Aporia

Undergraduate Journal of the St Andrews Philosophy Society
Volume XIX — Issue No. 2

Aporia *is funded by the University of St Andrews Philosophy Society, which receives funds from the University of St Andrews Department of Philosophy, the University of St Andrews Students' Association, and independent benefactors.*

Contents

Acknowledgements

We would like to thank the individuals who that continue to make the publication of a journal such as *Aporia* possible. Special thanks go to Andrew Fish, Andrew Ma, and Micheal Taylor for their significant efforts in the review process as a part of the Aporia Sub-Committee, Kimon Sourlas-Kotzamanis for his efforts in creating the journal design and style, and Kyle Brady from the Online Journal Hosting Service at the University of St Andrews for helping set up our online interface. Most of all, thank you to everyone who submitted a paper for publication.

Spencer Albert
Editor-in-chief

Arvo Muñoz and Kyle Van Oosterum
Deputy editors

Can it be more difficult to know something when there is a great deal at stake?

Mark Paul*
University of Edinburgh

Abstract There are a plethora of highly plausible cases, such as DeRose's bank cases, in which our intuition very strongly suggests that it can be more difficult to know something when there is a great deal at stake. Intuitively, though, whether or not an agent knows a proposition *should not* depend on what is at stake for that agent, but rather on such things as the subject's evidence, their justification and the truth or falsity of the object of purported knowledge. This paper attempts to provide a survey of the existing literature on this topic and to provide an assessment of the prospects for a coherent account of the stake-sensitivity of knowledge, assuming that such sensitivity obtains. The author begins with an exposition of DeRose's bank cases, which is followed by arguments for and against the stake-sensitivity of knowledge. After a brief exploration of the experimental literature regarding folk intuitions in cases that purport to demonstrate stake-sensitivity, this paper will consider two accounts of the stake-sensitivity of knowledge—namely epistemic Contextualism and Subject-Sensitive Invariantism (SSI)—examining the benefits and drawbacks of each in turn. The author will argue that SSI is best-placed to account for the stake-sensitivity of knowledge, mostly because of a strong and largely unresolved linguistic objection levied against the very heart of Contextualism.

1 Introduction

Some claim that it *can* be more difficult for a subject to know something when there is a great deal at stake. I will call this view "stake-sensitivity". Proponents of stake-sensitivity often appeal to theories such as Epistemic Contextualism and Subject-Sensitive Invariantism (henceforth "SSI"), each of which provides quite a different

*Mark Paul has recently graduated from the University of Edinburgh, with an MA in Philosophy and Mathematics. He is now on the Teach First LDP (fast-track teacher training), and will be teaching mathematics full-time at Little Lever School (near Bolton) from September onwards, whilst working towards Qualified Teacher Status (QTS). His philosophical interests are mostly in epistemology and ethics, as well as philosophy of law.

account of how the stakes affect knowledge. Others argue that the stakes do not affect knowledge. I will begin with a brief look at both sides of the debate before moving on to explore which of these two theories, Contextualism or SSI, is best able to explain the stake-sensitivity of knowledge, assuming that such sensitivity obtains. In my exploration, I will consider objections to the accounts of stake-sensitivity that the theories provide, as well as general objections to the theories themselves. After all, if the theories do not hold well in general then they cannot be used as bases for accounts of stake-sensitivity, no matter how appealing those accounts may be. I will ultimately find that SSI is better placed to account for stake-sensitivity, mostly owing to the existence of a strong and unresolved objection to Contextualism.

2 The debate

The debate amongst philosophers as to whether or not it is more difficult to know something when there is a great deal at stake is far from resolved. Before I go on, I will state a well-accepted and intuitively correct view:

(Intellectualism) Whether or not a subject, S, is in a position to know a proposition, *p*, is determined exclusively by purely truth-relevant dimensions with respect to *p*, such as S's justification for believing that *p*, S's evidence that *p*, and so on.[1]

2.1 It is more difficult to know something when there is a great deal at stake.

Consider the following two cases.

> **Bank case A** Hannah and her wife, Sarah, are driving home on Friday afternoon. They plan to stop at the bank to deposit their paycheques. Driving past the bank, they notice the large queue. It is not important for them to make the deposit immediately, so Hannah suggests that they return in the morning when it will be quieter, to which Sarah responds, "It might be shut. Lots of banks are closed on Saturdays." Hannah replies, "No, I know it'll be open. I was there two Saturdays ago. It's open until midday."

1. Also known as *Purism*, as in Fantl and McGrath (2009, 27–28). Their definition is more complex, as are their purposes.

> **Bank case B** Hannah and Sarah drive to the bank on Friday afternoon, as in Case A, when they notice the long queue. Hannah again suggests coming back in the morning, recounting when prompted her experience of two weeks previous. However, in this case, their house will be repossessed if they make their deposit any later than Saturday morning. Sarah reminds Hannah of this and then says, "Banks sometimes change their hours. Do you know they'll be open tomorrow?" Still as confident as she was before that the bank will be open, Hannah replies, "Well, no. I'll go in and check."[2]

These are Keith DeRose's bank cases. Note that, in both cases, the bank *is* open on Saturday morning.

Stake-sensitivists are often motivated by twin cases like these. They claim that it is obvious that both of the following are true:

(1) In case A, when Hannah says, "I know it'll be open," she is speaking truly.

(2) In case B, when Hannah says that she does not know, she is speaking truly.

There is an apparent contradiction between (1) and (2), which the stake-sensitivist must address. If intellectualism is true, then (1) and (2) cannot both be true, because case A and case B do not differ with respect to truth-directed dimensions. According to intellectualism, Hannah is in a position to know that the bank is open in case A if and only if she is in a position to know in case B.

The view that I have thus far been referring to as stake-sensitivity is really comprised of a variety of different views. One prominent stake-sensitivist view is based on Contextualism, and another on SSI. I'll explain each in turn.

(Epistemic contextualism) The doctrine that the proposition expressed by a knowledge attribution relative to a context is determined in part by the standards of justification salient in that context (Stanley 2005, 119).

Note that this is essentially a linguistic view about the semantic content of the word 'know'. The contextualist holds that the proposition expressed by a knowledge attribution (a statement such as, "Meabh knows that x") varies with the context of attribution, precisely because the meaning of the word 'know' varies with the context of utterance. Consequently, she is committed to a spectral view of knowledge, ranging from knowledge relations with less justification lower down the spectrum (we might call one of these $\text{knows}_{\text{low}}$), to knowledge relations with more justification higher up ($\text{knows}_{\text{high}}$).

2. Adapted from DeRose (1992, 913). The re-assignation of the subjects' names (and sexuality) is taken from Stanley (2005, 3–4).

In DeRose's bank cases, the stake-sensitivist contextualist says that (1) is true, because the absence of high stakes means that the standards of justification salient in the context of Hannah's self-attribution of knowledge are low. Thus, what Hannah is really, *truly* saying is that she $\text{knows}_{\text{low}}$ that the bank will be open. Similarly, she can hold that (2) is true because the presence of high stakes in case B results in the standards of justification salient in the context of Hannah's self-attribution being quite high. Thus, what Hannah *truly* says is that she does not $\text{knows}_{\text{high}}$. In this way, the contextualist is able to hold without contradiction that (1) and (2) are both true.[3] For the contextualist then, it is more difficult to 'know' something when the stakes are high, because the meaning of 'know' is more demanding in such contexts.[4]

SSI yields a similar result by quite different means. The best way of (perhaps roughly) defining SSI that I have come across makes use of mostly negative claims that sharply distinguish it from Contextualism:

(SSI-a) *Invariantism*. The truth conditions of a knowledge attribution do not vary as the context of attribution varies. In other words, it is impossible for an attribution of knowledge of a fixed proposition to a fixed subject at a fixed time to be true when uttered by one attributor in one context and yet false when uttered by another attributor in another context (as per Brown 2013, 233–34).

(SSI-b) *Impurism*. The varying standards that comprise the truth-conditions of a knowledge attribution include some truth-irrelevant dimensions with respect to p, alongside traditionally epistemic factors.[5]

(SSI-c) *Subject-sensitivity*. The varying standards that comprise the truth-conditions of a knowledge attribution are sensitive to the context occupied by the putative subject of knowledge, rather than the attributor's context (phrasing as per DeRose 2005, 283).

This paper is concerned with those forms of SSI that hold that what is at stake for S over *p* is one of the truth-irrelevant factors that comprise the truth-conditions of attributions of knowledge-that-*p* to S. A stake-sensitive SSI-ist of this sort might argue that it is more difficult to know something when there is a great deal at stake in the way set out below.

For the SSI-ist, (1) is true, simply because the standards that comprise the truth-conditions of Hannah's self-attribution of knowledge are satisfied, given Hannah's context. Crucially, as per the impurism prescribed by a stake-sensitivist (SSI-b), these

3. Note that one is not committed to rejecting Contextualism if one rejects intellectualism. For contextualist impurism, see Lewis (1996).

4. Some contextualists deny that knowledge is sensitive to the stakes, e.g. Schaffer (2006), but this paper will discuss stake-sensitive Contextualism only.

5. This is a denial of intellectualism.

standards include what is at stake for Hannah over the bank's being open on Saturday. In a way, the fact that there is very little at stake in this case is one reason that the truth-conditions of the self-attribution have been satisfied – had the stakes been higher, the standards that comprise these conditions would have been higher, and thus more difficult to satisfy. There remain two somewhat technical (though crucial) points of clarification. Firstly, in accordance with (SSI-c) the stakes for Hannah are a relevant concern here because they are a component of the context occupied by Hannah as the *subject* of the knowledge attribution, not because of their being a component of the context occupied by Hannah as the knowledge attributor.[6] Secondly, if Hannah's self-attribution is true, then all attributions of knowledge-that-the-bank-will-be-open to Hannah are true on this view, no matter who the attributor and no matter the context of the attribution. This comes from the invariantism in (SSI-a), and is closely related to the subject-sensitivity of (SSI-c).

For the SSI-ist, (2) is also true. The SSI-ist denies that the meaning of the word 'know' has changed, arguing instead that the standards that comprise the truth-conditions of Hannah's self-attribution of (non-spectral) knowledge are now higher than they were in case A. This is precisely because, as per (SSI-b), these standards include what is at stake for Hannah over the bank's being open on Saturday and so, despite the traditionally epistemic, truth-directed factors remaining unchanged, the truth-conditions of Hannah's self-attribution are now more stringent. Since Hannah has no more evidence or justification than she did in the first case, the SSI-ist argues that these conditions are simply not met and that Hannah does not know. As in case A, the relevant concern is what is at stake for Hannah as the *subject*, not as the attributor (from (SSI-c)), and any attribution of knowledge to Hannah in case B is false if and only if Hannah's self-attribution is false (from (SSI-a)). Thus, the SSI-ist claims that it can be more difficult to know something when there is a great deal at stake, but in a very different way to the contextualist. Unlike the contextualist, the SSI-ist denies intellectualism by claiming that whether or not a subject, S, stands in the (only, non-spectral) knowledge relation to a proposition, p, is directly determined by such things as traditionally epistemic factors, such as the truth of p, S's evidence and justification for believing p, and so on, plus what is at stake for S over p.

