

Disowning Mutual Identity: The Case of Spirit-Murdering the Other in Law and Society

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The most important moves made in philosophy or indeed in any sort of thinking are the most basic and often the most metaphysical. Thinking even briefly about the basic confusions that we so frequently hold about seemingly simple subjects like who “we” are and who “they” are can give us alarming insights into important problems. These problems underlie American social perspectives on those people and groups who are relegated to the margins of socio-political worth. So many of the legal problems tied to the ideas of empowerment and disenfranchisement in terms of race, creed, sexual orientation, gender, and so forth are partially based on poor metaphysics. Specifically, there are problems both with how society understands identity and how people react when they experience the impact of novel experiences and their ways of thinking about the world. For many, it is a fundamental misunderstanding of personal identity and, by proxy, claims of “reasonability” that underlie fear and hatred of the social “Other,” that marginal group with which “we” are not familiar and of which “we” are so often afraid. Cruelly principled exclusion builds on the cracked foundations of these misunderstandings of identity and rationality. A clear unraveling and reconstructing of some identity claims through case studies and truly human experience may yield some practical steps towards untying bigotry from our societies.

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To begin, then, we must answer the question, “What exactly is the mistake made about personal identity and reasonability?” or, rather, “What are the mistakes?” There are probably too many to discuss here in any detail. However, considering the context of this examination, two immediately stand out against all others: the skeptical mistake and the deific mistake. Both of these are strongly influenced by the development of Enlightenment rationality and, while not attributable to any specific philosopher, seem to be implicit in Descartes and some of his later cohorts in the modern project.

Modern society’s laws and social tendencies formed in great part around the central tenets of these principles, and as such, they play out in a number of ways, a conclusion that will be clear later on. In law, we see their rumblings under qualifications such as “his belief must be a reasonable belief; such a belief as a reasonable man would entertain if he applied his mind.”¹ What it is to utter a statement like “This is a reasonable belief [action, thought]” must be defined, as must be the notion of the personal identity of the person who utters such a thing.

We begin with the latter of these: personal identity claims. This starts with philosophical Skepticism. Ancient Skepticism, especially the original Pyrrhonian version, is almost invincible (or perhaps irrelevant) because of its unwillingness to accept any undefined, basic principles with which to work. This leads to problems in philosophical analysis: the Skeptics break everything down into their smallest component parts in order to analyze each notion and part separately, and this analysis fails if no “primitive notions” exist. More modern versions of Skepticism also break everything apart into almost meaningless entities and then claim that they cannot be adequately glued back together. This is the heart of the skeptical mistake, and though there are few, if any, Pyrrhonian about in the modern world, the tradition of overly acute analytical dissection is a modern ritual whether or not it is always labeled as Skepticism with a capital “S.”

¹ *Regina v. Morgan* 524.

In terms of modern notions of identity, this skeptical mistake functions as disowning various types of interconnectedness inherent in personal identity notions. The solipsism of this thinking may occur at a number of levels, from alienation in two-way relationships to the alienation of group relationships. The basis for this philosophical solipsism is a function of the notion that we all have single, developing selves that are not affected (and do not affect) other things—including people—in any relevant way. This is perhaps an overstatement of the point I want to make here, but it is an important one. The idea that the self is so internal to a person that the world cannot affect it and vice versa implies that all things outside of the self can be manipulated only in a trivial or non-essential way. We cannot change the identity of anyone or anything because we do not have any “real” contact with that thing—its true essence, substance, or form is beyond the handling of its concreteness, accidents, or instantiation.

In terms of personal identity, this makes a “me” and the “world,” where I am the knower, the cogito, the “in,” and where the world is the unknown, the other, and the “out.”² Of course, very few people live in such a way as to make this seem entirely plausible. Our family members begin to shape our thinking, helping us grow into the people we are; teachers educate us, a formative and changing process; our community fosters and shapes us, helping solidify (or undermine) the values we learn from our families and educators. In practical terms, solipsism can be taken only so far, as the road of broadening perspective is traveled through life.³ For those whom we commonly identify as bigots, though, there is an abrupt halt or misstep somewhere along that road. At some point, the personal identity of the cogito and its familiar group starkly closes to the Other. It is a healthy thing for a person to have a secure identity that is confidently distinct from all others, but it is dangerous for everyone when groups of peo-

² William James also draws this strong distinction between self and not-self in *The Principles of Psychology*, but his charge does not carry the doubt of all-but-the-self that the Cartesian model exemplifies. Thus, James avoids solipsism. See James 44–110.

