

# *Modality, Individuation, and the Ontology of Art*<sup>1</sup>

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## **I Introduction**

In 1988, Michael Nyman composed the score for Peter Greenaway's film *Drowning by Numbers* (or did something that we would ordinarily think of as composing that score). We can think of Nyman's compositional activity as a 'generative performance' and of the sound structure that

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Nyman indicated (or of some other abstract object that is appropriately related to that sound structure) as the product generated by that performance (ix).<sup>2</sup> According to one view, Nyman's score for *Drowning by Numbers* — the musical work — is the product generated by Nyman's compositional activity (namely, an abstract object) and, more generally, artworks are identified with the products generated by compositional or other creative activities. Let's call this view *The Product Theory*. By contrast, according to another view, Nyman's score for *Drowning by Numbers* is the generative performance itself (namely, Nyman's compositional activity) and, more generally, artworks are identified with generative performances themselves. Following David Davies in *Art as Performance*, let's call this view *The Performance Theory* (80). In that book, Davies argues for The Performance Theory and against The Product Theory.

Different versions of The Product Theory provide different answers to the question of how artworks are individuated, and Davies argues against them separately. According to one version of The Product Theory, artworks are not individuated by the art-historical context in which they are produced. (Rather, they are individuated entirely by something else: their structural properties, say.) On this view, for example, if Nyman composed a musical work with a certain sound structure in 1988 and Mozart composed a musical work with the same sound structure in 1779, then Nyman and Mozart might have composed the same musical work.<sup>3</sup> Let's call this view *The Decontextualized Product Theory*. By contrast, according to another version of The Product Theory, artworks are individuated in part by the art-historical context in which they are produced. On this view, if Nyman composed a musical work in 1988 and Mozart composed a musical work in 1779, then — no matter how similar in sound structure the musical works might be — Nyman and Mozart did not compose the same musical work.<sup>4</sup> Let's call this view *The Contextualized Product Theory*. One of Davies's main arguments against The Contextualized Product Theory, which he takes to be 'the principal alternative' to The Performance Theory (x), relies on modal intuitions

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2 Unless indicated otherwise, numerals within parentheses refer to page numbers in Davies 2004. In describing an abstract object as a 'product' that is 'generated,' we don't mean to presuppose that abstract objects are created rather than discovered.

3 See, for example, Kivy 1983, 1987; Dodd 2007. The view that Kivy and Dodd defend entails that, in the scenario envisaged, Nyman and Mozart did compose the same musical work. But, actually, although Nyman intended the score for *Drowning by Numbers* to evoke Mozart's *Sinfonia Concertante in E flat for Violin and Viola*, the musical works do not have the same sound structure (111).

4 See, for example, Levinson 1980a, 1990a; Stecker 2003.

about artworks. In this paper, we criticize that argument. Although our immediate aim is to defend The Contextualized Product Theory and thereby undermine Davies's case for The Performance Theory, our ultimate aim is to assess how modal considerations do (or rather do not) affect the individuation of artworks and hence the ontology of art. We begin, in the next section, by presenting Davies's argument.

## II The Argument from Modal Intuitions

When Nyman composed the score for *Drowning by Numbers* in 1988, Mozart had already composed the *Sinfonia Concertante in E flat for Violin and Viola*. Let's say that Nyman composed the score for *Drowning by Numbers* in a *Sinfonia*-ish musico-historical context: namely, a musico-historical context in which someone (e.g. Mozart) had previously composed a *Sinfonia Concertante*-esque musical work (e.g. the *Sinfonia Concertante*) — a musical work, that is, with the sound structure that the *Sinfonia Concertante* actually has. Nyman intended the score to evoke the *Sinfonia Concertante* (111). One might have the intuition that Nyman's score could not have been composed in a non-*Sinfonia*-ish musico-historical context (111). By contrast, consider the *Prairie Variations*, a hypothetical keyboard work — in the style of the *Goldberg Variations*, say — that was composed in 1988 by a naïve occasional composer living in the Midwest. The *Prairie Variations* was also composed in 1988; so, one might think, it too was composed in a *Sinfonia*-ish musico-historical context. The Midwest composer, let us suppose, did not intend the *Prairie Variations* to evoke the *Sinfonia Concertante*. One might have the intuition that the *Prairie Variations* could have been composed in a non-*Sinfonia*-ish musico-historical context. So one might have the intuition that, insofar as musico-historical context is concerned, some musical works are more modally flexible than others: some musical works (e.g. the *Prairie Variations*) that were composed in a *Sinfonia*-ish musico-historical context could have been composed in a non-*Sinfonia*-ish musico-historical context, whereas others (e.g. Nyman's score for *Drowning by Numbers*) could not.<sup>5</sup>

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5 This example is modelled on one involving visual and literary works that Davies discusses (108, 108 n. 5). (Davies does discuss Nyman's score for *Drowning by Numbers* (111), but he doesn't compare it to another musical work.) We think that the examples we discuss are as plausible as the examples that Davies discusses. And, as Davies notes, the plausibility of any particular example doesn't matter, provided that one finds plausible other examples with the same 'structural features' (104; cf. 107, 112).

Davies calls this sort of variability in modal flexibility *the work-relativity of modality* (107, 123). To say that artworks exhibit this sort of variability in modal flexibility, we will say that modality is work-relative. In Chapter 5 of *Art as Performance*, Davies uses the work-relativity of modality to argue against The Contextualized Product Theory and in favour of The Performance Theory. In presenting the argument against The Contextualized Product Theory, Davies focuses on what he takes to be ‘perhaps the most discussed contextualist ontology of art’ (105): namely, Jerrold Levinson’s (1980a, 1990a) theory, which Davies calls *The Indicated Structure Theory* (e.g. 106). According to The Indicated Structure Theory, a musical or literary work is an indicated structure of some kind, one that is individuated in part by the art-historical context in which it was produced.<sup>6</sup> Although Davies focuses on The Indicated Structure Theory in presenting the argument, it is clear that he intends the argument to apply to any version of The Contextualized Product Theory (x-xi, 104). Davies’s argument is as follows:

- (P1) The Indicated Structure Theory cannot accommodate the work-relativity of modality.
- (P2) The Performance Theory can accommodate the work-relativity of modality.
- (P3) Modality is work-relative.
- (C1) So, *ceteris paribus*, The Performance Theory should be preferred to The Indicated Structure Theory. (From (P1)-(P3))

The argument relies on (P3), which is justified by intuitions about the modal properties of artworks, so we call this argument *The Argument from Modal Intuitions*. In Sections III and IV, we discuss (P1). We argue that it is false: The Indicated Structure Theory can accommodate the work-relativity of modality. In Section V, we discuss (P2). We argue that, if it is true, then The Argument from Modal Intuitions is of no use to Davies. For, if The Performance Theory can accommodate the work-relativity of modality, then so can The Contextualized Product Theory — even if, contrary to what we argue in Sections III and IV, The Indicated Structure Theory cannot. In the rest of this section, we discuss the work-relativity of modality itself.