2.2 It is not more difficult to know something when there is a great deal at stake.

This section will focus on general objections to stake-sensitivity. It will include an exposition of a common misconception about DeRose's bank cases and an assessment of

6. In this case, it just so happens that the attributor and the subject are one and the same, but keeping a clear distinction is key. Were the two distinct, SSI would track the context occupied by the subject, not the attributor, as per (SSI-c).

a general objection to stake-sensitivity raised by a number of experimental philosophers.

On a first reading of DeRose's bank cases, one might be tempted to propose that the high stakes in case B only affect Hannah's knowledge v*ia* the effect they have on her belief. Thus, one might argue, it is not really more difficult to know *p* when there is a great deal at stake over *p*, it is just more difficult to maintain one's own belief that *p*. Of course, if one loses their belief that *p*, one may consequently lose their knowledge, but there are plausible cases of knowledge without belief and we frequently have belief without knowledge.[7] Thus, if high stakes only act on knowledge *via* belief, then surely the most we can say is that it is *sometimes* more difficult to know something when there is a great deal at stake.

This account of the effects of the stakes in the bank cases is, however, a mistaken one. Bank case B specifies that Hannah remains *as confident as she was before* that the bank will be open on Saturday; the stakes have not caused her to lose her belief and yet, assuming (2) is true, she has lost her knowledge. Nonetheless, one might object that this is just too odd: if Hannah really still believes that the bank will be open, then going in to check is irrational. Suppose, as a remedy to this oddity, that Hannah instead refuses to go in and check. In this modified case, the stakes have certainly *not* robbed Hannah of her belief and she acts in accordance with that fact in a natural way. However, Hannah's actions seem irresponsible in the extreme. This is surely because Hannah does not know that the bank is open. The stakes seem to have robbed Hannah of her knowledge without affecting her belief. At any rate, the stakes have certainly not acted on her knowledge *via* belief as suggested.

In my previous discussion of the bank cases and of the common misconception concerning them, I implicitly assumed the view that Brown calls 'folk sensitivity', namely that, "folk attributions of knowledge are sensitive to the stakes and/or salience of error" (Brown 2013, 234). This view was the basis of my claim that it is 'obvious' or 'intuitive' that Hannah knows in case A and that she does not know in case B. This assumed weight of intuition did a lot of work in motivating the view that it can be more difficult to know something when there is a great deal at stake. Of course, if folk sensitivity is false, this would impugn stake-sensitivity. A number of experimental philosophers have conducted studies to test folk sensitivity. Below, I will consider the findings of some of these studies, but I will ultimately argue that the results overall are inconclusive.

In a paper of 2010, May et al. presented DeRose's bank cases to folk subjects. They found that, "neither raising the possibility of error nor raising stakes moves most people from attributing knowledge to denying it" (May et al. 2010, 265). Another study from Buckwalter (2010) drew similar conclusions. However, studies conducted by

7. For knowledge without belief see the case of the timid student, Lewis (1996, 555). Note that this is somewhat controversial.

Pinillos (2011) and by Sripada and Stanley (2012) drew the opposite conclusion that their data supported folk sensitivity. Some have tried to argue either for or against folk sensitivity by claiming that the balance of empirical data supports their given view. A comprehensive review of the empirical data is far outside of the scope of this paper but what is clear from the disparities between empirical studies' conclusions is that we can infer nothing of certainty about folk sensitivity. At most, this paper will accept the empirical data as showing that folk sensitivity *might* be false, and thus that some stake-sensitive views *might* be undermined (*alla* Brown), but this is not much of a claim (Brown 2013).

Notwithstanding the above, it would be remiss not to consider the studies that purport to have found that folk sensitivity is false in a little more detail. May et al. conclude that their data points towards the falsity of folk sensitivity, but they do concede that "the raising of the stakes (but not alternatives) does affect the level of *confidence* people have in their attributions of knowledge" (May et al. 2010, 265). This variation in confidence is to my mind indicative of some underlying folk belief that the stakes are in some sense relevant to knowledge. One might argue that, on the contrary, the folk only become less confident because they think (for Gricean reasons) that the new information that they have been provided with *should* in some way be relevant to their attributions of knowledge to Hannah. If this were the case, we would presumably have seen the same phenomenon in the study whenever the folk were presented with new information in the second case, but when relevant alternatives were introduced, folk confidence was undiminished. It thus seems that it is the variation in the stakes that is causing this variation in folk confidence, which rather impugns the claim that this particular set of data points to the complete falsity of folk sensitivity.

In summary, although May et al. conclude that folk sensitivity is false, I believe that elements of their data relating to folk confidence impugn their own conclusions. The folk may not always possess the same *prima facie* intuitions as stake-sensitivists but it seems clear that some basis for epistemic sensitivity to the stakes *does* exist in folk intuitions in May et al.'s subjects. There are a multitude of other studies purporting to disprove folk sensitivity that I have not discussed, but I hope that my examination of May et al.'s data has served to highlight that there is a significant level of uncertainty surrounding folk sensitivity and that even studies that argue against folk sensitivity do not always manage to do so definitively.

3 Contextualism or SSI?

Contextualism and SSI both offer attractive accounts of how it can be more difficult to know something when there is a great deal at stake. In this section, I will consider some merits of and objections to these theories, with some possible defences.

3.1 Contextualism

There is much to be said for Contextualism. Perhaps most importantly, it provides us with a solution to the apparent contradiction between (1) and (2), but it also accommodates our common-sense notion that 'know' means something different in a murder trial than it does in a game of trivial pursuit. It is also ostensibly capable of dealing with the sceptic in a way that accommodates both our fundamentally unshakable belief that we have hands, for instance, and our philosophically unshakable belief that we cannot know for sure.[8] It manages to do all of this without rejecting intellectualism. However, its linguistic nature makes it susceptible both to the charge that it fails to properly engage with the sceptic, and to a strong linguistic objection that will be the focus of this section.[9]

The contextualist claims that the word 'know' exhibits the property of context-sensitivity and gradability (i.e. meaning that occupies a point on a spectrum, as determined by context). Gradable adjectives, such as 'big' and 'cold', are the only category of words that exhibit these same properties.[10] Consider the word 'cold'. In, "It's cold outside," 'cold' might mean 2°C, whereas in, "Liquid nitrogen is cold," cold means −200°C. In a meteorological context, 'cold' means something much weaker and less demanding than in a chemical context, just as 'knows' means something much weaker and less demanding in bank case A than in bank case B.

So Contextualism boils down to the claim that 'knows' exhibits the same properties as gradable adjectives. However, 'knows' lacks the degree modifiers and comparative forms that all gradable adjectives possess. Consider the word 'big'. We can have 'bigger than', as in, "London is bigger than Edinburgh." By contrast, we cannot have, "Gog knows the sky is blue more than Magog knows the sky is blue," or similar. Likewise, we can have, "London is very big," but we cannot have, "Magog very knows that grass is green," or similar.

We might follow Stanley in considering 'really' as a potential degree modifier for 'knows', as in, "Magog really knows that grass is green" (Stanley 2005, 124–25). However, 'really' seems to be functioning to tell us that Magog *truly* knows. It is not fulfilling the function of a degree modifier, which in the case of 'knows' would be to increase the level of justification required in order to satisfy the predicate.(124). As one further candidate, I will consider 'for sure', as in, "Hannah knows for sure that the bank will be open." It seems at first glance that 'for sure' functions as a degree modifier, picking out a more demanding knowledge relation. In the negation of the attribution, "Hannah does not know for sure that the bank will be open," the promising

8. For the contextualist, the presentation of sceptical hypotheses raises the standards of justification so that 'know' refers to a stronger knowledge relation. Thus, the sceptic is only right when we entertain her. See Lewis (1996, 550) (1996).

9. I set sceptical matters aside. See Klein (2000)

10. Some claim that certain verbs (other than 'know') also exhibit these properties, but they are few in number and this is debated.

behaviour continues; this appears to say that Hannah does not satisfy some stronger knowledge predicate, although she may satisfy a weaker one. However, we face the same problem here as we faced with 'really'. In every other instance (e.g. "Grant is tall for sure"), 'for sure' means 'definitely', and it functions in a similar way to 'really'. When Hannah says she 'knows for sure' it seems that Hannah is making a claim about the likelihood of her self-attribution being true, rather than a claim about the strength of the knowledge. To reject this, one would have to argue that 'for sure' functions differently when applied to 'knows', but only then, and this adds to rather than solves the contextualist's problem. At any rate, the extent of the dis-analogy casts significant doubt on the gradability of knowledge.

Clearly, the contextualist has some explaining to do. There is a way out, but the road is bumpy, and it is not clear that Contextualism survives the journey. The contextualist can claim that 'knows' is *sui generis*, as Brown puts it, but this clearly needs a great deal of justification.[11] Why is 'knows' *sui generis*? Well, the contextualist might respond by pointing out that 'knows' is the only context-sensitive and gradable word about which there is a field of philosophical enquiry. Given that fact, would it be so surprising if it were a linguistic special case? Perhaps 'know' and its cognates have developed in line with an erroneous, common-sense understanding of the nature of knowledge as bivalent, as per the intuitively correct common-sense doctrine that, 'either you know, or you don't'.[12] Perhaps it was this folk conception that prevented degree modifiers and comparative forms from developing in ordinary usage. However, if we follow this road, we also have to explain why (1) and (2) do count as ordinary usage. The contextualist's central claim is that we ordinarily use 'knows' in a gradable way. Defending this claim against the linguistic objection by claiming that the word 'knows' and its cognates developed in a way that was heavily influenced by a non-gradable understanding of knowledge is perhaps too close to cutting off one's nose to spite one's face.

Notwithstanding the significant linguistic issues, we have plenty of reasons to believe that we do use 'knows' in a context-sensitive way—'knowing' is undoubtedly different in a murder trial than it is in a pub quiz—but this sort of evidence does nothing to save Contextualism as a linguistic theory.

3.2 SSI

SSI also offers an attractive resolution to the bank cases and others like them. SSI does this by claiming that some of the factors that determine whether or not a subject is in

11. By '*sui generis*' Brown, roughly, should be taken to mean that the word 'knows' is linguistically in a class of its own, being the *only* context-sensitive and gradable word that lacks degree modifiers and comparative forms.

12. I claim that the doctrine would be historically intuitively correct to folk subjects who have not considered bank cases, or similar.

a position to know that *p* are pragmatic (and thus not truth-directed), and that these include what is at stake for S over *p*. Unlike Contextualism, this means that SSI only manages to offer a solution at the cost of rejecting intellectualism, which amounts to what Kvanvig (2004) originally coined 'pragmatic encroachment' on knowledge. This, for many, is a pill that is very hard to swallow. In this section, I will outline why pragmatic encroachment is a problem for SSI before going on to consider the problem posed by certain types of third-person cases for SSI and the projectivist response thereto.