³ Incidentally, this may be the type of thinking that we see in Lawrence Kohlberg and Carol Gilligan’s psychology of moral development: people increase their levels of awareness of the outside world—other people, beings, etc.—as they mature morally.

ple feel so distinct from other groups that they forget what they share in common.⁴ This is the denial of a mutual identity, and history shows us time and again the cruelty engendered by such disowning in society. The ultimate function of the skeptical mistake is to put a gulf between in-groups and out-groups on the metaphysical level of personal identity; this split is in fact so great that the in-group renounces any claim to the identity of the Other, a concept which begins to develop in mythologized and demonized terms.

The second part of mistaken identities is the deific mistake, the working of which can be seen operating when the idea of “reasonable belief” is considered. If one takes the preceding sense of the individualized cogito for granted,⁵ then the notion of acting “reasonably” refers to one’s own reason. For example, when a person says, “That is totally unreasonable,” she really means to express the idea, “I cannot picture myself thinking, doing, or saying that.” Such a thing is beyond what she considers conceivable for her. It is beyond her understanding of the world, which is the only Reason that she can really know with the basically noninteractive self previously described. Taking into account the fact that all people do live and grow within groups and communities, the consideration must be broad. Reason then refers to the widest possible group with whom one identifies, so that “reasonability” refers to characteristic traits of a group to which one belongs.

It is not clear that this thinking is a misstep, though, or why it should be given such a grandiose title as the “deific mistake.” The real Enlightenment error that one can trace through the short history of the secular world is the quasi-ritualistic worship of Reason as such. Reason is hailed to be the trump card of the modern world, as that which provides all answers in a parallel sense to the answers offered by God through revelation in the Christian tradition. When Reason becomes the all-powerful, and rationality is the characteristic of possessing reason and is often based on little more than one’s personal experience of the world, then there is a

⁴ It remains to be seen what exactly this is; it is discussed below.

⁵ . . . which I wholeheartedly think that most people do.

danger of groups implying that deific Reason is on their side and their side only. A group begins to see Reason as belonging essentially to itself when it puts an impenetrable blockade between itself and the Other. Reason is forced into the boundaries of the group's own beliefs and experiences. Regrettably, this mistake frequently occurs, leading those who are already victims of the skeptical mistake even farther from identifying with those who are perceived as disowned or fundamentally unrelated. This explanation gives a vague outline of the processes that create the nonrational Other in society, and it is time to look at examples of the consequences that follow from it.

These principles are best understood in terms of case studies, however cursory. It may be argued by some that the circumstances of marginalized groups are improving in the world, and that their diverse experiences should be left well enough alone to flourish as they will. I respond that these groups will not achieve true parity until we recognize all parties as equally valid, equally rational, and equally identifiable as persons. Examples demonstrate that some of these groups still lack the relevant parity.

One group of Other in society is the Gay-Lesbian-Bisexual-Transgendered community. This Otherness has been clearly demonstrated in recent years, as in the case of the Matthew Shepard murder. A gay college student beaten and tied to a fence in Wyoming in 1998 fueled a nationwide controversy that spawned a new interest in hate crime legislation in the years immediately following his murder, which was clearly linked to homophobia. Shepard was, by most accounts, tortured. The short account of the beating runs something like this: “[Aaron] McKinney and an accomplice posed as homosexuals and lured Shepard from a bar, drove him to the outskirts of Laramie, tied him to a fence, savagely pistol-whipped him and left him to die” of exposure in freezing temperatures.⁶

Shepard's brutal death brings the element of the Other explicitly to light. More than just a murder, this is a hate crime. Shepard seems to have

⁶ Kenworthy A2.

been singled out for this kind of treatment because of his homosexuality; where another man might have suffered a beating at the hands of these assailants, a gay man was tied to a fence in the wilderness and left to die. Patricia Williams observes that in the murder of a civil rights activist who was stabbed thirty-nine times, “the point was not just murder but something beyond.”⁷ Williams identifies this variously but finally settles on the term “spirit murder,” an umbrella term under which we might accurately describe any manner of hate crime. No matter the term, the sense is the same: one commits a crime against some Other because of that Otherness. Williams writes:

