

THE DISENCHANTMENT
OF
SECULAR DISCOURSE

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From Reason to Reasonableness

I will need to present that explanation in stages. In the first place, it seems evident that there is a general loss of faith in the capacity of reasoned discourse to provide cogent resolutions of controversial moral and political issues. If people come to believe astrology is bunk, they predictably will waste little time poring over the daily horoscope. By the same token, if people lose faith in the efficacy of reasoning, it is hardly surprising that they will expend little effort engaging in it.

In this respect, the current intellectual climate is strikingly unlike the one that prevailed during the time in which the American republic (and, some might say, the modern world) were born—the so-called Enlightenment. *Then* thinkers were confident that, as the eminent historian Henry Steele Commager wrote, “with Reason as their guide they could penetrate to the truth about the Universe and about Man, and thus solve all of those problems that pressed upon them so insistently.”³⁰ Commager, immersed in and seemingly intoxicated by the eighteenth-century writings, exudes as much as describes the scope and the audacity of that mind-set, or that mood:

Everything discussed and disputed! What a din of controversy and debate, what a clashing of minds. . . . What is the nature of the universe and of the celestial mechanics that God imposed upon it? How does Man fit into the cosmic system? Is religion necessary? . . . What is the end and the object of life? Is it happiness, and if so, what is happiness? . . . What is the origin of government, what the basis and the limits of government? What are the rights of Man—that cuts close to the bone!

These are the great questions that sent pens scratching across an infinity of pages, that launched a thousand Essays, Discourses, Considerations, Inquiries, and Histories. How they speculated, how they probed, how they wrote!³¹

From our current vantage point, that enthusiasm, and that confidence in the capacity of “Reason” (notice that Commager uses the upper case) to “solve all of those problems that pressed upon [us] so insistently,” may look quaint, almost childlike. The era of so-called Enlightenment was, James Q. Whitman observes, “an odd and often overblown age.” And the thinkers of that period—the Voltaires, Jeffersons, Franklins—“remained fallible, and often comically fallible, human beings. The thrill of using one’s free reason for the first time, it seems, often clouded the senses.”³²

By now, that particular cloud has been at least partially dispersed, and expectations regarding what “reason” can deliver have come coldly down to earth.

These deflated expectations for reason are reflected in the “political liberalism” of the most celebrated political philosopher of our time, John Rawls. An earnest insistence that important public decisions be justified by something called “public reason” remains conspicuous in Rawls’s work.³³ But the term is apt to mislead. Upon inspection, it becomes apparent that Rawls’s “public reason” is not the “Reason” of Commager’s Enlightened thinkers; indeed, it comes closer in crucial respects to being Reason’s nemesis—or at least its nanny, whose task is to keep Reason under control and out of sight when the important public functions occur.

Thus, for the thinkers described by Commager, Reason’s function was to explore such matters as “the nature of the universe,”

"the end and the object of life," and the meaning of "happiness," and to bring the truths discovered in such inquiries to bear on practical matters such as "the basis and the limits of government" and "the rights of Man." Moreover, the Enlightened thinkers supposed that the uninhibited exercise of reason would lead people to recognize truth; and this supposition in turn implied an eventual convergence on truth.

In this spirit, Jefferson confidently predicted that "there is not a young man now living who will not die a Unitarian."³⁴ In retrospect, and in view of Unitarianism's comparatively meager numbers today, the prediction seems a bit bizarre. But there was a logic to it: if you have great confidence in the powers of reason (as Jefferson seems to have had), and if Unitarianism is the position recommended by reason (as Jefferson evidently supposed), then it would seem likely enough that under reason's benign tutelage people would eventually converge on that position.

Today any similar expectation seems utterly naïve with respect to religion, morality, politics, or political philosophy. On the contrary, clear thinking today must begin, Rawls maintains, by acknowledging that a pervasive pluralism in such matters is and will continue to be our condition.³⁵ No one expects that anything called "reason" will dispel such pluralism by leading people to converge on a unified truth—certainly not about ultimate or cosmic matters such as "the nature of the universe" or "the end and the object of life." Indeed, unity on such matters could be achieved only by state coercion: Rawls calls this the "fact of oppression."³⁶ So a central function of "public reason" today is precisely to keep such matters *out of* public deliberation (subject to various qualifications and exceptions that Rawls conceded as his thinking developed). And citizens practice Rawlsian public reason when they *refrain from* invoking or

acting on their "comprehensive doctrines"—that is, their deepest convictions about what is really true—and consent to work only with a scaled-down set of beliefs or methods that claim the support of an ostensible "overlapping consensus."³⁷

But why would someone agree to bracket her most fundamental convictions about what is true in "reasoning" about important public matters? She would do this, Rawls explains, if and because she is "reasonable"—meaning that in a situation of pluralism she understands that no one's truth is going to prevail over its rivals, and so rather than seeking to ground public decisions in truth she is "ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so."³⁸ To be reasonable is thus not the same as to be rational, and indeed "there is no thought of deriving the reasonable from the rational."³⁹ Far from being an exercise of Reason, "reasonableness" reflects a willingness, in the interest of civil peace, to rein in that potentially disruptive faculty.

In short, in the eighteenth century, a commitment to reason denoted a willingness to pursue the truth and to follow the argument wherever it leads, with the confidence that reason will ultimately lead people to converge on the truth. In contemporary political liberalism, in stark contrast, "reasonableness" denotes a willingness *not* to pursue or invoke for vital public purposes what one believes to be the ultimate truth—a willingness based on the judgment that reason will *not* lead to convergence but will instead subvert a civic peace that can be maintained only if people agree not to make important public decisions on the basis of arguing about what is ultimately true.

In this way, Reason is displaced by "reasonableness"—which in effect amounts to a willingness *not* to ask too much of, or to assign

too much responsibility to, reason. Jeremy Waldron observes that "the constraints Rawls imposes on civic discourse so diminish our ability to grasp the true weight and implications of reasons in political argument as to deprive the practices they are supposed to govern of any entitlement to be called 'justificatory' in the true sense of the word."⁴⁰

Suppose, though, that we set aside that larger criticism for the moment: an urgent practical question still presses. What if the truncated discursive resources available within the downsized domain of "public reason" are insufficient to yield any definite answer to a difficult issue—abortion, say, or same-sex marriage, or the permissibility of torture under emergency circumstances? What if these limited resources fail to provide a satisfying justification for a decision on such issues? This worry is hardly academic. On the contrary, it seems apparent that at least for such hotly disputed controversies, the limited scope of beliefs and methods that actually can claim an "overlapping consensus" in a radically pluralistic society are insufficient to provide a generally persuasive basis for decision and justification.⁴¹

Rawls attempts to finesse this daunting problem by simply stipulating that an "essential feature of public reason is that its political conceptions should be complete." Under this stipulation, "public reason" is *by definition* adequate to "give a reasonable answer to all, or to nearly all, questions involving constitutional essentials and matters of basic justice":⁴² a discourse lacking such completeness, it seems, would not qualify as a form of "public reason."

But this stipulation does nothing to address the real-world problem. Instead, it merely prompts a reformulation of the objection: not "Public reason will leave many vital questions unresolved" (because by stipulation, it seems, "public reason" cannot fail in that

way), but rather "Public reason (so defined) does not exist." Which would in fact be a very plausible conclusion to draw—and one that brings us back to our current lamentable condition as described by critics like Susan Jacoby and Ronald Dworkin.

Now, though, instead of laying principal blame on poor schools or profit-driven media or evangelical religion, we can notice the way in which shallowness in discourse is actually *prescribed* by some of the most influential political thought of our time. (Because Rawls was only the most prominent in a whole family of like-minded theorists.) It is hardly an exaggeration to say that the very point of "public reason" is to keep public discourse shallow—to keep it from drowning in the perilous depths of questions about "the nature of the universe," or "the end and the object of life," or other tenets of our comprehensive doctrines. And that prescription, as we have seen, is in turn the product of a general loss of confidence in the capacity of reason to actually lead people to truth in such matters. "You have your opinions and I have mine," we are wont to think, "and nothing in our so-called 'reasoning' is likely to change our minds."

Given this lack of confidence in the efficacy of reason, is it any wonder that fewer people actually make the effort to engage in genuine reasoning in public discourse? Why *should* anyone invest time and effort in such a predictably futile project? The Enlightenment program of reason—of Reason—seems to be a sinking ship (with respect to matters of political morality, anyway), as even the champions of "public reason" quietly but effectively concede; and people and rats usually scurry to get off, not on, such a ship.

But this conclusion prompts another question: how did people come to lose confidence in the capacity of reason to lead people to truth? What happened to cause the Enlightenment's faith in

reason—the faith portrayed in Commager’s giddy description—to fade?

Different people will answer that question differently, obviously. And as usual, a full historical account, if such were even possible, would be dauntingly complex, and would include not just intellectual influences but also cultural, political, and military events and developments—the horrors of World War I trench warfare, Auschwitz, and the Gulag, for example. Still, for present purposes, the core of the most eligible answers can be conveyed in two contrasting stories. (These stories are of course simplifications of a much more convoluted history.) The first story is familiar, and is easily discernible in the writing of critics like Jacoby and Dworkin and like-minded thinkers. The second, though hardly original with me, is less familiar. But it is, I believe, ultimately more illuminating—I might say, with trepidation and with apologies to Rawls and Rorty, that it is ultimately more *true*—than the first one.

