The Midway Review publishes informed, accessible essays featuring literary, cultural, and political commentary and criticism. It is a forum for serious reflection and civil discourse across a variety of intellectual perspectives. We are currently accepting submissions to be considered for our Spring 2015 issue. For submission guidelines, please consult midwayreview.uchicago.edu.

Letters to the editor may be addressed to themidwayreview@uchicago.edu. We ask that letters be limited to 350 words.

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If you have all of this variety in flavor, this subtlety of taste, then how could something as simple and as bland as PBR compare?

What is the fundamental ground that allows us to speak of what the founding fathers called “inalienable rights” if not the religious correlate, “human dignity”?

“It’s about when you eat. You’re fucking disgusting.”

“It’s a big trap just to think that there’s some kind of uniform solution.”
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Dear Reader,

Once each quarter, all the editors gather in a small room to read submissions and decide what will go into the newest issue of The Midway Review. These meetings tend to be chatty and relaxed, featuring a healthy amount of debate and baked goods. In this issue, our essays capture both the diversity and shared curiosity of our Midway table. They include a meditation on the aesthetic value of craft beer, an interview on the effectiveness of human rights law, a review of two books discussing the changing role of religion, and a personal reflection on love, literature, and bad table manners.

At the heart of each essay is an honest look into how we understand our day-to-day lives. Whether by contemplating what we drink, how we eat, what we believe in, or our approach to helping others, each piece tackles its central question with insight and sympathy to its very human concerns. We hope you will find in each of these essays, as we did, rich food for thought.

—The Editors
The past few years have been good for the craft beer industry. Very good, in fact. There’s a cute little infographic on the website of the Brewers Association informing its reader that in the year 2013, while overall beer sales in the U.S. went down 1.9%, craft beer sales saw a 17.2% increase. (The graphic is formatted to have the words justified within their columns, so that the bold all-caps word BEER immediately catches your eye, reading like a convivial bar greeting. BEER!) What lies behind the apparent overwhelming success of craft beer? What is it that appeals to the craft beer consumer about Sierra Nevada or New Belgium brews that Budweiser cannot offer? There are several compelling, readily available answers to these questions, ranging from sheer superior quality to a significant increase in the number of small breweries (and therefore the availability of craft beer).2 Amidst these explanations for craft beer’s success is the proposal that the image of drinking craft beer has somehow become popular—that a subset of people now want to be known as craft beer drinkers. In the world of beer, the artisanal product is now desirable as a social tool, demonstrative of a more refined aesthetic taste.

This trend is obviously applicable to more than just beer. Anything you can put in your mouth, be it peanut butter, toast, or syrup, has its Jif, Wonder Bread or Mrs. Butterworth’s and their higher-quality, more expensive, and ultimately more hip, competitors. In every case we seem to see the artisanal product as better reputed, more desirable to consume. The

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2. There’s even speculation that the U.S. could soon have the more breweries than it has had since before Prohibition. Mike Snider and Maya Lau. “American taste for craft beer on the rise,” The Shreveport Times, 5 Oct. 2014.
craft product indicates refinement. The cultural shift toward the consumption of artisanal food, if we recognize it as such, is not merely a manifestation of a trend, but perhaps also suggests a very human impulse: to differentiate mankind from animal. In creating consumable products in more time- and resource- consuming ways, we put an additional dosage of humanness, of culture into these products. Every lautering, every addition of spice, every minute spent barrel- aging is a step away from mere functionality— from creating a product for the sheer sake of obtaining nutrients—and toward creating something that stimulates human taste for its own sake. *La bière pour la bière.*

If you spend any significant amount of your time visiting or touring breweries, you are bound to hear someone make the following proclamation at some point: “Beer is art.” Not simply artisanal, but actual art. It’s easy to understand how someone who works at a brewery would want to make this claim, an employee whose job likely consists of one part adding ingredients to gigantic tanks and three parts maintaining near- obsessive levels of cleanliness in the facilities. The brewmaster’s manipulation of flavor, the ability to craft a taste out of gallons of mush sitting in huge finicky metal vats, must look like the kind of tedious and slow miracle you’d expect to see from Gerhard Richter creating an abstract painting. In addition to the resemblance of the process to an artistic one, we could say that the sort of work demanded of your taste buds in consuming something flavorful is comparable to the work done by your eyes in viewing a piece of visual art: you have a first exposure to the work as a whole, a focusing of the senses, and a final reassessment of
the work holistically. In this sense, beer doesn’t seem so far removed from media like painting or music.

In his *Critique of Judgment*, Immanuel Kant provides an analytical structure for assessing judgments of taste—one that may be of use to us in our quest to answer the question of whether beer is art. Famously, Kant suggests that an aesthetic judgment, a judgment of taste, must be devoid of all interest. That is, if we like something for some extrinsic reason, be it an investment in the existence of the object or wanting to be known for appreciating it, we are not making an aesthetic judgment, but a judgment which is in some way practical. He puts it this way: “But if the question is whether something is beautiful, what we want to know is not whether we, or anyone, cares, or so much as might care, in any way, about the thing’s existence, but rather how we judge it in our mere contemplation of it (intuition or reflection).” For the subculture of people who consider food to be a medium of art, this particular stipulation is problematic. On the one hand, it seems obvious that something which provides sustenance cannot be judged without interest; on the other hand, it seems imbalanced to deny the sensory faculty of taste the ability to make judgments of beauty that we allow the faculty of sight. One solution to this dilemma is to propose that the context of the consumption of food can change whether or not the judgment being made is an aesthetic judgment. For example, the hungry consumer of a fancy cheese does not designate the cheese beautiful, but rather as something which satisfies a need, whereas the cheese-taster practiced in the art of recognizing cheese flavors is able to make a judgment of beauty. In the case of beer, the example would more likely be that the young college student who drinks beer for the sake of intoxication makes a judgment with interest, while the sampler of brews makes the aesthetic judgment.

This sort of distinction returns us to the idea that the consumption of craft beer or artisanal food is a means of separation from the purely animal need of acquiring nutrients. To the Kantian aesthetcian, there is arguably nothing more human than the realm of aesthetic judgment. In this logic we can reassess the question of why people want to be viewed as craft beer drinkers. If we accept the artistic aspect of craft beer consumption, craft beer drinkers are somehow more cultured
than their Coors-drinking counterparts, sub-humans who turn to beer as a means toward altering their mental state. “You are what you eat,” as goes the English rendering of Ludwig Feuerbach’s famous *Wortspiel*. While it seems unlikely that Feuerbach meant for this to be taken literally, and perhaps even more unlikely that he intended for it to be applied to the consumption of craft beer (“*der Mensch ist, was er trinkt*” doesn’t quite have the same ring) it seems to be the dictum adhered to by some of today’s stronger proponents of craft beer. Drinking a Miller Lite is not just an unfortunate choice for your taste buds, as we have seen, but an indictment of the very quality of your personhood.

The problem with the logic that craft beer is appreciated on the artistic plane, and that this aesthetic superiority lends the possibility of a more general human superiority, is that the concept of a purely aesthetic judgment of a consumable good is not possible. No matter how cultured the taster, no matter for what purpose the taster is consuming, the food is itself consumed by them. With the exception, perhaps of the beers we spit out after tasting, our engagement with beer involves, if nothing else, the basic awareness that it is then inside of us. Visual art, music, and theatrical performances may stay with us mentally after we have experienced them, but they do not linger in our digestive systems in the physical way that food or beer does. For the Kantian, this is perhaps the distinction between what is art and what is artisanal: the artisanal product can never be art insofar as the product first has an alternative purpose.

Of course, the idea that an aesthetic judgment must be made without any interest in the aesthetic object sounds awfully eighteenth century. A lot has happened since Kant wrote his third *Critique*: the invention of the drum roaster allowed for the creation of porters and stouts, fermentation technology developed and artists began challenging once-popular Kantian and
idealist aesthetics. This isn’t limited to just the “art is that about which nothing can be said” extremism of Tristan Tzaras and Marcel Duchamp’s declaration of a urinal as a piece of art, but also the tamer pragmatist objection to passivity and exclusiveness in what constitutes an aesthetic judgment. John Dewey’s work *Art as Experience* suggests that aesthetic judgment, contrary to Kant’s claim that it must be made without external interest, is a holistic experience, built not only upon an emotional connection but a somatic one, one that is necessarily interested. Dewey lays out a few qualities that define art (a sensation of completeness, coalescing means and ends, etc.), but, like Kant, latches onto the idea that the aesthetic judgment of the observer, not the object itself, is what is of interest. For us non-brewing beer consumers, this seems appropriate; after all, we’re not trying to decipher whether or not beer is an aesthetic object so much as whether or not our consumption of beer parallels the way in which we perceive art—whether or not we’re allowed to call drinkers of Budweiser “uncultured.”

