oehme, 2015; Saunders, Prost & Oehme, 2016; MacQuarrie et al., 2020; Prost, Saunders & Oehme, 2020).

⁴ Refer also to the interaction of the police with the military and thus the military–industrial complex mentioned previously.

enforcement agencies. The structural drive for profits, of course, also gives the employees of these organisations the plausible deniability to deny any responsibility, echoing the same “just doing the job” as individual police officers. Employee pushback at technology corporations, such as in the form of organised walk-outs, have, however, attempted to break the veil of inscrutability of what the goals of the technology are.

3.4. External individual

The other auxiliary support received by policing institutions is a public incapable of conceiving a differently-structured society, a mentality furthered in individuals by consent-manufacturing media (Hirschfield & Simon, 2010). In its simplest form, this can be seen when people are confronted with suggestions to defund or abolish the police to which they often ask, “but what would we do with the criminals?”. The institution of policing is instrumentalised and used in its function to extend domination over humans, propped up by the inability of the public to conceive an alternative society. This is part of a much larger problem of ideological obscuring of alternatives, most clearly seen in Margaret Thatcher’s statement that “there is no alternative!”, which reaches beyond the scope of this paper. Nevertheless, as stated in the introduction, a turn in the collective consciousness seems to be underway (Kaba, 2020; Ritzen, 2020).

Throughout all the above examples, those humans that disproportionately form the target of domination are people of colour and, more specifically, black people. The reason for this is the subject of many decades of scholarly research, but one reason for the *persistence* of this domination is the “eclipse” of value reasoning leading to the consistent replication of prior conditions and the inability to escape the horrific cycle.

4. Conclusion

As mentioned in the Introduction, many have labelled the events of 2020 as “unprecedented”. This characterisation, however, ignores the various historical precedents (which is itself an effect of instrumental reason), such as exactly those circumstances that drove Horkheimer, Adorno, and the rest of the Critical Theorists to develop new and up-to-date explanations of the horrors of society. Hopefully, this paper can serve as a preliminary attempt to investigate the applicability of one of their concepts, instrumental reason, to contemporary circumstances.

Horkheimer and Adorno’s critical examination of the enlightenment and its hypocritical internal contradictions is able to provide considerable insight into the function of various institutions of contemporary society. What has not been discussed in this paper, is what a possible future might look like beyond abstract values, or how those futures can be achieved. This is partly because it is beyond the scope of the topic, but also because Horkheimer and Adorno, like many of the Frankfurt School, were extremely cautious and suspicious of any theory that claimed to provide a neat way out of oppressive circumstances. This is understandable, considering the circumstances they were critiquing. It was, however, of course their mission to develop an emancipatory project, to transform society according to reasoned-over values.

A contemporary project of such a nature would crucially require a close understanding of the material grounding of the *Dialectic of Enlightenment* and instrumental reason in contemporary circumstances. That is, the mechanism that enables and reproduces the contemporary manifestation of instrumental reason has to be established. Only then would the following step be the building of a society that has been freed from domination.

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Fetus Feuds: A Critical Analysis of Thomson's *A Defense of Abortion*

Summer Carne

Abstract

Judith Jarvis Thomson's article, *A Defense of Abortion*, covers a deeply debated subject in moral philosophy due to its controversial and powerful stance in favour of the right to have an abortion. In this paper, I critique her work and in so doing, aim to affirm her position that abortion is morally permissible. I analyse the hypothetical scenarios Thomson uses for her position which include *The Violinist*, *The Engulfing Baby*, *The Jacket*, and *The Burglar*. Upon close inspection, the core argument of each of these analogies proves that the right to make decisions about one's body and the right to self-defence are stronger than that of the fetus's use of one's body. As will be discussed, her paper does not go without criticism. John Finnis argues that the fetus has ownership rights which should not be violated through abortion. However, his argument is weakened because it cannot be applied when a pregnancy is life threatening. This would violate the mother's ownership rights. I will contend that Thomson's "right to autonomy" argument, in favour of the right to abort, is more pertinent than Finnis' claim, because it can be applied to all situations. Another well-known point of discussion, proposed as the dilemma of "actively killing" or "allowing to die" by Philippa Foot, will also be examined. In this paper, I contend that Foot's concern is less relevant than Thomson's, given that aborting would be followed by an already available sequence of events that does not impact the overall moral right to autonomy. With these convincing critiques, I conclude that Foot's dilemma dissipates, and we are left with the argument that Thomson's right to autonomy in favour of the moral permissibility of abortion prevails.

About the author

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1. Introduction

In determining the moral permissibility of abortion, multiple conceptual and philosophical problems are raised. Discussion on whether a fetus has moral rights and the right to autonomy are largely responsible for this ongoing debate (Greasley, 2017: 1). With particular reference to Judith Jarvis Thomson (1971), this paper aims to resolve some of these debates by ascertaining that the right to abort is morally permissible and justifiable. A critique and discussion will be granted on Thomson's paper, *A Defense of Abortion*, especially with regards to the thought experiments she provides to argue that abortion is morally permissible. These thought experiments for abortion include *The Violinist*, *The Engulfing Baby*, *The Jacket*, and *The Burglar*. Furthermore, arguments by Philippa Foot (1967) and John Finnis (1973) on the morality of abortion will be highlighted. Finnis gives a direct rebuttal to the thought experiments Thomson provides for abortion by claiming that the fetus has ownership rights. However, if a mother's life is threatened, his rebuttal falls short, as the mother has the right to self-defence and her own ownership rights would be threatened. Finnis's argument is not applicable to all cases of abortion making it inconsistent unlike Thomson's position: the right to autonomy can be applied to all cases of abortion.

The question of the morality of abortion requires deep consideration because, as this paper will reveal, the answers to the conceptual questions mentioned above are complex (Greasley, 2017: 2). Thomson's article, *A Defense of Abortion* (1971), will be the focus of this paper, because it addresses these issues skilfully. Thomson (1971: 48) posits that abortion is morally permissible by arguing that one has the right to autonomy above all else, from which it follows that one may decide to abort. As Boonin-Vail (1997: 329) observes, the assertions Thomson provides for abortion are well-

thought out and deserve recognition. Before giving Thomson's arguments their due attention, it is first necessary to have a better grasp of the complex concepts at play. The following section will elaborate on Thomson's idea that an embryo has personhood rights from the moment of conception. Her argument then follows that, although the fetus has the right to life, it does not supersede the right to abort.

2. An Overview of How Abortion Relates to Personhood, Morality and Rights

Those who argue for the right to abort claim that a fetus is not yet a human being. This is to justify that abortion is morally permissible because one would not be killing a 'person' (Foot, 1967: 2). Thomson (1971: 47) takes an alternative stance by arguing that her theory for the right to abort rests on the grounds that an embryo is a human being from the moment of conception. This is because it is arbitrary to draw a line deciding when an embryo (or fetus for that matter), suddenly becomes a person.¹ Thomson (ibid., 48) declares that opponents of abortion heavily rely on the notion that an embryo is a person from the moment of conception and deem that reason enough for the moral impermissibility of abortion. However, as I will demonstrate in the following section, this assumption requires a deeper analysis. Thomson does not deny that the embryo has personhood rights (ibid.). Although she does acknowledge that a clump of cells (an embryo or fetus) is "no more a person than an acorn is an oak tree", she remains steadfast on her position that these cells still constitute as a person.

Thomson (ibid., 47) mentions that "most opposition to abortion relies on the premise that the fetus is a human being, a person, from the moment of conception" and every person has a right to life. This claim is used to justify that abortion is morally impermissible. On

¹ A "person" here refers to a being worthy of the moral rights given to that of an individual.

the other hand, Thomson writes that a mother has a right to her body and decisions concerning her body (ibid., 47). Following this, the fetus's right to life takes precedence over the mother's right to her body. Thus, an abortion is unethical and should not be executed (Thomson, 1971: 48). Even though Thomson agrees that this idea is appealing, she provides a counterargument in the form of a thought experiment that is best known as *The Violinist*, which focuses on the right to autonomy within the abortion debate.

3. Autonomy: The Violinist

In this hypothetical scenario, Thomson asks you to imagine yourself waking up next to a famous violinist who happens to be unconscious. On closer inspection, you realise that your circulatory system has been plugged into the violinist's own circulatory system. This violinist has a rare kidney disease and only your body can keep him alive. A nurse explains that whilst you were asleep, you were kidnapped by the violinist's fans, The Society of Music Lovers, and connected to the violinist to keep him alive. The nurse continues to say that fortunately his condition is not lifelong. You will only need to stay in the bed connected to the violinist for nine months until he has recovered. Then you can safely disconnect yourself and continue living your life as normal. However, to unplug yourself would result in you killing him (ibid., 49).

The question Thomson raises here, is whether it is morally obligatory to stay connected and support the violinist (ibid.). To complicate the situation, the doctor says that you will need to stay in bed for the rest of your life to sustain the violinist – drastically prolonging the original timeline of nine months. The doctor reminds you that the right to your body is outweighed by the violinist's right to life, and therefore, you must accept the situation and continue to support the violinist to avoid the violinist's death. Thomson believes that this would be an outrageous request because a person's right to life should not "outweigh your right to decide what happens in and to your body" (ibid.). This position is supported if one prolongs the amount

of time needed to sustain the violinist, because the conditions are considerably harsher – making it a less viable option. Furthermore, a life forced into sustaining the violinist's life would violate the right to autonomy. One might argue that pregnancy is never a lifelong commitment, making the "lifelong sustenance" argument irrelevant. However, this is not the point that Thomson is focused on. Thomson is using this theoretical situation to demonstrate that if a pregnancy were a lifelong commitment, it would be morally unacceptable to force the woman to support the violinist. You could sustain the violinist (lend your body to the unborn child) and it would be noble to do so, but it would be unfair for it to be mandatory. It would mean you would sacrifice the right to decide what happens to your body eternally. For the sake of consistency, a commitment of nine months should not be viewed any differently from a lifelong commitment: time cannot be a measurement for how long one's rights may be violated for. In other words, nine months in comparison to a lifetime of sustenance does not outweigh the right to choose what happens to your body. After considering Thomson's view, it is evident that the right to your body is stronger than that of the fetus's right to life.

In a variation of *The Violinist* thought experiment, the doctor tells you that you will only need to keep the violinist plugged into you for an hour (Thomson, 1971: 59). Thomson claims that in this situation, it would be considered indecent to unplug yourself. I concede that this seems to loosen Thomson's stance at first glance. This is why Thomson argues that it is better "to keep a tight rein" on what she has established (ibid.). In other words, to say that what you "ought to do" does not equate to "the right to have" (ibid.). You *ought* to save the violinist, but that still does not give him the *right* to have what you can offer him. The conclusion of the thought experiment firmly remains: you can lend your body to your unborn child, but that does not mean that you must at all costs.

Thomson draws the reader's attention towards the question of whether it is more acceptable to have an

abortion if the pregnancy occurs as a result of rape. Imagine The Society of Music Lovers forced you into the position whereby you are connected to the violinist. You did not intend to be plugged into the violinist. The example is synonymous to that in a case of rape that results in pregnancy – you did not intend to become pregnant (Thomson, 1971: 47). This gives rise to the notion that a fetus conceived from rape has less of a right to life than that of a fetus conceived consensually. This is arguably unfair, because your right to life should not depend on how you come into existence.²

Now that I have analysed *The Violinist* thought experiment, I will discuss some speculations that Foot (1967) and Boonin-Vail (1997) consider on the topic of the morality of abortion that Thomson addresses briefly. In *The Problem of Abortion and the Doctrine of the Double Effect*, Foot (1967: 2) suggests that the problem with abortion is that it would be actively “initiating a fatal sequence of events”. In other words, one would be killing as opposed to allowing a fatal sequence of events to occur. Thomson (1971: 52) disagrees with this premise based on self-defence. In an adapted thought experiment of *The Violinist*, the doctor says that you must stay plugged in even though this will lead to killing you. Thomson insists that it would not be morally permissible to expect the mother to passively wait to die. This is because Thomson insists the right to life trumps the right for the violinist to use the mother’s body especially if she is employing the common law of self-defence (ibid.).

Although Foot (1967: 6) grapples with the dilemma of *initiating* killing versus *letting* (or *allowing* to) die, she does not use this assertion to conclude that abortion is morally impermissible. She writes that even though her suggestion deserves consideration, she has “not

been arguing for or against these points of view but only trying to discern some of the currents that are pulling us back and forth” (ibid.).

Boonin-Vail argues that Foot’s proposal on abortion is irrelevant (1997: 337). In response to Foot’s analysis on abortion, Boonin-Vail argues that a distinction cannot be made between whether the action of abortion is *initiating* or *allowing* the end of a life. With regards to *The Violinist*, when you unplug yourself, the violinist is fulfilling a pre-existing sequence of events similar to if you were to abort. On this point, Boonin-Vail (ibid., 334) claims:

Abortion seems simply to be a means by which a woman who has been providing needed life support to the fetus she is carrying can effectively discontinue her provision of such support, and when an agent discontinues providing another with needed life support this seems clearly to be a case of letting die rather than of killing.

A fatal sequence of events is already available with regards to the violinist (or fetus). Therefore, it must be said that you would not be initiating a sequence of fatal events by performing an abortion, but rather, you are allowing a fatal sequence of events that would otherwise happen if you were not fostering the unborn child. Although intriguing, the conversation on *initiating* versus *allowing* the end of a life is less of a concern to Thomson than that of her fundamental point in *The Violinist* – which concludes that the right to autonomy is more pertinent than the fetus’s right to life. Initiating or allowing the fetus to die is irrelevant, because it does not impact the moral rights to autonomy or life.

² I acknowledge that some individuals would not make an exception for rape, even if the mother’s life is heavily compromised by the situation for the rest of her life. Although Thomson (1971: 50) claims that those who do not make an exception for rape cases are rare, recently (2022) in the United States of America (USA), there have been multiple protests in favour of criminalising abortion –

even in cases of rape that result in pregnancies. See the newspaper article, *Few States with Abortion Bans in Effect make Exceptions for Rape or Incest*, for further details on the most recent protests in the USA (Cineas, 2022: 1).

One of the challenges Thomson may face in *The Violinist*, is if one were to argue a utilitarian stance. This counterargument seems agreeable when both the mother and baby will survive the pregnancy: not aborting produces the greatest good for the greatest number, as the core ethical standpoint of utilitarianism proposes.³ The issue with indulging in this counterargument, is that one would have to concur with utilitarianism, which would breach the standard moral right to autonomy in the case of abortion. Utilitarianism would not allow the mother to abort, because aborting would negatively impact the overall outcome, since the fetus would not survive. Hence, the mother would have to sacrifice her right to autonomy to keep the fetus alive. The rights-based deontological argument Thomson adopts with *The Violinist* thought experiment does not have room for such a consequentialist argument. According to Thomson's (1971: 60) stance, rights must remain constant instead of shifting in accordance with future outcomes. In all, I deduce that the utilitarianism stance fails to successfully counter Thomson's position, as it rests upon unsound foundations on the basis that it ignores the basic moral rights of the individual.

