Aletheia

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Notes from the Executive Team

Editor-in-Chiefs

It is an honor to have served as the the Aletheia journal's Editor-in-Chiefs for this year. We got to see the growth of the journal in the past year, from improving our editor training procedures to beginning to change where the journal is published.

First, we want to thank our Executive Editor, Kaleigh Marshall, who has been available for whatever work needed to be done, even on short notice. Without your effort, this journal would not have been published on time, and it would have been of lower quality. Thank you for your contributions to this edition.

Next, we want to thank Dr. Raymond for his dedication to the journal and its editors. Often extremely busy, yet he always made time for us when we needed it. He was also integral to the improvements in editor training that we made this year and has always kept us on track.

We also want to thank our fantastic editorial board who, despite their numerous other commitments, were able to consistently work with our authors by providing high quality constructive criticism and helped said authors to improve their arguments and papers as a whole. Thank you Audrey for going the extra mile in the creation of our cover page!

Finally, we want to thank the authors of all of the papers that were submitted to the journal for their willingness to go through the editorial process and work with us to improve their papers. Their openness to new perspectives and constructive criticism has helped to create something great.

Hailey Baker and Will Stinebaker
Society Ethics and Law major and Environmental Studies major respectively
Class of 2025 and 2026 respectively

Notes from the Executive Team

Executive Editor

I am incredibly grateful for the opportunity I have had this semester to serve as Executive Editor for the Spring 2025 Edition of *Aletheia*. The journey to establishing this journal has been filled with challenges, but the process of navigating these challenges has only made me optimistic about the future of this journal. It has been a privilege to contribute to its development, ensuring that *Aletheia* will continue to thrive for future generations of students.

I would like to extend my appreciation to our Editor-in-Chief, Will Stinebaker, whose dedication and work ethic have been instrumental in bringing this edition to life. Your commitment has made all the difference, and this edition would not have been possible without you.

I am also sincerely grateful to Dr. Raymond, whose unwavering support has been a cornerstone of *Aletheia*'s success. Your guidance and encouragement have provided a strong foundation for this journal, and I am excited to see how it continues to grow and evolve in the years to come.

Additionally, I want to recognize the entire Editorial Board for their hard work, adaptability, and commitment throughout the development of this journal. Your dedication and flexibility have been invaluable, and it has been wonderful working alongside all y'all this semester.

Looking forward, I am only optimistic for the future of *Aletheia*. May it remain a space for intellectual exploration and rigorous discourse.

Kaleigh Marshall

Philosophy Major

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Kyla Beck is a junior Agribusiness major with certificates in Philosophy and Pre-law, and International Trade in Agriculture. She is originally from Seguin, with philosophical areas of interest in law and political philosophy. Kyla serves on the College of Agriculture and Life Sciences Student Council and strives to live her life as a passionate advocate for agriculture. In the future, she plans to attend law school after graduation to pursue regulatory environmental law to continue being an advocate for the beef industry at the legal level.

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Redefining Privacy in a Digital Age

America Jimenez

Abstract

The Supreme Court's decision in *Carpenter v. United States* significantly reshaped Fourth Amendment protections in the context of modern digital technology. This paper examines the government's use of Timothy Carpenter's cell site location information (CSLI) to track his movements without a warrant, collecting over 13,000 data points across 127 days. The Court rejected the application of the third-party doctrine, which historically permitted warrantless access to information shared with third parties. Chief Justice Roberts, writing for the majority, argued that CSLI tracking intrudes upon reasonable expectations of privacy, equating its scope to an "ankle monitor." This paper contrasts the majority opinion with the dissent's emphasis on property-based notions of privacy, ultimately affirming the importance of adapting Fourth Amendment standards to address technological advancements. Drawing on philosopher Stanley Benn's concept of autonomy, the analysis supports the Court's decision as a critical step in safeguarding privacy in an increasingly connected world.

In 2011, a group of four men were arrested on suspicion of being involved in a series of RadioShack robberies. One of the men arrested confessed to being involved in the string of robberies, and he provided the FBI with names and phone numbers of fifteen other accomplices, including a man named Timothy Carpenter. Using this information, prosecutors obtained court orders under the Stored Communications Act which allowed for the government to gain access to certain telecommunication records when there are "reasonable grounds to believe" that the information is relevant and material to an ongoing criminal investigation."[1] Federal Magistrate Judges issued two orders for Carpenter's cell phone carriers- Sprint and MetroPCS, one of which obliged carriers to disclose Carpenter's cell site location information (CSLI). CSLI is produced every time a cell phone connects to a set of radio antennas called "cell sites," and each time this

[1] 18 U.S.C. § 2703 (2018)

connection occurs, a time stamp record is produced. This CSLI request produced nearly 13,000 location points over 127 days, allowing prosecutors to place Carpenter in the vicinity of each robbery during the times they occurred. This information was one of the decisive factors that led to Carpenter subsequently being charged for the robberies.[2]

Carpenter later sued under the notion of the search being a Fourth Amendment violation, and this paper will analyze the case when it reached the Supreme court. First, an explanation will be provided on how the Government argued that the search addressed in *Carpenter* was not a Fourth Amendment search under the third party doctrine's notions of voluntary exposure and business records created in *Smith v. Maryland* and *United States v. Miller,* respectively. Next, this paper will evaluate how Carpenter later sued, and how the Court's opinion, delivered by Justice Roberts and informed by precedent cases *United States v. Jones* and *United States v. Knotts*, concluded that the government's gathering of CSLI information violated Carpenter's Fourth Amendment Rights. Then, this paper will show that much of Justice Roberts' reasoning along with the precedents that shaped it align with Philosopher Stanley Benn's perspective on privacy. Next, the majority decision in which the court ruled that the warrantless search of CSLI data was a Fourth Amendment search will be explained. Ultimately this paper seeks to defend the Court's decision in *Carpenter* by offering a more nuanced and intuitive perspective—gained through legal and philosophical analysis—on why the Fourth Amendment was properly applied in the case of Carpenter.

The Government's main contention against Carpenter's claim that the use of CSLI data constituted a Fourth Amendment search was the third-party doctrine. The doctrine holds that people who willingly give information to third parties have no reasonable expectation of privacy

[2] *Carpenter v. United States*, 585 U.S. ___ (2018)

in that information.[3] Its rationale is based on the principle of voluntary exposure found in *Smith v. Maryland* , and the notion of no ownership of business records found in *United States v. Miller.*

In *Smith*, the court ruled that the use of a pen registrar, a device that recorded the numbers of outgoing calls dialed on a landline, was not a Fourth Amendment search. The court held that an expectation of privacy in this case is not deemed as reasonable, because one should "assume the risk" that the companies' records could be turned over to the police.[4] Put differently, it held that "a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties."[5] *Miller* is where the third-party doctrine largely traces its roots. While Miller was under investigation for tax evasion, the government subpoenaed his bank to turn over his financial records. The court held that this did not constitute a Fourth Amendment search because Miller could assert "neither ownership nor possession" of the documents as they were "business records of the bank's." [6]

Under the notions of implicit risk assumption and the third party doctrine respectively informed by the abovementioned *Smith* and *Miller* cases, the government held that, in terms of *Carpenter*, the defendant did not have any reasonable expectation of privacy. The government held that in having a phone, one assumes the risk that their information is tracked, stored, and could be turned over to the police.[7] Additionally, the government believed that cell site records were no different than any other kinds of business records that the government has a right to obtain by a compulsory process. CSLI data belonged to the phone carriers and was therefore considered "business records" that *Carpenter* could "neither own nor possess."[8]

[3] *Carpenter v. United States,* 585 U.S, Roberts, opinion, § III B (2018)
[4] *Smith v. Maryland*, 442 U.S. 750 (1979)
[5] *Id*., 743
[6] *United States v. Miller*, 425 U.S. 440 (1976)
[7] *Carpenter v. United States,* 585 U.S, Kennedy, dissent, § II A (2018)
[8] *Ibid.*

Having outlined the government's precedent-based argument against Carpenter, this paper will now analyze the arguments in his favor. To do so, three influential precedents to the Courts' ruling, namely *United States v. Knotts, United States v. Jones*, and *Katz v. United States,* will be introduced. This set of cases is particularly interesting because, while *Knotts* and *Jones* involve similar tracking behavior, they lead to different Supreme Court rulings, despite both being assessed under the same reasonable expectation of privacy standard established in *Katz*.

Federal agents, suspecting Katz of transmitting gambling information across state lines, placed a listening device outside a public phone booth he used. Based on recorded conversations, he was convicted of illegally transmitting wagering information. Katz appealed, arguing the recordings shouldn't be used as evidence, but the Court of Appeals upheld his conviction, reasoning that no physical intrusion occurred. The Supreme Court took the case and ruled in Katz's favor, holding that the Fourth Amendment protects people, not just physical spaces. Justice Harlan's concurrence introduced the idea that people have a constitutional "reasonable expectation of privacy" in both physical and digital spaces that are generally considered private.[9] This concept has since shaped Fourth Amendment interpretations, including the rulings in *Knotts* and *Jones*.

United States v. Knotts (1983) considered the government's use of a beeper to track a car for a chloroform sting operation. The court concluded that the "augmented" surveillance did not constitute a Fourth Amendment search, because a person traveling on public roadways does not have a reasonable expectation of privacy in their movements.[10] The idea is that anyone could observe a vehicle traveling on a public roadway and that the beeper served only as a supplement and not a violation of one's privacy.

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[9] *Katz v. United States*, 389 U.S. 347 (1967)
[10] *United States v. Knotts*, 460 U.S. 276 (1983)

United States v. Jones (2012) also pertained to tracking a vehicle – a GPS tracker was placed on a car and followed for 28 days. Surprisingly, the court held that this search *was* a violation of privacy, and while the court had different reasonings for arriving at this conclusion,[11] Justice Alito's argument that this search was a violation pivots on principles established in *Katz v United States,* and it is his interpretation and application that is most relevant to the *Carpenter* case. He concurred that the tracking was a violation of the defendant's reasonable expectation of privacy even if these movements were disclosed to the public at large, particularly emphasizing notions established in *Katz v. The United States* (1967). *Katz* had previously established that a person does not surrender all Fourth Amendment protection by venturing into a public sphere, so even though Jones could be subject to public gaze when on roadway systems, he still had a reasonable expectation of privacy.[12] Particularly Justice Alito emphasized that GPS monitoring tracks absolutely every movement of someone and therefore impinges on expectations of privacy.[13]

When considering that *Katz*, which extended the reasonable expectation of privacy to people and not just places, occurred prior to *Knotts* and *Jones*, it seems inconsistent that *Knotts* faced a different outcome than *Jones*, despite both cases pertaining to being tracked on a public roadway system. However, while the cases seemed pretty similar, the difference in opinion heavily rested on the fact that *Jones* occurred three decades after *Knotts*, and Jones was tracked for 28 days while Knotts was tracked for 3 days.[14] While the surveillance in *Knotts* was not considered a Fourth Amendment search, the GPS tracking in *Jones* was much more advanced

[11] The court held that by attaching a GPS device to the vehicle that the defendant drove, officers engaged in conduct that might have provided grounds in 1791 for a suit for trespass to chattels, and for this reason, the court concluded that the installation of this GPS device constituted a search. However, while Justice Alito agreed with the ruling, he believed that it was incorrectly arrived at. (*United States v. Jones*, 565 U.S. 400, Scalia, opinion, (2012).

[12] *Katz v. United States*, 389 U.S. 347 (1967)
[13] *United States v. Jones*, 565 U.S., Alito, concurring, § V (2012)
[14] *Id.*, Scalia, opinion, § I; United States v. Knotts, 460 U.S. 276 (1983)

than the sort of surveillance in *Knotts*, and this was a decisive factor in the court finding the tracking in *Jones* to be a search in violation of the Fourth Amendment. Ultimately, the difference of the Court's opinion between the *Knotts* and *Jones* decisions rested in the notion that, as emphasized by Justice Alito in his concurrence, different principles indeed apply when more sophisticated monitoring comes into play.[15]

The difference of decision between *Knotts* and *Jones* is where Justice Roberts found his defense of reasonable expectation in *Carpenter*. Justice Roberts argued that Carpenter *did* have a reasonable expectation of privacy despite the fact that he could most likely reason that, in having a phone, one could assume their information to be tracked and stored by a third party. However, just as the consensus changed from *Knotts* to *Jones* based on applying different principles to different levels of monitoring, Justice Roberts argued that the *Carpenter* court should do the same. He emphasized that it is nearly impossible for one to be a member of society without having some sort of cellular device.[16] A phone faithfully follows its owners everywhere, beyond public realms, even to the extent that 12% admit to using their phone in the shower.[17] Unlike the GPS tracking seen in *Jones* or bugged containers in *Knotts*, the phone has a much greater surveillance scope, and it is nearly a feature of human anatomy.[18] It is evident how this could lead to an array of privacy intrusions if the government is not limited in the scope of search regarding a phone. Specifically pertaining to cell site location information, Roberts was very aware of this dangerous notion and emphasized a phone's ability to provide an "intimate picture of one's life" that is nearly equivalent to an ankle monitor.[19] Justice Roberts argued that the defense was mistaken, as the sort of reasonable expectation of privacy being translated from

[15] *Jones*, 565 U.S., Alito, concurring, § V (2012)
[16] *Carpenter v. United States,* 585 U.S, Roberts, opinion, § III B (2018)
[17] *Id.,* § III A
[18] *Riley v. California*, 573 U.S. Roberts, opinion, § III (2014)
[19] *Carpenter v. United States,* 585 U.S, Roberts, opinion, § III A (2018)

cases like *Smith* and *Miller* was outdated. Justice Roberts stressed that courts must adapt the reasonable expectation to the capabilities of new technologies to ensure that government officials are not exceeding their power when obtaining evidence.[20]

Philosopher Stanley Benn provides insight on why [1] it is improper to observe someone in a space they deem private even if it is visible to the public – giving us an intuitive understanding of the reasoning in *Katz*–, and [2] why changing norms must be considered when outlining what constitutes a reasonable expectation of privacy. Benn provides an example of a private room: it is private in spite of uninvited intruders. If someone is in their room, they expect whatever happens there to remain private, shared only with those they choose to let in. If an uninvited person enters, they are violating that privacy. Gaining access doesn't strip the space of its private nature—it simply means that a person has intruded on it and violated someone's privacy.[21] Further, this type of privacy that makes unauthorized observation inappropriate is, according to Benn, norm dependent.[22] That is, what is considered private varies across cultures and contexts.

