

Particulars, Practices, and Pragmatic Feminism: Breaking Rules and Rulings with William James

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In point of fact, there are no absolute evils, and there are no non-moral goods; and the *highest* ethical life—however few may be called to bear its burdens—consists at all times in the breaking of rules which have grown too narrow for the actual case.

—William James, *The Moral Philosopher and the Moral Life*

A recent conversation I had with a fellow philosopher turned on the question of particulars: Is it ever true that our theorizing is separable from the everyday lives and experiences of “real” people outside the academy? Are ideas things we can try on or toss aside without consequence, like so many frivolous hats? I was inclined, as a feminist, to answer both of these questions with an emphatic no. Committed to the idea that theories are always politically loaded—in both their origins and their consequences—I could not agree that my work as a philosopher should or could be divorced from the lived realities of people on the ground. Though it is obviously true that not everyone philosophizes (professionally or otherwise), it does not follow that those of us who *do* are thereby excused from thinking through the particular practical effects of this or that conception of truth, reality, or goodness on the lives of actual individuals in the world. A philosophy that refuses to concern itself with the messy particulars of existence is both deluded and dangerous.

Although feminists may very frequently find themselves in just such confrontations with a philosophical establishment that cannot or will not recognize questions about the particulars of women’s lives as legitimate roads of inquiry, there are a few allies within the philosophical camp (and thankfully, of late their numbers are steadily growing). My purpose in this article is to show where and how William James’s pragmatism is theoretically useful for feminists, especially those feminists in dialogue with traditional philosophy. My investigation of James’s work will be topically organized by attention to three conceptual themes,

which, though interrelated in James's thought, I will distinguish for the purposes of clarity: the concept of habit, the notion of the pluralism of experience (which I will treat in conjunction with selective attention and the constructed nature of truth), and the importance of consequences for the evaluation of philosophical commitments. Putting these theoretical resources to work in the service of feminism, I will argue that James's thought is rich in resources for articulating the continued pervasiveness of sexism, especially as that sexism remains nontransparent to those implicated in it; for problematizing the supposedly "essential" nature of gender difference; for emphasizing the situated character of knowledge as constructed and transmitted by differently bodied individuals; and for interrogating the legitimacy of the traditional philosophical separation of theory and practice.

Additionally, I will suggest that the relationship between Jamesian pragmatism and feminism need not be unidirectional but that feminist resources may be marshaled to serve as a corrective to James's own lapses into sexism. However, I will argue that these corrective moments should not result in deep alterations to James's theoretical framework but, rather, in the claim that James ought to be more consistently pragmatic. Finally, in the spirit of James's declaration that "pragmatism is uncomfortable away from the facts" (1975, 38), I will, in the final section of this article, analyze a recent ruling of the U.S. Supreme Court that is of particular interest to feminist activists. The majority decision of *Ledbetter v. Goodyear*, which limits the rights of women to sue employers for sex-based pay discrimination, is centrally dependent on the assumption of the lucidity of two notions: the *intent* of the employer to discriminate and the isolability of a *discrete event* of discrimination. I will argue that a feminism informed by Jamesian pragmatism is well equipped to problematize both of these concepts and to expose their theoretical inadequacy as rooted in, among other things, insufficient attention to the relevance of particular social situations. My goal in this article, then, may not easily align with the conventions of typical philosophical *or* legal discourse. I take my license to proceed, however, to be derivative from a Jamesian theme: one must break rules that have grown too narrow for the actual case.

Jamesian Pragmatism and Pragmatic Feminism

My purpose in this section is twofold: first, I am interested in articulating the specific ways in which James's pragmatism is theoretically useful for a certain sort of feminist project; second, I am concerned to address, in conjunction with these theoretical resources, a few moments in James's texts that could be, for good reason, problematic for feminist thinkers. My treatment of James in what follows will of necessity be selective; rather than attempt to address every aspect of his pragmatism, I will be restricting my inquiry to three concepts that lend

themselves particularly well to being positively used by feminist theorists: habit, pluralism, and the merging of theory and practice.