To conclude this section, *The Violinist*, brings about a convincing argument for the right to have an abortion. It provides evidence that the right to autonomy is stronger than the right to life of a fetus. This is done by illustrating that one could lend one's body to sustain the violinist, but does not mean that one must do so, for that would infringe one's right to autonomy. In other words, one could provide support to the fetus, but that does not mean that the fetus has the right to this support. To do so would violate the right to choose what happens to one's own body. Furthermore, the suggestion of *initiating* a fatal sequence of events

versus *allowing* a fatal sequence of events has little relevance to the issue on the permissibility of abortion in comparison to the more pertinent stance Thomson provides – which, as stated above, entails the moral right to autonomy above that of the life of the fetus. This is because the intention behind the decision to abort is to preserve one's autonomy rather than to initiate a fatal sequence of events. Therefore, Foot's argument is irrelevant. Lastly, the utilitarianism stance that defends anti-abortion is flawed, because it contradicts the moral right to autonomy in favour of an overall positive future consequence. Now that I have argued for the right to autonomy which leads to the right to abort, the next section will focus on the right to self-defence, which provides another reason for the moral right to have an abortion.

4. Self-Defence: The Engulfing Baby

Extremists believe that killing a person is never morally permissible, no matter the circumstance. A mother should not abort even if, due to medical complications, the pregnancy will kill her. This view claims that, even though the mother will die, it is still not permissible to abort, because abortion is actively killing a person (Foot, 1967: 1). The extremist continues to declare that not aborting is morally justifiable because there is no active component – one is simply letting the mother die (Thomson, 1971: 50).

Thomson puts forth another thought experiment to problematise the extremist's position (ibid.). In this scenario, you are a woman trapped in a small house with a baby. The baby grows larger and larger, eventually growing so big as to press you against the wall. You know that the baby will engulf you to death if you do not protect yourself by exterminating it. With the

³ The author, Peter Singer (2011), claims that if one were to take a utilitarianist stance, it would successfully refute Thomson's rights argument on abortion and thus believes her theory is not defensible. His defence of abortion relies instead on personhood and what it means to be recognised as a legitimate person with a right

to life. However, Singer's arguments are beyond the scope of this paper. For more details, refer to chapter 6, *Taking Life: The Embryo and the Fetus*, in Singer's *Practical Ethics* (2011).

extremist's line of reasoning, the mother must let herself die to avoid the act of killing and therefore, the baby's right to life outweighs the mother's (Thomson, 1971: 50). Thomson states that this postulation is implausible, for it cannot be that the mother must passively let the baby (or pregnancy) kill her. The right to self-defence must exceed the right to the baby's life (ibid., 51). Consider the following: if one's life is in imminent danger with a live firearm pointing at one's head and there is no alternative point of action, the common law principle maintains that one has the right to defend oneself – even if it is at the cost of the other person's life (Goosen, 2013: 71). The right to self-defence is what separates an innocent person defending themselves from a murderer, similar to a mother choosing to defend her life instead of proceeding with a pregnancy that would kill her. In light of Thomson's contention, I believe that the mother choosing to abort would be a morally acceptable action, because she has the right to defend her life.

If one accepts the claim that a fetus and the mother have the right to live, one still needs to ask whether one of the two has a "stronger" right to life (Thomson, 1971: 52). In the Engulfing Baby thought experiment, the house (the body) is owned by the mother, and the baby is likened to a tenant temporarily renting the house. This is indicative that the mother has more of a right to use her body in the way that she wishes, because it is first and foremost her body and not the baby's (ibid.). I wish to add to Thomson's statement: if a tenant uses the landlord's house and changes the tiles without the permission to do so, it breaches the contract between them and the landlord. Therefore, they have no right to make changes to the house as it is not their place to do so. Similarly, the fetus has no right to change the state of the mother's body without her permission, because it is not their property.

One of Thomson's most well-known critics is John Finnis. He challenges Thomson by saying that the unborn child has an equal right to the mother's body. The fetus has ownership rights over its own body, according to Finnis, and nobody else should have the right to

interfere or destroy that right (Finnis, 1973: 142). I argue that Finnis undermines his claim, because, like the fetus, the mother also has ownership rights over her body and, as Finnis states, nobody may interfere with ownership rights. By Finnis's logic, if the fetus risks the mother's life and, in doing so, violates her ownership rights, she should have the right to self-defence by aborting to protect herself. So, although Finnis's idea may be tempting, it still does not hold in a scenario where a mother is dying due to a complicated pregnancy, which makes his argument unstable.

5. Ownership: The Jacket

Often, a third party is responsible for performing an abortion – or at the very least, aiding in an abortion procedure. That is to say, it is not the mother who is directly defending herself, but rather another person who defends her life on her behalf, by performing the abortion procedure (Thomson, 1971: 52). The extremist would say that neither the mother, nor the third party, may perform an abortion. According to this view, to do so would be to kill an innocent person (ibid.). In other words, performing an abortion this way would be morally impermissible.

Finnis (1973: 140) agrees with Thomson, that the mother has the right to perform an abortion if her life is in danger. However, he disagrees with her argument with regards to a third party. He claims that the abortion must only be performed by the third party if they are entirely certain that the fetus poses a fatal threat to the mother, or that the fetus is already dead. Finnis believes that Thomson is too confident with regards to her position that a third party has the obligation to get involved (ibid., 130). To this, I offer Thomson's opposing argument below.

I uphold that, *pace* Finnis's view, Thomson's (1971: 53) position is strong: a third person *may* help with aborting the fetus. Thomson proposes a thought experiment to illustrate her point which introduces the theme of partiality (ibid.). In this thought experiment, a person, Jones, is wearing a jacket that belongs to

Smith. They both need this jacket to survive the cold. A third party arrives and says that he cannot choose who should wear the jacket, because he claims to be an impartial spectator. However, Thomson writes that impartiality is nearly impossible in a situation like this, since the spectator knows Smith owns the jacket. Furthermore, according to the rationality of ownership, he would believe it should be Smith's to wear. The third party does have the right to refuse to help (Thomson, 1971: 54). I argue that this last point undermines Finnis's (1973: 130) postulation that Thomson is over-confident, because Thomson does allow room for refusal. In other words, the third party has a right to choose to (not) help perform an abortion. In this instance, the right to autonomy is not violated and it is morally permissible for a third party to help the mother.

6. Intention: The Burglar

Throughout this paper, I have considered various thought experiments, as posited by Thomson. In this section, I turn to Thomson's position on abortion, particularly in cases where the pregnancies are unintentional. One might say that a person does not have the right to abort if that person were aware that there was a possibility that they could fall pregnant but had unprotected sex regardless (Thomson, 1971: 57). The argument holds that, that person would be doing an injustice to their unborn baby, because they were responsible for the conception of the baby (ibid.). Thomson counters this notion with yet another thought experiment: a woman opens a window, because it is stuffy. As a result, a burglar climbs through the window and trespasses into her house. By claiming that a woman does not have the right to abort in a situation where she had sex, despite knowing the possible consequences, suggests that you would have to let the burglar do as he wished – even if that means staying in her house. I argue that this is an unreasonable claim to

make, because the woman did not intend to let the burglar in, just as she did not intend to get pregnant.

The woman knew that burglars pose a threat, and she knew of their existence. However, she is not responsible for the burglar who broke into her house (ibid.). This is because, despite trying to prevent the pregnancy, the situation still thrust itself upon her. As this makes it not her responsibility, she has no obligation to foster the fetus. This gives another reason for why abortion is morally acceptable. Upon this closing statement on *The Burglar* thought experiment, I conclude on the matter of the right to abort in light of Thomson's paper.

7. Conclusion

After discussing Thomson's thought experiments, I have argued that the right to autonomy and self-defence is stronger than the right to the life of the fetus. This is what makes abortion morally acceptable. As I have shown in this paper, Thomson's thought experiment, *The Violinist*, provides a strong assertion for the right to abort, because it exhibits how one's right to one's own body outweighs the right for others to use one's body. I observed that only a utilitarian can attempt to counter-argue by postulating that not aborting would produce the greatest good for the greatest number. However, utilitarianism is flawed against the deontological approach Thomson uses, because it fails to consider the essential rights of the individual, making it a weak contention. The next thought experiment, *The Engulfing Baby*, shows that a mother should have the right to abort if her life is in danger because she has the right to self-defence and autonomy over her body. *The Jacket* thought experiment shows that a third party may also justifiably help the mother perform an abortion, because those individuals have the right to choose to help or not. Lastly, *The Burglar* thought experiment reveals that even if a pregnancy occurs, a woman does not necessarily intend for it to

happen and therefore does not have their responsibility, nor their obligation to keep the fetus.

In this paper, I have discussed some of the well-known objections to Thomson's arguments, particularly those posited by Finnis. Finnis provides a compelling argument, which states that nobody may violate the ownership rights of the fetus through abortion. However, this argument does not hold when the mother's life is endangered by the pregnancy and when her ownership rights would also be violated. Thus, his argument is inconsistent, for it is not applicable to all cases of abortion. Thomson's argument regarding self-defence and autonomy can be applied to all cases of abortion. Hence, her position is stronger. This is shown by

employing the thought experiment of *The Engulfing Baby*: common law allows that the mother may defend herself against the threat of the ever-growing baby. In other words, if the fetus threatens the mother's life, she may defend herself. Therefore, the right to self-defence and the right to autonomy is stronger than the fetus's ownership rights. Foot calls our attention to the possibility that abortion would be an act of actively killing. However, as Boonin-Vail refutes, an abortion only lets a pre-existing fatal sequence of events happen, which makes abortion morally permissible. In conclusion, Thomson's arguments outweigh all the attempts of rebuttal discussed in this paper, and the right to autonomy prevails, resulting in the moral permissibility of abortion.

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Game: On Instrumentalised Desire

Pieter Conradie

Abstract

In this paper, I discuss two uses of the concept GAME in relation to the repression of desire. The first use refers to the common use of the term: board games, sports, and riddles, while the second refers to sexual prowess. Following Herbert Marcuse's concepts of surplus repression and the performance principle, I argue that the supposed liberation of desire in an advanced capitalist society transfigures desire into another consumable product under rational control. Such desire further alienates us from one another since relationships become a constant game of manipulation in which we seek to suppress, produce, and negotiate desire. In a series of interludes, I then imagine societies with alternative expressions of desire. In doing so, I seek to describe as well as to perform a world free from excessive rationality. However, under academic strain, this project faces monumental inclinations to justify and explain what would otherwise be an honest form of playing. In the spirit of critical social theory, I sketch the reality of a game-driven society yet locate transformative potential in our radical intersubjectivity.

About the author

Pieter (Pauw) Conradie is wrapping up his Honours in Philosophy at Stellenbosch University. He is curious about questions on the human condition and how we are to speak and live together in such a vast estranging world. These topics he pursues at the hand of processual, linguistic, and deconstructive philosophy. [As a closet existentialist] he also expresses and explores such themes through creative writing.

1. Introduction

The repression of sexual desire has long been an object of social and critical theories, as has been the emancipatory possibilities of overcoming such repression. But how might desire be liberated in a fully industrial, instrumentalised world? This paper undertakes an analysis of how desire is subjugated for the sake of labour and then further repressed for the sake of excess production, drawing on Herbert Marcuse's concepts of surplus repression and the performance principle. Following a close analysis of the use and popularity of two notions of GAME, I argue that the reintroduction of desire, in a world ruled by the performance principle, mutilates desire into yet another consumable product without the immediacy of unmediated feeling. Any liberation of desire is hence superficial. Through a deferral of pleasure, fulfilling desire itself becomes an objectified goal. Lastly, in a series of interludes, I consider a few tentative practices that might allow for the freer expression of an open sexuality.

2. Freud's Reality Principle

The repression of desire is such an entrenched phenomena that its historical origin is of little account. Emphasis rather falls on the ways in which it is perpetuated, such as taboos or moral institutions. In an analysis of these mechanisms of perpetuation, Freud posits that the pleasure principle (libido or sex-drive) is overtaken by the reality principle, which is a structural necessity for civilisation (Marcuse, 1955: 11). The relation between the pleasure principle and the reality principle loosely corresponds to nature-culture, unconscious-conscious, and emotional-rational distinctions. When the reality principle triumphs, immediate satisfaction, playing, consumption and freedom is changed into delayed gratification, working, production and security (*ibid.*, 12). The reality principle acts in service of greater control, utility, reason, predictive accuracy, and general manipulation of the world (and of one another). Crucially it means that our desires are no longer our own, but rather constructed in accordance with our place in society (*ibid.*, 14). It is in a world

dominated by the reality principle in which we find ourselves. It is in such a world that the need for liberation arises most poignantly.

3. Marcuse on Overproduction

It is on Freud's notion of the reality principle that Marcuse builds his own concepts of surplus repression and the performance principle, which he situates much more prominently in the socio-economic domains of Western-European history. His project can be described as marrying Freud with Marx in an attempt to describe and overcome the industrial society of his time. For Marx, labour acts in service of self-formation in a transcendence of natural impulses, but Marcuse argues that this process is inverted in the overarching structures of capitalism where one rarely works for oneself, but rather for an alienating system (Farr, 2019). Thus, the individual no longer works to gratify their own desires, but instead acts in service of progress and profit. Here, Freud's reality principle is no longer sufficient to account for the mass repression of desire (Marcuse, 1955: 129).

Marcuse interprets Freud through his dual notion of surplus repression and the performance principle. Firstly, he draws the distinction between repression that is "basic" and "surplus". Basic repression is the minimal level of libidinal repression for society to *work*. Work is thus a structural condition of society that transforms the pleasure principle into a basic form of the reality principle. Surplus repression refers to levels of repression that transcend that which is necessary for society to function (Elliot, 1996: 139), such as working after-hours for non-essential commodities. This repression acts in service of the performance principle which is characterised by overproduction and overconsumption. The performance principle thus no longer caters simply to our human needs, but rather to artificial desires created by advertisement.

In such a world, scarcity can be wholly overcome, resulting in a liberated subject. Yet, due to how resources

are distributed, scarcity is kept alive artificially (Farr, 2019). Labour continues for the sake of progress in industrial capitalism, casting individuals as mere functional components in a system; functionaries which are subject to further fragmentation and alienation (Elliot, 1996: 139). The individual is no longer in touch with the erotic. Rather, they are mere objects, bound to the authority of the system which dominates them through mass media and commodified culture (ibid., 140). In such a world, the erotic becomes virtually fully repressed and without it, there is no more place for authentic individual feeling. Where the erotic once had the power to overthrow social conventions, it now gives way to advertisement so that the triumph of reason and domination may be complete.

4. On Game

The concept GAME has a long history of philosophical analysis. Here, I focus on the implications for two of its common conceptions. In the first sense, GAME denotes a competitive activity, usually for fun, with objective goals. This conception illustrates the working of the reality principle since it already deals with deferral and delayed gratification. This gratification is also subject to prior practice and reason, especially in the case of most board games. While there is certainly a greater element of freedom in games than in work¹, we see that the pleasure principle is already infiltrated. GAME can further be contrasted from FREE PLAY, which is a more open and immediate form of sensation and satisfaction. For example, a friend at a pancake party may slap your cheek with their pancake, making you spew your drink with laughter. This playing has no name, no reason and little language. It only becomes a game when you start formulating rules and

objectives (for example, trying to be the last to spew your drink). With these goals enter the axes of victory and defeat and as soon as you can win “the pancake game”, strategy enters into it. Free play, with all its immediate absurdity and joy, would become objectified into a rational enterprise.