Unlike Kant, however, Dewey proposes an aesthetic interaction that is experiential in the way that any interaction with the world is: “a product [...] of continuous and cumulative interaction of an organic self with the world.” In our experiential interaction with our environment we are necessarily interested beings, and our engagement with the aesthetic object is no different, Dewey argues. For Dewey, then, the drinking experience of macro brews is no less aesthetic than that of the craft brew drinking experience. Mass culture is just as good at prompting an aesthetic experience as “refined” culture.

If we accept Dewey’s interested aesthetic judgment, then, the discussion becomes much easier to turn to our object of interest: the consumer rather than the object being consumed. Whereas Kant pushes an almost absurd rationality that is hard to accept when it comes to art, Dewey embraces aesthetics as a study of the way we experience those things, whether we want to call them art or not, that are integral to our lives—which, for many of us, include beer.

Here craft beer loses its high ground. It’s easy when looking through the lens of Kant or another high-minded
aesthete to think that the artisanal elements of craft beer really do make it better, for very real reasons. The list of stops craft brewers will pull out for their beers goes on and on (fresh hops, barrel-aging, pumpkin and peach additions...) and it’s easy to get drawn in by the impressive craftsmanship that goes into these brews. If you have all of this variety in flavor, this subtlety of taste, then how could something as simple and as bland as PBR compare? If you have the means, why wouldn’t you go for the food which was worked over extensively, rather than the mass-produced item? But Dewey takes this conception and flips it on its head, dismissing the central claim to aesthetic dominance, whether in beer or Bach, by framing this as a question of purpose and experience. Our context, far from what Kant believes, is extremely important in our consideration of art or any interaction with an object that involves aesthetic appreciation. We might engage with a piece of music for different reasons, whether it be for intellectual stimulation, an emotional escape, or the backdrop to a party or movie. In a similar way, we choose to drink beer for many different reasons, sometimes in the pursuit of flavor, sometimes in the pursuit of socially-encouraged intoxication. These contexts, seemingly wildly different, all aim for the same thing: aesthetic enjoyment.

The modularity of beer as an artistic object becomes relevant when considering the way in which craft beer drinkers regard consumers of macro brews. Whether due to an objection to aesthetic judgments tainted with interest or a simple privileging of taste within a realm of many equally aesthetic engagements, a perceived failing of aesthetic judgment is often grounds for accusing the aesthetic judge of a failing of character. For example, you may object to the use of Starry Night on a tote bag because the aesthetic object is viewed not aesthetically, but with the interest of using it toward some personal means (creating an image of the wearer as “cultured” or “interesting”), or you may object because you simply find the tote bag ugly. In both of these cases, the failing of the aesthetic engagement is indicative of a personal failing of the aesthetic judge as someone with poor taste. Whether your idea of aesthetic judgment is as restricted as Kant’s or as dynamic as Dewey’s, however, the right to judge a person’s taste is less valid when assessing taste in food. No matter how prominently the focus of the consumption
is on the sensory faculty of taste, the simple fact that beer is consumed negates the validity of potential judgments of character that can be based upon aesthetic judgments. This means that our relationship with beer or food is not only built upon our taste faculties, our rational faculties, and our stylistic preferences, but also in a very physical way with our bodies. Beer comes with all kinds of somatic limiting factors: calorie content, alcoholic content, particular ingredients. We cannot assume superiority of taste in drinking craft beer because we cannot presume that everyone’s relationship with beer is built on the level of aesthetic tastes. Even if we do believe that craft beer is the superior option, either because it adheres to a stricter conception of an aesthetic judgment or simply because we like it best, it is critical to remember that those who do not drink craft beer are not simply choosing to ignore the aesthetic superiority of craft beer, but may be avoiding the calories, alcoholic content, or ingredients in craft brews. The role that beer plays in our lives is one that necessarily includes considerations outside of the purely aesthetic realm of taste. For this reason, we should check our sniggers the next time the guy at the bar orders a Bud Light.

During Super Bowl XVIX, Budweiser ran a commercial declaring pride in their status as a macro brewery and poking fun at drinkers of craft beer. “There’s only one Budweiser. It’s brewed for drinking. Not dissecting,” the commercial declares. Ignoring the falsehood of the first claim, Budweiser
may have a point. While beer can be consumed for the aesthetic engagement with the taste organs, it can also be consumed for a panoply of other reasons, such as “drinking.” There are some craft beer drinkers who would do well to remember that. Of course, it’s likely that, despite Budweiser’s campaign to the contrary, the world of craft beer will continue to see success, supported by hordes of people who believe in the importance of flavor, or who, at the very least, believe themselves to be supporters of flavor. In this historic time for American beer, sure, let’s go ahead and say that beer is art. But it may not be art for everyone. So, non-beer-drinkers, non-drinkers, and unpretentious drinkers of Bud Light, I raise my growler to you.

4. “Budweiser” originally referred to a type of beer brewed in Budweis, Bohemia for hundreds of years and is retained in the name of the Czech brewery “Budweiser Budvar.”

But I can see in a great many things that you are very refined. I have observed it ever since you came home, and I am afraid it will not be for your happiness.
Can’t We Just Be Secular?

Jon Catlin

Religion without God
Ronald Dworkin
Harvard University Press, 2013
$17.95, 192 pp.

Culture and the Death of God
Terry Eagleton
Yale University Press, 2014
$26.00, 248 pp.

On his deathbed in 1964, Aldous Huxley turned his final thoughts to religion: “A Quaker silence is religion, so is Verdi’s Requiem. A sense of the blessed All-Rightness of the Universe is a religious experience and so is the sick soul’s sense of self-loathing, of despair, of sin, in a world that is the scene of perpetual perishing and inevitable death.” Religion is more than the fossilized institutions we often conflate it with. The Quaker, the aficionado, the saint, and the skeptic may concern themselves with questions of belief. But what makes them all fundamentally religious is that they are concerned with questions of value.

Ronald Dworkin’s final and posthumously published book, Religion without God, argues that a religious sense of value is nothing less than the true basis of social and political life. The late Harvard legal theorist hoped his book would “contribute to rational conversation and the softening of religious hatred and fear,” the jacket says. The book is an earnest attempt to reconcile both interreligious and religious-secular divides.

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that polarize political life. Based on the 2011 Einstein Lectures Dworkin delivered at the University of Bern in Switzerland, the book begins by unpacking Einstein’s famous remark that though he was an atheist, he considered himself a deeply religious man in a particular sense:

To know that what is impenetrable to us really exists, manifesting itself as the highest wisdom and the most radiant beauty which our dull faculties can comprehend only in their most primitive forms—this knowledge, this feeling, is at the center of true religiousness. In this sense, and in this sense only, I belong in the ranks of devoutly religious men.

Dworkin develops Einstein’s deep appreciation for the intangible into a new spiritual type, “the religious atheist,” which he hopes can overcome the false binary driving theists and atheists apart.

Sound like a cheap, semantic fix? Dworkin is well aware of the worry. He writes that religion is an “interpretive concept,” meaning that “people who use the concept do not agree about precisely what it means: when they use it, they are taking a stand about what it should mean.” Religion is thus worth reframing on less politicized grounds. Dworkin wants to do for theist and atheist something like what social psychologist Jonathan Haidt did for the political Left and Right: chart their behavioral differences, but also bring out their commonalities. (Conservatives may be disgusted by gay marriage, but liberals reveal their own holier-than-thou attitudes when it comes to non-organic foods.)

“The new religious wars are really culture wars,” Dworkin writes. By showing that the new religious wars are not really about metaphysical beliefs, he aims to reduce their size and importance. “This ambition is utopian,” he admits. “But a little philosophy can help.” Dworkin reorients discussion of religion from belief in God toward “the independent reality” of value, which he argues is logically presupposed by the value claims of both theists and atheists—thus “separat[ing] God from religion” and “questions of science from questions of value.” To use Dworkin’s recurrent example, the theist and atheist alike know that a beautiful sunset is beautiful;

whatever grounds that beauty, the experience of it is the same. Einstein could thus rightfully call himself a “devoutly religious man” because the awe and wonder he felt toward science “are something beyond nature that cannot be grasped even by finally understanding the most fundamental physical laws.” There is a sense of meaning behind even rigorous scientific work that cannot be reduced to matter alone. This sensibility, Dworkin argues, is religious.

Dworkin writes not of a “turn to religion,” but rather a shift in religious-secular dialogue that has been underway for decades in religious studies departments. The fact that this conciliatory approach has reached a figure like Dworkin and been published in a popular book marks a public debut of revisionist understandings of religion and secularism, though not yet their universal reception. He charges both religious and secular camps guilty of dismissing the other on metaphysical grounds, and forgetting their shared commitments. “What divides godly and godless religion,” he writes, “is not as important as the faith in value that unites them.”