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6 See also Levinson 1980b, 1985, 1992. Levinson (1980a: 82) intends his view to cover musical and literary works. Davies extends Levinson’s view from musical and literary works to visual ones (108, 108 n. 5). In the text, we focus on musical and literary works.

Davies does not argue that the work-relativity of modality follows from general principles. Rather, he argues that the work-relativity of modality is supported by our modal intuitions about particular cases: for example, about Nyman's score for *Drowning by Numbers* and the *Prairie Variations*.<sup>7</sup> We suspect that many readers without a prior commitment to some theory or other will have no modal intuitions here — or at least they will have no modal intuitions that they wouldn't be willing to give up for theoretical gains elsewhere. We agree with Davies that theories of art should fit the data, but we aren't convinced that the cases Davies discusses provide robust data. Davies offers us a practice-based ontology of art. The chief criterion of adequacy for such a theory is that it accord with and account for the ways in which we make, experience, and critically interact with artworks. But our artistic practice rarely, if ever, prompts us to think about the modal properties of individual artworks. As Davies recognizes, 'our critical practice incorporates very few modal judgments of this sort, since we are rarely interested in how a given work might have been, but only in how it is' (103). The ability of a theory to match our modal intuitions is valuable only to the extent that those intuitions are part of our critical practice. So, if the intuitions that support the work-relativity of modality aren't all that central to our critical practice, then it wouldn't be that much of a vice of The Indicated Structure Theory if it couldn't accommodate the work-relativity of modality; nor would it be that much of a virtue of The Performance Theory if it could.

Davies might counter that, if the modal intuitions that he uses to support the work-relativity of modality and hence to undermine The Indicated Structure Theory are suspect, then so are the modal intuitions that Levinson uses to support his contextualism and hence to support The Indicated Structure Theory, which is designed to respect that contextualism.<sup>8</sup> According to Levinson (1980a: 68-73), musical works are individuated in part by the musico-historical contexts in which they are composed. Levinson argues for this form of contextualism as follows: musical works composed in different musico-historical contexts differ in their aesthetic and artistic properties and hence, by Leibniz's Law, are distinct.<sup>9</sup> For example, suppose that Mendelssohn composes *A Midsummer Night's Dream* in 1826 and that someone else composes a sound-alike work in 1900. In that case, Mendelssohn's work is original, whereas the sound-alike work is not. So Mendelssohn's work and the

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7 On the examples that Davies actually uses, see note 5.

8 Indeed, in conversation Davies suggested as much.

9 We discuss this argument at length elsewhere. See Matheson and Caplan 2007.

sound-alike work are distinct.<sup>10</sup> Levinson's argument appeals to intuitions about merely possible cases: for example, a case in which Mendelssohn composes *A Midsummer Night's Dream* in 1826 and someone else composes a sound-alike work in 1900.

But there is a difference between the modal intuitions that Davies relies on to support the work-relativity of modality and those that Levinson relies on to support contextualism: the modal intuitions that Davies relies on are *de re*, whereas the modal intuitions that Levinson relies on are *de dicto*. The distinction between *de re* and *de dicto* modality is admittedly difficult to cash out in general, but we think that it is clear enough in particular cases. For example, the intuition that Stephen Harper — *that very guy* — could have had a better haircut than he actually has is a *de re* modal intuition, one about what is possible for Stephen Harper; whereas the intuition that it is possible that someone or other with a great haircut is Prime Minister is a *de dicto* modal intuition, one that isn't about what is possible for anyone in particular.

Levinson relies on *de dicto* modal intuitions. For example, his argument for contextualism doesn't require that we have *de re* modal intuitions about a merely possible case in which Mendelssohn — the actual composer — composes *A Midsummer Night's Dream* — the actual musical work — in 1826. Rather, Levinson's argument requires only that we have *de dicto* modal intuitions about a merely possible case in which, in 1826, someone or other (perhaps Mendelssohn, perhaps not) composes some musical work or other (perhaps *A Midsummer Night's Dream*, perhaps not) with the same sound structure as *A Midsummer Night's Dream* actually has and in which, in 1900, someone else composes a musical work with the same sound structure. If the first musical work is more original than the second, then they cannot be identical.

By contrast, Davies relies on *de re* modal intuitions. To motivate the work-relativity of modality, it isn't enough for Davies to appeal to the *de dicto* modal intuition that it is possible that some musical work or other (perhaps the *Prairie Variations*, perhaps not) with the sound structure that the *Prairie Variations* actually has is composed in a non-*Sinfonia*-ish musico-historical context, whereas it is not possible that some musical work or other (perhaps Nyman's score for *Drowning by Numbers*, perhaps not) with the sound structure that Nyman's score for *Drowning by Numbers* actually has is composed in a non-*Sinfonia*-ish musico-historical context. Rather, Davies needs to appeal to the *de re* modal intuition that it is possible for the *Prairie Variations* — the actual musical work — to have been composed in a non-*Sinfonia*-ish musico-historical context,

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10 See Levinson 1980a: 70.

whereas it is not possible for Nyman's score for *Drowning by Numbers* — the actual musical work — to have been composed in a non-*Sinfonia*-ish musico-historical context. And one might reasonably suppose that *de re* modal intuitions about these cases are less robust and widespread than are our *de dicto* modal intuitions about the merely possible cases that Levinson considers.<sup>11</sup>

In addition, there is a question about how literally we should interpret modal claims that purportedly report our *de re* modal intuitions about artworks. To see this, take as an example what hypothetical critics say about a hypothetical book, *Prairie Passion*. One critic says

- (1) *Prairie Passion* would have been twice as good if it were half as long.

Another critic says

- (2) *Prairie Passion* would work better as a love story if the rabid gopher sub-plot were more fully developed.

(1) and (2) are the sorts of modal claims that critics actually make. On the surface, (1) and (2) are *de re* modal claims about *Prairie Passion*. In that case, if (1) and (2) are true, then there is a possible world in which *Prairie Passion* has a different textual structure from the one it actually has. But, according to lots of ontological theories of art, textual structure is essential to a literary work, just as a sound structure is essential to a musical work, so there is no possible world in which *Prairie Passion* is shorter than it is in the actual world or in which it contains more developed sub-plots than it does in the actual world.<sup>12</sup> If any of these theories is right and we are to make sympathetic sense of what the critics say, then we have to paraphrase their claims as something like

- (1') A work that was in important respects like *Prairie Passion* but only half as long would be twice as good as *Prairie Passion*.

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11 Informal fieldwork in California supports this result.

