



Nihilism and the End of Law

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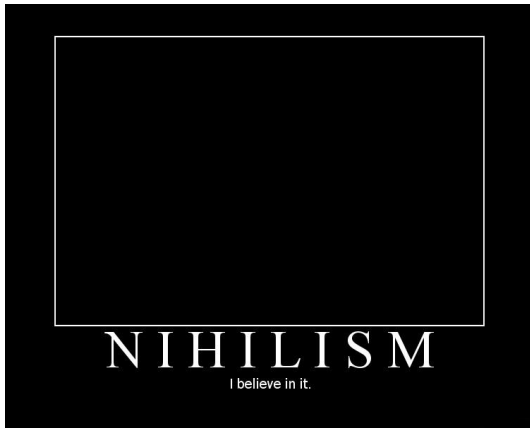
When President Bush nominated Judge Clarence Thomas to a vacancy on the United States Supreme Court, liberals opposed to confirming the nomination at first

directed critical scrutiny to statements the nominee had made in favor of employing "natural law" in constitutional interpretation. The Chairman of the Judiciary Committee that had to pass upon the nomination, Democratic Senator Joseph Biden, emphasized that he too believed in the existence of natural law. Indeed, he had successfully opposed a previous Republican nominee to the Supreme Court, Judge Robert Bork, in part because Bork had denied that the Constitution protects certain "natural" rights that are not mentioned in the document itself. At that time Senator Biden had insisted that "My rights are not derived from any government. . . . My rights are because I exist. They were given to me and each of our fellow citizens by our Creator and they represent the essence of human dignity."

Senator Biden feared, however, that Judge Thomas might believe in the wrong kind of natural law. He explained the difference between good and bad natural law in a newspaper article that expanded on a theme first advanced in the New York Times by Harvard Law School Professor Laurence Tribe. According to Senator Biden's article, good natural law is subservient to the Constitution-i.e., to positive, man-made law-and its use is therefore restricted "to the task of giving meaning to the Constitution's great, but sometimes ambiguous, phrases." Second, good natural law does not dictate a moral code to be imposed upon individuals; instead, it protects the right of individuals to make moral decisions free from dictation by either legislators or judges. Finally, good natural law is not a static set of "timeless truths" but rather an evolving body of ideals that changes to permit government to adjust to new social challenges and new economic circumstances. In short, good natural law doesn't prevent us from doing anything we really want to do.

As a legal scholar, I had hoped Judge Thomas would accept Senator Biden's challenge and articulate a vision of natural law with real content, but this was not to be. Robert Bork had debated his legal theories with the Senators candidly, with disastrous results, and political strategists had concluded from that experience that the way to get confirmed is to say as little as possible.

Judge Thomas took their advice, and stuck to a simple set of unilluminating answers when the Senators tried to probe his judicial philosophy.



The resulting stalemate illustrated the ambivalence with which our contemporary legal culture regards the proposition that there exists some objective standard of right and wrong against which human legal standards can be measured. Anyone who says that there is such a standard seems to be denying that we are morally autonomous beings who have every right to set our own standards. On the other hand, anyone who denies that

there is a higher law seems to embrace nihilism, and therefore to leave the powerless unprotected from the whims of whoever controls the law-making apparatus. Either alternative is unacceptable. The safest course is to be impenetrably vague or confusing on the subject.

The Biden-Thomas exchange reflected at the partisan political level a problem that permeates the literature of legal philosophy. I call this problem the modernist impasse. Modernism is the condition that begins when humans understand that God is really dead and that they therefore have to decide all the big questions for themselves. Modernism at times produces an exhilarating sense of liberation: we can do whatever we like, because there is no unimpeachable authority to prevent us. Modernism at other times is downright scary: how can we persuade other people that what they want to do to us is barred by some unchallengeable moral absolute?