The second meaning of GAME has recently emerged with an immediate and problematic relation to desire: that of sexual prowess. Likely popularised by Neil Strauss in his book *The Game: Penetrating the Secret Society of Pickup Artists*, phrases such as “You need to up your game” and “He has no game” has become common. On Q&A websites, such as quora.com, Hadi Akmal (2021) has defined game as “the ability to negotiate desire”. While this definition at first glance seems to encourage genuine interaction, from the advice Akmal gives, it quickly becomes clear that he is more interested in seduction. “Negotiation” is simply a substitute for “manipulation”. This manipulation of desire acts in the service of further goals, such as sex and/or validation – construing another human being as an object which you can use to fulfil your desires. The lack of personhood is evident in Akmal’s maxim (2021) that “the one who cares the least in a relationship, has the most power”. As GAME suggests, modern sexuality is based on delayed gratification, especially in comparison to the premarital sex play practices of the !Kung people (Lee, 1985: 38) and the practices of fictional societies such as the Adem and the Dothraki. Due to delayed gratification in modern sexuality, some form of rationality is almost always involved before an initial expression of libido between people. Thus, the notion of GAME assumes a poignant role in our world, especially in its associations with conquest and manipulation.

¹ I distinguish “work” from “game” through the inclusion of material and credential benefit.

Bathing interlude

In Patrick Rothfuss' fantasy series, starting with *The Name of the Wind*, there is a culture (the Adem) which is so sexually liberated (unrepressed) that the concept FATHER does not exist. There is no taboo on sexuality and, similarly, no taboo on nudity. Once a taboo emerges, it relegates public phenomena to the private realm where those who participate therein are objectified through all manner of rumours and insidious whispers. Transparent communication becomes almost impossible. Yet, all taboos have a cultural lifespan and are reinforced through practices, products and especially through architecture (i.e., through curtains and obscured glass). Similar to the Ancient Romans, the Adem have systems of public baths. Unlike the Romans, their baths are unisex. We no longer see prominent examples of such structures in contemporary Western society.

I would like to imagine a large white building with ancient pillars next to the gymnasium. Upon entering, you pay a small fee and borrow a towel. Heated either naturally or artificially and kept clean through modern sanitary technologies, the baths are truly welcoming. Inside, there are men and women laving in the hot water, partly obscured by cusps of steam. It is a place to relax after a long day, to meet strangers and to catch up with old friends. Through repeated visits to the baths, myths about the body are demystified and replaced with open conversation. Through an exercise in vulnerability, the baths open up spaces for developing honest confidence and self-respect. For Marcuse (1955: 140-141), such fantasy links reason and emotion and preserves suppressed desires in art and culture. This expression aims beyond the rational where a liberated erotic reality may yet prevail (Marcuse, 1955: 146). In other words, beyond the logical exposition of arguments, imagination facilitates the expression of desire.

5. Desire "Liberated"

Another of Marcuse's projects is the development of a radical revolutionary subjectivity. In his search, he abandons Marx's trust placed in the proletariat to revolt when they grow conscious of their marginalised position in the system. He also moves away from Freud's descriptive and circular patterns of revolt against the father (Farr, 2019). Instead, Marcuse recognises the revolutionary potential of psychoanalysis to describe and overcome socio-historical structures. These structures are temporal entities: they had an origin and will eventually come to an end. Ironically, Marcuse locates this potential to liberate humanity from controlling systems in the performance principle itself (ibid.). Through surplus repression and its resulting overproduction and with the right distribution channels, coupled with advances in science and technology, full control over nature is possible. This control includes the production and sharing of resources and perhaps even includes our cognitive and social needs. With such control, we would have increased

security over most dimensions of life and be able to put an end to all scarcity.

The end of scarcity would ensure that individuals no longer have to work to survive and that they may be emancipated from the alienating systems of the performance principle. For Marcuse (1955: 152), such a mature, industrialised civilisation will fulfil the needs, including leisure and open sexuality, of all its citizens. Marcuse uses the term 'libidinal rationality' to describe the way in which a transformed society would be able to merge a transformed pleasure principle into the entire sphere of personality, including work and civil progress (ibid., 199). This is similar to a claim made by Audre Lorde (1978: 2), who calls for the erotic to enrich all aspects of existence with acute feeling. Unfortunately, the reintroduction of sexuality into a world ruled by the performance principle does not seem to yield such results.

Shortly after the publication of *Eros and Civilization* in 1955, the sexual revolution started gaining traction, moving away from the repressive norms and taboos of monogamous, patriarchal societies. While the libido

was celebrated to a greater extent than before, the tendencies of deferring desire through reason meant that it was reconfigured as a product rather than a primal drive. Here, a distinction between libido and desire becomes necessary. I use “libido” to refer to the natural drive towards sexuality and “desire” as a form of artificially induced sexuality. Desire is subject to reason, manipulation, and advertisement. While some form of natural feeling remains, it is focused on sexual stimulation (physical or imaginative), rather than an eroticism of the entire lived experience (Elliot 1996: 139).

Since the domination of the performance principle, leisure and sexuality have been commodified (Marcuse, 1955: 94). This commodification can be seen in a wide variety of available products of desire – from pornography, erotica, dating manuals and literal sex toys. These products are not an end in itself, rather an objectified means aims towards producing desire or material gains (such as money or social credit). Desire has essentially become labour. It has become a game. These products may be a vehicle for liberation, and there are certainly some emancipatory aspects to them, but by their deferred nature, they cannot cater towards the primal libido. Rather, they seek to fulfil desires that they themselves create. It is evident that desire has become instrumentalised through an alleged freeing of repression under the performance principle.

6. Perpetuating Instrumentalised Desire

Instrumentalised desire, while not wholly unproblematic in its products, becomes truly problematic once it infiltrates the sphere of direct human interaction. Such infiltration takes place when other people are seen as objects of desire or as means to fulfil desire. Desire becomes an exchange in which the promise is:

“I will fulfil your desire if you will fulfil mine”. Here, the notion of game as a negotiation (manipulation) of desire becomes acute, since to fulfil the other’s desire, the desire itself must first be created. This happens through measures of rational control over the libido, both yours and the other’s, for the sake of a form of gratification which is delayed. To successfully manipulate and fulfil, desire is portrayed as a triumph, fit for congratulations, as is commonly seen in communicative practices where sexual encounters are related. A friend after a night out might, for example, describe where they went, what they had to drink and brag about how they approached a stranger and made out with them after some conversation. Instead of shared joy in the expression of a free libido, the listeners would applaud this successful negotiation of desire – as if it were an achievement.

Making an achievement out of desire also creates a social expectation to participate in further sexual encounters and to “up your game”. In a cruel twist, surplus repression and the performance principle works in on desire itself. Especially in clubbing-and-dating culture, people are socialised into a system of artificial desires (produced by the mechanisms of advertisement and portrayals of desire in mass media). In order to fulfil these desires, people need to further repress their instincts and their immediate satisfaction. This repression frees time for practice and personal progress in the ability to manipulate desire – that is, for the sake of having more and better intimate encounters. Countless website manuals are produced to cater towards this need for better performance. These manuals then, in turn, produces more desire, perpetuating the cycle. Finally, since writers like Hadi Akmal regard honesty about the libido as an ineffective technique for manipulating desire, there is very little room left for genuine human interaction. Hence the triumph of instrumentalised desire is complete.

Jawadi interlude

I believe we have an almost libidinal drive towards honest interaction and shared feeling, especially in a world of instrumentalised desire. How might such a primal force be expressed if most talk about sexuality either conforms to the mechanisms of GAME or to cold academic analyses? If there is hope for liberation in this world, it lies in the sharing of worlds, in intimate communication. Yet, fear of ridicule often stops us short of having such conversations, especially with those to whom we are attracted. Furthermore, such conversations cannot effectively be facilitated in larger gatherings, for fear of being rationalised. A language game, such as “What are the best strategies for holding intimate conversations?” would clearly incorporate reason in order to achieve its goals. Facilitation remains after all a rational process of guidance and control.

Let us return then to whispers in the bedroom, to hidden dialogues and the person-to-person transmission of ideas. This is a project which was shared with me orally, one which I really shouldn't write about. Like a chain message, a person is challenged to have an intimate conversation with someone to whom they are attracted. Thereafter the first person challenges their partner to engage two more people in a similar conversation. Thereafter, a symbol – Jawadi, the name of a fictional friend – is shared so that others might recognise that we have also had the conversation. KNOWING JAWADI becomes a code or concept for “Yes, I have experience of such a conversation and I agree to rather be honest about my immediate feelings, not to resort to any manipulation of desire. You can trust me.” The code, Jawadi, may be inconspicuously slipped into conversation, i.e., “My friend Jawadi...” to which the other person responds, “Oh, I know them too...” to create safe interpersonal bubbles where compassion and honest sexuality are encouraged.

7. Critical Considerations on Marcuse

The work of Herbert Marcuse is highly influential in the field of critical social theory and beyond (Farr, 2019). In merging Marx's analysis of society with Freud's analysis of the individual, Marcuse is able to show how the individual is placed in and shaped by social forces as well as how society is made out of the repression of the individual. In this analysis, the repression of the erotic creates culture and the force of Eros is transformed into a working civilisation (Marcuse, 1955: 81-82). Marcuse's adaption of the reality principle into the performance principle based on surplus repression more effectively captures the tendencies of advanced industrial capitalism (Farr 2019) – tendencies which are still at work in contemporary society. In his involvement with his students and other

marginal members of society, Marcuse has located the potential for a radical revolutionary subjectivity. He identifies students as the agents for overcoming the alienation brought about by surplus repression. Even though this liberation may lead to other forms of rational domination, the spectre of his Great Refusal¹ still offers hope and a critical angle whence to practically transform society.

Marcuse's analysis also has some important limitations. With his emphasis on the repression of Freud's drives, he has been accused of reinforcing gender stereotypes. However, Nina Power (2013: 79), suggests that his project to universalise traditionally feminine qualities (such as care and emotion) alongside reason rescues him from most of these criticisms. According to Elliott (1996: 140), Marcuse's notion of libidinal

¹ Drawing inspiration from Marx's spectre of communism, the Great Refusal is a movement that counters resignation in the face of injustice. It claims that a different life is possible *here* and *now*.

rationality remains underdeveloped and in placing the erotic *next* to reason misses the opportunity to locate the erotic *within* the rational. Audre Lorde (1978: 4) sees such a conjunction of the erotic and reason as the necessary condition of joy. Lastly, Marcuse's focus on the individual and the society fails to account for the intersubjective level of human interaction (Elliot, 1996: 140). This crucial level, developed in the Jawadi interlude, forms the basis of all empathy and intimate communication. Within such interaction lies the erotic as a deeply personal and connected feeling which crucially cannot be further expressed through objective language (Lorde, 1978: 1), and thus cannot be systemically rationalised. It is this level where the subjectivity of others is most prominently recognised and realised. This realisation creates potential for a radical revolutionary *inter*-subjectivity to arise and for small-scale engagements free from rational domination.

8. Conclusions

In this paper, I have described how the libido is repressed for the sake of rational civilisation. I have underlined Marcuse's theory of how an excess in such repression leads to overproduction and overconsumption and I have shown how his theory is practically manifested in GAME and how it plays itself out in new forms of artificial desire. I discussed how this new desire then infiltrates the realm of personal interactions and objectifies people as a means to fulfil desire. While not a universal phenomenon, this process explains some aspects of the alienation we feel towards our acquaintances. In between these arguments I have also entertained somewhat practical fantasies of a future that challenges these processes and champions human connection. In setting out these visions, I attempted to take a break from the work and from purely rational argumentation. This project, although perhaps performatively significant, largely fails, (1) because I am still afraid of digressing too far from the standards of reason and (2) because of the academic language game with all its rules, I could not resist the expectation to explain and justify, once more skewering the erotic with reason.²

² You too, dear reader, partake in such a skewering, insofar as you ask me to explicate, exemplify and help you understand.

A poem, fragile and formidable

Hey, Nienke?

It's okay if you want to kiss
 with other people—
I'm not saying that you want to
 just— it's okay if you do.

I mean—
 it would be a relief
To know I don't have to be
 your one and only.

Maybe me saying this
 will help one day
When the ardour of our passion
 burns our skin away
It'll help to know that you may.

 All I ask—
(if we are to deconstruct authority)
 is that we be honest
And intimate with our wants.

(sincerely)
Pieter

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I also make reference to the following fictional source:

Rothfuss, P. 2011. *The Wise Man's Fear*, London: Gollancz.

Justice as Fairness in South Africa: Rawls and the Failure of the Broad-Based Black Economic Empowerment (BBBEE) Act of 2003

Shannon Stodel

Abstract

John Rawls's moral theory aims to achieve a form of distributive justice that is founded upon fairness. In this paper, the criteria and principles, as presented by Rawls in his theory of *justice as fairness*, are applied to the enactment of the Broad-Based Black Economic Empowerment Act (BBBEE) in an effort to evaluate whether it satisfies his stipulated conditions. The Broad-Based Black Economic Empowerment Act of 2003 was introduced in South Africa as a means to further mitigate the structural patterns of disadvantage that disproportionately affect the black majority of the population in the wake of Apartheid.

Justice as fairness is initially theoretically conceptualised and contextualised through an explanation of its main elements and thought experiments, namely, those of the basic structure of society, the *original position*, and the *veil of ignorance*, as well as the principles of justice. In this paper, the practical application of this theory of distributive justice is facilitated through the use of the BBBEE Act in an effort to establish whether the act achieves the kind of justice as fairness that Rawls envisions. This analysis is facilitated through a qualitative comparison of the successes and alignments, as well as the failures and divergences of the policy to the theory itself. The outcome of the analysis suggests that the BBBEE policy satisfies some of the Rawlsian criteria for justice as fairness initially, but ultimately fails in practice.

About the author

Shannon Stodel is currently an International Relations Honours student at Stellenbosch University. Her undergraduate degree – a triple major in Political Science, Philosophy and Economics – informed her passion for interdisciplinary study and she plans to pursue a career in the future that centres around remedying issues of development. Her recent research has focused on the role of infrastructure and Foreign Direct Investment as aid in Africa.

1. Introduction

Many decisions and contemporary policies have been informed by the work of the American moral and political philosopher, John Rawls, whose work set out to achieve a more equal and just society through his method of equitably “levelling the playing fields” (Richardson, 2005: 6). The Broad-Based Black Economic Empowerment (BBBEE) Act of 2003, is one such policy. Enacted in 2003 in South Africa, it aims to address the structural inequalities that remain as a product of the Apartheid regime, namely, the exclusion of black people (referring to African, Coloured, and Indian South African citizens from birth, descent, or naturalisation, as stipulated in the act) from participating meaningfully in the economy. Under Rawls’s theory of justice, more commonly known as *justice as fairness*, the instantiation of the BBBEE act serves as a well-meaning and practical attempt at realising distributive justice in South Africa. However, I argue that it is in its contemporary application, or implementation, that it fundamentally fails to achieve this ideal. In order to facilitate the critical discussion of the BBBEE Act as a function of Rawls’s theory, the theory itself will first be unpacked. The impetus for the formulation of this theory of distributive justice will be contextualised and followed by the conceptualisation of the main aspects of the theory itself. Thought experiments, aiding in the accessibility and description of the theory will be discussed – specifically those of the *original position*, the *veil of ignorance* and the *difference principle*. The final portion of this paper will serve as a systematic exposition of the BBBEE Act as, firstly, an extension of Rawls’s theory of justice in its conception and enactment and, secondly, how it fundamentally reneges on these ideals in its implementation in reality. As I will show, the culmination of the analysis shows that the BBBEE Act, while satisfying some of Rawls’s conditions to achieve justice through fairness, ultimately fails to resolve the problem of distribution and racial economic inequality, that it sets out to diagnose and treat in the first place.