As Fantl and McGrath put it, pragmatic encroachment is *mad* (Fantl and McGrath 2009, 28). It's mad because it constitutes the loss of the intuitive, plausible doctrine of intellectualism. It just seems wrong that non-truth-directed factors are relevant to whether or not one is in a position to know. Of course, the SSI-ist could bite the bullet and say that some non-truth-directed factors, such as the stakes, *just are* relevant to knowledge. If the objector continues to insist that this is 'just wrong', then the SSI-ist would appear to be within her rights to request an alternative solution to the bank cases. Reed objects extensively to the pragmatic encroachment entailed by SSI, and he does indeed suggest an alternative (Reed 2013, 104–05). However, the alternative that he suggests is Contextualism and, as we have seen, this is not without problems of its own. Indeed, I do not accept, given what we have seen so far, that Contextualism is clearly preferable to SSI. Pragmatic encroachment might be a bit mad, but it is not *that* mad. Ultimately, SSI functions as an appealing and otherwise natural explanation of what is happening in the bank cases.

DeRose provides what he believes to be, "a killer objection," to SSI, which utilises the following case (DeRose 2005, 185) .

> **Thelma and Louise** Hannah and her wife, Sarah, are driving home on Friday afternoon. They plan to stop at the Thelma is being asked by the police whether John could have committed the awful crime they are investigating. Thelma admits that she does not 'know' various propositions on this matter unless she is in an extremely strong epistemic positions with respect to them. Thelma has reliable testimony that John was in the office yesterday, which would ordinarily be grounds for knowledge, but she holds that the weakest grounds for knowledge that John was in the office in her actual context would consist of, say, having seen John in the office herself. The police then ask Thelma whether Louise, who is elsewhere, would know whether or not John was in the office. Thelma knows that Louise is in the same epistemic position (in the intellectualist sense) as she is, so she replies, "No, she does not know either" (186–87).

In the case above, the stakes are very high for Thelma. If she says that John could have committed the crime without being sure enough that this is the case, she risks wrongfully incriminating John and perhaps even prosecution for the perversion of

justice if she makes a claim that she is really not justified in making. However, Louise is unaware of all this and so, for her, the stakes are not high at all. For the contextualist, attributions of knowledge are governed by the context of the attributor, so this poses no problem. However, on SSI, knowledge is sensitive to the stakes and the broader context surrounding the putative subject of knowledge. DeRose says that SSI predicts that Thelma will apply the lower standards salient in Louise's context and that she will thus attribute knowledge to Louise, and yet she does not (185). I would argue that although SSI predicts that denials of knowledge to Louise are false, it does not predict the choices of any speaker. At any rate, says DeRose, the SSI-ist must, "against very strong appearances," argue that Thelma's denial of knowledge to Louise is false (185). Although I concur that Thelma's denial is to me intuitively false, my intuition is far from 'very strong'.

The 'projectivist' defence (*alla* Hawthorne) against this objection is to claim that Thelma *rightly* denies herself knowledge and then *mistakenly* projects her own ignorance onto Louise (Hawthorne 2003, 162–66). The problem with this, according to DeRose, is that in cases where Thelma *does* know (e.g. she saw John herself), Thelma will still deny knowledge to Louise, even though she has no ignorance to project (DeRose 2005, 187).

What if, rather than projecting her own ignorance, Thelma projects the high stakes salient in the context of her self-attribution onto the context of Louise's hypothetical self-attribution? That is, what if Thelma actually means "no, Louise would not know, *if she were aware of the stakes*?"

Then, even if Thelma had knowledge, she could continue to project the stakes onto Louise and to thus deny her knowledge. If we pursue this amended defence, one might raise concerns that we veer too close to attributor-sensitivity rather than subject-sensitivity, or that we are heading towards a contextualist account. It seems to me that we avoid the former concern for the same reason that the original projectivist defence does. On my account, the claim is that Thelma *mistakenly* denies knowledge to Louise because she projects the high stakes salient in her own context. Interpreted as, "Louise does not (whilst still unaware of the stakes) know," we lose subject-sensitivity since the truth of this depends on features of Thelma's context only. Interpreted as per my account, as a modal claim about whether or not Louise *would* know once aware of the stakes, we clearly retain subject-sensitivity, since the truth of this depends on features of Louise's context only. However, the concern that we are heading towards a contextualist account may be more well-founded. To avoid this, I must assert that if Louise is unaware of the stakes, then Louise's self-attributions are true, but if she is aware of the stakes, then they are false. That is, whether or not Louise truly self-attributes knowledge in this case appears to be sensitive to the context of her self-attribution rather than to what is, whether she knows it or not, at stake for her. Thus, whilst this new projectivist defence avoids the problem pointed out by DeRose, it perhaps loses some of SSI in the process.

Nonetheless, this paper does not accept that this is a 'killer objection' to SSI. The prospects for an alternative defence against this sort of objection seem far from bleak, and the objection only applies to slightly unusual third-person cases, rather than to the very heart of the theory.

4 Conclusion

There is some debate as to whether or not it is more difficult to know something when there is a great deal at stake. Contextualism and SSI both offer attractive but differing accounts of the effects of the stakes on knowledge. On the other hand, empirical studies have impugned folk sensitivity, the very starting point of these theories, although the collective body of data is contradictory and inconclusive. In my opinion, SSI is better placed to explain stake-sensitivity than Contextualism, not because SSI offers a perfect, objection-free account, but because the linguistic objection to Contextualism is to my mind a strong, unresolved objection to the very essence of Contextualism that is stronger than any existing objection to SSI.

References

Brown, Jessica. 2013. "Experimental Philosophy, Contextualism and SSI". *Philosophy and Phenomenological Research* 86 (2): 233–61.

Buckwalter, Wesley. 2010. "Knowledge Isn't Closed on Saturday: A Study in Ordinary Language". *Review of Philosophy and Psychology* 1 (3): 395–406.

DeRose, Keith. 1992. "Contextualism and Knowledge Attributions". *Philosophy and Phenomenological Research* 52 (4): 913–29.

———. 1995. "Solving the Skeptical Problem". *Philosophical Review* 104 (1): 1–52.

———. 2005. "The Ordinary Language Basis for Contextualism, and the New Invariantism". *Philosophical Quarterly* 55 (219): 172–98.

Fantl, Jeremy, and Matthew McGrath. 2009. *Knowledge in an Uncertain World.* Oxford University Press.

Hawthorne, John. 2003. *Knowledge and Lotteries.* Oxford University Press.

Klein, Peter D. 2000. "Contextualism and the Real Nature of Academic Skepticism". *Philosophical Issues* 10 (1): 108–16.

Kvanvig, Jonathan. 2004. "Pragmatic aspects of knowledge?" `https://web.archive.org/web/20151020183305/http://certaindoubts.com/test/`.

Lewis, David K. 1996. "Elusive Knowledge". *Australasian Journal of Philosophy* 74 (4): 549–67.

May, Joshua, Walter Sinnott-Armstrong, Jay G. Hull and Aaron Zimmerman. 2010. "Practical Interests, Relevant Alternatives, and Knowledge Attributions: An Empirical Study". *Review of Philosophy and Psychology* 1 (2): 265–73.

Moore, G.E. 1925. "A Defence of Common Sense". In *Contemporary British Philosophy, Second Series,* edited by J. H. Muirhead. George Allen / Unwin.

Pinillos, Nestor Ángel. 2011. "Some Recent Work in Experimental Epistemology". *Philosophy Compass* 6 (10): 675–88.

Reed, Baron. 2013. "Practical Matters Do Not Affect Whether You Know". In *Contemporary Debates in Epistemology,* edited by Matthias Steup and John Turri, 2–95. Blackwell.

Schaffer, Jonathan. 2006. "The Irrelevance of the Subject: Against Subject-Sensitive Invariantism". *Philosophical Studies* 127 (1): 87–107.

Sripada, Chandra Sekhar, and Jason Stanley. 2012. "Empirical Tests of Interest-Relative Invariantism". *Episteme* 9 (1): 3–26.

Stanley, Jason. 2005. *Knowledge and Practical Interests.* Oxford University Press.

Justifying prison breaks as civil disobedience

Isaac Shur*
Northeastern University

Abstract I argue that given the persistent injustice present within the Prison Industrial Complex in the United States, many incarcerated individuals would be justified in attempting to escape and that these prison breaks may qualify as acts of civil disobedience. After an introduction in section one, section two offers a critique of the classical liberal conception of civil disobedience envisioned by John Rawls. Contrary to Rawls, I argue that acts of civil disobedience can involve both violence and evasion of punishment, both of which are necessary components of prison breaks. In section three I outline the broad circumstances in which escape attempts would be justified, which are when individuals have either been incarcerated on unjust grounds (such as coercive plea bargains, draconian laws, or institutionalized discrimination) or when individuals are subject to inhumane conditions within prison (such as physical or sexual abuse, inadequate medical care, and overcrowding). Although this framework is formulated with the U.S. criminal justice system in mind, it is potentially applicable to other instances of incarceration if they're similarly unjust such as prisons in other countries, migrant detention centers, or psychiatric wards. I then outline four requirements which must be met for these prison breaks to qualify as civil disobedience. First, escape must be attempted as a last resort. Second, violence and other law-breaking must be reasonable, meaning it is done with precision, discretion, and proportion. Third, escapees hold the burden of proving they have been subject to injustice. Fourth and finally, the act of escape must contain other key components of civil disobedience such as persuasion, communication, and publicity, which will most likely be accomplished via coordination with non-incarcerated individuals. In section four I address the distinction between prison reform and abolition.

*Isaac Shur is a senior at Northeastern University in Boston, Massachusetts where he studies Politics, Philosophy, and Economics. After graduating he plans on pursuing a PhD in philosophy, with the goal of becoming a professor. His main areas of interest are social, political, and moral philosophy. Outside of philosophy, Isaac enjoys music, literature, and theatre. He is also the vice president and treasurer of Northeastern's Shakespeare Society, with which he typically performs every semester.

1 Introduction

Prison breaks are generally not considered acceptable, that much is obvious. Conventional wisdom leads us to believe that people in prison deserve to be there due to crimes they've committed, and should be kept there to prevent them from committing more crimes. But this is not necessarily the case. Many innocent people are strong armed into pleading guilty by prosecutors, since plea bargains eliminate the risk of receiving an even harsher sentence during trial.[1] Additionally, many people are imprisoned based on laws that may qualify as unjust, such as non violent drug offenses or sex work offenses involving consenting parties. It is clear that grave injustice occurs within the criminal justice system, and more specifically the Prison Industrial Complex.[2] My aim is not to prove this, as this has been thoroughly argued elsewhere by the likes of John Pfaff, Angela Davis, and Michelle Alexander.[3] Rather I argue that in the face of these injustices, incarcerated individuals may be justified in attempting to escape prison and subsequently evade reimprisonment, and that such conduct may qualify as civil disobedience.

This might seem radical and surprising at first since prison breaks are inherently a violent form of evading punishment, whereas civil disobedience is often understood to be neither violent nor evasive. It is for this reason that section two offers a critique of the classical liberal conception of civil disobedience envisioned by John Rawls. Contrary to Rawls, I argue that acts of civil disobedience can involve both violence and evasion of punishment. In section three I outline the appropriate circumstances and requirements which qualify certain escape attempts as justified acts of civil disobedience. In section four I address the distinction between prison reform and abolition.

1. John Pfaff argues that the power of prosecutors is actually the primary cause of increased prison populations. See John Pfaff, *Locked In: The True Causes of Mass Incarceration—and How to Achieve Real Reform* (2017).