I wondered for a long time what it was that would not die, . . . what sort of thing would not die with the body but lived on in the mind of the murderer. Perhaps . . . what the murderer was trying to kill was a part of his own mind’s image, a part of himself and not a real other.⁸

Aaron McKinney, by this logic, was trying to kill what he shared with the Other-ness in Shepard,⁹ though usually we might think that McKinney was trying to destroy that which he could not understand. I think that the truth lies somewhere in the middle of these—while possibly identifying with Shepard’s sexual inclinations on even a subconscious level, McKinney could not recognize an affirming self-identity cooperating with those inclinations.

A second example comes directly from Williams’s chapter on the concept of spirit murder. Her paradigmatic example is that of the Howard Beach incident, which occurred in 1986. The car in which three African American men were riding stalled on a freeway that passes near an affluent white neighborhood of Howard Beach in New York City. The men

⁷ Williams 72.

⁸ *Ibid.*

⁹ His attorney, during the trial, asserted that McKinney had homosexual experiences as a child, making this all the more plausible. For one version of this reports, see “Gay Panic.”

walked through the neighborhood until they found an all-night pizza shop, from which they were chased and brutally beaten by a group of white teenagers. The kids killed one of the men and permanently blinded another in one eye.¹⁰ When the story hit the papers, a number of Other-identifying questions and statements began circulating, especially amongst the affluent whites of Howard Beach. “We’re a strictly white neighborhood”; “they had to be starting trouble”; “we ain’t racial, we just don’t want to get robbed.”¹¹ Such comments implicitly identify African Americans as troublemakers, thieves, and naturally vicious people.

There is a lot going on in this case in terms of the Other, and it is internally consistent with the Shepard murder. We see the empowered group (the affluent white people, in this case) treating the marginalized group (the African Americans) in a dehumanizing way. In the Howard Beach case, though, the dehumanization goes beyond that of the Matthew Shepard murder because public opinion does not convict the New York teens the way it does Aaron McKinney. In fact, Williams’s telling of the story highlights incidences of Howard Beach residents actually dismissing the incident as some kind of natural reaction to the presence of black citizens in their community. Perhaps Howard Beach residents come short of actually condoning the violence, but they are certainly not as disgusted or enraged as we might expect them to be.

Hate crimes are dissociative in nature, a public consequence of an internalized belief in a cavernous ontological gap between social groups. As in the Shepard murder, this is spirit murder, a crime committed against one person that is directed toward that person’s (out-) group. These men’s status of “being African American” contributed to the severity of the beatings in such a way as to make us wonder if this brutality was really directed at the men themselves, at African Americans in general, or at the internal conflict between learned fear and intuited identity. I argue that all three are equally correct, each level more discreet and pervasive than the previous.

¹⁰ Williams, ch. 4, “Teleology on the Rocks (or spirit-murdering the messenger).”

¹¹ *Ibid.* 58–59.

Hence, while many whites might have thought that this incident was without racist (or racial) motivation and was rather just the meanness of local kids, African Americans thought in a broader context that these men were symbols of their entire community. The men, both as individual victims and victims-as-symbols of their African American community, suffered the consequences of an overactive boundary-drawing tendency that is learned solipsism, a tragic effect of a defective self-identity.

Perpetrators of hate crimes seemingly recognize that they do share something with their victims—some kind of identity—and their hate crimes are motivated by just such a thought. The skeptical mistake about personal identity tells us that we share nothing with them. However, this line of reasoning is inconsistent with the experience of the world. Some people cannot accept any sharing of identity between themselves and the Other and so try to stamp out the Other altogether, both in the specific victim and as the victim-as-symbol of the Other. The spirit murderer is forced to crisis by the belief that what he has learned is right and that his intuition of interconnectedness with the Other must therefore be wrong. It is then that the deific mistake of holding Reason (the experienced rationality of one's group or accepted authority) above oneself and one's own internal moral compass pushes the angry or confused to violence.