2. Conceptualisation and Contextualisation of Key Concepts

In order to successfully unpack Rawls’s theory and understand its subsequent application to the policy of Broad-Based Black Economic Empowerment, a few key concepts will require a brief description. Firstly, the concept of distributive justice in its broader sense. Distributive justice, according to the International Encyclopaedia of the Social Sciences (2008), relates to the system or process by which rewards, burdens and resources are assigned to individuals according to a certain set of moral belief(s). Principles of distributive justice extend this idea in that they serve as a vessel for the morality of political structures and processes that facilitate the distribution of said benefits, resources, and burdens.

The theory of justice as fairness, in its essentialised form, is Rawls’s interpretation of distributive justice. His theory is comprised of two main elements or principles, namely, liberty and equality. “Liberty” denotes equal access to individual freedoms, while “equality” refers to the fair distribution of advantages (Richardson, 2005: 6). These two principles are the basis from which his theory stems and are arranged in lexical order – denoting that the first is always prioritised over the second (Rawls, 1999: 55). “Rational individuals” denote people that, given different choices, will decide on an option using calculations or logical thought processes in order to maximise or optimise their own individual self-interest or utility (Mueller, 2001: 68). This definition is of importance, as it underpins the premise on which claims made by Rawls, political philosophers and economists alike have fundamentally based their thinking.

3. Rawls's Theory of Distributive Justice: Justice as Fairness

3.1. History and impetus

John Rawls, who proposed the moral theory of justice as fairness, sought to tackle and attempt to resolve the issue of distributive justice. Before one can talk about the theory itself, it is important to contextualise the impetus for its creation. Rawls first conceptualised the notion of justice as fairness as a product of various influences. His theory came as a response to a theory of justice that was prevalent at the time, namely, utilitarianism. Broadly, utilitarianism is the view that the morally correct action is the one that secures the greatest good or happiness for the greatest number of people (Mill, 1970: 7). This notion is the amalgamation of the works of classical utilitarian philosophers Jeremy Bentham and John Stuart Mill – one to which Rawls is diametrically opposed. Rawls fundamentally disagreed with this notion, arguing that it leaves no room for the protection of individual rights and liberties that form the foundation upon which democratic ideals and institutions are built (Rawls, 1999: xii). This is further explained by Richardson (2005: 6), who presents that the element of the utilitarian definition that Rawls problematises, is that the “average” or “total” utility of society is maximised. In turn, this fails to acknowledge the primacy of the individual and their associated rights by generalising or aggregating utility to a societal level. The fulcrum of the theory which Rawls contends, is the notion that utilitarianism commits itself to serving the aggregate welfare of the population and not to the prioritisation of ensuring equitable or maximum liberty to all individuals (Lyons, 1972: 536).

Rawls clearly states that “utilitarianism does not take seriously the distinction between persons” (1999: 4). This is the main driving factor for Rawls's theory of justice as fairness, insofar that it aims to provide an alternative to what Rawls thinks is not a truly moral means to secure justice (Safodien, 2016: 2). This fervent opposition to utilitarianism is the basis from which the argument in favour of a theory of justice based on fair-

ness stems. However, one area where Rawls's theory aligns with that of utilitarianism is their commitment to normativity, stating what ought to be rather than describing what is. With this said, both theories are informed by a commitment to correct the injustices of society.

Rawls's theory of justice serves as a continuation and extension of the thinking of his predecessors. The social contract theory of Thomas Hobbes and John Locke serve as the partial inspiration and foundation for his formulation of the original position and the veil of ignorance, which will be discussed later (Rawls, 1999: 10). The markedly abstract and hypothetical nature of this conception of the social contract illustrates the extension that Rawls exercised regarding the work of his predecessor (Sarangi, 1991: 195). Locke, particularly in his work *The Second Treatise of Civil Government* (1660), often referenced the social contract as if it were an actual historical event, while Rawls later uses the overarching idea of the social contract to facilitate his explanation of his theory of justice as fairness.

3.2. The essence of *justice as fairness*

The following section will offer a systematic explanation of Rawls's theory of justice as fairness, which is informed by a rejection to utilitarianism as a moral theory – an extension of the ideas of contractarianism and a response to the existence of injustice in society (Freeman, 2007: 156). Core elements that aid in the construction of the moral theory of fairness include the original position, the veil of ignorance, and the principles of justice.

3.3. The basic structure of society

As it has already been mentioned, Rawls's theory of justice stems from two principles: liberty and equality (in that order). The basic structure of society that Rawls envisions is focused on the subject matter of institutions and societal practices. An institution, according to Rawls (1971: 55), is a public system of rules that has the ability to define and assign roles, as well as their associated responsibilities, influence, and im-

munities. The “public system” mentioned here, denotes that everyone involved in a certain institution is privy to the rules and accepts the responsibility associated with involvement in a particular institution (Rawls, 1999: 47-48). It too can be abstract (i.e., rules) or, as a product of the thought patterns and actions of people formed as a consequence of these rules. Rawls strives to resolve the patterns that exist as a result of these current structures, such as alienation, exploitation, and envy, by reimagining the way society is organised and to mitigate the manifestation of such issues in the first place.

The basic structure of society, in its most simplistic form, is a closed system that is isolated from other societies (Lehning, 2009: 19). This basic structure, and the associated principles of liberty and equality, can manifest themselves in the form of constitutional and legal frameworks. Once implemented, these structures can alter the life chances of individuals so that they can exercise their liberties freely and contently – a so-called “levelling of the playing field” (Richardson, 2005: 6). Society in this form is seen as an opportunity and a space that enables cooperation in the spirit of mutual advantage, which is facilitated through the interaction of rational and reasonable human beings (Lehning, 2009: 20).

3.4. The original position and the veil of ignorance

The inception of the conceptualisation of the theory of justice as fairness, is what is called the “original position”. The original position (OP) is the first thought experiment or hypothetical situation that aids in achieving the critical distance that Rawls claims society needs in order to attain an objective answer to the question of what principles of justice are appropriate for a certain society to achieve the overarching principles of liberty and equality. The essential features of the OP are that no-one knows their place in society, as normally determined by their class, race, intelligence, ability, wealth, or social status. Participants also do not have a conception of their own psychological propensities and their own conception of the “good” (their conception of how to satisfy rational desires). Rawls

assumes that individuals fashion their lives around their own conception of the good (Ekmekci & Arda, 2015: 228). In absence of this conception of the good, or rather, this aspect of ‘not knowing’ in the original position, is known as the “veil of ignorance” (Rawls, 1999: 11).

The purpose of the OP and the veil of ignorance is to place individuals in a situation where, if asked the question of “who gets what?”, people as rational individuals will attempt to maximise the outcome for themselves. Under this veil, one does not know where they will be placed in society or what their life chances will be. This means that, in order to maximise their individual outcome in any situation, they will choose principles of justice that are fair or to the benefit of the least advantaged – for they could very well find themselves in that same position. With the absence of the conception of the “good” and the other unknowns, the parties’ decisions are based on an accumulation of what Rawls calls “primary social goods”: rights, liberties, wealth, income, and opportunities. This is under the assumption that individuals value having more primary social goods, or primary goods, rather than less. Additionally, under these circumstances, people are “mutually disinterested”, meaning that they only are concerned with their own accumulation of primary goods and not with anyone else’s (Richardson, 2005: 10). I posit that mutual disinterest can be likened to respect, in that an individual will not interfere with another person’s accumulation of primary goods given that their own actions will also not be interfered with. Parallels can also be drawn here to the Hobbesian social contract theory in that freedom and safety are secured through a structured understanding (or respect) of others’ autonomy (Rawls, 1999: 10).

Primary social goods are outlined by Lehning (2009: 20) as having the right to freedom of speech, liberty, assembly, association, movement, conscience, and political liberties (having the right to vote and be eligible for public office). Also included in this category are income and wealth, the social basis of self-respect and having choice of occupation. Primary social goods

more generally are the elements that are fairly distributed according to the terms of social cooperation. This extends into the realm of constitutional (political) and economic institutions in that, in the application of the basic structure of society to said institutions, a forecast on the extent of the just distribution of primary social goods can be extrapolated (Lehning, 2009: 21), and a measurement of justice as fairness can be achieved.

This reinforces the self-interested nature of rational individuals which Rawls tries to account for in his theory, rather than idealising or attempting to change it. Rawls describes his understanding of how at birth, there is a lottery in terms of the allotment of circumstances that people enjoy, some examples being: historic inheritance of status, wealth, intelligence, and ability (Arneson, 2007: 80). By removing this lottery through Rawls's OP, it leaves room to establish or conceptualise a so-called "fair" distribution of the principles of justice from an impartial standpoint. In summary, the guiding ideas for a "Rawlsian" society stem from a decision made by rational actors who would accept a certain position of equality – and one that defines their basic structure of association in order to promote their own individual interests to the maximum under any of the stipulations of the original agreement.

The OP aims to destabilise the accepted norm of the principles of utilitarianism. This is done by illustrating that under the stipulations of the original position and the veil of ignorance – rational individuals would not choose the principles of justice associated with utilitarianism when given the choice. Furthermore, it would not be a true reflection of a just moral theory (Richardson, 2005: 9).

3.5. The principles of justice

The principles of justice as fairness in *A Theory of Justice* (Rawls, 1999) are at the heart of Rawls's theory and act as a guiding mechanism for their implementation. These principles follow on from the previous concept of the basic structure of society, and are as follows:

The first principle stipulates that a society must ensure that each citizen has equal claim to the most extensive liberties and rights. The second principle addresses social and economic inequality, or the distributive elements and takes the form of two parts: the first part necessitates that the social structures that shape this aforementioned distribution must be open and accessible to all, or, in other words, equality of opportunity, while the second part, also known as the *difference principle*, presents itself as a type of clause to the preceding iteration of Rawls's theory of justice. The difference principle states that inequalities (social and economic) are only justified if they are to the greatest benefit of the least advantaged in society and concerns itself mainly with the primary goods of income and wealth (ibid., 16-17). The difference principle has also come to be known as the *maximin*, in which the long-term expectations of those individuals or social group who are the most disadvantaged are maximised. This can also be viewed as a function of rational choice, in that a person will try to mitigate uncertainty by making decisions that maximise the minimum expected outcomes of one option in comparison to another. This requires the identification of those who are deemed to be the most disadvantaged in society, which sometimes has paradoxical implications. This means that under this rule, the most "reasonable" decision is not always the most rational, as losses are minimised rather than gains being maximized (Harsanyi, 1975: 595). Altham (1973: 77) attempts to resolve this issue by, instead of identifying the most disadvantaged group, he instead identifies the most disadvantaged *individual* and systematically raises the expectations of the least advantaged to the next least advantaged and so on, until an "equilibrium" is reached. This point of equilibrium is a state that Altham believes satisfies Rawls's difference principle (maximin), in that it maximises the social minimum (ibid.).

Considering another angle, Poee (2013: 336) argues that the difference principle, as expressed through Rawls's concept of "equality of condition", can be seen

as an embodiment of equity.¹ Whilst, as alluded to in the conceptualisation of the first principle, the notion of “equality of opportunity” is more reminiscent of that of equality. It is with this caveat that Rawls acknowledges and accounts for inequalities and inefficiencies in society and, rather than trying to solve these with a blanket solution, attempts to offer a tailored remedy as expressed through equity over equality. In terms of the principles of justice, having a more equitable distribution of resources, in turn, necessitates a more equal society.

3.6. Rawls in reality

Rawls, in his theory of justice as fairness, offers largely a hypothetical system in which society can be analysed, namely, through the aforementioned thought experiments of the original position and the veil of ignorance. However, what his theory largely omits is its practical instantiation, aside from his mention of the following two systems in his work: firstly, liberal or democratic socialism and secondly, property owning democracy. Rawls’s theory in practice has been likened to that of the liberal democratic political tradition and, in a similar sense, how liberal democracy occupies a certain space of the political scale (Callan, 1997: 13). The interpretation and application of Rawls’s theory of justice in different contexts and countries have different implications and consequent locations on said scale (Lehning, 2009: 209). For example, in the United Kingdom, it has been viewed as social democratic, while the USA has viewed it as being left-liberal (O’Neill & Williamson, 2014: 13). Property owning democracy is conceived by Rawls to be attractive, in the sense that it values individual entrepreneurship. However, this seems to inevitably encounter practical issues of distribution (e.g., income inequality) when implemented, thus not aligning with the Rawlsian conception of justice.

In the following section, I discuss and analyse the practical application of Rawls’s theory in relation to the policy of Broad-Based Black Economic Empowerment in South Africa. Through this, I aim to shed light on the efficacy of his theory in securing true and equitable distributive justice within a contemporary South African society.

4. Rawls and BBBEE: The Problem of Structural and Economic Inequality

4.1. Conceptualisation of BBBEE

The Broad-Based Black Economic Empowerment (BBBEE) Act 53 of 2003 was implemented in order to address the historical legacy of Apartheid that left the majority of South Africans namely, black people, trapped in a position of structural economic inequality up until the present day. The repressive laws of the Apartheid era aimed to systematically exclude black people spatially, socially, politically, and economically through the enactment of policies such as the Natives Land Act (1913) which restricted the ownership and purchasing of land on the basis of race (Republic of South Africa, 1913).

The BBBEE Act aims to address these inequalities that still persist by increasing the meaningful employment and participation of black people in the economy, satisfying all with their constitutional right to equality – promoting a higher growth rate and also working to realise a more equitable distribution of income. This policy serves as an appropriate yardstick with which to evaluate the practicality and efficacy of Rawls’s theory of justice as fairness through its ability or failure to diagnose and treat the problem of distribution that South Africa faces today. In a similar vein to Rawls, BBBEE is interdisciplinary, meaning that it is applicable to a variety of contexts – aiming to transform

¹ Equity differs from equality in that the former acknowledges differences and discrepancies between the circumstances of individuals and allocates resources and opportunities accordingly, while

the latter prescribes uniform resources or opportunities to a group (Cook & Hegtvædt, 1983: 218).

different levels and sectors of the economy through one, single policy lens (Thabe, 2010: 1, 22).

4.2. BBBEE policy and Rawls

Rawls's theory of justice and the BBBEE policy intersect at the point where "justice" as Rawls conceives it, is illustrated through the goal of the BBBEE policy to address the structural remnants of Apartheid. "Fairness" is reflected through the enactment – and consequent commitment to fix the exclusion of a specific part of the population from participating meaningfully in the economy. Even before the enactment of BBBEE, South Africa had come a long way from its pre-1994 state and already fulfilled some of the basic requirements as set out in Rawls's theory, such as being a democratic regime, constitutionalising the right to freedom of speech and assembly, liberty of conscience and freedom of thought, freedom of the person, and their right to hold property and freedom from arbitrary arrest as defined by the rule of law. Therefore, BBBEE caters to the prescription of Rawlsian notions of justice by attempting to redress the rights of those who were not afforded the during the Apartheid era.