Habit, Gender, and Thought

The notion of habit is, for James, crucial to explaining the continuity of our experiences and the propensity of individuals to engage in certain sorts of behaviors without actively intending to do so. Because “habits have a physical basis” (1984, 125), James argues that human (as well as nonhuman or even nonsentient) behaviors are quite literally shaped by preceding ones. Particular movements and behaviors are never simply isolated events; preceding movements and behaviors always lead subsequent ones to be more or less likely. Repetition of my bad reading posture leads me to adopt more easily this posture in the future, in the same way that practicing a sonata enough times makes playing the piece an automatic sort of experience. I do not specifically decide to sit in this way or even necessarily think about the movements of my fingers on the piano—rather, I have become so physiologically accustomed to behaving in certain ways that these behaviors are no longer consciously adopted or interrogated. Moreover, these habits of bodily comportment are not limited to such straightforwardly “physical” activities as posture; they give form and content to individuals’ styles of action, such that repeated, learned behaviors become (to put it in a way that is perhaps deceptively simple) a part of ourselves. It is not simply that I characteristically *do* some things and not others; my doing of the particular things that I do just *is* the process of my becoming a particular sort of person. James writes that in young people learning to take up a particular role in society, one can see the expected mannerisms, performances, and ways of thinking set in and take hold. He writes, “You see the little lines of cleavage running through the character, the tricks of thought, the prejudices, the ways of the ‘shop,’ in a world, from which the man can by-and-by no more escape than his coat-sleeve can suddenly fall into a new set of folds” (1984, 133). What this means is that habits cannot be adopted or left behind at will, like an overcoat or umbrella; to “take off” a habit would be to shed a part of one’s self.

Interestingly, James explicitly claims that we have habits of conceptualizing, too—and that one particular philosophical habit has consistently led us to misconstrue our own thought. Arguing that consciousness cannot be adequately understood as a chain of discrete instants of content but is better conceived of as a continuous fluidity, James writes, “We ought to say a feeling of *and*, a feeling of *if*, a feeling of *but*, a feeling of *by*, quite as readily as we say a feeling of *blue* or a feeling of *cold*. Yet we do not: so inveterate has our habit become of recognizing the existence of the substantive parts alone” (1984, 148). Having learned to identify “thoughts” as content-full in specific ways, we transfer those modes of thinking about thought and content to reflective self-consciousness without realizing that such a transition has been made. The consequence, in this case, is that philosophers produce accounts of human consciousness that bear little or no resemblance to lived experience. Though this particular example is limited

in its scope, the general claim James is making can be restated so as to point to the larger implications of habitual modes of thought. The repetition of some way of “seeing” or conceptualizing some thing, person, or event tends to lead us to “see” or conceptualize similar things, persons, or events in the same way in the future, without the conscious adoption of any particular conceptual framework. That is to say, our thoughts, just as much as our movements, are largely shaped by our previous experiences and thoughts—and these experiences and thoughts are themselves contingent on the particularity of human bodies and situations. “What is called our ‘experience,’” James writes, “is almost entirely determined by our habits of attention” (1984, 156). There is no “pure” objective thought that escapes our habitual modes of thinking, because all human experience occurs historically and contextually, as part of the continuity of a life.

It is habit’s contribution to continuity that is of particular interest from a feminist perspective. Specifically, the fact that habits give shape to differing kinds of experiences—both those typically thought of as “physical” and those thought of as “cognitive”—makes them useful for explaining the relative stability of a phenomenon like gender, as well as the ways in which such a phenomenon is “read” or conceptualized. That is, James’s analysis of the ways in which young people come to *be* shopkeepers, doctors, and so on—by being habituated into typical ways of moving, thinking, and acting—could be analogously applied to the ways in which human beings come to *be* women or men. Just as I habitually slouch while reading, I have, through years of repetition, learned habitually to walk, sit, talk, and dress in ways characteristically feminine—and because these behaviors literally give shape to my body, I could no more decide to shed my being-a-woman than I could, by sheer force of the will, suddenly bench-press two hundred pounds. This is not to say, however, that my gender is “essential” to my being in the metaphysical sense of the term or to argue that change is impossible. Rather, it is to insist that the bodily organism *matters* deeply in the habits of gender and that its being regulated and constructed in particular ways in and through those habits entails, over time, relative stability that can only be significantly altered through the adoption of a different, contradictory habit. This way of thinking about gender is helpful for the purposes of an antiessentialist feminism that seeks to account for the general continuity of sexual difference without appealing to masculine or feminine “natures,” which are philosophically dubious and politically problematic in their exclusion of those individuals who are not so easily classifiable. Moreover, the Jamesian emphasis on the ineliminable physicality of habits could avoid the misconstrual of the language of “performativity” popularized by Judith Butler. Although an account of gender as habituated in James’s sense would be, in its substance, very much in line with Butler’s, the use of James’s explicitly bodily language regarding habit would allow feminists to circumvent the sort of criticism of which Butler has been the target—namely, that understanding gender as “performative” fundamentally underestimates how deeply ingrained it is as well as its central dependence on the body.

