Qualia

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Qualia is a student-run journal at Bard College dedicated to collecting and publishing outstanding work in philosophy by undergraduates around the world. We are currently seeking editors, reviewers, and submissions for our second issue. Please send all submissions or inquiries to philosophy.bard@gmail.com.

Qualia gratefully acknowledges Stance: An International Undergraduate Philosophy Journal for assistance in our review process.

We also wish to extend our gratitude to the philosophy professors and students at Bard College for their encouragement and continued interest in our progress and to all students who submitted to us and made this first issue possible.

Thank you.
Forward From the Editor

Welcome to the first issue of Qualia! Our goal when we began this project was to produce a student-run philosophy journal here at Bard College, one that would review and publish outstanding work by undergraduate students from different colleges and universities. As you can see, we did it. And we’re very happy.

Our goal now is to produce another issue next May, and to that end, we’re looking for students who are passionate about philosophy to contribute to the pages of this journal, whether as writers, reviewers, or editors.

Though we hope for the next issue to be more aesthetically pleasing, with a fancy cover, nicer paper, and so forth, we are nevertheless thrilled by the content of this first issue, and we think you will agree. All of the submissions we received were excellent in one regard or another, and the five essays published herein are better than we could have asked for.

Our name, “Qualia,” is a term in the philosophy of mind that I think can be better demonstrated by a thought experiment than a textbook definition. Imagine a person named Bob who has never tasted chocolate. Those of us who are chocolate enthusiasts want to remedy Bob’s situation, but an allergy test reveals that he is severely allergic to chocolate (and to any chocolate substitutes, anything flavored like chocolate, et cetera). How then are we supposed to show Bob what chocolate tastes like? Telling him “It tastes like chocolate” is utterly useless and redundant, telling him “It tastes sweet” is too unspecific, and telling him “It tastes good” says more about what we think of the taste than the taste itself. We want him to know exactly what happens when somebody experiences the taste of chocolate.

We therefore decide to educate Bob in neuroscience. We explain to him what tastes buds are, lecture him on the physiological processes that occur when the taste receptors are stimulated, and, using the most cutting-edge technology in neuroimaging, show him numerous pictures of what happens in people’s brains as they taste chocolate.

When all is said and done, does Bob know what chocolate tastes like? Very likely not, for although Bob is now superbly learned when it comes to the neural processes involved in tasting chocolate, he still does not know how chocolate tastes and shrugs his shoulders in exasperation when we ask him.

Then, all of a sudden, scientists discover a cure for allergies. Bob celebrates by eating his first piece of chocolate. He now knows what chocolate tastes like, and it turns out that none of that neuroscience was even necessary.
The thought-experiment above is based on a similar one devised by philosopher Frank Jackson. Jackson describes a situation in which a scientist, Mary, has spent all of her life in a black and white room studying (on black and white monitors) the physiological processes that occur when people see color. And yet Mary herself has never seen a color. Can she really claim to know everything that happens, for example, when a person sees the color red? For Jackson, the answer is no. Not until she leaves her black and white room and witnesses red things for herself will Mary know how the color red looks. Jackson’s thought experiment is meant to challenge anybody who thinks that the mind is reducible only to physical processes. Whereas neural processes like the kind we’d see on an fMRI scan might be visible to a “third-person,” they do not possess the “first-person” character that we attribute to conscious experiences. Thomas Nagel helps illuminate this distinction in his essay “What Is It Like to Be a Bat?” Study the brain of a bat all you want, you’ll still never know what it’s like to use echolocation and locate tasty insects with your ears as a bat does.

The taste of chocolate is an example of what philosophers mean when they use the term “qualia.” The color red would be another example. So would the blaring sound of a trumpet or the feeling of velvet against one’s fingers. John Locke, in *An Essay Concerning Human Understanding*, described these things as “secondary qualities” of an object. Unlike properties such as shape and mass, the secondary qualities of an object do not exist unless somebody is there to experience them. The distinction is the exact same one illustrated by the question “If a tree falls in the forest and no one’s around, does it make a sound?” We can be rather sure that it would cause certain particles in the air to oscillate at a particular frequency, but it’s dubious that there would be any sound if nobody were around to hear it. Once again, the slow wooden creaking that we would hear as the tree began its descent, followed by the enormous crashing sound that would occur when it hit the ground, serve as further examples of qualia (“qualia” is plural, by the way; the singular is “quale”).

However, there are several schools of thought within the philosophy of mind whose proponents deny completely that qualia exist, or who at least insist that it’s a useless and utterly confused concept. Many of us might assume that the belief that we experience qualia is totally self-justifying and obvious, and yet Daniel Dennett, in his essay “Quining Qualia,” has attempted to show using a series of clever thought experiments that such intuitions are false. “Eliminativist” theories of mind take these views even further, arguing that along with qualia, mental states such as beliefs and desires—more formally known as “propositional attitudes”—reflect a “folk theory” of psychology that will be debunked with new discoveries in neuroscience. Theories of mind such as these have been accompanied in part by a movement called “experimental philosophy,” which attempts to unite philosophical problems with problems in empirical science and deny any hard distinction between the two.
Regardless of what the future holds, what philosophy is (or is not), what it is good for, and how it ought to be conducted will probably be debated forever. But this much is certain among philosophers: philosophy enjoyable, it's enriching, and it's rewarding, and the process of putting together this first issue of Qualia has been most rewarding for us. We sincerely hope you enjoy it.

Kevin Powell
Editor-in-Chief

Further Reading

Frank Jackson, “Epiphenomenal Qualia” and “What Mary Didn’t Know.”
Thomas Nagel, “What Is It Like to Be a Bat?”
Daniel C. Dennett, “Quining Qualia.”
David J. Chalmers. “Absent Qualia, Fading Qualia, Dancing Qualia.”
Ned Block. “Are Absent Qualia Possible?”
Paul Churchland. “Eliminative Materialism and Propositional Attitudes.”
Prenatal Screening, Selective Abortion, and the Rights of Potential People

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With the completion of the Human Genome Project in 2003 came an immense flood of scientific knowledge concerning the transmission, detection, and treatment of genetic diseases and disabilities. Doctors and scientists can now test potential parents for the illnesses that their hypothetical children may inherit, and are able to detect in a developing fetus the presence or absence of a particular disease-causing gene. These new and ever-advancing capabilities present significant ethical challenges, chief among which are the questions of immoral conception and selective genetic abortion. Is it morally permissible for potential parents to knowingly bring children into the world whose genetic predispositions put them at high risk for a devastating disease? And if a fetus is conceived which, by prenatal screening, is determined to carry the gene for such a disease, do the parents have a moral obligation to terminate the pregnancy, thus sparing the hypothetical child a life of terrible suffering followed by an early death?

Laura Purdy has argued forcefully that under certain circumstances procreation can be immoral, and that if a couple is unwilling to abort a fetus based on the results of a prenatal screening, then they should take measures to avoid conception altogether. We have an obligation, she claims, to ensure that every child can be guaranteed at least a minimally satisfying existence, the possibility of which is precluded by many serious genetic diseases. Conversely, Leon Kass believes that encouraging genetic abortion would have grave social implications. He warns that in a world where people with genetic disabilities ought not to be born, those rare individuals who do exist despite their prenatal test results would be severely stigmatized and misunderstood. Furthermore, the pursuit of the perfectly healthy child, he argues, is the first step down a slippery slope of eugenics which, if followed carelessly, can lead to policies reminiscent of Nazi Germany. By examining the strengths and weaknesses of each of these arguments, it is my aim in this paper to support the thesis put forward by Laura Purdy: that conception is sometimes unethical, and that selective abortion is an acceptable means of preventing unnecessary suffering. In addition, I hope to show that several of the arguments leveled against this thesis misrepresent the issues at hand and do not hold up to serious scrutiny.

Before we can assess the merits and detractions of the relevant arguments, we must first examine them in greater detail. Laura Purdy’s conclusion that it is sometimes immoral to have children rests on three explicit premises. First, “we ought to try to
provide every child with something like a minimally satisfying life” (Purdy 458). Purdy concedes that a “minimally satisfying life” may mean different things to different people, especially when cultural standards are taken into consideration. She does, however, flatly refuse to define the phrase as “not quite so miserable as to wish to be dead.” At this point in the argument, we must recognize an implied premise in order for Purdy’s conclusion to follow; a minimally satisfying life, ill-defined though the concept may be, is out of reach for many people with severe genetic diseases and disabilities. (Thus, to give birth to such a child is to fail in our obligation to provide every child with a minimally satisfying life.) The second main premise concerns the rights of potential children. “Given that possible children do not presently exist as actual individuals, they do not have a right to be brought into existence” (Purdy 459). This will be a point of special significance in the debate between Purdy and Kass, and we will return to it later. For now, it is enough simply to understand that Purdy does not attribute the right to life (or anything else) to potential children. Finally, she asserts that the right of (actual) children to have a minimally satisfying existence outweighs the rights of parents to reproduce. If this premise is accepted, then it is morally indefensible for parents to knowingly conceive children whose lives will not be minimally satisfying.

Leon Kass argues on the opposite side of the issue. It is his position not only that selective genetic abortion will have far-reaching negative consequences that Laura Purdy and other advocates of the method fail to consider, but also that genetic abortion cannot be justified, even on its own terms. He first warns that “[t]he practice of abortion of the genetically defective will no doubt affect our view of and behavior toward those abnormals who escape the net of detection and abortion” (Kass 463). He fears that those children who are born with a disease which is typically cause for an abortion will be looked down upon by the community as inferior human specimens, beings who may not have (and indeed should not have) been allowed to live. The situation is even grimmer for children born to parents who would have terminated the pregnancy had they been able to afford a prenatal test, or had the test results not been in error, or whatever the case may be. Such parents will likely resent their disabled children, seeing them as unwanted and cumbersome burdens, a mistake that should have been caught by the system. In addition, once the practice of selective abortion becomes commonplace for the elimination of genetically transmitted disease, there is little to prevent the method from being expanded to account for children who may be at risk in other ways. As the scientific understanding of genetic predisposition and societal conditioning increases, might social and psychological factors be used to justify the abortion of potential criminals or homeless people? In light of these considerations, Kass suggests, the harm done by the practice of selective abortion cannot be justified by the benefits.

Kass goes on to examine some of the justifications put forward by selective abortion advocates, and finds none of them to be satisfactory. The first is the argument from societal good: it is in the best interest of society at large to ensure that its members are genetically fit and productive. Kass believes that in many or most cases, the term “societal good” is merely a euphemism for money (Kass 465). In addition to the (at best) questionable motives inherent in this justification, we must ask ourselves whether the
empirical claims it puts forward are even verifiable, let alone true. Those who assert that the genetically disabled are a drain on society’s resources often fail to take into account the costs of even a normal human being. We must also consider the price of genetic screening equipment, the training of genetic counselors, and all other professionals involved in the practices of prenatal screening and selective abortion. More importantly, selective abortion has hidden costs that simply cannot be measured in financial terms. These are the problems Kass mentions earlier regarding the maltreatment of the genetically disabled and the social conflict this will cause.

If the argument from societal good is unsatisfactory, one may wish to appeal to the rights of parents to determine for themselves what is good for their children and their families. Is it not within their rights to have a child in keeping with their expectations and desires? Here again, Kass finds problems of subjectivity, vagueness, and slippery slopes. If parents are allowed to abort certain fetuses on the basis of genetic predisposition, it follows that they would be justified in aborting fetuses because they were not of the desired sex or for any other “trivial” reason. Also, what would advocates of this justification say to the couple who, for some strange reason, wanted to give birth to a child with a genetic disease or disability? Is this not also within their rights? It is clear that these situations pave the way for circumstances that are entirely unforeseen and unintended by supporters of selective abortion.

Finally there is the “objective” appeal to natural soundness. Just as a giraffe without a neck could not live the life of a proper giraffe, the sufferers of debilitating genetic illnesses may be said to never function in a fully human capacity (Kass 468). It is merciful and just, says the argument from nature, to save these potential humans from so limited and fruitless an existence. But how does one define the essence of humanity, and where should the line be drawn in determining which potential children don’t make the cut? It may seem obvious that a child with Tay-Sachs disease cannot attain a fully human existence as we understand it, but the situation is not so clear with a blind or deaf person. The pursuit of a perfectly healthy child may lead down a dark slope to presently unimaginable levels of eugenics.

Now that the arguments on both sides of the issue have been spelled out more clearly, we can begin to examine their strengths and weaknesses. Beginning with Laura Purdy, we should examine each of her argument’s premises in turn to determine whether each is sound. The first premise, that we have a moral obligation to provide a minimally satisfying existence to every child, is justified on several ethical systems. I will examine two of these. First, from a utilitarian perspective, it is clear that a world which ensures each person at least a minimally satisfying life would bring about a greater amount of happiness for a greater number than a world in which this was not the case. If one wishes to measure the morality of an act based on the net happiness brought about by its consequences, then it seems obvious that measures taken to ensure satisfying lives to all people are highly moral indeed. The difficulties surrounding the definition of a minimally satisfying existence are not material to this premise, so long as it is granted that such an existence is possible and does exist.

Next, we will look at the premise from a Kantian point of view. The Categorical
Imperative states that one should not act on a particular maxim unless he can simultaneously will that that maxim should be a universal law (Kant 88). Any act which contradicts this imperative is shown to be unethical and ultimately self-contradictory. (A liar can only get away with lying if both he and society at large are operating on the assumption that lying is not the norm; if everyone were to lie all the time, it would become utterly useless.) The maxim of ensuring all children a minimally satisfying existence would most certainly pass the test of the Categorical Imperative. To allow a child to be born, however, knowing that he will be barred by his disease from ever having a satisfying life, would be prohibited by Kantian ethics. At this point it is important to mention that nothing has been said about selective abortion in particular or Kass’s objections to that method. For now, all we have done is shown that Purdy’s first premise is sound.