12 On The Indicated Structure Theory, sound structures are essential to musical works. See Section IV. And on the version of The Decontextualized Product Theory defended by Kivy (1983, 1987) and Dodd (2007), sound structures are also essential to musical works, since musical works just *are* sound structures (although neither Kivy nor Dodd would put it quite like that). For a view on which sound structures are not essential to musical works, see Rohrbaugh 2003. (For discussion, see Dodd 2007, Rohrbaugh ms.)

and

- (2') Had the text of *Prairie Passion* been retained but supplemented with more material relevant to the rabid-gopher sub-plot, the resulting novel would work better as a love story than *Prairie Passion* does.

(1') and (2') are not *de re* modal claims about *Prairie Passion* itself; rather, they are claims about what Davies calls 'critical counterparts' (113): namely, other works that resemble *Prairie Passion*.<sup>13</sup> We conjecture that, to the extent that modal claims do any work in critical practice, there is no reason to think that they are *de re* modal claims like (1) and (2) rather than paraphrases like (1') and (2').<sup>14</sup> As a result, there is extra reason to be suspicious of a claim, like the work-relativity of modality, that relies on *de re* modal intuitions.

Finally, there is a question about how widespread the work-relativity of modality can be, even if Davies is right. On Davies's view, it turns out that, even if the *Prairie Variations* is more modally flexible than Nyman's score for *Drowning by Numbers*, a work composed by the Midwest composer in 1988 that was influenced by Beethoven's *Moonlight Sonata* — the *Prairie Sonata* — isn't. We return to this point in Section V.<sup>15</sup>

So we are suspicious about how robust and widespread the *de re* modal intuitions that Davies relies on are and about how literally we should interpret claims that purportedly report those intuitions. But we don't expect everyone to share our suspicions. And we admit that there is something to Davies's claim that modality is work-relative. After all, some artworks do seem to be more deeply saturated with their art-historical context than others. Warhol's *Brillo Box*, Duchamp's *Fountain*, Stravinsky's *Rite of Spring* — each of these artworks is very much of its moment, both in the sense that its artist was confronting artistic problems that had just acquired urgency and in the sense that the solutions the artwork offered would have been inconceivable a little bit earlier and superfluous a little bit later. By contrast, other artworks, such as

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13 According to counterpart theory (see e.g. Lewis 1968), *de re* modal claims just are claims about counterparts. But Davies does not regard claims about critical counterparts as *de re* modal claims about actual artworks (113). So he would not think of *de re* modal claims about artworks as being reducible to claims about critical counterparts; rather, he would think of claims about critical counterparts as replacing *de re* modal claims about actual artworks.

14 We hope to say more about this elsewhere.

15 We owe this observation to Eric Marcus, Guy Rohrbaugh, and Martin Rom.

Brahms's symphonies or Ravel's orchestral music, seem not to be so saturated in these two senses, either because the artistic communities in which they were produced were not in a state of flux or because their artists did not offer solutions to timely problems for their communities. It seems fairly clear, then, that some artworks are more saturated with their art-historical context than others. This variation in saturation at least raises the question of whether there is a parallel variation in the artworks' modal flexibility, even if the variation in saturation does not force an affirmative answer to that question. Since we don't expect everyone to share our suspicions about the *de re* modal intuitions that Davies relies on, and since we admit that there is something to his claim that modality is work-relative, we think it is worth seeing whether — and, if so, how — various theories could accommodate the work-relativity of modality. This is what we do in the rest of the paper.

### III The Modality Principle

The Argument from Modal Intuitions relies on (P1): namely, the claim that The Indicated Structure Theory cannot accommodate the work-relativity of modality. According to The Indicated Structure Theory, a musical work is an indicated structure of some kind. Levinson considers a number of proposals about the kind of indicated structure that a musical work is. We focus on the proposal that Levinson (1980b: 97 n. 20, 1992: 146) ultimately favors:

(MW+) A musical work is a sound-structure-*S*-as-indicated-by-individual-*x*-in-musico-historical-context-*c*.<sup>16</sup>

Here is the sort of argument that Davies offers. 'If (MW+) is true, then *having sound structure  $S_1$  and being composed by Nyman in musico-historical context  $c_1$*  (where  $c_1$  is a *Sinfonia*-ish musico-historical context) is an individuating property of Nyman's score for *Drowning by Numbers*; and, likewise, *having  $S_2$  and being composed by the Midwest composer in  $c_2$*  (where

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16 Following a suggestion of Levinson's (1992: 146 n. 21) in a footnote, we don't mention a time in (MW+). Levinson takes the structure that is indicated to be, not just a sound structure, but rather a sound structure together with a 'performing-means structure.' See Levinson 1980a: 78-79. We ignore this complication in the text. And Levinson (1985) takes the structure to be, not just indicated, but also titled. We also ignore this complication in the text. Levinson (1980a: 79, 82; 1992: 149) considers at least three other proposals. We ignore them here. Davies discusses two of these other proposals (e.g. 105-106). He doesn't discuss (MW+).

$c_2$  is a distinct *Sinfonia*-ish musico-historical context) is an individuating property of the *Prairie Variations*. But the individuating properties of a musical work are essential to it. So, if (MW+) is true, then *being composed in a Sinfonia-ish musico-historical context* is an essential property of both Nyman's score for *Drowning by Numbers* and the *Prairie Variations* (assuming that, if a musico-historical context  $c$  is one in which a musical work with a sound structure  $S$  has previously been composed, then  $c$  is essentially a musico-historical context in which a musical work with  $S$  has previously been composed). As a result, if (MW+) is true, then Nyman's score for *Drowning by Numbers* and the *Prairie Variations* are equally modally inflexible: neither could have been composed in a non-*Sinfonia*-ish musico-historical context.'

This argument relies on the claim that the individuating properties of a musical work are essential to it. This claim follows from a more general principle, which — to borrow Davies's term (104-105, 126) — we can call *The Modality Principle*:

### The Modality Principle

For any entity  $x$ , any property  $F$ , and any kind  $K$ , if  $F$  is an individuating property of  $x$  (relative to  $K$ ), then  $F$  is an essential property of  $x$ .<sup>17</sup>

The Modality Principles links individuating properties with essential ones. Essential properties are familiar (104, 122-3).

### Essential Properties

For any entity  $x$  and any property  $F$ ,  $F$  is an essential property of  $x$  if and only if, for any world  $w$  such that  $x$  exists in  $w$ ,  $x$  has  $F$  in  $w$ .

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17 Davies defends a different version of The Modality Principle. For one thing, the version of The Modality Principle that Davies defends is a biconditional (104-5, 123). But he doesn't need the right-to-left direction to argue for (P1), so we ignore it in the text. (Davies contemplates a related weakening (125).) For another, the assumption that individuation is always kind-relative (see note 19) leads Davies to defend a version of The Modality Principle that links ordered pairs of kinds and individuating properties — what he calls 'constitutive features' — to essential properties (104-105, 123). But, if a constitutive feature <kind  $K$ , individuating property  $F$ > is essential to an entity  $x$ , then so is the individuating property  $F$ . So the version of The Modality Principle that we discuss follows from the version of that principle that Davies defends.