Yale Law Professor Arthur Leff expressed the bewilderment of an agnostic culture that yearns for enduring values in a brilliant lecture delivered at Duke University in 1979, a few years before his untimely death from cancer. The published lecture-titled "Unspeakable Ethics, Unnatural Law"-is frequently quoted in law review articles, but it is little known outside the world of legal scholarship. It happens to be one of the best statements of the modernist impasse that I know. As Leff put it,

I want to believe-and so do you-in a complete, transcendent, and immanent set of propositions about right and wrong, findable rules that authoritatively and unambiguously direct us how to live righteously. I also want to believe-and so do you-in no such thing, but rather that we are wholly free, not only to choose for ourselves what we ought to do, but to decide for ourselves, individually and as a species, what we ought to be. What we want, Heaven help us, is simultaneously to be perfectly ruled and perfectly free, that is, at the same time to discover the right and the good and to create it.

The heart of the problem, according to Leff, is that any normative statement implies the existence of an authoritative evaluator. But with God out of the picture, every human becomes a "godlet"-with as much authority to set standards as any other godlet or combination of godlets. For example, if a human moralist says "Thou shalt not commit adultery," he invites "the formal intellectual equivalent of what is known in barrooms and schoolyards as 'the grand sez who?'" Persons who want to commit adultery, or who sympathize with those who do, can offer the crushing rejoinder: What gives you the authority to prescribe what is good for me? As Leff explained,

Putting it that way makes clear that if we are looking for an evaluation, we must actually be looking for an evaluator: some machine for the generation of judgments on states of affairs. If the evaluation is to be beyond question, then the evaluator and its evaluative processes must be similarly insulated. If it is to fulfill its role, the evaluator must be the unjudged judge, the unruled legislator, the premise maker who rests on no premises, the uncreated creator of values. . . . We are never going to get anywhere (assuming for the moment that there is somewhere to get) in ethical or legal theory unless we finally face the fact that, in the Psalmist's words, there is no one like unto the Lord. . . . The so-called death of God turns out not to have been just His funeral; it also seems to have effected the total elimination of any coherent, or even more-than-momentarily convincing, ethical or legal system dependent upon finally authoritative, extrasystematic premises.

Leff pointed out that it is not we who define God's utterances as unquestionably true, in the manner that we define a triangle as a three-sided plane figure. In a God-based system, God is not an idea in the human mind but a separate and controlling reality. If human reason aspires to be the judge of God's statements, it makes itself the unevaluated evaluator, which is to say it takes God's place. In Leff's words, "Our relation to God's moral order is the triangle's relationship to the order of Euclidean plane geometry, not the mathematician's. We are defined, constituted as beings whose adultery is wrong, bad, awful. Thus, committing adultery in such a system is 'naturally' bad only because the system is supernaturally constructed."

The relationship between natural law and supernatural authority requires a bit of explanation. In the philosophic tradition of Thomas Aquinas, "natural law" is distinguished from divine law because its commands are accessible to human reason even in the absence of divine revelation. To a theist like Aquinas, the reality of a moral law was not in question. The question was how much of that law we could know from natural reason (or academic philosophy), and how much we could know only from Scripture or the Church. This two-level system of reason and revelation made it possible for Aquinas to fuse the pre-Christian philosophy of Aristotle with the revelation-based doctrines of the Roman Catholic Church.

To a modernist, who by definition relies only upon human authority, natural law in the Thomistic sense is no longer supportable because it would have to rest upon the unacceptable premise that nature was supernaturally created. There are still plenty of people around who would like to argue that a moral code can be discerned from nature, but the modernist understanding of nature undermines their efforts. According to Judge Richard Posner, the very idea of natural law rests upon a premodern picture of nature that science has discredited.

Even the term "natural law" is an anachronism. The majority of educated Americans believe that nature is the amoral scene of Darwinian struggle. Occasional attempts are made to derive social norms from nature so conceived, but they are not likely to succeed. It is true that a variety of widely accepted norms, including the keeping of certain promises, the abhorrence of unjustified killing of human beings, and perhaps even the sanctity of property rights, promote the adaptation of the human species to its environment. But so does genocide.