Next is the implicit premise that a minimally satisfying life is beyond the reach of those who suffer from certain genetic diseases. Purdy herself concedes that this is a highly subjective point, and that there are some individuals who have led meaningful and fulfilling lives in spite of seemingly devastating handicaps. Nevertheless, taking Huntington’s disease as an example, Purdy describes some of the challenges that must be faced by people born with an inescapable genetic illness. People with Huntington’s disease typically first show symptoms between the ages of thirty and fifty. What may begin with subtle personality changes and slight involuntary muscle movements gradually degenerates over the course of approximately fifteen years into severe loss of muscular control, extreme paranoia, loss of memory, difficulty speaking, and difficulty swallowing. The disease is universally fatal, and there is no treatment or cure. It is caused by a single autosomal dominant gene, meaning that children born to a parent with the disease have a 50% chance of inheriting the gene and ultimately contracting the disease (Purdy 457). If the symptoms of the illness itself are not distressing enough, we must also consider the patient’s life prior to its onset. If a prenatal test is not performed, or if the results are not revealed to the child, then he must choose between living his life in extreme anxiety (uncertain as to whether or not he is a carrier of the disease), or getting tested, thus risking the certain discovery that he has a genetic time bomb ticking over his head. While it is clear that a more than minimally satisfying existence can be had by one who is tested for the disease and shown not to be a carrier, such an individual would, under Purdy’s argument, not be selected for genetic abortion; only those who are determined with certainty to be carriers of the disease should be aborted. If, however, a couple is unwilling to test their fetus for Huntington’s disease (perhaps because they themselves do not know whether the at-risk parent is a carrier of the defective gene and do not wish to find out), then they should refrain from conception altogether. This is in keeping with Purdy’s third and fourth premises, which we will turn to momentarily. But if the case made by Huntington’s does not seem strong enough, then it should also be mentioned that other illnesses, such as Tay-Sachs disease, typically cause death in infancy, and are guaranteed to make a minimally satisfying existence, by any meaningful definition, an impossibility. Nevertheless, it is my opinion that this is the weakest of Purdy’s premises as it relies heavily on vagueness and
subjectivity.

The third premise we must examine is the claim that potential children, because of their nonexistence, do not have the right to be born. If this premise holds, it follows that nobody is harmed by preventing the birth of a potential person. Two things may be meant by “potential children,” and we must judge the premise as it pertains to both of these possible meanings. The first is any possible child that could theoretically be formed by the DNA of any set of potential parents. On this definition, it is overwhelmingly apparent that “potential children” do not and cannot have any meaningful rights. There is, for all practical purposes, an infinite number of this sort of “potential person,” and to act on the assumption that each has a right to be born would be to require all human beings of child-bearing age to constantly be reproducing and, even then, we could only ever hope to satisfy the rights of an infinitely small proportion of all potential people. The second way the term may be used refers to conceived and developing fetuses. One may intuitively feel that of all potential people, those that have actually begun to form posses greater potential than the others; thus the question of selective abortion gives way to the greater debate surrounding abortion in general. It is not the aim of Purdy’s paper, or this one, to resolve the abortion debate. Let me simply say that I see no empirical or scientific reason to attribute any greater rights to a fetus, particularly in its early stages, than to a potential person in the sense described above. Both are raw genetic material, and although one may be said to be further along in its process of becoming a human being, it is not a human being in any meaningful empirical sense. The exact point at which a developing person may be called a human and is imbued with its fundamental right to life is no doubt a troubling mystery; it is also a mystery when a mountain of sand, depleted grain by grain, ceases to be a mountain. There is no doubt, however, that by the time all the grains are removed (or only a handful remain), its mountainhood is long gone. To suggest that a human being becomes a moral agent at the moment of conception is like suggesting that two grains of sand constitute a mountain. Thus it seems clear that Purdy is justified in denying potential children any right to be born.

Finally we come to Purdy’s fourth premise, the claim that parents’ rights to have children are overruled by the rights of those children to not have to endure a less than minimally satisfying life. Purdy lists several reasons why potential parents may desire to have children and finds that, among those which could not be equally well satisfied by the adoption of non-genetically-related children (wishing to perpetuate a genetic line, wishing to have children that resemble oneself, wishing to cement a marriage or prove one’s adulthood), none provides any satisfactory basis for the conception of genetic offspring (Purdy 460). The idea that potential parents should be permitted to reproduce, even at the expense of the very children they would create, seems blatantly unjust and even cruel. Kass himself, while arguing on the opposite side of the main issue, seems to reach a similar sort of conclusion. “Indeed, the whole idea of parental rights with respect to children strikes me as problematic. It suggests that children are like property, that they exist for the parents. . . . Our children are not our children” (Kass 467).

Although Kass makes this point while arguing against Purdy’s main thesis (specifically,
as he warns against the potential hazards of the parental-rights justification for selective abortion), he nonetheless reinforces and appears to agree with Purdy’s fourth and final premise. Children do not belong to their parents, and they do not exist solely for the pleasure of their parents. To lose sight of this, regardless of one’s position on the issue of selective abortion, would be devastating.

Next we must turn to Kass’s case against selective abortion. His first and, as I see it, strongest argument is his point concerning the stigma that will inevitably be faced by those rare exceptions who are born with a genetic disease. Under normal circumstances, such children would have been aborted. Certainly some would die in infancy, or be too severely retarded to understand their situation, but others, such as those with hemophilia or Turner’s syndrome to use Kass’s examples, would surely struggle with feelings of inadequacy in a society that viewed their births as a mistake. It is troubling to imagine how the inhabitants of such a society might react to a “defective” individual who had slipped through the net of selective genetic abortion. Kass fears that they would see such a person as less than human, and that the affected individual himself would ultimate internalize these views, causing feelings of extreme anxiety and inferiority. Worse still is the possibility of conflict between those born with genetic diseases and their own parents. In the first place, parents who would have opted for an abortion but lacked the financial resources either for the prenatal testing procedures or for the abortion itself might harbor resentment towards the children that they never wished to have. Indeed, the children themselves may view their births as wrongful, and already there have been instances in the United States and elsewhere in which children have taken legal action against their parents, “seeking to recover damages for physical and social handicaps inextricably tied to their birth” (Kass 464). Such a future seems grim and seems also to be a logical conclusion of the methods Purdy supports.

Yet this criticism is not without significant drawbacks. Most importantly, this objection represents a practical limitation of selective abortion, not an ethical one. In a hypothetical perfect system, there would be no rare exceptions; afflicted fetuses would be aborted or, in the case of parents who opposed abortion, never conceived in the first place. We must here remember that potential children have no fundamental right to life, and this perfect system would thus cause no harm to any actual moral agent. Still, practical limitations are limitations nonetheless, and it is difficult to imagine that a perfect system could ever be achieved. That said, it should be noted that even today several diseases and disabilities are unfortunately stigmatized, and those who suffer from them largely misunderstood. Of course, this is not always true, nor is it reasonable to assume that it would always be true in a society where these diseases occurred with less frequency. The increased rarity of a particular illness would no doubt contribute, in some cases, to the misunderstanding surrounding it, but there is also reason to believe that it could bring about heightened compassion and sympathy towards those who must endure its trials. The proliferation of selective abortion does not entail the spread of ignorance or prejudice against those who suffer from serious disabilities, not, at least, to any greater extent than such problems exist today.

Kass’s critiques of the possible criteria for the practice of selective abortion are
motivated by various slippery slope arguments. He suggests that selective abortion might be expanded to account for non-genetic predispositions, or that the elimination of affected individuals might not remain limited to potential people, but increase to include children, adolescents, and beyond (Kass 465). This second suggestion is not only monstrous, but also represents a grave misunderstanding of the intentions behind Purdy’s thesis. The aim of selective abortion is not, nor could it ever be, the elimination of living people, regardless of their genetic circumstances. Rather, selective abortion and contraception on genetic grounds strive to prevent the births of children who will suffer terribly and needlessly; this is done out of a desire to prevent unnecessary suffering. There is no logical path from this desire to the act of killing living people without their consent.

The suggestion that the grounds for selective abortion may be expanded indefinitely relies, like all slippery slope arguments, predominantly on intuition. It is admittedly difficult to define a minimally satisfying life, but once such a definition has been reached, there is no reason to believe, as Kass does, that “‘Defectives should not be born’ is a principle without limits” (Kass 465). The fear that selective genetic abortion will pave the way for the obsessive pursuit of the perfectly healthy child is wholly unjustified, especially when one takes into consideration the fact that the average person carries recessive genes for five genetic diseases or disabilities (Munson 449). Even by conservative definitions of the word “perfect,” any couple bent on conceiving a perfect child would quickly realize the futility of their task. Even such disabilities as blindness and deafness may be caused by an immensely complicated interplay of genetic predispositions and environmental factors. By contrast, the sort of selective abortion proposed by Purdy would only apply to the elimination of easily detected, severely damaging illnesses caused, in most cases, by a single defective gene.

At the heart of Kass’s various arguments, I believe, is the erroneous conflation of real and potential people. “[I]n the case of what other diseases,” he asks, “does preventative medicine consist in the elimination of the patient-at-risk?” (Kass 464). This language is misleading and, along with the suggestion that living human beings might be sacrificed in the pursuit of genetic perfection, seriously misconstrues the issues at hand. Preventing the birth of a child who will inevitably suffer from a devastating disease is not to eliminate a patient-at-risk any more than not to construct a building is to knock a building down. One may intuitively feel that it is unspeakably coldhearted to suggest that a human being should not have been born, but this too is misleading. No doubt we would mourn the loss of any living person, no matter what his genetic condition, but this is not what is entailed by selective abortion. A friend or loved one suddenly disappearing from the world would plainly be a tragedy, but a potential friend or loved one never being brought into the world happens an infinite number of times every day. If we do not mourn the absence of our potential brothers, sisters, friends, and relations, then there is no reason to mourn those children whose non-existence spares them a life of extreme adversity. For this reason, it becomes clear that the weakness in Purdy’s second premise, that a minimally satisfying life is beyond the reach of a person born with a severe genetic disability, is ultimately irrelevant; such lives, if underway,
will not be terminated. The lives of potential people, however, are not worth mourning in the first place.

With these considerations in mind, I submit that the implications of prenatal screening and selective abortion are no greater cause for concern than a newfound cure for Huntington’s disease, Tay-Sachs, or hemophilia. Even Kass, I suspect, would not object to a world in which children with these dreadful illnesses were never born. This world is a possibility and would come at the expense only of potential human beings, the kind which are denied their chance at existence by the billions every day. If, however, Kass’s reservations lie in the act of abortion itself, then I have already said enough on the issue; as I have argued above, no harm can be done to a potential person, and fetuses, especially in their earlier stages, are in no meaningful way greater than potential people. Those who oppose abortion in general will obviously oppose selective abortion, but not because of its selective nature. I cannot address the abortion debate here, and the question of selective abortion stands as an independent issue in its own right. In light of the foregoing arguments, it is clear that prenatal screening and selective abortion provide promising opportunities for the preventative care of several genetic disorders.

Works Cited


Disaster Triage: Protocol and Conscience

CHLOE DELLA COSTA is a Junior Film major at Bard College. Her interests include writing, film, animation, poetry, philosophy, and anthropology, as well as horses, science fiction, and the prison system. She is currently involved in the Bard Prison Initiative, works at Salvatore’s Italian Restaurant in Red Hook, NY, and has a job at the Idyllwild Arts Summer Program in the department of Native American Arts. She has also been involved in the New Orleans Project and Student Labor Dialogue while at Bard. In her free time she enjoys relaxing. Chloe hopes to pursue writing and tons of other stuff after graduation.

Introduction

The first floor of Memorial Medical Center in New Orleans, Louisiana flooded during Hurricane Katrina. It did not take long for all of the electricity and back-up generators to stop working and for the building to overheat to over 100 degrees. Many health care workers left when Katrina hit, but others stayed behind to help, and they were faced with dire circumstances, limited resources, and decisions to make with many lives in the balance. The hospital was evacuated by helicopter gradually and in small groups, so choices had to be made about who would leave first. There is no one embraced system of triage. The two most recognized systems are actually opposites (the sickest are treated first or those with the best chances are treated first). Generally the latter is only used in cases of extreme disasters and can be called “reverse triage.” In some situations, triage is not even logical—a lottery system is necessary because all patients have equal needs and prospects. It is difficult to reconcile issues of triage because of the importance we place on doing it fairly and the apparent arbitrariness of it in certain situations, particularly disasters. In a way, it is both necessary and impossible to have triage protocol for disasters. Each situation is different, which necessitates having different systems at play at once. Yet this also creates unpreparedness and confusion, and decisions can appear arbitrary because there is no standard protocol. There is a certain paralysis in trying to sort out the ethical issues of dire situations, as some claim these situations make it impossible to act unethically or to be condemned because of practical limitations. But emergency situations also have the most at stake and inspire the most appraisal and reproach. The goal is a difficult one: to be fair and just, but also save as many as possible. Ultimately, with such high stakes a person will do what his conscience dictates. This gives people in these situations a dangerous amount of power and responsibility, but a standardized system of protocols would not be able to predict the exact details of any disaster, so following them could be dangerous as well. While laws and protocols for disasters are helpful for medical personnel to consider, in order to attempt to fulfill their goal as fully as possible, they will ultimately need to stray from these protocols and make their own decisions as the situation dictates.
Triage

Triage is the French term for sorting, picking, or choosing. When applied to health care, triage is “a process of developing and using criteria for prioritization” (Beauchamp 279). “At least nine well-recognized triage systems exist” (Fink 6). But what are the best criteria? Studies show that even when using the same triage system, medical personnel rank patients totally differently. In this way, there are guidelines, but also the matter of a personal decision. But what guidelines does one start with? The two main modes of thought behind a just triage system are “Utilitarian, which emphasizes maximal benefit to patients and society” and “Egalitarian, which emphasizes the equal worth of persons and fair opportunity” (Beauchamp 275). Beauchamp and Childress argue that a combination of these two principles makes for the most just system of triaging patients and rationing limited resources. A patient’s medical needs versus their medical prospects of success can create conflict.

Trying to save a patient whose need is medically urgent sometimes inappropriately consumes resources that could be used to save more people. A rule of giving priority to the sickest patients or those with the most urgent medical needs will produce unfairness, because it will lead in some cases to inefficient use of resources. Rationing schemes that altogether exclude considerations of medical utility are indefensible, but judgments of medical utility are not sufficient by themselves. (Beauchamp 277)

This refers to the allocation of limited resources (Beauchamp and Childress use the case of organ transplant), but there is even greater conflict when the decision is simply who gets to see a doctor first. In a severe emergency, not only is medicine limited, but also time, staff, and other resources. Who receives treatment first? The sickest or those with best chance of surviving? Beauchamp and Childress argue that neither principle should be totally ignored, but the balance they are seeking will inevitably be difficult to maintain in dire emergency situations.