How the Enlightenment Went Out: The Standard Story

In the standard depiction, the Enlightenment reflected a struggle by the partisans of reason against the dark forces of religion, tradition, and superstition.⁴³ In Europe, Christianity in particular was viewed as an “infection,” Peter Gay says, and as a form of “disease.”⁴⁴ American proponents of Enlightenment, like Jefferson, were generally more moderate in their opinions,⁴⁵ but they also insisted on the superiority of reason over tradition, and an Enlightened figure like Jefferson ridiculed what he perceived as the ignorance and irrationality of more traditional or orthodox forms of religion.⁴⁶ The commitment to reason manifested itself, among other places,

in the crafting of the American Constitution which, because it was a product of rational deliberation, was held out as (in Jefferson’s sanguine description) “unquestionably the wisest ever yet presented to men.”⁴⁷

In believing that life and government could be brought under the dominion of reason, however, the Enlightened thinkers acted on what seems to be a recklessly optimistic estimate of what human beings are capable of—reckless on their own premises, at least. People have often found security, comfort, and consolation in tradition and religion; or at least so hold the partisans of secular reason (who often find religion to be largely inexplicable *except* in such terms). So the Enlightenment project was a “lively experiment,”⁴⁸ or perhaps an enactment of the parable of Plato’s cave. The project gambled on the hope that human beings, once brought into the light of reason, could be persuaded to live in that unblinking glare rather than retreating back into the dark, warm, womb-like cave of religion and tradition. As civilization progressed, religion would dwindle and largely disappear—or at least would retreat to the private domain, leaving a public sphere governed by secular reason.⁴⁹

So the project was a gamble based on an optimistic view of human potential. Sadly, that view was *too* optimistic. (I am still summarizing the first or standard story). Thus, in a narrow sense the Enlightenment in America was already finished by the early years of the nineteenth century, as the wave of revivalistic and sometimes grotesque religiosity often called the “Second Great Awakening” swept across the country. The commitment to reason did not disappear, however, and in this country it has persisted in an unstable détente with traditional religion ever since. There have been occasional embarrassments (the Scopes “monkey trial,” for example), but there have also been advances. Universities, for example, once

heavily religious in character, are by now almost exclusively secular.⁵⁰ And at least if taken at face value (as it may not deserve to be), constitutional doctrine now officially confines government to the domain of the secular.⁵¹

Still, particularly in times of heightened fear and confusion, people feel a greater need for security and reassurance,⁵² and they tend to retreat from reason, reverting to their religious traditions. The 1960s, with the Vietnam War, the Kennedy and King assassinations, and the countercultures of antiwar, drugs, and the "hippie" movement, were one such time of confusion. In the wake of the 1960s, a conservative religious reaction gained force and made itself increasingly intrusive in political discourse.⁵³ The shock of September 11 inaugurated another such period of fear and confusion, and not surprisingly, religion has pushed back the discourse of reason in the ensuing years. Thus, the reelection of George W. Bush was, as Garry Wills dramatically put it, "The Day the Enlightenment Went Out."⁵⁴ Whether the election of Barack Obama has persuaded observers like Wills that the Enlightenment has been turned on again remains unclear, but it seems early to be unduly sanguine.

In one version or another, I think, this story is familiar—wearily so, for those of us who inhabit the academy. It is so familiar that many may regard it as virtually axiomatic. But there is a different story—one that is less familiar but, in my view, more compelling.

How the Enlightenment Went Out: A Revisionist Account

The alternative story agrees with much of the standard story in its broad outlines, but it assigns different valences and evaluations to

some of the key components and developments, and thus issues in a diagnosis of our situation that is in some respects directly contrary to that of the standard story. The alternative story can agree that the Enlightenment was a movement away from a more pervasively religious and traditional world and in the direction of a more secular one. And while denying that religion is merely a manifestation of fear and insecurity, or that there is any necessary conflict between reason and religion, the alternative story can acknowledge that the self-styled champions of "Enlightenment" have often viewed the world in just these terms. But insofar as Enlightenment has faded, the alternative story does not rely primarily on fear and insecurity (or even on poor schools, profit-driven media, or the Internet) to explain that decline. Instead, it proposes a different explanation.

The explanation would go something like this: In the cultures of classical and premodern times, Western peoples inhabited a world that they understood (sometimes on theistic grounds, as in Jewish and Christian thought, and sometimes in a nontheistic way, as in Aristotle's philosophy) to be intrinsically normative or purposeful. Louis Dupre describes the classical Greek view that the universe was a "cosmos" or "ontotheological synthesis." In this conception,

[n]ature teleologically directs organic processes to their destined perfection. It establishes the norms that things developing in time must follow if they are to attain their projected end. The more comprehensive term *kosmos* constitutes the ordered totality of being that coordinates those processes as well as the laws that rule them. *Kosmos* includes, next to the *physis* of organic being, the *ethos* of personal conduct and social structures, the *nomos* of normative custom and law, and the *logos*, the rational foundation that normatively rules all aspects of the cosmic development.⁵⁵

In a similar vein, Remi Brague explains that in the premodern thought of the West, whether Christian, Jewish, or Islamic, "human action had been conceived of as being in phase with cosmological realities that were presumed to furnish humankind with a model, a metaphor, or at least a guarantee, of right conduct."⁵⁶

The transition to the modern world occurred when it came to be accepted that progress in knowledge and control would be enhanced by leaving behind this metaphysically profuse (or perhaps promiscuous) cosmos in favor of a leaner world viewed as complete in its empirically observable, naturalistic, or physical dimension. Aristotelian "teloses" and "final causes" (an internal "oakness" pulling the acorn to grow into a tree) would be phased out; only "efficient causes" (one billiard ball striking and moving another) would remain. God would be, not denied, exactly, but excluded from scientific explanations and, later, from public political justifications. Instead of a purposeful, intrinsically moral cosmos brought into existence by a biblical deity or a Platonic demiurge according to an intelligent and normative design, the world would now be conceived to be composed of atomic particles randomly colliding and combining in intricate ways, and over the course of eons sometimes evolving into more and more complicated systems and entities, including ourselves.

The preceding paragraph is, of course, a gross simplification. Paradigm shifts of this type and magnitude do not occur all at once, or in any orderly or linear fashion, or as a result of some sort of agreement that they should occur. In fact, and sometimes to the consternation of contemporary partisans of Enlightenment, Jefferson and his colleagues did not banish deity from their explanations; in fact, they pervasively invoked Providence and the providential scheme in their accounts of everything from natural rights

to the continued existence (as Jefferson supposed) of mammoths in North America.⁵⁷ Even today, the classical view, or offshoots or vestiges of it, persist and flourish in some cultural neighborhoods. Nonetheless, the story serves to convey an overall change that began in the early modern period and that has largely been completed by now, at least in much public discourse and especially in the discourse of the academy.

The historical developments that have led to this change are, of course, complex.⁵⁸ Typical accounts emphasize nominalistic philosophical and voluntaristic theological developments of the late Middle Ages and early modern period,⁵⁹ the Protestant Reformation and the political reaction to the ensuing wars of religion,⁶⁰ and the spectacular achievements of science.⁶¹ Other scholars call attention to the organized efforts of thinkers and movements of the nineteenth and twentieth centuries.⁶² Under such influences, countless social thinkers predicted the advent of a world in which religion would have largely withered away.⁶³ And although those predictions have by now been to a significant extent discredited or at least seriously revised, it does appear that a "secular" worldview has come to dominate some areas of life. Peter Berger points out that although predictions of the decline of religion have largely proven to be mistaken, "[t]here exists an international subculture composed of people with Western-type education, especially in the humanities and social sciences, that is indeed secularized."⁶⁴

Max Weber famously described the change as the "disenchantment of the world";⁶⁵ he sometimes spoke of modernity as an "iron cage," in which life is lived and discourse is conducted according to the stern constraints of secular rationalism.⁶⁶ It is that cage—the cage of secular discourse—within which public conversation and especially judicial and academic discourse occurs today.

Life in the Cage

And how has the exchange of a purposeful, normatively laden cosmos for a more stripped-down, secular universe worked out? Here the alternative story draws a distinction. In disciplines and fields of inquiry devoted to understanding the physical or natural world—in the natural sciences, in other words—the shift to a secular framework has been associated with a spectacular growth of knowledge, both theoretical and applied. This success is hardly surprising: regarding the world as a physical, naturalistic system is nicely congenial to inquiries interested in the physical, naturalistic dimension of the world. As a result, science has flourished, and conspicuously so: we now have genetic engineering, space exploration, and instant worldwide communication that would have astonished even our Enlightened ancestors.

In more normative domains, by contrast, it has turned out—I am still presenting the alternative story—that the secular vocabulary is too truncated to express the full range of our values, intuitions, commitments, or convictions. To be sure, some normative perspectives and disciplines (or at least disciplines with normative implications) are more compatible with the newer framework than others are; unsurprisingly, those are the perspectives and disciplines that have tended to prosper. Thus, economics, concerned with people's empirically measurable preferences as manifested in willingness to buy and sell, has achieved the reputation of being perhaps the most solid and rigorous of the so-called social sciences. The reputation may well be deserved. (These sentences were initially written before the economic meltdown of 2008; perhaps they need to be revised.)

Still, many of us have the sense that economics, for all of its power and insight, captures only a subset of the normative

commitments we in fact have. And we perceive that the effort to convert noneconomic values into the currency of economics has the consequence of effectively negating or denaturing those values.⁶⁷

More generally, utilitarianism (of which economics seems at least a close relation) is more at home in the secular world than some other normative positions are. But once again, many people find that utilitarianism simply does not adequately grasp or express their deeper normative commitments.⁶⁸

In short, it may be that we can do science well enough within the iron cage of secular discourse, but when we try to address normative matters, we run up against a dilemma. We can try to treat all of our normative commitments as if they were the sorts of commitments that secularly congenial disciplines like economics or rational choice theory can recognize (and, again unsurprisingly, many academics are powerfully attracted to this approach); but then we may perceive that we have done violence to many of our deepest convictions. Or we can refuse to attempt that translation; but then it is awkward finding within secular discourse the words and concepts to say what we really want to say and to articulate what we really believe.

And so, the alternative story continues, when we attempt to engage in reasoning about vital normative concerns, our performances turn out to be a pretty shabby and unsatisfactory affair. *So unsatisfactory, in fact, that many people eventually conclude that there is little point in pretending to participate in the enterprise at all—an enterprise that often looks like an exercise in inventing, as F. H. Bradley put it, "bad reasons for what [we] believe on instinct."*⁶⁹ And the result is predictable: a public discourse that is sometimes, as Dworkin says, "appalling."

Smugglers' Blues

This alternative story may seem altogether too gloomy, just as the accounts of current public discourse given by critics like Susan Jacoby and Ronald Dworkin may seem excessively glum. Such grim descriptions may prompt a challenge: if our discourse is so deficient—so “appalling”—then how is it that our world continues to go on, and not so badly? Political discourse may be shallow and politics may be an unedifying spectacle, but Americans still enjoy relatively high levels of freedom and economic prosperity. (A comparison to other times and places suggests that this statement remains true even in the midst of a serious economic recession.) Let us suppose that the constitutional reasoning of lawyers and judges is spectacularly unpersuasive, as I have suggested: even so, and acknowledging that particular decisions or legal doctrines will seem wrong and even iniquitous to some of us, our legal system still works relatively well compared to other systems we might observe in history or in other places in the world. If discourse is so bad, how can life still be, in many respects, so good?

Once again, any attempt at a complete answer to that question would be imposingly complex. For present purposes, though, there is a short and simple explanation for how things continue to work. And that explanation is . . . smuggling. Our modern secular vocabulary purports to render inadmissible notions such as those that animated premodern moral discourse—*notions about a purposive cosmos, or a teleological nature stocked with Aristotelian “final causes,” or a providential design.* But if our deepest convictions rely on such notions, and if these convictions lose their sense and substance when divorced from such notions, then perhaps we have

little choice except to smuggle such notions into the conversation—to introduce them incognito under some sort of secular disguise.