Moreover, James's account of habits that we might typically classify as "cognitive" could go a long way, from a feminist perspective, toward explaining why it is that the behaviors of women and men are experienced and understood differently. That is, if the sorts of judgments we think of as straightforwardly cognitive—that some individual person is competent, abrasive, or ignorant, for example—are *always* contingent on habitual ways of seeing, feeling, and understanding, then it must be the case that our experiences are always inflected or colored in some way. What that means is that our "judgments" are never *just* judgments, if by "judgment" we mean to indicate anything abstracted from the emotional and contextual messiness of lived, bodily experience. James points out that human reason is not insulated from feeling and that individual life experiences have a significant hand in determining what will "count" for us as relevant, good, and so on—and that they do this all the time, regardless of whether we are actively aware of it. Thus, a feminist appropriation of James's notion of habit could articulate not only how individuals are habituated to behave in particularly gendered ways but also how those behaviors are habitually understood, felt, and classified. The fact that male job applicants tend to appear more capable, that Hillary Clinton tends to seem "bitchy," and that "effeminate" men tend to look weak, even to people who would not think of themselves as sexist (and often even to philosophers who are themselves aware of the operations of such habits), is much more comprehensible in light of an account of habits of thought of the sort that James gives. "Seeing" gendered behaviors in a misogynist light is not, for the most part, a conscious decision—and it is for this reason that such seeing is so difficult to eradicate. Habit is society's "most precious conservative agent" (1984, 132), James writes. A feminism that seeks to change the ways women are felt, heard, and understood must do far more, then, than simple "consciousness-raising," because it is contending with far more than mere "consciousness."

The deeply constitutive character of such habits of invidious discrimination is unwittingly attested to by James himself, when he problematically asserts that it is "well for the world" that habits are so difficult to overcome, for this fact "keeps us all within the bounds of ordinance, and saves the children of fortune from the envious uprisings of the poor" (1984, 133). James's assumption that the maintenance of current patterns of class stratification is itself a good discloses a surprising chauvinism in James, which seems incompatible with both his philosophical commitment to the interrogation of essential differences *and* his long-standing involvement in public activism and anti-imperialist movements.¹ One might be inclined to disregard such a statement, in light of James's more politically progressive work, as the unfortunate slipup of a man "of his times," but it seems to me that neither feminism *nor* pragmatism could do this responsibly. Feminists of all stripes insist, as Charlene Haddock Seigfried puts it, that "the researcher is not a neutral observer, but on the same plane as the subject matter" (1996, 37) and that as a consequence, we must look carefully at the assumptions and situations involved in any philosophical position—including those that we ourselves hold. As such,

I would contend that James is clearly exhibiting the habits of thought one might expect from a man of a privileged social status. This recognition, moreover, should probably entail the revising of his previous evaluation to something closer to the claim that the continuity of current social arrangements is “well” for those of the dominant groups but not so well for others. James’s lack of attention to his own habits and situation in this regard may therefore be rectified using the resources of feminism—which, in truth, are also the resources of pragmatism. The shared nature of these resources should become clearer in the following section.

Pluralism, Selective Attention, and the Situation(s) of Truth(s)

The mark of a pragmatist, James writes, is a turning away from “fixed principles, closed systems, and pretended absolutes and origins” and a rejection of “dogma, artificiality, and the pretense of finality in truth” (1975, 30). My purpose in this section is to look more closely at this denial of absolutism and finality as derivative of James’s notions of selective emphasis and the making of truth. Although this thematic grouping is perhaps not standard procedure in discussions of James as a pluralist, this approach will allow me to get at a richer notion of what “pluralism” means, especially for the purposes of putting that pluralism to work in the service of feminism.

James’s discussion of selective emphasis is closely connected to his notion of habitual patterns of thinking: both concepts point to the ways in which human beings are involved in shaping experience. Selective emphasis concerns more generally consciousness as such: *all* consciousness is selective, or as James puts it, thought “*is always interested more in one part of its object than in another, and welcomes and rejects, or chooses, all the while it thinks*” (1984, 154). It is not *just* the case, then, that human beings habitually tend to categorize some persons or things in particular ways; the fact that we do so categorize is indicative of a larger fact of our experience—namely, that it is always limited by our attending to some things and not others. James continues, “We do far more than emphasize things, and unite some, and keep others apart. We actually *ignore* most of the things before us” (1984, 155). Experience is thus necessarily incomplete, since Cartesian-esque “objectivity” is never to be had. While most people—even most philosophers—will readily admit that differences in attention will occasionally cause us to see some things and not others, James is making a larger claim than this. Though I may easily grant that most of my experiences of my dog (for example) are partial—now my attention is on her fur, now it is on her bark, all the while ignoring the jingling noise of the dog tag against her collar—it is another thing entirely to admit that, even were I to go through the philosophical exercise of isolating the “essence” of her dog-ness, that, too, would be contextualized and limited by the selectivity of my attention. Philosophers, after all, typically understand themselves to be in the business of getting around such biases. Nevertheless, James is undeterred. Even when it appears that we have arrived at the true “essence” of something, he writes, “the mind chooses to suit itself, and decides what particular sensation

shall be held more real and valid than all the rest" (1984, 155). Philosophical attempts at abstraction notwithstanding, human consciousness is necessarily limited, incomplete, and intentionally directed.