Justice Roberts echoes the sentiments of Benn. We see that Justice Roberts asserts that *Katz* was correct in holding that the Fourth Amendment protects people and not places, *even* if these people are visible by others. Robert's believes that people have a reasonable expectation of privacy in uninvited spaces, even if they could be deemed "public," because it disrespects and violates their reasonable expectation of privacy. This view is also prevalent in Robert's notion that the argument of voluntary exposure was not viable if someone has essentially no choice but to expose themselves. Again, if someone wants to be a standing member of society, it is almost a necessity that they own a sort of cellular device. Requiring someone to own a phone and then

[20] *Ibid.*
[21] Stanley I. Benn, "Privacy, Freedom, and Respect for Persons," 2
[22] *Ibid.*

allowing it to be subjected to unwarranted surveillance undermines their autonomy in deciding which aspects of their life remain private and which are made public.[23]

Justice Roberts, like Benn, emphasizes the importance of context—especially when it comes to changing technology. He builds on Justice Alito's concurrence in *Jones*, pointing out that *Katz* assumes privacy expectations remain stable. However, technological advances can disrupt those expectations, creating uncertainty and ultimately shifting public attitudes. While new technology can make life more convenient or secure, it often comes with a cost to privacy - a tradeoff many people may come to accept.[24] However, there must be a period of adjustment before this tradeoff can truly take place. Technology often evolves faster than people's awareness of its impact on privacy, leaving them in a position where they have not fully consented to increased surveillance. Moreover, even if Carpenter had time to recognize that owning a phone could lead to such extensive tracking, it is unreasonable to treat this as a voluntary agreement when, as previously noted, avoiding phone use is not a realistic option in modern society.

Further, Justice Robert's evaluation seems to be centering not so much around a fear of privacy invasion in regards to the "property" of Carpenter, but rather of his autonomy. The alarming sense of an intrusion into the most "intimate" sectors of one's life seems to be rooted in a value for autonomy. This is very similar to philosopher Stanley Benn's interpretation of privacy. As noted, Benn holds that yes, expectations and norms play a role in the privacy owed to individuals, but Benn also posits that even if these norms and expectations were not present, there would still be some sort of privacy owed to individuals. At the root of it all, Benn holds that it is not okay to observe people in uninvited spaces, because it disrespects them.[25] That being

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[23] *Id.,* 6-12

[24] *Jones*, 565 U.S., Alito, concurring, § VI A (2012); Katz v. United States, 389 U.S. 347 (1967)

[25] Stanley I. Benn, "Privacy, Freedom, and Respect for Persons," 3.

said, even *if* Carpenter was aware of the risks of carrying a phone and in a society where it was not necessary to have a phone to function, under this autonomous view, he would *still* be owed privacy. This focus on autonomy as a core part of privacy ties directly into how the Court approached *Carpenter*. While thinkers like Benn offer a broader ethical take, the Court had to ground those concerns in legal precedent. That meant figuring out how to balance rapidly changing technology with the limits of the Fourth Amendment.

Ultimately the Court asserted that precedents on each end of the argument were relevant to the *Carpenter* Case. The sort of CSLI tracking addressed was comparable to the GPS monitoring found in *Jones*. At the same time, the fact that owning a phone implicates an individual perpetually sharing location information with a carrier brings relevance to the third-party principle of *Smith* and *Miller*. However, the Court's decision, authored by Justice Roberts, decided to deny the extension of *Smith* and *Miller* to cover the circumstances of the *Carpenter* case. The Court held that the government "fails to contend with the seismic shifts in digital technology" that made this tracking possible.[26] The third party principle posits that an individual has a reduced expectation of privacy when information is knowingly shared with another party. Yet, the court notes the fact that "diminished privacy interests does not mean that the Fourth Amendment falls out of the picture completely."[27] Additionally, the court points attention to the precedent cases that the government heavily relied on to defend their case: *Miller* and *Smith*.

These cases did not only rely on the act of sharing information with a third party, but they also considered the level of surveillance used to see if the defendant had a legitimate expectation of privacy in regards to their contents. *Smith* pointed out the "limited capabilities" of the pen

[26] *Carpenter v. United States,* 585 U.S, Roberts, opinion, § III B (2018)
[27] *Riley v. California*, 573 U.S., Roberts, opinion, § II B (2014)

registrar to help conclude that there would be no reasonable expectation of privacy.[28] Miller emphasized that checks were non-confidential forms of commercial transactions.[29] Both cases noted the importance of the limitation of the particular information/documents sought in concluding that the government did not complete a Fourth Amendment search. However, the court held that, in *Carpenter*, the government failed to acknowledge the lack of limitation of CSLI. As Roberts put it, the phones that provide CSLI create a very "intimate picture of one's life" that cannot be reasonably reduced to a comparison of taking down numbers by a pen registrar or requesting bank statements. They ruled that the government's acquisition of the data without a warrant constituted an unreasonable search.[30]

In evaluating the dissent, the most considerable argument against the ruling was in the notion that the court was wrongly interpreting the Fourth Amendment. Each dissenting judge places emphasis on "the right of the people to be secure in *their* persons, houses, papers, and effects, not the persons, houses, papers, and effects of *others*." [31] The emphasis is placed on the idea that the Fourth Amendment protects an individual in regard to what is *theirs*, and to argue that there is a protection of something that is not objectively *theirs* is illegitimate. This emphasis places privacy back under the constraints of property. To speak in terms of what is "*theirs*," seems to just speak of what property they own. However, as previously addressed, the ruling of *Katz* broadened the conception of the Fourth Amendment to protect certain expectations of privacy, ruling that "privacy protects people and not [just] places." The ruling in *Carpenter* is in alignment with this "protection of people," and for that reason, I think the majority decision was the correct one, and that the dissenters were mistaken.

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[28] *Smith v. Maryland,* 442 U.S. 742 (1979)
[29] *United States v. Miller*, 425 U.S. 440 (1976)
[30] *Carpenter v. United States,* 585 U.S. ___ (2018)
[31] *Carpenter v. United States,* 585 U.S, Alito, dissent (2018)

The Court ultimately ruled in favor of Carpenter, holding that the government's tracking of his precise movements across an extended period of time via CSLI was a Fourth Amendment search. The decision suggested that rapidly changing technology demands that we rethink what we might consider to be reasonable privacy expectations, at least when members of the public have no real choice but to use technology that produces sensitive data/information. Justice Roberts' reasoning, which connects to valuable precedents like Jones and Katz, makes sense in a wider philosophical context about privacy. That is, privacy is less a contractual arrangement than it is a fundamental matter of individual autonomy.

As philosophers such as Stanley Benn argue, privacy is a necessary condition for human dignity because it provides people with the opportunity to function in the world without permanent scrutiny from the world around them. The government's case in Carpenter was based on the idea that people give up their rights to privacy when they share data with third parties. But this perspective overlooks the coercive element of digital engagement in contemporary life. In a voluntary exchange, people willingly assume risks, but CSLI tracking occurs in the background, tracking an individual's movements in ways they cannot necessarily evade. This reality reminds us that privacy isn't a thing to be relinquished through a transactional waiver but, rather, a description of control over ones autonomy: an interpretation deservedly shielded by the Court's ruling.

By restricting the third-party doctrine, *Carpenter v. United States* confirms that constitutional protections must evolve as our technological capabilities advance. The ruling notes that data-sharing might complicate privacy and boundaries, but does not dispel the basic principle of an abundance of privacy and the expectation that we do not live under constant surveillance. By rejecting the government's broad interpretation of CSLI as just a business

record, the Court recognized that mass surveillance of this kind is an extreme threat to both legal rights, as well as personal autonomy. This is, therefore, an important precedent, reinforcing that privacy is not simply a contingent privilege, but a necessary condition for freedom in the digital age.

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The Rise of the Martyr: Carl Schmitt's Optimal Inhabitant

Kyla J. Beck

Abstract

In this paper, Carl Schmitt's vision of an ideal political community in *The Concept of the Political* will be closely analyzed to dissect his distinguishing factors of success: supreme sovereignty and self-sacrifice. In examining Schmitt's political philosophy regarding individual subordination within the state, his friend-enemy distinction, and his critique of liberalism, this paper will evaluate whether Schmitt's framework strengthens political unity or poses a threat to democratic governance and individual freedoms in contemporary political structures. Initially, this paper will outline the pertinent history of Schmitt's philosophical journey and the events that surrounded to provide a contextual foundation for the assessment of Schmitt's political philosophy in *The Concept of the Political.* Through this assessment, this paper will compile the strengths and weaknesses of Schmitt's vision, as well as simply deduct his philosophy into causational theories that relate to Schmitt's personal political alignments and beliefs. This sample is an important argument to dissect, as Schmitt's ideas are dissimilar to political tactics used today, utilizing greater sovereignty and violence. These methods are useful to understand to prevent mass chaos and anarchy within reality.

Historical Context

Within the realm of politics, many philosophers differ in their ideal leadership of the polis. Authoritarianism, dictatorship, liberalism and democracy all receive equal criticism. Carl Schmitt, an influential political and legal theorist, notes a firm conception of the sovereignty of state power, resulting in state involvement within every aspect of individual lives. This strength of state power relies on the presupposition of the state over its people, utilizing individuals for the betterment of the polis. Schmitt's political community is rooted in the friend-enemy distinction, where the defense of the political against perceived threats is of utmost importance. By asserting the supreme value of the political community, Schmitt argues that individuals derive

purpose through acts of self-sacrifice or violence in its service, while those unwilling to participate are excluded from attaining any higher purpose. This paper will begin by outlining the contextual history of Schmitt's philosophical ideas and their significance in politics. Then, the contextual arguments highlighting the moral dilemmas inherent in this theory will be analyzed, Schmitt's critique of liberalism as a challenge to the supremacy of the state will be examined, and the validity of Schmitt's political structure will be critically analyzed.

Prior to the rise of Nazi Germany, Schmitt published *The Concept of the Political*, a critique of philosophical liberalism and weak state authority. After its completion, Schmitt was heavily involved in the Nazi agenda, further supporting his position on state presupposition over its people. Using his literary and philosophical skills, Schmitt aided the rise of the regime, discussing the importance of the "cleansing" of Germany. Often praising the Nazi's for their scientific work, as well as consistently promoting radical antisemitic agendas, "he criticized shallow and superficial forms of antisemitism, arguing that only a more radical and profound form of antisemitism… was acceptable."[1] Schmitt rose to such an influential position within the regime that he was ousted from his power within academia, receiving complaints from competitors claiming he had championed Nazism to increase his notability and further his career.[2] Schmitt's influence in Nazi Germany is viewed as memorable but questionable, leading this paper to further question the integrity of modern implementation of the political philosophy at hand.

Schmitt aimed to differentiate the weak principles of liberal philosophy from the state strong, authoritative, and ultimately contrasting spectrum of his political theory. Schmitt's position in this work relies heavily on the distinction between friend and enemy in creating political communities. These communities do not simply arise to allow individuals to "live

[1] Scheuerman, Bill. *German Politics & Society*.No. 23, (1991), 74-75.
[2] Vinx, Lars. "Carl Schmitt", *The Stanford Encyclopedia of Philosophy* (Fall 2019 Edition).

well" or for other individual prosperity; rather, these communities form according to the division of friend and enemy and the likelihood of mortal combat. Contrasting the ideas of Plato and Aristotle, Schmitt is unconcerned with the individual livelihood but simply the continuity of the state. This theory is further escalated to critique liberalism and depoliticization, as Schmitt notes that a "world in which the possibility of war is utterly eliminated…would be a world without distinction of friend and enemy and hence a world without politics,"[3] highlighting the cruciality of enemy distinction within the realm of politics and sharply opposing the ideals of liberalism and classical philosophy.

Philosophy Framework and Application

At the core of Schmitt's political theory lies the friend-enemy distinction, which allows individuals to form groups based on shared alignments. According to Schmitt, this distinction is of the most intense classifications and operates independently, uninfluenced by other aspects like morality, economics, or aesthetics. He writes, "The phenomenon of the political can be understood only in the context of the ever-present possibility of the friend-and-enemy grouping, regardless of the aspects which this possibility implies for morality, aesthetics, and economics."[4] The criteria for this distinction hinges on the potential for war and threats to a particular way of life. This concept further refines the definition of the state as an entity that independently decides who its enemies are as its collective strives to defend it against those that threaten it. Schmitt elaborates, "An enemy only exists when…one fighting collectivity of people confronts a similar collectivity,"[5] rendering other characteristics simply moot in terms of potential conflict. Political communities, therefore, are formed through similar individual identities and a collective willingness for self-sacrifice to preserve the community. This unity is

[3] Schmitt, Carl. *The Concept of the Political*. (Univ. of Chicago Press, 2007), 35.
[4] Schmitt, *The Concept of the Political*, 35.
[5] Schmitt, *The Concept of the Political*, 28.

crucial to the sovereignty of the state, as the shared commitment amongst its members establishes a common identity and defines a way of life that the community defends as its higher purpose.

The exclusionary logic of the distinction of friend-and-enemy directly aligns with the foundational principles of the Nazi regime. This is shown through the dehumanization of those labeled as enemies, and were excluded from society as a whole. Schmitt was a ranked officer in the Nazi regime, enabling him to exercise his philosophical beliefs about politics in the modern world. However, his ideology does not directly correlate with mass genocide, but the foundational principles of state authority over human life and the dictation of enemies had potential to serve as an enabling factor in the event.

Moreover, Schmitt notes that a world cannot turn into complete morality by the renunciation of the distinction between friend-and-enemy, as "an individual has no political enemies."[6] The political entity independently determines who or what its enemies are, and individuals who refuse to participate are excluded from the political spectrum. Schmitt draws this connection to the importance of politics in human life, "If a people no longer possess the energy or the will to maintain itself in the sphere of politics, the latter will not thereby vanish from the world. Only a weak people will disappear."[7] For Schmitt, politics is an inevitable aspect within a community or society, so individuals who lack the decisiveness, strength, and the ability to identify friend from enemy risk being overpowered or absorbed by stronger political entities, further exemplifying an ideal individual as self-giving to the state.

Within the sphere of state sovereignty, individuals in Schmitt's political theory are ideally bound with the willingness to kill or die for their community. Within this claim, the state receives ultimate power and authority over the lives of those within the political community,

[6] Schmitt, *The Concept of the Political*, 51.
[7] Schmitt, *The Concept of the Political*, 53.