Dworkin’s book is intended to equip us with a less superficial vocabulary with which to talk about religion and its absence. He doesn’t trust the term “secularism”, which hardly appears in his book. As a legal scholar, of course, he supports the formal separation of church and state institutions. But secularism implies a strict separation between atheism and theism that Dworkin thinks is not really there. Once we follow him in moving away from the question of belief in God, we see that forms of secularism—or, rather, secularity, to drop the implication of a unified plot to destroy religion—are as
diverse as forms of religiosity. Secularity is a positive cultural force that cannot be reduced to atheism or antireligiousness.

**TESTING THE SECULARIZATION HYPOTHESIS**

The difficulty in identifying what is secular is not at all new; it traces its way back to a turn-of-the-century social theory that still packs undue and unproductive force, especially in the New Atheist circles of Christopher Hitchens and Richard Dawkins.

One of Freud’s most enduring theories was that modernization entails the end of religion—the so-called secularization hypothesis. Religious beliefs, Freud wrote in *The Future of an Illusion*, “are illusions, fulfillments of the oldest, strongest, and most urgent wishes of mankind,” but at the expense of reality. They are thus “comparable to a childhood neurosis” that modern man would have to grow out of. Since science, reason, and technology grant us real power and psychic control, functions religion can satisfy only by illusion, Freud thinks we ought to prefer the former.\(^3\)

Freud rejects the cynical position “that men are completely unable to do without the consolation of the religious illusion, that without it they could not bear the troubles of life and the cruelties of reality.” This may be true, Freud admits, of those raised with a psychic dependency on “the sweet—or bitter-sweet—poison from childhood onwards,” but what about those “sensibly brought up?” Perhaps they will not suffer the neurosis in the first place. Perhaps after this religious generation, people could be “cured” from religion once and for all. But what then?

*They will, it is true, find themselves in a difficult situation. They will have to admit to themselves the full extent of their helplessness and their insignificance in the machinery of the universe….They will be in the same position as a child who has left the parental house where he was so warm and comfortable. But surely infantilism is destined to be surmounted. Men cannot remain children for ever; they must in the end go out into ‘hostile life’. We may call this ‘education to reality’….The sole purpose of my book is to point out the necessity for this forward step.*

Almost a century later, a majority of Americans have still not left the house. We do not live in the world Freud predicted, a world he also desperately hoped for. The scientific path destined to rid us of our “infantilism” has not done so. Yet Freud could hardly say that we have not made a forward step: most religious people in the West have assimilated to their increasingly secular world, and the most vigorous religious movements today are ones of willing conversion, not stale habit. Religion continues to permeate most aspects of public life, if perhaps in less official guises.

Perhaps no one understood Freud’s error better than his one-time disciple Jacques Lacan. In a 1974 interview recently translated as “The Triumph of Religion,” Lacan remarked:

If science works at it, the real will expand and religion will thereby have still more reason to soothe people’s hearts. Science is new and it will introduce all kinds of distressing things into each person’s life... It took some time, but [the Christians] suddenly realized the windfall science was bringing them. Somebody is going to have to give meaning to all the distressing things science is going to introduce.... Religion is going to give meaning to the oddest experiments, the very ones that scientists themselves are just beginning to become anxious about. Religion will find colorful meaning for those.4

The “real” here stands in for everything distressing about human existence that we will never be able face directly: finitude, loneliness, alienation, anxiety, death. For Lacan, Freud’s charge to weather the cold world of adulthood is neither possible nor desirable. Instead, Lacan says, “We must be able to get used to the real”—that is, to acknowledge the real, but not succumb to the nihilism or despair entailed in Freud’s vision. Lacan develops a relation to the real that retains awareness of it, but at a safe distance. He thus makes room for religion in psychic life, going so far as to suggest that psychoanalysis itself could become a form of religion. Lacan’s prediction is exactly opposite Freud’s: Religion is so resourceful that it will “triumph” over reason, he says, and we will “truly drown in it,” and henceforth be cured of our need for psychoanalysis as well.

This debate continues today. In a recent webchat, the Lacanian philosopher Slavoj Žižek came to yet another conclusion, proclaiming that the “21st century will be the century of philosophy.” "The incredible social dynamics of today's capitalism, as well as scientific and technological breakthroughs, changed our situation so much that old ethical and religious systems no longer function," he said. For example, biogenetic technologies may soon alter our psyches and pose new questions of identity and free will—questions for which theology has no answers. “This was not even a possibility considered in traditional ethical systems, which means that we all in a way have to think. We have to make decisions. We cannot rely on old religious and ethical formulas.”

Žižek lacks Lacan’s enthusiasm for religion, but having witnessed the horrors of the twentieth century conducted under the banner of rational progress, he also lacks Freud’s scientific optimism. Žižek is one of Dworkin’s religious atheists, retaining the need for ethics and value without God or theology. Though he has written a book on salvaging religious insights for the secular world, here he mischaracterizes religion as a source of static doctrines. To proclaim the triumph of philosophy at the expense of religion is to sideline the strong role religious concepts—like innate human dignity—and even organized religions, could play in the social dilemmas he mentions, as perhaps signaled in the Catholic Church today by Pope Francis’s attempts at continued relevance. Sharing Freud’s narrow view of religion as rigid tradition without
invention, Žižek perpetuates the myth of its incompatibility with modern life. Let us hope he is right about the role of philosophy in the twenty-first century. That would not cancel out the role of religion.

DWORKIN’S INTERVENTION

One might wonder why one of the most accomplished legal scholars of the last century turned his thoughts to religion in his last years. It is clear from the outset of Religion without God that Dworkin sees religion as the most fruitful and engaging avenue to pursue a discussion of what he has long sought in his legal work: a basis for social value. Dworkin worries that liberal political theory, despite its eloquent articulation at the hands of figures like Rawls, Nozick, and Nussbaum, always seems—at some level—unsupported. What is the fundamental ground that allows us to speak of what the founding fathers called “inalienable rights” if not the religious correlate, “human dignity?” If we do not recognize some shared ground of value, Dworkin argues, politics becomes arbitrary, leading down a slippery slope from utilitarianism to nihilism. Atheists may prefer secular conceptions of justice to religious doctrines, but liberal political theory alone does not explain the inherent value of individual life, which it aims to protect.

Dworkin calls our best shot at a shared ground “religious” because although he does not believe in the existence of God, he “accepts the full, independent reality of value” and hence rejects the “naturalistic” view that nothing is real except what is revealed by the natural sciences. Even there, “We might say: we accept our most basic scientific and mathematical capacities finally as a matter of faith.” He apologizes for his rather unromantic conclusion:

I will not have convinced some of you. You will think that if all we can do to defend value judgments is appeal to other value judgments, and then finally to declare faith in the whole set of judgments, then our claims to objective truth are just whistles in the dark. But this challenge, however familiar, is not an argument against the religious worldview. It is only a rejection of that worldview. It denies the basic tenets of the
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religious attitude: it produces, at best, a standoff. You just do not have the religious point of view.

The pure naturalist is in the end a problem—left irreconcilable with the rest of the valuing body politic. But the rest of Religion without God has been spent chipping away at the naturalist position, so that the majority of the body politic falls under “religious theist” or “religious atheist,” which share a fundamental belief that there are things worth living together for.

This brings us close to what Jean-Jacques Rousseau called the need for a “civic religion,” fitting the post-revolutionary French model of secularism, which supplanted official state religion with a shared code of secular civic values. Martha Nussbaum pluralizes this position in her most recent book, Political Emotions, by arguing that the state should not impose a comprehensive theory of the good, but instead encourage its citizens to pursue their own in collaborative social arrangements. Recognizing a sense of shared striving is the precondition for love for something beyond oneself. Nussbaum’s resulting legal outlook, like Dworkin’s, amounts to tempering a strictly individualistic conception of constitutional liberties with a view to social consequences.

For Dworkin, the law seems arbitrary unless it is grounded in a sense of shared moral values that lend it legitimacy. The laws of democratic societies are thus held together by a religious orientation, if not religious content. Yet no one voice can ever speak for this grounding because it may be articulated through competing claims and priorities. As the philosopher Charles Taylor describes this issue, “The problem is that a really diverse democracy can’t revert to a civil religion,” as in the case of the young American republic, or “antireligion,” in the case of postrevolutionary France, “however comforting this may be, without betraying its own principles.” Modern states have what Taylor calls a political identity, defined as the generally accepted answer to the question, “what/whom is the state for?” But while Taylor advocates determining policy on religious liberty directly around these goals, forgoing the “fetishized” division between church and state, Dworkin prefers the more strictly legalistic view of promoting “ethical independence” for both theists and atheists.
Taylor’s behemoth *A Secular Age* opens with a frank remark: we would all seem to agree that we live in a secular age, even if we can’t pin down exactly what that means. Taylor then refines that sense into criteria for discussing and reasoning about religion and its absence in public life. He quickly discards two simple notions of secularity: first, the simple separation of church and state, second, the falling off of religious practice. Instead he focuses on the conditions necessary for religious belief. How did we get, he asks, “from a society in which it was virtually impossible not to believe in God, to one in which faith, even for the staunchest believer, is one human possibility among others?”