Because pure objectivity, at least as philosophy has conceived it, is non-existent, it is not possible to continue to understand "truth" as an entity existing apart from human beings, to be obtained by making one's mind a "copy" of reality. Instead, James argues, truth must be rethought as something that "*happens to an idea*" (1975, 97), inasmuch as that idea properly fits (necessarily partial) experience. He writes, "*Ideas (which themselves are but parts of our experience) become true just in so far as they help us get into satisfactory relation with other parts of our experience*" (1975, 34). Truth is best understood, then, as an incident internal to human existence. As such, James claims, an idea "*becomes true, is made true by events. Its verity is in fact an event, a process: the process namely of verifying itself, its veri-fication*" (1975, 97). The truth of the phrase "two plus two is four"—like the truth of the phrase "it is not presently raining"—is not a property inherent in that thought but, rather, a shorthand way of referring to a set of relations that make it well suited to the rest of experience. In particular, an idea being true means that it can be acted on in ways that produce good results (which is to say, good for some purpose). Were I to act on the phrase "it is not presently raining" by going out without my umbrella and find myself immediately thereafter soaked by a thunderstorm, I could rightly say that this phrase was not true—not through access to something called "objective reality" but very simply because that statement clearly conflicted with my experience. This is *not*, however, to claim that truth is relative to individual persons or that it is meaningless or nonexistent. I, as an individual, cannot make "two and two equals five" a true proposition, because it will not (no matter how hard I wish it) work in the world—notably because the world always includes other people. I can will myself to *believe* "two and two equals five," of course, but because the verification—which is to say, the "making-true"—of ideas always happens socially, my private belief would remain erroneous. As James puts it, "All human thinking gets discursified; we exchange ideas; we lend and borrow verifications, get them from one another by means of social intercourse. All truth gets verbally built out, stored up, and made available for every one" (1975, 102). Thus, James is not suggesting that we give up the search for truth but that we get a clear idea of what it is we are actually looking for. And because what we are looking for is inextricably experiential, social, and limited, it will not be found by abstractions or the quest for some final word.

Thus, James is a pluralist *not* because he mastered the postmodern virtue of "tolerance" before everyone else but because his attention to the limitations of consciousness and the situated and constructed nature of truth *require* his being a pluralist. If I understand my experience as necessarily contextualized and partial, then I could not consistently hold any knowledge of mine to be absolute. "There is nothing improbable," James writes, "in the supposition that an analysis of the

world may yield a number of formulae, all consistent with the facts" (1979, 66). The differences in our formulations of the world are to be expected, given our differing historical and cultural situations, as well as our differing purposes.

From a feminist perspective, then, James's emphasis on the pluralism of experience is crucial, because it is inextricably tied to the situations and contexts of individuals and the admission that truth—and by extension, knowledge of truth—is always partial and socially located. Moreover, because we cannot help but experience and know the world from particular perspectives—as selves embodied in particularly raced, gendered, and classed ways—what is needed is not the pretense of philosophical abstraction from these particularities but, rather, the active interrogation of them and the acknowledgment that our knowledge is always particularly situated. A feminism informed by James's notions of selective emphasis and the construction of truth could, for example, provide a plausible account for the "truth" of such historically received and transmitted notions of women's "nature" as bodily or emotional, in contrast to the supposedly cognitive or analytic character of masculinity. That is, taking seriously the privileged position of those responsible for the making and transmission of this knowledge has the effect of contextualizing it, of revealing the assumptions and perspectives that make it possible, and ultimately, of divesting it of the power of a universalizing claim. Taking this pragmatic approach, rather than simply making a contradictory universal claim regarding the metaphysical falsity of such a conception of women's nature, could put feminists in a more solid critical position that avoids falling into the same dubious philosophical assumptions they aim to critique. At the same time, reconceiving truth in this way does not force feminist thinkers to accept that previously prevalent misogynist notions of womanhood have an equal claim to legitimacy as those proffered by feminism. Because experience is cumulative, and the verification of truth is continually being made and remade, James argues that new experiences have retrospective effects on the truth or falsity of previous ideas. In the case of such new experiences that disrupt our formerly unquestioned notions, James writes, "Using the past tense, what these judgments utter *was* true, even though no past thinker had been led there. We live forwards . . . but we understand backwards" (1975, 107). Thus, a pragmatist feminist could insist that sexist conceptualizations of humanity are contingent on specific cultural and historical situations by calling attention to the privileged position of the dominant constructors of received truths while at the same time holding that, because these sexist conceptions are not verifiable in light of a plurality of experiences, they were *always* misguided. Just as importantly, however, James's pragmatism is a useful resource for feminists to articulate why and how our contexts and interests always matter and, consequently, why the epistemic situations of oppressed or marginalized groups are valuable to larger philosophical projects whose goals are not explicitly feminist.

