

Metaphysical Naturalism, Postmodernism, and Jurisprudence

American jurisprudence is predicated on the assumption that we may know things as those things are; or minimally, we may think that we know those things as they are¹. In such a case, we admit of limitations to certitude, which entails knowledge of even *that* limitation. Consider the essential features of the American judicial system typified in criminal and civil proceedings: physical evidence, character witness, examination of motive, jury selection, penal administration, reference to previous legal findings and remediation, appellate process –each of these particulars grounded in the United States Constitution. Though at times the legal nexus is extremely prohibitive to the fruition of its intent, there remains nonetheless a commitment to procedures that are irrational sans epistemological, ethical and moral realism. Over and against these claims, however, are the remonstrations of metaphysical naturalism and postmodernism.² Of the former, knowledge is a derivative of exclusively biological interactive systems and perhaps subsequent and contingent emergent mental properties, whereas the latter avers knowledge as either human linguistic convention, or socially embodied, culturally defined projection. In this paper I maintain that neither metaphysical naturalism nor postmodernism yields a rational epistemology, consistently using the aforementioned legal apparatus as a foil against which we may demonstrate the failure of either paradigm to adhere. In the process it is decided that each method betrays its own assumptions and intuitively holds fast to either a non-constructed reality, or to knowledge not arrived at via strict empiricism. In pursuit of the same, it is assumed that postmodernists and naturalists think our judicial system sustainable,

¹ By “things”, I mean the entire range of physical objects, objects of perception, mental intuitions, and word usage. This will be more fully developed as those concepts are engaged in this paper.

given the absence of demands to overthrow it in favor of one in keeping with their respective epistemologies.

Darwinian evolutionists and their sociobiologist pedigree demand that reason has no place in our moral actions and “convictions”; at least “reason” as a property independent of physical emergence. “They believe that knowing about genes is absolutely essential for a proper understanding of human nature as well as life and its conditions, laws, justice and morality.”³

Other logical positivist types such as A. J. Ayer insist,

“For in saying that a certain type of action is right or wrong, I am not making any factual statement, not even a statement about my own state of mind: I am merely expressing certain moral sentiments. And the man who is ostensibly contradicting me is merely expressing his moral sentiments. So that there is plainly no sense in asking which of us is right. For neither of us is asserting a genuine proposition.”⁴

Michael Ruse and Edward O. Wilson conclude,

“Morality, or more strictly our belief in morality, is merely an adaptation put in place to further our reproductive ends. ... In an important sense, ethics as we understand it is an illusion fobbed off on us by our genes to get us to cooperate. It is without external grounding. Ethics is produced by evolution but not justified by it...it serves a powerful purpose without existing in substance.”⁵

The first instance presents the geneticist with the question of which corrective action at the gene level may alter behavior that otherwise negatively impacts reproduction, such as murder. For on that view, the concern is not violation of any objective ethical or moral precept. Indeed, no

² Postmodernism is not limited to linguistics, but linguistic value ethics and other human conventions are right at home in postmodernism, and those various terms will be used in the course of our review.

³ Peter Singer, *Ethics and Sociobiology*, abstract appearing at www.drjbloom.com, Biola University Masters program, p. 1

⁴ A. J. Ayer, , *Emotivism*, in Pojman, Louis., *Ethical Theory: Classic and Contemporary Readings*. (4th ed. Belmont: Wadsworth, 2002). P. 422

⁵ Michael Ruse and Edward O. Wilson, *The Evolution of Ethic*, abstract appearing at www.drjbloom.com, Biola University Masters program, p. 1

such possibilities obtain in a strictly physical universe. The behavior of the criminal is merely *described* as thus and such; there is no moral prescription. In such a case, it seems that laws have no real place in society except as abstracts of genetic output. Perhaps the naturalist will respond that law can serve as an expression of the genetic urge to promote happiness, and the community that codifies that expression is doing so to promote that self-interest. To that we may respond that the naturalist objection is inviting teleological implications, contrary to the purposeless mechanism their evolutionary dogmatism requires. "How can the byproducts of collisions of molecules yield a normative ethical, principle?"⁶ Indeed, how does such an advocate think *about* the utility of law in restraining certain behaviors or punishing others? Or how can the same discern the value of penal application to the rehabilitation of the criminal? Intentional properties have no home in such a metaphysic.

Ayer, Ruse and Wilson also fail to evince an "ought" from their empiricist and naturalist philosophies. The former will have great difficulty in adjudicating between competing sentiments and may well account for many instances of "hung jury". In that situation, people from various backgrounds may evidence different "feelings" about the action taken by the defendant, and conflicting sentiments about the anticipated sentencing. What the defendant may have actually done has little bearing on their deliberations, since the action itself has no real moral status, such ethical concepts being what Ayer call "pseudoconcepts". This is entirely irrational. Ayer wants to deny that a person ought to act a certain way (morally speaking), but that we *ought* to esteem his point of view as accurate.