For example, if Waggins is a dog in every world in which he exists, then *being a dog* is an essential property of his.<sup>18</sup> Individuating properties are perhaps less familiar. Davies describes an individuating property of an entity as a property in virtue of which that entity is *that* instance of its kind, as a property that makes that entity *that* instance of its kind (104-5).<sup>19</sup> And Davies says that an individuating property plays an important role in individuation, where individuation 'is a matter of determining when we have the same X [entity of kind K] on two different occasions, and when we have different Xs [entities of kind K]' (105).<sup>20</sup>

There are various ways of cashing out what Davies says about individuating properties. Here's one.

### Weak Individuating Properties

For any entity  $x$ , any property  $F$ , and any kind  $K$ ,  $F$  is a weak individuating property of  $x$  (relative to  $K$ ) if and only if  $x$  is the only entity of kind  $K$  that has  $F$ .

Suppose that Waggins is the only dog in the universe that has a Manitoba-shaped scar on its muzzle. In that case, *being an  $x$  such that  $x$  has a Manitoba-shaped scar on  $x$ 's muzzle* is a weak individuating property of Waggins's (relative to the kind *dog*). But not all weak individuating properties are essential. For example, Waggins might never have had such a scar. The Modality Principle says that individuating properties of some sort are essential properties. Let's say that individuating properties are *MP-friendly* if The Modality Principle is true of them: that is,

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18 Elsewhere, following Fine (1994) and Suster (2005), Davies (2005) considers an alternative, non-modal characterization of essential properties. Nothing we say in the text hangs on which characterization of essential properties Davies ultimately adopts, largely because every property that is essential according to the alternative characterization is essential according to the characterization we give in the text.

19 Following Wiggins (2001), Davies assumes that individuation is always kind-relative (104-105, 122-123).

20 'Determining' might be read epistemically or metaphysically. Read epistemically, Davies's claim is that individuation is a matter of our judging — or perhaps our judging correctly — that we have the same entity of kind  $K$  (or not) on two occasions. Read metaphysically, Davies's claim is that individuation is a matter of its being the case that we have the same entity of kind  $K$  (or not) on two occasions. Conversation with Davies has led us to believe that he intends the metaphysical reading. (See note 24.) And we take it that Davies's claim that an individuating property is one 'in virtue of which' an entity is *that* instance of its kind is a metaphysical claim (104-105).

if they are of a sort such that The Modality Principle would be true if the individuating properties that it says are essential are individuating properties of that sort. Since not all weak individuating properties are essential, weak individuating properties are not MP-friendly.

Here's another way of cashing out what Davies says.

### Medium Individuating Properties

For any entity  $x$ , any property  $F$ , and any kind  $K$ ,  $F$  is a medium individuating property of  $x$  (relative to  $K$ ) if and only if (i)  $x$  is the only entity of kind  $K$  that has  $F$  and (ii) in no possible world does more than one entity of kind  $K$  have  $F$ .

*Being an  $x$  such that  $x$  has a Manitoba-shaped scar on  $x$ 's muzzle* is not a medium individuating property of Waggins's (relative to the kind *dog*), since it is possible that two dogs have that property. But suppose that Waggins is the smartest dog in the universe that has a Manitoba-shaped scar on its muzzle. In that case, *being an  $x$  such that  $x$  has a Manitoba-shaped scar on  $x$ 's muzzle and, for any  $y$  such that  $y$  is a dog and  $y$  has a Manitoba-shaped scar on  $y$ 's muzzle and  $x \neq y$ ,  $x$  is smarter than  $y$*  is a medium individuating property of Waggins's (relative to the kind *dog*).<sup>21</sup> For Waggins is actually the only dog that has that property, and it's impossible for two dogs to have that property. But not all medium individuating properties are essential. For example, Waggins might not have been the smartest dog to have a Manitoba-shaped scar on its muzzle. (Indeed, Waggins might never have had such a scar.) Since not all medium individuating properties are essential, medium individuating properties are not MP-friendly either.

Here's a third way of cashing out what Davies says.

### Strong Individuating Properties

For any entity  $x$ , any property  $F$ , and any kind  $K$ ,  $F$  is a strong individuating property of  $x$  (relative to  $K$ ) if and only if (i)  $x$  is an entity of kind  $K$  and (ii) the following condition obtains: for any possible world  $w$  and any entity  $y$  that exists in  $w$ ,  $y$  is the same entity of kind  $K$  as  $x$  if and only if  $y$  has  $F$  in  $w$ .

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21 Thanks to Jeff Speaks for help with this example.

Unlike weak and medium individuating properties, strong individuating properties are essential.<sup>22</sup> So strong individuating properties are MP-friendly.<sup>23</sup>

We want to make two points. First, if The Modality Principle is true and one wants to use it to conclude that some individuating property is essential, then one needs to be sure that the individuating property is MP-friendly. An example of Davies's illustrates this point. Davies suggests that occupying a particular space-time path is an individuating property of familiar objects.<sup>24</sup> One might appeal to The Modality Principle and conclude that *occupying space-time path P* is an essential property of Waggins's. But *occupying space-time path P* isn't an essential property of Waggins's. For it is possible that some other dog occupies space-time path *P*. So, if The Modality Principle is true, then *occupying space-time path P* can't be an MP-friendly individuating property. (For example, *occupying space-time path P* isn't a strong individuating property of Waggins's.)

An example from the ontology of events also illustrates this first point. One might reach a conclusion about the essential properties of events — namely, that, on Donald Davidson's (1969) account of events, the causes and effects of an event are essential to it — from The Modali-

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22 Suppose that *F* is a strong individuating property of an object *o* (relative to a kind *K*). In that case, for any possible world *w* and any entity *y* that exists in *w*, *y* is the same entity of kind *K* as *o* if and only if *y* has *F* in *w*. Assuming that, for any possible world *w* such that *o* exists in *w*, *o* is the same entity of kind *K* as *o*, it follows that, for any possible world *w* such that *o* exists in *w*, *o* has *F* in *w*. So *F* is an essential property of *o*.

23 In conversation, Davies suggested that individuating properties should be understood in something like the following way:

**Just-Right Individuating Properties**

For any entity *x*, any property *F*, and any kind *K*, *F* is a just-right individuating property of *x* (relative to *K*) if and only if *F* is part of *x*'s nature as a *K* (or *F* is part of what *x* is, or *F* is part of what makes *x* the entity of kind *K* that *x* is).

The two points we make below in the text about MP-friendly individuating properties would remain unaffected even if only just-right individuating properties were MP-friendly.