Such smuggling is, I happen to think, ubiquitous in modern public discourse. Some of it is small scale and idiosyncratic—the work of random discursive privateers (like, say, Ayn Rand). Much of it occurs under the auspices of large and powerful families of terms, concepts, and rhetorical tropes. As it happens, in the public discourse of present-day America, we have two dominant normative families—not the Corleone and Tattaglia families, but rather the autonomy-liberty-freedom family and the equality-neutrality-reciprocity family. These powerful and eminently respectable normative families do a good deal of legitimate business, for which we may all be grateful—I certainly am—but they also run extensive smuggling operations. (Sometimes the two families team up for these purposes, as in the Eisgruber-Sager “Equal Liberty” principle, which we will bump into in Chapter 4.)

I am far from the first to observe the workings of these operations. Take the autonomy-liberty-freedom family. “Freedom” is a term that inspires respect, even reverence. In the abstract, everyone admires it: who goes around proclaiming, “I’m against freedom”? (Not me, certainly.) And no doubt a vast amount of good has been accomplished under the banner of freedom. Consequently, there is ample scope for advocates to wrap their favored agendas in the flag of freedom. But, of course, there are different kinds or conceptions of freedom: “negative” versus “positive” freedom, “individual” versus “civic” or “political” freedom. Moreover, an expansion of one person’s freedom often means a contraction of other people’s freedom: if we recognize and protect the freedom of the pornographer to market pornographic

materials, we simultaneously reduce the freedom of people to live and raise their children in a pornography-free community. Hence, appeals to "freedom" can easily be—and often are—question-begging: freedom becomes an honorable label used to smuggle in an advocate's particular agenda or conception of what is good and valuable.

In this vein, reviewing a history by Eric Foner of the various uses of "freedom" in American politics, Michael Klarman comments that "by demonstrating the infinite contestability and malleability of freedom, Foner has proven that the concept does no serious work in the various debates in which it is invoked."

This is not to say, of course, that all arguments about freedom are equally convincing. It is to say that the reason some such arguments are more persuasive than others has nothing to do with their merit as arguments about freedom, but rather is attributable to the attractiveness of the substantive cause on behalf of which they are mustered.⁷⁰

And Klarman concludes that

[f]reedom . . . is an empty concept. To say that one favors freedom is really to say nothing at all. As is so often the case in constitutional law, one ultimately cannot avoid taking a position on the merits. Whether freedom is good or bad depends entirely on the particular substantive cause on behalf of which freedom is invoked.⁷¹

To be sure, theorists and advocates attempt to supply substantive criteria to fill in this emptiness. Probably the most powerful and pervasive such filler, at least in Anglo-American discourse, has been the famous "harm principle" proposed by John Stuart Mill. We will look at that principle more closely in a later chapter, and

we will see that to a large extent, the principle has served as an immensely effective vehicle for . . . smuggling.

Or consider the equality family, which in recent decades seems to have muscled aside even the venerable freedom family at the center of American public discourse. More than a quarter century ago, Peter Westen published an article called "The Empty Idea of Equality" in the *Harvard Law Review*.⁷² Westen's basic point was simple: as a normative value, equality is a formal notion, meaning simply that "like cases should be treated alike" and "unlike cases should not be treated alike." Those propositions are hardly controversial; what *is* controversial is whether particular instances actually *are* alike in relevant respects. *That* question cannot be answered by invoking equality, however, but only by reflecting on the substantive values or criteria that apply or should apply to a particular issue. Blind people are like those who are not blind for some purposes (voting, for example) because blindness is not relevant to the substantive criteria governing voting. But blind people are unlike those who are not blind for other purposes (for example, driving a car) because ability to see *is* relevant to the substantive criteria that govern the ability to drive.

Westen suggested that if we know what the relevant substantive criteria are, we do not need the idea of equality; we can simply treat each case as the relevant substantive criteria dictate. We do not need to insist on treating the blind and the sighted "equally"; if we simply determine the appropriate criteria for voting eligibility and for drivers' licenses and apply these criteria consistently, then without ever intoning the word we will ipso facto be treating these groups as equality requires. Conversely, if we do *not* know what the relevant substantive criteria are, the idea of equality is no help, because we have no way of determining

whether particular instances are relevantly like or unlike. "So there it is," Westen concluded:

Equality is entirely "circular." It tells us to treat like people alike; but when we ask who "like people" are, we are told they are "people who should be treated alike." Equality is an empty vessel with no substantive moral content of its own. Without moral standards, equality remains meaningless, a formula that can have nothing to say about how we should act. With such standards, equality becomes superfluous, a formula that can do nothing but repeat what we already know.⁷³

Westen's conclusion may have overreached in some respects, as his critics argued.⁷⁴ But a mildly more modest conclusion seems sound, and also tremendously important: in any genuine controversy, the notion of "equality" cannot carry us far toward any particular resolution. If there is a sincere disagreement about, say, whether same-sex marriage should be legalized, then insisting on "equality" is merely a distraction (albeit a polemically potent one, as we have recently observed). More generally, when we observe an advocate placing a great deal of weight on "equality," we have cause to suspect that something sneaky is going on.

Westen's article has been widely discussed, and most legal scholars will purport to acknowledge the central point. Moreover, advocates typically understand that they must say *something* about the substantive criteria or values they are invoking. Yet it remains common to observe even the most prominent and sophisticated theorists and advocates today featuring appeals to equality as their central discursive strategy on a whole range of issues, from same-sex marriage to religious freedom to free speech to just about any major issue you can name. And whenever we observe this strategy

in action, we have reason to suspect that the real operative values are being smuggled in—or at least heavily subsidized—under the auspices of the venerable family of "equality."

Or if "equality" happens to be indisposed, the close family relations of "neutrality" or "reciprocity" can often be employed to do the same work. Consider Jürgen Habermas's claim that a "universal" ground for religious toleration (as opposed to more local and prudential grounds) can be found in the idea of reciprocity. Citing Pierre Bayle's classic argument, Habermas argues that reciprocity precludes Christians from forbidding Muslim proselytizing in Christian Europe while at the same time objecting to the suppression of Christian evangelization in Japan.⁷⁵ To those of us for whom a constitutional commitment to religious toleration has become close to axiomatic, this argument is likely to pass without objection. *Of course* religious toleration is a good thing—who today worth paying attention to doubts this? So a denial of toleration would be a clear violation of reciprocity. Wouldn't it? And wouldn't it seem merely churlish, and maybe a bit medieval, to quibble with Habermas's argument?

So then did the people in premodern Europe who resisted religious toleration—the Thomas Mores, the John Calvins—somehow fail to grasp or accept the idea of "reciprocity"? Not at all. Or at least they need not have opposed the idea. Rather, they might cheerfully acknowledge the legitimate demands of "reciprocity," and they might further concede that, *if* Christianity, Islam, and, say, Shintoism are relevantly similar, then if Christians expect to be permitted to evangelize in territories dominated by Islam or Shinto, they likewise ought to allow representatives of those religions to proselytize in Christendom. But that premise—namely, that these religions are relevantly similar—is precisely what the premodern believers

emphatically denied. In *their* view, one of the religions leads to salvation, while the others lead to damnation: that is hardly equivalence. And what could be more perverse than to insist that reciprocity requires truth to be treated in the same way as falsehood? It is as if a student were to argue, on grounds of reciprocity, that if the school gives credit for true answers on a test it must give equal credit for false answers.

To be sure, even the most devout adherents to the different religions might acknowledge that the religions are similar in the sense that their own followers believe them to be true. But is that similarity dispositive for the question of reciprocity? Well, it may be, if we assume, for instance, that belief, not actual truth (or salvific efficacy), is the relevant factor. And that assumption may seem natural enough—even obvious—to, say, a modern skeptic who supposes that none of the faiths is actually true in any strong sense anyway, or that in any event their truth is unknowable *to us*. Conversely, to a premodern true believer—to a Thomas More, once again, or a John Calvin—that assumption would likely seem as odd as would a claim by a failing student that since all humans (including teachers) are fallible, what should matter in determining grades is not whether the answers given on an exam are actually correct (about which we can never be absolutely confident anyway) but whether the student sincerely believed those answers.

We need not take sides in this particular disagreement here. The crucial point is simply that the division between partisans and opponents of religious toleration is not over the obligation of reciprocity—both sides may happily and wholeheartedly embrace that idea—but over whether reciprocity should be keyed to truth or instead to something like sincere belief. Piously insisting on “reciprocity” only serves to conceal that fundamental disagree-

ment. Consequently, upon hearing the Habermasian argument (or similar arguments made by Rawls⁷⁶ or any number of other advocates), the opponent of religious toleration might say just what Dworkin says of public intellectuals today, and what Priel says of Dworkin: “You purport to be offering an argument, but in fact you aren’t. You are simply begging the question, and your ‘argument’ is just a way of packaging the problem so as import—to smuggle in—the conclusion you were determined from the outset to reach.”

The Necessity of Smuggling

A powerful and respectable family will naturally resist—and resent—any accusation of illicit behavior. By the same token, the numerous learned and respectable patrons of the autonomy and equality families might indignantly deny that those families are engaged in smuggling or illegitimate activity. Isn’t it presumptuous of me, an obscure law professor, to be leveling such a charge anyway? What evidence can I produce to prove that honorable, venerable families of notions like liberty and equality are associated with a disreputable activity like smuggling?

It is a fair question, and I hasten to say that what I have done to this point is simply to lay out a story. You can observe the various conversations that make up public discourse and see for yourself whether the story fits. I do hope to raise your suspicions, but I understand that nothing I have said thus far and nothing I will say hereafter will amount to proof sufficient to sustain any universal indictment. Maybe a prosecutor with sufficient stature and intellectual clout—a Charles Taylor, an Alasdair MacIntyre⁷⁷—could make a careful, comprehensive case strong

enough to bring down the dominant secular families. But I very much doubt it—and in any case I am quite sure that I do not possess either the credentials or the intellectual wherewithal to attempt that task.

Indeed, I will offer a further concession: it is far from obvious that we should even want to crack down on smuggling at this point. Black markets are generally frowned upon, but an economy can be so dependent on a black market that shutting down that market will lead not to clean, honest commerce but rather to economic collapse. Or conditions can develop in which legitimate public authority has broken down, leaving people to depend on gangs or warlords for whatever order they enjoy. In a similar way, smuggling arguably allows modern discourse to function and to provide a measure of rationality and sense to our normative affairs. Conversely, ending such smuggling, even if that were possible, might, under current conditions, have the effect of paralyzing normative evaluation and leaving the public square vulnerable to openly cynical politics—or to brute force.

Even so, corruption is still less than ideal. So if in our current circumstances, we have little choice but to put up with smuggling (and, perhaps, to throw our support behind the benign smugglers rather than the malign or misguided ones), we ought at least to retain some awareness of what is going on. That is the objective of this book.