Moving from the social context towards the realm of legal philosophy, we can see a kind of second victimization taking place at the level of victim responsibility in both the Matthew Shepard murder and the Howard Beach beatings. Aaron McKinney's defense attorney claimed that

Shepard, not McKinney, was the aggressor the night he died. . . . [He] made an unwanted advance towards McKinney when he put his hand on the defendant's groin and stuck his tongue in McKinney's ear. . . . These alleged acts sent McKinney into a rage that was aggravated by his abuse of alcohol and methamphetamines.¹²

¹² "McKinney's Defense Says Unwanted Advance Spurred Shepard's Fatal Beating."

This “gay panic” defense was later dismissed by the trial judge for various reasons, and the public generally scoffed at it. The idea of “gay panic” reflects the belief that this murder was somehow Shepard’s fault, that he was the aggressor the night he died. Behind this defense is the claim, “Aaron McKinney was acting as any reasonable person might, though his reaction was heightened by drug use.”¹³ This, though, is not how any reasonable person might act. It is rather how a bigot or a severely confused person might act, and the judge in McKinney’s trial recognized this.

In the Howard Beach case, this idea of victim responsibility is taken to extremes. The Howard Beach residents’ statements questioning why the victims entered the neighborhood in the first place presumes a type of guilt. Williams identifies these segregationist attitudes explicitly: “Everyone who lives here is white. No black could live here. . . . No black is ever up to any good.”¹⁴ African Americans are the Other, and they are now here, and the Other is not good. African Americans are from the urban jungle—they are animals.¹⁵ This is the kind of demonization that translates into our opinions and courtrooms, as Williams notes in the case of Bernard Goetz’s shooting of four teenage African Americans:

The public overwhelmingly presumed his innocence. . . . The public devoured, ex post facto, stories about the deviant behavior of the victims in this case. The victims’ criminal propensities—allegations ranging from rape to robbery—were used . . . to

¹³ There is another way to read the articles describing the idea of “gay panic.” At times, McKinney’s attorney suggests not that “gay panic” is a reasonable thing for all people to experience, but that McKinney’s nuanced and “confusing” experiences with homosexuality make gay panic a reasonable defense for him. If this is the case, then we would still be allowing the court to say that gay people, as a group in society, occasionally so enrage some people that they can reasonably be expected to react violently, even if that violence is not condoned. This is a more apologetic, though still harmful, view of the situation, which I nonetheless think is a mistaken rendering of the views that McKinney actually stated during his trial.

¹⁴ Williams 59.

¹⁵ *Ibid.* 74–75.

show why the four young men deserved to be the objects of intent to kill.¹⁶

The same sort of thing happened in the Howard Beach case and continues to happen to groups of Other in the United States' judicial process.¹⁷ Those who are perceived as Other are punished through social marginalization. Victim responsibility claims are a second, more stylized assault on the humanity of those who are already victims of crime.

This spirit murder is committed by any legal system that allows us to say that the victim of a crime deserves what happens to her simply because of who she is. This is parallel to accusing someone of being so offensive that the person, in herself, is inciting or panic causing. Because of who she is, anything she says can be construed as "fighting words."¹⁸ People themselves become statements and are offensive to the in-groups for whom they form the "out." It could be argued, and I would agree, that this is part of what plays into the myth of "reverse racism" that Wise identifies as being a white backlash against affirmative action.¹⁹ We might imagine, for instance, Bull Conner thinking in just this way when encountering the Birmingham protests, that the protesters in front of him were offensive because of who they were and for being who they were publicly. Publicity has a lot to do with these issues: just as free speech, free assembly, and free press are inherently designed to protect citizens who desire to express themselves publicly, so also has marginalization to do with being public. Public, as we might imagine by drawing on a number of Williams's claims, is determined by the empowered, the wealthy, the white, such that being African

¹⁶ Ibid. 77.

¹⁷ Another clear example of this occurs in rape trials, e.g., *State v. Rusk* (in *Legal Philosophy* 519–525). Female rape victims are asked to "prove" that they were not giving any consensual signals, and so forth. This, until recently, could be marked by something as simple as wearing a short skirt on a date with the accused. Some rape victims are accused of somehow "asking for" the violence done to them and often have to humiliate themselves in proving that they did not want sexual intercourse with the accused.