24 In the case of 'physical objects like chairs and tables,' Davies says that 'we individuate particulars by reference to the presence or absence of some spatio-temporally continuous path connecting an entity encountered on one occasion with entities encountered on other occasions' (121). In conversation, Davies suggested that, although he generally intends individuation to be understood metaphysically, he was thinking of individuation epistemically when he made the claim about how we individuate familiar objects.

ty Principle and a premise about the individuating properties of events: namely, that, on Davidson's account, events are individuated by their causes and effects.<sup>25</sup> But the inference is tricky.<sup>26</sup> To say that events are individuated by their causes and effects need not be to say that *having causes*  $C_1, \dots, C_n, \dots$  and *having effects*  $E_1, \dots, E_m, \dots$  is an MP-friendly individuating property (such as a strong individuating property); perhaps it is only to say that that property is a medium individuating one. In that case, if it is true, The Modality Principle would not license the conclusion that the causes and effects of an event are essential to it. To reach the desired conclusion, one would first need to show that, on Davidson's account, *having causes*  $C_1, \dots, C_n, \dots$  and *having effects*  $E_1, \dots, E_m, \dots$  really is an MP-friendly individuating property.

Second, if one needs to show that an individuating property is MP-friendly before one can use The Modality Principle to show that the property is essential, then perhaps one should dispense with The Modality Principle and argue independently for the conclusion that the property is essential. Another example of Davies's illustrates this point. Davies suggests that the property of having a 'particular genetic heritage' is an individuating property of some dog (104). It is not clear whether *having a genetic heritage*  $H$  is an MP-friendly individuating property. It isn't a strong individuating property. For it is possible that Waggins has a monozygotic twin who shares genetic heritage  $H$ . If Saul Kripke (1980) is right, then *having genetic heritage*  $H$  is essential to Waggins. One could appeal to this essentiality claim — namely, that *having genetic heritage*  $H$  is essential to Waggins — to argue that *having genetic heritage*  $H$  is an MP-friendly individuating property; but then, on pain of circularity, one would need a way to argue for the essentiality claim that doesn't appeal to the claim that *having genetic heritage*  $H$  is an MP-friendly individuating property. And, if one had such a way of arguing for the essentiality claim, then presumably (especially given the previous point) one would have a way of arguing for the essentiality claim that doesn't appeal to The Modality Principle either. In that case, perhaps one should argue for the essentiality claim directly, without appealing either to the claim that *having genetic heritage*  $H$  is an MP-friendly individuating property or to The Modality Principle.<sup>27</sup>

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25 Dodd (2007: 189) seems to read Davies (168-169) as endorsing this argument. We think this is a misreading.

26 See van Cleve 1985: 589, 601 n. 4.

27 Just how we should reach the conclusion that *having genetic heritage*  $H$  is essential is another matter. For a recent suggestion, see Rohrbaugh and deRosset 2004. (For

Another example from the ontology of events also illustrates this second point. One can reach the conclusion that, on Jaegwon Kim's (1976) account, no event could have occurred at a different time than it actually does. One can reach this conclusion via the claims that sets have their members essentially and that, on Kim's account, an event is an  $\langle \text{object, property, time} \rangle$  triple.<sup>28</sup> One could recast the argument as proceeding via the premise that, on Kim's account, having a certain time as an element is an MP-friendly individuating property. But that premise would need to be defended, and the obvious way to defend it is by appealing to the claims that sets have their members essentially and that, on Kim's account, an event is an  $\langle \text{object, property, time} \rangle$  triple. It is these claims, and not the claim about MP-friendly individuating properties, that are really doing all the work.

Applying these two points to The Argument from Modal Intuitions, we get two morals. The first is that, if Davies is to use The Modality Principle to reach an essentialist conclusion — namely, that, if The Indicated Structure Theory is true, then certain individuating properties are essential — then he needs to defend the claim that, according to The Indicated Structure Theory, the individuating properties in question are MP-friendly. The second is that, if Davies needs to defend that claim, it might be better to argue for his conclusion directly: that is, by appealing to what The Indicated Structure says about indicated structures, rather than by appealing to The Modality Principle. In the next section, we consider how such an argument might go.

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discussion, see Cameron and Roca 2006, Robertson and Forbes 2006, Rohrbaugh and deRosset 2006.) Of course, some think that we should not reach that conclusion at all. See, for example, Lewis 1986c: 252.

- 28 Much the same can be said about Lewis's (1986a) account, on which an event is a set of space-time points. On the claim that sets have their members essentially, see van Cleve 1985. The argument might go as follows. 'On Kim's account, an event  $e$  is an ordered triple  $\langle x, F, t \rangle$ .  $\langle x, F, t \rangle$  is a set  $S$ , and  $t$  is a member of  $S$ . Sets have their members essentially, so  $t$  is essentially an element of  $\langle x, F, t \rangle$ . Given that, necessarily,  $e$  occurs at  $t$  if and only if  $t$  is the third element of  $e$ ,  $e$  could not have occurred at any time other than  $t$ .' The conclusion can be resisted by adopting a counterpart theory that allows for multiple counterpart relations. (See Lewis 1971, 1986c: 248-263.) But the point isn't that the conclusion is inescapable; rather, the point is that one can reasonably reach the conclusion without appealing to The Modality Principle.

#### IV The Indicated Structure Theory

According to (MW+), a musical work is *S*-as-indicated-by-*x*-in-*c*. Let's say that *S*, *x*, and *c* are the *elements* of *S*-as-indicated-by-*x*-in-*c*. In presenting The Indicated Structure Theory, Levinson describes the elements of an indicated structure as essential to it. For example, Levinson (1992: 146) says that, if a musical work is *S*-as-indicated-by-*x*-in-*c*, then its composer is essential to it.<sup>29</sup> This suggests that, if (MW+) is true, then *having sound structure S, being indicated by x, and being indicated in c are essential.*<sup>30</sup>

Here's how someone could argue for (P1). 'If (MW+) is true, then  $c_1$  (a *Sinfonia*-ish musico-historical context) is an element of Nyman's score for *Drowning by Numbers* and  $c_2$  (a distinct *Sinfonia*-ish musico-historical context) is an element of the *Prairie Variations*. It follows from The Indicated Structure Theory that the elements of a musical work are essential to it. So, if (MW+) is true, then a *Sinfonia*-ish musico-historical context is essential both to Nyman's score for *Drowning by Numbers* and to the *Prairie Variations*. As a result, if (MW+) is true, then Nyman's score for *Drowning by Numbers* and the *Prairie Variations* are equally modally inflexible: neither could have been composed in a non-*Sinfonia*-ish musico-historical context.'