According to bioethicist John Moskop, “[t]here’s a whole spectrum of situations that involve what we call triage, and it goes from the sort of routine triage that would happen in any busy emergency department . . . At the other end of the spectrum,’ he explains, ‘would be a massive disaster such as a nuclear attack, in which many people say triage would be useless” (Triage). The use of triage in situations in between, such as natural disasters, is not useless, but it is more complex than in an emergency room. In disaster circumstances, often a triage system is employed that allows those with the best chances to be treated first, with the utilitarian rationale that this will do the most good. Some disagree with this system: “some people say you should try to give everyone an equal chance to survive, and then, even if most of them die, you can say, ‘At least they had the chance’” (Triage).
Beauchamp and Childress propose a system of disaster triage that seems to take into account an egalitarian as well as a utilitarian view. Those who have major injuries and will die without immediate help, but who can be salvaged, are ranked first; those whose treatment can be delayed without immediate danger are ranked second; those with minor injuries are ranked third; and those for whom no treatment will be efficacious are ranked fourth. (Beauchamp 279)

This system is ideal, but realistically, it would be difficult to follow accurately in the situations where it is necessary. One could claim to be following this system, but it could still lead to ignoring the sickest patients, just as in the strict utilitarian system. Often there is simply not enough time or information to determine rankings as ideal as those above. Those ranked fourth in a disaster could easily end up being those that need immediate care. Do patients even exist for whom “no treatment will be efficacious”? In reality, health care workers may decide to place patients in this category if treatment would be hindering the treatment of several others. Beauchamp and Childress set up a triage system that is ethical but not practical.

Disaster at Memorial

There are countless complications and issues with triage when in a disaster situation. One major problem is that often, a patient’s triage status will change, but the staff will not have time to reassess and reorder. There are many practical concerns such as limited staff, so many argue that this makes it no longer an issue of ethics. But when you take the case of the overweight patients in Memorial Medical Center who were not evacuated because the staff felt they could not get them down the stairs, it becomes complicated. Some patients in this situation were (allegedly) euthanized.

At Memorial, at least seventeen patients are said to have been euthanized by Dr. Anna Pou and other hospital staff (Fink 2). Memorial is a private hospital with a staff untrained in triage systems: “Pou and her colleagues had little if any training in triage systems and were not guided by any particular triage protocol” (Fink 7). Memorial’s written emergency plan did not account for the dire circumstances they faced during the Hurricane (Fink 3). This led to chaos and confusion over rationing resources and triaging patients for evacuation by helicopter. The staff was not triaging to treat, but triaging to evacuate. The triage system in the course of days following Katrina was as follows: “The standard of rescue [had] changed from Tuesday to Thursday; initially the sickest patients were evacuated first. When we realized that help was not imminent, the standard of rescue changed to that of reverse triage” says Pou (Okie). It is unclear when this complete reversal occurred and what it was that directly caused the staff to switch to reverse triage. When one hundred patients remained, those who were in fairly good health and could sit up or walk would be categorized “1’s” and prioritized first for evacuation. Those who were sicker and would need more assistance were “2’s.” A final group of patients were assigned “3’s” and were slated to be evacuated last. That
group included those whom doctors judged to be very ill and also, as doctors agreed the day before, those with DNR orders. (Fink 6)

This is not the system Beauchamp and Childress propose, but a direct system of “best chance of survival” first. This information is startling and seems extreme, as it seems some patients in Category 1 could have waited longer to be evacuated, but at the same time, it is somewhat paralyzing to absorb this information. People feel like they are being unfair if they criticize the doctors and nurses who were actually there—who had to make such harrowing decisions with no guidance. At the same time, any system they could have used would have caused a certain amount of this numb acceptance, but also inevitable controversy. And with any system being used, as a chaotic situation ensues (and changes), the staff has to also adapt the system, even disregard it at times, which leads to controversial decisions.

The staff agreed that they would automatically put Do Not Resuscitate (DNR) patients in the lowest category because these patients would arguably not want to be saved before others. Pou is currently pushing for DNR status to be legally recognized as a marker for low priority triage position in a disaster, a proposal that has been met with a great deal of criticism. One patient’s daughter was expecting her seventy year old mother to be evacuated soon, when she was informed she was lowest priority because of her DNR status. “I’ve got to rescind that order” she begged the staff, but no doctors were available to carry this out (Fink 7). What factors are applicable to patient’s triage status in a crisis situation? Arguably, a patient’s or even a family member’s wishes could sway a doctor or nurse. Some patients at Memorial were Category 3 but expressed an extreme desire to fight, were animated, and had a positive outlook, while others in the same category were unconscious and terminal. Some argue that age should play a role in triage, or quality of life, or even a patient’s character. Is it fair to be subjective and consider all of these? Is it possible or too time consuming? Perhaps it is more just to treat everyone as if they hold equal weight in all respects except medical need and prospect of survival. What is interesting is that somehow if protocol is followed, people’s actions are more accepted, without the protocol itself being assessed, but if people act based on their own choices (as they must to some degree), they are much more likely to be criticized.

In a disaster, beneficence (the concept of a doctor promoting good and preventing harm [Beauchamp 149]) starts to win out over autonomy (self-rule of a patient that is free from control by others [99]) much more than in the usual medical setting, or even in an Emergency Room. “In a disaster with mass casualties, the balance shifts from individual autonomy to the greater good” (Triage)—the “greater good” meaning it becomes about the needs of the whole rather than the needs of the individual. But this beneficence is necessary to some extent—doctors must control the chaos, and they must work fast. Doctors become somewhat Godlike, which is accepted as necessary to some extent, but also causes a certain amount of outrage and criticism when they are forced to make difficult decisions. “I mean how much more can you play God than when you say, ’I’m not going to feed this patient so I can feed this one?’” (Triage). Medical personnel are forced into the role of deciding who to try to save so
they may save the most they possibly can.

The issue of euthanasia is complex on its own, but it is different in this context because the patients are not necessarily requesting it or even informed that it is going to happen. One nurse said “I did what I would have wanted done to me if the roles were reversed” (Fink 15). Again it is apparent that autonomy has no place—it is the nurses and doctors who decide what is best. One could call this a case of strong paternalism (when a doctor disregards a patient’s wishes for ethical reasons, namely to benefit the patient or prevent harm [Beauchamp 210]) that could possibly be justified. In this example, the nurse is using her conscience to attempt to protect the patient’s best interests, since autonomy is nearly impossible in disaster circumstances. But many things happened at Memorial that are very disturbing to hear. Regarding one patient, Dr. Pou said, “I had to give her 3 doses. She’s fighting” (Okie). Dr. Ewing Cook, the first to euthanize a patient during the crisis, said simply, “I gave her medicine so I could get rid of her faster, get the nurses off the floor” (Fink 9). He knew he was hastening the patient’s death, but it was so that resources and staff could be utilized to help the patients that had a better chance of survival. So in a sense, this case of euthanasia falls somewhat in line with the ethics of the triage system being used. In fact, one could say it is more ethical to euthanize the patient than to just stop treatment and let the patient die slowly and painfully.

One of the overweight patients told a nurse several times, “Don’t let them leave me behind” (Fink 12), and this patient was ultimately euthanized. After several days, the situation was deemed dangerous, and the hospital was informed that the health care staff would need to evacuate—the rest of the Category 3 patients would be left behind (Fink 14), which influenced the decisions in the final cases of euthanasia. Later Dr. Pou claimed she knew their deaths might be hastened but “she did not intend to kill them” (Okie). She appealed to the rule of Double Effect—she foresaw the deaths but only intended to alleviate pain. Still, Dr. Pou faces civil suits and criticism for her decisions. If we draw a distinction between blame and responsibility, in a sense, Pou is responsible for those deaths, but is she to blame? Or is the hurricane at fault? Or the limited number of helicopters that FEMA provided? This is a difficult issue—we could say that Pou was forced to take action, but really she made a decision. But even in acting of her own conscience and free will, we could say she was acting completely ethically, and that in fact, not to hasten the patients’ deaths would have been unethical under the circumstances. Would the use of a different triage system in this hospital have changed the outcome for these patients? Or would Pou have done the same thing, no matter what the protocol?

Change

Disasters inspire change. Even though the public has a certain amount of sympathy, empathy, and even understanding for the doctors in these situations, perhaps more than in any other cases, the fact that crises like this one are so public and so talked about
makes controversy inevitable. People want justice—and blaming God is useless, so who can we blame? Since Katrina, many are trying to find ways to protect health care workers who have worked in disasters. Pou helped write and pass three laws to offer immunity to health care workers in disasters, except in cases of willful misconduct (Fink 1). John Matessino, president of the Louisiana Hospital Association, claims there are many saying they would not want to stay and be criticized (McConnaughey). A disaster becomes much more serious when there is a lack of medical personnel.

Since Katrina, there also has been a call for reassessment of how disaster triage should be handled. Some even claim a national system of triage needs to be implemented, but this is very controversial. In general, there is a massive call for “expanded training and public debate” (Okie). The debate is whether preparation for these situations would ultimately be inadequate, or even harmful. Jeff Orledge says that “even though he has trained in and taught lifesaving and mass casualty triage, and was part of the 9/11 medical response to New York, the situation [Katrina] demanded he adapt to what he found” (Triage). Currently Governors declare a state of emergency during disasters “suspending some of the normal standards without giving any idea of what the alternative standards ought to be” (Okie), so many are left feeling completely lost as to what is ethically sound. Some say, “You need to have community support ahead of time, because you have the luxury of time to get everyone around a table” (Triage), but still some say an element of personal discretion has to be involved—“don’t remove all discretion and responsibility from the person making triage decisions… Physicians had to make due with what they had, and there’s no way you can plan in that kind of detail” (Triage). When protocol became insufficient, the only thing left to rely on was personal conscience.

In Hodge and Anderson’s “Principles and Practice of Legal Triage During Public Health Emergencies,” they explain that

\[\text{[n]o matter how thoroughly conceived or how well-drafted, no set of emergency laws can anticipate with specificity the varying needs that will arise in a health-related crisis. Laws that facilitate responses to one part of an emergency may impede effective responses to another.} \ (251)\]

While some parts of emergency laws are helpful, others create contradictions or are counterproductive. At the same time, it is the existence of these laws that allows medical personnel to decide things for themselves. This can be likened to flipping a coin — when faced with one option, you may not follow it, but it forces you to decide what choice to make. Hodge and Anderson also stress the difficulties with so many different departments working together: the health care workers, FEMA, and other government agencies. Perhaps this is where change is needed, so that different organizations know how to work together in order to prevent the chaos and miscommunication that took place in New Orleans.

Even with a triage protocol, for a health care provider, handling a disaster would inevitably become a matter of personal conscience. There simply is no other way. They are forced into a Godlike role and made to ask themselves What can I live with? The protocol would certainly be insufficient and even possibly dangerous. Consider the case
of DNR status. Pou is pushing for DNR to be stretched to such an extent that it would control patients’ triage positions. “Bill Armington, a neuroradiologist, told me he thought that patients who did not wish their lives to be prolonged by extraordinary measures wouldn’t want to be saved at the expense of others—though there was nothing in the orders that stated this” (Fink 4). This would make all DNR decisions completely uninformed. One of Pou’s fellow panelists on this issue said “there are dangers whenever rules are set that would deny or remove certain groups of patients from lifesaving resources” (Fink 21). Making this decision legally obligatory is extremely dangerous. But at the same time, having no protocol is precisely what allowed Pou to implement this rule all on her own. These kinds of dangers are inescapable in these situations. But perhaps more training or preparation for disasters would be helpful, as long as personnel know they are free to stray from it. This would allow a doctor to be faced with one side of the coin and reassess it, knowing that it is ultimately his call and his responsibility. It is unclear what would be just the right amount of training and regulation for disaster-preparedness without impeding on what is necessary: a doctor’s capacity to say, “I am going to do this, because it is right.” An extremely delicate balance is necessary—one must be prepared, but also be prepared to improvise, to question, and to re-think a situation plagued with ethical dilemmas.

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Refocusing the Refugee Regime: From Vagrancy to Value

HANNAH LEVINSON is graduating from the University of North Carolina at Charlotte this spring with a B.A. in Philosophy, Magna Cum Laude. She specializes in social and political philosophy with concentrations on forced migration, human rights and international law. She also studies theater, English and journalism. Hannah intends to pursue a joint JD/PhD in law and international relations or political philosophy. She is currently seeking employment for the interim period between her baccalaureate and post-baccalaureate studies, and hopes to find a paralegal position with a law firm that defends refugees, asylees and immigrants’ rights. When not reading or writing philosophy papers, Hannah volunteers for the Hebrew Immigrant Aid Society, a refugee resettlement agency with a field office in Charlotte, NC. She is also a community organizer and advocate for the Nepali-speaking Bhutanese community in Charlotte.

This is an exploration of two moral-political accounts in my search to establish and frame better treatment of refugees. If we regard refugees as human beings whose lives lack sustainable levels of political, economic, and social stability, both of the frameworks I look at stress the importance of providing such persons with succor and alleviation. Martha Nussbaum’s capabilities approach posits the human body as a bearer of elemental rights that ought to be recognized and realized. Judith Butler presents an argument that focuses on life’s precariousness and grievability. Situating the refugee in a normative context will, I think, strengthen the foundation needed for a focus on determining what sorts of actions should be taken to rectify the situations of increasingly protracted refugee populations which, arguably, consist of the world’s most vulnerable political beings.

The definition of who can be called a refugee is disputed, but the most widely-accepted definitional parameters are provided by the U.N. High Commissioner for Refugees (UNHCR). UNHCR frames the refugee as an individual who, “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular group or political opinion,” has been involuntarily displaced from her country of origin or the place that she might consider “home.” The limiting scope of this definition, however, affects when, why, and how intervention is considered; it can exclude individuals who, as involuntarily displaced persons, ought to be considered refugees. Because of this, I think we need a broader definition of the refugee, and for this project I am introducing one that includes internally displaced persons, stateless persons, and persons displaced by natural disasters. My definition also includes persons oftentimes referred to as “economic migrants,” whose mobilization-inducing poverty can be considered a form of coercive displacement, effectively created by failures of their nation-state’s and immediate community’s social and political institutions.
While examining accounts from Martha Nussbaum and Judith Butler, I argue that the perilous conditions experienced by refugees impart a common responsibility to recast conceptions of protection and the political in relation to refugees. I aim to determine whether we should work to alter the circumstances of refugees, and what sorts of strategies adequately take into account the multi-faceted and dynamic circumstances that carve out the space of the refugee as a forcibly displaced figure.