"the state as the decisive political entity possesses an enormous power: the possibility of waging war and thereby publicly disposing the lives of men,"[8] allotting the supreme value of the state, and ultimately contradicting modern conceptions of human rights. Even so, Schmitt highlights the importance of this characteristic within his theory as those unwilling to partake in that level of sacrifice are deemed as a threat to a community's way of life, "If a part of the population declares that it no longer recognizes enemies, then…it joins their side and aids them,"[9] highlighting the exclusion of individuals from the collective. While excluding members from society due to their hesitation to commit violence, this prominent characteristic of sacrifice and violence creates a central shared action amongst its members, instilling violence as a key preservation method for the community. In this, Schmitt visualizes the political as violent; he glorifies and welcomes conflict amongst community members and excludes individuals who refuse to partake in the violence, "A private person has no political enemies. Such a declaration can at most say that he would like to place himself outside the political community to which he belongs and continue to live as a private individual only."[10]

According to Schmitt, there is no world in which a political community sees no mortal combat, in which he creates his claim that the political is deducted from the friend-and-enemy distinction. This directly contradicts the visualizations of the political from other philosophers, as Aristotle defines the political as a place for individuals to live well and flourish alongside one another. This ideology romanticizes and glorifies violence in a way that it is the highest achievement one can have within a community, which many philosophers reject completely.

Implementation of this type of political philosophy in the modern political sphere would be detrimental to the foundation of individual rights provided to American citizens, protected under the Constitution. The subordination of individual lives for the sake of the sovereign and

[8] Schmitt, *The Concept of the Politica*l, 46.
[9] Schmitt, *The Concept of the Political*, 51.
[10] Schmitt, *The Concept of the Political*, 51.

the glorification of violence at the expense of citizens would not only increase volatility in the political community, but ultimately demolish modern democracy. Schmitt's emphasis on an existential friend-enemy distinction undermines the democratic foundations of modern America. His rejection of liberal institutions and procedural norms would directly conflict with the foundational principles that uphold civil liberty and political stability. If applied in modern America, Schmitt's framework would justify authoritarianism, suppress political dissent, and demolish the checks and balances that safeguard democracy. However, this structure, as violent and harmful as it may be, creates a unified notion amongst its members and potentially a stronger bond among them and their beliefs about the political community that they risk their lives to defend it.

Critique on Liberalism

Schmitt's political theory, centered on the friend and enemy distinction and the subordination of the individual life to the supremacy of the state, stands in stark contrast to liberalism, which acutely rejects this premise. Liberalism, according to Schmitt, is an individualistic approach to depoliticized politics, "The negation of the political, which is inherent in every consistent individualism, leads necessarily to a political practice of distrust toward all conceivable political forces and forms of state and government, but never produces on its own a positive theory of state, government, and politics."[11] By prioritizing individual rights and procedural mechanisms over decisive action, liberalism undermines the unity and strength necessary for political sovereignty. Instead of fostering central strength and stability, Schmitt argues that liberalism provides, "a series of methods for hindering and controlling the states and government's power,"[12] rendering it incapable of addressing existential threats. Schmitt critiques liberalism for its emphasis on avoiding existential conflict, prioritizing compromise, and the

[11] Schmitt, *The Concept of the Political*, 71.
[12] Schmitt, *The Concept of the Political*, 71.

protection of individual freedom, which he argues undermines the decisiveness and unity that is necessary for political sovereignty. He asserts this avoidance of war does not exterminate the presence of conflict and enemies but rather the politicization of other realms, such as ethics and economics. This, for Schmitt, highlights the inevitability of the friend-enemy distinction in political life.

Furthermore, Schmitt's emphasis on conflict within the political determines liberalism to be insufficient in protecting the community by methods of economics due to the inevitability of violence and conflict, "War is condemned but executions, sanctions, punitive expeditions, pacifications, protection of treaties, international police, and measures to assure peace remain."[13] Moreover, Schmitt views such avoidance as a detrimental denial of reality, leaving the community vulnerable to stronger, more politically unified entities, further reducing the individualism that liberalism claims to protect, "…the possessor of economic power would consider every attempt to change its power position by extra-economic means as violence and crime, and will seek to hinder this. That ideal construction of a society based on exchange and mutual contracts… is thereby eliminated."[14] In this, liberalism's depoliticization of politics undermines the very sovereignty that Schmitt views as the ultimate purpose of the political community, ultimately reinforcing his emphasis on the friend-enemy distinction as essential to preserving political unity and strength.

Conclusion

In summary, Carl Schmitt's ideal structure of a political community is based on the decisiveness of the unit to distinguish between friend-and-enemy. This factor is crucial to the separation of entities and the ability of individuals to live their lives for the sake of the polis.

[13] Schmitt, *The Concept of the Political*, 79.
[14] Schmitt, *The Concept of the Political*, 77-78.

According to Schmitt, the supremacy of the state as the ultimate authority of individuals is essential to the preservation and strength of the community. In this framework, Schmitt's vision highlights the relationship between the individual and the community, where the individual is subordinated to the political and finds meaning through self-sacrifice and service to the state. Those unwilling to participate in this service are excluded from achieving a higher purpose within the community, strengthening the unity and decisiveness within the community. In this, Schmitt's ideology contradicts the modern philosophy of the community by ways of structure and state sovereignty, which are evident in his actions within the Nazi Germany regime, which is reflected in his philosophy in *The Concept of the Political*.

Schmitt's emphasis on an existential friend-enemy distinction undermines the democratic foundations of modern America. His rejection of liberal institutions and procedural norms would directly conflict with the foundational principles that uphold civil liberty and political stability. If applied in modern America, Schmitt's framework would justify authoritarianism, suppress political dissent, and demolish the checks and balances that safeguard democracy. Ultimately, Schmitt's theory emphasizes that the individual sacrifices and decisiveness are essential to maintaining the sovereignty of the political community, highlighting the foundational role of these principles in his political framework, but demonstrating its ineffectiveness within modern politics.

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Gender with Respect to Race

Grace Lu

Abstract

Gender is a highly polarizing topic, from its practical applications in debates over restrooms and sports to the more theoretical questions about what purpose it serves and how it should be defined. Race, though also a hotly debated issue, is one that has more firmly established societal guidelines – its arduous and often painful history has allowed for us to gain more of an understanding on how it ought to be treated. In this paper, I will be looking at the issue of gender as it compares to race, and the conclusions we can draw from this comparison. I will first make the argument that there is no morally relevant difference between gender and race – I will examine their similarities, then their differences. Having established this equivalency between the two, I will then lay out the implications for gender given our view on race. I will refer to Anca Gheaus' criteria on gender to see if these same expectations work in the context of race.

I: Morally Relevant Differences

In this paper, I will be arguing that society ought to treat gender and race in the same way as there exists no morally relevant difference between the two. This argument is based on the definitions of these two categories: gender being a "classification based on the social construction (and maintenance) of cultural distinctions between males and females"[1] while race is a "construct of human variability based on perceived differences in biology, physical appearance, and behavior."[2] Given these concepts of gender and race, my argument for their equivalency is as follows:

1) If there is no morally relevant difference between A and B, and A is treated a certain way,

[1] That is to say that gender is based on the binary of biological sex, not that gender itself is binary. It is also worth noting that this biological binary is less straightforward in cases of disorders of sex development (DSDs).
[2] Institute of Medicine (US) Committee on Assessing Interactions Among Social, Behavioral, and Genetic Factors in Health, "Genes, Behavior, and the Social Environment: Moving Beyond the Nature/Nurture Debate," (2006), doi:10.17226/11693.

B ought to be treated in the same way.

2) There is no morally relevant difference between race and gender.

3) Therefore if race is treated a certain way, gender ought to be treated in the same way.

I will be focusing on the second premise which states that there is no morally relevant difference between race and gender.

My argument hinges on this concept of a *morally relevant difference*. This is defined as "a difference between [two things] that can explain why they differ morally" and "makes a difference to the morality of the situation."[3] By this definition, not every difference between two things is one that is morally relevant. In these cases, following from the first premise, the differences do not justify a difference in treatment between the two things.

II: Similarities in Gender and Race

In this section, I will examine several commonalities that gender and race share. These commonalities are threefold: first, how they are determined; second, their roles in perpetuating oppression; and third, their sharing of the commonality and normativity problems. To begin, I will address how these distinctions are determined. Both race and gender are socially constructed categories. That is, there is no objective reality about them – instead, they are based on social norms that draw on a number of arbitrary factors. For race, this typically includes "physical appearance, social factors and cultural backgrounds."[4] Gender is similarly defined by "socially

constructed roles, behaviours, expressions and identities."[5] Neither race nor gender has a necessarily objective, biological basis – therefore they are both social constructions.

[3] Daniel Z. Korman, *Learning From Arguments: An Introduction to Philosophy* (PhilPapers Foundation, 2022), 128.
[4] "Race," National Human Genome Research Institute, last modified February 28, 2025, https://www.genome.gov/genetics-glossary/Race.
[5] "What is Gender? What is Sex?," Canadian Institutes of Health Research, May 8, 2023, https://cihr-irsc.gc.ca/e/48642.html.

This follows from the fact that, as mentioned above, the factors upon which these social constructions are based are arbitrary – specifically the phenotypic traits. Race is based in part on skin color, and gender on numerous physical features associated with femininity or masculinity – yet, again, these traits are random. You could just as easily imagine a division based on whether one's earlobes are attached or detached, or if you have a widow's peak. Yet we still place so much weight on gender and race, both of which are determined by traits just as arbitrary as these. Another similarity between race and gender is how they serve as ideological systems of oppression. Sally Haslanger depicts this similarity in "Gender and Race: (What) Are They? (What) Do We Want Them To Be?" aptly:

> S is a woman iff$_{df}$ S is systematically subordinated along some dimension (economic, legal, political, social, etc.) and S is "marked" as a target for this treatment by observed or imagined bodily features presumed to be evidence of a female's biological role in reproduction.[6]

and

> A group is racialized iff$_{df}$ its members are socially positioned as subordinate or privileged along some dimension (economic, political, legal, social, etc.), and the group is "marked" as a target for this treatment by observed or imagined bodily features presumed to be evidence of ancestral links to a certain geographical region.[7]

The concepts of gender and race here are directly tied to the amount of privilege received or discrimination faced. In this way, both act as "hierarchical human-grouping systems" that oppress certain minorities based on where they fall within this hierarchy.[8]

Finally, both gender and race face both the *commonality problem* and the *normativity problem*. Haslanger's commonality problem claims that there is not a single property that all women share.[9] I believe race faces this issue as well. Haslanger asserts that "whether a group is

[6] Sally Haslanger, "Gender and Race: (What) Are They? (What) Do We Want Them to Be?," *Noûs*, vol. 34, no. 1 (2000): 39, doi:10.1111/0029-4624.00201.
[7] Ibid., 44.
[8] "Race."
[9] Haslanger, "Gender and Race," 37.

racialized, and so how and whether an individual is raced, is not an absolute fact, but will depend on context."[10] As such, different racial classification systems will ultimately arrive at different conclusions, preventing there from existing a system that is consistent for all members of a racial group. This is due to the fact that, as I have previously discussed, both gender and race are not objective determinations. Since a myriad of factors are used in these distinctions, it makes it impossible for those who share a gender or race to necessarily have something in common outside of belonging to said gender or race.

Haslanger's normativity problem states that any attempt to define a woman "will marginalize certain females, privilege others, and reinforce current gender norms."[11] That is, each definition is problematic in its own way. Similarly, any attempts to define race seem to face this issue – each plausibly draws on some misguided or problematic stereotype. For example, defining race as "the social meaning of the geographically marked body"[12] relies on the attribution of physical characteristics to a group such that it determines their social position. This would inevitably exclude individuals that fall outside of these normative characteristics and serve as a racial norm that dictates what an individual ought to be like in order to be of a certain racial group. Again, this issue arises from the subjectivity these categories are based on, resulting in this lack of a non-problematic definition.

III: Differences in Gender and Race

I will now address multiple differences between gender and race. As my argument relies on the premise that there is no morally relevant difference between the two, I will strive to show that these differences either do not exist or are not morally relevant. Specifically, there exists no morally relevant difference that justifies a distinction in how society perceives, and

[10] Ibid., 44.
[11] Ibid., 37.
[12] Ibid., 44.

thereby treats, gender and race.

The first difference I will cover is the fact that race is necessarily intergenerational, whereas gender is not. Race is intergenerational in the sense that one's genotype is inherited from one's parents, and this genotype is what gives way to phenotypic characteristics. Phenotypes often attributed to race (e.g. skin color) are therefore passed on from generation to generation, leading to the line that race is intergenerational. Still, if we allow this premise, I hold that this is not a morally relevant difference. The intergenerationality of race may prevent intrafamilial discrimination on the grounds of race, but has no effect on the greater societal perception and treatment. That is, the fact that race may be inherited does not change how others treat you based on your race. Therefore, the fact that race can be considered an inherited characteristic is not something that makes it different from gender in a moral sense.

Another potential objection might be that race has no biological basis, but that gender can. Sex does have an inherent biological definition in most cases, so one might suggest that basing gender on sex could give it an objective biological criteria. Yet this misses the point. Gender refers to something that implies one's role in society – it can describe certain roles that people are expected to play or standards that they are expected to conform to. These expectations are not necessarily dependent upon factors derived from biological sex, such as chromosomes

and anatomy. For example, there is nothing inherent about having two X chromosomes that associates one with the color pink, or with being a homemaker. This is instead something ascribed to gender by societal expectations. Biology is therefore not a difference between gender and race as gender can not be determined merely by sex.

The next difference I will look at is that one can change their gender, but cannot change

their race. This observation is true,[13] and accurate in that this does result in a change in how society perceives someone who changes their gender. However, this perception is not different in a morally relevant sense. That is, while one is unable to change their race to avoid racial discrimination,[14] changing their gender does not allow them to escape gendered discrimination either. To make this point, let us consider someone who changes their gender. In this case, their gender no longer matches their biological sex. They are therefore no longer following the socially accepted norms set by society, and are still subject to social ostracism due to their gender. So changing one's gender does change the way they are perceived physically, but does not allow one to escape discrimination, meaning race and gender remain oppressive categories that one cannot elude.

Some may believe this difference in gender and race does not hold if changing one's race is possible. As I will not be arguing for or against the legitimacy of transracialism in this paper, let us consider for argument's sake that this is possible. An objection here might propose that adopting a new racial identity entails an inherent historical and cultural context that gender lacks. As such, changing one's gender would merely allow them to occupy a different social position independent of any of these connotations. Yet I believe that changing one's gender subjects one

to this same kind of historical context – in fact it is precisely this past history that has fostered the oppression necessary to create the different social positions. Additionally, gender does entail cultural values as gender identities are inherently defined by the cultural norms that we assign to them.