Let's suppose that there is a musico-historical context  $c_1$  such that, if (MW+) is true, then  $c_1$  is an element of Nyman's score for *Drowning by Numbers*. And let's suppose that there is a musico-historical context  $c_2$  such that, if (MW+) is true, then  $c_2$  is an element of the *Prairie Variations*. (MW+) does not require that  $c_1 = c_2$ . Indeed, given what Levinson says about what musico-historical contexts include, (MW+) entails that  $c_1$  and  $c_2$  are distinct.<sup>31</sup> To accommodate the work-relativity of modality, those who endorse (MW+) can say that  $c_1$ , but not  $c_2$ , is a *Sinfonia*-ish

29 See also Levinson 1980a: 84-85 n. 29, 1985: 163, 1992: 145.

30 See also Rohrbaugh 2005: 211-215.

31 According to Levinson (1980a: 69), the musico-historical context in which a composer *x* composes a musical work at a time *t* includes the 'musical influences operating on [*x*] at *t*.' (See below in the text. Levinson uses a different variable for composers.) The *Sinfonia Concertante* was one of the musical influences operating on Nyman in 1988, when the score for *Drowning by Numbers* was composed. By contrast, the *Sinfonia Concertante* was not one of the musical influences operating on the Midwest composer in 1988, when the *Prairie Variations* was composed. As a result, Nyman and the Midwest composer were composing in distinct musico-historical contexts. (Similarly, Stecker (2005: 76) suggests that, in these sorts of cases, the art-historical contexts can be distinguished by features that are relevant to each artist's project in generating an artwork.)

musico-historical context. Let's call this *the context proposal*. Since, according to the context proposal,  $c_1$  and  $c_2$  are appropriately different, the musical works display the desired variability in modal flexibility: the *Prairie Variations* could have been composed in a non-*Sinfonia*-ish musico-historical context, whereas Nyman's score for *Drowning by Numbers* could not.

But, according to Levinson (1980a: 69), the musico-historical context in which a composer  $x$  is composing at a time  $t$  includes a great many things, including 'the whole of musical development up to  $t$ .' In that case, since it is part of the musical development up to 1988 that Mozart has previously composed the *Sinfonia Concertante*, any musico-historical context in which anyone was composing in 1988 would be *Sinfonia*-ish. So, contrary to the context proposal, both  $c_1$  and  $c_2$  would be *Sinfonia*-ish musico-historical contexts.

We suggest that, to avoid this problem, those who endorse the context proposal limit what musico-historical contexts include. Levinson (1980a: 69) identifies nine features of the musico-historical context that a composer  $x$  is composing in at a time  $t$ :

- (a) the whole of cultural, social, and political history prior to  $t$ ;
- (b) the whole of musical development up to  $t$ ;
- (c) the musical styles prevalent at  $t$ ;
- (d) the dominant musical influences at  $t$ ;
- (e) the musical activities of  $x$ 's contemporaries at  $t$ ;
- (f)  $x$ 's apparent style at  $t$ ;
- (g)  $x$ 's musical repertoire at  $t$ ;
- (h)  $x$ 's oeuvre at  $t$ ; and
- (i) the musical influences operating on  $x$  at  $t$ .<sup>32</sup>

Levinson divides these features into two groups. The first group includes those features that are 'relevant to anyone's composing at  $t'$ ': namely, (a)-(d).<sup>33</sup> The second group includes those features that are 'relevant specifically to [ $x$ 's] composing at  $t'$ ': namely, (e)-(i).<sup>34</sup> Features (a)-

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32 This list is taken more or less verbatim from Levinson 1980a: 69. We have made a few minor stylistic changes.

33 Levinson 1980a: 69.

34 Levinson 1980a: 69.

(d) constitute what Levinson (1980a: 69) calls a 'general musico-historical context' (original emphasis). By contrast, features (e)-(i) constitute what Levinson (1980a: 69) calls an 'individual musico-historical context' (original emphasis). According to (MW+), a musico-historical context *c* is an element of a musical work. Those who endorse the context proposal can say that *c* is an individual musico-historical context; it includes only features that are relevant specifically to the composer's compositional activity. That someone had previously composed a *Sinfonia Concertante*-esque musical work is relevant to Nyman's composing in 1988, since the *Sinfonia Concertante* is a musical influence operating on Nyman in 1988. By contrast, that someone had previously composed a *Sinfonia Concertante*-esque musical work is not relevant to the Midwest composer's composing in 1988, since in 1988 a *Sinfonia Concertante*-esque musical work wasn't implicated in the musical activities of the Midwest composer's contemporaries, the Midwest composer's apparent style, the Midwest composer's repertoire, the Midwest composer's oeuvre, or the musical influences operating on the Midwest composer.<sup>35</sup> So, according to the context proposal, that someone had previously composed a *Sinfonia Concertante*-esque musical work is part of the musico-historical context in which Nyman was composing in 1988, but it is not part of the musico-historical context in which the Midwest composer was composing in 1988.<sup>36</sup>

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35 Although it is in principle possible that a musical influence is operating on a composer without her being aware of it, it is still plausible to suppose that no *Sinfonia Concertante*-esque musical work is a musical influence operating on the Midwest composer (who lives in a shack in Ohio, has never listened to Mozart, has never listened to anyone who listened to Mozart, and so on). Thanks to an anonymous referee here.

Also, 'contemporaries' should not be read in a strictly temporal way here; otherwise, Nyman and the Midwest composer would be contemporaries, since they were both composing in 1988. But, in keeping with Levinson's treatment of (e) as a part of an individual musico-historical context, it seems reasonable to suppose that Nyman's musical activities weren't relevant to the Midwest composer's composing in 1988 and hence that Nyman's musical activities shouldn't be part of the musico-historical context in which the Midwest composer was composing in 1988.

36 This strategy won't work in the *Prairie Sonata* case, alluded to in Section II: the *Sinfonia Concertante* might well be a musical influence operating on Beethoven while he composed the *Moonlight Sonata*, in which case it would be part of the musico-historical context in which he composed the *Moonlight Sonata* and hence, according to The Indicated Structure Theory, it would be part of an element of that work; in this case, the *Moonlight Sonata* is a musical influence operating on the Midwest composer in 1988, so it is part of the musico-historical context in which the Midwest composer composed the *Prairie Sonata* and hence, according to The Indicated Structure Theory, it is part of an element of that work; so, by a sort of

Even with the context proposal, (MW+) respects Levinson's contextualism.<sup>37</sup> Indeed, it is hard to see what works (MW+) and the context proposal could fail to distinguish. (MW+) and the context proposal can distinguish two works composed by different composers: in that case, there's a difference of composer. (MW+) and the context proposal can also distinguish two works composed by the same composer at different times: in that case, there's a difference of oeuvre and hence of individual musico-historical context. (MW+) and the context proposal can't distinguish two musical works composed by the same composer at the same time (when that composer is indicating the same sound structure). But it is hard to imagine such a case; and (MW+) couldn't distinguish those works even if it weren't for the context proposal, since in that case there wouldn't be a difference of general musico-historical context either. We infer that the context proposal doesn't make (MW+) any less contextualist. It turns out — perhaps somewhat surprisingly — that, with (MW+) and the context proposal, one can distinguish two works composed in different general musico-historical contexts, even if those general musico-historical contexts are not elements of the musical works.<sup>38</sup>

## V The Contextualized Product Theory and The Performance Theory

At the beginning of the previous section, we rehearsed an argument for the claim that The Indicated Structure Theory cannot accommodate the work-relativity of modality. The argument is directed at The Indicated

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musical transitivity, the *Sinfonia Concertante* is bound to the *Prairie Sonata* (since the *Sinfonia Concertante* is part of something that is an element of something that is part of something that is an element of the *Prairie Sonata*). But Davies has to deny that the *Prairie Sonata* is more modally flexible than Nyman's score for *Drowning by Numbers* (see Section V); so The Indicated Structure Theory is no worse off than The Performance Theory here. Thanks, again, to Eric Marcus, Guy Rohrbaugh, and Martin Rom.