2. The term Prison Industrial Complex refers to the ever expanding overlapping financial interests of state punishment and private industry, such as the many government contracts given to CoreCivic (formerly known as the Corrections Corporation of America or CCA) to build and maintain private prisons.

3. Angela Davis, *Are Prisons Obsolete?* (Seven Stories Press, 2003); Pfaff, *Locked In*; Michelle Alexander and Cornel West, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (The New Press, 2010).

2 Violence and evasion in civil disobedience: a critique of the liberal conception

Although arguments in favor of violent civil disobedience have been given,[4] nonviolence is still assumed to be a part of the very definition of civil disobedience in much contemporary analysis.[5] This is no doubt due in large part to John Rawls' definition of civil disobedience stated in *A Theory of Justice*. For Rawls, civil disobedience must be "a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government."[6] Rawls also thought that when practicing civil disobedience, fidelity to the law is expressed "by the willingness to accept the legal consequences of one's conduct."[7] Clearly any form of resistance that involves violence or the evasion of punishment will not qualify as civil disobedience under Rawls' framework.[8] This certainly sounds like the intuitive conception of civil disobedience that we associate with figures such as Martin Luther King Jr. or Mahatma Gandhi. But this conception has its critics, and some even question whether or not it truly matches up with the actions of King and Gandhi.[9] Pushing back on this traditional conception, contemporary philosophers have offered alternative conceptions of civil disobedience that allow for both evasion of punishment and the use of violence.[10] A defense of these frameworks will lay the necessary groundwork for this project.

4. Allan C. Hutchinson, "Civil Disobedience: Its Logic and Language," *The Law Teacher* 13, no. 1 (1979): 1–11; John Morreall, "The Justifiability of Violent Civil Disobedience," *Canadian Journal of Philosophy* 6, no. 1 (1976): 35–47; Robin Celikates, "Rethinking Civil Disobedience as a Practice of Contestation—Beyond the Liberal Paradigm," *Constellations* 23, no. 1 (2016): 37–45.

5. See for instance William Smith, "Policing Civil Disobedience," *Political Studies* 60, no. 4 (2012): 826–42. Smith's project of determining how to police civil disobedience would obviously require drastic changes if the disobedience in question were to be violent.

6. John Rawls, *A Theory of Justice* (1971; repr., Harvard University Press, 2005), 364.

7. Ibid.

8. Under a strict Rawlsian framework, violent and evasive resistance may instead qualify as "militant action" (see ibid., 367–68). Some prison breaks may indeed qualify as militant action, but those which meet the requirements laid out in section three will be better classified as civil disobedience, due to the restrictions set on the use of violence and the element of persuasion that is required.

9. Candice Delmas, *A Duty to Resist: When Disobedience Should Be Uncivil* (New York, USA: Oxford University Press, 2018).

10. Celikates, "Rethinking Civil Disobedience," 37–45; Kimberley Brownlee, *Conscience and Conviction: The Case for Civil Disobedience* (Oxford University Press, 2012). Celikates' and Brownlee's conceptions diverge from Delmas' in an important way. While Celikates and Brownlee argue civil disobedience itself can be violent, Delmas argues for a distinction between civil and uncivil disobedience that are both potentially defensible as principled disobedience. I believe this distinction has merit but for the sake of simplicity and focus I'll use the more popular term civil disobedience inclusively as per Celikates and Brownlee.

2.1 Evasion of punishment

I'll start with the evasion of punishment,[11] which becomes paradoxical in the case of mass incarceration, where the punishment itself is identified as unjust and in need of change. Philosophers such as Kimberley Brownlee and Howard Zinn point this out as well.[12] Brownlee argues that accepting the legal consequences of one's actions necessarily concedes the legitimacy of the punishment.[13] Therefore it would be impossible to both accept a given punishment (thus granting it legitimacy) while also protesting against said instance of punishment as unjust via civil disobedience, as this would lead to the conclusion that the punishment is unjust yet somehow legitimate. This is a puzzling conclusion at best, and a logical contradiction as worst. Surely in order for the criminal justice system to maintain legitimacy it must promote justice rather than injustice. It cannot be both unjust and legitimate, at least not without reducing legitimacy to moral arbitrariness. Furthermore, as Zinn points out, civil disobedience necessarily begins with the premise that the law must sometimes be disobeyed.[14] So why should obedience suddenly be required once we get to the punishment stage of the legal process? If disobedience is justified at the outset it seems arbitrary, even backwards, to reinstate a requirement of obedience later on. It would be more consistent and sensible for disobedience to remain justifiable throughout the entire process, punishment and all.

Rather than willingly accepting the legal consequences of their actions, Zinn and Brownlee argue citizens need only accept the *risk* of being legally punished.[15] There are two advantages to replacing the acceptance of punishment with the acceptance of risk. First, accepting the risk of punishment rather than the punishment itself avoids the contradiction of granting legitimacy to instances of injustice. Accepting the risk of being imprisoned merely acknowledges the state's ability to incarcerate but grants no legitimacy to such incarceration, thus leaving open the possibility that such practices of incarceration are unjust. Second, acceptance of risk rather than punishment allows citizens to sustain their disobedience, thus maintaining consistency, rather than arbitrarily rescinding their disobedience when it comes time for punishment. This makes civilly disobedient prison breaks more immediately plausible, as surely anyone who attempts to escape from prison must accept the risk of punishment. It also demonstrates that the idea of evasive civil disobedience is not as new and radical as one may assume.

Some object by invoking Martin Luther King Jr.'s assertion that those who dis-

11. Some theorists, such as Brownlee, distinguish between evasion in general, and evasion of state punishment specifically. Throughout this piece I will use 'evasion' to refer exclusively to the latter sense.

12. Howard Zinn, "Law, Justice, and Disobedience," *Notre Dame Journal of Law, Ethics and Public Policy* 5, no. 4 (1991): 899–920; Brownlee, *Conscience and Conviction*.

13. Brownlee, *Conscience and Conviction*, 8, 23.

14. Zinn, "Law, Justice, and Disobedience," 914.

15. Brownlee, *Conscience and Conviction*, 146–47; Zinn, "Law, Justice, and Disobedience," 913–15.

obey the law and subsequently accept their penalty demonstrate "the highest respect for law."[16] But Zinn argues that King's motivation for accepting punishment was grounded instrumentally rather than in principle.[17] King speaks of one "who willingly accepts the penalty of imprisonment *in order to arouse the conscience of the community* over its injustice."[18] Interpreting King's words strictly, we might come to the conclusion that one must only accept imprisonment insofar as this appeals to the community's conscience. Even King himself did not always accept punishment in full, for instance when he accepted premature release from jail in 1960 after an anonymous benefactor pleaded his case from behind the scenes.[19] Although this premature release was extralegal rather than illegal, it shows that King was willing to serve less time than he was sentenced to. Based on this, and a strict reading of his letter, I'd argue that King understood that imprisonment had a limited communicative purpose, and once this upper limit was reached he knew he would be able to affect more change from the outside than in. Important and well known figures like King might accept *temporary* imprisonment for *instrumental* purposes, but the American conscience seems particularly unmoved by mass incarceration of regular citizens since prison populations continue to rise while conditions deteriorate. Thus, ordinary people stuck in the unjust Prison Industrial Complex need not accept imprisonment by King's own logic. They will be better able to arouse the community's conscience if they evade, as I'll argue later on. Even still, one might maintain the view that disobedients should express fidelity to the law, thus departing from the interpretation of King I've argued for here. In the face of such a view I ask: why should citizens respect the law when the law so clearly disrespects citizens by inflicting injustice upon them? Respect between citizens and the systems which govern them should be mutual, not one sided. Further, the refusal to accept such injustice should be seen as expressing fidelity to the *ideal* of a just system in the face of an unjust one.

2.2 Violence

Violence is a more difficult component to analyze due to the question of what exactly qualifies as violence. John Morreall argues that if we interpret violence as stripping someone of value, integrity, dignity, sacredness, or their rights to body, autonomy, and private property then we clearly cannot limit the term violence to obvious physical acts but must extend it to psychological harm, verbal acts, and coercion in general.[20] Similarly and more recently, Robin Celikates distinguishes between a narrow understanding of violence as strictly physical harm to people, and a broad understanding

16. Martin Luther King Jr., "Letter from a Birmingham Jail," 1963, `https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html`.
17. Zinn, "Law, Justice, and Disobedience," 915–16.
18. King Jr., "Letter from a Birmingham Jail." Emphasis mine.
19. Zinn, "Law, Justice, and Disobedience," 915.
20. Morreall, "The Justifiability of Violent Civil Disobedience," 37–45.

that is closer to Morreall's view which includes things like destruction of property, violence to one's self, and psychological violence.[21] Both Morreall and Celikates argue that taking the broad view of violence forces us to drop the requirement of nonviolence in civil disobedience, or else admit that many actions which we generally consider to be civilly disobedient will no longer qualify as such. For instance, blocking entrances to buildings in protest.[22] Such an act, after all, involves physically challenging the autonomy of those who wish to enter and exit the building. Ultimately this challenge to autonomy is a use of force which, as Morreall puts it, "has much more in common with a physically violent protest than with a letter-writing campaign."[23]

On the other hand, if we take the narrow view of violence for the sake of maintaining the nonviolence requirement then we lose powerful tools which could potentially change the status quo and reduce overall suffering. As Celikates argues, the requirement of nonviolence threatens to reduce civil disobedience to a purely symbolic moral claim with no potential to affect any real change on political systems.[24] As we'll see in the next section, this is certainly the case regarding prisoners' ability to reform the system from the inside. In other words, nonviolence can place drastic restrictions on both the options available for civil disobedients and the effectiveness of those options. So, the requirement should be dropped, and some degree of violence should be permissible.[25]

More important than the distinction between violence or nonviolence, Morreall argues, is the distinction between coercion and persuasion, where persuasion is an attempt to change one's mind while coercion is an attempt to change one's behavior using force or the threat of force.[26] In other words, the persuader attempts to align the persuadee's views with their own, while the coercer ignores the coercee's views entirely. Acts of protest and resistance might necessarily be somewhat coercive in some contexts, but this need not disqualify them as civil disobedience as long as the element of persuasion is still present to a sufficient degree. An action that is wholly coercive and not at all persuasive won't qualify as civil disobedience. So in order for prison breaks to qualify, the violence exhibited will need to strike a balance between coercion and persuasion. This brings me to the next stage of this project. Surely not all prison breaks will maintain a sufficient balance between persuasion and coercion. Some prison breaks will be justified acts of civil disobedience, and others will not.

21. Celikates, "Rethinking Civil Disobedience," 41–42.
22. Morreall, "The Justifiability of Violent Civil Disobedience," 39–41.
23. Ibid., 40.
24. Celikates, "Rethinking Civil Disobedience," 41–43.
25. This conclusion is shared by Brownlee, *Conscience and Conviction*, 21–23 as well.
26. Morreall, "The Justifiability of Violent Civil Disobedience," 40–43.

3 Prison breaks as civil disobedience

It is one thing to morally justify prison breaks, it is another thing to classify them as acts of civil disobedience. Acts which qualify as civil disobedience may nevertheless be morally unjustified (bigots might peacefully protest against laws which prohibit discrimination in the workplace, for instance). As such, the tasks of justification and classification must be undergone separately.