4.3. BBBEE and Rawls: Successes and alignments

Rawls and BBBEE align in their shared ideas of justice as fairness and notions of cooperative underpinnings and equitable outcomes. Both make a vested attempt to acknowledge the primacy of the individual whilst also attempting to emphasise the greater value that is created as a product of cohesion and interconnectedness – in both values and in relations. However, this is not necessarily true at the level of implementation for the BBBEE policy and under Rawls's veil of ignorance, ultimately a purely self-interested decision is made. This emphasises the dynamics, intersections and conflicts of self-interest and collective interest that are at play and are crucial in policy design. Furthermore, and as mentioned, post-1994 and pre-BBBEE South Africa satisfies first principle that Rawls stipulates in his principles of justice as having equal and basic liberties through the introduction of the new constitution and

new, functional democratic system (Thabe, 2010: 18-19).

Again, referring to the constitution and to the policy of BBBEE itself, the second principle in theory is fulfilled in that there is equality of opportunity to all under the law and the instantiation of the BBBEE Act aims to further strengthen or reinforce these rights (ibid., 23). In other words, the rights of all are put on paper to ensure maximum and equitable liberty as Rawls suggests. However, as I will show, these objectives and policies do not always translate directly into practice. The debate between ideal and non-ideal theory is aptly reflected in Rawls's justice as fairness and the BBBEE Act in how their practical instantiations do not necessarily reflect their anticipated theoretical outcomes (Valentini, 2012).

4.4. BBBEE and Rawls: Failures and divergences

The successes of the conception of the South African constitution and the BBBEE Act as a its extension, has been lauded thus far, but there are arguably some gaps in the policy formulation itself that goes against the grain of Rawls's theory. The first instance of this is seen in the conception of the individual within the BBBEE policy framework. The individual is not made a priority, and not defined outside of their status within a group in the policy. This would be a fundamental flaw in the eyes of Rawls, as was illustrated through his rampant rejection of the similar notion discussed in the utilitarian generalisation of the individual into an aggregated group. An attempt is made at addressing and acknowledging the primacy of the individual through the creation of a specific policy to address the issue of racial inequality and its implications for economic access. However, by pooling African, Coloured, and Indian people into one group as "black", reneges on the goal of the policy, not taking into account the complexities of race and the carious lived experiences of the "black" South African community. This reflects the BBBEE Act falling into the very trap that Rawls's theory of justice as fairness aimed to counter: utilitarianism. BBBEE consequently illustrates that the individual is not paramount as is necessitated by Rawls

and rather embodies utilitarian traits of maximising utility for the many over the few.

Secondly, although as it was previously described, BBBEE satisfies Rawls's first principle of most extensive liberty to a certain extent. Some scholars disagree, citing that it does not satisfy the first principle, because "only some are benefiting from BBBEE" (Safodien, 2016: 31). "Some" in this case refers to how the BBBEE policy oftentimes in practice prioritises and favours the employment of qualified black people rather than uplift the unqualified black persons. The policy theoretically works to enable equality of opportunity as stipulated in the constitution to previously disadvantaged groups. However, in practice it is seen that there are inefficiencies which tend to favour specific individuals disproportionately, namely, elites within the black community. This logically implies that liberty is not being maximised for those who the BBBEE policy aims to help, which undermines its theoretical objectives, as well as those of Rawls (Poore, 2013: 637).

The arguably fatal flaw that separates the BBBEE policy from the Rawlsian conception of justice as fairness, is the fundamental implementation failures that have been seen in its application. The first of these implementation failures are shown through the discrepancies of gender and sectoral outcomes as a function of BBBEE. Statistics from 2019 show that the shareholdings of black women in that year on the Johannesburg Stock Exchange (JSE) were significantly lower than that of their male counterparts, occupying only 0-25% comparatively to 52-100% for black ownership overall across three sectors (B-BBEE Commission, 2019: 53). This is indicative of a blind spot in the BBBEE policy, as it illustrates a failure in acknowledging the interaction between and complexities of race and gender, respectively (Patel & Graham, 2012: 204). This revisits the problematic notion of the difference principle: although there are tangible gains being seen or reductions in inequality, it is of a skewed nature, where black men are prioritised over black women in their economic empowerment. The least advantaged in this

case is not advantaged equitably, as Rawls would necessitate.

Moreover, the BBBEE scorecard system prioritises businesses that are black-owned or have black individuals in senior management positions, assigning rewards and exemptions accordingly to those who are compliant. The outcomes in practice thus far, however, have proved to rather be more effective in cultivating a black middle class over helping those at the bottom of the income distribution (Southall, 2004: 537). With this said, it is still important to note how a creation of a strong middle class can assist in the anchoring of democracy. Expanding on this the growth of a middle class and its associated characteristics, such as reduced inequality and expanding franchise, lend themselves to democratic consolidation and the correction of historic discriminatory patterns (Resnick, 2015: 695).

While the aforementioned notion of compliancy advances Rawls's overarching objectives and some of the BBBEE policy's goals, it too creates negative externalities, as shown through the rising cases of "fronting" to meet BBBEE scorecard requirements (Shai, Molefinyana & Quinot, 2019: 3). By intentionally placing Black, Coloured or Indian South African citizens (as stipulated in the BBBEE policy) in positions that are above their qualification and competency levels, it not only creates injustice in the form of excluding others from opportunities, but it does not give credit to an individual where credit it is due. This notion is again a reflection of utilitarianism, in that fronting uses people as a means to an end and not as an end in themselves – a concept and premise with which Rawls fundamentally disagrees. Rawls, too, does not acknowledge the intricacies and nuance of the emotional aftermath of redistribution, which further compounds the weight of taking emotional element of redistribution and individual nuances into account. Situating the emotions in the work of John Rawls (Banerjee & Bercuson, 2017: 1). Whilst it is often conceived that emotion can cloud policy-making, it is a crucial element to effectuate a more nuanced, considered, and comprehensive un-

derstanding. This would acknowledge the various dynamics that exist within the apparent blanket categorisation of “black people” within the BBBEE Act.

The outcomes of the implementation of the BBBEE policy in South Africa echo the sentiments of Anthony Crossland (1974: 17), insofar as he said that solving problems of distribution in society are not about “how much equality?”, but should rather centre around the reduction of inequalities. This is perfectly illustrated in the way that the arguable Achilles heel of the BBBEE policy, so to speak, is its hyper-fixation on numerical targets to achieve a certain level of “equality”. This mirrors utilitarian metrics of success which arguably have a misguided focus on maximising net equality, rather than net happiness. Ironically though, it is within this fixation that more inequalities are formed and perpetuated. As Karl Sociwa, Group Executive from Market Development Sanlam, puts it, the policy of BBBEE is broadly successful in tracking transformation on the sectoral level, but there exists a disconnect or lack in information around the transformation of individuals lives (Sanlam Gauge Digital Conference, 2021). This encapsulates how BBBEE aims to prioritise the individual, but reneges on this goal in practice, indicating the incongruency between the policy’s formulation and Rawls’s theory of justice.

5. Conclusion

The exposition of the analysis showed the theoretical impetus and underpinnings of Rawls’s *A Theory of Justice* relates mainly to his principles of justice, the original position, the veil of ignorance, and the difference principle. The practicality of the theory was also discussed in order to lay the groundwork for the analysis of the Broad-Based Black Economic Empowerment Act and its successes and alignments and failures and divergences from Rawlsian conceptions of justice. The analysis led to the conclusion that the BBBEE Act draws many parallels to Rawlsian notions of liberty, equality, social cooperation, and justice, but ultimately, loses its footing when implemented. These implementation failures were shown through hyper-fixation on numerical targets for equality, which merely perpetuate and create more inequalities, as seen in the case of “fronting”. In addition, there exists some conceptual misalignments, such as the differing conceptions of “the individual” as well as how justice should be measured. At the conclusion of this analysis, the question remains: can BBBEE rectify its implementation issues and eventually realise the Rawlsian ideal of distributive justice in the future? And, more broadly, if the maximin paradox can be resolved through asking if there can ever be an acceptable level of injustice?

As I have argued, the initial theoretical comparison of the BBBEE policy satisfied some of the Rawlsian criteria for justice as fairness. However, it is in the practical implementation of the BBBEE Act that the policy fails to achieve the type of liberty and equitable distributive justice that Rawls envisions in his theory of justice as fairness.

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Butler on Wittig: From One Radical to Another Regarding Strategies of Emancipation

Tamlyn February

Abstract

Judith Butler and Monique Wittig are two feminist philosophers with many similarities, but also crucial differences. Wittig's starting point is the materiality of language where she posits that language has a dual function. It can affirm absolute reciprocity and equality among all speaking subjects in Being, but it can also institute artificial differences such as gender and sex. For Wittig, sex is a political category that establishes heterosexual society not in a binary way, but in a way that particularises women as "the sex" while men are universal subjects in Being. Wittig calls for emancipation through a two-pronged lesbian revolution to obliterate sexual difference. Although Butler agrees with Wittig on the materiality of language, the political nature of sex, and that there is no natural category of "women", they critique and differ from Wittig on two fundamental bases. The first is that Wittig uncritically invokes the metaphysics of substance with the concepts of Being and the subject, despite it being the basis of the heterosexual matrix. The second is Wittig's emancipation strategy of revolution over Butler's strategy of redeployment. This paper will discuss Wittig, Butler's critique of Wittig to articulate their own theory of gender performativity, and the more primary point, that Butler does not argue for full-scale revolution. Rather, their emancipation strategy from heterosexual society is more radical as it aims to trouble all identities, and the notion of identity itself, to make space for the legitimacy and recognition of "impossible" identities.

About the author

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1. Introduction

In this paper, I present a twofold argument about Judith Butler's critique of Monique Wittig in Butler's *Gender Trouble*.¹ The first part of my argument is that Butler's critique of Wittig elucidates two crucial aspects of Butler's emancipation strategy from the heterosexual matrix, namely, their repudiation of metaphysics as well as their strategy of internal subversion. The second part of my argument is that Butler's strategy of emancipation is a more radical alternative to Wittig's strategy of emancipation. I am interested in Butler and Wittig, not only because they share many similarities, but also have crucial differences.

This paper is divided into four sections. The first section presents a brief overview of Wittig regarding her views on language, ontology, materialism, the nature of sex, and her conceptualisation of a lesbian revolution. The second section discusses Butler's first critique of Wittig which includes her metaphysical lingering. The third section considers Butler's second critique of Wittig's emancipatory revolution. In the final section, I discuss the significance of Butler's critique of Wittig for their own emancipation strategy, and why this also proves that Butler presents a more radical emancipation strategy than Wittig.

2. Wittig: Language, Ontology, Sex, and the Lesbian

Wittig (1989: 3; 1985: 6) claims that language is the first, permanent and final social contract that gives everybody the same power of becoming an absolute and equal subject. However, language has a dual function: it can access the fundamental ontology of Being, but it can also institute difference between individuals. In

the fundamental ontology of Being, all individuals are absolute subjects that are radically equal and the same (Wittig, 1985: 6). Henderson (2018: 196-197) claims that Wittig's notion of Being is similar to Habermas's ideal speech situation that affirms absolute reciprocity among speaking subjects within radical democracy.

The notion of difference only becomes possible within the socially constituted reality. Wittig (1979: 115) claims that any difference between categories of individuals is the result of a political, economic, and ideological order. Unlike the fundamental ontology of Being where everyone is equal and the same, Wittig (1980: 29) argues that there is nothing ontological about difference. In other words, differences between individuals are artificial categories in service of a socially constituted order. Wittig proposes that language can access the existence of a fundamental ontology and create a socially constituted reality of difference.²

The dual function of language is premised on Wittig's view of the materialist nature of language. Wittig's focus on language and concepts is material because she argues that concepts can act on the body. She argues that "language casts sheaves upon the social body" (Wittig, 1989: 10). This means that she does not view language as an abstraction, but rather that it has material effects on bodies and reality. Butler (2007: 522) describes materialism as the view that language acts upon the body, articulates its contours and categorises it.

Wittig's materialism is especially important to note for her discussion on the category of sex. She argues that the category of sex is a political category that establishes heterosexual society (Wittig, 1982: 66). The notion of sex as male and female is thus not a natural

¹ Monique Wittig (1935-2003) is a French feminist author and philosopher that argues for an overthrow of the system of compulsory heterosexuality with a two-pronged lesbian revolution. Judith Butler is an American post-structural feminist philosopher that argues that both gender and sex are discursively constructed and per-

formed. In *Gender Trouble* (originally published in 1990), Butler discusses and critiques Wittig's work.

² An example of the social reality of difference is the gendered pronouns in language that institute the differences between men and women because it perpetuates the heterosexual binary (Karhu, 2016: 831).

division at all. When sex is analysed from Wittig's materialist perspective, she argues that sex works to oppress women and then claims that this same oppression is a result of their natural bodies. The category of sex implies that it is a women's nature to reproduce, raise children and do domestic chores (Wittig, 1982: 66-67). Butler (1993: 1-2) agrees with Wittig's view that sex is political and not natural when they claim that sex is a normative category that is forcibly materialised over time through repetitive performances. Similarly, for Wittig, sex is a category that is forcibly materialised through the discourse of a socially constituted reality of difference.

Wittig does not view sex as binary at all (Henderson, 2018: 193). She argues that within heterosexual society, only women are their sex and they have been made their sex in their minds, acts, bodies, gestures, and even their murders and beatings (Wittig, 1982: 68). It is important to note Wittig's fundamental ontology of Being and the socially constituted reality of difference. Women are the only sex, because they are defined by their sex – in other words, women have been particularised. Women are relegated as the different or the other in many ways (Wittig, 1980: 28-29). They are trapped within the socially constituted reality of difference, whereas men are absolute subjects in Being. Men are not different or others, they are the universal person and only they can participate in the fundamental ontology of Being (Wittig, 1983: 64).³

Wittig's emancipation strategy from heterosexual society is a lesbian revolution. Wittig (1981: 13) calls the lesbian a "not-woman, not-man", because the lesbian stands completely outside the heterosexual order and is thus free from it. A lesbian is not a woman, because this term only makes sense in an asymmetrical relation to a man within heterosexuality (Henderson, 2018: 193). Wittig (1980: 30) argues that lesbians and homosexual men cannot refer to themselves as men

and women, because that means that they are perpetuating heterosexuality. Based on this, she makes a sharp distinction between heterosexuality and homosexuality, where the latter means freedom. Wittig (1989: 11; 1980: 27) also views heterosexuality as a universal and totalitarian order with courts, laws, terrors, mutilations, and police that control all mental production. Due to its totalitarian nature, the only way to emancipate oneself from heterosexuality is to overthrow the entire system itself.

The lesbian revolution also consists of the textual revolution. The textual revolution is when a writer attempts to universalise a minority point of view (Wittig, 1983: 66). This ties in with Wittig's fundamental ontology and the socially constituted reality of difference. When a writer universalises a minority point of view, the persons in these minority positions can assert themselves as absolute subjects in Being. In this regard, and based on her emphasis on language, Wittig (1984a: 45) argues that literary works act as a war machine against socially constituted difference.