⁶ Smith, R. Scott. *Ethics and the Search for Moral Knowledge*. Biola University, 2005. [This is a revision of a draft of a book based upon lectures for Ethics 626 in the spring 2003.] p. 91

Ruse and Wilson on the other hand go so far as to adorn evolution with teleology. Worse still, they adduce from their strict empiricism a powerful non-physical force called ethics. They do not offer any biological explanation as to how our genes trick *us*; neither can they account for the dichotomous descriptive they would otherwise disdain. For what on a physicalist account construes "us" and how can genes participate? Is it possible that a defendant would lie on the stand in an attempt to avoid imprisonment, knowing that to be held in an all-male population would threaten his innate, gene induced drive to reproduce? Could we fault him for doing so? Herbert Schlossberg wrote, "naturalism in ethics moves persistently to fulfill the logical mandate of its assumptions."⁷ Nothing then is ultimately wrong if it is merely following the course of nature.

Naturalistic proclamations purporting to explicate "reality" are echoic inasmuch as they reverberate only as a function of a fixed principle – one that its proponents deny. Humean empiricism disavows access to actuality, reducing "knowledge" to an abstract sensate experience of a thing, not the thing itself. Like a man refusing to acknowledge the existence of the canyon wall that makes possible the return of his own voice, the naturalist cries "knowledge", simultaneously crying "no-ledge." Shall we accept the premise that we can have knowledge without access to what can be known? In that case, how might we claim to have said knowledge? In other words, if naturalism is true, we cannot possibly know that it is. The naturalists know this, even without public affirmation of the same. When they insist that either physicalism is true, or that the universe is a closed self-referential system, they saw off the limb that their ladder is leaning on. Something beyond the material senses is at work when stating a

⁷ Herbert Schlossberg, *Idols for Destruction*, (Wheaton, Ill., Crossway Books, 1990) p. 171

belief *about* or *of* something. There are non-physical “concepts”, the constituents of logic, which are brought to bear on the phenomena observed. Nothing in the object transmogrifies by external apperception. When a jury reaches a conclusion based on testimony and evidence, they neither altered the evidence nor projected mental events into the witnesses’ memory. In addition, they trust that the witness is providing an accurate report (based in part on the witnesses promise to tell “the truth”) of the events to which they testify. None of this makes sense in the court of naturalism. The attorney for the naturalist will object and remind that the five senses alone give us knowledge. The gun, the blood, the DNA – each of these is amenable to empirical verification. Therefore, we may know that the person is giving an accurate report, “we can believe it because the physical evidence demands it”. Yet if we cannot know the evidence as it really is, but our experience or perception of it, then on what basis do we acquit or find the defendant guilty? May we even rely on *character* witnesses, the thoughts of others about others non-physical traits – their kindness, their thoughtfulness, etc.? Can the judge overrule or sustain an objection? The same dilemma applies to the naturalists’ rejection of reason in the discussion of knowledge. Again though, the same immaterial cognition that they incessantly repudiate *is* the epistemological constellation within which they repute.

We have observed some of the inconsistencies and failures of naturalism within the judicial framework. If naturalism is true, actions (which could not have been otherwise) are amoral derivatives of either deterministic biological systems, or responses to environmental inputs. But may we know that naturalism is true according to its own premise? R. Scott Smith writes,

“In this context, Plantinga develops Darwin’s doubt, that if evolutionary, naturalistic processes are just random, chance results of blind, mechanistic forces, then why should we trust them the deliverances of our minds, including the belief in the theory of natural evolution itself?”⁸

Schlossberg concurs, noting that if ideas simply emerge from material substrates, then “the ideas of behaviorists...are only a function of their bodies”.⁹ It seems on the contrary, that despite naturalistic disputations, American jurisprudence reflects our moral intuitions, we ought to behave certain ways, and that we ought to provide for penal consequence when appropriate.

Postmodernism and “Language Games”

Second century Christian church presbyter St. Irenaeus of Lyons wrote, “faith is established upon things truly real, that we may believe what really is, as it is, and <believing> what really is, as it is, we may always keep our conviction of it firm.”¹⁰ With great clarity and brevity Irenaeus articulated an epistemology inclusive of mind independent, objective reality; we can contemplate things external to ourselves as they are and would continue to be if we ceased to exist. For present purposes, our judicial system operates with the supposition that evidential analysis and testimony afford us access to events as they happened as well as to motive as it existed in the mind of the participants. Also, we infer that we may understand what previous findings the various courts have issued forth, and how those findings are appropriated for subsequent legal proceedings. In other words, epistemological realism grounds our judicial activities. Postmodern philosophy would ultimately replace that system

⁸ R. Scott Smith, Smith, *Ethics and the Search for Moral Knowledge*, p. 130

⁹ Schlossberg, p. 150

¹⁰ John Behr, *On the Apostolic Preaching*, (Crestwood, NY, ST. Vladimir’s Seminary Press, 1997) p. 41

with knowledge construction, interpretation or mind projection, replete with some of the same failings that attend naturalism.