3.1 Justification

I argue that there are two broad circumstances in which escaping prison would be morally justified. Either the sentence is objectionable due to procedural injustices that it resulted from, or the incarcerated individual faces such grave and persistent injustice within the prison itself that they fear for their health and safety. A prison sentence itself might be objectionable in a number of ways: if the individual was coerced to plead guilty by a prosecutor; if they were coerced into the crime yet sentenced anyways; if they've been given a disproportionate sentence due to characteristics such as race, religion, or gender; if they've been incarcerated based on the violation of unjust laws,[27] including laws criminalizing consensual and victimless acts (here following the liberal commitment against paternalism); or if the crime was committed in order to preserve their health and safety or that of others (such as economic crime to avoid starvation, or providing sanctuary to undocumented migrants). For injustice within the prison itself to qualify as a threat to one's health and safety we might turn to instances of physical and sexual assault, excessive use of solitary confinement, and prison overcrowding, which are all too common in the U.S. incarceration system.[28]

27. This raises the obvious question of what makes a law unjust, an important question too complicated to answer sufficiently here. Yet I submit that we can conceive of unjust laws and point to past instances of them such as fugitive slave laws. Other cases are less clear. I for one believe that nonviolent drug consumers and consensual sex workers are imprisoned on the basis of unjust laws.

28. Davis, *Are Prisons Obsolete?*, 77-83; American Civil Liberties Union, "The Dangerous Overuse of Solitary Confinement in the United States," 2014, `https://www.aclu.org/report/dangerous-overuse-solitary-confinement-united-states`; American Civil Liberties Union, "Overcrowding and Overuse of Imprisonment in the United States," 2015, `https://www.ohchr.org/Documents/Issues/RuleOfLaw/OverIncarceration/ACLU.pdf`. According to American Civil Liberties Union, "Overcrowding and Overuse...," U.S. prison populations have risen 700% since 1970, which has outpaced both general population growth and crime rates. Most facilities are far beyond capacity "with prisoners sleeping in gyms and hallways or triple- and quadruple-bunked in cells." This is the sort of overcrowding which justifies escape.

3.2 Classification

Beyond these broad circumstances there are additional requirements which need to be met by escapees for their attempts to be classified as civil disobedience. For a more detailed framework of justified violence, I turn to Allan C. Hutchinson, who gives four qualifications which must be met for violence to be justified in civil disobedience. First, it must be used as a last resort (this is reminiscent of Rawls' stipulation[29] that any form of civil disobedience must occur after all available legal channels have been exhausted). Second, the violence must be a proportional response to a serious violation of rights. Third, the burden of proof regarding the aforementioned violation of rights is on those who commit and advocate for the violence. Finally, violence must be used with precision and discretion.[30] Beyond Hutchinson's requirements, escapees must also meet Morreall's requirement of persuasion identified earlier. I've combined and distilled Hutchinson's and Morreall's frameworks into four points, which can be used to evaluate escape attempts on a case by case basis to determine whether they can be classified as civil disobedience.

3.2.1 Escape as a last resort

The sheer fact that an individual has ended up in prison means they have gone through the available legal channels already, and often faced injustices such as coercion into plea deals. There are few channels available within prisons themselves to remedy injustice. Congress has continually passed legislation making litigation against prisons difficult if not impossible, such as the Prison Litigation Reform Act of 1996 which requires inmates to exhaust internal remedies before being eligible for lawsuits. But these internal remedies are designed by prison administrations to be overly complex and ultimately useless. Take for instance the 602 form which California prisoners are required to fill out to begin the internal grievance process. These forms have a notorious reputation among prisoners for being lost, ignored, and even burned by guards in front of inmates, who are then left with no other channels for recourse.[31] The end result is that prisoners are stifled during the internal process, which then blocks them from accessing the courts.[32] Additionally, prison guards who might theoretically be capable of remedying injustices are often committing the injustices in the first place or at least turning a blind eye to them.[33] Thus it is not difficult to argue that prisoners facing injus-

29. Rawls, *A Theory of Justice*, 363–68.

30. Hutchinson, "Civil Disobedience," 1–11.

31. Kitty Calavita, *Invitation to Law and Society: An Introduction to the Study of Real Law*, 2nd ed. (University of Chicago Press, 2010), 47–50.

32. Ibid.

33. See for instance David Sonestein, "California Prisoners Say Videos Show 'Gladiator Fights' At Soledad State Prison," *Shadow Proof*, 2019, `https://shadowproof.com/2019/02/18/california-prisoners-say-videos-show-gladiator-fights-at-soledad-state-prison/`; Jason Renard Walker, "Grey Suit Protection: Ellis Unit Guards Admit Assaulting Prisoners, But Aren't Held Account-

tice in the mass incarceration system have exhausted their legal channels, which were limited in the first place.

Extralegal channels which lack violence and evasion have also proven ineffective in prisons. Past acts of disobedience such as hunger strikes and work stoppages have left prisoner's demands unmet.[34] This is due largely to the position of power that correctional authorities wield over those who attempt to strike. The most recent prison strike in 2018 was met with harsh preemptive suppression from prison authorities, such as the transfer and isolation of prisoner activists and jailhouse lawyers under false pretenses.[35] Even violent (yet non evasive) tactics have failed in the past such as the 1971 Attica revolt, which resulted in the death or injury of 112 inmates and left their demands unmet.[36] This is not to say that prisoners must attempt all of the methods of resistance mentioned here before attempting escape, rather I argue that given the ineffectiveness of these methods escape attempts may be the only viable option prisoners have in the first place.

3.2.2 Reasonable violence

I find Hutchinson's second and fourth requirements similar enough to lump them together as one requirement; that the violence used to escape and evade must be reasonable. This means it must be proportionate to the violence they are subject to, and it must be used with precision and discretion. Escapees should avoid direct confrontation with correctional officers and law enforcement as best they can, only engaging in physical violence when they are subject to physical violence themselves. Preventative and retaliatory violence would not be permitted. Violence against civilians should be avoided altogether unless zealous private citizens attempt to directly pursue and detain escapees, in which case they have in essence filled the role of law enforcement. Then the same principles of proportionality, precision, and discretion apply. Escapees will no doubt be forced to break other laws while evading capture. This additional law breaking must follow the same rule as violence and be proportionate to the escapees' needs and similarly precise so as to minimize harm to others. Stealing small amounts of food or money, and perhaps transportation (be it vehicle theft or not paying for public transit) would be justified.

able," *Incarcerated Workers Organizing Committee*, 2019, `https://incarceratedworkers.org/news/grey-suit-protection-ellis-unit-guards-admit-assaulting-prisoners-arent-held-accountable`.

34. Delmas, *A Duty to Resist*, 183–84.

35. Paul Stanley Holdorf and Melinda R. Paterson, "Prisoners' Legal Advocacy Network (PLAN) Mounts Legal Responses to Widespread Reports of Prisoner Abuses in the Aftermath of the 2018 National Prison Strike," 2018, `https://www.nlg.org/plan-prison-strike-response-2018/`.

36. Delmas, *A Duty to Resist*, 180–83.

3.2.3 Burden of proof

Injustice within the Prison Industrial Complex is well documented, and often self evident. For instance, physical abuse perpetrated by correctional officers and other inmates is likely to leave visible traces on the body. Unjust conditions such as overcrowding and the use of solitary confinement are matters of public record.[37] In sum, the same instances of injustice which ground prison breaks as a potential form of civil disobedience also serve as the proof which fulfills this third requirement. The main obstacle in proving instances of injustice would likely be state action. Authorities might destroy and delete damning records or attempt to cover-up instances of violence and abuse. It is likely that blame would be shifted from officials to inmates themselves, as was the case with the most 2018 prison strike.[38] The difficulty in proving injustice will vary greatly from case to case. Sometimes it will be obvious but there will often be battles in the court of both law and public opinion. Overcoming state interference in providing proof of injustice will likely require collaboration between people inside and outside of prisons, which is addressed in the next section.

3.2.4 Persuasion

The requirement of persuasion intertwines naturally with three other important components of civil disobedience: publicity, communication, and collaboration. I argue that escapees can account for all four of these components in the same way. Escaped convicts naturally have incentive to hide from the public eye while the police have incentive to publicize the escape in order to raise awareness of potential danger as well as procure tips from the public. However I believe it is sensible to require publicity that is intentional on behalf of the escapee, if for no other reason than to also fulfill persuasion through communication to the public. Escapees could communicate by disseminating their stories through collaborators on the outside who are capable of being in the public eye more directly such as family and friends or perhaps sympathetic journalists. These collaborators will also be paramount in providing proof of injustice. While escapees will likely be occupied primarily with evading authorities, allies such as journalists and activists can investigate claims of abuse, violence, and inhumane conditions. Conducting research on the use of solitary confinement on particular prisoners, for example, might fulfill both requirements three and four as injustice could be uncovered and publicized in order to raise awareness and appeal to the public conscience.

The aims of persuasion are three-fold. First, escapees aim to persuade the public and policy makers that reform of the criminal justice system is necessary from standpoints of both justice and efficiency,[39] thus pursuing legal change. Second, by commu-

37. See note 27 above.
38. Holdorf and Paterson, "PLAN Mounts Legal Responses..."
39. The justice aspect is obvious, but there is an efficiency element as well since mass incarceration

nicating that they intend no harm to anyone and will only use violence as a means of avoiding being re-imprisoned, escapees aim to convince people that the typical conception of convicts as inherently dangerous and malicious is not necessarily accurate. This serves to break down the stereotypes of convicts that partially contribute to the injustice of the mass incarceration system, or at least combat apathy to the injustice and generate sympathy for escapees by publicizing their stories. Finally, meeting and communicating with activists and journalists incurs a level of risk for escapees which demonstrates that their escape is grounded in genuine concern for injustice and a desire for change, rather than simply self-preservation.[40]

4 The pursuit of change: reform or abolition?

Activists and abolitionists will rightfully wonder whether the purpose of this framework is to work towards the abolition of incarceration or merely reform. I believe there is some sense in which this distinction does not matter for this project. The justification of prison breaks can be seen as a tool for either reform or abolition. Further, I'm of the mindset that meaningful reform and total abolition must both begin with decarceration, for instance the decriminalization of non violent drug use and sex work involving consenting parties.[41] Yet there is a danger in escapees and collaborators not specifying their demands for change and choosing these demands with care. Correctional authorities might appease escapees and collaborators by enacting minimal and incremental changes that serve to perpetuate the Prison Industrial Complex rather than dismantle it. For example by increasing the size of solitary confinement cells and decreasing their overall use rather than simply eliminating the practice altogether. Or lawmakers might reduce mandatory minimums for nonviolent drug use rather than decriminalizing it entirely. These are very real threats to both meaningful reform and abolition alike, thus the targets of legal change should be chosen with care and communicated explicitly.