In other words, a certain amount of social cooperation is natural, in the Darwinian sense, because it tends to promote the survival of a tribe or kinship group. Murderous violence against outsiders is equally natural, because it promotes the spreading of one group's genes by eliminating competing genes. In fact, Darwinian natural selection is defined as a process by which superior varieties exterminate their inferiors, whether by attacking them directly or by competing more effectively for limited resources. It is therefore no wonder that equating what is natural with what is good-i.e., trying to derive "ought" from is-is dismissed these days as the "naturalistic fallacy."

Modernists therefore see no merit in natural law propositions about, say, sexual morality. For example, even if one grants that homosexual intercourse or abortion is in a sense less natural than heterosexual intercourse or childbirth (because it does not further reproduction), it does not follow that "unnatural" means wrong, or even undesirable. It is equally unnatural for humans to fly in airplanes, since we are not born with wings. Rejection of the naturalistic fallacy does not necessarily mean that modernists discard natural law altogether, however. As Senator Biden's article indicates, modernists are much more comfortable with the idea of natural rights than with natural obligations. Because the individual human subject-Leff's godlet-is the modernist starting point, it seems reasonable to place a heavy burden of justification upon anyone who seeks to restrain the liberty of that subject. This burden of justification is what Leff whimsically called "the grand sez who."

The assertion of rights cannot for long be separated from the imposition of duties, however. If we give X a right to do as she wants, and she wants to get an abortion, we must soon face the question of protecting her from Y,

who wants to protect the rights of unborn children. If majority opinion in the legislature favors some restrictions upon abortion, and there is no specific language in the Constitution on the subject, then "pro-choice" forces have to invoke something very much like a natural law duty to get their way. "Thou shalt not interfere with a woman's right to choose abortion; indeed, thou must help to pay for abortions through tax money; more than that, thou shalt not legislate that the woman contemplating abortion must be fully informed about the potential adoptive parents who desperately want to provide a loving home for her unborn child." Sez who?

The modernist impasse, in other words, does not stymie as long as all we are doing is proclaiming liberties. The problem for modernists is how to justify imposing obligations. Homosexuals have a right to be homosexuals, of course, but do employers who disapprove have an obligation to hire them? The poor have a right to public assistance, of course, but do the more fortunate and productive citizens have a right to refuse to pay when they think the tax burden has become unreasonable? The rights of all citizens must be protected, of course, but who are the citizens? What about infants, the unborn, foreigners, and animals? Who or what has the authority to tell us whom we ought to admit to the sphere of protection?

Most of Leff's lecture consisted of a review of all the unsuccessful attempts to establish an objective moral order on a foundation of human construction, i.e., to put something else in God's place as the unevaluated evaluator. The asserted non-supernatural sources of moral authority are many and varied, and each is only temporarily convincing. They include: the command of the sovereign; the majority of the voters; the principle of utility; the Supreme Court's varying interpretations of the Constitution's great but ambiguous phrases; the subtle implications of platitudinous shared values like "equality" or "autonomy"; and even a hypothetical social contract that abstract persons might adopt in the imaginary "original position" described by John Rawls. Every alternative rests ultimately on human authority, because that is what remains when God is removed from the picture. But human authority always becomes inadequate as soon as people learn to challenge its pretensions. Every system fails the test of "the grand sez who."

Leff's lecture made a powerful impression upon a generation of legal scholars because he stated the nature of the impasse so convincingly. Most modernist thinking consists of attempts to evade the impasse with superficial resolutions. Scientific socialism can usher in a secularized Kingdom of Heaven by giving economic power to the proletariat. Criminal tendencies in individuals can be greatly reduced by providing education, psychiatric treatment, and economic opportunity. Public education can produce rational, self-controlled citizens, who can govern themselves through liberal political institutions and free markets. Scientific technology can provide abundance and health, and even eventually improve the human species itself by genetic engineering. Above all, we can still know what the good is, however difficult

it may be to achieve it. Modernist philosophy teaches that when we lost God, we lost only a projection of the best that was in ourselves; what was real in that projection therefore remains, and only the illusion is gone.