Nussbaum considers humans innately political beings who “exert a moral claim that (they) should be developed,” and advocates a “capabilities-oriented” approach that begins with a consideration of “the human being as a dignified free being who shapes his or her own life, rather than being passively shaped or pushed around by the world.” Nussbaum’s framework defends a universal obligation to protect human beings by providing social infrastructures that allow the flourishing of their capabilities. The capability to shape one’s own life is, according to Nussbaum, what makes human nature distinctive; our “humanness” depends upon our ability to access the means to realize specifically human capabilities. For Nussbaum, the recognition of both inherent and realizable capabilities in another person is the point when an obligation arises to help her realize her capabilities.

Butler defends an account of social ontology and of the vulnerable body as a foundation for ethicality and normativity. For Butler, ontology is contingent for all life and based in the generalized conditions of “precariousness” and “grievability.” Butler describes precariousness as an inescapable and basically universal condition, regardless of one’s perceived disengagement from (or, conversely, seeming susceptibility to) the more precarious facets of existence. She refers to bodies whose precariousness is maximized on the political front as being in states of “precarity,” where precariousness has been differentially allocated for the bodies in question.1 According to Butler, the motivation to aid involves both apprehension and recognition of the differentially allocated precariousness of others.

Without a meticulous framework that denotes human life with a certain worth—in the case of Nussbaum, because of the human’s teleology, found in her inherent and potential capabilities; in the case of Butler, because of the inherent value we should extrapolate from the extensive interdependency and precariousness of all life, and the grievability accorded a life “worth living”—it becomes much more difficult to proceed with a coherent justification for action. Thus, a moral-political account of the scope of both Nussbaum and Butler’s proposals, is, I think, necessary to explicate the obligation—humanitarian or otherwise—to alleviate the perilous situations of the world’s refugees. However, as I will demonstrate, the mechanism that a moral-political account works through is just as crucial, and an account that places too much stock in state-centrism and existing sociopolitical institutions within the society of nation-states cannot sufficiently address the singularly difficult and complex situations of refugees. The circumstances of the refugee involve exclusion, or oftentimes persecution by the

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1 From this point onward, when referring to the precariousness of refugees and refugee populations, the term “precarity” will be used; this specificity aims to increase the reader’s understanding of the differential allocation of precariousness. This term also denotes the precariousness of refugee bodies with more pointed accuracy.
community or state she would traditionally look to for her protection and opportunity to flourish. Sometimes she is unable to access adequate resources, and thus impelled to seek new haven. In order to adequately address these difficulties, there must be a cognizance of these particular singularities in the account. To answer questions about how and why refugees are treated the way they are, the lack in egalitarianism of refugees’ treatment must be highlighted and explained. I find that this is a lack in Nussbaum’s account that Butler’s picks up and addresses better.

I. Common Central Capabilities

Nussbaum calls her account of the human functions the “thick, vague theory of the good” to convey her theory’s ahistorical universality and cross-cultural flexibility. It emerges from

a wide variety of self-understandings of people in many times and places, from the stories people tell themselves when they ask what it is to live as a being with certain abilities that set it apart from the rest of the living beings in the world of nature, and with, on the other hand, certain limits that derive from membership in the world of nature.\(^2\)

Nussbaum describes the lists of capabilities she details as “open-ended” and heterogeneous, containing both “limits against which we press and capabilities through which we aspire.”\(^3\)

Capabilities operate on two levels, or “thresholds,” the second of which must be reached by public policy, personal motivation and social interaction. The first threshold involves elements which together compose the “shape of the human life”: mortality, the human body, cognitive capability, early infant development, practical reasoning, affiliation with other human beings, relatedness to other species and to nature, humor, play, and separateness. According to Nussbaum, a life without any of these items would be “too lacking, too impoverished to be human at all,”\(^4\) so these are necessary conditions for a life to be considered human. The central political goal of Nussbaum’s framework is that the gap between the presence of these “lower-level” capabilities and the potential each human exhibits to fulfill “higher-level” capabilities be filled. “It is that gap between humanness and its full realization,” Nussbaum states, “that exerts a claim on society and government.”\(^5\)

For Nussbaum, then, points of intervention fall between the cognizance of this first threshold and the realization of a second threshold “beneath which those characteristic functions are available in such a reduced way that, though we may judge the form of life a human one, we will not think it a good human life.”\(^6\) Nussbaum claims that the second threshold, in particular, exhibits the “open-endedness” she describes

\(^3\) Ibid, S55.
\(^4\) Ibid, S55.
\(^5\) Ibid, S62.
\(^6\) Ibid, S57.
because “in many cases the move from human life to good human life is supplied by the citizen’s own powers of choice and self-definition,”7 and insofar as public policy provides the opportunity for the threshold of the “good human life” to be met, the actual implementation of second-threshold capabilities ultimately remains in the hands of the person in question. “Open-endedness” also refers to the malleability of the listed items across cultures. Nussbaum puts in these qualifiers to ensure that the capabilities approach cannot be criticized for being paternalistic.

The items Nussbaum lists as elements of the second threshold represent the availability of means to activate the capability in question: “the capability to function, not actual functioning, should be the goal of legislation and planning.”8 Second-threshold capabilities include the abilities to move from place to place at will; live out a “complete” human life, without fear of dying prematurely; have good health; avoid unnecessary pain and access pleasure; use all five senses, as well as intellect, imagination and reason; have attachment to others, love, and grief; have a conception of the good and engage in critical planning about one’s life; engage in different forms of social interaction; live with concern for and relation to non-human animals and plants; laugh and play, and live one’s own life in a chosen set of surroundings and context.9 Of these, Nussbaum calls practical reason and affiliation “architectonic”: these particular capabilities, Nussbaum argues, “(hold) the whole enterprise together and make it human.”10

Though the provisions of Nussbaum’s approach are wide-ranging and meticulously detailed (indeed, well-defended against other normative theories of social ethics and public policy11), I want to argue that there is still a limitation to capability theory that hinges itself nearly directly on the status of refugees, particularly those fleeing in-state violence. Nussbaum clearly states that the capabilities approach requires that the state be, in large part, responsible for the implementation and continuation of social programs that work to help humans realize their capabilities. In the case of the refugee who is forced to flee in-state violence, however, the facilitation of these sorts of programs will not be addressed by the refugee’s “home state.” Indeed, the refugee who finds herself without a “home” is often driven from it by the very state that Nussbaum’s approach claims ought to be one of her closest sources of protection. Now, Nussbaum has built provisions into her approach she thinks ecumenical enough to counter this limitation. Again, this is why, after creating the lists of capabilities, Nussbaum

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7 Ibid, S58.
8 Ibid, S58.
10 Ibid, S59.
11 To demonstrate the superiority of the capabilities approach, Nussbaum contrasts it with other liberally framed theories that work in human development. In comparison to resource-based, preference-based, and human rights-oriented approaches, Nussbaum finally finds a capabilities-oriented approach superior in that it encompasses not only the breadth of the aforementioned approaches but also “makes each person a bearer of value, and an end.” Nussbaum considers the capabilities approach more holistic in that it addresses discrepancies wherein these approaches are lacking, primarily in “the issue of care and our need both to receive care and to give it.” In so doing, Nussbaum requires the creation and continued existence of social programmes that enable the “combined capabilities” of all members of society, that is, the permanence of options that work to realize each central capability of a decidedly worthwhile human existence.
constantly reminds us that the lists are “open-ended”; she makes sure to acknowledge
the history of prejudicial applications of social justice theories like hers, making
reference to the “inglorious saga of capability testing”\textsuperscript{12} in one article.

Let us see if there is enough leeway to potentially solve the lacuna between the
capability approach’s close connection to the state and finding a means of facilitating
proper treatment of refugees. Seemingly, with the adaptability Nussbaum’s approach
seems to provide, some sort of solution for refugees can be proposed. Can other nation-
states utilize Nussbaum’s lists of capabilities to implicate the state, sovereign body, or
social group that disallows even first-threshold capability realization for refugees? Can
the international juridical realm do the same in circumstances where individual nation-
states fail? Yet Nussbaum’s ideas are already, in varying degrees, implemented at the
state level and within international law,\textsuperscript{13} so it seems that something is still missing. As
an object of political coercion and violence that often stem directly from the nation-state
and its operating bodies, the refugee still lingers in an amorphous no-man’s land the
capabilities approach is unable to reach. What are the underpinnings of this shortcoming?

On Nussbaum’s account, the “moral concept of the human” drives us toward
“recognition,” or moral acknowledgment and thus accession to capability-oriented
rights claims. How, then, are refugees relegated to their statelessness by another
conscious moral being, or set of conscious moral beings? How are they left languishing
under the effete jurisdiction of international law, unprotected by the state, banished
from their birthplace, former residence, and former community? If Nussbaum stands by
her argument, these questions which pertain specifically to the situations and traumas of
the refugee cannot be answered adequately by the capabilities approach as I read it. The
normative ideal Nussbaum purports has not, and perhaps cannot, account for the
treatment of the stateless, rightless bodies of refugees. We turn now to Butler for an
account that focuses on the disparaging treatment of ostracized or marginalized political
figures like refugees.

II. A Social Ontology of Precariousness: The Vulnerable Body as Incentive to Act

Butler states that, as a generalized condition of life, precariousness begins at birth. In
order to realize the extinguishment of life as a loss, the social nature of ontology involves
what she calls “apprehending” another life as grievable, and on equivalently precarious
grounds as one’s own. To apprehend the generalized conditions of precariousness and
grievability is to notice and identify vulnerability in another, and the requirements that
must be fulfilled for that other being’s life to be sustained. However, on the grounds that
“there is no life and no death without a relation to some frame,”\textsuperscript{14} Butler seeks to

\textsuperscript{12} Martha Nussbaum, “Social Justice and Universalism: In Defense of an Aristotelian Account of Human
Functioning,” \textit{Modern Philology} 9 (May 1993), S62.

\textsuperscript{13} Nussbaum served on the board of the United Nations Development Programme, and along with Amartya
Sen, whose development economics is also based in capability theory, helped develop the UNDP’s aims,
theories and goals.

illustrate how, if a life is not apprehended as grievable, it cannot be “recognized” in the sense that theorists like Nussbaum argue it can. Michael Kelly states that “(if) recognition is one of the basic concepts in liberalism, Butler is critiquing liberalism with the concept of apprehension in order to capture the persons that liberalism excludes from recognition systemically, not just accidentally.”

On Butler’s account, before the sort of recognition Nussbaum aims for can even be considered, normalized epistemological “frames” are working to “generate specific ontologies of the subject” and obscure certain lives from recognition. Here, what Butler calls frames are sociocultural norms, “historically articulated and enforced,” that determine what lives will or will not be considered grievable and thus livable. On Butler’s account, if a life is not apprehended as grievable, it is then not “recognizable” as human, or worthy of being protected. So those who consider the lives of refugees ungrievable do not allot them even the first threshold of capabilities Nussbaum describes. Certainly, some lives will, in a strong social sense, have “recognizability,” but many others will not. Immigration policies, and the oftentimes brutal treatment of immigrants, give us an example of this: a non-citizen is often given a pejorative designation, condemned for ulterior motivations, and hardly ever referred to with the same concern a citizen is (“How is her health? Are her children doing well in school? How has she been doing financially during this difficult recovery period?”). Here, frames, or the lenses through which grievable subjects are constituted, are what “produce an historically contingent ontology, such that our very capacity to discern and name the ‘being’ of the subject is dependent on norms that facilitate that recognition.”

Once we understand the functions of recognizability, it follows that those who are not characterized by recognizability go unrecognized: during the stage of apprehension that Butler argues necessarily precedes recognition, those lives that fall outside the norms that frame the recognizable fail to be characterized as grievable lives. Due to this lack of grievability, their lives can, and often do, go unacknowledged by surrounding communities—they do not count as human. Butler uses the obituary, “the means by which a life becomes, or fails to become, a publicly grievable life,” as a primary example of how public discourse, and the limits of it, “establish the limits of human intelligibility.”

If we consider one narrative Butler provides of a Palestinian American who submitted the obituaries of two Palestinian families to the San Francisco Chronicle, we clearly see a paradoxical and prejudicial allocation of grievability, and thus recognizability, which prevents the recognition of certain populations. The Chronicle, in response to this man’s letter, told him that newspaper policy disallowed the publication of obituaries without death certificates. The man resubmitted memorials in the obituaries’ stead, only to have his second request for public grieving denied on the grounds that the newspaper did not wish to offend its readership. Here, “[in] the silence
of the newspaper, there was no event, no loss, and this failure . . . [was] mandated through an identification with those who identify with the perpetrators of violence.”

Apprehended as ungrievable, precariousness was meted out to these Palestinians differentially and in such a way as to deny humanness, and the sort of treatment accorded a grievable human life. These were humans whose unrecognizability made it possible for them to be denied a basic regard as humans, a regard that those within norms of recognizability never think of losing.

Butler makes a clear distinction between the function of apprehension and the achievement of recognition that prompts moral action. Apprehension of another precarious life, she repeatedly states, does not guarantee a moral response in the person who apprehends. Especially when facilitated by the frames of historically contingent norms, apprehension can stimulate behaviors of oppression and violence in the one who apprehends, can give “an insight into the physical vulnerability of others that incites the desire to destroy them.” The ethical response of guarding the precarious other, then, is constantly affected by the norms of recognizability, and by the recreation and (de)stabilization of the epistemological frames that shape how we apprehend. Butler insists that if we are to make broader social and political claims about rights of protection and entitlements to persistence and flourishing, we will first have to be supported by a new bodily ontology, one that implies the rethinking of precariousness, vulnerability, injurability, interdependency, exposure, bodily persistence, desire, work and the claims of language, and social belonging.

III. The Particular Precariousness of the Refugee

The bodies of refugees, when understood as bodies in “precarity,” may be subjected to violence which proceed directly from a state or operating force/set of forces that has an inverse set of relationships with other bodies in the refugees’ immediate vicinity, associations of protection, and inclusion. Refugees, then, can be seen as bodies in utmost precarity. They are subjected to processes, sometimes state-oriented, “whereby the ontological status of (the) targeted population is compromised and suspended.” These processes, made possible by exploitation of the targeted population, can be seen as following from the detrimental type of apprehension mentioned before; in this case, the lives apprehended are not designated with grievability. These refugee bodies are cast as a threat to human life rather than as living populations in need of protection from illegitimate state violence, famine, or pandemics. Consequently, when such lives are lost they are not grievable, since, in the twisted logic that rationalizes the loss of such populations is deemed necessary to protect the lives of “the living.”