A Note about "Smuggling"

Before we pursue that objective, though, some clarification is called for. I have suggested that a good deal of modern discourse trades on "smuggling." But I have been less than precise about just what

"smuggling" is. Is this just a provocative metaphor for flawed or inadequate reasoning? And hasn't discourse in all times and places been prone to flawed or inadequate reasoning? If so, isn't it a little misleading (even if true) to suggest that modern discourse exhibits and depends on smuggling, in the same way that it would be misleading (even if true) to say that most people in Alabama have two eyes and two ears but only one nose?

So it will be helpful to try to make the notion a bit more definite. "Smuggling" is a metaphor, obviously, not a technical term; but it is a metaphor that serves to depict one sort of discursive shortcoming. There are many ways in which discourse can be deficient—formal logical fallacies, simple errors of fact, and so forth—and most of them do not involve "smuggling." "Smuggling" is one kind of deficiency. But what kind?

Well, in the first place, smuggling implies that an argument is tacitly importing something that is left hidden or unacknowledged—some undisclosed assumption or premise. But relying on an unacknowledged premise or belief is not in itself enough to constitute smuggling, because *all* discourse does that, and could hardly do otherwise. Suppose you suggest that we should walk over to the deli for lunch because it's close and the food is tasty and not too expensive. Your suggestion assumes a staggering number of things: that saving time is good, that tasty food is *prima facie* to be preferred over tasteless food, that saving money is desirable, . . . that the deli still exists, that our legs still function, that the world is real, and so forth. But that sort of assuming is a virtue, not a shortcoming, because you have reason to be confident that these propositions are not controversial. It would be merely tedious for you to try to state *all* of your implicit assumptions, even if it were possible. In declining to say out loud what is assumed and

finds expression in frightening levels of mutual incomprehension between 'the religious' and 'the secular' that we see today.¹⁷⁸ It is that incomprehension that afflicts our modern conversations about religious freedom. And so long as the incomprehension persists, the celebrated incoherence of our church-state jurisprudence seems destined to flourish as well.

5

THE HEAVENLY CITY OF THE
SECULAR PHILOSOPHERS

In April of 1931, as Herbert Hoover was vainly struggling to contain the Great Depression, Adolph Hitler was plotting his way into power, and Joseph Stalin was implementing a five-year plan that would soon produce a devastating famine in the Ukraine, the eminent historian Carl Becker delivered the prestigious Storrs Lectures in the more genteel environs of the Yale Law School. In an impressive display of erudition and gently cynical wit, Becker inspected an intellectual problem that he seemed to view as a sort of delicious performative irony acted out by the partisans of the eighteenth-century Enlightenment.

His lectures, published under the title of *The Heavenly City of the Eighteenth Century Philosophers*, became a minor classic that continues to warrant attention, because in fact Becker's analysis illuminates more than he intended. Without quite realizing it, Becker had stumbled onto a fundamental conundrum that continues to afflict much modern thought. Indeed, it is just possible that Becker's discussion revealed more about his own plight, and that of his secular successors, than about his historical subjects.

The Enlightenment of Self-Deception

Becker's focus was on the so-called philosophes—the progressive thinkers of the period of Voltaire, Diderot, Hume, Franklin, and Jefferson. It was in these thinkers that Becker detected the problem that became the subject of his book—and of this chapter.

Morality without Religion

The eighteenth-century progressive thinkers, Becker reported, saw themselves as “engaged in a life-or-death struggle with Christian philosophy and the infamous things that support it—superstition, intolerance; tyranny.”¹ Though they attacked traditional Christianity, however, the philosophes were far from being ethical nihilists. On the contrary, they were in fact the conspicuous champions of justice and morality.

In part, their patronage of morality reflected a self-serving concern about their own public image.² Thus, David Hume declared himself “much more ambitious ‘to be esteemed a man of virtue than a writer of taste.’”³ But the philosophes’ devotion to morality went beyond reputational concerns. At its core, Becker observed, the Enlightenment program was one of social reform⁴—its proponents hatched innumerable projects ranging from the mundane (upgrading of roads in winter) to the grandiose (universal peace)⁵—and social reform presupposed normative standards by which the society they strove for could be judged superior to the society they wanted to supercede. Having repudiated traditional Christianity, therefore, the philosophes were determined “to replace the old morality by a new and more solidly based one.”⁶

And how was this task to be accomplished? The moral vocabulary of the eighteenth century, Becker noted, pervasively invoked “nature” and “natural law” as the definitive ethical standard.⁷ There was nothing new about these ideas, of course—or at least about these words; appeals to “natural law” were perfectly familiar to classical, medieval, and early modern thinkers. But the philosophes understood “nature” in a radically different way than their predecessors had.

In earlier centuries, Becker argued, “nature” was the doorway to a theological or philosophical system. In the eighteenth century, by contrast, “nature” became secular and assumed a scientific, empirical cast; the term referred to observable facts, not to a priori concepts or categories.⁸ (This was Becker’s interpretation, at least, though of course other scholars would give—and have given—different interpretations.⁹) Investigating nature, consequently, became “a matter of handling test tubes instead of dialectics.”¹⁰

In short, “nature” now referred to solid empirical realities—not to metaphysical fantasies (as the Enlightened thinkers took the older notions to be). Unfortunately, this more scientific view created a serious problem when the devotees of Enlightenment looked to nature as a source of ethical standards. Once deprived of its normative dimension, how could “nature” or “natural law” serve as sources of evaluative criteria or judgments? How could one squeeze moral values, or judgments about justice, or interpretations of the “meaning” of it all, out of brute empirical facts? The philosophes were committed to using “reason,” yes, but reason does not manufacture moral criteria ex nihilo. It needs something to work with, and nature as they understood it (or as Becker supposed they understood it), was stingy in supplying that need.

Thus, the most acute philosopher of the period, David Hume, demonstrated that "[r]eason is incompetent to answer any fundamental question about God, or morality, or the meaning of life."¹¹ And the period's leading philosophical poet, Alexander Pope, expressed what seemed the natural conclusion in poetic (if slippery, and contestable) terms: "One truth is clear, *Whatever is, is right*."¹²

Pope's dictum can be taken to indicate a sort of morally blank universe: whatever is simply *is*, and no independent normative Archimedean point or standard is available by which what *is* can be judged "right" or "wrong." Becker thought that this was what Pope's pronouncement meant, at any rate,¹³ and he also thought that Pope was right. Or at least he believed that the amoralist proposition expressed the conclusion that a dispassionate exercise of reason would have drawn from the Enlightenment thinkers' scientific view of nature.

The problem, Becker explained, was that this amoralist position was also flatly unacceptable to the partisans of Enlightenment. In the first place, the notion expressed in Pope's line seemed a conceptual or semantic travesty. "To assert that all that is, is right, was to beat all meaning out of the word 'right.'"¹⁴ The amoralist position also seemed to fly in the face of Enlightened good sense: how could it be that the Bastille, or the practice of torture, or the "superstition, intolerance, and tyranny" associated with traditional Christianity, were right?¹⁵ Perhaps most distressingly, the amoralist position threatened to thwart the philosophes' reformist aspirations. "A society so obviously wrong could never be set right unless some distinction could be drawn between the custom that was naturally good and the custom that was naturally bad."¹⁶

In short, Pope's dictum seemed to imply a sort of incipient moral nihilism that was categorically unacceptable to the philosophes. So . . . what to do?

One possibility would have been to return to the Christian worldview of revealed religion, or perhaps to the telos-infused worldview of classical Athens, as a basis for moral judgments. But this was a course that the philosophes were constitutionally unable to take—or at least to admit to taking. Kant's Critical morality might (or might not) eventually offer an escape from the predicament—Becker ventured no judgment on that point, nor need we—but in the cultural milieu of Becker's study the Kantian philosophy was not yet on offer.

So instead, Becker argued, the philosophes opted for a "strategic retreat" from reason and its impertinent implications.¹⁷ If reason led to the amoralist conclusion, then reason would just have to be, for the moment and for certain practical purposes, suspended.

Naturally, though, the philosophes did not and could not have put the point in quite these stark terms—not even (or perhaps especially not) to themselves. "Reason," after all, was their banner and their battle cry; conversely, transgression against the authority of reason was the principal sin of which they accused their traditionalist and Christian foes. So instead of openly acknowledging the shortcomings of reason, the partisans of Enlightenment adopted a more complicated strategy—one that (we can see in retrospect) could never actually satisfy the unflinching requirements of reason, but that could at least serve to conceal the philosophes' embarrassment behind a rationalist veil.

More specifically, they resolved to derive values from "human experience" and "human nature"¹⁸ by means of historical research—the eighteenth-century equivalent of modern social science—conducted in a reflective and scientific spirit. The point of this philosophical history would not be simply to record facts, as in

their estimation past historians had done, but rather to discern what is essential in human nature—to separate out the “really human” (to borrow a phrase that we will see much more of shortly) from the accidental or contingent manifestations of corrupted culture. Becker explained:

[T]he task of the philosopher-historian, theoretically speaking, was to note the ideas, customs, and institutions of all peoples at all times and in all places, to put them side by side, and to cancel out as it were those that appeared to be merely local or temporary: what remained would be those that were common to humanity. From these common aspects of human experience it would then be possible, if at all, to discover, as Hume put it, the “constant and universal principles of human nature” and on these principles to base a reconstructed society.¹⁹

From a distance it is easy enough to appreciate the shortcoming in this strategy. How is the theorist to know which “ideas, customs, and institutions” should be classified as essential and universal, and hence good, as opposed to those that are merely lamentable corruptions? In all times and places that the historian or anthropologist might study, she will likely discern features that we would applaud—but also features that we would regard as unfortunate or unjust or downright evil: there will be altruism, charity, and humane sympathies, yes, but also self-interest, cruelty, and exploitation. The philosophes “wished to get rid of the bad ideas and customs inherited from the past; quite as obviously they wished to hold fast to the good ones, if good ones there were,”²⁰ but mere empirical observation would be incapable of making this sort of discrimination.

Enlightened Delusions

Undaunted (or perhaps oblivious), the Enlightenment thinkers forged ahead to reach righteous judgments on the basis of their social science project. Or at least they purported to. So, how did they manage to do this?