Arthur Leff had a deeper understanding of what the death of God ultimately means for man. He saw modern intellectual history as a long, losing war against the nihilism implicit in modernism's rejection of the unevaluated evaluator who is the only conceivable source for ultimate premises. Leff rejected the nihilism implicit in modernism, but he also rejected the supernaturalism that he had identified as the only escape from nihilism. Here is how he concluded his 1979 lecture:

All I can say is this: it looks as if we are all we have. Given what we know about ourselves, and each other, this is an extraordinarily unappetizing prospect; looking around the world, it appears that if all men are brothers, the ruling model is Cain and Abel. Neither reason, nor love, nor even terror, seems to have worked to make us "good," and worse than that, there is no reason why anything should. Only if ethics were something unspeakable by us could law be unnatural, and therefore unchallengeable. As things stand now, everything is up for grabs.



Nevertheless:

Napalming babies is bad.

Starving the poor is wicked.

Buying and selling each other is depraved.

Those who stood up and died resisting Hitler, Stalin, Amin, and Pol Pot-and General Custer too-have earned salvation.

Those who acquiesced deserve to be damned.

There is in the world such a thing as

evil.

[All together now:] Sez who?

God help us.

What Leff said is fascinating, but what he failed to say is more fascinating still. If there is no ultimate evaluator, then there is no real distinction between good and evil. It follows that if evil is nonetheless real, then atheism-i.e., the idea of the nonexistence of that evaluator or standard of evaluation-is not only an extraordinarily unappetizing prospect, it is also fundamentally untrue. Because the reality of evil implies the reality of the evaluator who alone has the authority to establish the standard by which evil can deserve to be damned. When impeccable logic leads to self-contradiction, there must be a faulty premise. In this case the premise is that because God is dead, "it looks as if we are all we have." Why not reexamine

the premise? Why not at least explain why you refuse to reexamine the premise?

By not asking that last question, Leff in effect placed the death of God in the place of God. In his system, the absence of a supernatural evaluator was a premise so far beyond question that it could not be doubted even when it pointed to a conclusion Leff desperately wanted to escape, even a conclusion he acknowledged to be false. If we know that totalitarian mass murder is evil, and that those who acquiesced in it deserve damnation, then we know something about that absolute evaluator as well. Leff offered no reason for protecting modernism's founding premise from the brilliant skeptical analysis that he directed at everything else.^{1} To a theist this must seem indefensible, but Leff could not have done otherwise without ceasing to be a modernist. A system's ultimate premise is always beyond question; that is what it means to say that it is an ultimate premise.

The most interesting aspect of any argument is not what it explicitly states, but what it implicitly assumes. A rationalistic culture teaches us to think that truth is the product of a process of logical reasoning. When we are dealing with intermediate or detailed truths, which rest on more fundamental premises, this model is correct. The model breaks down, however, when we try to apply it to the fundamental premises themselves. This is because logic is a way of getting to conclusions from premises. By its very nature, a logical argument cannot justify the premises upon which it rests. When these premises are questioned, they have to be justified by a different logical argument, which rests upon different premises.

We may follow this process forever, and we will never encounter anything but another logical argument, which will itself be based upon premises. But then what is the ultimate premise, the Archimedean fulcrum on which intellect can sit and judge all the rest? If we try to answer that question by employing logic we lapse into the absurdity of circular reasoning. Reasoning has to start somewhere. Any attempt to justify the ultimate starting point necessarily fails, because it only establishes a different starting point. Hence, the really important step in any argument is apt to be the unexplained, unjustified, and often unstated starting point.

For example, take the rationalist philosopher who demands philosophical proofs of God's existence. From a humanistic standpoint, which finds its Archimedean point in the self-existent human mind, the demand is perfectly reasonable. But where did this mind come from, and why should we trust its philosophical ground rules? From a biblical theistic standpoint, human reason possesses a degree of reliability because God created it in His own image. When human reason denies its basis in creation, it becomes unreason. Those who have thought that they are wise in rejecting God end up as fools, carried along by every intellectual fad and approving every kind of hateful nonsense. Many people who live in modern times find this analysis confirmed every day

by what they see on television and read in the newspapers. Then why is the biblical starting point out of the question for modernist intellectuals?