As in his discussion of habit, James makes passing remarks in his analysis of truth that unintentionally betray his own situation as a privileged masculine

subject. Explaining how pragmatism “unstiffens our theories,” he writes, “She [pragmatism] is completely genial. She will entertain any hypothesis, she will consider any evidence” (1975, 32, 44). In contrast to rationalism, which is also metaphorically represented as a woman, “Lady Pragmatism,” in the words of James Livingston, “wants to stay on that busy street, to mingle with those who know that this world is ‘tangled, muddy, painful and perplexed,’ to bring out the ‘cash value’ of every proposition, to trade on her truths” (2001, 145). The intelligibility of the metaphors of pragmatism and rationalism as women to be “used” as better or worse companions or instruments of philosophers covertly assumes a masculine inquirer, and James’s use of such metaphors unwittingly perpetuates a picture of women as objects in the lives of men. Though Livingston argues that James’s description of Lady Pragmatism is actually subversive and representative of “the sensibility of the New Woman who invented modern feminism by extricating herself from an *exclusive* preoccupation with domesticity, entering market society as an individual” (2001, 146), it seems to me that such an interpretation does not avoid the fundamental problem. Even if Livingston’s interpretation of James is right on this point, and Lady Pragmatism is truly a women’s libber, the fact is that she remains a tool in the hands of James—or whichever philosopher happens to want to enjoy the fruits of her genial nature. Here, as previously, it seems that James needs feminists to remind him of what he ostensibly already knows: that his masculine perspective is situated and limited and, as such, ought to be taken into account and interrogated.

Theory and Practice, Philosophy and Politics

I began this article with a biographical anecdote about the importance of particulars and consequences in philosophy. Though the particularity of situations and the importance of consequences for the evaluation of ideas have come up indirectly in my discussion of James’s notion of habit and commitment to pluralism, I want now to think more explicitly about particulars and practices as well as James’s pragmatic assertion that the two are intimately connected. Specifically, James argues that *every* philosophical problem worthy of the name gives rise to real, practical consequences and, thus, that there can be no theory whose value is only discernible in the abstract. He writes, “There can *be* no difference anywhere that doesn’t *make* a difference elsewhere—no difference in abstract truth that doesn’t express itself in a difference in concrete fact and in conduct consequent upon that fact, imposed on somebody, somehow, somewhere, and somewhen. The whole function of philosophy ought to be to find out what definite difference it will make to you and me, at definite instants of our life, if this world-formula or that world-formula be the true one” (1975, 30). That is, our philosophizing should not treat its practical implications or consequences as afterthoughts to be considered once all the planks of the theoretical structure are firmly in place (as is often done in undergraduate classes following readings of Plato’s *Republic*, for example). Rather, James is suggesting that our philosophizing should be

consequence oriented through and through, such that differences in practices are the driving force of theory. It is crucial, moreover, that James's phrasing of this interest in lived consequences emphasizes that what is at stake is "conduct . . . *imposed on somebody*." James's pragmatism will not allow us to forget that the effects of our theorizing are not abstract but, in fact, are very frequently felt in the lives and bodies of concrete individuals in the world.

Additionally, James is claiming that any philosophical question with *no* practical effects is not worth answering, because it amounts to an exercise in wordplay; such a philosophical problem is not a real problem at all. Because he takes seriously the idea that theorizing always arises from real individuals with real historical and cultural situations and real lives, James refuses to grant that philosophy should ever conceive of itself as engaged only in the abstract treatment of concepts. He writes, "It is far too little recognized how entirely the intellect is built up of practical interests. . . . The germinal question concerning things brought for the first time before consciousness is not the theoretic 'What is that?' but the practical 'Who goes there?' or rather . . . 'What is to be done?'" (1979, 72). Human beings, when left to their own devices, are a practically minded group; most people, according to James, do not need to be taught to be concerned with consequences—at least, not until they become initiated into the cults of abstract philosophy. Philosophers have fooled themselves (and trained generations of students) into believing that theoretical knowledge is an end in itself and have spent countless hours arguing over the minutiae of metaphysics and the distinctions of epistemology. These hours, James is suggesting, have been wasted *if* it is truly the case that their solutions could occasion no real difference in our lives.

This is not to say, however, that all—or even most—philosophical questions are in fact meaningless. Though positivism would have us believe that no questions about nontangible entities are "sense-making," James explicitly argues against this view. He writes, "It cannot then be said that the question, Is this a moral world? Is a meaningless and unverifiable question because it deals with something non-phenomenal. Any question is full of meaning to which, as here, contrary answers lead to contrary behavior" (1979, 86). Thus, it is hardly the case that philosophy as such is an empty exercise; quite the opposite would turn out to be true, if only philosophers would take care to recognize the implications of their views. There are, in fact, many theoretical differences that make *significant* practical differences: whether we believe that the world is "moral" will, as James points out, have important implications for the way we live our lives in it; what we think of "human nature" will give content to our notions of who counts as human (and what sorts of considerations they are thereby afforded); whether we think access to "absolute truth" is possible will shape our interactions with those individuals with whom we disagree. And, of course, we might continue the list interminably. For the present, however, it should suffice to note that James is arguing the (contextually) radical—and yet surprisingly commonsense—point

that our theorizing must *always* be concerned with its practical consequences and as such, that the historically accepted split between theory and practice is the misguided artifice of delusional philosophers.