20 Ibid, 36.
21 Ibid, 2.
23 Ibid, 29.
24 Ibid, 31. Oftentimes, bodies
In late modernity, the body of the refugee can be seen as one of the most frequently reproduced figures living outside the norms of life. The refugee “not only becomes the problem to be managed by normativity, but seems to be that which normativity is bound to reproduce: it is living, but not a life.” If considered undesirable or troublesome by a dominant group, she is ousted completely from the frame of normal society—perhaps because of her adherence to an unwanted ideology, or because of her ethnic background. After fleeing persecution or being forced into exile, she may receive temporary shelter from UNHCR and other humanitarian organizations. She still remains unwanted, however, on a general political level: she is unable to safely return to her former home, and she is hardly ever fully (legally) welcomed into the community or state where her makeshift residence is haphazardly constructed. Her rejection is considered necessary—for the preservation of the state, for the reinforcement of an idealized identity. She is excluded from legal privileges in her asylum country because its leaders feel bound to the principles and protection of national sovereignty and citizenship, “received, as it were, on the condition that (she) does not belong to the set of juridical obligations and prerogatives that stipulate citizenship or, if at all, only differentially and selectively.” The case of the economic refugee involves another sort of societal exclusion, but very similar results. Thus, even if the refugee’s existence is acknowledged by some members of the international community—the U.N., the humanitarians, the secondary media—she remains in legal limbo, unable to repatriate, or reenter the realm of the real; she cannot regain refuge under the umbrella of the sovereign and accepted, of citizenship and community.

IV. Refocusing on the Refugee

I have shown, through both the structure of the capabilities approach and the criticisms of recognition-based theories provided by Butler’s recent writings, that Nussbaum’s justifications for the preponderance of the capabilities approach, in the cases of refugees, are insufficient. The capabilities approach cannot account for why, if the denial of another’s humanness is impossible when the moral categories for recognition are in

subjected to states of precarity are minority groups. These groups can be most easily subjected to precarity through external pressures from other groups who disfavor their ethnic or tribal backgrounds, religious or political affiliations, or sexual lifestyles and orientations.

25 Thus, the life of the refugee is one of the ungrievable lives Butler describes. It is analogous to Hannah Arendt’s description of rightlessness in The Origins of Totalitarianism: when Arendt describes persons deprived of human rights, she is referring specifically to stateless persons; “the fundamental deprivation of human rights,” Arendt states, “is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective.” According to Arendt, the fundamental deprivation of statelessness/rightlessness entails the disappearance of any mean or medium of acknowledgment or connectivity to a public realm.


28 In response to the objection that her conception of the good life can be prejudicially applied, Nussbaum argues that in circumstances where subhuman statuses and titles are attributed to human beings, an avoidance mechanism is used in attempt to quell and ignore the strength of the moral notion of the “human being.” Nussbaum stresses that the concrete descriptions the capabilities approach provides “(push) us towards moral acknowledgment.”

28
place, certain states and parties still choose to do so by creating refugees whose statuses are well-defined as the “fundamental situation of rightlessness.” Indeed, the bodily status of “refugeeness” has also been described as an “inclusive exclusion,” such that the figure of the refugee constantly hovers around the perimeter of frames of acceptability and protection, but is never really allowed “in.” Since the capabilities approach does rely heavily on state involvement and support to ensure the fulfillment of second-level capabilities, Nussbaum’s original manifests falter in the cases of refugees.

Butler notes that stateless persons “are not just stripped of their status but accorded a status and prepared for their dispossession and displacement; they become stateless precisely through complying with certain normative categories.” If, for example, the state is the prejudicial component that has chosen to reconstruct a person or people group as undeserving of capability realization, soon-to-be refugees are sized up by the state and, upon decision that the lives in question do not meet the first threshold of capability, ejected from the coherence of almost all political communities that support the creation and sustenance of second-threshold capability. This is quite commonplace for nation-states; upon realization of the vulnerability of their normalization and dominance, they select a subject or series of subjects that threaten “security” and, following this selection, take the steps necessary to minimize the state’s own precariousness.

If Nussbaum’s theory chooses to defer to the jurisdiction of existing international laws and norms, then the capabilities approach still falls short: neither the U.N., nor any other international agency, has the economic or political capacity to impinge on the sovereignty of nation-states that opt out of caring for their citizens in manners that conform to the standards of Nussbaum’s capabilities lists. And though Nussbaum does acknowledge the utility of non-governmental, coalitional movements and grassroots organizations in her work, her methodology is still missing a component that is very important, one that Butler’s account of apprehension clearly invokes and pushes us toward: the paramount importance of the language of affect in creating real desires to engage in practical forms of helping that follow moral obligation. Altering and affecting the circumstances of refugees involves first reconceiving the epistemological framing that casts refugees outside of ordinary, recognizable social and political frameworks. It is in the stage of apprehension that an ethical exhortation can be provided about certain lives that are ordinarily cast as unrecognizable, like those of refugees. Nussbaum’s account lacks this stage, precluding forms of social critique and sensate democracy that might elucidate cracks in epistemological frames that generally render refugee populations unrecognizable.

I am not arguing that the recognition of lives in precarity, which is what Nussbaum’s capabilities approach starts with, cannot activate claims about the rights of bodies in precarity. But Nussbaum’s approach lacks a connection of and continuous communication between the stages of apprehension and recognition, and the cases of refugees are too dynamic for the framework of the capabilities approach. When

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apprehension of precariously is coupled with recognition, proactive social agendas can found “an alliance focused on opposition to state violence and its capacity to produce, exploit, and distribute precarity.”31 An approach to normative inquiry that begins with apprehension can be utilized by these alliances to shift the frame of moral obligation to a more radical “ought” as we seek to find means of including once-unrecognizable figures within the norms of recognizability. Finally, when apprehension is followed by recognition, it can serve as the bridge from moral conceptions that lack adequate inclusion of refugees and their movements.

When Butler speaks of the “mobile alliances” she envisions, she makes sure it is understood that these alliances and coalitions do not settle into liberal or multicultural bases, but rather are “bound together less by matters of ‘identity’ or commonly accepted terms of recognition than by forms of political opposition to certain state and other regulatory policies that effect exclusions, abjections, partially or fully suspended citizenship, subordination, debasement, and the like.”32 This work involves “a kind of analysis capable of calling into question the framework that silences the question of who counts as a “who”—in other words, the forcible action of the norm on circumscribing a grievable life”33—so it will need to involve shifting mediums that counteract the dominant media, ideologies, and frames of normalization that ostracize refugees or potential refugee groups. Since Butler emphasizes that by “parsing forms of representation” we can apprehend the differential and exclusionary norms that need critiquing in the legal-political realm, these alliances will work both with and under the level of state-based institutions, but also beyond it, incorporating the resources of globalization via sub and supra-national means to build spaces for resistance against dominant frames. The varying forms these coalitions can take are not directly outlined by Butler, though she does offer up Muslim LGBTQ groups as examples of how coalitions can form over and through “active antagonisms.” “The point,” she stresses, “is to insist that normative inquiry take on a critical and comparative form so that it does not unwittingly reproduce the internal schisms and blind spots inherent to those versions of the subject.”34 Thus, whether these mobile alliances work through non-governmental organizations, internet forums, or artistic spheres, their role and aim will be to shift from normalized focuses that obscure or abuse figures like refugees and reify their differential precarity.

Without us first learning to notice the effects of a perhaps near-global entrenchment in sets of normalized frames that seek to keep refugees expendable, the refugee will continue to go unrecognized, and thus her humanity—her inherent and realizable capabilities—will remain unrealized. I think an account like Butler’s that strives to reorient political perceptions toward “a consideration of precarity as an existing and promising site for coalitional exchange”35 can produce a better, more dynamic methodology for refugee rights, one that does not rest on exclusionary maxims.

33 Ibid., 162.
34 Ibid., 162.
35 Ibid., 28.
nor comes to rest at all. A sensitivity to and an ability to address the particular needs of refugees through the affective level is more plausible at the level of “mobile alliances,” or non-identitarian coalition-building, than through the nation-state and its related institutions. Thus, my practical suggestions, in accordance with Butler, call for this sort of coalition-building and movements that seek to create more egalitarian norms of recognizability. As I have illustrated, this can entail a varied series of social projects, all of which require constant attention, capital, and creative resources in order to remain relatable. Because new opportunities continually emerge for coalitional convergence, it is through the step of apprehension that I hope to see a refocused set of approaches to normative obligation that center on the refugee in the realm of the moral and political alike. My hope is that, by learning to use the phase of apprehension to bring recognition to refugees, we can find better means of grounding obligation to contemporary refugee figures and their crucial, singular needs for consideration and care.

Works Consulted

How to Do Things with Internal Mental States:
A Critique of J.L. Austin’s Notion of Performatives

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Abstract

In this paper I criticize J.L. Austin’s conception of what performatives are and how they operate. While Austin believes that a performative is nothing more than an utterance that, via social convention, performs a particular action, I espouse the view that performatives are actually indications of internal mental states, and that the presence of those states is a requirement for successful performance. I describe three advantages to this conception of performatives: clarifying when performances are void, more accurately reflecting our intuitions about deceptive performance, and pinpointing the source of our discomfort with Austin’s rules for voidance.

There is a problem with performatives, which can be illustrated by considering a common example. If someone says to you “I promise x,” that utterance engenders an idea of obligation on her part to follow through with her promise, and an expectation on our part that she will. That’s because saying “I promise x” is supposed to indicate that the speaker has the intention to act in a certain way, namely to do whatever she is promising. The problem is that if the speaker uttered the words “I promise x,” but did not have the indicated intentions, convention demands that we still speak, think, and act as if the promise has been made. In other words, whether or not the speaker had the indicated intentions to keep his or her promise is irrelevant in determining whether or not a promise was made. This disconnect between intention and performative ought to make us uncomfortable, because our idea of what it is to make a promise is intimately tied with the promiser’s intentions. This problem is rooted in the fact that conventions, which turn otherwise passive utterances into performatives, assume two contradictory definitions of performatives: they are built on the assumption that a performative is an indication of an internal mental state of the speaker, and enforced on the assumption
that a performative is only a speech act or utterance.  

In this paper I will propose a single definition of performatives as more than just utterances, but indications of internal mental states. By an “indication” of internal states, I mean that a performative utterance is the speaker’s confirmation that he or she has the relevant internal states. Under this formulation, a performative is considered void not only when the convention is violated, but also when the indicated internal states are not present. In others words, if you didn’t intend to keep your promise, you didn’t ever make a promise, even if you uttered the words “I promise x,” because that utterance was not a confirmation of the requisite intentions. The advantages of this formulation are three-fold: clarifying the blurry distinction between violations of convention that void the performance and those that don’t, more accurately reflecting our intuitions about deceptive utterances, and rectifying the disconnect between the assumptions on which our social conventions rest and those through which they operate.

We will begin with a thorough survey of J.L. Austin’s notion of a performative, and under what conditions it is void. Performatives are an especially interesting type of linguistic act, because they complete the action they describe upon utterance. In other words, they occur as soon as they are said, and no earlier. In Lecture I of How to do Things with Words, Austin asserts that to be a performative, a sentence must meet two conditions. First, the sentence does not describe or report anything, and thus cannot be said to be true or false. Secondly, its utterance is the doing of an action that is something more than just uttering it. Dummett clarifies: “As opposed to an ordinary assertion, it does not state something considered as being the case independently of the act of uttering it” (Dummet 334). For Austin, sentences either declare something to be the case and are called constatives or perform a particular act and are called performatives. Performatives include betting, apologizing, promising, naming, declaring, commanding, etc. An example would be saying “I do” at a marriage ceremony, or “I damn thee!” to a foe. One common feature of performatives is that they “all will have . . . humdrum verbs in the first person singular present indicative active,” or as Austin later clarifies, they will all be reducible to or interchangeable with performatives that do (Austin 5). It is possible to make a statement of fact about a performative, but it would require the use of a different verb tense. Thus, a performative occurs at the intersection of a particular set of verbs and the first person singular present indicative tense, and no where else (see the difference between “I promise” and “It was promised”).

To be clear, Austin does not think that the utterance of a performative indicates the presence of internal mental states, otherwise it would be describing or reporting the existence of those states, a notion he explicitly rejects. A performative for Austin is simply an utterance that does something. He elucidates using the example of the “I do” performative of marriage, saying that “the act of marrying, like, say, the act of betting, is at least preferably (though still not accurately) to be described as saying certain words, rather than as performing a different, inward and spiritual, action of which these words are merely the outward and audible sign. That this is so can perhaps hardly be proved,

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1 This interpretation of what a performative is, and how convention operates, is most clearly espoused by J.L. Austin in his How to Do Things with Words series of lectures. I will use his writings to clarify the flawed position, and his interpretation will be the focal point of criticism.
but it is, I should claim, a fact” (Austin 13). With this statement, he illustrates his full commitment to, and cursory defense of, the idea that performatives are not descriptions of internal states. Whether or not this definition begs the question of how a performance operates is yet to be seen.

Performatives are defined by social convention—conventions of verbal assent to marriage, bet, or contract developed over time through social relations. These conventions are widely observed regularities based on some level of tacit agreement, which vary among societies (“Conventions”). Collective consensus about what actions performative speech acts do, and what conditions are necessary for the verbal utterance to become an action, has defined our set of performatives. A speech act, such as the utterance “I bet x” is not inherently a performative (we would not say the caveman who happened to utter those exact sounds had done anything), but is made so by convention. The conditions under which these conventions apply, which necessarily include an utterance of the performative, are not always met. Austin lists six different types of conditions for “happy” performance. The first four (the A and B rules), which briefly include the acceptance of a conventional procedure, appropriate participants, and correct and complete execution, are necessary for the performative act to be completed or achieved. The last two (the Γ rules), which briefly include having the appropriate thoughts, feelings, and intentions, are not required for the achievement of the performative, according to Austin. Violating the Γ rules, however, is an abuse and results in an “unhappy” performance. The distinction between merely unhappy performatives and void ones becomes blurry as Austin attempts to deal with the objections to his view in the later lectures, but holding him to the clear statements of the first lecture is not uncharitable, as they form the basis for his conception of the ontological status of performatives. According to Austin, violations of the A and B rules cause a performance to be thoroughly void, while violations of the Γ rules make it merely unhappy. Reiterating that performatives are not descriptions, he states that “in no case do we say that the utterance was false but rather that the utterance – or rather the act e.g. the promise- was void, or given in bad faith, or not implement, or the like” (Austin 11).

The rest of Austin’s treatment of performatives concerns situations where the performative utterance was unsuccessful because other necessary conditions (the A and B rules) were not fulfilled. These other conditions vary with the fluid social conventions tied to individual performatives, but it remains the case that the utterance itself is a necessary, if not sufficient, condition for the success of the performative via social convention. Austin’s discussion of A and B rule violations is perfectly consistent with the view I will espouse. We can both agree that a violation of any of these 4 rules makes the performative act void, but not as a result of the utterance itself being flawed. A marriage can be void because the minister isn’t recognized by the state, while the status of the utterance “I do [take so and so’s hand in marriage]” remains uncontroversial.