The primary answer is that modernist thinking assumes the validity of Darwinian evolution, which explains the origin of humans and other living systems by an entirely mechanistic process that excludes in principle any role for a Creator. In the word of the neo-Darwinist authority George Gaylord Simpson, the meaning of "evolution" is that "man is the result of a purposeless and natural process that did not have him in mind." For modernist intellectuals, belief in evolution in precisely this sense is equated with having a scientific outlook, which is to say, with being a modernist. The price for denying "science" is to be excluded from modernist discourse altogether. That is why "it looks as if we are all we have," even if the model for "we" is Cain and Abel.

In my book *Darwin on Trial* I explained that Darwinian theory finds its basis in the philosophy of scientific naturalism rather than in an unprejudiced examination of the evidence. In other words, the theory that is itself the most important supporting pillar for the modernist system is itself supported by that very system, in a classic example of circular reasoning. If that analysis is correct, then scientific naturalism itself is the product of a faith commitment rather than an irresistible inference from the facts provided by scientific investigation. In that event, the modernist impasse may be a problem of the mind that has sold itself into captivity. Can a way out of this captivity be found in "religion"?

Not if religious thinking itself accepts the ground rules of modernism. R. Kent Greenawalt, a University Professor at Columbia University, is a distinguished legal philosopher who has tried to justify a mild theism without directly challenging the modernist definition of rationality. In Greenawalt's words: "With some uncertainty and tentativeness, I hold religious convictions; but I find myself in a pervasively secular discipline." In the 1986 Cooley Lectures at the University of Michigan Law School, Greenawalt defends a limited role for religious convictions in a jurisprudential culture whose ruling paradigm, called "liberalism," is roughly identical to what I have been calling modernism.

Some legal philosophers say that liberalism implies the exclusion of religious considerations from public life. Their reasoning is that public decisions should be made on the basis of principles and arguments accessible to all persons. This basic principle implies that common sense and science must supply all the essential factual knowledge, and that standards of ethics and justice must come from secular philosophies that rest upon uncontroversial assumptions. For example, Cornell University philosophy professor David Lyons declares that to reject the idea of "a naturalistic and public conception of political morality . . . is to deny the essential spirit of democracy." In the same spirit, Yale Law School's Bruce Ackerman writes disparagingly of those

who want to restrict abortions "on the basis of some conversation with the spirit world." According to this influential version of liberalism, people who want to make public policy on the basis of some private knowledge of God are fundamentally undemocratic, because they refuse to share a common base of discourse with their fellow citizens.

Responding to this "religion is for private life only" position, Greenawalt argues that in some circumstances citizens of a liberal/modernist state may rely upon their personal religious values in casting votes or framing arguments. Some religious citizens may have difficulty understanding why the argument even has to be made. All they have to do, after all, is invoke "the grand sez who" and then vote and argue as they like. Greenawalt concedes that citizens of a secular liberal state have a legal right to vote their religious convictions, but he is more concerned with when and whether they ought to exercise self-restraint in the interests of good citizenship. Model citizens do not do everything they are legally entitled to do. They do not, for example, advocate the legal subjugation of one race by another, or the establishment of a particular religion, even though such advocacy is constitutionally protected. Good citizens also decide how they will vote on rational grounds, as far as they are able. But according to modernist liberalism, religious beliefs are inherently nonrational. Does it follow that model citizens should leave their religious convictions at home (where they are relatively harmless), and base their votes and arguments concerning public questions on secular considerations only?

Greenawalt concedes that "legislation must be justified in terms of secular objectives." Nonetheless, "when people reasonably think that rational analysis and an acceptable rational secular morality cannot resolve critical questions of fact, fundamental questions of value, or the weighing of competing harms, they [may] appropriately rely on religious convictions that help them answer these questions." He assumes the modernist position that only secular reasoning can be completely rational, because he thinks that "a critical nonrational element" is always present in religious belief. The presence of such a nonrational element does not disqualify religious values from consideration in lawmaking, however. Because "rational secular morality" cannot conclusively decide such important value questions as how highly we should rate the preservation of fetal life, or how generously we should provide for the poor, legislators and judges as well as ordinary voters may with good conscience rely on their personal religious convictions to resolve such questions.