¹⁸ Feinberg discusses the various kinds of expression that are limited under the law, 306–325.

¹⁹ Wise 34–36, *et alibi*.

American in public is being African American in the white world and in the white press. Being “inciting” means walking through an all white neighborhood in the middle of night while being African American; speaking “fighting words” is simply being a man who winks at another man in a Wyoming bar.

From here the issue explodes into hundreds of pieces and avenues, with room to mention only a few, those with regard to changes we might make in our law and ourselves. First, it seems that we must correct the metaphysical mistake lying at the root of some of these problems. It can be accomplished in a few ways and in most major metaphysical systems. For instance, the physicalist could trot out arguments to the effect that we all share identity because we are composed differently on the atomic level at every second of our lives. Our identity is in flux, and we share this physical identity with every other person on the planet, who is also composed of the same stuff as we are on a basic level. The physicalist could also argue along the lines of a “scattered totality” of humanity—all humans are humans in one body of humanity that can physically be mapped according to the location of each person in the universe. And so on. It seems that a number of systems could correct the metaphysical identity issues at least to the satisfaction of avoiding spirit murder by affirming some kind of unity or recognition of humanity. The task of education is to develop more sophisticated thinking throughout all young people, and these ways of thinking must try to better describe the world and the “Other” and reach them better than many of the current avenues.

Kevin Graham’s description of Patricia Hill Collins’s controlling images adds another dimension to this picture and the picture of what education must constitute. The controlling image is

similar to a stereotype insofar as it is a demeaning, belittling image. . . . Controlling images shape the perceptions and expectations of dominant group members about members of

subordinate groups, and *they justify the use of social and economic power to force subordinate group members to fill the roles.*²⁰

First, this explanation highlights the inherent domination and subordination of the out-group minority by the in-group majority. In other words, the issue is put into terms that more accurately describe the experience of being Other. More importantly, however, we can see that a real revision of education is not a matter entirely for schools and able teachers. This is a call for all of society to become able educators by becoming sensitive to, confronting, and finally dismantling hurtful and offensive controlling images. For proof that these images really do play out in deeply painful ways, return to Aaron McKinney, the Howard Beach incident, the Goetz slayings. For McKinney, the controlling image was that of the flamboyant and promiscuous fag trying to convert the straight guys, an image he made clear in the gay panic defense. For Howard Beach residents, the African American in their neighborhood were clearly just hoodlums. For Bernard Goetz, the teenagers whom he massacred were wild animals. If more evidence is needed to consider controlling images as a part of everyday life, momentarily consider the meaning and implications of the term “jungle fever.” Malformed identity is shot through with these images, and we must protect both ourselves and our youth from them, even at great expense.²¹

On the legal level, there are changes already in the process. For instance, some weakly worded hate laws are becoming stronger yearly. Though some argue that these unequally affect minorities, hate crime legislation is a first step towards publicly asserting that as a society we reject bigotry in all of its forms, beginning with interpersonal violence. Further steps must be taken to reduce the harm done by social systems, which continue to perpetrate the greatest violence on the Other. These social systems continue to allow the kind of hate speech that drive gay youth into an unhealthy subculture just as they continue to allow stylized violence against

²⁰ Graham 51, emphasis added.

²¹ This is a natural segue into the topic of reparation thought, but it will not be considered in this paper. For an introduction, see McGary chs. 5-8.

women under the guise of “entertainment.”²² Williams writes, “We need to elevate spirit murder to the conceptual—if not punitive—level of a capital moral offense.”²³ These systems will not change until there is a fundamental shift towards the acceptance of the Other as valuable because of differences and equal because of what is shared.²⁴ We do not live in a utopian society, and these attitude shifts are unlikely to take full form for a very long time, but the attempt to protect traditionally marginalized groups is the beginning of an education process that may end in some kind of parity as a rejection of the solipsistic identity mistake.