My position is as follows: a performative is an indication of the presence of an internal state (for example, an intention, belief, or feeling), and as such the completion or success of a convention depends on the presence of the relevant internal states. In other
words, the success of the performance requires that the utterance be an accurate reflection of the speaker’s internal mental state. In terms of Austin’s rules for happy and successful performatives, we can solve the problem by saying either that violations of the \( \Gamma \) rules cause a performance to be void, or that the presence of the requisite internal states are part of the A and B rules because they determine things such as who is appropriate for the invocation and what it means to execute the procedure completely. Either way, if the utterance is not an accurate reflection of a speaker’s internal states, the performance is void.

The true nature of performatives will become evident via a case study of the act of promising. I chose this example because it has clear social conventions and is addressed by Austin explicitly. Austin believes that a promise made by someone without intention or ability to fulfill it “is perhaps misleading, probably deceitful and doubtless wrong, but it is not a lie or a misstatement” (Austin 11). This interpretation of the promise does not reflect our intuitions about promises. When we think about a promise, we consider the intention of the speaker rather than the words he or she spoke. You can remember that I promised something to you even if you don’t remember what the utterance sounded like, or even that I made it. When we speak of a ‘false’ promise, we are saying that the utterance “I promise that…” is a lie or misstatement, and thus the performance of the promise is void. If a listener were forewarned of the speaker’s duplicity, perhaps as a result of reading their diary, we would interrupt the speaker’s “I promise that…” utterance, exclaiming “No you don’t! You are lying!” rather than “That’s misleading!” We generally view false promises as misrepresentations of a speaker’s intentions. In other words, we think of a promise as an indication of a speaker’s intentions, which must be accurate for a promise to be made.

That a performative is an indication of a speaker’s internal state is also evident in the case of a marriage ceremony. It’s often overlooked that the utterance “I do” is an answer to a question asked by the minister. The standard question goes something like this: “wilt thou have so-and-so to be thy wedded wife/husband…Wilt thou love her/him, comfort her/him, honor and keep her/him, in sickness and in health… so long as ye both shall live?” Interestingly, the question seems to reduce to “do you have these intentions?” to which the bride or groom replies, “I do”. If the bride or groom does not have those intentions upon uttering “I do,” then the performative utterance was obviously a lie because it falsely indicated the presence of certain internal states. The entire concept of an annulment, which can be either civil or religious and varies throughout cultures, is based on the near term fulfillment of those intentions by the utterer of “I do”. According to Austin, “the whole point of having such a procedure is precisely to make subsequent conduct in order and other conduct out of order” (Austin 44). What makes philandering out of order, and loving, honoring, and keeping your new spouse in order, is not the utterance of “I do” but the intentions it asserts.

The recognition that performative utterances are indications of internal mental states calls for a reassessment of the conditions under which a performative is void. Unlike Austin, I believe that an utterance that belies an absence of the requisite internal states makes the performative void. We will refer to those utterances that incorrectly
indicate the presence of an internal mental state, because that state is actually absent in the speaker, as insincere or deceptive. They are misstatements. A deceptive utterance can also be referred to as a lie, if the speaker via his or her utterance knowingly misrepresents his or her internal mental states, but we will use the terms “insincere,” “deceptive,” and “misstatement” because they include both intentional and unintentional misrepresentations. This means only that the internal states the utterance indicates are not in fact present. We will proceed by examining and then collapsing Austin’s distinction between violations of A and B rules and violations of the Γ rules.

Recall that according to Austin, a violation of the A or B rules means that “the act in question…is not successfully performed at all, does not come off, is not achieved,” whereas if we violate one of the Γ rules, “the act is achieved, although to achieve it in such circumstances…is an abuse of the procedure” (Austin 16). There are two problems with this distinction. First, the overlap and interrelationships between the rules makes it impossible to determine with certainty which rules are violated. There is inherent tension between the two sets of rules, as the A and B rules that require things like “accepted conventional procedure,” persons and circumstances “appropriate for the invocation,” and that the participants execute the procedure “correctly” could all be construed as placing requirements on the intentions or beliefs of the participants. Not being able to determine which rules are violated is devastating, because it means we have no effective procedure for determining whether the performative is void. Secondly, the consequences of violating a Γ rule don’t give enough credence to our intuitions about the importance of intentions. At best, it licenses our disapprobation towards a speaker who has done something “abusive,” “misleading,” and “deceitful”. But surely the performance of a deceptive speaker, who is only pretending to promise, declare war, or apologize, must somehow differ from the performance of a sincere speaker. Viewing a performative as void if it violates any of the A and B rules or, via a deceptive utterance, violates the Γ rules can solve both of these problems.

Austin’s confusion about the consequences of violating his own rules is a result of conflating the performative utterance with the social convention surrounding it (the rules that determine who can participate in the procedure, what is required for its completion, etc.). Ironically, we will find that his own definition of a performative as a speech act only, rather than an indication of internal states, is the exact reason we are forced to accept the success of performances which are “abusive,” “misleading,” and “deceitful”. I will show why a deceptive utterance (one that lies about the presence of the requisite internal mental states) ought to make the performative void, and why Austin’s interpretation of conventions misleads us into believing otherwise.

First, we should note that the results of many performatives can be achieved by alternative social conventions that don’t require an utterance. For example, in some states two people become married after living with one another for a certain amount of time. You can place a bet by putting a coin into a slot machine. Clearly the utterance isn’t a necessary part of the action of marrying or betting, for example. It is, however, a necessary part of the social conventions that require performatives for their achievement of those actions. In order to marry via the social convention (rather than a common law
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marriage), or place a bet in a social setting (rather than with a slot machine), an agent must utter the performative, and I believe that he or she must mean it (in the sense that he or she has the internal states the utterance indicates). Austin’s conviction that an insincere utterance does not void the performance is a result of his placing too much emphasis on social convention and ignoring the necessity of sincere utterance. Social convention surrounds performatives in order make an utterance an action. Promising, naming, betting, etc. are not inherently actions. “I sentence you to death” is an act only because people agree that it is in a particular context. But the correct context, plus making the right series of sounds, ought not be sufficient. When a performance is “achieved” despite a deceptive utterance, it’s because the force of social convention is so strong that we are coerced into behaving as if the utterance had been an accurate reflection of the speaker’s intentions, beliefs, etc.

For example, if you unknowingly make a bet at the racetrack, thinking that you are purchasing a soft-drink and “I bet $10 dollars on Seabiscuit” is the password, social convention will take over and force us to behave as if you had made a bet. But the fact remains that you never intended to pay money if Seabiscuit lost, or receive money if he wins. Your utterance was thus insincere, and though you actually placed a bet unintentionally via social convention, it is only because the bookie has to treat every utterance of “I bet $10 dollars on Seabiscuit” as an indication of an internal intention to make a bet on Seabiscuit. The fact that you are held to your bet, in spite of your mismatched intentions, is based on a fundamental disconnect. Social convention is built on assumptions about your intentions (the bookie thought you actually wanted to bet), but determines what your intentions are via your utterances. In other words, social convention operates under the assumption that the ϕ rules are never violated, while simultaneously creating the conditions for their violation by enforcing the performative based on a mere indication of your internal mental states rather than their unambiguous presence. Were it clear that you had never intended to bet (perhaps via the preface “So that I can buy a soft drink, I will now speak the password…”), the social convention would have been void. At the very least, the bookie would be prompted to ask questions to determine whether you had the requisite intentions and beliefs to make a bet before placing it for you. The convention only holds, despite your insincere utterance, because at the level of enforcement it, like Austin, assumes that a performative is just a speech act, rather than an indication of your internal state. In other words, determining the success of a performative is currently based on the flawed assumption that merely uttering the right string of sounds is enough to do an action.

Herein lies our discomfort – convention makes an utterance a performative because it assumes that the speaker holds the relevant mental states, but refuses annulment even when we discover that assumption is false. This discomfort can be resolved by rectifying the confusion about what a performative is. Viewing performative utterances as fundamentally indicators of internal mental states, rather than just speech acts (uttering the right string of sounds), would appropriately heed our intuitions that a performative ought to be void if the utterance was deceptive. Our social conventions have always been based on this assumption about performatives- we just

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don’t notice it until we accidentally place a bet, or are married to a deceptive gold
digger, or the victim of a lying promise, because people like Austin incorrectly interpret
conventions as operators on speech acts rather than intentions, beliefs, etc.

It should be clear that the internal state of the speaker is at least as necessary as
the utterance itself to a successful performative. When we discover that someone who
said “I apologize” is not apologetic in the least, we consider his or her apology void, not
just poorly performed or misleading. To clarify: this isn’t to say that the utterance of a
performative has no place in social convention. While we feel that apologetic feelings
are necessary for a true apology, they are certainly not sufficient. As noted previously,
such conventions require performative utterances (you haven’t apologized until you say
it). The confusion about voidance arises when we forget that the appropriate internal
state is also required, or rigidly and universally associate the utterance with the
intention it’s supposed to represent. Convention requires that schoolchildren raise their
hand before speaking, and it’s the case that almost every time a child wishes to speak he
raises his hand, and almost every time he raises his hand it’s because he wants to speak.
The prevalence of this convention does not mean the teacher should assume every child
with a hand in the air wants to speak. Sometimes little Timmy just wants to go to the
bathroom, and the teacher won’t know that unless he or she confirms the intentions of
the student raising their hand. In other words, the surfeit of associations between an
utterance and a particular intention does not mean we can abandon intentions altogether
and consider only utterances. Doing so will only result in wet pants.

Despite his fundamental misunderstanding of the nature of performatives and
the conditions required for their success, Austin does address the question of intentions.
Recall that his initial definition of performatives explicitly denied that they describe or
report anything. In later lectures, however, Austin explains that, “we might in some
sense or way imply lots of things to be so when we say ‘I promise’, but this is completely
different from saying that the utterance, ‘I promise’, is a statement, true or false, that
these things are so” (Austin 45). Despite his insistence that ‘I promise’ implies “lots of
things,” Austin doesn’t explain what those would include outside the presence of the
relevant intentions. So performatives imply, rather than indicate, statements about the
presence or absence of internal states. We cannot say that a performative “entails” a
statement about intentions or beliefs, but only that it may be “connected importantly
with the truth of” such a statement (Austin 53-54). Long story short, no guarantees.

Austin tries to re-explain performatives as allowing us to say something
definitive about intentions, but upon closer inspection its clear that he is begging the
question. Careful examination of his wording here is enlightening, and not uncharitable
for the author of “How to do things with Words”. Austin claims, “now if when…I say ‘I
apologize’ I do apologize, so that we can now say, I or he did definitely apologize,
then…it is true and not false that certain other conditions obtain of our kind Γ, in
particular that I am thinking something” (Austin 46). The next sentence explains that he
only holds this relationship to be as strong as implication (as contrasted with the
stronger guarantee of indication). Note that Austin acknowledges a distinction between
saying ‘I apologize’ and actually apologizing, as evidenced in his use of “if when…I
say...I do...we can now say..." In other words, Austin already assumes an internal state of apology. Several pages later, he reiterates this point by saying, “if the performative utterance ‘I apologize’ is to be happy, then the statement that certain other conditions obtain- those notably in our rule $\Gamma I$ – must be true” (Austin 53). While this assertion seems to take the “If A, then B” structure, which would show that utterance does imply intentions, it in fact does not. That’s because he’s not saying “if an utterance is happy, then the statement that the $\Gamma$ rules obtain is true,” but rather “if an utterance is to be happy, then the statement that the rules obtain must be true.” In other words, Austin is now changing his notion of performative success to include the presence of the requisite internal states, in order to explain how his original definition, which was just restricted to the speech act, can tell us something about intentions.

This sleight of tongue aside, Austin’s insistence that performatives only imply, rather than indicate, the presences of mental states is unconvincing. He asserts an analogy between insincere statements (saying something we don’t believe) and deceptive performatives, since “both...are procedures intended for use by persons having certain thoughts.” He claims that, “to say ‘I promise’, without intending is parallel to saying ‘it is the case’ without believing” (Austin 50). This analogy is flawed, because an assertion implies an additional statement, namely that the speaker believes what he or she asserts, whereas a performative only asserts the presences of internal mental states. “I promise” says or means or indicates (pick your poison) exactly no more and no less than “I have the intention to do this, and via this utterance assert my commitment to do so.” There is no additional statement to be made false by insincerity, unlike in the case of the statement. This notion that performatives indicate the presence of mental states, rather than implying the truth of some additional statement that asserts their presence, reflects our intuitions about performatives. We don’t consider utterances such as “I do” or “I damn thee!” or “I bet” as strong support for the associated intentions and beliefs, but as absolute indicators of their presence.

While implication fails to accurately explain the relationship between performatives and their requisite internal states, Austin’s explication of pre-supposition and entailment provide support for the indication view. Using marriage as an example, Austin notes, “the formula ‘I do’ presupposes lots of things: if these are not satisfied the formula is unhappy, void: it does not succeed in being a contract when the reference fails” (Austin 51). If there is one thing the performative “I do” presupposes, it’s that the speaker actually does assent to the marriage vow by being in the right state of mind. These mental states are also the best candidate for the “reference” Austin mentions. In the following paragraphs, Austin notes that the performative “I promise” entails “I ought,” and thus “to say ‘I promise’ but not to perform the act is parallel to saying both ‘it is’ and ‘it is not’” (Austin 51). This explicit acknowledgement that an utterance without the relevant intentions is a contradiction supports two views: (1) that a performative is nothing other than an indication of its requisite internal states, and (2) that a performative uttered in the absence of those statements must be void.

Viewing performative utterances as indicators of internal mental states offers several advantages over Austin’s view that they are just simple speech acts that via
social convention perform some action. Recall that this account of performatives extends the instances of voidance to include violations of the $\Gamma$ rules. This definition maintains the most persuasive elements of Austin's account, such as the necessity of the utterance itself and the A and B rules to successful performance. It also sidesteps the blurry distinction between the A and B rules and the $\Gamma$ rules, which is critical to reliably and confidently being able to determine when a performative is void. Perhaps most importantly, defining performatives as indications of the intentions, beliefs, or emotions of the speaker is a more accurate reflection of our intuitions about what performatives are, and how they operate. Intuitions ought to be given special weight in the instance of performatives, as a performative is determined, defined, and described by social convention. In other words, performatives are our collective creation, and thus our intuitions about their nature are critical to nailing down what they are.