As he puts it otherwise, “Belief in God is no longer axiomatic. There are alternatives.” Taylor is not interested in who actually believes what, but why one is able to believe in the first place. The answer, for him, lies in the social framework that upholds belief.

Taylor argues that the West has opened up belief as a question that could not have been asked seriously before the Enlightenment. On the level of possible alternatives, the premodern framework is naïve while ours is implicitly reflective. “Naïveté is now unavailable to anyone, believer or unbeliever alike,” Taylor writes. The believer today is affected by the conditions of secularity just as the unbeliever is. “We cannot help looking over our shoulder from time to time, looking sideways, living our faith also in a condition of doubt and uncertainty.” Our “modern condition” is one in which we cannot help but recognize that there are different kinds of fullness out there and that intelligent people cannot agree on which of them is best. In this climate, a cohesive civil religion would be an utter anachronism. Yet Dworkin would argue that this pluralism is not simply relativism. It is in part as a reaction to this uncertainty that we tend to mistakenly think of religion and atheism as mutually exclusive.

Like Dworkin, Taylor figures that the unbeliever and the believer share the goal of achieving fullness in *this* life. “A secular age,” Taylor writes, “is one in which the eclipse of all goals beyond human flourishing becomes conceivable; or better, it falls within the range of an imaginable life for masses of people.” The conditions of secularity Taylor outlines are in fact the precondition of Dworkin’s entire field of political philosophy, whose question is how to best achieve just human
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flourishing in the here and now. This would seem to de facto grant the upper hand to the secularists, but that would be to forget the centrality of value in this question, which even in its cultural form has religious roots.

WHY RELIGION WON’T DIE

The religious studies scholar Hent de Vries has helpfully noted that what we most often refer to when we refer to religion is not someone’s belief status or standing with respect to a particular organized religion. We refer instead to a shared past, a culture. Heresy, iconoclasm, and excommunication still fall under the banner of “religious” activities because they stand in relation to an indisputable religious inheritance, which De Vries calls an archive, “an ensemble of words and things, images and sounds, gestures and powers,” that owes something to “a past whose metaphysical status...is best described as absolute, pure, and virtual.” Even as religion’s particular instantiations remain contestable, he writes, religion itself “has lost nothing of its historical, and perhaps, ontological weight.” We may enter in and out of particular religious faiths, but our relation to religious tradition itself cannot be refuted.

All but the most radical atheists are stuck with the archive of Western civilization, which is inseparable from the religions that determined its course. In a 1947 essay, grappling with her relation to Western culture after the Holocaust, the German–Jewish philosopher Hannah Arendt wrote that culture as we understand it today was born at the end of the Middle Ages out of the “secularization of religion,” not its erasure. The Enlightenment triggered a more direct crisis, “the danger of losing historical continuity as such, along with the treasures of the past...the fear of being robbed of the specifically human background of a past, of becoming an abstract ghost.” Yet that ghostly nihilism was never realized because the dissolution of traditional religious values opened up a space for new, cultural kinds of meaning to take hold—as we see, for example, in Nietzsche. Subsequent cultural debates stemmed not from a vacuum of meaning, but from a contest of which forms of meaning to commit oneself to. Arendt ultimately equated culture with non-religious pluralism. “Culture is by definition secular,” she wrote. “It requires a kind of broadmindedness


of which no religion will ever be capable.” Yet here she differs with Freud in calling religion intrinsically narrow.

Arendt identifies culture as a new vehicle for religion: “The historian, though hardly ever the theologian, knows that secularization is not the ending of religion.” De Vries has solidified her position more theoretically: “In religion’s perpetual agony lies its philosophical and theoretical relevance. As it dies an ever more secure and serial death, it is increasingly certain to come back to life, in its present guise or in another.” The death of God is not the death of religion, and even religion’s own death seems somehow to immortalize it. This brings us to one of Mark Taylor’s criteria for all religions. In addition to explaining origins and the like, religion for Taylor contains a “‘principle’ of ‘internal’ criticism that leaves the theory open to endless revision,” which in turn maintains it in a world of ever-changing circumstances, including the leap from theology to culture.

The English philosopher Terry Eagleton begins his latest book, *Culture and the Death of God* with a cautionary note that “atheism is by no means as easy as it looks.” As a Marxist, Eagleton is wary of religious dogmatism, a hesitance manifest in his peculiar Catholicism. While his political vision
is inspired by the Christian idea of care for the poor, he is equally critical of the betrayal of that vision by institutional Christianity. Years ago, Eagleton’s New Atheist credo *The God Delusion*, accusing him of equating religion with fundamentalism. In his latest book, Eagleton sets up the narrative of God in modernity as primarily a political one. “Religion has been one of the most powerful ways of justifying sovereignty,” he writes, so its ebb from public life in the West since the Enlightenment has triggered a crisis of political authority. Of the various attempts to “plug the gap where God had once been,” the “most resourceful of these proxies was culture, in the broad rather than narrow sense of the term.” Yet art, culture, and reason have invariably proved unequal to the task: “The Almighty has proved remarkably difficult to dispose of.” Eagleton identifies something special about religion that other kinds of meaning can’t displace—its capacity “to unite theory and practice, elite and populace, spirit and senses, a capacity which culture was never quite able to emulate.” Thus “religion has proved easily the most tenacious and universal form of popular culture.”

“Societies become secular,” Eagleton writes, “not when they dispense with religion altogether, but when they are no longer especially agitated by it.” *Culture and the Death of God* is a chronicle of how many of the West’s most treasured secular values and traditions resulted from religious agitation. If we consider Žižek’s claim of the obsolescence of religion in this context, it seems that the ethical debates of the twenty-first century will continue to take place on that agitating turf of religious discourse. Hence Eagleton’s revisionist history redeems religion from Freud’s narrow view of religion as repressive, “a yoke which must be shaken off.” What Freud failed to note was that reactions against religion would continue to appeal to religious sensibilities in the secular terms of value and culture. Both Eagleton and Dworkin call on us to own up to that continuity.

Eagleton claims that the biggest problems facing religious traditions today are precisely what led to their historic power: authority and boundedness. Christianity in the West was built up on “Christendom,” the unification of faith with political authority, but eventually softened into “Christianity,” the post-medieval understanding of Christianity as a faith. With

this shift, Eagleton argues, Christianity went from dictating the terms of social life to adapting itself to keep up with them. The project of the Enlightenment in Britain, he writes, “was not to replace the supernatural with the natural, but to oust a barbarous, benighted faith in favor of a rational, civilised one.” As Freud wrote in The Future of an Illusion, “a civilization”—religious civilization—“which leaves so large a number of its participants unsatisfied and drives them into revolt neither has nor deserves the prospect of a lasting existence.” Accordingly, Eagleton does not deny the unsavory, repressive aspects of fundamentalist religion, but shows that we need no longer oppose religion as such to free exercise of the mind. Even from a secular perspective, he then suggests, it may be more productive to reform the religious civilization we have instead of trying in vain to move past it.

Eagleton’s narrative depends upon what the Italian philosopher Gianni Vattimo has called the “weakness” of contemporary thought, which disables the metaphysical and authoritative claims of organized religion along with those of its staunchest critics. As Vattimo puts it, “The end of metaphysics and the death of the moral God have liquidated the philosophical basis of atheism.” For Vattimo, the atheist’s absolutism for scientific facts has gone the same way as the religious dogmatist’s. Now that there are no absolute truths, only interpretations that stop short of fully explaining reality, religion gains back lost footing. This leads to what Vattimo calls “postsecular faith,” which has passed through the gauntlet of “death of God” critiques. It offers the entrance of critical, open, and creative tools into the foray of religious life. Values formerly confined to a particular religious doctrine now contribute to “a general explosion of Weltanschauungen, of world views,” the “Babel-like pluralism” of our day.

**THE RELIGION OF THE FUTURE**

In a 1997 New York Times article, Jack Miles, who had just toured the country promoting his book God: A Biography, found himself face to face with doubters who nevertheless practiced religion. As he described the sentiment he encountered, “If I may doubt the political system from the voting booth, if I may doubt the institution of marriage from the conjugal bed, why may I not doubt religion from the pew?” In these

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doubting observers, Miles finds just the trend Dworkin hopes for: the quiet disappearance of the metaphysical question of God. For Miles, these people worship out of a need for a spiritual community. Yet many religious people Miles talks to worry about declining membership. What does he prescribe? “Religious reflection on secular uncertainty—a reversal of the familiar phenomenon of secular reflection on religious uncertainty.”