IV: From Race to Gender

[13] The statement is true if we assume the general view that transracialism is not possible.
[14] One might object that one can "pass" as another race, allowing them to escape racial discrimination. Yet this is also possible with gender, where one can pass as another gender to avoid gender discrimination. As such, there is no morally relevant difference here.

I will now expand on the implications of the conclusion that there exists no morally relevant difference between gender and race. To recall the argument:

1) If there is no morally relevant difference between A and B, and A is treated a certain way, B ought to be treated in the same way

2) There is no morally relevant difference between race and gender

3) Therefore if race is treated a certain way, gender ought to be treated in the same way

Having affirmed the second premise, I conclude that issues of gender ought to look to race in how it is treated. As these implications are wide-reaching, I will use Anca Gheaus' three main criteria[15] for an account on gender identity[16] to see if applying racial standards to gender is plausible. In order to do this, I will test whether or not applying these criteria to race produces a result that aligns with current societal views on race.

Gheaus' first criterion is that gender must "vindicate the trans (as well as non-trans) people's identification of their own gender identities."[17] The question, then, is if race is able to achieve this absolving of suspicion or doubt in one's racial identity. I posit that yes, this is something that race is able to do. My claim hinges on the fact that race is something that is self-identified. This is evident from the interpretation used in the census, where race is defined as "self-identification in a social group."[18] This ability to self-identify with respect to race means race *must* vindicate one's identity as it is chosen by each person themselves. So in the same way, gender should be seen as something that is 1) self-identified, and 2) affirms one's gender identity.

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[15] Gheaus gives five criteria in outlining an account of gender identity, though I reference only the three that are most relevant when applied to race.

[16] Gheaus herself is skeptical of gender identity as she holds that gender norms are always problematic. Gheaus does not believe that any account of gender identity meets her criteria, and that the concept of gender identity therefore ought to be eliminated.

[17] Anca Gheaus, "Feminism without 'Gender Identity,'" *Politics, Philosophy & Economics*, vol. 22, no. 1 (2022), doi:10.1177/1470594x221130782.

[18] "All About Race and Ethnicity in the Census," Missouri Census Data Center, https://mcdc.missouri.edu/help/race-ethnicity.html.

This self-identification of race may seem strange in some cases – for example, if a white person were to say they were Black. I think the distinction here depends on why we call this person white: is it because we perceive them to be white or because they identify as white? In the former case, I would maintain that the person is actually Black. Society's perception does not define one's race as this is something that is ultimately determined[19] by oneself. Yet in the case where the person themself identifies as white, it would be a false claim. If one truly identifies as white, saying that they are Black is effectively a lie. Race is something that is self-identified but also something that is internalized. Therefore claiming to be a race that you do not actually believe you are is a misrepresentation of oneself.

Gheaus' next claim is that "denying a person's gender identity, or misgendering, is a grave harm and that we have a right to be treated, and perhaps also seen, as belonging to the gender with which we identify."[20] This is an important normative claim that seeks to affirm those within the trans community. When looking at this criterion from the perspective of race, I think the most comparable cases are those in which one's phenotype aligns with a specific race yet that person self-identifies as another race. One such case is that of Clarice Shreck: although the "last

known full-blooded Black person in her family was her great-great-grandfather" and despite the fact that her skin tone is often associated with whites, Shreck was raised to believe she was Black.[21] Shreck's self-identity is so intertwined with her racial identity that others, including her daughter, who try to deny this part of her to be true in a sense reject her identity. It therefore seems that one does have a right to have their racial identity respected as not doing so

[19] This determination is not necessarily as simple as declaring that you are a certain race. As I discuss later on, this self-identification is only legitimate when it comes from a genuine belief.
[20] Gheaus, "Feminism without 'Gender Identity.'"
[21] Khushbu Shah, "They Look White but Say They're Black: A Tiny Town in Ohio Wrestles with Race," The Guardian, July 25, 2019,
https://www.theguardian.com/us-news/2019/jul/25/race-east-jackson-ohio-appalachia-white-blac

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can cause that person unjustified harm. If this is true for race, as I have shown that there is no morally relevant difference between race and gender, the criteria must also apply to gender.

Shreck's case is also important as it demonstrates the legitimacy of racial self-identification. In Shreck's case, her racial identity stems from a sincere belief informed by her upbringing and past experiences. This is different from someone who declares that they are of a certain race on a whim without genuinely believing this to be true – this would be an unsubstantiated proclamation that does not accurately reflect one's identity. The self-identification of race is therefore legitimate only when it comes from a sincere belief in one's identity.

Gheaus' final criterion that I will examine states that it should sometimes be permissible to make one's gender public. This, she suggests, might appear in the form of gender being a necessary piece of information required by an institution.[22] When we turn to race for insight on this matter, there is a pretty definitive answer. Race is a common piece of information required in demographic-based questions. For example, as previously mentioned, race is an important category that the census tracks to gain information about the population. So as making one's race public seems to be an acceptable societal standard, we, too, should allow that making one's gender public is a permissible act.

V: Conclusion

To conclude, I have defended the premise that there exist no morally relevant differences between how society ought to perceive gender and race. Given this, our societal standards concerning the treatment of race ought to apply to gender as well. Applying Gheaus' criteria on an account of gender identity to expectations concerning racial identity produced results consistent with our intuitions on race.

[22] Gheaus, "Feminism without 'Gender Identity.'"

Yet as this criteria is not an exhaustive list of how gender ought to be treated, we ought to use race as a reference point as we continue to shape our intuitions regarding the issue of gender. As we look towards the future and all the new dimensions of gender that will follow, it is important that we have a reliable basis for both our moral intuitions as well as our societal response. Given this, in cases where gender impacts the morality of the situation, we should turn to societal expectations regarding race to resolve these disputes.

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A Person's Character is his Fate

Nikolai van Niekerk

Abstract

In this essay I analyze how Aristotle's understanding of virtue is attained, how actions and dispositions should be judged and whether dispositions can change. The main example I examine is a person who seeks virtue but mistakes it with vice and acts viciously. The main concerns are whether this individual should be held responsible for his or her character state and whether this individual can become virtuous. Questions that are examined include whether the person is the origin of his actions, whether the intentions of his actions matter in relation to virtue and whether this type of person can become fully virtuous. My goal of this essay is to explain Aristotle's argument concerning judgement and dispositional states and draw out its implications. Specifically, from this exegesis I argue that judgements of dispositional responsibility can never be fully accurate but are necessary for dispositional change.

In Nicomachean Ethics, Aristotle is concerned with what virtue is and what being virtuous entails. For this essay's purposes, Aristotle's Book I explanation of virtue as praiseworthy traits or specifically as a dispositional state of being that has to do with reason, choice, relative context, and appropriate responses shall be accepted and not examined.[1] In this paper, I will analyze Book II and III, where Aristotle details virtuous activity. I chose these sections in the hope that through the exegesis of Aristotle's writing, implications on the relationship between dispositional states, responsibility, and agency may be uncovered. Using this exegesis, I will then posit my own views on dispositional responsibility and dispositional change, arguing that judgment on dispositions can never be fully accurate but is required for dispositional change. My basis for this claim has to do with the difficulty with dispositional change. From the upcoming exegesis, it follows that dispositional change requires one to be the

[1] Aristotle, C. J. Rowe, and Sarah Broadie, "Book II," in *Nicomachean Ethics*, First (Oxford: Oxford University Press, 2002), 111–22, 117.

origin of such a change while at the same time having a skewed reference point towards virtue. From this, I argue that such a change can only be made through reflection done by allocating responsibility to one's dispositions.

I will first describe how dispositional states are gained, citing Book II and a related section found in Book VI, and then I will explain how Aristotle thinks judgment should be allocated, citing Book III. Next, I will draw out the implications of both sections on the question of how to allocate responsibility regarding dispositional states. The prime example I examine is whether a person who mistakes virtue is responsible for his dispositional state. After this exegesis, I will then give what I think is an account for dispositional judgment and change.

The following section concerns Aristotle's views on dispositional states. Aristotle divides virtue into two categories: character and intellectual virtues. He explains that "intellectual [excellence] comes into existence and increases as a result of teaching… excellence of character results from habituation."[2] He further stipulates that character virtues are for "dealings with human beings."[3] From these assertions, intellectual virtues are taught, and character virtues rely on human interaction, but still, the way character virtues are specifically gained is unclear. Aristotle explains that "the way we learn the things we should do… is by doing them. For example, people become builders by building… so, too… we become just by doing just things."[4] In other words, Aristotle believes that in order to become virtuous, we need to do virtuous deeds; this explanation is somewhat unfulfilling a tension arises. If one is virtuous, then one must already know how to act virtuously; it seems that one cannot become virtuous. Aristotle addresses this concern by detailing that a person is virtuous if he "does something [virtuous] and

[2] Aristotle, Ethics, 111.
[3] Ibid.
[4] Ibid.

does it in a way a [virtuous] person does it… in accordance with one's expert knowledge of [virtue]."[5] In other words, one does virtuous things and becomes virtuous by trying to imitate virtuous agents to the best of one's knowledge. Aristotle believes that this imitation will ingrain a virtuous disposition into such a person. From this imitation, the relationship between disposition and actions becomes clear. Dispositions reflect (and are an amalgamation of) one's actions, as Aristotle says, "actions are… responsible for our… dispositions." [6] To reiterate, intellectual virtues are gained through teaching, whereas character virtues are gained through habitual imitation to the best of one's ability.

The specific relationship between intellectual and character virtues is also important regarding virtue acquisition. As established, Aristotle believes that character virtues are gained through experience. This type of experience is a wisdom to know what specific contextual actions are needed for end goals or the cultivation of the virtuous character.[7] End goals are determined by one's values, but the way one acts is determined by a type of wisdom.[8] Aristotle calls this *phronesis*. I understand phronesis as an intellectual virtue necessary for the acquisition of character virtues. As Aristotle explains, phronesis is gained over time and is crucial in acting virtuously. [9]

Phronesis is the contextual understanding or reference point of what really matters in relation to virtue.[10] This experiential knowledge is relative to the contextual and situational features of an event. If phronesis did not exist, then individuals could have virtuous intentions

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[5] Aristotle, Ethics, 114.
[6] Aristotle, Ethics, 112.
[7] Aristotle, C. J. Rowe, and Sarah Broadie, "Book VI," in *Nicomachean Ethics*, First (Oxford: Oxford University Press, 2002), 176-89, 187-8.
[8] Aristotle, Ethics, 188.
[9] Ibid.
[10] Gideon Rosen and Rosalind Hursthouse, "Virtue Ethics," essay, in *The Norton Introduction to Philosophy*, Second (W. W. Norton and Company, 2018), 828.

but be unable to act on them. For example, if a person gives his word to meet a friend for coffee but on his way, he sees a person having a heart attack, the phronesis-lacking person might just continue his way to his prior commitment. The proper—or phronesis-including action—is to understand that in this context, the prior engagement does not matter with reference to one's duty to help an injured party. A phronesis-lacking person might think it vicious to go back on one's commitment but lacks the experiential knowledge to understand that in this context it is appropriate. Thus, the phronesis-lacking person would not know the actions to take to achieve virtuous end goals. For this reason, Aristotle sees virtue as an active, not a passive endeavor.[11] One must be present in the moment and actively utilize one's contextual analysis to understand and rationalize what the appropriate action is. This understanding cannot be internalized if one does not care about virtue as then one cannot reason with reference correctly on how to act in given circumstances.[12] Thus, phronesis is a type of practical reasoning entirely with reference to what the virtuous agent would do.[13]

Phronesis plays an active role in singular actions, but, importantly, I argue that it connects singular actions to dispositional states of character through its emotional component. I understand a dispositional state as the manner in which one is inclined to react and respond to events in the world. Aristotle writes that "Every affection and every action is accompanied by pleasure and pain," and so virtuous people are pleased or pained by good or bad actions, respectively.[14] Aristotle maintains that the correct emotional responses to good or bad actions is part of virtue.[15] Therefore, I understand emotional responses as a key part of the reference point of phronesis. Subsequently, I argue that emotional responses together with the imitation of a

[11] Aristotle, Ethics, 112.
[12] Hursthouse, Virtue, 828.
[13] Hursthouse, Virtue, 829.
[14] Aristotle, Ethics, 113.
[15] Ibid.

virtuous agent form the reference point of phronesis. Since one reference point informs action and disposition is the amalgamation of actions, this demonstrates how phronesis connects actions to dispositions.

Since emotional response is key in connecting actions to dispositions, the question then arises: What if one does not have the correct emotional response or inclination to a situation? From the above explanation of emotion and the reference point of phronesis, if one seeks to imitate a virtuous agent and does not have the correct emotional response, then a person's reference point is misaligned. This misalignment will then influence one's subsequent actions. This emotional understanding, partly, explains why Aristotle does not think a person can be argued into changing their values. If a person's emotional reference point is not aligned with virtue, then changing the person's state of character is immensely difficult; to illustrate this point, he uses the example of a dyed cloth.[16] Aristotle discusses how once a dye is stained into a cloth, it is difficult to remove or totally recover its original color. Metaphorically, this illustration demonstrates how dispositional states, once ingrained into a person, are difficult to change or remove. Moreover, it demonstrates how values from one's disposition influence all subsequent actions. One's disposition affects one's emotional responses and thus affects one's reference point toward virtue. From Aristotle's dye metaphor, I argue that there is a positive feedback loop between dispositional states and actions. Since one's reference point towards virtues is affected by one's disposition, all subsequent actions are affected; and since one's disposition is the amalgamation of actions, there is a positive loop where actions and dispositions continually inform and influence each other.

[16] Aristotle, Ethics, 114.

This connection between dispositional states and action is crucial for the implications of a vicious person seeking to become virtuous. Since a vicious person would have already formed the wrong emotional reactions and the wrong reference point towards virtue, whether knowingly or not, this person's actions are stained by vice. Thus, actions which proceed from the vicious disposition are aimed towards the wrong end goal—mistaken virtue. Given the above discussion on emotions and dispositional states, a number of questions arise from this scenario. For instance, can a person with a vicious disposition change, and how should this type of person be judged?