Very simply, Becker explained: they cheated. (Or, we might say, smuggled.) While purporting to derive ethical guidance *from* human experience, in fact they systematically imported their own preconceived values and imposed these values *onto* human experience. So they studied history, but “they were unwilling or unable to learn anything from history which could not, by some ingenious trick played on the dead, be reconciled with their faith.”²¹ And they pretended to ground their principles of ethics and justice in their empirical research and reflections, but in fact “the principles they are bound to find are the very ones they start out with.”²²

In this way, Becker suggested, the Enlightenment thinkers were in fact following in the steps of the medieval thinkers they regarded with such disdain, thereby producing an updated, secular version of the Heavenly City. To be sure, the substantive contents of the medieval and Enlightenment moralities were discernibly different. At least as Becker described them, the philosophes’ moral and political views were, if not identical, at least strikingly similar to modern liberal notions (as we will see shortly). But the basic method was the same: the partisans of Enlightenment “were engaged in that nefarious medieval enterprise of reconciling the facts of human experience with truths already, in some fashion, revealed to them.”²³

Becker revels in the irony. The partisans of Enlightenment—of holding the world up to the critical examination of “reason”—were

blissfully oblivious, it seems, to the workings of their own minds. "[A]t every turn [they] betray their debt to medieval thought without being aware of it."²⁴ Their very sophistication makes them seem almost comic—"at once too credulous and too skeptical."²⁵

Still, in the end Becker is indulgent—and for a curious and, unbeknownst to him, portentous reason. "[T]hey are deceiving us, these philosopher-historians," he declares. "But we can easily forgive them for that, since they are, even more effectively, deceiving themselves."²⁶ So the Enlightened ones should be forgiven because, notwithstanding all of their castigating of foes for superstition and ignorance, and despite all of their paeans to truth and reason, they knew not what they were doing. Their grand moral and political aspirations were grounded in presuppositions of which they were unconscious, and which indeed they took pride in having repudiated. The Enlightenment—that "bright springtime of the modern world"²⁷—was constituted at its core by a practice of pervasive deception and self-deception.

The "Old Insoluble Question"

It is a commonplace that in their presentations of the past, historians often reveal as much about themselves and their own times as they tell us about their ostensible subjects of study. Could this be true of Becker, himself a quintessential "philosopher-historian"? Becker's book obviously partakes of the wit and urbane cynicism that, he said, we most admire in Enlightenment thinkers.²⁸ Did it also reflect the insouciance he ascribed to them? And if it did, as I suspect, was the shortcoming peculiarly Becker's? Or did it reflect a deep conundrum of a secular age?

There is, we might notice, a troubling tension in Becker's treatment of the Enlightenment. Becker criticized the philosophes—albeit in a gentle, genial spirit—for the intellectual blunder he believed they committed and acted out with so much childlike energy and enthusiasm. And for the most part he treated that blunder as a historical curiosity—a local error that by now we could not be so naïve as to duplicate. Beneficiaries of decades of additional experience and sophisticated thought, we today would never be so innocent as to commit this sort of elementary mistake. Would we?

Yet Becker himself never actually proposed any solution to the philosophical predicament in which the philosophes found themselves. Given their views of nature, how *could* the thinkers of the Enlightenment have grounded or supported their moral values or commitments? Was there any alternative to the intellectual cheating that Becker depicted with such relish? What other response could the philosophes have made to what he called "the old insoluble question of the foundations of morality and the good life"?²⁹

With respect to these more enduring questions, Becker kept mum. His silence raises a disturbing question about the nature of the blunder that the philosophes are said to have committed. Did their error lie in embracing a false solution to the problem of morality when a better solution was available? Or, rather, was their mistake to continue to adhere to normative commitments at all when the new, scientific worldview had rendered ideas like justice and morality anachronistic?

The light-hearted tone of Becker's treatment might seem to support the former interpretation. Nothing so portentous as the "death of morality" would seem to be at stake. But Becker's levity may

mislead in this respect—mislead both us and himself. Indeed, his description of the moral problem as “insoluble” coupled with his apparent inability to point to any better answer to the philosophes’ problem lends weight to this interpretation. “If it does not bore us too much,” he remarked at one point, “we ask a perfunctory question, What is morality? and pause not for an answer.”³⁰ The proper response to the “old insoluble question,” it seems, is that we should just stop worrying about that question.

Should we then simply regard philosophical questions about the nature of morality as nonsensical—relegate them to the “angels on the head of a pin” category? Maybe. But it hardly takes the perception of a great historian to realize that humans have not adopted this nonchalant attitude, and we are not about to do so any time soon. The twentieth century was surely as charged with moral passions of one kind or another (some noble, and some deadly³¹) as the eighteenth century was, and such passions naturally provoke thinking about just what sort of thing “morality” might be. So if we cannot leave the philosophes’ question alone, and if the new naturalistic worldview supports no satisfactory answer to that question (or at least none that Becker could point to), how could he be confident that the Enlightenment error he dissected so gleefully would not be repeated in his own time—or in ours?

Indeed, the conditions that spawned the mistake are, if anything, more stark now than they were two or three centuries ago. Other historians might doubt that the eighteenth-century thinkers actually embraced the disenchanted secularism that Becker ascribed to them.³² But Becker, along with many of his contemporaries—and successors—surely *did* embrace it (or at least they tried to, and they thought they did). Thus, Becker intoned that it is now “quite impossible for us to regard man as the child of God for whom the earth

was created as a temporary habitation. Rather must we regard him as little more than a chance deposit on the surface of the world, carelessly thrown up between two ice ages by the same forces that rust iron and ripen corn.”³³ And any escape from the challenge through return to a more faith-filled or metaphysically thick worldview is by now almost inconceivable, he declared. So the older types of moral arguments inherited from classical and medieval times are no longer viable: “the world pattern into which they were so dexterously woven is no longer capable of eliciting from us either an emotional or an aesthetic response.”³⁴

At the same time, the notion that morality and justice are dead anachronisms—that “whatever is, is right”—is just as categorically unacceptable today as it was to the Enlightenment. Indeed, the moral commitments that Becker discerned in the eighteenth century are not so different from the commitments that mainstream political and legal thinkers would be espousing at the end of the twentieth. “The essential articles of the religion of the Enlightenment,” he explained,

may be stated thus: (1) man is not natively depraved; (2) the end of life is life itself, the good life on earth instead of the beatific life after death; (3) man is capable, guided solely by the light of reason and experience, of perfecting the good life on earth; and (4) the first and essential conditions of the good life on earth is the freeing of men’s minds from the bonds of ignorance and superstition, and of their bodies from the arbitrary oppression of the constituted social authorities.³⁵

Leave out the first two items (which today would seem so obvious, to progressive sensibilities anyway, that they would hardly need to be said), tone down the third item a bit, and Becker’s list might

almost be mistaken by a reader today, going on four-score years later, for prediction, not historical description. Indeed, the fourth and final element—"freeing . . . men's minds from the bonds of ignorance and superstition, and . . . their bodies from the arbitrary oppression of the constituted social authorities"—has been *the* project—the cherished, central, defining aspiration—of a mass of modern theorizing, polemicizing, and politicking on political-moral topics.

The relevant conditions and imperatives, in short, have not changed drastically, except perhaps by becoming even more firmly entrenched. So why would we *not* expect to find modern progressive thinkers practicing the same kind of elegant intellectual cheating, and the same cheerful and good-hearted self-deception, that Becker discerned in the eighteenth-century progressives?

Reenacting the Enlightenment?

It would not be difficult to paint some prominent thinkers of the past century into the picture that Becker sketched of the philosophes. Take John Dewey, that darling of the first half of the twentieth century and then again of many in the second half. With his earnest insistence on deriving values not from metaphysics or religion but from science and human "experience,"³⁶ Dewey would mix nicely in the company of Becker's philosophes.³⁷

In a different way, John Rawls's famous devices of the "original position" and the "veil of ignorance" reflect an effort, quite reminiscent of the philosophes', to strip away the accidental and the distortingly contingent from humanity and thereby to call forth the pure, unencumbered human being—who can then consent to principles of legitimate government. As critics have often pointed

out,³⁸ the question of which human features are essential (and thus to be retained in the "original position") and which are contingent (and so to be stripped away) is highly debatable. Rawls removes precisely those features—economic and social class, embeddedness in a particular political or social tradition, religious affiliation or faith—that are incongruent with his own views of what is relevant to justice, and he retains qualities conducive to his ethical and political predispositions. Thus, we might easily say of Rawls and his followers what Becker said of the philosophes—that "the principles they are bound to find are the very ones they start out with."

But these are hasty comparisons—and contestable ones, no doubt. It may be helpful to examine a contemporary instance in more leisurely fashion.

Where to turn for an instance worthy of our study? One of the highest honors in legal academia—an honor conferred on only one legal scholar each year—is an invitation to write the "Harvard Foreword," which is an article reflecting on the current state of American constitutional law that is published as the lead article of the most current volume of the *Harvard Law Review*. Most recently (as of the time I am writing), the honor went to the prolific philosopher, classicist, and legal scholar Martha Nussbaum.³⁹ Nussbaum uses the Foreword to explain and apply something called the "capabilities approach"—an approach that she has elsewhere described as "the most important theoretical development in human rights during the past two decades."⁴⁰ The description, even if oversanguine, suggests that there is something of significance here. So with Becker's discussion of the philosophes freshly in mind, let us consider Nussbaum and the capabilities approach.⁴¹

The central idea is commonly associated with the economist and social theorist Amartya Sen, who has argued that *capabilities*, rather

describing many of today's political-moral theorists. Their political faith, Becker observed,

assumes everything that most needs to be proved, and begs every question we could think of asking. These skeptics who eagerly assent to so much strike [us] as overcredulous. We feel that they are too easily persuaded, that they are naive souls after all, duped by their humane sympathies, on every occasion hastening to the gate to meet and welcome platitudes and thin panaceas.⁹⁶

6

SCIENCE, HUMANITY, AND ATROCITY

Just over a half century ago, researchers in occupied Manchuria conducted scientific experiments on logs. The project sounds innocuous enough—until we learn that “logs” was the researchers’ term for the human beings on whom they were experimenting.

The term arose, possibly, from research on frostbite. “Those seized for medical experiments,” a later report explained, “were taken outside in freezing weather and left with exposed arms, periodically drenched with water, until a guard decided that frostbite had set in. . . . [T]his was determined after the ‘frozen arms, when struck with a short stick, emitted a sound resembling that which a board gives when it is struck.’”¹

In one such experiment, the “log” was a three-day old baby. Experimenting on a baby can pose difficulties, of course, because the baby may decline to cooperate. The researchers explained how they overcame one obstacle in this case. “Usually a hand of a three-day-old infant is clenched into a fist . . . but by sticking the needle in [the baby’s finger], the middle finger could be kept straight to make the experiment easier.”²

In *The Song Sparrow and the Child*, Joseph Vining's reflection on the claims of science and humanity begins with a terse, eerie recitation of these and similar incidents of scientific experiments conducted on human beings during the twentieth century in Manchuria, Nazi Germany, and Pol Pot's Cambodia. The incidents are conveyed through quotations, sometimes of the coldly clinical prose that the researchers themselves chose as most suitable for their purposes. These quotations are juxtaposed against others from an array of distinguished scientists and philosophers explaining the naturalistic cosmology that, in the view of these luminaries, modern science has conferred on us. We live, it seems, in a stark, cold cosmos devoid of any inherent meaning, purpose, or value. "The more the universe seems comprehensible," Nobel Prize-winning physicist Steven Weinberg remarks, "the more it also seems pointless."³ In this pointless universe, "living creatures just are very complicated physico-chemical mechanisms," J. J. C. Smart explains.⁴

And what of ourselves—of human beings? Another Nobel Prize winner, Francois Jacob, instructs us:

Biology has demonstrated that there is no metaphysical entity hidden behind the word "life." . . . From particles to man, there is a whole series of integration, of levels, of discontinuities. But there is no breach either in the composition of the objects or in the reactions that take place in them; no change in "essence."⁵

So, what are we supposed to make of this pairing up of descriptions of moral atrocities with statements of a scientific worldview? Is Vining trying to do to science what critics sometimes do to Christianity when they give descriptions highlighting, say, the sexual abuses of clergy, or the Inquisition—thereby implicitly condemning a whole movement of life and thought by equating it with

the enormities that any large-scale human enterprise will occasionally produce? If so, readers might well toss Vining's book aside as a cranky manifestation of the "antiscience" that is one of the book's abiding concerns. To be sure, scientists have sometimes behaved unfeelingly, even monstrosly—just as other humans have done. But surely there is nothing inherent in the scientific method or worldview that leads to the atrocities of Manchuria or the Third Reich.