In her latest memoir, the Christian author Marilynne Robinson gives us just that. She reflects that the social science she read in college “did not square at all with my sense of things….The tendency of much of it was to posit or assume a human simplicity within a simple reality and to marginalize the sense of the sacred, the beautiful, everything in any way lofty.” Yet her critique does not spare religion, which she calls a frequent accessory: “religion in many instances abetted these tendencies and does still, not least by retreating from the cultivation and celebration of learning and of beauty, by dumbing down, as if people were less than God made them and in need of nothing so much as condescension.” Robinson’s idea of religiosity entails belief, yet like Dworkin’s it is not at odds with science or reason. “O ye of little faith,” she writes, “Let them subscribe to *Scientific American* for a year and then tell me if their sense of the grandeur of God is not greatly enlarged by what they have learned from it.” For Robinson, religion is not, as many atheists and theists have emphasized, just about “explaining how the leopard got his spots.” Religion boils down to a mentality that recognizes complexity and beauty in the world.

As we see in Robinson’s case, a religious sensibility leads us to do strange things, like write fiction. We collect experiences, facts, and emotions in something so puzzling yet powerful, so uniquely ours, that it adds up to a vessel of self-awareness. Since I don’t know of a better word, let’s follow Robinson in calling it a soul,
the loss of which in our times Robinson calls “disabling, not only to religion but to literature and political thought and to every humane pursuit.” Hearing out Robinson’s use of the term “soul” would seem to go against Dworkin’s aim of a religious mentality without metaphysics. Yet soul might—as a concept—work just as well for the religious atheist. Dworkin comes so close to representing what for Robinson is genuine religious experience without belief in God that we can already see his book initiating an important dialogue.

Behind Dworkin’s project of reshaping religious and secular discourse is, I believe, a political core. Despite his more radical background, Eagleton’s book spells out the implications of the religious atheist for politics in a way Dworkin might have endorsed if he hadn’t felt compelled to bracket the political question for the purposes of his short but powerful book. Eagleton concludes, “If religious faith were to be released from the burden of furnishing social orders with a set of rationales for their existence, it might be free to rediscover its true purpose as a critique of all such politics. In this sense, its superfluity might prove its salvation.” The religious sensibility might, in its mature form, ultimately become so liberated from religious tradition that it could come to serve as the basis for a new and universal vision for human flourishing in common. I have followed Dworkin in arguing that something similar is already implicit in the idea of politics, but what if we were to make that shared affect explicit? Far from disappearing, religious faith might quietly follow Eagleton’s genealogy and Dworkin’s prescription, shifting from private metaphysical belief to political faith built on shared traditions and common values.
Mind Your Manners

Jake Bittle

“Under certain circumstances there are few hours in life more agreeable than the hour dedicated to the ceremony known as afternoon tea.”
—Henry James, opening line of The Portrait of a Lady (emphasis mine)

I was just beginning my junior year of high school when I started dating Rachel. She was my first Serious Girlfriend. During the first week of school, I asked her to the homecoming dance, and on the night of the dance, after a dinner at Maggiano’s Little Italy with all of our friends, I kissed her on the dance floor and asked her to be my girlfriend and she said, “Yes.”

Three weeks into our relationship, while I was hanging out with two of my bros, Austin and Brandon, I told them I had never had such strong feelings for a girl before. We were sitting on Austin’s sofa watching Pawn Stars. With a mouth full of Cheez-Its, I told my two friends that I thought I might even love Rachel. Brandon snorted. Austin did too, but then stopped.

“Actually, Jake,” he said. “We have to talk about something.”

I froze up. What did he mean? I assumed the worst: infidelity.
“Yeah,” said Brandon. “You and Rachel are, like, pretty serious.” Yeah, we were. What of it?

“You’re gonna have to take her out to dinner soon,” said Austin.

“I know,” I said. “So what?”

“With, like, her parents,” added Brandon.

“Yeah,” I said. “I know. What’s the big deal?”

“And you and Rachel are, like, good for each other. And she’s like, really hot. So you don’t want to, like, mess this up, you know?”

“Yeah,” I said, “I know. What are you talking about?”

“Okay, Jake,” said Brandon. “It’s about when you eat. You’re fucking disgusting.”

Three years later, I can admit it: there were tears in my eyes. Of course I had noticed people laughing when food fell off my fork. Of course I had noticed that I tended to stain my
clothes with sauce far more often than other people did. But was it really that big of a deal? Was it really as bad as they said?

“Yes, Jake,” said Austin. “It really is that bad.”

I was appalled. Did everyone know this about me? Rachel and I had already agreed that we would go to dinner with her parents the following Friday: the Day of Judgment was coming, and fast. That night I stayed up well past my bedtime agonizing over the fact that my family and friends had all betrayed me by failing to point out and correct my primitive habits. Only in the wee hours of the morning did I come to my senses: though they were a little late, Austin and Brandon were really trying to help me. I decided to take matters into my own hands. I filched plates, utensils, and leftover food from the kitchen and brought the whole stash up to my room, where I practiced eating all through the night, scrutinizing my mouth and fingers in my computer’s webcam.

On the day of the dinner, Rachel’s parents picked me up in their SUV and I sat in the back with her as we drove downtown to an Italian restaurant (not Maggiano’s) that her parents liked. After her parents had each had a glass of wine and I had downed a Sprite and a half, the conversation started to flow. Rachel laughed at my jokes and her mother and father said I seemed intelligent. Afloat on the meaningless love for objects that Proust says always comes hand in hand with the beginnings of romance, I ordered the item on the menu that I thought would taste the best. So foolish! It was not until the waiter had waddled away that I realized the gravity of my choice: I had requested the *linguine di mare*. The noodles, the mussels, the grease! There was no way I would be able to eat it politely under such pressure. Her father was a police officer. Would he judo flip me out of the booth when he saw me dropping mussels into my lap and smearing sauce across my cheek?

The dish arrived. I picked up my fork, determined to prove my worth once and for all, but before I stuck it in the bowl I looked down and saw that I was holding it the way I had always been wont to do, with my entire fist curled around the hilt. Gently I put down the fork and picked it up the right way.
You will not dine as you did yesterday, for we have nothing but some fried beef.

I took a few noodles and a node of shrimp from the top of the dish and tried to carry them over my lap and into my mouth, but—alas!—the noodles were hanging too heavily off the fork and one of them slipped down and stuck on the edge of the table. I jammed the pasta in my mouth. It was only then that I realized the table had gone completely silent. I looked up and met Rachel’s father’s eyes.

“Having a little trouble eating there?” he said. I gripped the leather of the booth to keep my body from disintegrating on the spot. Rachel flushed red and hid her face in her hands. I looked at her father, unable to say anything with my mouth full of pasta. He narrowed his eyes at me. I was about to make a run for it. But then he leaned back and laughed.

“Don’t worry about it,” he said. “It doesn’t gross me out. I don’t mind. And as long as Rachel doesn’t have a problem with it, I’m certainly in no position to say anything.” I overflowed with joy. I spent the rest of the night completely aglow, feeling almost as though I could hear the “airy and fragrant phrase” from Vinteuil’s sonata that seals and signifies Swann and Odette’s nascent love.

Nor was this merciful man—God bless you, John Redacted, wherever you are—some exceptionally forgiving outlier.
Rather, he was one point in a whole constellation of people who have professed tolerance for and patience with my disgusting manners. Peers, mentors, relatives, and employers of mine have been able “look past” my “bad habits” and “accept me” for “who I am.” Some of them even find my lack of etiquette “cute.” At the time of writing I am a full nineteen years old. I have successfully cast a ballot in a congressional election, put together a coherent resumé, and completed one-and-a-half years of undergraduate study (about three hundred and fifty dining hall meals, if anyone’s counting). I do not remember the last time I ate something without spilling it or getting it on my face. Really. The adult world, the world of etiquette, restraint, maturity, has for whatever reason chosen so far to forgive my awful manners.

But the older I get, the more I see that although my sloppiness has, for the most part, been tolerated by those around me, it has certainly not been ignored. I grow increasingly aware of how easy it is for people to spot my bad manners and of how much I stick out at a table, even among close friends or family members. Other people do not always comment on my manners (perhaps because they have the very self-restraint that I seem to lack), but I know they know. I can see it in their eyes. And besides, even if they didn’t notice, I would still notice; even when I’m distracted by a
rowdy conversation or an interesting story I can never go too long without feeling the sauce smeared across my cheek or noticing a meatball fall off its fork and into my lap. But of course everyone sees: at a dinner table every face is plainly visible. All mouths are on display. Even once my sloppiness has been acknowledged and forgiven, my fumbles and spills still break up the fabric of the meal, interrupting a congenial atmosphere by arousing at best pity and at worst suspicion.