While these findings have helped us reach some conclusions about performative utterances, they also bring new questions to light. For example, the idea of a performative as an indication of an internal mental state seems to provide support for the notion that performatives are statements about our internal states that can be true or false. If we are right that performative utterances say nothing other than “I have $x$ set of internal mental states,” then calling a performative deceptive or insincere seems no different than saying it is a false statement. Austin says we can differentiate performatives from constatives because performatives are “reducible, or expandable, or analyzable into a form, or reproducible in a form, with a verb in the first person singular present indicative active (grammatical)” (Austin 61-62). He notes “an asymmetry of a systematic kind between [the first person singular present indicative active] and other persons and tenses of the very same verb” and that “this asymmetry is precisely the mark of the performative verb” (Austin 63). This distinction is entirely compatible with the view that performative utterances are a specific subset of statements, because it provides the bounds for that subset. If a statement is reducible to the right type of verb, and that verb, as defined by social convention, performs an action in that tense and person but not its others, then it is a performative statement. While our findings in this paper give much credence to this view, I will only suggest it as a possibility here.

The other, and perhaps more fundamental, issue emerging from our conclusions is whether or not performatives should exist at all. Communication in general depends on our reliable ability to tie statements to their associated content. When someone says, “my car is parked in C lot,” we must take this statement as an indication of its content (namely, that the speaker’s car is actually in C lot, and that the speaker believes this to be the case). While the statement may not guarantee anything about its content, constant skepticism would prevent any sort of communication of content. This seems to imply that in order for performatives to serve a communicative function at all (for them to be able to express apology, promise, or desire to bet), we have to assume they have a stable connection with internal states. This is possibly a serious problem for my view, but I will suggest three possible answers. First, assuming a stable connection does not mean assuming a universal one. If we knew a speaker was lying about the location of his car, we wouldn’t believe that it was actually in C lot. Similarly, if we have reason to
believe a speaker doesn’t intend to keep their promise, or isn’t trying to place a bet, then we wouldn’t view the performative as expressing its usual content (the presence of requisite internal states). Second, this possibility doesn’t undermine our claim that performative utterances that violate the \( \Gamma \) rules are void. Voiding a deceptive performative utterance is similar to saying the statement “my car is in C lot” is false if we know it’s in A lot. Third, at best this objection means we ought to get rid of performatives altogether, which might not be such a bad thing. If performative utterances are unreliable indicators of internal mental states, then we probably shouldn’t give them the power to bet our life’s savings, or marry another person, or promise to keep a secret. The instances of deceptive performatives highlighted in the paper show that protecting our ability to communicate via performatives by denying their unreliability causes all kinds of unpleasantness.

While there are no easy answers to the questions that our reformulation of the definition and operation of performative utterances have brought to light, we ought to feel confident that we are at least heading in the right direction. The answers given by academics like Austin have failed to reflect what everyday speakers already know about performatives, and have put us in uncomfortable situations regarding the conditions of their voidance. The conclusions reached in this paper offer some solutions, but are not the final word. There is much room remaining to clarify the nature and utility of our performative utterances, from the starting point provided here.

References


Walker and Walked: Reversibility and Walking in Landscape

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For the soul, the body is both natal space and matrix of every other existing space. Thus vision divides itself. There is the vision upon which I reflect; I cannot think it except as thought, the mind’s inspection, judgment, a reading of signs. And then there is the vision that really takes place, an honorary or instituted thought, squeezed into a body-its own body, which we can have no idea except in the exercise of it and which introduces, between space and thought, the autonomous order of the compound of soul and body. The enigma of vision is not done away with; it is relegated from the "thought of seeing" to vision in act.

- Maurice Merleau-Ponty, “Eye and Mind” 176

Walking requires a literal stepping out of one’s self and stepping into the world in the same fluid motion, yet when we walk out into the world, we step out from somewhere—where not as just in physical place, but where in terms of situation, moment, state of being. Walking puts us out into the world, giving ourselves to it in our perception of it as something already there, waiting to be felt as if it has something to offer us in return. Maurice Merleau-Ponty describes in “Eye and Mind” how we touch the world and are touched back in “the reversibility of dimensions, or a global ‘locality’—everything at the same place at the same time, a locality from which height, width, and depth are abstracted, or a voluminosity we express in a word when we say that a thing is there” (80), but how does one gain this immeasurable sense of depth by walking? Walking into the world takes us on a journey of recognizing we are putting forth something—an
acknowledgement of ourselves as beings of value in our stepping out into the endless surroundings—in what we discover to be a relationship of touching it through the padding of footsteps, light radiating from within to grasp what seems to be beyond, breath that enlivens our bodies as we exhale our heated exhalations only to inhale earth’s cool comforting bestowal of air, of life in return in a process of giving and receiving, not as separate acts, yet not as distinct, but rather, walking our way into the world as a putting forth which enables us to become enlightened to the taking back we receive as beings beholden to earth. In this essay, we explore and describe the sense of movement out into the world and the sense in which the world seems to reach into us in the act of walking.

II. Walking One’s Way into World: Illuminating the Healing Overlap of Light and Breath

The eye accomplishes the prodigious work of opening the soul to what is not soul—the joyous realm of things and their god, the sun...

...my body moves itself, my movement deploys itself. It is not ignorant of itself; it is not blind for itself; it radiates from a self

- Merleau-Ponty, “Eye and Mind” 186/162

Walking in nature is not a “creative healing process” on its own—it requires participation, not in the form of just walking and the healing “happening” as a coincidence, but as more of an active embodied participation. This active participation is needed, for if Heraclitus is correct, “Nature loves to hide” (Robinson 98). It requires a faith in a world in which pain and happiness are born of each other and coexist at the same time, despite our view of them as distinct opposites. Through seeing nature as having something to offer us in return, we take it up; we let it seep into us as we submerge ourselves into its river of unknown origin, endless, yet silently there. Heraclitus states, “Upon those who step into the same rivers flow other and yet other waters” (Robinson 91). By this, he means we step into the same river, but the water is always new and always changing—it is this openness to the changing that enables one, as an openly co-participating walker with nature, to merge into a continual process of healing, of recreating a world from the ashes of a world that, at times, appears perplexingly unchangeable and painful. As open to the coexisting opposites in nature, one gains an acceptance with each step. This is not an avoidance of pain, rather it is an embracing of trust in the process of emotional identification with the world as having overlaps of necessity—there is meaning within suffering, gained through walking with it rather than against it, possible even when one is entirely unaware of the possibility of meaning laying dormant within suffering.

I may walk down the same path every day, yet each time have a different experience; like Heraclitus’ same river of other waters, the path is different each day despite the disembodied mind’s construction of it as in the same physical location; my
experience changes with each day’s perception and awakening of emotional resonances within. Though I step onto the path, the path itself is changed, like the process of healing with compared to healing from, the path elicits particular awakenings one day, and still others the next—of hope, pain, memories, and possibility.

Like Plato, Heraclitus uses the symbol of fire as things “coming to know each other through being opposites . . . in flux” (Robinson 90). In World at a Glance, Edward Casey states the Greeks saw light as “fire, purified to such an extent that it does not burn” (195). This pure light is what lies within our vision. We look while walking and touch the landscape with our lines of sight, our inner light radiating out into the world. But as Plato articulates in Timaeus,

[when the light of day surrounds the stream of vision, then like falls upon like, and they coalesce, and one body is formed by natural affinity in the line of vision, wherever the light that falls from within meets with an external object. And the whole stream of vision, being similarly affected in virtue of similarity, diffuses the motions of what it touches of what touches it over the whole body, until they reach the soul, causing that perception which we call sight. (15)

This light from within touches upon the lit landscape, the world beaming through rays of sunlight—through this “whole stream of vision, being similarly affected in virtue of similarity,” the light of day joins the light radiated by the eye. In this mutual feeding fire, the opposites of light from within and light from without merge and birth the world as the “purified fire” of the Greeks. Their coming together is a merging of opposites, a light pulsing in the darkness, and the world lit as inner fires grow with our understanding that we are, to use Heidegger’s term, “worlding” with the world (177). This worlding process is of the same fibers as the healing process, for both bring together what seems opposite or outside of us and illuminate the necessity and relation of opposites. In this way, healing and worlding are partners in creation. In Timaeus, Plato describes this double existence of opposites as “the mother and receptacle of all created and visible and in any way sensible things” as an “invisible and formless being which receives all things and in some mysterious way partakes of the intelligible, and is most incompressible” (18). Plato’s discussion of the world as lit meeting the light from within gives insight into this notion of the receptacle as “of all generation” (17); it is the invisible yet visible co-participation of opposites in our world.

Heraclitus states: “To those who are awake the world-order is one, common to all; but the sleeping turn aside each into a world of his own” (Robinson 95). We turn to the “worlds of our own” when we blindly walk as if the world is there for us to admire in passing, as something for pleasure to be left behind until the next paved scenic overview fills a hole in our desiring minds. Walking in Maine, I come across many such “scenic views” that are indeed quite beautiful to behold, but I find those hidden glistening places, discovered only through the effort of walking mindfully, to be more spiritually alive than those beautiful “spots” in plain view. As we walk with nature’s unfurling process in a mutual process of humility, our worlds overlap, reflecting the fact that we, as intermingled with it, are also changing in its flux. We walk into an
acceptance of process, a kindling of patience with ourselves, with the world, despite the
pains, trials and tribulations, and choices that create our daily existence. Courting the
concept of flux, Casey articulates “All such external light constitutes a flux or flow that is
given shape by visual rays, thereby forming a temporary but effective ‘body’ that is
capable of transmitting the motion of things seen” (196) —the “motion” of co-created
world in process. If we heed Heraclitus’ suggestion that “[w]e ought not to act and
speak like men asleep” (Robinson 95) and act and speak like the caring, emotionally and
perceptually open beings that we are, the being of ourselves-in-the-world that gets lost
within the embedded enmeshment of cultural alienation of ourselves from our
perceptual bodies.

If we do not see ourselves as changing and in perpetual motion, we dissipate like
scattered light, resulting in distorted perceptions of self and world. We become
disjointed beings compartmentalized from our unity with the world, worse than
someone with closed eyes. Plato illustrates that even when the eyes are closed, the fire
within remains:

. . . when the eyelids, which the gods invented for the preservation of
sight, are closed, they keep in the internal fire; and the power of the fire
diffuses and equalizes the inward motions; when they are equalized,
there is rest, and when the rest is profound, sleep comes over us scarce
disturbed by dreams; but where the greater motions still remain, or
whatever nature and in whatever locality, they engender corresponding
visions in dreams, which are remembered by us when we are awake and
in the external world. (15)

If we are closed off to our inner light, we are not even asleep; we are essentially “dead.”
Casey’s “sublunar entities,” of which he includes human beings, “play an active role in
making vision happen: the emanation of the visual ray from the eye can be construed as
the perceiver’s contribution to the intermediate body of sight” (198). A key point here is
“making vision happen” through the perceiver’s “contribution” —as human beings, we
are involved in this process of seeing, of taking up and emitting light through the rays of
our eyes. In Timaeus, Plato supposes that “sensations are dearest and strongest
according to the manner in which the eye is affected by the object, and itself strikes and
touches it” (26). For the eye to be “affected” it needs to be the eye of an open perceiver.
As mentioned above, if we are not open, our light does not touch that which solicits its
calling. Plato also declares that ”there is no violence either in the contraction or dilation
of the eye” (26). This suggests not a forced looking, but a gentle fluidity of the eye
“reaching out to touch the world” and the world “touching it back” in a reaching towards
each other; yet is it really a reaching? It is more like a natural extension of the eye,
something it just does when one walks mindfully, at ease in thought, as the world replies
in return with its lighted bestowals of nature. As Casey illuminates, “[i]n walking, our
kinesthesias (and there are always several of them) extend outward onto the path over
which we move and into the surrounding landscape” (202). This paints a picture of how
light ignites the world through what and how it touches, what we are able to unite with
as we let ourselves be touched—a surrendering of control through stepping with our
heart and breath, trusting that what draws us has a purpose, “the power of sight as the prime cause of things” (Plato 15). This visual fire is what births us into the lighted world.

Casey suggests we make vision happen by letting it “make us happen” as human beings—by letting it do what it does in the interplay of our light reaching out to the world to be mirrored back by its light. Plato touches upon this in his discussion of tears, stating how white and black come from dilation and contraction through a “swifter motion of a different sort of fire” which forces its way through the eye’s passages and melts them, forming tears by “an opposite fire which comes to them from an opposite direction – the inner fire flashes forth like lightning, and the outer finds a way in and is extinguished in the moisture, and all sorts of colours are generated by the mixture” (27). This birthing of colors is expressive not only of itself, but of the birthing of ourselves from the union of this fire. Plato suggests God gave us sight so that we would see the order of intelligence in the heavens and see our relation to them (16); through sight we gain “the power of enquiring about the nature of the universe” and this is what springs philosophy (16). As open-eyed enquirers, we find answers inspiring further enquiries, expanding our circles of value and meaning in the world, deepening our acceptance that we cannot know into a gradual opening to the divinity of the invisible. Like the act of life-giving breath, we succumb to its urgings and breathe in surrender to rhythmic forces beyond our control yet comfortably in tune with nature.

Heraclitus describes how we become intelligent by drawing in the divine logos when we breathe:

We become forgetful during sleep, but on waking we regain our senses. For in sleep the channels of perception are shut, and the intelligence in us is severed from its kinship with the environment–our only connection with it being through breathing, but which we are, as it were, rooted in it. When it is separated in this way, the mind loses the power of remembering which it formerly had; but in the waking state it once more flows forth through the channels of perception as through so many openings, and making contact with the environment recovers the power of reasoning. (Robinson 98)

We are “rooted” in our environment through breathing. As Plato asserts in Timaeus, “[t]he rays of fire which are bound fast within followed the passage of the air either way, never at any time ceasing so long as the mortal being holds together” (33). In terms of the mortal being held together, I relate this to Casey’s statement: “The homoiomeric [uniform] principle of like to like. . . here draws the visual fire of the eye into close collusion with surrounding daylight in the generation of a visual field that connects eye with world” (Casey 196). Just as Casey states the glance “exhibits both an ongoing and incoming aspect” (200), inhalation and exhalation provide the ongoing/incoming in a similar yet different fashion. In returning to the breath, we reunite with the environment and trip on the rootedness of which Heraclitus speaks; as long as our “mortal being holds together” this process never ceases (Plato 33). This is reminiscent of Samsara, the Buddhist wheel of birth and rebirth, of a meditation done by visualizing a
wheel circling into the expanding belly and out through the nose in an unending wheel of life. Plato’s “mortal being holds together” through the breathing exercise (33). In the circular breathing of meditation and noticing how one breathes as a never-ceasing process as long as we are living, one can see the connections between Plato’s words and Buddhist philosophies.