The following section concerns Aristotle's Book III views on judgment and responsibility. Aristotle is clear: judgment on individuals depends on whether the individual was the origin of the action.[17] If an action's origin is external to the individual, then the individual's action is forced; that individual is therefore not responsible.[18] Equally, an individual's action is considered voluntary if the individual has full knowledge of the action, chooses said action, and is thus responsible.[19] This clarity is lost with mixed cases such as counter-voluntary and *mens rea*. I understand *mens rea* as acting with full intent to do harm, setting up the necessary conditions to meet this goal, but before the action is carried out, the subject withholds such action. Counter-voluntary, however, is acting entirely without the intent to do harm, but one's actions are unknowingly harmful.[20] I see *mens rea* and counter-voluntary as inversely related. Moreover, counter-voluntary actions are actions where the effects are wrong, but in the context of a situation, an individual is not responsible.[21] For the individual to not be responsible,

[17] Aristotle, C. J. Rowe, and Sarah Broadie, "Book III," in *Nicomachean Ethics*, First (Oxford: Oxford University Press, 2002), 122-41, 124.
[18] Aristotle, Ethics, 124.
[19] Ibid.
[20] Ibid.
[21] Ibid.

Aristotle argues the individual must display genuine regret, as this emotional response indicates the individual has correct values.[22] An example of this would be acting in ignorance of a different cultural value of respect when intending to be respectful. If one is a guest at a dinner party where one's own cultural upbringing is different from that of one's host, one might intend to be respectful while accidentally being rude. For example, in some Western cultures, it is a sign of delight when one's plate is empty, a signal that one has enjoyed one's food, but in some Eastern cultures, such an action is an insult to the host. In this scenario, the guest might intend to make a compliment by finishing one's food, but in actuality, insult one's host and later regret such actions. The above scenario explains cases where one's actions are voluntary and wrong, but the individual may be pardoned due to the individual's correct emotional response.

There are cases where ignorance is not sufficient to be counter-voluntary, and so for an action to be judged, one must look towards the steps one took to take such an action. If one is the origin of one's ignorance, then one is responsible. One such example would be one's decision to become intoxicated. One who is willingly intoxicated and does vicious actions cannot be counted as a counter-voluntary as he was the origin of such ignorance.

Voluntary actions are crucial in judging character. Aristotle argues that decisions are indicators of character because decisions are voluntary actions with deliberation (the steps one takes to achieve the ends of actions).[23] Decisions are connected to phronesis as both are concerned with the way one achieves one's wishes. Therefore, judgements about a person's virtue must be made with reference to actions that are voluntary and deliberate, according to one being the origin of one's actions, with reference to the intention of such action. This implication is what connects judgements of responsibility concerning actions to dispositional states. Since

[22] Ibid.
[23] Aristotle, Ethics, 127.

the end goal of actions is partly determined by one's disposition, judgements about a person's responsibility for their actions are related to judgements of a person's disposition.

One criticism of Aristotle's assessment that virtue is gained by imitation is that it is prone to inaccurate knowledge. Through Aristotle's method of attaining virtue, one can imitate vice, believing it to be virtue, and thus unknowingly be vicious, as already explained. This issue is critical in understanding how to judge individuals. If one acts under the belief, one is virtuous when in fact one is not, not only does it question the possibility of becoming virtuous, but it also questions how to accurately judge individuals' actions. Judgment's clarity on voluntary and deliberate actions is lost when the action itself is wrong, but the intention of the action was to do good. This grey area of intentional virtue can seem pessimistic, as this way of judgement argues that one who seeks virtue mistakenly is responsible without genuinely meaning so.

I argue that Aristotle addresses this concern through the metaphor of sickness. He explains that a vicious person "had the option not to be ill, but once he has let himself go, he no longer has it, any more than it is possible for him to retrieve a stone after it has left his hand; but all the same it depended on him that it was thrown, for the origin of it was in him."[24] Here, I interpret Aristotle to mean that vice blurs one's reference of what a virtuous person is, to the degree where one cannot become fully virtuous even if one tries to become virtuous later. This follows as one's disposition has been stained, one's phronesis is misaligned. Subsequent actions, even if they are correctly aimed towards virtue, fall short as they came from an origin point of partial viciousness. Aristotle's sickness metaphor corroborates the former point about the positive loop of actions and dispositions.

[24] Aristotle, Ethics, 131.

One way to illustrate the sickness metaphor is through Enkratic and Akratic people. Enkratic people have the wrong reference point in terms of virtue, but know it and have the strength of will not to do vicious actions. One example is of a person who has inappropriate desires or inclinations, such as necrophilia, but has the willpower to refrain from acting on such desires. This person's disposition is wrong with reference to virtue, but his actions are not. Still, this person is not virtuous as he has the wrong initial responses to do vice. Inversely, Akratic people have the initial virtuous responses and thus the right reference point, but the weakness of will to commit these actions. For example, a person might be disposed to have a protective character, and so he enrolls in a police force or a fireman occupation. When duty calls and this person must act on such inclinations towards protection and service, this person fails and becomes cowardly or fearful. This person's actions are wrong, but his initial disposition was not. A vicious person is a person with vicious dispositions and the willpower to do vicious actions. For this person, he is inclined towards vice, actively enjoys doing vice, and his willpower is aligned towards vice. This means that this person has the strength of will to act viciously and he is not annulled by any sense of guilt as his reference point for virtue is entirely aligned towards vice. Concerning all the above cases, Aristotle argues that since the person is the origin of his sickness, whether knowingly or not, he is still responsible.

The following section concerns the implications of the above sections on dispositional acquisition and allocations of judgment. Now that we have an understanding of Enkratic and Akratic behavior, where one's reference point is misaligned and there is no moldable disposition, I argue that it is then greatly difficult to change one's dispositional state. Aristotle states, as explained through the dye metaphor, character states can be changed through extreme difficulty, but there will always be a difference between an unstained cloth (a virtuous person) and a

previously stained cloth now cleaned (a once vicious person now closer to virtue but not quite virtuous). Moreover, the possibility of this change is questionable. One's reference point is skewed, and the origin for one realizing one needs to change must be internal for said person to be responsible for subsequent actions. Such internal change must be from some incredibly hard and profound level of self-reflection; the likelihood of this occurring, Aristotle argues, is extremely low.[25] Thus, once one has fallen into vice, it is incredibly hard to become fully virtuous again.[26] The next question is how to judge this type of individual. This individual did not intend to become vicious, but his actions are. Since his actions are vicious and dispositions are the amalgamation of actions, his disposition will thus have been skewed. I argue from Aristotle's sickness or stone-throwing metaphor, judging this person as vicious and responsible for his vicious actions is correct. This person is responsible for the origin of his decision to act was solely within him, regardless of intentionality. However, one might imagine a person who intends to do good, does vicious actions instead, but realizes it and thereby demonstrates genuine emotional regret. Such an example is counter-voluntary.

From his explanation of dispositional acquirement, Aristotle argues that there is equal opportunity to gain virtuous and vicious dispositions, even with the chance of educational variances. Aristotle writes, "If… all this is true, how will excellence be any more voluntary than badness?"[27] Aristotle recognizes this uncomfortable reality by noting "actions and dispositions are not voluntary in the same sort of way; for we are in control of our actions from beginning to end… whereas we only control the beginning of our dispositions."[28] The reality of virtue acquisition is that it relies on the right start, as Aristotle explains with his stone-throwing

[25] Aristotle, Ethics, 114.
[26] This conclusion relies on the subject not being from a young moldable disposition.
[27] Aristotle, Ethics, 131.
[28] Aristotle, Ethics, 132.

metaphor. From the dye metaphor, dispositions inform the reference point or alignment of phronesis and thus all further actions. Education is then crucial in determining virtue. From his sickness metaphor, it follows that as one progresses in life, one loses control of the origin of one's actions as one's disposition is already informed. Education informs disposition before one has the experience to correctly originate one's actions. Moreover, education informs dispositions before one's disposition is so far developed that one's actions are still coming from a moldable disposition.

With virtue and vice each being equally voluntary, it begs the question of whether each is equally likely to arise in a person seeking virtue. Aristotle stresses education's importance, but still, education relies on birth and location and thus has an element of chance; this is an accepted aspect of Aristotle's virtue ethics. The implication of education's importance and disposition's influence over decision making is that there is much less agency after one's disposition is formed. The possibility of one changing one's disposition depends on whether one is somehow able to recognize one's wrongdoing while having the wrong reference point towards virtue. This process necessitates great difficulty and a level of reflection on one's false reference point.

The question of the paper is how responsibility relates to dispositional states. Much has been said on the responsibility of actions, but, as previously stated, Aristotle recognizes that we are only in control of our dispositional states at the beginning. Judging actions must be based on whether they are voluntary, thus reflecting one's disposition, but dispositions are only voluntary at the beginning. It seems that with time, judging individuals solely based on their actions does not entirely allocate responsibility as their later un-moldable dispositions inform their actions.

I will now posit my own views on dispositional judgment and change. It is unsettling that Aristotle's method of judgement leaves it possible for one to intend to do good, think one is

doing good, do wrong, and be responsible. However, I think it follows from Aristotle's exegesis of dispositional states that a person is indeed responsible for disposition, just not in the same way as actions, as one loses agency to change as time progresses. Concerning actions, an individual with a current disposition is responsible depending on voluntary and deliberate contextual facts. Concerning dispositional states, however, an individual with a current disposition is not in control from beginning to end as his disposition is constantly being informed by former dispositions and actions. Thus, a person is responsible but not in the same sort of way as he is responsible for his actions. An individual is entirely responsible for the virtue or vice of his actions, but his current disposition does not explain or entirely allocate total responsibility for the virtue or vice of his current dispositions.

From the above explanation of dispositional responsibility, we are responsible for our current disposition, but I argue that we do not have full epistemic grounds for understanding how to allocate this responsibility in practice. Dispositional responsibility is allocated according to voluntary and deliberate contextual facts, however, on the scale of human life as opposed to a single action. My ground for this claim is that, just as an action's responsibility depends on the contextual features determining the voluntariness of the action, a disposition's responsibility depends on the contextual features of one's life entirely, understanding how each disposition informs each other. The question of allocating responsibility then depends on whether one can grasp the totality of all of one's dispositions and how they further influence one's subsequent dispositions.

Here is where I think Aristotle's point about the difficulty of changing one's disposition relates to responsibility. Just as for one to change one's reference point from vice to virtue, one must be the origin of one's actions while simultaneously having the wrong reference point

skewing one's phronesis and thus skewing subsequent actions. So too does judging dispositional states require one to analyze whether one was the origin of all of one's actions, while at the same time having all of one's dispositions constantly being affected and influencing all subsequent actions. Such a relationship, I argue, undermines the plausibility of such a judgement. To illustrate this point and analogous to Aristotle's stone-throwing metaphor, if a stone is thrown into a pool of water, it makes ripples; this represents judgment of actions. We judge based on whether the stone was thrown voluntarily by observing the ripples of such an action. During one's life, multiple stones are thrown, causing multiple ripples, representing one's dispositions. The multiple ripples interact with other ripples, causing more ripples, each of which crosses over each other. Such interaction makes it unclear which stone was responsible for which ripple. From this ripple metaphor, the actions over the course of one's life that form one's disposition make it hard to judge and allocate correct responsibility for which dispositional state was responsible for what action. By this metaphor, we argue that one cannot judge the totality of one's life as we lack the epistemic resources for such a judgment. Thus, it is impossible to allocate full correct responsibility to dispositional states.

I also believe that the ripple metaphor demonstrates the difficulty in dispositional change. As explained above, dispositional change requires one to be the origin of such a change, yet at the same time, one's reference point is skewed. Thus, for one to change one's disposition, one would have to sift through the ripples of the stones across the pools, without one's reference point as a guide. This is part of the difficulty: one must try not to use one's already formed idea of a virtuous agent to understand an action's impact and what disposition was responsible for it. One must reconstruct a new idea of a virtuous agent. This is why Aristotle says that to be virtuous, we must imitate what we think a virtuous person would do. I think it must be added that

we must imitate what a virtuous person would do, assuming our previous idea was not sufficient. If we use our own skewed reference point, we can allocate wrong responsibility to the wrong disposition and thus fail to understand what actions are required in a given context and how to judge. This process is therefore one of reconstruction or recreation. Such a process, I think, could be called *palingenesis*, from the Greek words for "again" and "birth".

In trying to change our disposition, we must imitate what we think our reconstructed idea of what a virtuous person would do, but in reconstructing our idea of a virtuous person, we are making a judgment of dispositional responsibility of our idea of a virtuous person. We assume a virtuous person is responsible for their entire disposition. I think for this process to occur, it is required that one must reflect on one's life. For this reflection to be about the correct instances of one's dispositions, one must allocate responsibility to an amended idea of the virtuous disposition. Thus, for dispositional change to occur, judgment of dispositions is required.

Dispositional states being impossible to accurately judge does not mean we should not seek to allocate responsibility or that we cannot change our disposition. Practically speaking, we will always fail to be fully accurate in such a judgment, but such judgments are necessary if one is to try to be virtuous. Assuming one's disposition is already stained, judging one's disposition is a requirement in the hard process of change. If one cannot allocate responsibility to oneself for one's current state, then by what means will such a person ever be the origin of the change of this reference point for phronesis? For one will not know, even partially, how one's disposition influences one's actions.

Concerning our prime example of a person's belief in mistaken virtue, the way this person would then try to change is by realizing his reference point is skewed. The way he would do this is through a process of reflection, allocating responsibility for his actions and

dispositions, and through *palingenesis*, as explained above. If *palingenesis* is accomplished, then one could be the origin of changing one's reference point without the aid of one's skewed idea of a virtuous agent. *Palingenesis* could align one's idea of a virtuous agent closer, but never fully, because one's former dispositions are still influencing one's decisions. Moreover, *palingenesis* is not a foolproof method as in constructing a new idea of a virtuous agent, one could mistake virtue again. As explained with the sickness and dye metaphor, a vicious person can never become fully virtuous, but can change and might come closer to virtue, through extreme reflection.

Answering the question of the paper, I argue that judgments of dispositional responsibility can never be fully accurate, but such judgments are necessary for dispositional change. Allocating dispositional responsibility is necessary for dispositional change, as for change to occur voluntarily, one must be the origin, but this cannot come from one's skewed reference point, rather through the process of *palingenesis*. This change must come from reflecting upon one's dispositions, allocating responsibility to one's dispositions, and then comparing them to a constructed and amended idea of what a virtuous agent would do. One can never fully know whether this amended virtuous agent is actually virtuous due to the impossibility of judging the totality of one's life. However, it is through this process of reflection and comparison to the amended idea of a virtuous agent that one can change one's reference point and align it closer towards the virtuous disposition.