Or is there?

The question runs through Vining's multifaceted meditation, and the answers that gradually, tentatively emerge are complicated, provocative, and counter to the culture that prevails in much of academia today. In that and other respects, *The Song Sparrow and the Child* is continuous with earlier writings⁶ that have established Vining among the more profoundly challenging—and, yes, idiosyncratic—legal thinkers in recent decades. *Song Sparrow* is a short, but not an easy, book, and even after reading it more than once we may not be sure that we have discerned its meaning. But let us try.

Science, Antiscience, and Totalistic Science

To begin with, we should take note that *Song Sparrow* is a book by a law professor writing about science: that is an unusual and risky, and, some might think, audacious project. No one will doubt the subject's significance, though. Of the various influences that over the last several centuries have shaped and reshaped the way we live and think, science is surely among the most powerful. But has science's overall influence, on balance, been healthy—or destructive? The question is one that all of us, even lawyers, are entitled to ask.

Taking passages out of context, one might suppose that Vining views science as pernicious, and that he himself is a partisan of what he calls "antiscience"—the wholesale Luddite or fundamentalist condemnation of science along with its methods and conclusions. But an even moderately careful reading shows the error of this interpretation. Far from disparaging science, Vining is effusive in paying his respects. He speaks of "the deep necessity of science, the scientist in each of us."⁷ Much of what is good in modern life, he says, we owe to science.⁸ Science is "a gift . . . , as music is a gift."⁹ And Vining elaborates: "science brings gifts, of fascination, of beauty, of relief from pain, gifts of unclouded thought, of freedom to love; and in fact these gifts and their effects are enjoyed even by those who live in a world whose material constitution they deny."¹⁰

Still, Vining is obviously concerned, even alarmed, about *something*. So if science is not the object of that concern, what is? The book's first paragraph proposes the answer that is repeated throughout: what Vining finds threatening is not *science*, exactly, but rather "total claims" made in the name of science, or "total theory," or "total vision." It is the reductionist insistence that there is ultimately "nothing but" or "merely" (phrases that Vining finds ominous, like symptoms of a cancer) the objective "systems" and "processes" that scientists study—and hence that the kinds of impersonal explanations given by science and immensely valuable for explaining *some* things can ultimately account for *everything* (including ourselves, and including the scientists among us).

Vining's principal target is thus the sort of worldview endorsed by John Searle, who declares that the world "consists entirely of physical particles in fields of force, and . . . some of these particles are organized into systems that are conscious biological beasts, such as ourselves." Searle goes on to explain that "the simple intui-

tive idea is that systems are collections of the particles where the spatio-temporal boundaries of the system are set by causal relations. . . . Babies, elephants, and mountain ranges are . . . examples of systems."¹¹ It is this totalistic view, and not science itself, that Vining sees not merely as mistaken but as a profound threat to humanity—and even, paradoxically perhaps, to science itself (which in Vining's view appears to be the sort of healthy "golden mean" threatened on one side by "antiscience" and on the other by "total vision"). Much of the book is thus devoted to describing and understanding this "total vision"—not only its substance but also its mind-set, and its tone.

The affirmative substance and tone of "total vision" are conveyed in part through quotations, such as that from Searle given above. The book provides numerous similar instances and expressions. "The brain," as one scientist puts it, "is merely a meat machine";¹² again, that ominous word "merely." In the same vein, Vining quotes neurobiologist Jean-Pierre Changeaux, who explains that "[t]he brain secretes thought as the liver does bile."¹³ Changeaux adds that beliefs—which can be "defined as a specific state of nerve cell activity"—are comparable to diseases: "they can propagate from one brain to another, and spread 'infection' much as viral attacks do."¹⁴

More generally, Vining says, the gaze of total science looks out upon

a world of swirling flux . . . in which all, including mathematics and the mathematician, becomes processes and processes of processes. . . . Things merely happen and nothing can be more important than anything else because it is merely something happening. There is no such thing as catastrophe. The raging

fire that caught up with the smoke jumpers in Norman MacLean's *Young Men and Fire* is grass burning. Grass burning is just something happening. Flesh burning is no different. The wind rises, the fuel changes, the temperature escalates, the spread accelerates, process builds on process, the organization of the fire replaces the organization of a tree, of a human body, and then the fire is gone.¹⁵

But the nature of total theory is not fully captured by such imagery. Nor can total theory be adequately understood merely in terms of affirmative claims dispassionately presented in propositional form. On the contrary, Vining suggests that total theory has the qualities of a "creed" or faith—or an antifaith.¹⁶ And just as Christian creeds developed largely in response to perceived heresies, the character of the naturalistic creed is as clearly manifest in what it aggressively *denies* as in what it *affirms*.

Thus, total theory conspicuously leaves some elements out of its account of the world: purpose, spirit, transcendence, divinity.¹⁷ But it does not merely omit or forget to mention these elements; it militantly opposes them.¹⁸ It seeks to root them out with a kind of censorious zeal.¹⁹ For Nobel Prize-winner Jacques Monod, for example, "Judeo-Christian religiosity" is not merely false; it is (along with, by the way, "scientific progressivism, belief in the natural rights of man, and utilitarian pragmatism") "disgusting." Such notions, Monod insists, "afflict[] and rend[] the conscience of anyone provided with some element of culture, a little intelligence."²⁰ (*Song Sparrow* was written just before the onslaught of recent books sometimes described as the "new atheism,"²¹ but surely those writings could be added to the evidence Vining gives for these descriptions.)

Pondering such denunciations, Vining wonders whether what is called "'science' . . . is molded by and is inseparable from the enemy

it constructs to hate."²² And he detects in "late twentieth-century cosmological speculation . . . the psychology of the adolescent who doesn't understand, and who destroys."²³

With totalistic science, as with other encompassing faiths, heresy and error are always cropping up not only among the unenlightened but within the congregation of the (anti-)faithful as well, and they must above all be weeded out from that field. Thus, with a sort of monastic severity, Changeaux exhorts mathematician Alain Connes that "[t]he materialist program" involves "an act of self-discipline" through which even the scientifically converted must "eliminate" within themselves "all remaining traces of transcendence."²⁴ And as if to allay suspicions of heretical tendencies, Connes hastens to concur: "I grant that the brain . . . has nothing of the divine about it, that it owes nothing to transcendence whatsoever."²⁵ Philosopher Daniel Dennett pronounces that if progress is to be made in artificial intelligence, "we must give up our awe of living things."²⁶ And Vining sorrowfully describes one of his favorite science authors, Lewis Thomas ("He was a wonderful man and I keep his books on a special shelf"²⁷), who in Vining's view struggled to rein in his gift for seeing beauty and meaning in the world in order to conform to the censorious demands of totalistic science. Hence the wonderful, sometimes troubled, quality of Thomas's writings—tossing out but then hastily disowning insights and intuitions and hypotheses that "[m]y scientist friends will not be liking,"²⁸ alluding to the irrepressible likelihood of something in the universe that transcends material processes but then quickly passing off such allusions as mere playfulness or jokes. "Jokes," Vining observes sadly, "being the freedom of the oppressed."²⁹

Central to Vining's discussion is an ostensible distinction between science itself, which he admires, and totalistic science, which

chills and appalls him. But is this distinction an illusory one? Or do the assumptions on which science is conducted necessarily commit its devotees to making totalistic claims?

Vining thinks not. "There are great scientists," he reminds us, "from Newton to Einstein who are not troubled by divinity, nor driven by a desire to eliminate it from the thought and speech of all."³⁰ But maybe the religious or poetic flourishes of a Newton or an Einstein were a sort of holiday in which they took temporary leave of their scientific vocation? Maybe the more mundane colleagues of these giants of science are in fact being more rigorously, ploddingly faithful to the logic of the scientific enterprise? Vining's perception is that over the course of the twentieth century, totalistic claims from scientists and science-admiring philosophers seemed to grow more insistent and aggressive—and more censorious: the assertions quoted earlier from Weinberg, Searle, Dennett, and Changeaux constitute just part of the evidence that he compiles.

These are thinkers whose intellectual credentials may be intimidating to most of us. So their apparently total confidence in asserting a totalistic view has force. How might such assertions be resisted? And *should* they be resisted? Like Vining, some of us might find the comprehensively naturalistic worldview unappealing: so what? Since when did theories get accepted or rejected based on whether we find them edifying, or flattering, or spiritually uplifting?

What Do We Believe, Really?

Rather than confronting such questions and doubts head-on, Vining offers instead a more oblique and measured (and, perhaps, frustrating) response—one constituted by an apparently meander-

ing meditation that circles around and around recurring themes. To appreciate this response, we need to consider Vining's somewhat unusual understanding of the character of believing and, hence, of the function and limits of reflective reasoning.

Most of us probably think of our beliefs as being at our beck and call—as being immediately transparent to us. Asked what you believe about something, you can simply look inside yourself, so to speak, and then report whatever belief you find there. The belief might be false, of course. But your sincere statement that it *is* your belief (at least as of the time of the report) seems unassailable. If you say you believe *X* and someone says, "No, you don't," the objector will seem merely boorish and obtuse.

Vining has a different conception. In his view, a belief is not simply a readily observable propositional piece on our cognitive chessboard: it is something less on the surface and instead more rooted in the depths of our being. Discovering what we believe—what we really, genuinely believe—involves not a simple introspection and report but a more serious and searching investigation of . . . well, of what we *think* we believe, yes, but also of how we live, what we desire, what we would and would not be willing to do. It may turn out, upon close examination, that people do not really believe some of what they casually thought they believed—and vice versa. "We may think we believe something here, or do not believe something there, but we do not have the last word on what we believe unless we read ourselves as a whole, in the same way we read others to determine what it is they are really saying and what it is they actually believe."³¹

Hence, someone might be mistaken not only *in* his beliefs, but also *about* them—about what his own beliefs actually are. To assert this possibility is not to insult. Rather, "an inquiry into actual

belief, asking for candor... is according a dignity to the one of whom the demand is made."³²

The point is not simply to demonstrate (or purport to demonstrate) an inconsistency in someone's professed beliefs and then quickly to conclude that he does not really believe what he insists he *does* believe, as Ronald Dworkin does when he argues that hardly anyone really believes that abortion is murder.³³ It is not that sort of surface consistency that interests Vining, but rather the deep resonance of genuine belief with and within a person's most central commitments—with and within her life. Wittgenstein once observed that "[v]irtually in the same way as there is a difference between *deep* and shallow sleep, there are thoughts which occur deep down and thoughts which bustle about on the surface."³⁴ Vining's earnest inquiry is directed to those deeper-down thoughts and beliefs.