I mentioned earlier in this section that language has a dual function: it can institute difference but also access Being. Wittig (1984b: 93) appeals to the latter function as a revolutionary practice, because language forms itself in a relationship of absolute reciprocity. In her own literary works, *The Lesbian Body* (1986) and *The Guérillères* (1971), Wittig attempts to universalise a lesbian point of view, and her use of gender-neutral pronouns is a means of moving away from difference, toward absolute reciprocity in Being. She also writes that the "I" in language reorganises the world from the speaker's point of view and lays claim to the universality of Being (1985: 6). Wittig's overall strategy of emancipation is thus to obliterate the sexual difference that founds heterosexual society to assert everyone as absolute, equal, and free subjects in Being.

³ In the same way, Wittig (1980: 28-29) argues that in racist societies, white people are not different but black people are.

3. Butler's First Critique of Wittig: Metaphysical Lingerings

Butler's first critique of Wittig is the metaphysical lingering that undergirds her interpretations of the heterosexual matrix and her emancipation strategy. To understand Butler's criticism, one needs to start with Butler's rejection of the discourse of the metaphysics of substance that Wittig maintains. Butler (2002: 27) agrees with Michel Haar, originally from Nietzsche, that substances are artificial philosophical means of instituting order, simplicity, and identity. However, substances do not reflect the true complexity of reality – they are illusions produced by language. For example, Butler (*ibid.*, 22) argues that identities only become intelligible when they are coherent and continuous and have some kind of intrinsic essence or self-identity. However, identities are far more complex, and this complexity problematises the notion of a coherent and essential identity. This complexity becomes even more evident when the discourse of the metaphysics of substance is read within gender and sexual identities in heterosexual society.

Gender and sexual identities under compulsory heterosexuality are only intelligible when they are coherent and continuous. Coherence and continuity come about within a binary system: for example, intelligibly “male” bodies are sexed as male (as opposed to female), and their gender is a man (as opposed to a woman), and based on being male and a man, they must desire the opposite sex (women) (Butler, 2002: 23-24). Gender and sexual identities are thus substances that aim to order reality under compulsory heterosexuality. Wittig (1989: 10) would agree with this, because she says that “language casts sheaves of reality upon the social body”. As a materialist, Wittig

casts sex and gender as substances that institute differences – it does not reflect reality in any way and creates artificial differences. Butler (2002: 33) uses this insight to introduce their theory of gender performativity which claims that substances such as gender and sexual identities continually create the phenomena that it purports to be.⁴

However, Butler argues against the entire discourse of the metaphysics of substance which includes substances such as the subject and Being – concepts that Wittig's theory heavily relies on. Butler (2002: 14) contrasts their view of “the subject” or “the person” with Wittig's view. Wittig subscribes to the humanist view of the subject when she claims that there is an absolute subject prior to language and the social. The subject or the person denotes the universal capacity for reason, morality, and language (in Being) and gender and sex is attributed after (*ibid.*). Butler (*ibid.*, 14-15), on the other hand, advocates for a relational view of the subject. In other words, “the subject” is not an absolute entity, but rather a relational being where these relations are constantly shifting in different contexts. Gender and sex, then, is a relation that is continually performing (instead of expressing) the subject which implies that there is no subject or person (viewed as coherent, continuous, and self-identical).⁵

Wittig (1985: 6) argues that a relative subject is inconceivable and could not speak at all – this shows that she needs the notion of an absolute subject in Being. However, if Wittig agrees that gender and sexual identities are substances (illusions of language that violently shape reality by imposing coherence and continuity), then what makes substances such as the subject and Being any different? Like sexual and gender identities, the subject and Being also appear to be self-identical, coherent, and continuous. Wittig (1982: 64)

⁴ Butler (2002: 10-11) claims that if the immutable binary nature of sex can be contested, then “sex” is in fact as culturally constructed as gender – sex was gender all along and there is no distinction between sex and gender. Binary sex is not the politically neutral surface onto which culture or gender acts.

⁵ Butler (2002: 178, 180) argues that gender (and its corollary, sex) is a performance with punitive consequences that requires repetition of socially established meanings. If these identities are performative, instead of expressive, then they constitute the identity they claim to express or reveal.

argues that oppression creates sex, and she meant heterosexuality. However, Butler (2002: 33) would argue that there is an underlying oppressive mechanism at work as well – the metaphysics of substance. When one speaks “I”, it does not assert absolute subjectivity as Wittig claims, because “I” is constantly being constituted and performed.⁶ For these reasons, Wittig cannot recourse to Being, the subject or the person, because they are part of the discourse of the metaphysics of substance – the same discourse that instituted the category of sex in the first place.

4. Butler’s Second Critique of Wittig: Redeployment over Revolution

Butler’s biggest problem with Wittig is her notion of a world outside heterosexuality. As I explained in the first section, Wittig views heterosexuality as totalitarian, and universal, and the only way to be emancipated from it is to overthrow the entire system. This is the political dimension of the lesbian revolution. Butler identifies a few issues with Wittig’s emancipation strategy which allows them to formulate their own emancipation strategy. Firstly, Butler (2002: 154-155) critiques Wittig’s sharp distinction between heterosexuality and homosexuality. Butler argues that this is simply not the case – heterosexuality and homosexuality are embedded in each other and define each other relationally. When Wittig posits homosexuality or lesbianism as freedom, she fails to see that it is not only heterosexuality that informs sexuality (ibid., 155). For example, the discourse of the metaphysics of substance also constrains what possibilities can be realised in sexuality.

Secondly, Butler (2002: 156-157) critiques Wittig’s notion of revolution as a strategy of emancipation. Wittig (1982: 68) claims that we should destroy the category of sex and live beyond it. However, a key difference between Butler and Wittig is that Butler does not view

heterosexuality as totalitarian. Butler (2002: 155) instead views heterosexuality not only as a compulsory system, but also as an “inevitable comedy”, because its identities are impossible to embody. Instead of overthrowing the entire system, it is possible to undermine it from within its gaps.

Where Wittig (1980: 30) claims that gay men and lesbians cannot call themselves men and women, Butler asks what would happen if they did do this. The terms “women” and “men” would be redeployed against heterosexuality itself. Similarly, when lesbians have butch and femme identities in relationships, it is anything but a mere assimilation of lesbianism into heterosexuality as Wittig claims (Butler, 2002: 157). Instead, it reveals the artificial and constructed nature of feminine and masculine identities. Butler’s emancipation strategy is to use heterosexuality against itself in subversive contexts.

Butler is expressing their own emancipation strategy by contrasting it to Wittig’s revolution. In addition to this, Butler also reads strategies of redeployment in Wittig’s textual revolution. In 2007, Butler wrote an article revisiting their critique of Wittig’s textual revolution. When Wittig (1983: 66) argues that literary works should universalise a minority point of view, Butler argues that she is redeploying the term “universality”. The term “universal” is supposed to indicate shared and solid grounds for our cognitive experience (Butler, 2007: 526). In compulsory heterosexuality, Wittig (1983: 64) claims that the masculine denotes the abstract, universal person, whereas women are particularised. By universalising a minority point of view, as Wittig does herself in her literary work, she is denaturalising this universal. Wittig is in fact redeploying the concept of a “universal”.

⁶ For Butler, there is no subject, only doings.

5. The Relevance of Critiquing Wittig and the Radicality of Butler

Butler's two critiques of Wittig's emancipation strategy elucidates two crucial aspects of their own emancipation strategy. Firstly, when Butler critiques Wittig's metaphysical lingering to concepts such as Being and the subject, they are bringing fully into view the post-structural or relational insights that inform their theory of gender performativity. Butler wants to do away with age-old philosophical metaphysical ideals such as substance that ultimately undergird the heterosexual matrix itself to introduce their theory of gender performativity. Substances create and constrain the realities they claim to name, and this is exactly what sex and gendered identities do. We are always performing these identities, because we can never be them – they do not reflect any true order of reality.

Secondly, Butler's critique of Wittig's lesbian revolution allows them to fully articulate their own emancipation project of redeployment in subversive contexts. This links back to Butler's repudiation of the metaphysics of substance, because if gender and sex is always being performed, then it is possible to perform differently and subvert heterosexuality from inside itself. When homosexual relationships take up heterosexual norms such as the butch and femme identities in lesbian relationships, it is not the case that homosexuality is assimilating into heterosexuality. Butler (2002: 41) claims: "gay is to straight not as copy is to original, but, rather, as copy is to copy". This implies that heterosexual norms in homosexual contexts denaturalises these norms, but more importantly, it also means that these identities are copies (or substances) of which the original never existed in the first place.

The second part of my argument is that Butler's emancipation strategy is more radical than Wittig's emancipation strategy. There are many similarities between Butler and Wittig: the discursive production of the heterosexual matrix, the political nature of "sex", and that there is no natural category of "women". It may seem

that Wittig's notion of a revolution is more radical than redeployment. However, I argue that such a view fails to see why Butler argues for redeployment in the first place. Due to the performative nature of heterosexual identities, identities and the metaphysics of substance as a whole, we can never escape performativity. Lesbianism is also subject to performativity – it is not complete freedom as Wittig argues.

After Wittig's lesbian revolution, we would still have to institute identities, uncritical of their performative nature. Instead of perpetuating the same discourse of substances that instituted oppression in the first place, we can instead open toward a future of multiplicities of identities. Redeployment can do this more than full-scale revolution ever could. Butler (2002: viii) already mentions this in the 1999 preface to *Gender Trouble* when they say the following: "the aim of the text was to open up the field of possibility for gender without dictating which kinds of possibilities ought to be realised". Butler does not locate an emancipatory telos in the figure of a lesbian outside the system, rather they are opening space for "impossible" identities to attain legitimacy.

6. Conclusion

Wittig argues that language can access the fundamental ontology of Being in which all individuals are equal and the same, but it can also institute material differences such as compulsory heterosexuality that institutes differences between individuals. The category of sex is the fundamental category undergirding heterosexuality, and it is produced through language. Wittig's emancipation strategy is the lesbian revolution that aims to overthrow heterosexuality entirely, both politically and through literature. Butler disagrees with Wittig's critique of sex and gender as metaphysical substances that constrain reality, while simultaneously affirming metaphysical substances such as Being and the subject. Butler also critiques Wittig for her conception of the lesbian revolution which is based on

a sharp distinction between homosexuality and heterosexuality.

In this paper, I argued that Butler lodges two critiques against Wittig to fully articulate their own emancipation project. Repudiating the metaphysics of substance allows Butler to articulate their theory of gender performativity. Butler's critique of Wittig's revolution also enables them to formulate their own emancipation project of redeployment. Redeployment follows from Butler's view that gender and sex are con-

stantly being performed which implies that we can perform differently to subvert heterosexuality. Lastly, I argued that Butler's emancipation strategy is far more radical than Wittig's strategy, because Butler allows for an open future of gender possibilities in which substances, such as identities are constantly troubled. Wittig's entire overthrow of heterosexuality fails to recognise the underlying extent of the metaphysics of substance and thereby neglects to acknowledge that homosexuality or lesbianism does not mean complete sexual freedom.

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Practising “Dissentient Philosophical Counselling” Underpinned by African Conversationalism and Pyrrhonian Scepticism: Provisional Theory and Practice

Jaco Louw

Abstract

Method in philosophical counselling is still a contentious topic. That is, there is no consensus on whether the philosophical counsellor should have a method in her practice to help the counsellee resolve philosophical problems. Some philosophical counsellors claim that there should not be any rigid adherence to method(s) as this will render philosophy too dogmatic. Philosophical counselling, in light of this view, promotes a kind of mutual philosophising sans definite goal with the counsellee. What I call “dissentient philosophical counselling” takes this claim even further: the philosophical counsellor lives/practices her philosophical counselling, that is, she embodies and practices philosophy as a way of life. This view is posed as a response to contemporary conceptualisations of philosophical counselling where the philosophical counsellor might stand in a disembodied relationship with her method(s) and tries to have a conversation “from nowhere”. Dissentient philosophical counselling, even though more focused on living philosophically, still suffers from certain shortcomings. In this paper, I firstly showcase how even the seemingly innocuous but important question “How might one live?” suffers from a lack of much needed nuance. And secondly, I introduce, via a fictional narrative, a provisional way of practicing this reworked dissentient philosophical counselling. I do this by, firstly, introducing African conversational philosophy, via its method of conversationalism, and secondly, I introduce a peculiar version of Pyrrhonian scepticism especially regarding the notion of *bios adoxastōs* (life without dogma).

About the author

Jaco Louw is a Ph.D. student at Stellenbosch University’s Department of Philosophy. His research focuses on African philosophy and philosophical counselling with a specific focus on modern methods of practicing African philosophy. In his spare time, he contrives to make academic philosophy more relevant to the lay public without trivialising its complexity and to instil in others to possibly live more philosophically.

1. Introduction: Initial Clarifications and Definitions

1.1. Philosophical counselling

Philosophical counselling (henceforth PC)¹ struggles from a crisis of definition (Raabe, 2001: xv, 43; Louw, 2021a: 1-2). There are said to be as many definitions of PC as there are practitioners of PC (Tillmanns, 2005: 2). One consequence of this crisis of definition is the lack of agreement on method(s).² One might view the position of the philosophical counsellor on this matter on a continuum: on the one end, there is the total rejection of method(s)³ and on the other end, there is the rigid adherence to method(s).⁴ In this article, I place myself in the middle of this continuum by promoting a view called *improvisation*.⁵

1.2. Pyrrhonian scepticism

Pyrrhonian scepticism is an ancient form of scepticism that seeks a state of mind free from anxieties caused by dogmatically adhering to theories/philosophies/beliefs. It is often misunderstood.⁶ However, this creates a space for creative and peculiar readings of Pyrrhonism. For instance, Pyrrhonism can be read as a *therapeutic philosophy*, i.e., using philosophy outside of the parameters of academic space. The

potential benefit of Pyrrhonism, for example, in the mental health professions⁷ has been noted by various authors.⁸ In fact, Sextus Empiricus writes: “Because of his love of humanity the Skeptic wishes to cure by argument, so far as he can, the conceit and precipitancy of the Dogmatist” (PH 3.280).⁹ Sparse research on the viability of Pyrrhonism in PC exists. In this paper, I will use a peculiar and creative reading of Pyrrhonism, especially regarding how Pyrrhonian sceptics (henceforth Pyrrhonists) regarded/held their beliefs, i.e., *adoxastōs*/without dogma. I also use two important notions I gather from Pyrrhonism, viz., (i) non-commitment (nomadism) from a (ii) non-position.

1.3. African conversational philosophy

African conversational philosophy methodised a specific understanding¹⁰ of “relationship” or “interdependence” into a method called conversationalism. This method promises to sustain a critical and continually revitalised conversation through a “creative struggle” between two parties by stifling the need for a “synthesis” (as there might be in dialogue). Furthermore, this method¹¹ emphasises the situated nature of the participants in this conversation. Importantly, conversationalism begins to equalise the playing field between philosophies (and conversational partners)

¹ I use philosophical *counselling* and philosophical *practice* interchangeably.

² Method(s) in this case referring to identifiable and repeatable steps taken by a philosophical counsellor to reach a particular outcome/goal beyond that of philosophising. See, for example, Staude’s (2015: 39-41) *Path of consideration* which is a conception of PC with both identifiable and repeatable steps and a particular outcome/goal beyond that of philosophising.

³ See, for example, Gerd Achenbach who uses a “beyond-method” method. In short, he does not adhere to any fixed method. Nor does he promote any talk about theories which might explain a counsellor’s problem/situation (e.g., Achenbach, 1995: 73).