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Internal Conference of Undergraduate Philosophy Corner

Introduction

The Internal Conference of Undergraduate Philosophy is a conference between Texas A&M's Philosophy Club and Texas A&M's Journal of Undergraduate Philosophy: Aletheia. Papers are created by the Philosophy club and are submitted to Aletheia. Aletheia editors will then create commentaries on the paper in which a summary of the argument is made, or something interesting within the paper is elaborated on. The purpose of the commentaries is to provoke thoughts and conversations about the paper they are commenting on. Below is a paper from the conference as well as its commentaries.

The Universalizability of Argumentation Ethics

Eliot Kalinov

Abstract

In this paper, I seek to provide context to the problem that Argumentation Ethics attempts to solve, first by explaining the relevant terms and then by outlining alternative solutions to the problem. Then, I will steel-man the argument from argument, or Argumentation Ethics. I will then steel-man the position of critics who have attacked the universalizability principle on the grounds that it is only particularistic either temporally, or to the participants in argumentation only. I then defend the universalizability principle by demonstrating the truth of non-temporal permanence, the expanding scope of application, as well as the limiting exceptions to application. The whole of Argumentation Ethics will not be defended as questions about the exact norms of Argumentation Ethics and their implications are not covered. I seek to demonstrate that critiques of Argumentation Ethics concerning the universalizability principle are unfounded, and critics must attack other points in the argument.

Introduction of terms

In order to have an accurate idea of the problem that Argumentation Ethics attempts to solve, one must first understand the terms as they are used. Action is used to mean purposeful behavior. Kinsella and Tinsley explain how it differs from behavior:

> Action is an individual's intentional intervention in the physical world, via certain selected *means*, with the purpose of attaining a state of affairs that is preferable to the conditions that would prevail in the absence of the action.[1]

The preferable state of affairs is called the *ends*. Hence, action for the purpose of this paper

[1] N. Stephan Kinsella, "Praxeology and Legal Analysis: Action vs Behaviour" in idem. *Causation and Aggression*.

is defined as the use of means for given ends.

All means that men employ towards given ends are necessarily scarce, that is, the use of a scarce resource necessarily excludes its use by another. Let's consider the case of Damon intending to eat a hamburger. In this case, the hamburger would be the scarce means towards the ends of satisfying his hunger. Scarce because Damon and Sebastian can't both eat the same hamburger, Damon eating the hamburger prevents Sebastian from being able to eat the hamburger.[2]

Conflict is defined as contradictory action, as in two actors attempting to use the same scarce means for exclusionary ends.[3] Aggression is defined as the initiation of conflict.

I will demonstrate how all of these terms are used with an example. Imagine A grabs the arm of B in order to direct the fist of B into the face of C. Given that A and B both want to use B's arm as a means towards the ends of striking the face of C, there is no conflict over the use of B's arm. Given that C intends to use his own face towards the ends of let's say, being pretty,[4] then there is necessarily a conflict over the use of C's face between C and the group of A and B.)

The problem at hand

So of what concern is any of this? LiquidZulu lists the three possible normative answers to this question:[5]

[2] This cannot be avoided by splitting the hamburger in half or any other ratio or form of allocation. If you split the hamburger into two halves, half A and half B, then one's use of half A prevents others from using half A.
[3] Exclusionary as both actions can't happen as they will clash, one action going through necessarily prevents the other from going through. Conflict is also sometimes defined as *rivalrousness* action.
[4] The point is more so that C intends to *not* have his face punched and A-B *do* intend to have C's face punched. The specific ends C intends to use his face as a means towards is irrelevant, only whether it differs from the ends of another actor. If the ends do not differ then there is no conflict.
[5] The rights-skeptic would believe that no norms regarding conflict could be justified. For more on this see: N. Stephan Kinsella, "Rights-Skepticism," in idem. *Dialogical Arguments for Libertarian Rights*

1. that conflicts should be avoided (the non-aggression principle);

2. that conflicts should be avoided under certain circumstances, but not always (mixed law), or;

3. that conflicts should not be avoided (the law of the jungle).[6]

Argumentation Ethics proponents seek to validate the non-aggression principle, or NAP, through proof by contradiction. If there are only the three answers to conflict that LiquidZulu states, and if 2 and 3 are proven false, then 1 is necessarily true.[7] Hans-Hermann Hoppe explains how the problem of scarcity and conflict lead to a need for property rights:

> To develop the concept of property, it is necessary for goods to be scarce, so that conflicts over the use of these goods can possibly arise. It is the function of property rights to avoid such possible clashes over the use of scarce resources by assigning rights of exclusive ownership. Property is thus a normative concept: a concept designed to make a conflict-free interaction possible by stipulating mutually binding rules of conduct (norms) regarding scarce resources.[8]

Argumentation Ethics

Now, the briefest of explanations of Argumentation Ethics runs as follows. Argumentation itself is an action hence, it utilizes scarce means toward a given end. Argumentation has certain norms that are pre-supposed in the act of arguing. If this was not the case, then any action could be considered arguing. Riding a bike, eating

[6] LiquidZulu, *An Ethical Defense of Private Property*, 2.
[7] Both A and -A can't be True, thus, if 2-3 is entirely representative of -A, and -A was False, then 1, representing A, is True.
[8] Hoppe, *A theory of socialism and capitalism*, 19

an apple, stabbing someone to death, or shouting "blah blah blah." Speaking is an action, and argumentation is a specific kind of speech act. It is important to consider what norms must be accepted in order to make argumentation distinct from other actions. It is worth noting for the sake of clarity that argumentation is not limited to speech, as it can be done through email, in the form of a philosophy paper, or even blinking in morse code. Next, Hoppe claims:

> …any truth claim—the claim connected with any proposition that it is true, objective, or valid (all terms used synonymously here)—is and must be raised and decided upon in the course of an argumentation. And since it cannot be disputed that this is so (one cannot communicate and argue that one cannot communicate and argue), and it must be assumed that everyone knows what it means to claim something to be true (one cannot deny this statement without claiming its negation to be true), this has been aptly called "the a priori of communication and argumentation.[9]

Thus, the proposer of norms must concern themselves with scarcity as argumentation as an action involves the use of scarce means. It is important to clarify that the norms being referred to are those that make a claim concerning the proper outcome of a conflict. Suppose Damon and Sebastian are arguing over which one should be the owner, meaning the right to exclude others from use, of hamburger X, this would be an argument over the norms of conflict avoidance, meaning that at the end of the argument, say they agree Damon should be the owner, then Sebastian should *not* initiate conflict by then trying to take the hamburger by force. Next is the argument of performative contradictions. One cannot argue, without contradicting oneself,

[9] Hoppe, *A Theory of Socialism and Capitalism*, 154.

for the norm that “no one should ever argue,” and hence its negation, “one should sometimes argue,” must be true. Argumentation Ethics argues that the “sometimes argue” norm is more accurately, “one should argue to resolve disputes over norms.” Stephan Kinsella continues:

> For the norm to work, it must be generally accepted as legitimate by others. That is why it must be "justified." If it's just a norm that A believes in but has not explained reasons for it to others, they have no reason to even regard it as a norm they must follow. To be a norm is it be a justified norm. For this to happen-for the norm to become justified-, someone has to propose the norm and provide reasons for its adoption. This is what argumentation is.[10]

The summary of Argumentation Ethics runs as follows.

1. If argumentation is an action with certain pre-supposed norms
2. And conflict-avoiding norms are justified through argumentation
3. Arguing for norms that contradict the pre-supposed norms of argumentation would be a performative contradiction and hence, false.
4. The norms pre-supposed in argumentation involve self-ownership, homesteading, and the NAP[11]

[10] Kinsella, “Explaining Argumentation Ethics and Universalizability Concisely to a Facebook Friend”
[11] This is reasoned from the fact that in an argument over a norm you pre-suppose the other interlocutor should be able to come to their own conclusions and engage in proper truth-seeking. If, for example, I have a gun to my opponents head and said “we will now argue over whether I or you should own X thing, and if you don’t agree with me I will pull the trigger” then this is contradictory to the norms of argumentation. That being, it is a conflict-free interaction where one seeks to convince the other through the force of their argument rather than physical violence. Whether these are in fact the pre-supposed norms of argumentation is not covered in this paper, simply the universalizability principle.

5. Then arguing against the NAP would be contradictory.

Universalizability critiques: Temporal Permanence

One criticism charged against Argumentation Ethics is that, just as any conclusion is valid as long as the premises are true, considering that one of the premises of Argumentation Ethics involves a performance, an action, the conclusion is only valid so long as that action is occurring and no longer. Hence, even granting the premises as true, Argumentation Ethics would only entail the NAP during the course of the argument and no longer. Robert P. Murphy and Gene Callahan have a similar critique by claiming that someone would not be contradicting themselves in arguing "that people should kill on Sundays," as argumentation ethics only establishes self-ownership *during* the debate.

This critique fails to remember what argumentation over norms is attempting to accomplish. Those engaging in argumentation are doing so in order to justify a specific norm, this is with the intent to adopt said norm at the conclusion of the argument. An argument always has a subject, that subject could even be argumentation itself, as is the case in this paper. Let us consider the example of a judge which Hoppe gave in a lecture concerning the matter:

> It would be self-contradictory for a judge in a trial to say "let us find out who of two contending parties, Peter or Paul, is right or wrong," and then ignore the outcome of the trial and let Peter go even if found guilty or punish Paul even if found innocent.[12]

A judge very well *could* do such a thing but can't do so if claiming to be justified in

[12] Property and Freedom Society, "PFP163 | Hans-Hermann Hoppe - Ethics of Argumentation"

doing so.[13] Suppose that you are in a disagreement with someone over whether the earth is flat or not. In this situation, both you and your fellow interlocutor are taking appropriate measurements with whatever instruments or tools are required. Given the proper calculations were made, you both ended up with the same result, that the earth is round. If, in this situation, the other party was presented with the truth and still decided to believe that the earth was flat, would you consider this person to be engaging in genuine argumentation? One may claim they were arguing as a gimmick or as a mere game. Murphy and Callahan, henceforth referred to as MC, raise an interesting analogy that attempts to challenge Hoppe further:

> One of his errors is the notion that a rule is indefensible if its application would make debate at that particular moment impossible (or difficult).[14]

They seek to illustrate this point by providing the moviegoer analogy. In their analogy, a movie theater has a sign posted saying, "ALL PATRONS AGREE TO REMAIN SILENT DURING THE FEATURE PRESENTATION EXCEPT FOR EMERGENCIES." Suppose someone buys a ticket, sees the sign, takes a seat, and begins shouting about how shoddy the film is. After a while, two large men remove him from the movie theater with force. This is where MC make their point:

> While he is being dragged out of the theater, the man demands that his escorts debate the justice of their actions. But rather than giving a rational exposition of the nature of property and contractual agreements, these brutes continue to urge him to keep his mouth

[13] It is important to note that Argumentation Ethics does not claim that one *should* argue but that one cannot argue against the NAP without contradicting themselves. It avoids the is-ought gapas follows: It *is* the case that norms of the NAP cannot be argued against without contradiction. -> It *is* the case that norms contradictory to the NAP cannot be justified.
[14] Murphy and Callahan, "Hans-Hermann Hoppe's Argumentation Ethic: A Critique"

> shut! … [The man claims] "[n]ot only is the prohibition against talking during a movie wrong, it is actually unjustifiable! For how can someone debate the justice of such a rule if he is forbidden to speak?"[15]

Now, what exactly is wrong with this argument? It doesn't address Argumentation Ethics, as Hoppe puts it. The conclusion of Argumentation Ethics is that no deviation from the NAP ethic can be justified. This has no relation to the analogy, considering that the escorts don't *argue.* Argumentation Ethics also doesn't claim that one must always be able to argue, merely that *if* someone were to argue for conflict-initiating norms[16] they couldn't do so without contradicting themselves. One need not actually argue for Argumentation Ethics to be the case. One simply has to consider what would happen *if* someone were to argue. This misunderstanding of Argumentation Ethics is further demonstrated by the assertion that Argumentation Ethics claims the truth of a proposition is dependent on someone making the proposition. It is certainly the case that 1+1=2, iron is denser than wood, and the earth revolves around the sun independent of someone making such propositions. Hoppe clarifies this point:

> Argumentation does not make something true, rather, argumentation is a method of justifying propositions as true or false when brought up for consideration. Likewise, the existence of property and property rights or wrongs does not depend on the fact that someone argues to this effect. Rather, property and property rights or wrongs are justified when up for contention.[17]

This specific misunderstanding is central to many criticisms of Argumentation Ethics. If

[15] Murphy and Callahan, "Hans-Hermann Hoppe's Argumentation Ethic: A Critique"
[16] Defined here as any norms deviating from the NAP, which argues conflict should at all times be avoided.
[17] Property and Freedom Society, "PFP163 | Hans-Hermann Hoppe - Ethics of Argumentation"

certain norms cannot be justified during the course of argumentation, then that means that they cannot be justified. It would not mean that they could be justified at a later date, as one could consider the fact that at that later date, those same norms would still be justifiable. Similarly, one need not actually actively engage in argumentation to consider whether Argumentation Ethics holds true or not. It would be contradictory for someone to claim during the course of an argument that the person they are arguing with is *another person*, as in, a person and a different one. This is an important point to consider in preparation for the coming criticisms of Argumentation Ethics.

Universalizability critique: Scope

Granting non-temporal permanence outside of the act of arguing as such, why would this apply to those who were never participants in the argument? The next set of critiques centers around what the *scope* of applicable persons would be per Argumentation Ethics. MC express this critique in reference to Aristotle arguing that barbarians were simply irrational, and hence, property rights are not extendable to them.