Consistent with this personal and holistic conception of belief, the function of reasoning and reflection is not, for Vining, merely to marshal arguments—to "move from proposition to proposition"—so as to construct a proof or demonstration, or to compel someone to accept a proposition that she initially opposed. That sort of exercise hardly ever succeeds, and it would be quite pointless even if it did succeed, because the underlying beliefs might well remain unaffected by the dialectical exercise. No genuine assent would result. "Binding you to me by successful moves of my mind would lose all that can be hoped for."³⁵

Instead, Vining conceives the function of reasoning and reflection to be that of enlisting us in the enterprise of examining our actions, assumptions, commitments, and ways of talking in order to determine what we *really* believe. Reflection for him should serve the purpose that Michael Polanyi described:

I believe that the function of philosophic reflection consists in bringing to light, and affirming as my own, the beliefs implied in such of my thoughts and practices as I believe to be valid; that I must aim at discovering what I truly believe in and at formulating the convictions which I find myself holding; that I must conquer my self-doubts, so as to retain a firm hold on this programme of self-identification.³⁶

This project of determining what we really believe must be a cooperative enterprise, Vining thinks³⁷—and one that aims to achieve self-understanding, candor (a virtue on which Vining places great emphasis), and genuine assent. We may well change our opinions during the course of the project. But the change will typically come not because we are coerced by argument or evidence into repudiating our previous convictions, but because we become able to acknowledge beliefs that at some level we have held all along without being wholly conscious of them, or perhaps without being willing to own up to them.

Song Sparrow is Vining's attempt to engage in such mutual reflection with respect to science and the claims of total theory. And his conception of the enterprise points to one reason why he thinks that lawyers—not just those who are officially licensed by the state, but others as well, because "[t]here is the lawyer and law in all of us"³⁸—have a valuable role to play in debates about total claims involving science. That is because the question as he conceives it is not so much whether some scientific explanation of some particular fact or phenomenon is correct, but whether anyone—you, me, the scientists themselves—actually believes in the totalistic worldview that so many modern scientists and other thinkers publicly sponsor. It is lawyers, after all, who examine and cross-examine and reexamine,

and who probe for inauthenticity and suppression of truth. So in trying to discern what you and I—and Steven Weinberg, and John Searle—really believe, we must “[d]o what lawyers do with witnesses’ testimony,” treating even the “doctors or scientists or mathematicians [as] witnesses.”³⁹ Do we and they believe, all things considered, that we are “nothing but” or “merely” complicated material systems and processes? We may *say* we believe this, but do we *really*?

That is Vining’s question. A critic might object that this is not the only question, or the most cogent one. It might be, after all, that the reductively naturalistic worldview is true even if hardly any of us can bring ourselves entirely to embrace it—or, for that matter, that this worldview is not true even if many of us do sincerely believe it. Shouldn’t the question be *what the truth is*, not *what we believe*? Shouldn’t the latter question be wholly subordinated to the former one?

Perhaps. But Vining would reply, I suspect, that we deceive ourselves with this distinction. There is no escaping the fact that it is *we*—we finite, fallible, alternately credulous and skeptical human beings—who are posing the questions, and we are posing them for ourselves and for our purposes. Separated from the question of *what we believe*, the question of *what the truth is* can mean nothing to us.

So the question posed, for better or worse, is whether we—scientists included—really believe in the totalistic claims sometimes emanating from scientists. Vining adopts a variety of strategies for pursuing that question.

Science as a Human Enterprise

One strategy is to examine closely the scientific enterprise itself to see whether *it* can be reduced to the sorts of objective, impersonal

“systems” and “processes” into which it characteristically attempts to reduce its own subjects of study. And in Vining’s examination, it turns out that science itself is a deeply human and personal enterprise. Consequently, and ironically, if the totalistic, person-reducing claims sometimes asserted by scientists were actually true, and were fully accepted, the scientific enterprise would be impossible.

In conducting this examination, Vining stresses the dependence of science on assent. The objective conclusions of a scientific experiment are not self-validating and self-executing, as it were: they must win the assent of *persons*—of the community of scientists and, for that matter, of nonscientists.⁴⁰ Science is a cooperative enterprise. No single scientist can personally verify or vouch for more than an infinitesimal fraction of the sum of scientific knowledge; each must rely on the work and reports of others, and in order to do that each scientist must be able to assume that other scientists are working in good faith.⁴¹ These qualities—“assent,” “good faith”—are irreducibly personal in nature.

And what exactly is the significance of these observations? In some respects they may seem to resemble a familiar argument made by, among others, C. S. Lewis, in a famous debate with the philosopher Elizabeth Anscombe. Lewis argued in essence that a comprehensively naturalistic worldview cancels itself out. That is because if that wholly naturalistic worldview were correct, it would follow that all of our beliefs—including our belief in a naturalistic worldview—are the product of nonrational natural causes, such as chemical processes in the brain. But there is no epistemic efficacy in chemical processes, and we put no stock in beliefs determined by merely natural causes. So if you believe in the naturalistic worldview, the logic of your own belief should cause you to abandon this belief: naturalism “cuts its own throat.”

Every particular thought (whether it is a judgment of fact or a judgment of value) is always and by all men discounted the moment they believe that it can be explained, without remainder, as the result of irrational causes. Whenever you know that what the other man is saying is wholly due to his complexes or to a bit of bone pressing on his brain, you cease to attach any importance of it. But if naturalism were true then all thoughts whatever would be wholly the result of irrational causes. Therefore, all thoughts would be equally worthless. Therefore, naturalism is worthless. If it is true, then we can know no truths. It cuts its own throat.⁴²

Lewis thought this criticism was compelling; Anscombe didn't.⁴³ At the very least, Lewis's argument points to a paradoxical quality in comprehensive naturalism—one that manifests itself in debates not only about epistemology but about free will as well.⁴⁴

Vining's reflections resemble Lewis's argument insofar as Vining suggests that if the claims of totalistic science were true, science itself would be subverted. In this sense, total theory may appear to be self-cancelling. But it seems that Vining's point is not the rationalistic one that totalist science has somehow been *refuted* by a demonstration of internal inconsistency. That conclusion might or might not be justified, but even if it is, what would be gained by the demonstration? The confirmed naturalist might respond, "Okay, you've identified a difficulty in my argument—a sort of paradox. I commend you for your cleverness. But you haven't shown—or even purported to show—that the naturalist position is *false*. Nor have you said anything that compels me to abandon my belief in naturalism. And in fact, I still believe it."

It is precisely at this point, I think, that Vining's reflections become relevant. His goal is not so much to demonstrate that totalistic science is self-refuting on a merely analytical level, but rather to show that even the scientists themselves who make totalistic claims do not and cannot fully believe in those claims. So in response to the defiant assertion that "I still believe it," Vining's message seems to be: "No, actually you don't. You believe in science and the natural world, of course. We all do. But if you reflect candidly on your actions and commitments as a whole, even including your commitments *to science*, you will see that you do not and never did believe in naturalism—not as the whole story."

Atrocities and the Morality of Scientists

But it is not only reflection on the scientific enterprise and its methods that leads Vining to this understanding. He is led there as well (and he seeks to lead us there) by pondering the significance of the moral atrocities, large and small, that were so conspicuous in the last century—in Manchuria, Germany, and Cambodia, to mention some flagrant examples. From start to finish, these atrocities loom over Vining's discussion.

The claim is not exactly that scientific research leads to atrocities (although it can, sometimes), or that scientists are moral monsters (although no doubt some have been). On the contrary. Though he worries about the potentially destructive consequences of total theory,⁴⁵ Vining thinks that, by and large, people who devote themselves to science are admirable, moral beings. In their most truly scientific work they are "driven by love and awe,"⁴⁶ by a "passion for truth,"⁴⁷ and by the "fascination," "beauty," and aspiration to

"unclouded thought" that science can give us.⁴⁸ And both their work itself and their writings about their work reflect admirable, and deeply moral, commitments—to each other, to humanity and future generations, to the pursuit of truth.

But now comes the troubling question: How do the partisans of science explain and justify these moral values and commitments? Or more precisely, how do they explain and justify them *within the framework and on the impersonal assumptions of totalistic science*? For example, commenting on Lewis Thomas's profound concern that deforestation or nuclear holocaust might produce a world that would not "see fit" to permit the continued existence of creatures "like us," Vining asks:

Why should we care at all . . . ? If we are the random product of a billion years of evolution, and the system does not "see fit" (though those would be forbidden words) to bring forth a product "like us" in another billion years, what concern is that of ours? The dice roll six, the dice roll two. The six does not care whether a two or a six is rolled next. The dice themselves do not care. Only if there is some identification with future creatures, creatures after our individual death, creatures after the passing of every body that is in material existence at the time of our own death, identification, real, through a connection other than near succession in time in the products of the processes of the material world, can there be any claim of the distant future on our present desires.⁴⁹

This is the central incongruity explored throughout the book: the frequent and apparently sincere expression of moral commitments and aspirations by people who purport to hold a worldview

within which, in Vining's estimation, these commitments and aspirations seem alien and indeed come close to being unintelligible.

Thus, most people (scientists included) react with outrage upon learning of the experiments on human beings conducted in occupied Manchuria or Nazi Germany. But why? We routinely perform scientific experiments on animals, after all, and though the practices can be controversial we do not typically experience the same moral indignation as we do in the cases of experimentation on humans. Suppose that humans are "merely" complex natural "systems," as total theory tells us they are, and that there is no difference in "essence" between humans and animals, as Francois Jacob declares. Suppose we are, in John Gray's phrase, "straw dogs."⁵⁰ Then why do we draw such a drastic distinction here? How do we account for our conviction that experimenting on *the sparrow* is so radically different from experimenting on *the child*? This is the central question that Vining presses over and over throughout the book. (Though, as we will see, from a different direction he himself doubts the solidity of the line between sparrow and child, and seeks to draw the sparrow over to the child's side of the line.)