By implication, Greenawalt accepts the crucial modernist assumption that there exists a common secular rationality capable of resolving some important public issues without relying upon controversial and unprovable (i.e., nonrational) assumptions. Otherwise, the conceded distinction between "religious" and "rational secular" thinking would collapse. This is an extremely important concession: giving modernists the power to define

rationality ensures that, even if "religion" is allowed a modest place in public discussion, God will continue to be effectively excluded. The reason lies in the very basis of modernist metaphysics. "Religious belief" is a real category to modernists; so is belief in fairies. All religions are equal-equally imaginary, that is. To modernists "God" is an idea in people's heads, not a reality outside of human subjectivity. As long as modernists make the rules, every godlet can undermine every theistic proposition at will by invoking the grand sez who. The culture will still be left to choose between an intolerable nihilism and continuing to chase the illusion of liberal rationalism.

At times Greenawalt seems to accept that illusion, but at other times he shows an awareness that it is an illusion. Here is how he explains his own understanding of rationality:

I confess to considerable uncertainty about where rationality ends; but among rational convictions I include those that are apparent to anyone with ordinary rational faculties or that can be demonstrated or persuasively argued on rational grounds. Beliefs that humans have greater ethical capacities than leaves, and that love is more productive of happiness than hate, can be rationally established. An irrational conviction is contrary to what can be established on rational grounds. A non-rational conviction, in my sense, is a conviction that is not irrational but that reaches beyond what rational grounds can settle.

When a philosopher defines his central concept only in terms of itself (rational propositions are those that appeal to rational people or that can be supported on rational grounds) it is a sure sign of confusion.^{2} Moreover, a secular rationalism that can't resolve anything more controversial than that humans have more ethical capacity than leaves is useless. The point modernist rationalism has to establish, or assume, is that a common secular rationality exists which is capable in principle of resolving the issues that actually divide people. Examining the most famous recent example of such a system, the rights-based liberalism of John Rawls, Greenawalt clearly recognizes that this basic modernist assumption is false.

Recognizing that citizens in liberal societies have variant religious beliefs and ideas of the good, Rawls begins with premises that are widely shared by people who disagree on many fundamental questions. From these premises, he aspires to draw principles of justice whose acceptance allows political decisions to be made without reference to the fundamental religious and metaphysical beliefs that divide citizens. . . . Contrary to what Rawls supposes, he does not provide a theoretical basis for thinking that this ambition is either realizable or desirable.

But why then does Greenawalt build his defense of religious opinion on the assumption that this ambition is both realizable and desirable? The probable answer is that in these lectures he was addressing an audience of modernist

liberal rationalists, and wanted to persuade them that even their own philosophical system had to concede at least some room for nonrational opinions on public questions, and therefore for religious opinion. Moreover, Greenawalt is a generous-minded person who understands that it is desirable to conduct public discussion on as ecumenical a basis as possible. However confused his notion of rationality may have been, his intention was to persuade his adversaries by meeting them on their own metaphysical territory.

Up to a point, this way of arguing is itself an act of good liberal citizenship. If a society is to be governed on the basis of consent rather than force, it is important that the laws make sense to as many citizens as possible. To that end, we should try to justify the laws on the least controversial basis that is available. That is why nowadays we defend Sunday closing laws (if at all) by the secular purpose of encouraging a general day of rest and recreation rather than the original purpose of honoring the Lord's Day or maximizing church attendance. In a more general sense, the courtesy we owe to fellow citizens argues for framing public questions in language that invites everyone to participate in the discussion on comfortable terms. It would be insensitive as well as ineffective, for example, for Christians to exhort their Jewish, Muslim, or agnostic neighbors about what Jesus would want us to do. On the other hand, Christians (or religious people in general) shouldn't be excluded from the political conversation either, as they would be if only agnostic opinions could count. Greenawalt's moderate and nuanced position about the proper role of religion in secular political discourse rightly addresses these questions of political good manners.