Even if it does not significantly change the way the world treats me, then, this habit at the very least changes the way I experience the world—specifically the social world(s) of the dinner table, one of the most important sites and forums for human interaction. It is in this world, this essential world—this proving ground, this stage for courtship, this arena for argument—that I must tread with the greatest caution and face my greatest embarrassments. There are few things more enjoyable than a hearty dinner with friends or family, but when the very act of inserting food into my mouth becomes a spectacle, this communion is blocked and negated. Eyes rush in my direction. Even if I am excused, there is a moment during every dinner when I am completely alone, left to struggle on my own with noodles and flanks and spoonfuls of rice. I am walled off from the scene of dinner, from the sense of a meal, and thus from one of the very nexuses of civilized life.

If we trust Literature (which I do—I have always regarded it as a transcendental substitute for gastronomical sustenance, the source of a higher kind of calorie) we are likely to conclude that besides reading, eating is the most important thing a human being can do. A hearty portion of many a classic novel is dedicated to that second-highest of mortal pursuits. Even Thomas Foster, in his atrocious book How To Read Literature Like A Professor, was perceptive enough to make the second chapter about the significance of meals in literature. Off the top of my head we have, by way of famous meals, Plato’s Symposium, the tea ceremonies in Genji, the feast in Joyce’s “The Dead,” the banquet in Macbeth, the opposed tables of the British and the Indians in A Passage to India, the cramped meals served with yerba mate in Cortazar’s Hopscotch, and don’t even get me started on the dinners in Karamazov. Dinnertime in all of these wonderful books is a place of great consequence, a site for meaning and for meaning-making,
and in reading them I cannot help but wish that I could find the same significance in the meals of my own life. But even though my sloppiness does not bar me from the table altogether, it always prevents me from entering fully this realm whose essence is not consumption but communion. Because I can never transcend the actual process of eating, I can never reach the real bliss of “dinner,” the “invariably memorable” space Woolf sees as being illuminated by “the rich yellow flame of rational intercourse.” I am held back from this poetic realm, the “meal,” by the mundanities and minutiae of gross, gastrointestinal life.

I am never more conscious of this gulf between my literature and my life than when I read Proust. His masterpiece In Search of Lost Time both inhabits and parodies the French realist world of manners and sociality, and thus overflows with examples of the significance of meals. Of the novel’s 3500 pages, at least four hundred take place during dinner, probably another three hundred during coffee or tea, and a solid seventy-five are devoted solely to the physical description of food itself. The gorgeous memory that opens Swann’s Way, the first of seven volumes, has the narrator spying on his family as they have dinner in the garden of their Combray mansion. He watches his parents entertain the inimitable Charles Swann, stopping every few moments to ask the maid Francoise to bring out another plate of fruit or to fill up their coffee. When I sit at the dinner table, whether it’s in a booth with my girlfriend’s parents or at one end of a sprawling private room at Maggiano’s, I often feel like poor Marcel at the window, unable to join in the cult of dinner even though I am right in the heat of the meal. It is only eating itself, the original purpose of the meal, that prevents me from enjoying the possibilities of communion that Proust so elegantly describes. I would never make it in Lost Time. M. Swann and Mme. Verdurin, seated at the long table at which Swann woos the elusive Odette de Crécy, would gasp at my behavior as I jammed pear slices into my mouth and spilled coffee all over my lace bib. I would be condemned, ridiculed in the gossip papers, ostracized from every Parisian circle—my awful manners would bespeak my lack of culture, my ignorance, my barbarism.

But again, we’re talking about my life, not literature. What’s even sadder than my inability to participate
wholeheartedly in this world of dinner that I read so much about is that there is nothing really profound or philosophical about this inability. I’ve read about more than a few slobs and indecorous eaters. One thinks immediately of Falstaff, Fyodor Karamazov, Ignatius Reilly, and their gluttonous ilk, followed by manner-breachers like Mrs. Bennet in *Pride and Prejudice* and the various tyrants and tycoons in Dickens. Perhaps the best example of symbolic sloppiness is the priest in Flaubert’s *Madame Bovary* who causes the Madam to give up religion when she sees a mustard stain on his robe. The way that exteriors often function as barometers of the interior, the way that a character’s sloppiness can signal not just bad manners but some key psychological fact, is part of what makes these books so magical, so very unlike life. It would be easy to ascribe some kind of characteristic symbolism to my bad manners, but it would also be misguided to do so. My sloppiness is not a refusal to abide by the social norms of my historical period or a manifestation of my passionate hunger for all things sensual and gastronomical. Nor, as I might like to believe, is it an indicative measure of my devotion to a life lived somewhere other than this material world. I care about food; I enjoy meals. I would like to linger. I would like
to poke fun at Dr. Cottard, to send for another round of pies at Combray, to eat lunch in the Bois with Albertine. The fact that I could never do so has nothing to do with the food, then, and everything to do with me. This ferocious mouth and these fumbling hands do not symbolize some kind of Epicurean passion for the juices of carrot and onion, the gravy and the garlic and the celery.

In another character, for instance Falstaff, a ravenous appetite might symbolize a greater appreciation for the delights of this world. But to suggest something of this nature about myself would also be to falsely bridge the gap between life and literature, between the senseless and the sense of which it dreams. My accumulated sloppiness is no symbolic characteristic. If it means anything, it means that as a young, white, relatively wealthy, and otherwise sociable male I have been given a free pass in civilized life; the accidents of my birth, gender, and class have allowed me to sail through adolescence without having to curb or fix my very nasty tendency to slurp and spill. Without any reason to shape up, I have never felt the need to do so, and thus my sloppiness has become a constant presence, not a fatal flaw or a mark of sin but just a very, very bad habit.

And habits, almost by definition, mean nothing: in fact, as Proust himself tells us, they exercise an “anesthetizing influence,” (Volume I), a “deadening effect” (Volume VII) on our actions and decisions. They are merely mounds of past action that have grown too heavy for us to slough off. This observation functions as a commentary on life, of course, and not on the world of the novel itself: when Odette spends too long looking in the mirror or when the Mme. de Guermantes walks with a dignified lilt, it means something. My sloppiness does not: it is just sheer boorish disgusting habit, not epic or tragic or symbolic but only dull, pedestrian, and ugly most of all. My sloppiness is only itself. There is nothing beneath it.

If I were a chum of Swann’s or a primped Guermantes boy my bad manners might mean something more. We might be able to tease them apart and use them to build some “significance” out of me. But I am not in a book (and if I am, it is certainly not Proust). Thus, this kind of significance, this level of “character,” is unavailable to me. Even if it is true
that I am both sloppy and inconsiderate, there is no sense in which the former is true because of the latter. The best I can do is point to my awful manners as an indication of privileges and prejudices relating to my class and my gender—but these are facts about the world, not facts about me. It would be better, I often think, to live in Proust or Dickens, where one’s exterior habits and features can and do testify to one’s internal character. But to pine after such a world is totally, painfully futile; we can visit Proust’s Combray, but we can never stay.

Instead, I reach to dip the madeleine in the tea and I knock the teacup over onto the tablecloth. The pastry falls apart in my mouth and its crumbs cover my chin and my shirt. There is no memorious efflux but only a few worried stares from the other side of the table. I apologize, I clean up, I wipe my mouth, and that’s it. The only thing left is a mess.
Can Law Really Defend Human Rights?
A Conversation with Eric Posner

Elisabeth Huh

The Twilight of Human Rights Law
Eric Posner
Oxford University Press, 2014
$21.95, 200 pp.

Just how effective are human rights treaties? Since the 1970s, the vast majority of countries has ratified countless international agreements and pledged to respect hundreds of human rights. But do such commitments actually make a difference? In his new book, UChicago’s own Eric Posner makes the controversial claim that universal human rights treaties are fundamentally unenforceable and fail to decrease human rights violations, arguing that we should look instead to other methods to improve the welfare of people worldwide.

The Interview

In your book, The Twilight of Human Rights Law, you argue that human rights law is largely ineffective because it reflects a type of “rule naïveté”—the view that the good in every country can be reduced to a set of rules that can then be impartially enforced. You assert that the vagueness of human rights law and the sheer proliferation of human rights prevent their meaningful enforcement. China, for example, can take away personal and political freedoms under the idiom of human rights by arguing that its actions aid poverty reduction. One solution some have proposed for the unmanageable number of human rights is to prioritize a narrower set of rights that states must enforce above all others. Why do you reject this solution?
Because there isn’t a consensus about what rights or human interests should get priority. There’s a basic disagreement, for example, about whether economic rights or political rights should be given priority. A country like China would say economic rights while the U.S. would say political rights, and lots of people think they should be put on an equal level.

But there’s also a deeper problem, which is that all countries have limited resources. So let’s consider, for example, torture. Everyone would agree it is important not to be tortured, but it’s perfectly possible, and in fact common, to have countries where torture is prevalent because the police are poorly trained and badly paid, and so the practice is deeply entrenched and it is simply not feasible financially or politically to go after torture.