Plato continues to discuss respiration as a wheel driven round and round in a circle, stating the inside of every animal is an “internal fountain of fire” (33). Of particular interest here is the reconnection to the environment as indebted to it, or as Casey asserts, as subordinate to the sun (198); we “meet in the middle” where the “rays of the world” and “mental rays” meet in the “intermediate body” of our eyes (199). We are open feelers—our “glancing acts in close concert with our moving legs: the two actions realize a complex commixture of coordinated motions in which sometimes the glancing, sometimes the walking, takes the lead – and sometimes they act in perfect synchrony” (203). Vision is the interplay between seeing and seen, and Plato’s emphasis on the inner and outer light play into this “vision of vision.” We are lights of the world, touching it with our visual rays, only to be touched in return, and gifted with a vision of nature, a lesson learned in walking while being visually caught by things.

In bowing to the synchronicity of stepping, visually touching, and breathing, we can be the light of the world as it lights us, touches upon the divine coexistences of opposites, of suffering and transformation, of light and dark, of the inevitable contingency of being. As we dwell within nature, by walking with it, being drawn through our vision and breathing into the unknown, we return to ourselves as beings of nature and feelers of light, walkers of visions, breathing with the pulse of life and living it once again, healing and changing into beings more receptive to and accepting of ourselves as changing. In a continually deepening healing process of becoming, we co-create a mutual beckoning of light as we walk with each other, breathing in the births of each day, living the moments of healing reconnection with the world-as-able to be healed—ourselves-as-able to change.

III. The World’s Wisdom Walking Me: Earth Answers the Call to Participation

The Master allows things to happen.
She shapes events as they come.
She steps out of the way
and lets the Tao speak for itself.
- Lao-Tzu 45

What is it about walking in particular that opens one up to “the way”? One passes by trees and other creatures in a reciprocal play of shared space. I walk by the tree in passing but never truly leave it behind, for I carry its way of being with me on my journey and incorporate it into my own experience; memories rush forth of other walks and trees, textures of green, quiet permeating here-nesses of times before, and times to come. Ageless silent wisdom is gifted to me as I walk with nature, rather than merely
pass by. This “way” of walking requires an awareness, a mental not-doing, for “in order to get underway, we do have to set out” (Levin 275).

“The way we walk is a measure of our character, a measure of our groundedness in the truth of Being – a measure, finally, of the depth of our experience of Being. For the most part, we walk in the oblivion of Being; we walk without awareness” (Levin 276). We walk and think of where we are going–a destination of point A to B, a straight line path, a mechanized timing like a conveyor belt—no allowance for dips in the path or changes in direction. When we walk without awareness, we move like automatons, taking for granted our patterns of movement and their echoing of nature’s inherent patterns, sidestepping the weaving of ourselves with what we are passing by.

Levin remarks that “[t]he Being of beings has shown itself as the ground” (283). Practicing the Taoist concept of “non action,” or letting be, opens us up to the quiet being of nature as the ground (Lao-Tzu 43). Non-action calls for a loosening of the grip on the controls of one’s situation and an easing of thoughts and mind-ramblings. Letting be is a colossal letting go of attachments, or what distracts us and keeps us not only from ourselves, but from nature itself. Focusing on the breath, one can listen to the quiet hum of life that lovingly flows around and within us at all times. Through acceptance of what is and releasing attachments to outcomes, we come to our way of just being, simply yet profoundly illustrated in Tao Te Ching: “Teaching without words / performing without actions / that is the Master’s way” (Lao-Tzu 43). Without words or actions, we reside within the beautiful stillness of just being.

This stillness is the quiet density of tree moss, the openness of my heart to the sacredness of other creatures; the painfully slow uncurling of ferns is my cells dying and being reborn, part of the rhythms of earth. Mazis states, “What is most overpowering is that everything is meaning-laden” (219). Meaningfulness seeps from nature—creatures and plants are not mere appearances or objects—they speak to us in a silent language of unending honesty and are examples of the connectivity and circularity of time. They just “be” yet inundate our senses with impressions and memory, eliciting hopes and ideas and comfort at our place in it all, and ease at not knowing what comes with the next breath. Walking reconnects us to the being of ground, the multidimensional overlapping of perceptions, the sensual and temporal, into a sacred silence of place, of nature, and of ourselves in a collapsing and blossoming forth of being.

As I pass by the trees, the earthy green of their mossy coats penetrates my being, imparting a sense of what it is to be the tree I am passing, an ageless spirit trickles through my body like the miniscule water droplets invisibly hovering in the rich emptiness of air surrounding me. I am “passing by,” yet though the tree disappears from view, it lurks behind me—as if it has tentacles that grasp me with some kind of mystical earth-wisdom, but grasping me loosely enough in order to let me continue on my way while making itself and its story known to me—their story and the stories of other creatures who have passed before and those to come. As Mazis describes, meaning “merges from the dialogue of us with things, others, and creatures” (240). We acknowledge each other’s necessary presence silently, deeply, with awe-inspiring respect. This ageless wisdom of trees is called out to play with me by the settling of
footsteps, their slow and deliberate steps like the tree limbs that slowly and deliberately climb towards the sky. In this way, the being-ness of the trees and plants, sky and earth becomes the unspoken necessity of our being to the manifestation of ourselves within the world.

Trees, earth, and sky join those walking with me on this day—they are not ahead of me or behind me on the path as located in space; they walk with me, not as objects, but subjective to what is around us. Their bodies speak to me in a wordless language, one that is tacitly understood before my mind has a chance to fathom the idea that there is this bursting of connective knowledge permeating my being and reflecting itself in a cohesion of necessary subjectivity. To Merleau-Ponty, “what is given, is not one fragment of time followed by another, one individual flux, then another; it is the taking up of each subjectivity by itself, and of subjectivities by each other in the generality of a single nature, the cohesion of an intersubjective life and a world” (Phenomenology 525). This cohesion is what occurs as we walk on our way, step on the path of all paths, the path of no end and no beginning, the path we are on as we are born into this world in our earthly bodies.

This given purposefulness seeps into my flesh like sultry heat waves on a humid day as my body responds with beads of sweat that emit from my pores—I have no control of it, over my body’s response to nature. It does it on its own, but when I just “be” with it, it nourishes my soul in a speechless moment of belonging. One may say it is trifling to notice such occurrences that happen constantly without our awareness, but if we stopped thinking for a moment about what to do next and noticed the sweat as the body’s response to and conversation with the heat, with the world, the conversation would turn into a lesson of how much control we do not have, how our bodies nurture us as nature nurtures them in a dialogue with nature that enlightens us to our “beholdenness” to the earth (Levin 292).

What is more subtle than the ground, the quiet being of the earth, always underfoot, always “there” in an unacknowledged sort of taken for granted-ness? Have we honestly questioned if the ground would be under our feet when we take that first step out of bed the next morning? Or, after taking a step presently, will we look down to double-check that the ground has not vanished into a black hole? This silent presence is something supportive; the ground is always under our feet. Despite our suffering, it remains. It supports us throughout our lives. It is there when we learn from our losses, uncover regrets, or discover hidden passions. It is the utmost spiritual significance to walk on this earth and share our footprints with its creatures, digging our roots deeper in the soil as we continue our open-ended journey of living, thinking we know at times, discovering we have no control at others, and learning slowly to accept our inability to be fortunetellers. In walking, we humbly take on the role of creature of earth, as meaningful to each other and to the world in which we find ourselves situated. We awaken to ourselves as process, for “that is why the love of the Tao / is in the very nature of things” (Lao Tzu 51). Levin eloquently illustrates:

To walk with awareness is to walk in the truth: to walk, that is, in a disclosing of the meaningfulness of Being. In its essence, walking is itself a
To walk on this earth is to share our rhythms with others, for they too walk with us. Though we may think we are separate beings, we are all supported by the ground, regardless of our class, race, or gender—we are all here on this earth despite where we may think we are. Through walking in nature we can “become emplaced,” as Mazis suggests, and “feel in the body and heart as if one were located in a space because one has felt its connectedness and connection to oneself” (234). In this connectedness, we learn to embrace the unity of ground and aliveness as brought to light in the winding together with this earth.

In Tao Te Ching, Lao-Tzu states: “Open yourself to the Tao / then trust your natural responses / and everything will fall into place” (23). Walking permits an openness to nature—through striding openly and unhesitatingly, the body releases itself to its surroundings and participates in a dialogue. If I breathe in to the tension in my shoulders and really “feel” my arms, they freely move within their environment and talk to it—swinging playfully like they did when I was a young girl walking in the woods in wonderment, imagination running wild. I have never lost this wild wonderment with nature, but through easing into my body, I can reclaim my place on the solid earth from years of being in my head, transforming cultural doctrines of being-for-others into being-with, because “I am from the start outside myself and open to the world” (Merleau-Ponty, Phenomenology 530). As open to the world, I am interconnected with all its encompassing beings in a wonder that takes hold of my outstretched hand and places it back into the open hands of possibility—a spiral of myself returning to the world as it reverses itself, echoing a shared wonder and acknowledged possibility to me in return.

This sense of wonder is something we associate with the glee of children as they play, a feeling we still have the ability to feel with awe and amazement and perpetual love of nature, of being needed by nature as part of it and reciprocating its love. Children do not question the trees when they speak to them—they listen. They do not cringe at the dirt cloaking their bodies as they play—they revel in it. There is an absence of hesitancy at getting dirty, which, is in essence, getting the ground on their skin, being grounded in a literal sense. We are all grounded until we see the earth as dirt beneath our fingernails, an impingement on cleanliness, a “dirty” hindrance to our controlled activities, rather than a nourishing support of our aliveness.

As I walk, the pulsing of footsteps joins the echoing of a distant goose’s call to its comrades. They soar in the sky in a journey together. Each goose appears to be physically separate from others by being a different outside body, yet each makes up a greater body as the geese grace earth-dwellers below with the shape of a “v,” a chorus
of honks, a sharing of duty—for when one goose tires, another takes over. “My life must have a significance which I do not constitute; there must strictly speaking be an intersubjectivity; each one of us must be both anonymous in the sense of absolutely individual, and anonymous in the sense of absolutely general. Our being in the world, is the concrete bearer of this double anonymity” (Merleau-Ponty, Phenomenology 521). This “double anonymity” is what we glimpse when walking our separate yet shared paths of life.

We walk on the path, each of us highly individualized, proudly separate beings, with our own foot patterns of stepping, pausing for milliseconds, gracing the ground in a manner of hugging it with our feet. So proud of our individuality, we do not see that we walk the path together, our steps joining the calls of the geese, our rhythms echoing their wings, our breath the wind gliding beneath their bodies as they share the lead—we do not awaken to the earth hugging our feet back with each step. We are the geese if we let ourselves be part of the rhythms that endlessly take up our being, open our footsteps to the earth, pressures on stone joining the lifeblood of ground, circling up into the currents of breeze kissing our cheeks. “Rhythm gives us access to the melodic aspect of the unfolding of energies and meaning that are at the heart of the way things, people, and creatures come to enter the dance of manifestation together” (Mazis 231). Through awareness of our rhythms, we are of a process, an emergence, a “way.” This process calls us to stay with it for a while, to want to be on our way. Through walking with openness, non-judgment, and acceptance of where we “are” in terms of our situations, we find our way and be it by simply letting ourselves be part of the process. For “[w]e respond to the way only be remaining underway” (Levin 275), and in turn, find ourselves “living” our lives in this gentle acceptance.

If the mind and body are separate, what explains the smile that leaks onto my face as a panting, slurping dog passes me by and why does the dog’s way of being bring tears to my eyes at the lesson it bestows upon me about myself and my own way? Why do I feel myself shudder with awestruck tears as I peer up at the sky only to have my sight caught by a bird that just happens to dart into view in that moment? What is this connection? It is the connection to sacred being, to all that is, and all that is not. To the mystery that is not a mystery—to the mysterious it that permeates our being, that so often we fail to acknowledge is there, because then we would have to admit we do not know something, that we have no explanation, and direr still, acknowledge we cannot know—and that frightens us. What we can do is accept—to take up our situation in this world (Merleau-Ponty, Phenomenology 529). If we are “fully human only by virtue of our relationship to the earth” we must learn to accept that we do not know; we must honor “the beholdenness, in which we always stand with respect to the primordial earth” or risk never realizing the freedom we have to be on our way (Levin 292).

Merleau-Ponty elucidates on how “[t]he natural world . . . is nothing other than the place of all possible themes and styles” (Phenomenology 523). To be part of it is to take one’s place in the realm of possibility—to live in the world and be sewn into its bodily fabric, not experiencing it as an all-seeing observer from on high, but getting down and dirty in it, playing in the mud of ambiguity and making something out of it in
all its unknowingness, molding and reshaping an unfinished work of art, like making sand creatures at the beach and watching the waves caress them as they dissipate out to the sea. There is a peacefulness to watching that happen, to letting it happen, knowing one can always create anew, and that what is newly created will never be finished, as it will meet another way of being as it reenters the sea.

Our shadows are like time—we never escape them, for my shadow is never completely ahead of me like the future, because it connects to my feet and resides under them. As I walk, it walks with me; at noon it invisibly engulfs me yet not completely, for it is there, ready to reappear in a moment of shifting earth. As it appears at my side, it is slightly behind me, yet does not reside there for long, for when I stop, it stops. The shadow is like an outward manifestation of the body in time, an example of our autochthony, our originating where found (Levin 285). The shadow stems from us; it is here while remaining in front and underneath. It is of all times and of no time. Blindly stumbling forth is assuming we have authority over where our feet land, or what lies ahead in our lives. We assume total control for something we are powerless over. We act out against our fear with plans and designs on the future as we dart away, avoiding our shadows catching up with us. But if we accept that our shadows are part of who we are, that we do not have to have it all figured out to be worthy of the journey, we may find peace in being compassionate with ourselves and others—we may find peace in just being.

I have just three things to teach:
simplicity, patience, compassion.
These three are your greatest treasures.
Simple in actions and in thoughts,
you return to the source of being.
Patient with both friends and enemies,
you accord with the way things are.
Compassionate toward yourself,
you reconcile all beings in the world.
- Lao-Tzu 67
Works Cited