Jury selection is an interesting process; attorneys for the interested parties (individuals, corporations, etc.), interview prospective jurors from a randomly selected pool generally representative of the local community. Attorneys are careful to detect both positive and negative biases and prejudices that may impact their chances for legal success. Think of a defendant having pleaded not guilty to charges of operating a motor vehicle under the influence of intoxicating beverage. In the jury pool are two individuals that have previously plead guilty to the OUI charge and suffered the loss of their license for a period of time. Each attorney is allowed to rule out a fixed number of prospects for reasons they deem appropriate to their case, so the prosecutor removes the two that have prior OUIs. His concern of course is that they may be sympathetic to the defendant. In this simple example we recognize that interacting persons at least believe that they have access to another's actual mental state or attitude. The attorney has come to a decision *about* a potential juror. She knows that people driving under the influence *are* a danger to society. The majority in society concurs that to operate under the influence is to commit moral wrong, not merely to break the law. But if it is actually morally wrong, can we know it? Do we have a shared ability to adjudicate between competing ethical interests? May we "legitimize or justify our moral viewpoints and claims beyond merely our own internal criteria?"¹¹

Nancey Murphey argues, "all beliefs are theory laden, and thus there are no truths about the world that we may *know* apart from our particular theories, language paradigms, conceptual

¹¹ R. Scott Smith, *Ethics and the Search for Moral Knowledge*, 297

schemes, etc.”¹² This progeny of Kantian philosophy has penetrated much contemporary thought as to the mind’s relationship to the world. An important feature of these theories is that language, rather than describing the world that the mind has made contact with, is constitutive of the world in which we interrelate, and indeed is internally related to the world.

“So, it is the complex interplay of both linguistic and other behaviors that give shape to and help define a particular form of life, in which meanings are developed in conformity with the language-games practiced therein.”¹³

More complicated still, the interplay of language across communal boundaries (on linguistic convention theories) threatens a breakdown in rationality. For communities separated by time and cultural distinctive hypothetically may arrive at radically different conclusions as to moral or ethical values. As a possible solution to this potential crisis, thinkers such as Alistaire MacIntyre suggest that we may supervene on an otherwise total collapse into relativism by learning the “language” of other linguistic communities, and so come to realize some hierarchical rational scheme in the language game. What he and others either miss or eschew altogether, is that their minds have made contact with the non-contingent reality that there *is* a device for “deciding between” alternate realities. And of course, these thinkers are not merely setting the table for their community’s intellectual fare, but supposing to offer cerebral sustenance for global consumption.

Returning to the judicial context will confirm the suspicion that the language game is not played with all the pieces. How could lawyers prepare for current litigation with the aid of previously documented court rulings? To do so would require that the attorney must learn the

¹² Ibid., 193 *Italics added*.

¹³ 2. Smith, R. Scott. *Virtue Ethics and Moral Knowledge: Philosophy of Language After MacIntyre and Hauerwas*. (London: Ashgate, 2003), pp.31-32

language of the community language and culture from whence the prior decision was issued. But how could he do that? He cannot immerse himself in that culture. How could one appeal to Constitutional provisions without the advantage of living in those times? These are necessary preconditions to linguistic convention, moral theories. Remember also that the jurors very likely represent a diverse cross section of communities and cultures. Pity the foreperson that must learn all the applicable languages to make them cohere in a fair judgement. Or what expectation do we have for a guilty defendant, sentenced to confinement in what may well be an entirely foreign language community? What moral direction is it hoped that he would turn to? What can be the goal of any penal consequence? To be clear, simply appealing to these difficulties does not amount to logical refutation, but our intuitions direct us to that end; and as has been evinced here, the theories are self stultifying, providing defeaters within their own arguments.

May I know who *I* am? May *another* person know who *I* am? To be consistent, postmodern thinking must surrender any notion of enduring personhood, i.e., a person remains essentially the same even through change. For neither does the personal self exist apart from its identification by communal convention or construction. According to MacIntyre, the self is a narrative unity of a whole life; and that unity is co-authored by the *self*, and the family and community etc. into which it is born and grows. The self is made determinate by linguistic inclusion in ongoing narrative.¹⁴ It is not good for man to be alone, for in that case there is no else to describe him.

¹⁴ Ibid., 53-56

The rejection of an ongoing personal human identity, independent of language and social projection, runs afoul of the reality in which society holds individuals accountable within a legal framework. This is akin to the error of naturalism as well, wherein humans are merely on a continuum of biological change. Yet absent noetic unity, one could not genuinely be held responsible for his or her conduct; we cannot ask *who* did it. Suppose that Larry committed murder twenty five years ago. Can we penalize or even try him within a community that did not participate in the same language game? If the trial continues for a six months, is Larry the same Larry that swore to tell the truth at the outset?

Metaphysical naturalism and postmodernism seriously compromise rationality by either dismissing independent objective reality, or espousing reality as a projection or determination of the mind. Proponents of those philosophies have yet to present a forceful explanation that satisfies the conditions for knowing reality while denying epistemological realism. Our judicial system confronts the choice that individuals make against the *ought* and provides legal and penal remedy for the "ought-breakers". The challenge of this paper is against those thought systems that betray what we regularly practice. Those ideologies are out of order and must remain held in contempt for their refusal to reveal an adequate source to ground their deliberations.

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