⁴ See, for example, Cohen who practices logic-based therapy (LBT), a variant of rational emotive behaviour therapy (REBT). In short, his brand of PC adheres to a specific theory and method with specific goals/outcomes (e.g., Cohen, 2013: 113-114).

⁵ In short, the philosophical counsellor uses different methods without dogmatic adherence to any of them.

⁶ One reason for this is the often-hostile translations of *Outlines of Pyrrhonism* (authored by Sextus Empiricus). Mates (1996) is one of the few charitable translations.

⁷ Amongst others, counselling psychology, psychotherapy, and psychiatry.

⁸ See, inter alia, Heaton (1997; 2003), Fischer (2011), and Greenslade (2014).

⁹ Benson Mates’s (1996) translation of *Outlines of Pyrrhonism* (PH = *Pyrrhōneioi hypotypōseis*) is used. Furthermore, the notation PH 1.1 is used to indicate the book number and paragraph number, respectively.

¹⁰ See Chimakonam (2017a: 115; 2017b: 11) who calls this an “under-explored sub-Saharan African notion of relationship or communion or interdependence.”

¹¹ The method of conversationalism has both identifiable and repeatable steps and a particular outcome/goal which is discussed in section 3. Utilised in PC, the method is used to sustain a conversation characterised by the so-called “creative struggle”.

thus preventing hegemonisation of any particular philosophy. Conversationalism plays a key theoretical role in the embodiment of a philosophical disposition which is actualised from a specific *philosophical place*.

1.4. Dissentient philosophical counselling

In this paper, I will argue as follows. Relying on what I call “dissentient PC,” I argue that the philosophical counsellor is “in control of methods,” and is constantly and creatively improvising. This contrasts with conventional philosophical counsellors who might be “controlled by method(s)” and who “dispense” or prescribe different philosophical texts as medicine or a cure.¹² Following the notion of dissentient PC, I argue that the philosophical counsellor does not rigidly/dogmatically hold onto method(s)/philosophies that might have worked¹³ in the past. What worked in the past for counsellee A might not work in the future for counsellee B. The philosophical counsellor in this view is thus always vigilant against dogmatically following a method and she continually professes a kind of philosophical ignorance. Dissentient PC was proposed as a solution to certain shortcomings in contemporary PC (see Louw, 2021a). However, dissentient PC still lacks a much-needed nuance regarding the actualising from a specific *philosophical place*, particularly regarding the important and seemingly innocuous question “How might one live?”. Subsequently, I introduce conversationalism and Pyrrhonism as two key theoretical underpinnings that might start to counter this lack.

2. Dissentient Philosophical Counselling¹⁴ and the Lack of Nuance

2.1. Dissentient philosophical counselling

The dissentient philosophical counsellor (shortened as the dissentient) is in control of multiple methods (Svare, 2006: 31-32). Being *context-sensitive*,¹⁵ the dissentient moves seamlessly between different methods. She “aspires to be something of a *methodological anarchist* prepared to challenge the authority of theoretical constructs and time-honoured convictions” (Swazo, 2000: 46; emphasis added). She avoids holding method(s) dogmatically which might have worked in the past. Dogma scares her.

Philosophy that takes its own assumptions for granted – ceases to critically challenge, and thereby to go beyond itself – is no longer philosophy, it’s dogma, ideology – a dead twig, not a living vine (Robertson, 1998: 10).

The dissentient knows that there are various methods at her disposal.¹⁶ There will, consequently, be a need for constant *improvisation*.¹⁷ As the musician¹⁸ needs to play her instrument so to say “‘spontaneously’ with [...] her fingers moving to the right place at the right time without even knowing it” (Louw, 2021a: 98), so also the dissentient will weave her way through philosophical discussions and methods without conscious or reflective awareness.

¹² Sivil (2009: 205-207) uses the formulation of “prescribing philosophical texts”. Marinoff’s (1999) popular book on PC, *Plato, not Prozac!*, for example, plays into both these problems, viz., (i) uncritically prescribing philosophical texts, and (ii) being controlled by a quasi-method he introduces to his counsellees which he has no commitment to (cf., Marinoff, 2002: 167).

¹³ A successful method in one case might be unsuccessful in another. What constitutes a successful method is problematic for the dissentient philosophical counsellor due to the realisation that situational factors will fundamentally change method(s) from counsellee to counsellee. Hence, the necessity of the dissent philosophical counsellor to be in control of various methods.

¹⁴ This section is based on Louw (2021a: 95-103, 128).

¹⁵ That is, having a keen sense of awareness to the counsellee’s needs and not being controlled by method(s) (Svare, 2006: 32).

¹⁶ See Pollastri (2006: 109): “philosophy [...] has several methods, not a specific one.”

¹⁷ Regarding *improvisation*, see Pollastri (2006) and Raabe (2001: 44-45).

¹⁸ Pollastri (2006: 110-111) uses the metaphor of a musician to equate the philosophical counsellor characterised by improvisation.

The dissentient knows, furthermore, that to live philosophically¹⁹ requires the relational/mutual practicing of philosophy through, inter alia, a joint inquiry, investigation, and reasoning. Rejecting the idea of synthesis as in a dialectical relationship,²⁰ the dissentient does not try to find an “ultimate answer” to the counsellee’s problem.

In fact, the philosopher will enter more fully into the spirit of the inquiry if [she] does not believe that [she] knows the answer sought by the [counsellee] (Allen, 2002: 5).

A “joint-creative-struggle” ensues in which the dissentient and the counsellee see “the problem as point of departure”²¹ and not in need of immediate resolution. The outcome of dissentient philosophical inquiry is not “inside” the philosophical counsellor, nor in the counsellee; it emerges “from the dialectic between them” (Allen, 2002: 11-12). PC subsequently becomes a *shared and relational experience* (Walsh, 2005: 500). Philosophical counselling “is not something the [dissentient] *does*, it is rather what she *cannot help but do*” (Louw, 2021a: 99).²²

This “doing” (*praxis*) can be linked to *phronesis*. In fact, the backbone of PC is *phronesis* (Weiss, 2018: 12). The *phronetic dissentient* is characterised by having “an ability to adapt to a new and unfamiliar situation without the [conscious] need to refer to a method” (Louw, 2021a: 100).

[A] person of practical wisdom [*phronesis*] must be prepared to encounter new cases, with responsiveness and imagination, using what she has learned from her study of the past, but cultivating as well the sort of flexibility and perceptiveness that will permit her [...] to “*improvise what is required*” (Nussbaum, 2018: 67; emphasis added).

Ultimately, what interests the dissentient is the question: “How might one live?”.²³ Therefore the dissentient will embody her philosophical practice in such a way as to guide the counsellee on the quest/journey to help formulate possible answers to this perplexing question of how one might live.²⁴ The dissentient views philosophy in a peculiar manner in order to facilitate a continuous conversation, to edify the counsellee’s life, and ultimately to get rid of philosophy itself.²⁵ Furthermore, the dissentient wants to turn the counsellee into a mutual/fellow philosopher²⁶ so that they might mutually and continually philosophise about the counsellee’s problem. However, the dissentient will profess that “we shall proceed as if I know, I really don’t know” (Swazo, 2000: 50-51). The way in which the dissentient lives her philosophical practice might lead the counsellee to have a *terrible experience* and it can possibly be an inherently *dangerous relationship* (ibid.). Philosophy might also be “bad medicine” as Jopling (2008: 162) appropriately argued.²⁷ But the dissentient will not profess philosophy to be

¹⁹ Hadot (1999) revitalised the notion of a lived philosophy, especially in *Philosophy as a way of life*.

²⁰ See section three on Chimakonam for more detail on the rejection/stifling of a synthesis.

²¹ See Louw (2021b) for a discussion in which the counsellee’s problem is seen as point of departure in contrast to the more conventional view of finding a solution to the counsellee’s problem.

²² See also Walsh (2005: 505) who states that “[t]o enter into [the philosophical counsellor’s] life at all is to enter into [her] philosophical counselling practice.”

²³ See May (2005: 1-2) who mentions modern academic philosophy’s neglect of this question.

²⁴ See Vansieleghem (2013: 602, 608, 611).

²⁵ Pyrrhonian therapy purges philosophy at some point. See section 4 below.

²⁶ See Raabe (2001: 147).

²⁷ In short, philosophy is bad medicine because it can potentially create or intellectualise problems, provide the counsellee an easy escape from tough emotional work, or philosophy might give the counsellee “pseudo-insight”, which is “sophisticated patter with little intrinsic philosophical content” (Jopling, 2008: 161-162).

medicine, nor will she proclaim that there are any discernible goals beyond merely philosophising for the sake of philosophising.

Moreover, the dissentient will go about this journey in a rather contradictory fashion and with a curious philosophical ignorance. Contradictory because she might carry on as if the answer/solution to the counsellee's problem is around every corner, and at the same time, she might carry on as if there is no solution/answer. Curious because she is vigilant to the fact that the answer could potentially be *anywhere*. It might lurk in the cursory reading of a philosophical text,²⁸ or revealed after a rigorous and continuous conversation, or it might even be gained through the purging of philosophy itself.

2.2. The lack of nuance

An apparent lack of nuance arrives as the dissentient practices her philosophical counselling when she posits the question "How might one live?". This question does not explicitly ask what I call situating questions. The epistemic subject looks rather empty, and the conversation presumably takes place from "nowhere", as I will showcase below.

3. Conversational African Philosophy

3.1. An empty epistemic subject and a conversation from nowhere

I contended earlier that the dissentient will be preoccupied with the question "How might one live?". I now argue that this question lacks nuance, that its epistemic subject is possibly empty, and that it promotes a conversation from nowhere. This is the case because *from where, when, by and for whom*, and *how* one asks this question is not necessarily sufficiently

addressed.²⁹ Chimakonam (2016: 15) states similarly that various strands of African philosophy are not sufficiently "engage[d] [...] in fruitful conversations on issues that would seek to unveil the African lifeworld." Simply put, philosophical conversations (read: philosophical counselling) that lack the nuance provided by a situatedness might not help the counsellee to cultivate and illuminate beneficial ways of living from a particular *philosophical place*. Nor will counsellees gain meaningful insight about their ways of being in the world from philosophies "in which the epistemic subject has no sexuality, gender, ethnicity, race, class, spirituality, language, or epistemic location within power relations" (Grosfoguel, 2012: 89). Chimakonam introduces the idea of philosophical *place* in contrast to philosophical *space* which might start to trouble the idea of asking the question "How might one live?" from nowhere.

3.2. Philosophical space vs. philosophical place

Chimakonam (2016: 15) uses a distinction provided by Janz between African philosophy as being either *platial* or *spatial*. The latter (i.e., spatial) refers to when Africa is seen as something akin to borders on a map and when African philosophers try to reclaim the stolen "intellectual territory" from the colonisers.³⁰ Chimakonam (2016: 32) subsequently calls this philosophical space. The former (i.e., platial) refers to what Chimakonam via Janz refers to as phenomenological issues/concerns. Simply put, platial African (conversational) philosophy, in part, deals with "issues that are present in the lifeworld or in the day-to-day experiences of a people" and is subsequently called philosophical place (ibid., 9, 15, 32).

Philosophical space for Chimakonam (2016: 37-38) becomes an "abstract meeting point of world philosophies". That is, different concrete philosophical places

²⁸ See Dußel (1996) who endorses this "per chance" style PC.

²⁹ These questions are loosely based on those asked by Mignolo (2021: xii). Paul Ricoeur also famously asked his students: "Where are you speaking from?" (as quoted in Du Toit, 2019: 227).

³⁰ That is, making Western hegemonic philosophy aware of its own situatedness and historicalness.

from an equal/horizontal footing meet up in this abstract philosophical space.³¹ Importantly, Chimakonam (2016: 37) notes that philosophical places “in a sustained movement towards the universal, converges with other philosophical traditions at a comparative level”. All philosophy thus should start from a philosophical place (i.e., embedded in a specific place or lifeworld) and ascend to this abstract philosophical space “where it initiates further conversations with other traditions” Chimakonam (2016: 38). The goal of particular philosophies (i.e., philosophical places) is to strive to have conversations with other particular philosophies in the universal philosophical space. The “ultimate goal of philosophy” for Chimakonam (2016: 40) is the “continuous unfolding of reason from the particular places to the universal space.”

The dissentient addressing the question “How might one live?” from nowhere might implicitly/explicitly practice her PC in the abstract philosophical space; it is not actualised from a concrete and embedded philosophical place. Conversationalism can start to add much needed nuance to this question.

3.3. Conversationalism: Arumaristics, the creative struggle, a disregard of synthesis, and context upsetting facts

Chimakonam, in providing an alternative understanding of philosophising, problematises the use of Western dialectical (i.e., Hegelian) thinking. He, instead, proposes a relational African paradigm in which a sustained and critical conversation can be held. He calls this method *conversationalism* (2017a; 2017b). The philosopher using conversationalism is explicitly aware of her own situatedness and context. Philosophising in this manner always explicitly situates itself. Furthermore, it is concretely embedded in a historical and

geographical frame that honours the embodied presence and living voices of the participants.

Chimakonam (2017b: 22) claims that traditionally, within the mainstream Western philosophical tradition, dialogue favoured a Hegelian dialectic where two sides, thesis and antithesis, form a new synthesis. The two opposing sides can form a new unit, i.e., synthesis, when they go into dialogue to “sort things out” and where the synthesis equates to a higher form of understanding. However, Chimakonam through conversationalism does not want to promote this as the ideal outcome. Disregarding synthesis, Chimakonam wants to keep the thesis and antithesis separate. There is no final goal of a successful synthesis, as in the case of dialogue. Conversation is “more than dialogue” (Chimakonam, 2016: 20). There is instead, a continual “sustenance of the conversation” for its own sake (Chimakonam, 2017b: 22) and a constant “reshuffling of thesis and antithesis” to create a new, more sophisticated and “fresh” thesis and antithesis (Chimakonam, 2017a: 116, 121).

This notion of conversation is based on *arumaristics* which, in turn, is based on the Igbo idea of conversation, *arumarụ-uka*. This roughly translates to “engaging in a relationship of doubt” (Egbai & Chimakonam, 2019: 181) or “engaging in critical and creative conversation” (Chimakonam, 2017a: 120). In this conversation, there are two sides: *nwa-nsa* or the defender of a position (thesis) and *nwa-nju* or the person rivalling the position (antithesis). The duty of *nwa-nju* is to relentlessly attack *nwa-nsa* to “reveal its loopholes and creatively fill up the lacunas” (ibid., 121). This creates a “frustration” because of a thwarted expectation of a synthesis that can be called “creative surrender” (Chimakonam, 2017b: 17-18). Conversationalism is instead called a “creative struggle” between *nwa-nsa* and *nwa-nju* because there is constant reshuffling of thesis

³¹ This abstract space is comparative or intercultural philosophy proper. The basic tenet of especially intercultural philosophy is that once universal and hegemonic philosophy is situated (i.e., purged from the philosophical space and reduced to philosophical

place) more meaningful conversations can be held from various philosophical *places* in the abstract philosophical *space*.

and antithesis which is not itself a synthesis. *Nwa-nsa* re-invents the thesis position *due to* the relentless attacks of *nwa-nju*. It never truly stops, it has a “transgenerational life-span [... that] keeps being re-invented and grows in sophistication” (Chimakonam, 2017a: 122). In dialogue, there might be a need to concede to the demands of a synthesis which inevitably ends. Instead, conversationalism stifles synthesis and seeks a continual conversation.