Nor is it merely our condemnation (and the scientists') of large-scale moral enormities that is in tension with the totalistic worldview so frequently professed. In fact, the writings even of scientists who assert totalistic claims teem with assertions of value, obligation, caring, and moral commitment. These assertions seem to be sincere, Vining suggests, but once again, they are hard to place within the naturalistic framework that these writers purport to embrace.⁵¹

Once again, we can question the significance of these incongruities, if that is what they are. Do they show that the partisans

of totalistic science are guilty of inconsistency, or of a so-called performative contradiction? Maybe or maybe not, but in any case this is not quite Vining's point. Analytical philosophers would likely respond to such a charge with conceptual distinctions and explanations calculated to dissolve or deflate or deflect the apparent contradiction, while scientists themselves—evolutionary psychologists, for example—might respond with explanations of how a species might evolve so as to favor, say, the carriers of its own genetic materials and thus to support what at least looks like a sort of altruistic behavior. But Vining's inquiry is subtly different. The question is not whether a satisfactory philosophical defense of the moral distinction between the sparrow and the child could be developed (a defense that, if persuasive, might operate to exonerate, against a charge of inconsistency, people to whom the defense would never have occurred). Nor is it whether our embrace of the distinction can be scientifically *explained*.

The question, rather, is what our words and actions in this matter tell us about what, in fact, we *really believe*. And Vining thinks (though it is, of course, hard to be certain, especially for others) that despite some protestations to the contrary, most of us really believe in a realm of value that cannot be adequately accounted for in purely naturalist terms. He thinks that if we exert ourselves to reflection and candor, and if we work up the courage to speak in good faith, we will acknowledge such beliefs. Theorists may *say* they believe in a merely naturalistic universe. But their genuine beliefs are better than their theory-driven professions.⁵²

So John Searle may declare that babies and animals are merely complex systems of "physical particles in fields of force." "But Searle would stay his hand from vivisecting a human being or pulling out

a dog's nails with pliers and then burning it alive. . . . In staying his hand, he would reveal much."⁵³

Openings into "Spirit"

Vining's examination is not limited, however, to showing tensions between what we say we believe in some contexts and what we say and do in other contexts. In a more direct and affirming vein, he asks us to contemplate what he calls "openings"—realms of experience through which, if we pay close attention, we can sense the reality of something beyond the reductionistic world of material systems and can look into the world of what Vining calls, with misgivings, "spirit."⁵⁴

The same openings will not present themselves to everyone. For some, *music* will provide this sort of insight.⁵⁵ I recall in this respect a former colleague who by his own account was incapable of religious faith but was deeply sensitive to art and music, and who confided to me that he was troubled by a naturalistic worldview because he could find no real home in it (as opposed to unsatisfying, tone-deaf evolutionary *explanations*) for Mozart's lofty compositions. The sublimity of the "Jupiter" symphony or the *Requiem* are undeniably real. So if evolutionary naturalism cannot adequately account for this sublimity, then . . . , well, my colleague honestly wasn't sure what conclusion to draw.

For other people, *language* with its intricacies and subtleties and poetry provides an opening. For still others, *land*—fields, mountains, forests—can offer a glimpse. *Death* can be yet another source of insight: "Speak of death, stand up and uncover the head in respect for death, and you have stepped through the opening, something has come to you through the opening."⁵⁶

Still another opening, Vining suggests, can be discovered by careful reflection on "the large fact of law"⁵⁷—and on our longstanding insistence in law on a distinction between the "authoritative" and the "authoritarian." The latter—or the exertion of physical power to force others to do what one wants—might be rendered intelligible in purely naturalistic terms. But real "authority," as Vining understands it, is a different and more mysterious matter: "authority" is something that we understand not as coercing us, exactly, but as having an authentic claim on our attention and respect. So, what is it that might have such a quality? The question cannot be answered in purely naturalistic and impersonal terms. Even so, we search for and believe in authority. The fact that we do this, Vining suggests, indicates again a belief in something beyond the naturalistic.⁵⁸

On a more intimate level, perhaps the most pervasive and important opening is simply the presence of other people—of human beings. Speaking under the constraint of theory, of course, we might assert that humans are merely complex systems of particles. Or, in Hawking's words, "chemical scum on a moderate-sized planet." But we do not believe this. Or at least we do not believe it when we have the "direct experience . . . of seeing a person and being seen as a person," or of actually "looking into the eyes of others." In those moments we perceive "the extraordinariness of our individuality," so that a "sense of life springs within us" and we know that there is more to a person than system and process and particles in motion.⁵⁹

Elsewhere, Vining quotes a biologist who explains "love" as a "temporary chemical imbalance of the brain induced by sensory stimuli." Vining goes on to reflect:

When presented in law with this sentence about love, there would be interest in what this same individual said at home, what he meant when heard to say "I love you" to his wife, child, friend, or sister. Putting the two statements together, the one made at home and the one made professionally, as would be done in cross-examination on a witness stand, a lawyer or jury would conclude, I think, either that the word "love" in the one statement, made in class when teaching the penguin's love as a textbook example of a system operating in an adaptive way, means something different from "love" in the other statement at home; or, if the two words are meant to convey the same, that he does not believe what he is saying in class.⁶⁰

Holding the Line, Hopefully

When we are being reflective and candid we know these things, Vining suggests. But under the pressure of a theory or ideology, we may be induced to tell ourselves otherwise, and we may also be induced to act on those inauthentic doctrines. The moral atrocities of the twentieth century were grotesque manifestations of this possibility. (Or of this "capability"?) Dehumanizing racism and slavery are manifestations of the same possibility.

Horrendous as they are, however, these enormities are in a sense still confined. In the scientific experimentation on humans conducted under the Third Reich, and in the slavery of the antebellum South, only particular classes were relegated to nonperson status. The claims of naturalistic total theory, by contrast, have sterner and more unrelenting implications: the person is—*all* persons

are—negated entirely. Vining more than once makes the point that the view of persons advocated by the proponents of total theory is a sort of universalization of the view taken of Jews and blacks in anti-Semitic fascist and slave regimes. In total theory, “[a]ll humanity is the target.”⁶¹

Actually, Vining’s concern is not confined to humanity. Though much of the discussion works from what he takes to be a common distinction between humans and other animals—between the child and the sparrow—Vining himself doubts that, viewed as a *moral distinction*, this line can hold. We react with moral outrage—or at least we do if we have not been morally mutilated by corrupt culture or heartless and hubristic theory—when we learn of experimentation on humans. Most of us may not instinctively react in the same way to experimentation on nonhuman animals. But our different attitudes may merely show that we are under the same kinds of reflective disabilities with respect to animals from which the researchers in Manchuria and Germany suffered with respect to humans. Vining suggests that if we look at an animal “eye to eye”⁶²—if we really look, and reflect—we will see that the categorical moral divide we often draw between humans and other animals is unsustainable. “The strictest ‘rationalist,’ most fastidious in his arguments, who has a dog, who nuzzles it and cares for it, and weeps when it dies, may not be a strict rationalist in actual belief.”⁶³

The point is powerfully made, I think, in an incident recounted by Timothy Jackson:

Walking dully along Temple Street in New Haven, one March day in 1979, I awoke from a rationalist’s dream. I heard over my right shoulder the screeching of tires, then a loud “Thump!” followed

by horrific howling. I turned to see a beautiful black Labrador retriever staggering along the side of the road with blood dripping from its nose and mouth. It was instantly clear, to me and the other pedestrians transfixed on the sidewalk, that this dog was doomed. Its internal injuries from being hit by the car, which did not stop, were so severe that nothing could be done. It was only a matter of time . . . and time seemed to clot more and more slowly with each high-pitched “Yelp!” from the beast. It obviously did not know how to die, because it came up to two of us in front of Timothy Dwight College and seemed to look imploringly into our eyes for some sort of explanation. I suddenly felt the need to beg pardon.

Partly inspired by Kant’s speculation that animal subjectivity is “less even than a dream,” I had just two months before written a graduate seminar paper arguing that animals don’t feel morally significant pain. . . . Now, confronted by the Lab’s agony, I saw how absurdly callous and callow this opinion was. I did not go through any elaborate process of reasoning; I simply felt for the dying dog so obviously in pain and so needlessly undone. As it slumped down in a patch of grass, I was touched by its misery and ashamed of myself. . . .⁶⁴

Vining’s questioning of the line between song sparrow and child does not lead him to any particular recommendations for terminating research involving experimentation on animals. On the contrary, he acknowledges that such research will often be warranted—just as there are situations in which *human* lives must be sacrificed for the benefit of other humans. More generally, Vining acknowledges that economics—the “dismal science” of making

trade-offs—has its necessary jurisdiction. Even so, we will make the trade-offs differently, he suggests, if we do not indulge in the false comfort of denying the moral status of the subjects we are sacrificing.⁶⁵

Nor is the point merely that nonhuman animals should be included along with humans in the class presumptively entitled to concern and protection. That sort of agenda would immediately raise boundary questions. What kinds of animals should be included in the class deserving of respect and concern? Dogs, cats, and dolphins? Snails? Amoeba? *Only* animals? Why not plants? Vining notes the boundary issue, which is real enough, but he does not dwell on it: he simply says that where to draw the line between what is and is not morally valuable—between “spirit” and mere particles in motion—requires ongoing reflection.⁶⁶ We might draw the line in a variety of ways or places: Vining does not pretend to tell us exactly where to draw it. That is not this book’s purpose.

Its central purpose, rather, is to prevent the line itself from being obliterated by the claims of “total theory” in the way so many theorists and scientists do, at least if we take their statements at face value. Everything is particles and force fields, process and system. So say the theorists. But Vining’s reflection is a powerful affirmation that we—and they, the theorists themselves—do not really believe this. To assent to this creed would be “a form of death, a giving up, a farewell.”⁶⁷ Conversely, by resisting the claims of “total theory” we can hold onto the hope with which Vining’s book ends—for an eventual “convergence of scientific and other forms of thought” in which “the scientist in all [is] no longer overshadowed by the antiscientist in any.”⁶⁸

7

OPENING UP THE CAGE?

Contemporary public discourse in this country, the critics say, is impoverished—even to the point of being “appalling,”¹ as Ronald Dworkin puts it. This book has offered a somewhat unconventional diagnosis of this situation: public discourse is impoverished because the constraints of secular rationalism prevent us from openly presenting, examining, and debating the sources and substance of our most fundamental normative commitments. Unable to acknowledge its deeper, determining strata, our discourse is condemned to superficiality.

This embarrassment is not uniformly debilitating, to be sure. Many public issues turn on straightforward economic or utilitarian considerations, for example, about which most citizens can agree with respect to basic premises, or *ends*. Disagreements in these cases can turn on different—but fully debatable—assessments of competing *means*. Thus, most people agree that, other things being equal, economic prosperity is good and unemployment is bad, and we can have meaningful discussions about which tax or monetary or trade policies are most conducive to these goals. But on a host of other issues—the sorts of issues often associated with the so-called “culture wars,” the sorts of issues discussed in this