- 37 Thanks to Andrew Lamming, Eric Lewis, and Josh Loeffler for pointing out that related views conflict with Levinson's contextualism.
- 38 Even if general musico-historical contexts are not elements of musical works, musical works according to (MW+) are sufficiently specific to bear the aesthetic and artistic properties — including properties that are gauged with respect to general musico-historical context — that we attribute to them. (On specificity and properties, see Levinson 1980a: 84 n. 29, 1990a: 224.) Relatedly, even if general musico-historical contexts are not elements of musical works, we can still appreciate musical works by attending to the general musico-historical contexts that they are composed in. Thanks to an anonymous referee here.

Structure Theory in particular; it does not generalize to The Contextualized Product Theory. For the argument relies on the claim that, according to The Indicated Structure Theory, the elements of an indicated structure are essential to it. And the more general claim — namely, that, according to The Contextualized Product Theory, the elements of an indicated structure are essential to it — is not true. As Guy Rohrbaugh (2005: 211-215) puts it, it follows from The Indicated Structure Theory that the elements of an indicated structure are essential to it, but that's not because The Indicated Structure Theory is a theory about the individuation of musical works; rather, it's because The Indicated Structure Theory is an ontological theory about the nature of musical works.<sup>39</sup> And The Contextualized Product Theory is primarily a theory about the individuation of musical works. The Contextualized Product Theory is not primarily an ontological theory about the nature of musical works.<sup>40</sup> As such, it is not committed to the claim that the elements of an indicated structure are essential to it.

Davies seems to recognize that theories about the individuation of musical works don't entail ontological theories about the nature of musical works (117).<sup>41</sup> But that means that The Contextualized Product Theory, as a theory primarily about the individuation of musical works, doesn't entail much of an ontological theory about the nature of musical works; at least it doesn't entail enough of an ontological theory about the nature of musical works to conclude, for example, that Nyman's

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39 Levinson sometimes seems to suggest that the elements of an indicated structure are essential to it precisely because indicated structures are individuated by their elements. For example, he says, 'titles are plausibly essential to works insofar as they are ineliminably involved in individuating them' (1985: 162). (On titles as elements of indicated structures, see note 16.) And, although he expresses some reservations, he entertains the idea that 'constitutivity implies essentiality' and that 'all the constitutive properties of abstract objects are essential to them' (1985: 163).

40 Insofar as The Contextualized Product Theory is an ontological theory about the nature of musical works, it is committed to the claim that musical works are the products generated by generative performances, but it is not committed to the claim that the elements of indicated structures are essential to them. In this respect, The Contextualized Product Theory is no different than The Decontextualized Product Theory. Any argument that relies on The Contextualized Product Theory's being an ontological theory about the nature of musical works would apply equally well to The Decontextualized Product Theory. Davies argues against The Contextualized Product Theory and The Decontextualized Product Theory separately, which suggests that his arguments against neither should rely on their being ontological theories about the nature of musical works.

41 Davies attributes the general point to Davidson 1987. See also 182-185.

score for *Drowning by Numbers* and the *Prairie Variations* are equally modally inflexible. By itself, The Contextualized Product Theory just doesn't entail anything about whether Nyman's score for *Drowning by Numbers* or the *Prairie Variations* could have been composed in a non-*Sinfonia*-ish musico-historical context.

Davies wants to use The Argument from Modal Intuitions, not just against The Indicated Structure Theory in particular, but against The Contextualized Product Theory in general. It is tempting to appeal to The Modality Principle here, since The Modality Principle allows one to infer the relevant claims about essential properties, which by itself The Contextualized Product Theory doesn't entail, from claims about individuating properties, which by itself The Contextualized Theory does entail. But, as we argued in Section III, appealing to The Modality Principle won't help Davies in arguing against The Contextualized Product Theory in general. And, without appealing to The Modality Principle, Davies can't argue that The Contextualized Product Theory contradicts the work-relativity of modality, since by itself The Contextualized Product Theory doesn't entail the relevant claims about essential properties.

Still, perhaps Davies could argue that, although The Contextualized Product Theory doesn't contradict the work-relativity of modality, it nonetheless can't explain the work-relativity of modality and hence can't really accommodate it. If, by contrast, The Performance Theory can explain and hence accommodate the work-relativity of modality, that might be a mark against The Contextualized Product Theory and in favour of The Performance Theory.

According to The Performance Theory, musical works are generative performances. Davies says that what counts as an 'adequate characterization' of a generative performance varies from work to work (114).<sup>42</sup> For example, an adequate characterization of Nyman's compositional activity would mention that Nyman was composing in a *Sinfonia*-ish musico-historical context, whereas an adequate characterization of the Midwest composer's compositional activity wouldn't mention that the Midwest composer was composing in a *Sinfonia*-ish musico-historical context.

Variability in adequate characterization leads to variability in modal flexibility. We take it that is because, on Davies's view, whether a generative performance  $g^*$  in another possible world is the same generative

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42 Davies also speaks of an 'adequate representation' (e.g. 115, 116), an 'adequate description' (e.g. 114, 115), and a 'perspicuous representation' (e.g. 116, 117) of a generative performance.

performance as a generative performance  $g$  in the actual world depends on the adequate characterization of  $g$  in the actual world: if  $g^*$  fits that adequate characterization, then  $g^*$  is the same generative performance as  $g$ ; if not, then  $g^*$  is not the same generative performance as  $g$  (116).<sup>43</sup> From the claim that an adequate characterization of the Midwest composer's compositional activity wouldn't mention that the Midwest composer was composing in a *Sinfonia*-ish musico-historical context, Davies infers that the Midwest composer's compositional activity needn't have occurred in a *Sinfonia*-ish musico-historical context.<sup>44</sup>

an adequate characterization of the generative performance resulting in a piece like [the *Prairie Variations*] will make little if any reference to the more general art-historical context in which [the Midwest composer] acts. ... **As a result**, we can easily imagine such a performance taking place in a very different art-historical context. (114; boldface added)<sup>45</sup>

Similarly, from the claim that an adequate characterization of Nyman's compositional activity would mention that Nyman was composing in a *Sinfonia*-ish musico-historical context, Davies infers that Nyman's compositional activity must have occurred in a *Sinfonia*-ish musico-historical context.<sup>46</sup>

an adequate representation of [Nyman's] performance must refer to [a *Sinfonia Concertante*-esque musical work]. Given the proposed strategy, **we thereby explain** our reluctance to allow that the work could exist in an art-historical context that lacked [a *Sinfonia Concertante*-esque musical work]. (115; boldface added)<sup>47</sup>

So, Davies concludes, (P2) is true: The Performance Theory can accommodate the work-relativity of modality.