There are all kinds of things that could be done to make people’s lives better, things that seem modest, like building playgrounds or picking up litter in the streets. Those things are expensive as well, and it’s reasonable for a government to say that as long as it’s futile to deal with torture, we should be able to use resources on those other things. But when you think about prioritizing human interests, no one would say it’s more important to get rid of litter than to get rid of torture. So this idea of prioritizing is just not helpful in providing useful guidance for governments.

I think it’s interesting that as a prominent legal scholar you argue, “Humanitarians should abandon the utopian aspirations of human rights law for the hard-won truths of development economics.” Do you think law is fundamentally less effective than developmental economics in providing assistance to foreign countries?

Yes, because law is coercive. It’s very difficult to coerce countries, because even if they are badly run with corrupt governments, the population will generally be more loyal to their own government than to foreign powers they distrust. Crude types of sanctioning such as trade sanctioning will hurt everybody; when sanctions are targeted at high–level officials, the government can reimburse them out of general revenues obtained through taxation of ordinary people. So the coercive side of law, which is what makes it effective in some circumstances domestically, makes it weak internationally.
Foreign aid, by contrast, merely offers money or other benefits to people. And people will be likely to be much more receptive if you offer them benefits than if you threaten them.

Throughout your book, you argue that countries invoke the notion of human rights when it is useful for them, and disregard them when it is not. Do you personally believe that the notion of universal human rights, and law in general, follows solely utilitarian principles? Do you reject the idea of an absolute moral law?

I think there are some common moral values that transcend borders, and I think the key insight of the Enlightenment is that governments should not be able to do what they want—they should have the responsibility of advancing the well-being of the populations underneath them.

I am myself a utilitarian, but my argument’s not based on any particular moral theory. There are lots of common moral values—you don’t betray your friends, you don’t kill someone unless there’s a good reason—but the question is whether we’re advancing people’s well being or some conception of morality through human rights law. I think the problem is that to the extent that there are common values, it’s very thin. It includes certain kinds of murdering and torturing, but it excludes all sorts of family-based morality and relationships between people, and people have very different ideas about what a government can do in order to promote order, what sorts of criminal process people need to be given, and I don’t think any of that is universal. I think what makes sense depends a great deal on the country we’re talking about and the circumstances in that country. So I don’t think it’s very useful to try to establish a code that would apply to all countries. There may be some universal values, but what everybody is concerned about and where the issues are is somewhat below that, the issues about what the government does.

I think that’s probably the best way to think about it, as if we wanted to create a code for all governments to tell them how they should govern. There’s very little we can agree to as a practical matter, about what’s a good government here and in Uganda and in Vietnam, because it’s not just that moral values vary. It’s that these places have more or less money, more or less corrupt officials, different ways to raise
taxes, different traditions, people are more or less religious. All those things are going to matter for how a government chooses policy, and those things cannot be captured in a universal document.

In the final chapter of your book, you note that recent literature in development economics suggests that economic growth is “to a large extent a function of events from the distant past” and that “wealth inequalities and institutional developments from centuries in the past may lead to modern institutions, habits, norms, and beliefs that promote or thwart economic growth today.” You suggest that some argue that human rights outcomes may also be determined by a nation’s history. Do you share this deterministic view of human rights, and do you think there are ways in which countries can overcome or mitigate the influence of a deep history and culture of inequality?

I don’t think it’s one-hundred-percent determined by the past. In the literature we’re trying to understand why some countries respect human rights more than others. The way people in the country think and the way people in the government think, those sorts of possibilities will be determined to some extent by the past. And the question is how big that extent is. I think it’s a very important area of research, but I don’t think we know the answer to that question.
But I think that there’s a real pattern. Countries that we think of as much better at respecting human rights today were the same countries who were much better 50 years ago or 100 years ago or 200 years ago. And I think that matters because if there’s a particular country that’s not respecting human rights and violating international law, we have to make a decision about what to do about it—should we put pressure on a country, should we withdraw foreign aid, should we provide technical assistance, should we disregard it? The more that we think that a country’s behavior is determined by the past, the less it would make sense to coerce the country into changing its behavior. But I want to reinforce that I do not think the past is completely determinative.

So what do you think is the most effective way to intervene in certain situations where a specific group is having their basic human rights violated by their governments?

I think the most dramatic examples would be Germany after World War II and Japan after WWII. So, conceivably, after a country is completely destroyed, we go in and occupy them for many years with hundreds of thousands or even millions of soldiers and rewrite their constitutions, and hope they feel ashamed by what happened in the war. But a massive intervention like that is rarely possible and even more rarely justified.

I suspect that there’s no recipe, and that this is one of my points: We can offer technical assistance to countries, and if those countries are willing—you can think of Japan during the Meiji Restoration or China to some extent now or twenty years ago—if people want peace and less civil strife and they think that Western norms and civil institutions would help, then we should by all means be receptive and explain to them how we do things and how our institutions work. I don’t think that people in the West have any practical method for helping oppressed groups in other countries. You can give symbolic help sometimes, you can put pressure to have a few people released from political prisons and so forth, but I don’t think there’s much the West can do.

Another professor at the University of Chicago Law School, Martha Nussbaum, has stated that human rights instruments have played
an important role in building and sustaining the international women’s rights movement. She claims that the Convention on the Elimination of All Forms of Discrimination against Women played a dramatic role by giving supporters a common language to network and communicate across national boundaries. Though you argue that human rights law is largely unsuccessful, do you believe that it should be completely disbanded if there is some evidence that it does some good?

You know, I don’t argue that it’s always ineffective. I don’t think we have enough evidence to know that with confidence. There are some people who have done some rigorous statistical studies that have shown that CEDAW has helped women in some respects and not in other respects. Countries that have ratified that treaty are more likely to have women who participate politically. Of course, the issue of causation is huge: you don’t know if countries ratify the treaty because women already have more rights or if the treaty itself causes the government to grant more rights to women. This is very complicated. I don’t know what to do with this sort of anecdotal evidence; there’s anecdotal evidence on the other side, too, and that’s why I think we need more statistical data in order to figure out what’s going on.

But I don’t think the treaties should be disbanded. Under international law, what would formally have to happen is that all these countries would have to renounce or withdraw from these treaties. And I don’t think anything would be accomplished by that; it would probably be demoralizing, and it doesn’t matter because the treaties aren’t really enforced, so who cares if countries denounce them or not. I think what’s
important is for people to understand that the treaties don’t really affect what the governments are doing and that people, including NGOs, should put more resources into development aid, rather than trying to enforce these treaties in some kind of abstract way.

To give an example that I talked about recently, there’s a treaty called the Convention on the Rights of the Child. That treaty provides children with various protections including personal security, and there’s a human rights committee, which determined that children have a right not to be subject to corporal punishment in schools. So Human Rights Watch persuaded Kenya to pass a law banning corporal punishment in schools. But then this sociologist in Kenya shows that the law had absolutely no effect because teachers think it impossible to maintain order in schools without corporal punishment. I’m sure there are excesses, but it just seems to me like a total misdirection of resources for HRW to try to end corporal punishment in Kenya because of some interpretation of a treaty. There are so many human rights, there’s any number of things they could go after in various countries. What I would like is to have these treaties in the background, but I’d want HRW and the other NGOs to solve problems that are solvable and whose solutions don’t create more problems—like massive lack of discipline in schools where corporal punishment is ended.

That brings us back to development aid. Economists have figured out that it is very hard to do development aid, but you can do it if you do it very rigorously, if you study a certain area and try to understand the people, their needs, and what they are willing to accept. You’re not going to try to change their behavior, so you’re not going to get rid of corporal punishment in schools, but maybe you could, you know, give some money to their schools so they could have smaller classes. That could strike me as a much more productive way to use this money HRW had to spend—to give it to the schools, and if educational outcomes improve, do it some more. So, that’s not disbanding the treaties, that’s just treating them as a less important part of how we engage with people in other countries.

*Do you think that there is any role that law can play in addressing these problems that developmental economics cannot?*
No, I guess not. I think international law is a weak instrument for policy. It’s certainly not meaningless, but it’s useful in very narrow circumstances.

The treatment of prisoners of war is something the law appears to be reasonably effective at. So if two countries are at war and they’ve taken prisoners, they’ll usually respect the Geneva Conventions. They don’t always do it, but I do think that the Geneva Conventions created a framework that works because of reciprocity: we treat our prisoners well because we’re afraid that if we don’t, you’re going to mistreat yours. If we’re giving 1000 calories a day to prisoners, is that mistreatment or not? The Geneva Conventions provide the standards so that we can have this argument. So I think that works very well and it has a humanitarian purpose. Soldiers are treated better than they would be otherwise. You also have trade law, which has a mechanism that seems to be reasonably effective.