But good manners is one thing; giving away the authority to define rationality is something else altogether. Good citizens treat their neighbors' deeply held convictions with respect not because they are necessarily rational, but because they are deeply held. Standards for defining rationality are as controversial as any other assumptions. What Greenawalt accepts as "rationality" is actually the irrational assumption that we can get along very well without employing any controversial assumptions about the nature of ultimate reality. This assumption is the idol of rationalism, the faith commitment that holds the tribe together. We should perhaps treat the idol gently, because it is still very dear to many admirable people, but we should not bow down and worship it. For any genuine theist, ultimate reality must be God-not the unanchored, self-validating human mind.

Theists may be entering a time of great opportunity for affirming that understanding of reality, because the modernist idol's substance is dissolving a little more every day. In the twenty-first century, philosophy's task will be to rebuild a positive response to the human predicament that starts with the cause of that predicament, man's alienation from God. Before it can undertake the positive task, however, it must complete the critique of atheistic rationalism. On the scientific side, theists need to continue to

expose the vulnerable philosophical assumptions that provide the only real support for the Darwinian theory of evolution. On the ethical and cultural side, they need to help the public as a whole to understand that the nihilism permeating contemporary life is the inevitable consequence of apostasy. King Lear's words provide the appropriate epitaph for modernism: "Nothing will come of nothing."

Secularized intellectuals have long been complacent in their apostasy because they were sure they weren't missing anything important in consigning God to the ashcan of history. They were happy to replace the Creator with a mindless evolutionary process that left humans free and responsible only to themselves. They complacently assumed that when their own reasoning power was removed from its grounding in the only ultimate reality, it could float, unsupported, on nothing at all. As modernist rationalism gives way in universities to its own natural child-postmodernist nihilism-modernists are learning very slowly what a bargain they have made. It isn't a bargain a society can live with indefinitely.

{1} Arthur Leff's intellectual crisis had a strange effect upon his scholarly career. Although I never met him, I know from mutual friends that Leff's Yale Law School colleagues revered him because he combined acute critical intellect with an unusual measure of humility and sympathy. According to Yale Law Professor Charles L. Black: "If you took to Arthur a thought of yours, he always moved it along a step. He rarely 'joined issue'; it was more of his nature to give the course of shared thought a sudden turn into some new dimension-nearly always surprisingly, always relevantly. ... I don't think I ever heard Arthur say anything cutting or unkind about anybody. There was in this no suggestion of saccharinity. It was rather, one felt, that he was wise enough either to find some reason for charity, or to have learned, from an even greater wisdom, that charity is to be practiced even if a reason does not immediately come to mind. He carried around with him the classic Chinese maxim, that the inferior person makes demands on other people, while persons of honor make demands on themselves."

This outstanding person devoted what ought to have been his most intellectually productive years to an extraordinary drudgery. According to his wife Susan, he was haunted by what I call the impasse of modernism, in her words the realization that "there is no longer a reasonably obvious set of questions that will lead one, with hard work and intelligence, to produce a good piece of scholarly work." He thought that somehow he would be better equipped to return to the philosophical quandary after undertaking some Herculean labor that would compel him to master the subject of law in its entirety, "one micron deep." And so Leff began writing a legal dictionary, at a pace so deliberate that he thought he might complete it "by the year 2075." When he died of a fast-acting cancer at the height of his intellectual powers, he had completed only the entries for the letters A, B, and C. The student-edited Yale Law Review devoted the entire July 1985 issue (about 400 pages)

to this fragment, along with the personal tributes from which the quotations in this note are taken.

{2} When he republished his lectures in book form, Greenawalt more or less abandoned the effort to employ the categories "rational," "nonrational," and "irrational" to distinguish among belief systems. This left the basis of any principled distinction between secular and religious beliefs thoroughly mysterious. Christianity, socialism, and feminism are all alike in the sense that each has a logic of its own and attracts a wide following, while also being opposed by many well-informed and intelligent persons. See Kent Greenawalt, *Religious Convictions and Political Choice* (New York: Oxford University Press, 1988).

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