There will necessarily be thought, discussion, and disagreement over what the appropriate targets of change are or should be. I believe the obvious targets to consider are the disproportionate powers of prosecutors over defendants, laws criminalizing consensual and victimless acts, overcrowding, solitary confinement, and the death penalty. Attempts at appeasement from authorities which fall short of eliminating these injustices entirely are inadequate, and escapees and their collaborators should not settle for such appeasement, as this will perpetuate rather than eliminate injustice. Thus, rather than protesting injustice *in general*, there must be *specific targets and goals*,

constitutes a hefty use of resources that could be used elsewhere. The difficulty of former convicts to procure employment is another issue of efficiency perpetuated by mass incarceration.

40. I thank the reviewers at *Aporia* for raising this point.

41. It is obvious how this qualifies as reform, but Davis, *Are Prisons Obsolete?*, 107–11 identifies this as an imperative of abolition as well.

regardless of whether the final aim is reform or abolition.

5 Conclusion

The proposal to classify certain instances of prison breaks as civil disobedience may seem radical. Analogies of fugitive slave escapes[42] and evasion of the Nazi regime during WWII come to mind. Even though mass incarceration may not be as blatantly unjust or as large in scale as these other examples I believe the injustice is sufficient to warrant civil disobedience. Although this framework is formulated with the U.S. criminal justice system in mind, it is potentially applicable to other instances of incarceration if they're similarly unjust such as prisons in other countries, migrant detention centers, or psychiatric wards.

There are likely many dimensions of this issue not sufficiently addressed here. For example, what exactly makes a law unjust? Is it potentially possible for state punishment to be unjust yet still legitimate? And can escapees view the government in general as legitimate while protesting against such large parts of it as prisons and the criminal justice system? Clearly more analysis is necessary in order to cement the justifiability of prison breaks as acts of civil disobedience. But by arguing against the requirements of nonviolence and non evasiveness while fulfilling other requirements such as persuasion, publicity, collaboration, and communication I believe I have presented a sufficient case to begin the conversation.

References

Alexander, Michelle, and Cornel West. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. The New Press, 2010.

American Civil Liberties Union. "Overcrowding and Overuse of Imprisonment in the United States." 2015. `https://www.ohchr.org/Documents/Issues/RuleOfLaw/OverIncarceration/ACLU.pdf`.

———. "The Dangerous Overuse of Solitary Confinement in the United States." 2014. `https://www.aclu.org/report/dangerous-overuse-solitary-confinement-united-states`.

Brownlee, Kimberley. *Conscience and Conviction: The Case for Civil Disobedience*. Oxford University Press, 2012.

42. Particularly keeping in mind that slavery is legal and constitutional as a form of punishment under the 13th Amendment. For a thorough critical examination of this, see Ava DuVernay, dir., *13th* (United States: Kandoo Films, 2016).

Calavita, Kitty. *Invitation to Law and Society: An Introduction to the Study of Real Law*. 2nd ed. University of Chicago Press, 2010.

Celikates, Robin. "Rethinking Civil Disobedience as a Practice of Contestation—Beyond the Liberal Paradigm." *Constellations* 23, no. 1 (2016): 37–45.

Davis, Angela. *Are Prisons Obsolete?* Seven Stories Press, 2003.

Delmas, Candice. *A Duty to Resist: When Disobedience Should Be Uncivil*. New York, USA: Oxford University Press, 2018.

DuVernay, Ava, dir. *13th*. United States: Kandoo Films, 2016.

Holdorf, Paul Stanley, and Melinda R. Paterson. "Prisoners' Legal Advocacy Network (PLAN) Mounts Legal Responses to Widespread Reports of Prisoner Abuses in the Aftermath of the 2018 National Prison Strike." 2018. `https://www.nlg.org/plan-prison-strike-response-2018/`.

Hutchinson, Allan C. "Civil Disobedience: Its Logic and Language." *The Law Teacher* 13, no. 1 (1979): 1–11.

King Jr., Martin Luther. "Letter from a Birmingham Jail." 1963. `https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html`.

Morreall, John. "The Justifiability of Violent Civil Disobedience." *Canadian Journal of Philosophy* 6, no. 1 (1976): 35–47.

Pfaff, John. *Locked In: The True Causes of Mass Incarceration—and How to Achieve Real Reform*. 2017.

Rawls, John. *A Theory of Justice*. 1971. Reprint, Harvard University Press, 2005.

Smith, William. "Policing Civil Disobedience." *Political Studies* 60, no. 4 (2012): 826–42.

Sonestein, David. "California Prisoners Say Videos Show 'Gladiator Fights' At Soledad State Prison." *Shadow Proof*, 2019. `https://shadowproof.com/2019/02/18/california-prisoners-say-videos-show-gladiator-fights-at-soledad-state-prison/`.

Walker, Jason Renard. "Grey Suit Protection: Ellis Unit Guards Admit Assaulting Prisoners, But Aren't Held Accountable." *Incarcerated Workers Organizing Committee*, 2019. `https://incarceratedworkers.org/news/grey-suit-protection-ellis-unit-guards-admit-assaulting-prisoners-arent-held-accountable`.

Zinn, Howard. "Law, Justice, and Disobedience." *Notre Dame Journal of Law, Ethics and Public Policy* 5, no. 4 (1991): 899–920.

What can conceptual art teach us about whether or not art needs to be aesthetic?

Aaron Muldoon*
University of St Andrews

Abstract Conceptual art, and its rejection of the aesthetic, poses a number of challenges to 'traditional' definitions of art. This paper considers whether art is necessarily aesthetic and what problems arise if we accept that it is not. My investigation will initially ask whether conceptual art (CA) can even be a kind of art, and will then discuss whether CA is necessarily aesthetic. In section 2, I present a range of existing views on this matter in order to show that conceptual art should indeed be considered a kind of art. I offer an evaluation of these views in section 3 before arguing that art in general is not necessarily aesthetic. In order to show this, I present arguments in support of the propositions that (i) CA is a kind of art and that (ii) CA is not aesthetic. Section 4 comprises a proposal suggesting that artworks are not necessarily aesthetic but rather are necessarily experienced in person. I then briefly address a number of potential difficulties that accepting such a view might appear to entail.

1 Introduction

> *"In conceptual art, the idea or concept is the most important aspect of the work […] the idea becomes a machine that makes the art"*
>
> – LeWitt (2000)

*Aaron Muldoon has recently graduated from St Andrews in June 2019 with a degree in Philosophy and Economics, and will be embarking upon a Master's degree in Modern and Contemporary Art Criticism, Theory and Curation at the University of Edinburgh. In the future, he plans to undertake a PhD in the Philosophy of Art, and is hoping to continue writing about art either in an academic or journalistic context. Within Aesthetics and the Philosophy of Art, he is particularly interested in questions about photography and representation; conceptual art and aesthetic value; and feminist aesthetics. His favourite artists are Francis Bacon and photographers Wolfgang Tillmans and Catherine Opie, and he also enjoys painting and photography in his own time

Conceptual art,[1] and its rejection of the aesthetic, poses a number of challenges to 'traditional' definitions of art. This paper considers whether art is necessarily aesthetic and what problems arise if we accept that it is not. My investigation will initially ask whether conceptual art (CA) can even be a kind of art, and will then discuss whether CA is necessarily aesthetic. In section 2, I present a range of existing views on this matter in order to show that conceptual art should indeed be considered a kind of art. I offer an evaluation of these views in section 3 before arguing that art in general is not necessarily aesthetic. In order to show this, I present arguments in support of the propositions that (i) CA is a kind of art and that (ii) CA is not aesthetic.[2] Section 4 comprises a proposal suggesting that artworks are not necessarily aesthetic but rather are necessarily experienced in person. I then briefly address a number of potential difficulties that accepting such a view might appear to entail.

2 The problem of conceptual art

What I will hereby refer to as the 'problem of conceptual art' is best explained by highlighting a contradiction in the following three independently plausible propositions:

(i) CA is a kind of art.

(ii) CA is not aesthetic.

(iii) Art is necessarily aesthetic.

How can conceptual art, as a kind of art, be non-aesthetic if being aesthetic is a necessary condition for something being art? A solution to the problem of conceptual art can come in one of three forms. Firstly, one might deny (i) that CA is a kind of art by holding (ii) that CA is not aesthetic and (iii) that art is necessarily aesthetic. A second solution might come in the form of denying (ii) that CA is not aesthetic while holding (iii) that art is necessarily aesthetic but also (i) that CA is indeed a kind of art. Finally, one might hold (i) that CA is a kind of art and (ii) that CA is not aesthetic and thereby deny (iii) that being aesthetic is a necessary condition of art. That is the solution I argue for in this paper.

I begin by voicing support for proposition (i). The task here is to show that CA is art without solely targeting 'aesthetic definitions' of art. Simply opposing the claim

1. Conceptual art historically refers to the movement reaching its pinnacle between 1966 and 1972, (Lippard 1973) but can be more broadly conceived as any work seeking to overcome the view that art ought to produce something with aesthetic value. Conceptual art is art of the mind, not the senses; art in which the idea is the most important aspect of the work.

2. The comparison of various definitions of 'aesthetic' is a core aspect of this paper, so I will avoid misleading the reader by promoting one definition at the outset.

that "CA is not art because art is necessarily aesthetic" with the argument that "art is not necessarily aesthetic and therefore CA is art" would be to fall prey to a textbook case of denying the antecedent. Nevertheless, addressing the shortcomings of what have come to be known as 'aesthetic definitions of art' is a natural starting point for this discussion. Monroe Beardsley is the greatest proponent of such definitions and the philosopher most prominently associated with the first solution—denying proposition (i). To progress with a definition of art that incorporates CA as a subtype, sufficient reason must be provided to move beyond Beardsley's definition.

2.1 Conceptual art as a kind of art

Definitions of art have been classified by Stephen Davies (2001) into functional and institutional/historical definitions. Functional definitions hold that something is an artwork if and only if it succeeds in achieving the purpose for which we have art. Beardsley's definition has emerged as the most prominent of these. He proposed that art is defined by its aesthetic character such that x is an artwork if and only if x gives rise to an aesthetic experience (Beardsley 1970).

> A work of art is either an arrangement of conditions intended to be capable of affording an experience with marked aesthetic character or (one) […] typically intended to have this capacity. (Beardsley 1958)[3]

Beardsley's conception holds that an aesthetic experience is, broadly speaking, an experience of the way things appear to us, where the 'thing' that gives rise to the aesthetic experience is a perceptual object.[4] Of course, many objects whose qualities are open to direct sensory awareness *do not* give rise to aesthetic experiences. Precisely what determines whether an object is aesthetic will be the subject of discussion later in this paper. For now, it will be sufficient to highlight that Beardsley's definition of art, and the assumption that CA does not give rise to aesthetic experience, together entail the denial that works of conceptual art—such as Marcel Duchamp's readymades—count as art.

In contrast to Beardsley's definition, Arthur Danto's 'institutional' definition states that one of the necessary conditions of an artwork is that it requires an art historical context (Danto 1981). Similarly, Binkley (1977) states that "An artwork's being an artwork is determined not by its properties but by its location in the artworld". Danto's

3. This definition should not be misconstrued as a contradiction to another of his seminal works co-authored by William K. Wimsatt, "The Intentional Fallacy" (1946), where it is argued that the intentions of the artist aren't relevant to the *interpretation* of a work of art. Our present concern is with the definition, not the interpretation, of art.