This point is extremely important for the purposes of feminism, for (as I noted in my introduction) feminist thinkers are concerned to note *both* where the consequences of supposedly abstract theorizing have led to the exclusion or oppression of marginalized groups *and* how the concrete situations of individual theorists have given shape and inflection to their theorizing. Pragmatism and feminism find themselves on common ground at this point, because both, as Seigfried puts it, “reject philosophizing as an intellectual game that takes purely logical analysis as its task. For both, philosophical techniques are means, not ends” (1996, 37). Feminists, like pragmatists, often take up the theoretical resources of philosophy for the purpose of critiquing philosophy itself, at least as it has been typically practiced. But this critique is by no means a purely academic exercise. The philosophical critiques of various types of feminist thinkers have informed and continue to inform the political action of activists, as well as persons more casually involved in feminist movements. In *Gender Trouble* (2006), Judith Butler’s problematizing of the “metaphysics of presence” and its concomitant assumptions about the reality of an underlying, stable self, for example, has radically altered the way that a generation of feminists approach questions of gender *and* has been (and continues to be) strongly influential in the work of queer activists in the United States and abroad. Additionally, bell hooks’s (2000, 29) criticisms of the philosophical assumptions of “second-wave” feminism itself—notably, its ignorance of the realities of racism and its problematic quest for gender “equality” with men, rather than the end of sexist oppression—reshaped feminist movements in the academy and revitalized the grassroots movement against sexism by women of color and working-class women. Thus, although feminist thinkers are certainly theorists, their theorizing is in no way separable from their social and political realities and goals. In this respect feminist philosophers are very close to James’s pragmatism—both in his insistence that theory *must* be practical and in his ethical commitment to “breaking . . . rules which have become too narrow for the actual case” (1979, 158).

Pragmatic Feminism and *Ledbetter v. Goodyear*

On April 23, 2008, the U.S. Senate failed to pass an amendment to Title VII of the 1964 Civil Rights Act that would ease restrictions on lawsuits alleging sex-based pay discrimination. The amendment was drafted by a large group of members of Congress, who were responding to a decision by the U.S. Supreme Court in 2007 to overturn a woman’s prior victory in a sex-discrimination suit against the Goodyear Corporation. Lilly Ledbetter, who worked as a manager in a Goodyear tire-manufacturing plant for twenty years, alleged and proved in a lower court

that she was the victim of sex-based discrimination by providing evidence that she was paid significantly less than her lowest-paid male colleagues; that she was denied at least two raises as a result of negative performance evaluations by a male supervisor who (according to testimony) was biased against women and whose sexual advances Ledbetter had previously rebuffed; and that she and other women working in the plant had been made to understand on various occasions that “the plant did not need [women].”²² On appeal to the Eleventh Circuit Court, Goodyear claimed that Ledbetter’s allegations were irrelevant, as the statute of limitations for discrimination—180 days—had, by its calculations, already elapsed. Though Ledbetter had filed suit within 180 days of her final paycheck from Goodyear (which, by that point, was nearly \$600 per month less than that of her lowest-paid male counterpart), the company claimed that these checks themselves could not amount to discriminatory actions but must, at the most, be regarded as the lingering effects of previous (alleged) sex discrimination. Those alleged previous acts, whose effects resulted in lower pay for Ledbetter, occurred over a year prior and thus, fell out of the range of the statute of limitations. The circuit court ruled in favor of Goodyear, overturning the lower court’s ruling. Ledbetter then appealed to the U.S. Supreme Court, which, in a five–four ruling, found in favor of Goodyear and upheld the ruling of the circuit court. My goal in this section is to read the Supreme Court’s decision in light of a feminism informed by James’s pragmatism, with a view to problematizing a few of its central assumptions, and to argue that its abstracted logic is both inattentive to necessary contextual considerations and deeply flawed.