Ultimately, conversation plays the role of facilitating the context in which *nwa-nsa* and *nwa-nju* has this creative struggle through which meaning is *produced* (Chimakonam, 2021: 11). That is, meaning is not necessarily inherent to thoughts or words, but rather dependent on the context in which they are expressed (Chimakonam, 2021: 20). A catchphrase of sorts is used: “context upsets facts” (Chimakonam, 2017b: 20; 2021: 11).

This promotes a crude or weak form of relativism which aligns with Pyrrhonism.³² The question, “How might one live?”, situated in conversationalism cannot meaningfully be answered when the philosophical counsellor tries to answer it with so-called universalised philosophy devoid of a “human” subject and situatedness. To use the above catchphrase, context (read: the counsellee’s unique situation) upsets facts (read: proclaimed universal philosophy). I now turn to Pyrrhonism.

4. Ancient Greek Pyrrhonian Scepticism

4.1. The nomadic Pyrrhonian occupying a non-position

I introduce two strange tenets of Pyrrhonism,³³ viz., (i) non-commitment (nomadism) from a (ii) non-position. The Pyrrhonist is a *nomadic philosopher*³⁴ which allows for what I call a *non-position*. That is, she is nomadic because she does not have a “fixed territory” (read: dogma/theory/philosophy) which she needs to constantly defend against the onslaught of others (read: philosophers with different dogma/theory/philosophy). The need to constantly defend a position disturbs the Pyrrhonist’s peace of mind (*ataraxia*).³⁵ The Pyrrhonist philosophises precisely to get rid of these disturbances. Sextus Empiricus reminds us that the dogmatist who needs to always defend and fend off enemies is perpetually troubled and does not have peace of mind (see PH 1.27).

Furthermore, having access to this non-position, she might rely on self-refuting arguments. When it is needed, she can go so far as to purge philosophy/reason itself to have peace of mind. Sextus Empiricus provides the well-known purgative example, stating that:

just as purgatives after driving the fluids out of bodies eliminate themselves as well, so too the argument against demonstration, after doing away with all demonstration, can cancel itself as well (M 8.480; emphasis added; cf. PH 1.206, 2.188).^{36, 37}

³² Due to *isostheneia* or the assumed equal weightiness of arguments, the Pyrrhonist withholds assent (*epoché*). This necessarily creates at minimum a weak or crude relativism.

³³ See Louw (2021a: 21–37) for an eclectic reading of Pyrrhonism.

³⁴ Martha Nussbaum (2018: 281) introduces the nomadic metaphor regarding Pyrrhonism.

³⁵ Mates (1996: 61) translates *ataraxia* as “peace of mind” or “imperturbability”.

³⁶ Richard Betts’s (2005) translation of *Against the Logicians* (M) is used.

³⁷ This reminds one of the Wittgenstein’s (2002: 89) ladder: “He must, so to speak, throw away the ladder after he has climbed up it”.

I now turn to a peculiar use of this nomadic Pyrrhonism from a non-position in order to return to common life (*bios*) without dogma (*adoxastōs*).

4.2. Eichornian Pyrrhonism and the return to common life *adoxastōs*³⁸

Eichorn (2012: 16; 2014: 132; 2020: 337) views Pyrrhonism in a very particular manner, especially regarding *bios adoxastōs*. According to his reading, the Pyrrhonist holds her beliefs without dogma (*adoxastōs*) and without any real commitment (i.e., nomadism).³⁹ Before becoming a Pyrrhonist, i.e., proto-Pyrrhonist, she would have started her epistemic journey, firstly, as an everyday dogmatist and then, secondly, as a philosophical dogmatist. As an inquirer or sceptic,⁴⁰ she firstly questions the validity of common life knowledge, and then she questions the veracity of her own philosophical knowledge. The goal is to return to common life but without any commitment to it and to find *ataraxia*. To return to common life without dogma, the Pyrrhonist needs to go through five stages (with three accompanying caveats).⁴¹

Caveat 1. There is a distinction between common life presuppositions and theoretical presuppositions (Eichorn, 2013a; 2020: 338). The former relates to those unreflective assumptions one holds to make daily life possible (e.g., I act according to the belief that I cannot walk through a tree). The latter relates to unreflective assumptions that are held to make theory/frameworks

possible (e.g., historians need to assume that the world did not come into existence ten minutes ago).

Caveat 2. Philosophy leaves no stone unturned. Philosophical investigations are free to investigate both kinds of presuppositions (Eichorn, 2013a; 2020: 339). This is of utmost importance for dissentient PC.⁴² Philosophising starts once presuppositions are questioned in this rather unrestricted/indiscriminate way.⁴³ For example, if the historian brings history into question via the idea that the world came into existence only ten minutes ago, philosophising consequently starts and the practicing of history stops.

Caveat 3. The philosopher, however, is “committed” to at least one presupposition which she does not/cannot scrutinise, viz., that credence/weight/preference is given to the conclusion of reason (Eichorn, 2013c). Eichorn (2012: 14-15; 2013c; 2014: 129) calls this the *philosophical epistemic-doxastic norm* (PEN).⁴⁴ If so, a philosopher who is committed to PEN will see philosophy as the “arbiter of epistemically responsible belief” (Eichorn, 2014: 129). Unlike the philosopher, the Pyrrhonist is not committed to PEN.

Keeping these caveats in mind, I will now discuss the five stages.

Stage 1. In the first stage, the proto-Pyrrhonist like the dogmatist is seen as an *everyday dogmatist*. That is, when sceptical challenges are launched at common life, it might be refuted with common life knowledge

³⁸ See Eichorn (2013a, 2013b, 2013c) for a more detailed version of this argument.

³⁹ This contrasts with popular readings of Pyrrhonism in which the Pyrrhonist does not hold *any* beliefs or only a few beliefs (cf., Frede, 1987).

⁴⁰ “The sceptic is an inquirer or a seeker, i.e., someone who *looks*. [...] *σκέπτομαι* (*sképtomai*), [...] means to look or examine, and *σkeptικός* (*skeptikós*), [...] refers to the person doing the looking or examining” (Louw, 2021a: 23).

⁴¹ This should not be seen as a “method”. Certain anomalies “forces” the proto-Pyrrhonist to become a Pyrrhonist. See, for example, Vogt (2011: 36-37) who writes about one’s “conversion” to Pyrrhonism, or DiCarlo (2009: 53) who states that the Pyrrhonist is “made”.

⁴² See Louw (2021b: 26) in which the importance of this “unrestricted philosophising” is discussed. Subsequently, the counsellor can engage with PC and philosophy from a crucial and uniquely *critical position* that emerges from this type of philosophising.

⁴³ See Fogelin (2004: 67) regarding the consequences of unrestricted Pyrrhonian philosophising.

⁴⁴ That is, reason sways the philosopher’s arguments. The committed Christian, for example, would not be committed to PEN. She is not thereby rejecting reason as such. She might use reason in accordance with the *internal logic* of Christianity. However, reason as such will not necessarily sway her from religion. She does not give preference to reason but to religion.

(Eichorn, 2013b). For example, the sceptic might ask, “How do you know there is a tree?” to which the everyday dogmatist says, “I can *see* it.”

Stage 2. Soon the sceptical arguments might grow in sophistication. The everyday dogmatist’s assertion “I can *see* it” proves to be insufficient.⁴⁵ The everyday dogmatist cannot refute these more sophisticated sceptical challenges with common life knowledge because common life as a whole is being challenged (Eichorn, 2013b; 2020: 335).

Stage 3. The only way to refute these more sophisticated challenges is to call upon, what Eichorn (2013b) calls, *autonomous reason*. That is, the everyday dogmatist moves away from the trust she had in common life knowledge and commits herself to reason to refute the sceptical challenges. This in turn changes the everyday dogmatist into a *philosophical dogmatist*.

Stage 4. However, as in stage two, the sceptical challenges grow in sophistication to also challenge autonomous reason itself.⁴⁶ One cannot rely upon autonomous reason to rid this dissatisfaction and fend off the more sophisticated sceptical arguments. If one cannot call upon autonomous reason nor common knowledge to refute sceptical challenges, to what does one turn?

Stage 5. Here, Eichorn (2013c) rather cleverly introduces the self-refuting arguments of the Pyrrhonists. The Pyrrhonist returns to common life in this stage but *transformed* (Eichorn, 2013c). She returns to common life without the previous dogmatic reliance on it nor does she hold the notion that common life needs

philosophical underpinnings; it is groundless but at the same time self-standing (Eichorn, 2020: 340-341). Philosophy thus becomes

an ongoing, piecemeal effort to reorient ourselves with respect to our lives, to illuminate the self-standingness of everyday life, and to root out dogmatism wherever it crops up, whether in ourselves or in others (Eichorn, 2020: 355).

4.3. A brief interlude: Enter Chimakonam’s conversationalism

Eichorn (2013c) states that there is no synthesis. I find in this exact moment an overlap with conversationalism. Common life (thesis, *nwa-nsa*) is reworked via the relentless attacks by sceptical challenges (antithesis, *nwa-nju*) and one returns *transformed* to common life (thesis, *nwa-nsa*). There is a clear stifling of a synthesis, no concession is given to the demands of a need to synthesise the thesis and antithesis positions. One returns to the original position but transformed.

This transformed position helps the dissentient to stand in a unique relation to the question “How might one live?”. Uncommitted and from a non-position,⁴⁷ the dissentient can begin to answer this perplexing question with more nuance, that is, actualised from a specific philosophical place and through a relational-creative struggle. I now provide a fictional narrative/encounter between a counsellor and a dissentient philosophical counsellor as to flesh out her practice.

⁴⁵ See, for example, brain-in-a-vat type scenarios. In short, brain-in-a-vat type scenarios are thought experiments in which a “brain in a vat” has similar mental states than humans in “the real world”, however, one cannot easily distinguish between the two. It is, therefore, a type of sceptical argument to question, inter alia, the validity of one’s knowledge about the external world. See, for example, Putnam (1998: 5-8) for a more in-depth discussion.

⁴⁶ See, for example, the Agrippan trilemma or the modern Münchhausen trilemma. The Agrippan trilemma or the modern Münchhausen trilemma are different sceptical devices to

showcase various epistemological claims’ reliance on assumptions which cannot be defended without either (i) infinite regression, (ii) dogmatic reliance, or (iii) circularity. In short, the sceptic might use these devices to showcase that one will always rely on assumptions that cannot be proven. See, for example, PH 1.164-177 for a more in-depth discussion, however, Sextus Empiricus refers to the five modes of Agrippa. This has been shortened to the Agrippan or Münchhausen trilemma.

⁴⁷ She is uncommitted due to her undergoing a purgative sceptical therapy and in a non-position because she is a nomad.

5. Practicing Dissident Philosophical Counselling

The counsellor “might have left in the meantime, [...] not much happier than before, but not unhappy either”⁴⁸ but perhaps with a greater interest in how she might live. The counsellor initially sought out the dissident philosophical counsellor because she was dissatisfied with her current way of being in the world. From the start, the dissident warned the counsellor that to enter her philosophical practice might not yield many results, but at the same time it can edify the counsellor’s life in strange and somewhat uncomfortable ways.

The counsellor might have brought a practical problem to the dissident. A tough decision that she needs to make, ethical issues that creates uneasy feelings, being stuck in life with no prospect of moving forward, the list goes on. The dissident, informed by the vast network of philosophical texts and knowledge, intuitively provides a correlating piece of philosophical wisdom. Plato’s cave myth, Aristotle’s five intellectual virtues, Irigaray’s deconstruction of Plato’s cave myth, Buber’s I-Thou dialogue, Heidegger’s thrownness, the list seems endless. However, the dissident, unlike conventional philosophical counsellors,⁴⁹ does not dispense these philosophical ideas and texts to resolve the counsellor’s problem. Instead, she tries to turn the counsellor into a fellow philosopher.

This conversion is a crucial step. The counsellor can either accept the weighty invite,⁵⁰ or she can reject the offer.⁵¹ But the dissident knows that this step cannot be skipped. She is not a dispenser of half-truths and philosophical slogans, nor is she a sophist.⁵² To enter her philosophical practice, the counsellor agrees to be

interrogated but also to interrogate the dissident. Initially, the counsellor might be in a thesis/*nwa-nsa* position. Causing discomfort at first, the dissident might interrogate the counsellor’s problem with the help of philosophical texts and know-how/*phronesis*. But soon afterwards, the counsellor’s problem is seen as a point of departure. Being a fellow philosopher at this stage, the counsellor might interrogate the dissident (albeit sans in-depth philosophical know-how/*phronesis*). A creative struggle ensues in which the dissident and counsellor constantly switch positions from *nwa-nsa* to *nwa-nju* in an effort to continue the conversation and to return to the original problem *transformed* and edified.

It might not happen like this at all. The dissident does not follow this as a method, she is not controlled by method. Instead, she is in control of methods. Actualising the conversation from an embedded philosophical place, she has a specific context sensitivity that helps her intuitively know when she can enter the above-mentioned conversation with a counsellor. At a minimum, she knows how to facilitate a context in which the counsellor is brought into contact with the question, “How might one live *here, today?*” and how a concrete philosophy, one amongst many others that could have been equally valid in this situation, can act as a springboard from which to philosophise. Cognisant of the fact that the counsellor might request a short and quick answer without the need to interrogate/be interrogated, or without the need to go down this dangerous path of mutual philosophising, the dissident reverts to a hesitant and ignorant position:

[She] may wonder why the [therapist] did not tell [her] at once the simple truths that would have made [her] free.

⁴⁸ See Dußel (1996: 337).

⁴⁹ See especially anecdotal evidence provided by Marinoff (1999: 83-256) and Schuster (1999: 127-180).

⁵⁰ I contend that the counsellor who visits the dissident philosophical counsellor qua philosopher should not merely seek a philosophical slogan or text to somehow solve their problem. Onus is on the philosophical counsellor to state this from the start.

⁵¹ One of the few requirements of PC is that the counsellor should be able to have a rational dialogue and should not suffer from serious cognitive problems which might signify the need for psychological/medical rather than philosophical intervention.

⁵² See, for example, Scruton (1998: 6-7) who states that Marinoff is a charlatan and sophist who disregards everything for which philosophy stands.

But as a therapist, I know that though the patient learns, I do not teach. Furthermore, *what is to be learned is too elusively simple to be grasped without struggle, surrender, and experiencing of how it is* (Kopp, 1994: 4; emphasis added).

6. Conclusion

Provisional theory and practice of dissentient philosophical counselling is proposed in contrast to (i) conventional philosophical counselling, and (ii) dissentient philosophical counselling without the necessary nuance and situating questions. The practice proposes to facilitate the question “How might one live?” with further situating questions that might make it more relevant to the counsellee embedded in a specific philosophical place and without dogmatic adherence to universalised (i.e., empty epistemic subject) philosophy. The theory, underpinned by conversationalism and Pyrrhonism, aims at (i) avoiding dogmatically adherence to method(s)/philosophies, (ii) a continued conversation actualised from a specific place, and (iii) to edify the counsellee’s life beyond that of uncritical prescription of a philosophical text or by purging philosophy itself.

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