4. A perceptual object (as contrasted with a physical object like something that is six by six feet in size) here refers to an object some of whose qualities are open to direct sensory awareness (Beardsley 1970), like a 'frightening' object. A physical object is not necessarily perceptual.

reasoning is that there exist some artworks with perceptually indistinguishable counterparts that are either artistically distinct or are "mere real things". In fact, the claim that "to see something as art requires something the eye cannot descry" has come to be known as one of the hallmarks of Danto's aesthetics (Lamarque 2007). So, Danto argues, it is only within the *context* of the artworld, and a viewer having prior knowledge that the object is an artwork, that Duchamp's *Fountain* could take on the properties of, 'impudence' and 'wit'. These are obviously properties that conventional urinals lack.

David Davies defines artworks by the process that results in their creation. He argues that the 'thing' to which we might attribute value or appreciation is the act by which it came into being—the material result is merely a vehicle that allows us to perceive the process (2003). Davies says that this vehicle may be a physical object (e.g. Picasso's *Guernica*) or an action of a particular kind (e.g. Duchamp's act of placing *Fountain* in a gallery space). The vehicle is whatever we have a perceptual engagement with and the idea is what we have aesthetic/cognitive appreciation for.

The question facing us now is whether we are warranted in moving past Beardsley's definition and adopting one along the lines of Danto's or Davies'. Stephen Davies (2001) advises that a definition of art should identify a set of properties such that each and every artwork has *all* the properties that make up that set and that it is *only* artworks that have that exact set of properties. Contrast this with Beardsley's definition, which outlines what art *should* be or *really* is, rather than attempting to capture all the works considered as art currently in existence. In light of this, Beardsley's relatively narrow definition seems arbitrary. If Beardsley had been writing in the 16th century with only Titian and Bruegel to reference—and had developed a conception of art and aesthetic value around the output of these and any preceding artists—one might wonder whether he would then have rejected any later art that required a redefinition of art itself. It seems fairly likely that Picasso and Miró would have been excluded from the canon of art if that were the case. Beardsley said that "it does not seem that in submitting that object (Fountain) to the art show […] Duchamp establish[ed] a new meaning of 'artwork,' nor did he really inaugurate a tradition that led to the acceptance of plumbing figures as artworks today" (Beardsley 1958). Yet, with the benefit of hindsight, we can see that this is precisely what Duchamp *did* do. It seems entirely implausible now, 37 years after Beardsley, to deny the status of art to the works of Marcel Duchamp, Marina Abramović and Joseph Kosuth given that they attract millions of art lovers each year to art institutions like MoMA and the Tate Modern. This attitude follows Timothy Binkley's basic reasoning:

> How do I know they are works of art? […] they are listed in catalogues. So I assume they are works of art. If you deny (this), it is up to you to explain why the listings in a Renoir catalogue are artworks, but the listings in a Duchamp catalogue are not. (Binkley 1977)

Granted, this argument is not sufficient to prove that CA really is art, but it does

push the burden of proof onto Beardsley to defend the aesthetic theory of art. It is not for the aesthetic theorist to stipulate what should count as art in the face of such countervailing evidence (Carroll 1999). This is a significant foothold. If we accept that the burden has fallen onto Beardsley to prove that CA is *not* art, and we appreciate that this is something he doesn't attempt beyond arguing that the aesthetic definition works for art up until 1982, I would posit that we now have the grounds to progress with a tentative use of the latter two definitions from Danto and Davies. I believe I have now presented enough evidence to show that the first solution to the problem of conceptual art is sufficiently weak that we might disregard it. CA is a kind of art.

2.2 Existing solutions to the problem of conceptual art

I now move on to the question of whether or not CA is necessarily aesthetic. Binkley and Danto both propose theories that use examples of conceptual art to argue that it is not a necessary or sufficient condition of an artwork to be aesthetic (or fall within the subject matter of aesthetics). Binkley (1977) is most notable for claiming that artworks have become synonymous with aesthetic objects as a result of the conflation of the fields of aesthetics and the philosophy of art. He outlines a brief history of aesthetics, referring to the point at which art began to fall into the subject matter of aesthetics. Binkley claims that this occurred to such an extent that aesthetics mistakenly became "just another name for the philosophy of art" and the first principle of the philosophy of art that "all art possesses aesthetic qualities". This is indeed reminiscent of Beardsley's definition. Binkley stresses that they are nothing more than related studies. He cites a number of conceptual artworks that do not appear to be necessarily aesthetic.

> It would be a mistake to search for aesthetically interesting smudges on Rauschenberg's work "erased DeKooning drawing". (Binkley 1977)

Binkley defends 'non-aesthetic' works like Rauschenberg's by relating the development of Modernism in art to movements of self-criticism within philosophy. Like philosophy, Binkley supposes, art developed to the point where "a critical act about the discipline could be part of the discipline itself". The underlying problem identified here by Binkley is that aesthetics has disregarded the fact that how an object is perceived is actually dependent on what viewers bring to it. This, in turn is dependent on cultural contexts. Aesthetics—which is an inherently perceptual inquiry—views an artistic medium as a kind of substance rather than as a system of conventions. While the fields of aesthetics and the philosophy of art have extensive common ground, neither one is a sub-specialty of the other. Danto (1981) also alludes to the distinction between the two fields, holding that art appreciation is primarily a cognitive matter while aesthetic appreciation is a form of sense perception. Danto extends his analysis back to 16th century art, claiming that the appreciation of Bruegel's 'Landscape with

the fall of Icarus' depends almost entirely on what information the viewer possesses. Crucially, he argues that such information is not perceptually available.

Elizabeth Schellekens and James Shelly, on the other hand, maintain that art is necessarily aesthetic. Schellekens' is an advocate of the 'second solution' I outlined in section 2, denying (ii) that CA is not aesthetic. She proposes that CA need not be 'antiaesthetic', and that "conceptual art may have aesthetic value that is crucial to the appreciation of its cognitive value" (Schellekens 2007). She assumes that to appreciate a work of conceptual art, it is necessary to have a first hand experience of its central idea. This involves the 'experiential qualities' of such ideas—and aesthetic qualities, it is claimed, are amongst these. The key argumentative feature of her paper is the modelling of the relationship between aesthetic and cognitive value in art. It is proposed that the cognitive value we hold in conceptual artworks is not limited to the kind of knowledge that can be translated into orderly propositions. Schellekens suggests that *if* this were the case, then there would be no difference between experiencing certain works of art and, for instance, experiencing a billboard advertising the same propositional content. Her central claim is that conceptual artworks can 'instantiate' propositional statements, therefore giving rise to increased understanding of the idea.

James Shelly (2003) observed that the main arguments against art being necessarily aesthetic presuppose that aesthetic properties must be susceptible to perception *in terms of the five senses*. Shelley argues that this view of aesthetic properties is too limited. He denies that aesthetic properties necessarily depend on properties perceived by means of the five senses. This move allows him to hold that there may be artworks that do not need to be *perceived* by the five senses in order to be appreciated, while also holding that artworks do necessarily have aesthetic properties relevant to their appreciation. He argues that if this *wasn't* the case we would not be able to call literary works aesthetic.

3 Conceptual art is not necessarily aesthetic

The problem of conceptual art seems to boil down to a disagreement over what exactly it means to say that aesthetic properties must be susceptible to perception. Shelley thinks that since the qualities that we attribute to works of conceptual art (impudence, wit etc.) correspond to the role traditionally played by standard aesthetic properties, we do not have the grounds to deny them aesthetic status. In this section I attempt to undermine Shelley and Schellekens' position, voice support for the intuition behind Danto and Binkley's position and ultimately argue that CA is not necessarily aesthetic.

The weakness of Shelley's (2003) paper lies in his supposition that it is possible to have aesthetic experiences of non-perceptual artworks. Proposing that some aesthetic properties may not be perceptual does not lead to the conclusion that art is 'essentially

aesthetic'. There are, for example, many artworks that may be formless and may fail to obtain the aesthetic qualities that the artist intended them to have. This art, according to Carroll (2004) is what we call 'bad art'—but bad art is still art.

It seems to me that the word aesthetic has been used far beyond its rightful domain by both Shelley and Schellekens. I maintain that their definitions of aesthetic experience are too broad in two distinct ways. The first is in the calling of things other than perceptual things 'aesthetic' and the second is in the assumption that *all* perceptual things *can* be aesthetic. Schellekens argues that "aesthetic value can be allowed for […] as long as the aesthetic qualities in question are ascribed to the idea at the heart of the artwork" (2007). Her aim, like Shelly's, is to escape the problem of 'non-perceptual' art. Schellekens compares the appreciation of the idea of a work of conceptual art to the appreciation of the 'harmony' of an intellectual process, the 'elegance' of a mathematical demonstration, the 'beauty' of a chess move and the 'ungainliness' of a failed experiment. Based on this analogy, she concludes that there should be no difficulty in the suggestion that ideas and intellectual processes can allow for aesthetic qualities.

My primary contention with Schellekens' thesis is this: to appreciate an idea—which is nothing more than a cognitive experience—as 'beautiful', 'graceful' or 'moving' in the way she describes, is to do nothing more than speak *metaphorically* about that idea. Simply being able to *describe* something with an aesthetic term does not mean that thing must be aesthetic. Consider the following:

> If the idea is well represented through its vehicular medium, it is the artwork conceived as idea—not the medium—that can be said to have certain aesthetic qualities. (Schellekens 2007).

By clustering together the common intuitions that art is generally aesthetic and that conceptual artworks are, fundamentally, ideas, Schellekens has suggested that ideas can have aesthetic qualities. I argue that she has actually just conflated the notions of something's being able to *be described* with certain aesthetic qualities and something's being able to *possess* aesthetic qualities. Schellekens does not address the possibility that such a connection has appeared simply as a result of using linguistic figures of speech in which words or phrases are applied to other objects or actions to which they are not *literally* applicable.

It is quite reasonable—and in fact extremely common—to *use* aesthetic terms in a metaphorical sense. My contention is not that use of such language is unwarranted but rather that Schellekens' use of this literary technique as empirical evidence of some underlying connection between ideas and aesthetic value has been insufficiently justified in her paper. When Schellekens talks of the 'harmony' of an intellectual process, we might imagine it being a well-organised process in which each aspect of it is in concord; with the 'beautiful' chess move, we might imagine that it was probably a move that won the game, and because of the rare combination of moves employed, the op-

ponent, statistically speaking, would have had some difficulty in seeing it coming. To reiterate, the ability we have to describe an idea or intellectual process with an adjective that is typically (and in basic or conventional language, literally) used to attribute aesthetic value to things does not mean that such objects are open to the possibility of actually *accruing* aesthetic value themselves. My ability to describe the mood of a person as 'blue' provides no support for the claim that moods or emotions (which have significantly more in common with ideas than with artworks) might be considered aesthetic objects. In nonmetaphorical language, the relation between an object's *being* something on the one hand and being *able to be described* as something on the other hand is not a symmetrical one. Only the former can entail the latter.