The Court’s majority decision relies on two major considerations, the second of which it takes to be the most important: the *intent* of the employer to engage in a discriminatory practice and the isolability of a *discrete act* of (intentional) discrimination that falls within the statutory time limit. Its reasoning in both of these considerations, I argue, is problematic—especially in light of some Jamesian insights noted earlier in this article. In the first place, the law’s emphasis on the importance of the *intent* of an employer to participate in sex-based pay discrimination assumes that such intent is discernible, even though (as the Court notes in its majority opinion) “the employer’s intent is almost always disputed, and evidence relating to intent may fade quickly with time.”²³ Leaving aside the fact that Ledbetter’s intent-related evidence was notably *undamaged* by the passing of time (such that she was able to prove to the satisfaction of a jury that sex-based pay discrimination had indeed occurred), we should note that this claim by the Court gives reason to question the reasonability of requiring proof of an employer’s intent, not (as the majority claims) to require that such claims be prosecuted earlier. That is, because the intent of an individual is all but impossible to prove, even in cases whose events are *not* long removed, the centrality of the question of such intent in the law surrounding pay disparities and discrimination is at best curious and at worst loaded against the claims of victims of such discrimination. James’s notion of habitual modes of thought is helpful in explaining why this is the case.

James, it will be remembered, argues that much of human behavior is shaped and governed by habits acquired in particular social and historical contexts. Even one's typical ways of categorizing and experiencing things and individuals are habitually inflected. What this means from a feminist perspective is that my judgments about women, for example, are never just *my* judgments, because they occur in a cultural context, in which I have learned habitually to understand and feel particular behaviors in particular ways. Whereas the legal definition of intent assumes and requires a subject whose thoughts and choices are ascribable entirely to him or her, the constitutive nature of habits makes the prospects for that ascription extremely dim. And these dim prospects are not *only* related to the fact that it is impossible to isolate the origins of misogynist habits of thought but also related to the concomitant fact that their fuzzy origins make them, in many cases, invisible even to those most clearly acting on them. Thus, it is perhaps unsurprising that, in many workplaces—especially those in which women have not traditionally worked, such as rubber manufacturing—women's performance is "seen" as worse, even in the eyes of individuals who earnestly claim to be exempt from sexism. It is noteworthy, for example, that Goodyear contended Ledbetter's differential pay to be attributable to poor performance, despite the fact that she previously won performance awards.⁴ In light of the often hidden character of habits of thought, the assumption of the transparency of individual intent looks to be markedly unfounded.

Moreover, the Court's contention that no intent to discriminate could be said to be operative in Ledbetter's substantially lower pay because that lower pay amounted to the *effects*, and not the actions, of sex discrimination implicitly claims that intention *can only* be imputed to individual human selves. Justice Alito, writing for the majority, argues, "Current effects alone cannot breathe life into prior, uncharged discrimination . . . such effects in themselves have no present legal consequences."⁵ The "effects" to which the Court refers here were notably active—Goodyear continued to pay Ledbetter less (and the pay disparity grew over time) than her male colleagues for the twenty years of her employment there. While Ledbetter argued (and a lower court agreed) that Goodyear's continued issuance of dramatically lower paychecks constituted current, active sex discrimination, the Supreme Court's decision isolates these later phenomena as mere effects of "alleged" discrimination. That these "effects" may be understood as effects of a prior action at all *requires* the assumptions that only individual human beings intentionally act, that corporations as such may not, and that the intent of those who *do* act may be accessed. In other words, it is only possible to conceptualize discriminatory pay as the effect of a previous cause—like the leaking of a pipe that results from a bad plumbing job—if we assume that the granting of lower pay by a company is merely a passive result of individual action, along the same lines as the flow of water through leaky pipes. However, by distinguishing the "effects" of discrimination from the act of discrimination itself, the Court thereby narrows the possibilities of evidence for individual intent, such that it becomes—against all

odds—even *more* difficult to prove. This is not, of course, to claim that the Court is *prima facie* wrong for making such a distinction. James rightly argues that we always, as beings whose experience is through-and-through selective, make such distinctions for specific ends and purposes. What is crucial to consider, however, is the extent to which those purposes blind us to the concerns of others and the lived consequences of our particular selections. Given the context of *Ledbetter v. Goodyear*—the interpretation of a law criminalizing sex-based pay discrimination and allowing for the redress of that discrimination—it seems clear that a distinction whose effect is to make such redress more difficult to obtain is a distinction that ought not to be made.

While the absence of discernible intent plays a considerable role in the Court's decision on *Ledbetter*, the supposed isolability of a discrete moment of discrimination figures much more prominently. The Court treats these two considerations as separate ones, but, as is evident in my discussion of the question of intent and the effect/act distinction, they significantly overlap (in that the definition of intent presumed by the Court requires this particular view of events as discrete). In its explanation of the calculation by which *Ledbetter's* claim fell outside the statute of limitations, the majority argues, "The EEOC [Equal Employment Opportunity Commission] charging period is triggered when a discrete unlawful practice takes place. A new violation does not occur, and a new charging period does not commence, upon the occurrence of subsequent nondiscriminatory acts that entail adverse effects resulting from past discrimination."⁶ Thus, the Court finds that those persons wishing to file a claim with the EEOC must do so within 180 days of the initial discriminatory act—the original setting of pay or denial of a raise—because this moment is the only one with discernible intent to discriminate. As I see it, there are at least three problems with this finding from a pragmatic and feminist perspective: the assumption of discrete instances is not consistent with the continuity of experience; it forecloses the retroactive nature of the verifiability of discrimination; and it is insufficiently attentive to the practical realities of the workplace, especially as experienced by women workers.