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43 What Davies says is that 'it is relative to that representation [i.e. adequate characterization] that we decide when we have *the same performance* in counterfactual situations' (emphases in original). This admits of epistemic and metaphysical readings. On the epistemic reading, Davies is explaining why we have the intuitions we do. On the metaphysical reading, Davies is explaining why the intuitions we have are correct. In the text, we opt for the metaphysical reading. See note 20.

44 Or perhaps Davies is merely explaining why we have intuitions to that effect. See note 43.

45 Davies is discussing a different example. We have transposed his example to ours. See note 5.

46 Or, again, perhaps Davies is merely explaining why we have intuitions to that effect. See note 43.

47 Again, Davies is discussing a different example. We have transposed his example to ours. See note 5.

Notice that Davies's explanation won't work in a case where the Midwest composer composes a keyboard work, the *Prairie Sonata*, influenced by Beethoven's *Moonlight Sonata*. For an adequate characterization of Beethoven's compositional activity might well mention that Mozart had previously composed the *Sinfonia Concertante*; and, in this case, an adequate characterization of the Midwest composer's compositional activity would mention that Beethoven had previously composed the *Moonlight Sonata*. So, on Davies's view, the *Prairie Sonata* could not have been composed if Beethoven had not previously composed the *Moonlight Sonata*; and the *Moonlight Sonata* could not have been composed if Mozart had not previously composed the *Sinfonia Concertante*. As a result, the *Prairie Sonata* could not have been composed if Mozart had not previously composed the *Sinfonia Concertante*, in which case the *Prairie Sonata* isn't more modally flexible than Nyman's score for *Drowning by Numbers*.<sup>48</sup> We assume that Davies would say that, although the work-relativity of modality is a genuine phenomenon, the phenomenon is restricted: the *Prairie Variations* is more modally flexible than Nyman's score for *Drowning by Numbers*, even if the *Prairie Sonata* is not.

In any case, the two key components of Davies's explanation of the work-relativity of modality are (i) the claim that adequate characterization is variable and (ii) the claim that variability in adequate characterization leads to variability in modal flexibility. We don't question either of these claims here. Rather, our point is that both of these claims are available to those who endorse The Contextualized Product Theory. As a result, those who endorse The Contextualized Product Theory can opt Davies's explanation of the work-relativity of modality.

According to The Contextualized Product Theory, musical works are generated products that are individuated in part by the musico-historical context in which they are composed. Those who endorse The Contextualized Product Theory can say that what counts as an adequate characterization of such a generated product varies from product to product. For example, an adequate characterization of the product generated by Nyman's compositional activity would mention that Nyman was composing in a *Sinfonia*-ish musico-historical context, whereas an adequate characterization of the product generated by the Midwest composer's compositional activity wouldn't mention that the Midwest composer was composing in a *Sinfonia*-ish musico-historical context.

Those who endorse The Contextualized Product Theory can say that variability in adequate characterization leads to variability in modal flexibility, because whether a generated product  $g^*$  in another possible

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48 Thanks, as ever, to Eric Marcus, Guy Rohrbaugh, and Martin Rom on this point.

world is the same generated product as a generated product  $g$  in the actual world depends on the adequate characterization of  $g$  in the actual world: if  $g^*$  fits that adequate characterization, then  $g^*$  is the same generated product as  $g$ ; if not, then  $g^*$  is not the same generated product as  $g$ . From the claim that an adequate characterization of the product generated by the Midwest composer's compositional activity wouldn't mention that the Midwest composer was composing in a *Sinfonia*-ish musico-historical context, those who endorse The Contextualized Product Theory can infer that the product generated by the Midwest composer's compositional activity needn't have been generated in a *Sinfonia*-ish musico-historical context. Paraphrasing Davies, those who endorse The Contextualized Product Theory could say

An adequate characterization of **the product generated by the Midwest composer's compositional activity** will make little if any reference to the more general art-historical context in which the Midwest composer acts. As a result, we can easily imagine such a **product being generated** in a very different art-historical context.

Similarly, from the claim that an adequate characterization of the product generated by Nyman's compositional activity would mention that Nyman was composing in a *Sinfonia*-ish musico-historical context, those who endorse The Contextualized Product Theory can infer that the product generated by Nyman's compositional activity must have been generated in a *Sinfonia*-ish musico-historical context. Paraphrasing Davies again, those who endorse The Contextualized Product Theory could say

An adequate representation of **the product generated by Nyman's compositional activity** must refer to a *Sinfonia Concertante*-esque musical work. Given the proposed strategy, we thereby explain our reluctance to allow that the work could exist in an art-historical context that lacked a *Sinfonia Concertante*-esque musical work.

So The Contextualized Product Theory can accommodate the work-relativity of modality if The Performance Theory can.

Davies seems to anticipate this reply (119). He seems to suggest that, although those who endorse The Performance Theory can explain why some features of the generative performance that are not features of the generated product must be mentioned in an adequate characterization of a musical work (namely, because the musical work is the generative performance), those who endorse The Contextualized Product Theory cannot. But it seems open to those who endorse The Contextualized

Product Theory to say that some features of the generative performance — or, more precisely, of the composer and the musico-historical context she is composing in — must be mentioned in an adequate characterization of a musical work, because they are relevant to the individuation of musical works. (Those who endorse The Indicated Structure Theory can add that such features must be mentioned in an adequate characterization of a musical work, because the composer and the musico-historical context are elements of the musical work.) Davies mentions two examples of features that he thinks must be mentioned in an adequate characterization of a musical work and that he thinks are features of a generative performance: namely, whether a work is Liszt-influenced (83) and what drafts were previously composed (100).<sup>49</sup> But both of these features can reasonably be taken to be features of the musico-historical context: the influence of Liszt is a matter of the musical influences operating on the composer, and the drafts that were previously composed are part of the composer's oeuvre. So, it seems, there is nothing to prevent those who endorse The Contextualized Product Theory from appealing to adequate characterizations of musical works and hence of accommodating the work-relativity of modality in the way that The Performance Theory does.

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