> So long as Aristotle only argued with other Greeks about the inferiority of barbarians and their natural status as slaves, then he would not be engaging in a performative contradiction. He could quite consistently grant self-ownership to his Greek debating opponent, while denying it to those whom he deems naturally inferior.[18]

This critique also fails to capture the claims of Argumentation Ethics. Aristotle very well *can* claim the barbarians (non-Greeks) as inferior or even choose to enslave a barbarian *because* they are a barbarian. Empirical facts that one can initiate conflict or engage in a

[18] Murphy and Callahan, "Hans-Hermann Hoppe's Argumentation Ethic: A Critique"

performative contradiction do not refute Argumentation Ethics. Let us consider what Aristotle *can* say about his fellow Greeks. It is certainly the case that he can argue with them, hence his concession that they would have self-ownership. Now what of the non-Greeks? Frank Van Dun attacks this point head-on:

> There can be no argumentative justification for Aristotle's refusal to put his statements to the only relevant test: engage a non-Greek in an argumentation.[19]

If Aristotle were to claim that there should be a set of rights A for Greeks and a set of rights B for non-Greeks, he would have to prove that this distinction is meaningful and as Hoppe puts it, "grounded in the nature of things."[20] This principle of universalizability vs particularizability is fundamental in understanding *who* and *what* Argumentation Ethics claims have rights. Kinsella further expands on this point in an interview with him:

> I can't say I'm your owner and you're my slave, and that's justified because you're black and I'm white, that is a distinction, but you have to show that it is a relevant distinction, or I'm a man, and you're a woman, or I'm 6 foot 3, and you're 6 foot one, unless you can give a reason why that's a relevant distinction it's just arbitrary and doesn't count as a reason, it has to be grounded in the nature of things.[21]
>
> Hoppe basically points out that if you propose a norm (during argumentation, necessarily) then it cannot be viewed as just–it cannot be accepted as valid by all

[19] Dun, "Argumentation Ethics and the Philosophy of Freedom."
[20] Such reasoning has been used to justify many different atrocities throughout history. For example: Jews should have a different set of rights because they are Jewish, black people should have a different set of rights because they are black, and women should have a different set of rights because they are women.
[21] N. Stephan Kinsella, "KOL453 Eliot Kalinov argumentation ethics property rights contract theory"

> parties–if it is not universalizable. I.e., it has to be applied equally to all participants unless there is a good reason–grounded in the objective nature of things–to treat participants differently. For example, A says "the rule I propose is I can hit you, and you cannot hit me, because I am me, and you are you"–that is particularizable and not universalizable. To fail to universalize is really to fail to give reasons. You are simply asserting the different treatment. This is, in the end, no different than simply proceeding without an argument, without reason. It is failing to distinguish norm from fact, right from might.[22]

Here, Kinsella demonstrates that arguing an arbitrary reason to discriminate in an ethic such as, "I am me and you are you," would not be giving a *reason* to discriminate, and as such, would not be an argument attempting to justify a truth claim.[23] A brute very well *could* choose to never attempt to justify any of their actions out of principle; Argumentation Ethics doesn't deny this. This brute would simply be, as Hoppe puts it, a 'technical' problem.[24] Hoppe explains further the universalizability principle:

> Indeed, as argumentation implies that everyone who can understand an argument must in principle be able to be convinced of it simply because of its argumentative force, the universalization principle of ethics can now be understood and explained as grounded in the wider "a priori of communication and argumentation." Yet the universalization principle only provides a purely formal criterion for morality. To be sure, checked against this criterion all proposals for valid norms which would specify different rules

[22] Kinsella, "Explaining Argumentation Ethics and Universalizability Concisely to a Facebook Friend"
[23] The reasoning is that saying "I am me and you are you" is more so a threat than a justification, If that is my justification for why I have the right to kill you then I am simply resorting back to violence rather than trying the engage in argumentation.
[24] As in, someone who chooses to never argue is also *owed* no argument in return, and must be dealt with accordingly, as a rather intelligent beast of sorts.

> for different classes of people could be shown to have no legitimate claim of being universally acceptable as fair norms, unless the distinction between different classes of people were such that it implied no discrimination,[25] but could instead be accepted as founded in the nature of things again by everyone.[26]

It is important to note that a rule being universalizable does not automatically make it true. A rule such as "everyone should stab someone on Tuesdays" would indeed pass the universalizability test but this does not make the ethic valid simply by meeting that requirement.

Universalizability critique: Limiting

MC continue their point that if you were to expand the scope and application of Argumentation Ethics to those outside of a specific argument by criticizing the rebuttal that Aristotle *would* be in contradiction if he tried to argue with a barbarian:

> Human beings never ask polar bears their thoughts on zoos. Horses are never allowed to debate the justice of their position in society … Nobody—not even animal rights activists—ever demands that we justify our practices to the animals themselves.[27]

> Of course, the Hoppeian might respond that horses are not as rational as humans, and therefore do not need to be consulted. But Aristotle need only contend the same

[25] Discrimination is not used here literally. *Any* distinguishing between groups such as man and animal would be discrimination. He means a distinction with a difference, as in, one that is morally relevant.
[26] Hoppe, *A Theory of Socialism and Capitalism*, 157.
[27] Murphy and Callahan, "Hans-Hermann Hoppe's Argumentation Ethic: A Critique"

thing about barbarians: they are not as rational as Greeks.[28]

> For example, if the reader excludes chickens on the ground that they cannot engage in rational debate, then Hoppe's argument doesn't apply to infants or comatose people, either.[29]

These critiques are of great concern to the universalizability principle, so I will respond in order. MC's polar bear in a zoo and Aristotle saying barbarians don't have rights are disanalogous. Aristotle very well *could* contend that barbarians are not as rational as Greeks, but this in no way makes the contention valid. I just as easily *could* contend that 1+1=3, but merely claiming such a thing is true does not *make* such and such a thing true. This claim would be struck down the moment he tried to argue with a barbarian.[30] Consider once again that no one arguing with another could deny that their argumentative opponent is *another person*. Aristotle would be conceding that his argumentative opponent has self-ownership, but why? Why? Because they are arguing back.[31] Aristotle's laziness in verifying whether the non-Greeks could also argue back with him is by no means a refutation of Argumentation Ethics. The disanalogy lies in the fact that no matter how hard one tries to engage in argumentation with a polar bear, no argumentation would be possible.[32] Hoppe further clarifies this point:

> Incidentally, the normative character of the concept of property also makes the sufficient

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[28] Murphy and Callahan, "Hans-Hermann Hoppe's Argumentation Ethic: A Critique"
[29] Murphy and Callahan, "Hans-Hermann Hoppe's Argumentation Ethic: A Critique"
[30] Recall the quote from Frank van Dun, "There can be no argumentative justification for Aristotle's refusal to put his statements to the only relevant test: engage a non-Greek in an argumentation."
[31] Unless of course he believed the Greeks had a different set of rights by virtue of being Greek, in which case the distinction without a difference argument is used.
[32] The longest sentence recorded from an animal was, "Give orange me give eat orange me eat orange give me eat orange give me you."

> precondition for its emergence as a concept clear: Besides scarcity "rationality of agents" must exist, i.e., the agents must be capable of communicating, discussing, arguing, and in
>
> particular, they must be able to engage in an argumentation of normative problems. If there were no such capability of communication, normative concepts simply would not be of any use. We do not, for instance, try to avoid clashes over the use of a given scarce resource with, let us say, an elephant, by defining property rights, for we cannot argue with the elephant and hence arrive at an agreement on rights of ownership. The avoidance of future clashes in such a case is exclusively a technical (as opposed to a normative) problem.[33]

This further illustrates the point in calling the person who chooses to never argumentatively justify any of their actions a 'technical' problem. No conflict-avoiding norms would be established or respected by such a person. Hoppe further explains the necessity of rights stemming from argumentation as an action:

> First, the question of what is just or unjust (or what is valid or not) only arises insofar as I am and others are capable of propositional exchanges—of argumentation. The question does not arise for a stone or fish because they are incapable of producing validity-claiming propositions. Yet if this is so—and one cannot deny that it is without contradicting oneself, for one cannot argue the case that one cannot argue—then any ethical proposal, or indeed any proposition, must be assumed to claim it can be validated by propositional or argumentative means.[34]

[33] Hoppe, *A Theory of Socialism and Capitalism*, 19.
[34] Hoppe, *The Economics and Ethics of Private Property: Studies in political economy and philosophy*, 400.

> The answer is that the source of human rights is and must be argumentation as the manifestation of our rationality. It is impossible to claim anything else to be the starting point for the derivation of an ethical system because claiming so would once again have to presuppose one's argumentative capability.[35]

Hoppe is very definitive in stating that Argumentation Ethics would only apply to those capable of arguing. This leaves Argumentation Ethics open to criticism on what rights infants or comatose people would have, if any. So what rights *do* children or comatose people have under Argumentation Ethics? Walter Block contends that:

> If a man has ever argued, in his entire life, that he had rights, or that others did not, if he ever argued at all, then he is logically estopped from violating rights.[36]

Walter Block himself takes this principle to its logical end and admits that someone who chooses[37] never to argue from birth would indeed not be engaged in a performative contradiction were they to violate someone's rights. Such a person would be dealt with as Hoppe's 'technical' problem. Walter Block's application of Argumentation Ethics would mean that comatose people would still have self-ownership rights.

Universalizability critique: Latent Rights

What of the rights of children then? Consider a young child who isn't old enough to engage in genuine argumentation, yet they *will* be capable given further development. Would

[35] Hoppe, *The Economics and Ethics of Private Property: Studies in political economy and philosophy*, 401.
[36] Block, "Rejoinder to Murphy and Callahan on Hoppe's Argumentation Ethics"
[37] Indeed it appears from Walter Block's argument that someone who *can't* argue, for whatever medical reason, would also not be able to engage in a performative contradiction by violating someone's rights. I don't think it would be unreasonable to conclude that Walter Block thinks that such a person wouldn't themselves have rights.

the child have rights prior to the ability to engage in argumentation according to Argumentation Ethics? Ian Hersum uses the analogy of an encrypted will to argue for the rights of children:

> [...] Imagine the scenario of an encrypted last testament (being consequentially analogous to one's premature will), which an interested party agrees to decrypt over time. What is to be done with the estate during that time? It must doubtless not be damaged or consumed until such a time as the will has been entirely decrypted, with its voluntary manager responsible for preserving it in the interim. Should it be damaged or consumed during that period, either by the manager or by a third party, whoever has done such damage or consumption would be held liable, and that person would be disqualified from managing the property in the future, provided that someone else is willing to assume that role. As such, anyone who harms a child should be held liable for the damage done and be forbidden from being the guardian of that child in the future, provided that someone else is willing to assume that role. As bits and pieces of the will are decrypted, the estate manager would be obligated to follow any instructions that are capable of being understood with the information available at the time. As such, as a child develops, his guardian is obligated to relinquish authority to the child in domains of behavior on which the child can express his informed will. In a contention between a child and his guardian over such authority, a court can listen to the testimony of the child in order to determine if he truly understands what he is saying or if he is merely blathering on about a decision that he lacks the comprehension necessary to make.[38]

Hersum's encrypted will analogy gives an answer to a great many 'edge-case' scenarios.

[38] Hersum, "A Rational Theory of the Rights of Children"

In the case of a man sleeping on a pile of snow in the Winter, it would not, in fact, be abduction[39] for the paramedics to transport him to a hospital. The paramedics or whoever else takes it upon themselves to claim the guardianship role would not be violating that man's rights.[40] In the scenario of a comatose patient, much of the same reasoning applies. The situation of the comatose patient may differ slightly in that instead of going from the state of the non-rational actor to the rational actor, the patient does the reverse. This allows the possibility of making one's will known *prior* to their state of comatosis. There could exist an advanced directive that would make your wishes known in the case that you become comatose. Similarly, DNR[41] forms exist. When interviewed, Kinsella expanded upon this point:

> It's obvious that you could argue that there is a continuum from when he is born or even before he is born to when he develops a certain level of maturity and then has full ownership, but between that point he has less than full ownership which means that someone else has the right to make decisions on his behalf and in his interest, which is presumably the parents.[42]

[39] Granted the man wasn't wearing a shirt with big letters saying 'leave me here.'
[40] Similar to the encrypted will analogy the guardian cannot for example, give the man a vasectomy while transporting him to warmer shelter.
[41] Do Not Resuscitate.
[42] N. Stephan Kinsella, "KOL453 Eliot Kalinov argumentation ethics property rights contract theory"[43] LiquidZulu, "Artificial Intelligence and Self-Ownership," in idem,. "5. The Rights of Children," in idem., *The Fundamentals of Libertarian Ethics*

Before moving on to the 'exceptions' I must further elaborate on the criteria demanded for rights. If an alien race came down and interacted with us and demonstrated the ability to engage in argumentation, then they would be afforded all of the rights presupposed by Argumentation Ethics. LiquidZulu explains further how the criteria isn't so selfish as 'being human' as he considers the potential of AI:

> This theory of the rights of children can be applied to determine the rights of developing artificial intelligence systems, and provides important insights on the nature of self-ownership. Consider a supercomputer which is running an AI program so advanced that it "wakes up" and develops the capability of engaging in argumentation, this AI must therefore have all rights implied by the NAP. Included in those rights is the right of self-ownership—thus this AI would own the hardware upon which it is running just as surely as every man owns himself.[43]

Universalizability critique: Exceptions

It is clear now how Argumentation Ethics would apply to children, the comatose, and now even aliens and AI. Argumentation Ethics does not argue for a pacifist ethic, as it argues against the *initiation* of conflict, as in aggression. Kinsella demonstrates that this is a distinction that does actually have a difference and isn't merely asserting, "I can kill you because you are black and I am white." He expands upon his Estoppel argument in conversation with a Facebook friend:

> Now if A says "I can hit you and you cannot hit me, because you previously committed aggression against me and are now estopped from complaining, while I did not use

[43] LiquidZulu, "Artificial Intelligence and Self-Ownership," in idem,. "5. The Rights of Children," in idem., *The Fundamentals of Libertarian Ethics*

> aggression against you" — that is a fact grounded in the nature of things. In this case the rationale for A being able to hit B (to punish him) and B not being able to hit A in return, is not particularized. It is based on a universal rule: No one may initiate aggression against the other.[44]

Person A would be estopped from arguing that the person B, the person he kicked, should not kick him back. What argument could he give? He can't claim that A should be able to kick B and B should not kick him back because "I am me and you are you." B could very well do the same and claim, "Ah, indeed, but I am ME, and you are YOU so I can indeed do so." This would be a breakdown of the argument and no different than might makes right. If person A argued that "you shouldn't kick me because it would be a violation of my rights," he already demonstrated through his actions he thinks such violations are ok, in fact. He is now holding the position that such violations are permissible and not permissible, a contradictory position. If, however, he truly believed and accepted that kicking was wrong when he did it, then on what grounds should he object from the victim seeking to punish an action he himself condemns? If regret absolves him of punishment, then why can't B kick him back and then claim regret?

Conclusion

In conclusion, critics of Argumentation Ethics must find some other angles to attack other than the universalizability principle. Criticisms of the universalizability principle fall into two categories: either a temporal criticism or a scope criticism. A temporal permanence understanding of Argumentation Ethics fails to understand the relevant *purpose* of argumentation. A distinction with a difference is to be demonstrated if any distinction is to be

[44] Kinsella, "Explaining Argumentation Ethics and Universalizability Concisely to a Facebook Friend"

made at all in terms of scope. Furthermore, arguments concerning the uncomfortable conclusions of any particular ethic are irrelevant to whether the conclusions are true or not.