The first two criticisms are closely related, so I will address them together. The Court, it seems to me, makes a similar move in its assumptions regarding the intelligibility of a "discrete instance of discrimination" as that criticized by James in his discussion of the continuity of consciousness. In particular, the Court's assumption regarding temporal instances appears to commit the error of philosophers who have been trained only to recognize the "substantive moments of thought" as actual thought. Although it is true that James is, in this particular context, referring to "consciousness" as such and not making a claim about temporal "reality," there is still something to be said here. Specifically, because the "truth" of *Ledbetter's* claim to discriminatory treatment could *only* be verified retrospectively—both because sex discrimination almost never announces itself as such and because its subsequent verification *is* its truth as discriminatory—a temporal schema that isolates the moment in question from future moments

precludes the possibility of that verification. That is to say, an act can only be said to be *truly* discriminatory if its characterization as such fits with one's larger experience—and such fitting typically requires the experience of the persistence of that discrimination, even if the evidence of that persistence, when isolated into discrete instances, is insufficient unto itself. Justice Ginsburg, in her dissent, makes a similar claim. Some forms of sex discrimination, Ginsburg writes, “cannot be said to occur on any particular day. It occurs over a series of days or perhaps years and, in direct contrast to discrete acts . . . may not be actionable on its own.”⁷ As with much of human life, we do not, for the most part, experience sex discrimination as a singular, isolated event located at some identifiable moment in history. And any such identification that we do come to make is of necessity retrospective, because the verification of our identifying claims—even (or especially) to ourselves—requires as much. James's quotation of Kierkegaard is especially apt here: “We live forward, but we understand backward.”

Finally, the Court's decision may be criticized from a pragmatist feminist point of view as radically inattentive to the practical realities of the workplace, as well as the implicit consequences of its finding. Its radical restriction of the time limit for filing complaints with the EEOC assumes (or worse, is indifferent to) the plausibility of building a federal case against an employer within the first six months of employment and finds fault with those employees who would initially give an employer the benefit of the doubt. The Court's restriction thus assumes the very transparency of discrimination that it has already admitted to be necessarily contestable. Additionally, the Court's treatment of the case gives absolutely no consideration to the situation of women's experiences of workplaces traditionally dominated by men and as such, renders a decision that appears oblivious to the importance, felt by many women, of the imperative not to “rock the boat” in these contexts. Moreover, the majority decision appears completely unconcerned with the potential consequences of its ruling, offering no comment on the increased difficulty that the establishment of its precedent will undoubtedly generate for subsequent women bringing suits of sex-based discrimination. As Justice Ginsburg writes in her dissent, “The Court would thus force plaintiffs, in many cases, to sue too soon to prevail, while cutting them off as time barred once the pay differential is large enough to mount a winnable case.”⁸ What this means, then, is that the arguments over intentions and agents, acts and effects, are not purely academic. The philosophical assumptions of the Court's ruling are differences that most definitely *make* a difference, and the difference they make is nothing less than demoralizing.

What, then, is to be *done*? James will not allow us to succumb to the despair of a quietism that resigns itself to the inevitability of oppression or to the absolute impossibility of changing thoughts and actions—whether those thoughts and actions are the progeny of philosophers, courts, or ordinary people. This is not to say, of course, that a feminism informed by Jamesian pragmatism ought to be simply-mindedly optimistic. James's meliorism encourages the belief that posi-

tive change is possible—but that this change can *only* happen through sustained effort. Habits are difficult things to break, and we are almost always ignorant of the effects of our own situations, biases, and interests on our assessments of the world. The value of pragmatism—and, I have argued, pragmatic feminism—is in its capacity to make us aware of our own limitations and to force us to confront the consequences of our thinking. Keeping these particulars in mind should make salient *not* the hopelessness of our current situation but the weight of the task ahead. Those of us of a Jamesian sentiment, then, ought not only to *hope* for the end of sexist oppression or the ultimate prevailing of a nonmisogynist Truth: we ought also, whenever possible, to look for ways of creating that truth, of realizing that demand. This article has been an attempt, however small, to contribute to that creation.

Notes

1. For a summary of James's political work, see Schlosberg 1998, 588.
2. *Ledbetter v. Goodyear*, 550 U.S. 05-1074 (2007), Dissent, 18.
3. *Ibid.*, 12.
4. *Ibid.*, Dissent, 18.
5. *Ibid.*, 9.
6. *Ibid.*, 8.
7. *Ibid.*, Dissent, 6.
8. *Ibid.*, Dissent, 17.

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