But human rights law is different because of the universalism of it, because of the idea that every person in every country has to have certain basic rights protected. There is no built-in way of enforcing that. There’s none of this reciprocity; in practice it’s really just the West bossing around other countries. The West for the most part doesn’t violate human rights, and when it does, no one stops them because they’re too powerful. Then there are other powerful countries such as China that people can’t do anything about. Countries like China don’t try to enforce human rights in other countries—they don’t care. It’s the West versus the developing world. The developing world is huge, and it’s hard to get all the countries to change, so the whole thing seems pretty futile. But even if it weren’t, different Western countries have different priorities and different resources, and they have to be able to cooperate, so it’s hard to pressure them. You put that together and you have a very weak enforcement mechanism.

*If you think that there’s no way to agree upon a universal set of values, what do you think would be our greatest hope for peace?*

For peace I think sensible diplomacy. I really think that’s about it. I don’t think there’s any way around the fact that if it’s war that we’re worried about, human rights can lead
to war. Human rights are often invoked as a justification for going to war, as in the case in Iraq and Libya, so if peace is what you’re worried about, it doesn’t seem like human rights is the answer. I don’t think there’s any solution to the basic problem that there are scarce resources, that there’s conflict, people have trouble understanding people in other countries and sympathizing with them. So what you need to prevent war is just very good diplomats and leaders who are sensitive and smart and are not ideological but pragmatic about cooperating with other countries.

So do you think economic development is ultimately the best way to create universally improved living conditions?

Well, economic development will make people better off, and that’s a sufficient justification for it. In a lot of countries people live on a dollar a day, or two dollars a day and their lives are very hard. If they had more money, that would be good: There would be more literacy, better health. Those things are really important and I think for extremely poor people those things are better than political rights which they can’t really exercise realistically.

Now if countries got wealthier, I think that’s a good in itself, if it’s the poor people who wind up with the wealth, or a substantial portion of it. Would that lead to less war? I don’t know. There are theories that greater
wealth would lead to less war; maybe they are right, I don’t know. Would that lead to more respect for human rights in a political sense? It might. It tends to be the case that wealthier countries are more democratic and have better human rights outcomes, but I don’t think there’s any iron law that that’s the case.

But I do think that we have a better understanding about how to improve wealth and well-being, through vaccination and such; there are relatively straightforward ways of doing that, while it’s much harder to create democracy or political freedom or to persuade people that free speech is good, or religious tolerance is good. So if the goal is to make people who are miserable better off, which seems to me an important goal, then foreign aid, development assistance, migration, those are things that can be helpful.

Do you think a humanities background can offer any advantage in addressing these problems? Is there any role that they can play that economics can’t?

These are big questions that are important to debate, and I do think that a humanities background is helpful. It depends what you want to do. If your life’s goal is to help poor people in developing countries, I suspect some sort of technical degree, maybe in economics, maybe in engineering or something like that, will help you achieve that goal. Language skills, which are in the humanities, some sophistication about how people differ across countries, which is the humanities, I think all of these things are helpful, but if you take your goal to be something like that, you probably just want to have skills, like to be a doctor—that’s a great way to help people. If you want to try to have a debate about human rights law—whether it should exist, or if you reject everything I say and think maybe we should prioritize rights, or maybe we should create more international institutions or something like that—then humanities or law are helpful. I think you have to figure out in what way you can contribute the most to these general problems and then figure out how to advance that through your educational choices.

In the field of philosophy of law, thinkers like Aristotle, Plato, and Kant have famously espoused virtue ethics and the idea that
law should promote good moral character. Do you believe in any alternate philosophies of law outside of utilitarianism? Or do you believe a non-utilitarian role would fall outside of its realm of jurisdiction?

I think in a modern, pluralistic, gigantic society, as opposed to a small republic or city-state, you just can’t expect law to promote virtue. You can expect it to limit conflict and to produce public goods like clean air and so forth, but it’s just too hard in a modern, individualistic society where we try to respect people’s choices. I just don’t think law can do that as a practical matter. It probably couldn’t do it in a small republic either, but I think morality can only be taught to people as kids, and the law can’t do much about that.

So do you think that law should never even aspire to occupy that kind of moral space? If that will never be achievable?

I think that that is even more true internationally. People just have such different ideas of what virtuous behavior is. For a lot of people, it’s just religious. They think what you should do is just to promote the religious good. Other people in the West don’t feel that way at all, so the idea that there could be some sort of common law that could govern both groups seems totally unworkable. And it’s also true within a country, certainly a country that’s diverse like the United States. Maybe in the Netherlands or someplace like Denmark,
people have close enough views so that you can use law to promote a kind of ideology or moral principles in a more effective way.

Do you think that there will ever be a point, maybe after a certain amount of universal economic development or shared cultural understanding, where we will be able to have a common set of values?

Not within our lifetimes. You can maybe imagine the whole world being like Europe, if everyone became wealthy, but that would take a really long time.

I think back in the 1990s people used to think that all countries would be like Europe, more or less secular, wealthy, a welfare state, peaceful, and I think people are less confident about that now because the world seems to have gone in the opposite direction over the last fifteen years. But maybe this is just a little blip and in fifty or a hundred years things will look more like Europe again. I don’t think there are universal laws that govern historical change. I think there’s a lot of randomness. And so I wouldn’t want to make a prediction, but if I had to I would be skeptical that would happen soon.

I actually recently read this book about Jeffrey Sachs’ Millenium Villages Project called The Idealist, and I think it discusses a lot of the pitfalls of development economics that you allude to in your book. What are the biggest kinds of traps you think development experts fall into?

I don’t want people to think that I think that foreign aid is some obvious easy substitute for the human rights regime. It’s in many ways very similar historically because people were excessively ambitious and idealistic. I think it’s based on a very similar kind of error, which is assuming that people in other countries are all alike. When you take into account traditions and cultures and histories, they’re not all just like us, and even if they are just like us, people often react in different ways to something that’s imposed on them by a bunch of foreigners than by their own country.

When you do this in other countries you might have this idea that because vaccines work here they would work there,
or when you give people malaria nets and they use them as fishing nets that are killing fish due to insecticide. Those are the kind of surprises that you have to be aware of. The person who’s very good about this is William Easterly, who wrote this book called *The White Man’s Burden*, and you read that and you feel kind of helpless. His view is that you shouldn’t be hopeless, you have to be very careful. It’s a big trap just to think that there’s some kind of uniform solution.

If I had to pick a big solution, it’s probably migration. More migration for people in the poorest countries. There have been a lot of studies of migration, and it really does help people a lot. They get paid four or five times more, and they send the money back to their homes, and it’s a huge fraction, like in Nepal about 15 percent of the GDP is money being sent back. I wrote an article in *The New Republic* about this with economist Glen Weyl, where we pointed out how the human rights people hate these guest worker programs, because they think that the guest workers are being exploited. The people who really do this a lot are the Gulf states like the UAE, and they bring people in from Nepal, India, Pakistan, and pay them not very much by our standards, but five times what they make back home. It’s secure and they get paid, and they aren’t attacked by bandits the way they often are back home, but they don’t have any rights in these places. They can’t vote, and there are abuses. But in aggregate these things are enormously beneficial for people. The human rights groups attack it because people aren’t given the rights they think migrant workers should be entitled to. We think this should be encouraged because it is a proven way of helping people quite significantly, but there are always trade-offs.

*Do you really think that helps the original country the people come from?*

Apparently it does. There have been articles about brain-drain, but it seems that most people go back when they go to another country to work. They only do it for a few years and they save money so that they can invest it. And they bring back their training and expertise. So the net effect is actually beneficial for the country from which people are coming. This is well-known among economists. So you take a construction worker who’s not that skilled in India, he goes to the UAE
and works in the building industry and makes money, he goes back home and he can invest in business and hire people and so forth.

Sure, he’s been gone for a few years so there hasn’t been labor, but in these countries the problem is not a paucity of unskilled labor. If a person goes for a few years, it’s not noticeable in the economy. Whereas these Gulf States, they don’t have unskilled labor. So, it’s jointly beneficial. A lot of the Indians who came to the U.S. to work in Silicon Valley, they go back, so India has a tremendously successful internet technology industry, which they didn’t have before.

Of course, none of this is easy. If we got rid of all barriers to migration that could be a huge problem, and there could be a political backlash. But I do think that at the margin this would be a much more effective way of helping people than the Millennium Villages.

Do you have another big idea for your next book?

I’m interested in the bailout of AIG in the financial crisis. In the financial crisis there were all of these bailouts of firms. I’m kind of interested in that topic, whether these bailouts were smart, and whether there are ways to regulate them so that they’re less controversial.

I’m also interested in international justice. The practice of prosecuting people who commit international crimes, like the international criminal court does, so I could imagine writing about that from a similarly skeptical perspective. But I don’t want to repeat myself.
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