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A Commentary on “The Universalizability of Argumentation Ethics”

Aletheia Editor One

The scholarly topic of this essay analyzes the problem that Argumentation Ethics attempts to solve and argues against critics of Argumentation Ethics using the universalization principle. The author is defending the point that those who are against argumentation ethics cannot do so by attacking the universalizability principle, as they believe that any opposition to that principle is “unfounded”. Their paper deals with the standard presentation of a component of argumentation ethics that the author is in favor of and defends.

The essay gives us an abundance of literature embedded within the article regarding argumentation ethics and the universalization principle, as well as arguments against both. Now I will outline what each source is contributing to the article and the author’s arguments. Walter Block's viewpoint on argumentation ethics is used by the author to prove that comatose people have self-ownership rights under the principles of argumentation ethics. Similar to Block, the author references Hersum to make the point that children have self-ownership rights under the principles of argumentation ethics. The next paragraph uses Frank Dun’s comment on Aristotle to showcase the difference between the principle of universalizability vs particularizability. Following that point, Kinsella provides simple examples to provide context on what argumentation ethics is and the main aspects of it that will be useful later in the article, and to show why a norm should be generalizable when brought up during argumentation and shouldn’t be discriminatory in nature. Hoppe is the author referenced the most throughout the article and comments on many aspects of argumentation ethics which include defining terms to better explain argumentation ethics, providing examples to detail certain points and stating what

the foundations of argumentation ethics are which all helps the author further multiple points they make throughout the article and Hoppe literature provide the primary framework from which the article stands on. The article references a YouTuber called LiquidZulu to draw information about property rights and AI ethics, which is used briefly in the article.

The author provides important terms and gives an overview of argumentation ethics. They then go on to state the different arguments against argumentation ethics and misconceptions about it, and the universalization principle. I believe that the author succinctly lays out the foundation of argumentation ethics and gives great examples to help break down the misconceptions surrounding the understanding of what argumentation consists of and the arguments against it as well. The article argues in favor of argumentation ethics and the universalization principle, therefore, this article is positive in nature.

The thesis of this article is “I seek to demonstrate that critiques of Argumentation Ethics concerning the universalizability principle are unfounded, and critics must attack other points in the argument.” They explain the thesis by giving context to what argumentation ethics is and relevant definitions, and then progressing to steel-manning what critics of Argumentation Ethics have said in opposition to it and the universalizability principle. I believe that it is a detailed and accurate description of the article’s main point.

The roadmap is listed in the same first paragraph as the thesis. As said before, the author introduces the concept of argumentation ethics and then goes on to steelman the opposing side’s arguments. This structure is consistent throughout the article.

The first argument made against argumentation ethics is Temporal Permanence, which states that due to any conclusion being valid if the premises are true, if the premise of an argument involves an action, the conclusion is only valid if that action is not occurring anymore. This means

that the non-aggression principle fails after an argument has finished. The author combats this point by stating that the conclusion of argumentation ethics is to establish a norm, and if a norm can't be justified during the argument, then it can't be justified after either.

The second argument made against argumentation ethics is Scope, which highlights the criticism made against who exactly can participate in argumentation ethics. An example involving Aristotle and his comments on barbarians, stating that Aristotle can deem who is inferior or not, therefore granting self-ownership to certain groups and not others, and only deeming them as able to argue. However, this point is refuted by stating that there must be a distinction "grounded in the nature of things" to prove that one shall argue and one shall not. It is not up to opinion. The next argument is limiting. This argument states that granting self-ownership to those outside of an argument is problematic because there are those, such as animals, that can be granted self-ownership. The author states that one must have the ability to argue back and state rational thoughts to be involved in an argument, and therefore, this analogy doesn't hold valid. The next argument is Latent Rights, which expand on the previous point but specifically in regards to children, coma patients, aliens, and AI. The last argument made against argumentation ethics is Exceptions, which show that despite common belief amongst critics, the argumentation ethic does not promote a pacifist view but a view that is against aggression and the author explains why this difference is important to note when discussing this topic and shouldn't be viewed as the same or used to attack argumentation ethics.

After reviewing the arguments in detail, I believe they are fairly strong counterarguments against the points made in opposition to argumentation ethics. Fully using steelmanning throughout the essay is a unique way to showcase a point, and is done well in this essay. They do not have easy counterarguments as the author is using steelmanning as a primary way to strengthen their argument, so all of their main points are counterarguments themselves.

One area I could see having a healthy discussion is what areas of Argumentation Ethics, besides the universalization principle, could critics of it point out and attack, as stated in the first paragraph? Exploring the other weak aspects of Argumentation Ethics could be a way to further strengthen the

author’s support of this type of ethics.

A Commentary on "The Universalizability of Argumentation Ethics"

Aletheia Editor Two

In "The Universalizability of Argumentation Ethics", the author discusses and argues for the dismissal of certain critiques levied against Argumentation Ethics; specifically, critiques which concern the universalizability of Argumentation Ethics to a number of possible contexts. The author begins by describing Argumentation Ethics. From the author's view, Argumentation Ethics is a specific system of ethics that enables persons to ascertain the truth of the Non-Agression Principle via performative contradiction. The author stipulates that argumentation is necessarily "an action [which] involves the use of scarce means." An additional fact is also stated about argumentation; namely, that "one cannot argue, without contradicting oneself for the norm that 'no one should ever argue'". Therefore, by the law of non-contradiction, it must be the case that it is not the case that no one should ever argue; in other words, it must be the case that people should sometimes argue. On the author's view, this demonstrates the foundational circumscribing of property rights, since people can at least sometimes have control over scarce resources — that is, some people at least sometimes have the right to argue. Finally, the author asserts that this ethic justifies the Non-Agression Principle, homesteading, and self-ownership through a logical extension of the fundamental argumentation property right.

The author then presents the objections to the universalizability of Argumentation Ethics, arguing in their thesis that "[the author] seeks to demonstrate that critiques of Argumentation Ethics concerning the universalizability principle are unfounded, and critics must attack other points in the argument." The author argues that all critiques of the universalizability principle — that is, the idea that Argumentation Ethics can be held up as a universal ethic — fall into two categories: either temporal-focused or scope-focused. The author first responds to the temporal-focused critiques issued by Robert Murphy and Gene Callahan, who have two specific objections to Argumentation Ethics. First, both argue that Argumentation Ethics only applies to those presently involved in the act of argument, not lasting any longer than the person remains in argument. Second, both assert that there is a fundamental issue with "'[Hoppe's] notion that a rule is indefensible if its application would make debate at that particular moment impossible (or difficult).'"

The author responds to the first contention by noting that "those engaging in argumentation are doing so in order to justify a specific norm"; as such, any genuine argumentation results in the adoption of the accepted norm if the argumentation is successfully completed. Since the Argumentation Ethics itself is the end of the argument, it follows that Argumentation Ethics itself must be accepted irrespective of whether the argument for it is presently occurring. The author compares the objection to a judge who holds a trial, oversees the verdict of that trial, and then somehow reverses the verdict. In this case, the trial stands for the argument itself, the verdict stands for the acceptance of Argumentation Ethics, and the judge's action of reversing the verdict stands as a violation of self-ownership. On this view, one cannot simply throw out the verdict because the trial is complete; instead — like the implementation of

Argumentation Ethics — the verdict must be respected after the trial. The author then turns to the second objection, arguing that Murphy and Callahan have misjudged Hoppe's formulation of Argumentation Ethics. Instead of stating that argumentation must always be possible, the author characterizes Hoppe as arguing "*if* someone were to argue for conflict-initiating norms, they couldn't do so without contradicting themselves." The question of the soundness of argumentation ethics revolves not around actual arguments, but around hypothetical ones. As such, Murphy and Callahan's second objection simply "doesn't address Argumentation Ethics".

After dealing with the temporal-focused objections, the author turns to the primary scope-focused objection. This objection argues that — under Argumentation Ethics — if one could simply avoid argument with other groups or assert the fact that those groups are incapable of argumentation, this would consequently allow that person to infringe on the self-ownership of members of other groups who they do not argue with or recognize as intellectual equals. To illustrate this point, Murphy and Callahan invoke a hypothetical Aristotle who asserts "the inferiority of barbarians and their natural status as slaves". They argue that, in this circumstance, Aristotle "would not be engaging in performative contradiction" in violating their rights, supposing he never argued with them and continued to regard them as inferior.

In response to this objection, the author responds that the applicability of Argumentation Ethics to individuals is not constituted by the proposition of the arguers, but rather by qualities that are "'grounded in the nature of things'". If one wishes to exclude certain groups or individuals from the rights afforded by Argumentation Ethics, that person must present evidence that the individuals are not rational agents, and are consequently not subject to the scarcity

disputes that allow Argumentation Ethics to arise in the first place. Simply regarding an individual as inferior or refusing to argue with them is not enough. Indeed, as the author quotes Frank Van Dun: "There can be no argumentative justification for Aristotle's refusal to put his statements to the only relevant test: engage a non-Greek in an argumentation." Rather than relying upon the beliefs of the arguers, Argumentation Ethics instead depends on the realities of whether or not an individual is capable of argument.

Although indirectly connected to the argument, the author explores the applicability of Argumentation Ethics to those who are latent possessors of the ability for argumentation — in other words, those who may be capable of argumentation but are not presently capable. These classes include children, comatose individuals, future artificial intelligences, and aliens. The author provides answers to a few of these questions regarding latent argumentation.

However, the author's paper also exposes questions on what method should be used to ascertain the rationality of specific agents or classes of agents. A central contention of Argumentation Ethics is the notion that only rational agents can be subject to the universalizable ethic. Indeed, the author invokes this point in defending against the objections of Murphy and Callahan. However, what set of criteria — if any — delimits classes of entities who may be considered "rational agents"? For example, is an incurably schizophrenic individual capable of argumentation? Surely they can produce the words, sentences, and paragraphs of an argument, but what level of awareness is sufficient for qualification as genuine argumentation? This issue demands discussion, and the true universizability of this ethic can only be seen once this is clarified. In addition, Hoppe's contention that treating separate groups with a different standard

under Argumentation Ethics must be justified by qualities "grounded in the nature of things" impels us to search for the qualities that would permit discrimination. Is the standard of self-ownership in Argumentation Ethics universal, or could a partial self-ownership standard apply to individuals who are included in a sub-rational class? If so, what would delimit this class? The author's exposition of the subject of universizability of clear, but the issues raised by it doubtless demand investigation.

A Commentary on "The Universalizability of Argumentation Ethics"

Aletheia Editor Three

This paper deals with defending the AE by using universalizability, temporal applicability, the scope of applicability, limiting exceptions, and latent rights. The author makes an investigation into the legitimacy and limits of Hans-Hermann Hoppe's Argumentation of Ethics (AE). This ethical framework aims to establish libertarian principles, particularly the non-aggression principle (NAP), through the logic inherent in the very act of argumentation. This paper defends AE by using the universalizability principle—whether the norms derived from argumentation apply universally, or only to the participants in an argument, and only during the act itself.

The scholarly topic under this paper's examination is regarding the validity and the scope of argumentation ethics, and the use of presupposed norms, such as self-ownership and non-aggression, is universally binding. This paper creates a roadmap for the reader by first establishing the norms of universalizability, its importance for the application of AE, then by explaining the misapplication and misunderstanding of AE, and counter-arguing the arguments made by critics and how AE is being misused. The authors in their paper reference different authors, such as the founder of AE: Hans-Hermann Hoppe, AE's major critics: Murphy and Callahan, and AE's defenders: Frank Van Dun, Walter Block, and Ian Hersum. In response to the scholarly topic, the author systematically addresses multiple critiques that target AE's claims to universality. These criticisms fall broadly into two categories: temporal limitations and the scope

of limitations. Temporal limitations seek to answer the question: Does AE apply only during arguments? And scope limitations seek to answer: Does AE apply only to participants in argumentation?

The author undertakes several objectives in this scholarly conversation. First, they steel-man both AE and its critics, ensuring that each position is presented in its strongest form. Next, the author engages in philosophical defense: they argue that criticisms of the universalizability principle fail either to understand the nature of argumentation or to grasp the logical implications of engaging in reasoned discourse. The central claim is clear: any attempt to refute the universalizability principle of AE ends in contradiction, thus failing to undermine its legitimacy. The literature engages in an ongoing debate—some defending AE's foundations while others challenge its reach and application. The author positions themselves positively within this landscape, offering a defense of AE and arguing that if critics wish to discredit the theory, they must look beyond the universalizability principle.

The thesis of the paper is explicit and adequately developed: "I seek to demonstrate that critics of Argumentation Ethics concerning the universality principle are unfounded, and critics must attack other points in the argument."Critiques of Argumentation Ethics based on universalizability fail to undermine its legitimacy; if AE is to be challenged, it must be on other grounds. The author clearly explains the thesis and supports it through a coherent roadmap that leads the reader from foundational definitions to complex edge-case applications (e.g., children, comatose individuals, artificial intelligence).

The paper successfully does what it sets out to do. The arguments—such as the concept of performative contradiction, the necessity of universality in ethical norms, and the importance of justification through reasoned argumentation—are strong and well-defended. Some, like Murphy and Callahan's movie-theater analogy, are shown to miss the mark by misunderstanding

AE's claim that justification, not speech itself, is the crux of ethical validity. A particularly interesting argument in the essay lies in the application of AE to non-human and non-rational actors, such as animals, comatose patients, and artificial intelligence. Here, the author employs analogies like Ian Hersum's "encrypted will" to argue that entities on the trajectory to rationality (e.g., children, developing AI) possess latent rights. This is a fascinating philosophical point that opens the door to ongoing questions: Can rights be derived from potentiality rather than actuality? If so, where do we draw the line between beings who can argue and those who might someday be able to?

This raises an intriguing problem for AE and libertarian ethics in general. If rights are grounded in one's capacity to argue, what do we do with beings who cannot yet, or no longer, meet that threshold, but once did or soon will? The author's answer is nuanced: rights persist if the capacity for argumentation once existed (as in comatose patients), or can reasonably be expected to develop (as in children). Yet critics might counter: doesn't this inject a form of moral subjectivity or predictive ethics that AE is supposed to avoid?

In conclusion, the author has made a compelling case that universalizability is not a weak point in AE, but one of its core strengths. By showing that attempts to refute AE often rely on misinterpretations or incomplete analogies, the paper redirects critical attention to deeper philosophical issues. Still, in engaging with edge cases like infants and AI, it opens up fertile ground for debate—can a rights theory grounded in reason ever fully account for those outside the bounds of rationality? That question remains open and ripe for further inquiry.

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