I do not mean to suggest, in making this argument, than any or all descriptions of works of conceptual art using aesthetic terms are metaphorical. I am simply attempting to show that Schellekens' argument does not hold because the connection between chess moves and the ideas behind them doesn't exist between art and its ideas. The former is not a truly aesthetic relationship, and therefore cannot be used to evidence the claim that ideas can have aesthetic value. In the absence of any further support for this theory, I believe I can conclude that CA is not necessarily aesthetic. Given that CA is art (from section 2.1) this allows me to deduce that art is not necessarily aesthetic.

Admittedly, this discussion merits the formulation of a new definition of aesthetic—a description of what makes something truly aesthetic in the way that the chess move is not; in a way that, I hope, the reader nonetheless intuitively understands. A new definition of art is not required to present the conclusions of this paper.

4 Non-aesthetic art and the experiential condition

The purpose of this section is twofold. I will initially outline my own defence of the possibility of non-aesthetic art before presenting a number of brief responses to the problems that accepting such a possibility might appear to entail. Where my opinion diverges with Danto's (and aligns with Schellekens'), is in their discussions of the necessarily perceptual nature of art. I argue, not only that art is necessarily perceptual[5]—in that it must be experienced in person—but that this ought to be considered as one of the key identifying features of it.

There is an analogy to be made between the use of vocabulary in a novel and the use of material in a conceptual artwork; the pace at which the novelist lets the plot unwind and the subtlety with which conceptual artists place some propositional meaning amongst the mediums of their work. The choice of vocabulary is a necessary compon-

5. Note that this does not contradict the point made by Shelley that literary works needn't be perceived. When Shelley talked of 'the work', he was talking of the art—we can't perceive the 'art' of a novel because it exists in the imaginative, cognitive 'dimension'. When I talk of necessarily perceptual (or experiential) here, I simply mean that one needs to have a direct experience with the object.

ent of the overall vehicle which is to eventually deliver aesthetic content to the reader in the same way that the medium (whether it be sound or a performance) is a necessary component of the overall vehicle which is eventually to deliver cognitive content to the viewer. To say that a viewer can gain all there is to gain from hearing a description of a conceptual artwork (as Peter Lamarque (2007) does) would be to say that a reader can gain all there is to gain from a novel by hearing a summary of it. This obviously isn't the case. As Schellekens (2007) observes, conceptual artists choose to represent their points in such a way as to *not only* make a statement but also to *instantiate* it—they can "turn propositional statements into something more experiential". The act of experiencing a conceptual artwork in person carries with it some of the semantic content which is necessary to appreciate it cognitively. At this stage it will be useful to look at a scorecard of where I now stand on the range of issues covered so far in this paper.

Conditions/mechanisms	**'Traditional' art**	**Literary art**	**Conceptual art**
Necessarily aesthetic	✓	✓	
Necessarily experiential[6]	✓	✓	✓
Necessarily cognitive	✓	✓	✓
Direct perceptual mechanism	✓		
Indirect vehicular mechanism		✓	✓

Allow me to flesh out the claims made in this table. The key takeaway is that all art (traditional, literary and conceptual) is necessarily experiential and necessarily cognitive but is not necessarily aesthetic. Consider John Cage's composition 4'33" for which the score instructs the performers not to play their instruments during the entire duration of the piece. The claim that art is not necessarily experiential entails that being present for a performance of a work like 4'33" has no bearing on someone's ability to understand, appreciate or interpret the work—it might as well have been summarised by someone else who has seen it. This feels intuitively wrong. People travel for thousands of miles to see the Mona Lisa and the ceiling of the Sistine Chapel in person just as they would have with Marina Abramović's 2010 performance work "The Artist is Present". People do not, however, travel to watch mathematicians write out their proofs.

Of course, this analogy does not in itself show that the defining feature of art is that it is necessarily experiential. One obvious rebuttal would be to highlight the fact that people do travel long distances to see non-artistic events like chess matches and political speeches. It might be argued that the 'experience' of watching a match or a speech cannot be fully conveyed by someone's testimony. If political speeches are necessarily experiential, then using this condition as a way to identify artworks is entirely undermined. Admittedly, the emotions that those present in the House of Commons must have felt while witnessing Winston Churchill's 1940 speech "We shall fight on the beaches" is something that they will never be able to fully convey by retelling the

6. This is has been called the 'experiential requirement' by Schellekens.

story of what happened. However, anyone who raises such a counterargument is neglecting one significant difference which breaks down the analogy between these two examples. Anything that Churchill's audience gained *from* experiencing his speech in person, over and above the propositional content expressed, did not arise from his speech. If we stripped his speech of all context—the atmosphere and energy in the room; the physical grandeur of the House of Commons etc—what would remain is its pure propositional content. This fundamental content *is* transferrable in its entirety by testimony or recording. It is not necessary to experience it to gain a full understanding of it.

Only art is necessarily experiential in the sense in which I am employing the word. Just as there is one sense in which we might experience a Dostoyevsky novel as a sociological account of St Petersburg in 1866, and another sense in which we might experience it qua art; so too are there different senses in which we experience other artworks. That Churchill's speech lends itself to being experienced in the former sense does not imply that it must—or even can—be experienced in the latter sense; the sense of experiencing something qua art. As Lamarque rightly notes, "one of the binding elements [in experiencing all of the arts] can be described as an experience of art *as art*".

Experience in this sense, Lamarque highlights, is "informed by knowledge about the kinds of objects being experienced" (2007). The type of experiencing which I am referring to is what I suggest ought to be considered a necessary condition for something being an artwork. It may strike the reader that I appear to have offered a circular definition of art by suggesting that artworks are those objects that must be experienced in the unique in particular way that only artworks can be. This would of course fail as a definition; but the account I have just offered is by no means an attempt to provide a non-aesthetic definition of art. My purpose is much simpler; to disentangle the notion of art being necessarily aesthetic with the notion of of art being necessarily experiential and to reject the former in favour of the latter.

The trap that the Churchill counterexample has fallen into may be more easily identified if we consider a musical example of the same problem. A live performance of Pink Floyd's "Comfortably Numb" provides the audience with exactly the same artistic content as listening to a recording of it. The distinction I am drawing upon here is not captured by thinking of 'live performances' in this sense. Rather, I am suggesting that it is necessary just to *listen* to a performance of "Comfortably Numb" (whether it be a recording or a live performance) in order to appreciate it. The work cannot be suitably appreciated if only a summary or description is given. CA needs to be experienced in the same way literature and music do because the thing that matters for the identity of an experience is not what the experience is of in the sense of what has caused it (such as facts about the performance that can easily be transferred by testimony) but what it is *thought* to be of—thought at that very specific time and place by that particular person (Lamarque 2007). Ideas are necessary but not sufficient for a conceptual artwork to exist. 4'33" cannot be collapsed into a mere supposition or description. It needs to

be experienced.

I will now briefly consider two problems that face advocates of the possibility of non-aesthetic art and propose that by accepting the experiential thesis just outlined, one can avoid all three of them. The problems are; (1) how might we distinguish between art and non-art in light of artworks not being defined by necessarily having aesthetic value; and (2) how might we appreciate artworks given that there is no *aesthetic* object to direct our appreciation towards.

Schellekens' thesis about the aesthetic value of ideas arose, at least in part, from a concern about what would secure a "significant distinction between art on the one hand, and the ordinary proposition or statement expressing that same idea in a non-artistic context on the other hand" (Schellekens 2007). I propose that the 'experiential condition' does precisely that. As was illustrated in Figure 1, all three categories of art are necessarily experiential and necessarily cognitive. There is no class of objects other than artworks that possess this experiential condition in the specific sense that I outlined in detail in the previous section. No other class of objects comes to mind that possesses this necessary condition in the same way that works of art do. Referring back to Stephen Davies' requirements for a definition, this condition is sufficient to distinguish between art and non-art.

Regarding the appreciation of non-aesthetic artworks, I suggest that the experiential condition's ability to cater for the purely cognitive appreciation of conceptual artworks as well as the jointly aesthetic and cognitive appreciation of traditional artworks means that it can offer a neater and simpler solution to the problem of conceptual art than the other solutions outlined here. Appreciating a conceptual work of art that has no aesthetic content is no more complicated than appreciating a Titian or a Bruegel—both provide the opportunity for cognitive appreciation of ideas and concepts and the 16th century works also provide the opportunity for aesthetic appreciation.

5 Conclusion

I began this paper by articulating what I referred to as 'the problem of conceptual art', presenting three independently plausible propositions that contradicted each other. I then presented a range of existing solutions to this (or very similar) problems before putting forward a brief argument as to why conceptual art should count as a kind of art. In section 3, I found that none of the existing formulations of the philosophy of conceptual art were suitably coherent or without significant openings to criticism. This led me to suggest that conceptual art is not necessarily aesthetic. Accepting these two claims allowed me to propose that art in general is not necessarily aesthetic. Based on the weaknesses identified in the papers presented here, I proposed that art is necessarily experiential, before briefly outlining how this new understanding of the philosophy

of conceptual art is not undermined by two major problems that afflict many other solutions to the problem of conceptual art.

References

Beardsley, Monroe C. 1958. "Aesthetics. Problems in the Philosophy of Criticism". *Philosophical Review* 70 (2): 275–79.

———. 1970. "The Aesthetic Point of View". *Metaphilosophy* 1 (1): 39–58.

Binkley, Timothy. 1977. "Piece: Contra Aesthetics". *Journal of Aesthetics and Art Criticism* 35 (3): 265–77.

Carroll, Noël. 1999. *Philosophy of Art: A Contemporary Introduction.* Routledge.

———. 2000. "Art and the Domain of the Aesthetic". *British Journal of Aesthetics* 40 (2): 191–208.

———. 2004. "Non-Perceptual Aesthetic Properties: Comments for James Shelley". *British Journal of Aesthetics* 44 (4): 413–23.

———. 2010. *Art in Three Dimensions.* Oxford University Press.

Danto, Arthur C. 1981. "The Transfiguration of the Commonplace, a Philosophy of Art". *Journal of Aesthetics and Art Criticism* 40 (2): 206–08.

Davies, Dave. 2003. *Art as Performance.* Wiley-Blackwell.

Davies, Stephen. 2001. "Aesthetic Theory. Definitions of Art". In *The Routledge Companion to Aesthetics,* edited by Berys Nigel Gaut and Dominic Lopes. Routledge.

Lamarque, Peter. 2007. "On Perceiving Conceptual Art". In *Philosophy and Conceptual Art,* edited by Peter Goldie and Elisabeth Schellekens. Oxford University Press.

LeWitt, Sol. 2000. "Paragraphs on Conceptual Art". In *Conceptual Art: A Critical Anthology,* 12–16. MIT Press. Originally published in 1967.

Lippard, Lucy. 1973. *Six Years: The Dematerialization of the Art Object From 1966 to 1972.* Praeger.

Schellekens, Elisabeth. 2005. "'Seeing is Believing' and 'Believing is Seeing'". *Acta Analytica* 20 (4): 10–23.

———. 2007. "The Aesthetic Value of Ideas". In *Philosophy and Conceptual Art,* edited by Peter Goldie and Elisabeth Schellekens. Oxford University Press.

Shelley, James. 2003. "The Problem of Non-Perceptual Art". *British Journal of Aesthetics* 43 (4): 363–38.

Wimsatt, William K., and Monroe C. Beardsley. 1946. "The Intentional Fallacy". *The Sewanee Review* 54 (3): 468–88.