Further, the “reasonability” standards that Kim Scheppelle suggests might combat the deific mistake concerning what it is to be rational.²⁵ Such standards require a greater consciousness of surrounding social systems in the legal realm as opposed to the “view from nowhere’ or the apparently point-of-viewless point of view” that denies “a multicultural society [in which there] is no longer a single unassailable truth, but plural and various truths.”²⁶ Scheppelle recognizes the deific mistake for what it is: the elevation of one point-of-view above all others; this point-of-view calls itself objective, but it really seems to be coming from the empowered group of society. In certain cases, at certain points, it becomes imperative to introduce nuanced standards of reasonability, which include not only the perspectives of diverse populations, but also those of all victims.²⁷ Again, a great deal of work must be done in this area to properly flesh out Scheppelle’s suggested system, and, as she asserts, this would be “a radical departure from the criminal law.”²⁸ Such a drastic overhaul may be necessary for the social system in which we live to do some kind of work towards a true equality amongst diverse perspectives.

²² MacKinnon 11. (“Entertainment” does not occur on this page, but the topic is discussed.)

²³ Williams 78.

²⁴ See John Stuart Mill on this topic in *On Liberty* ch. 3.

²⁵ Scheppelle 514–518.

²⁶ *Ibid.* 514.

²⁷ The law “customarily considers the victim to be just another witness at the trial and which privileges the perspective of the defendant through the *mens rea* requirement.” *Ibid.* 517.

²⁸ *Ibid.*

A final note on the Other and the empowered group. The empowered seems to circumscribe itself in terms of negative space; the empowered does not seem to have a specific and readily identifiable identity because it only defines itself according to, for instance, being nonblack or nongay, nonfemale and nonpoor.²⁹ Having identity based on negative properties is not to have any identity at all, and so it seems that in-group identity is intrinsically tied with notions of Otherness. Power of identity then is not something truly held by an in-group, but by the out-group, and so the in-group struggles to convince itself otherwise by affecting other avenues of disownership and marginalization. Thus, in the end, the cruelty of spirit murder might be a response to the fear that we are not the empowered, even though we do everything we can to convince ourselves otherwise. Hence, the totally nebulous form that the in-group takes is Other-denying on one level, but to the extent that it is an Other-defining act it is ultimately self-denying, reckless, and futile.

²⁹ Of course these paradigms shift according to the specific in-group in question.

ARTICLE TITLE

References

- Feinberg, Joel. "Limits to the Free Expression of Opinion." *Philosophy of Law* 6th ed. Ed. Joel Feinberg and Jules Coleman. Belmont, CA: Wadsworth/Thompson Learning, 2000. 306-325.
- "Gay Panic." Salon.com. <http://www.salon.com/news/feature/1999/10/26/trial/index.html>. (2 May 2003).
- Graham, Kevin. "Autonomy, Individualism, and Social Justice." *Journal of Value Inquiry* 36 (2002): 43-57.
- James, William. *Principles of Psychology*. In Bruce Wilshire, *William James: The Essential Writings*. Albany: SUNY Press, 1984.
- Kenworthy, Tom. "McKinney Avoids Death Sentence." *Washington Post*. 5 November 1999. A2.
- MacKinnon, Catherine. *Only Words*. Cambridge: Harvard University Press, 1993.
- McGary, Howard. *Race and Social Justice*. Malden, MA: Blackwell, 1999.
- "McKinney's Defense Says Unwanted Advance Spurred Shepard's Fatal Beating." Court TV Online. http://courttv-web3.courttv.com/archive/trials/mckinney/102599_ctv.html. (2 May 2003).
- Regina v. Morgan*. In *Philosophy of Law* 6th ed. Ed. Joel Feinberg and Jules Coleman. Belmont, CA: Wadsworth/Thompson Learning, 2000. 523-525.
- Scheppele, Kim Lane. "The Reasonable Woman." *Philosophy of Law* 6th ed. Ed. Joel Feinberg and Jules Coleman. Belmont, CA: Wadsworth/Thompson Learning, 2000. 514-518.
- State v. Rusk*. In *Philosophy of Law* 6th ed. Ed. Joel Feinberg and Jules Coleman. Belmont, CA: Wadsworth/Thompson Learning, 2000. 519-525.
- Williams, Patricia J. *The Alchemy of Race and Rights*. Cambridge: Harvard University Press, 1991.
- Wise, Tim J. *Little White Lies: The Truth about Affirmative Action and "Reverse Discrimination"*. New Orleans: Loyola University Twomey Center for Peace through Justice, 1995.

