

Social Justice, Mindfulness & the Law: Reflections on the “Self”

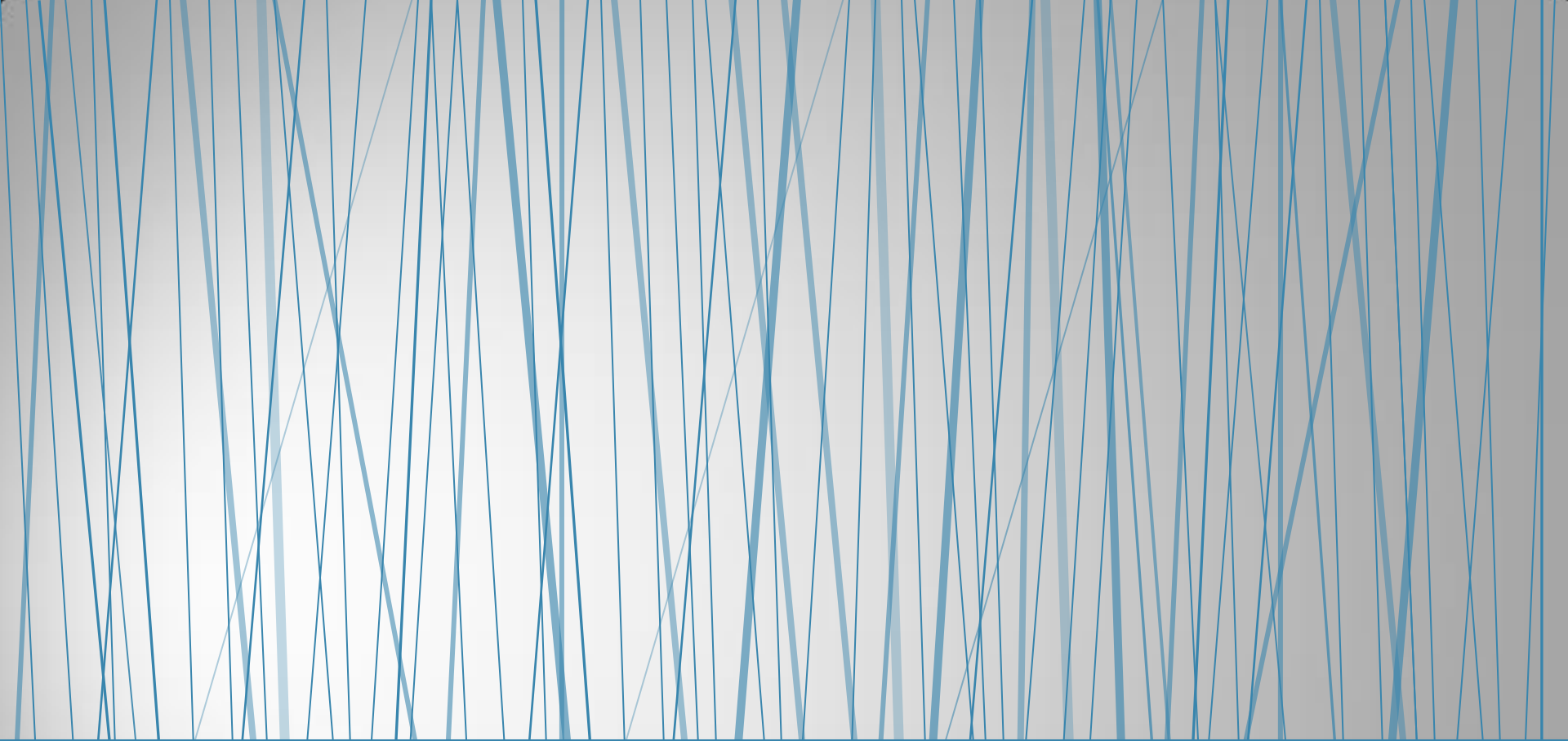
Professor john a. powell

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and The Robert D. Haas Chancellor’s Chair in Equity and Inclusion
University of California, Berkeley**

March 5 2013, UC Berkeley School of Law

Overview

- I. Where are we? Who are we? How did we get here? Reflecting on the Enlightenment conception of “self.”
- II. The problems with Enlightenment assumptions: What we now know.
- III. Transforming the isolated self: Mindfulness & Social Justice.



Part I: Where are we? Who are we? How did we get here?

What does it mean to be a law student (or lawyer) here and now?

- The Law
- Social relations & structures
- My sense of who I am

How did we get

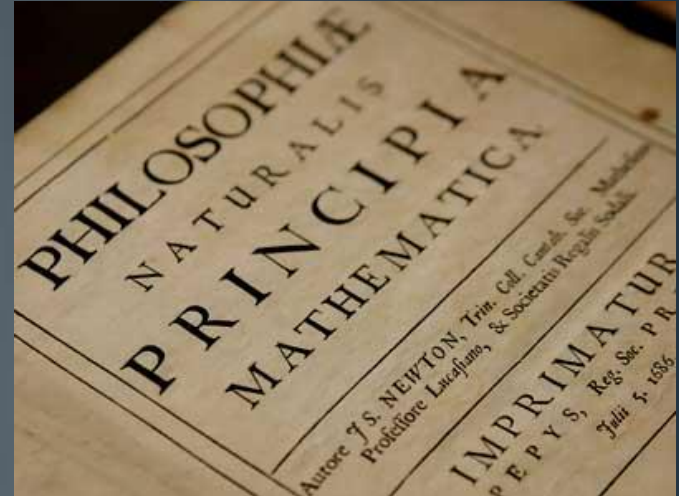
From here

To here?



The “Enlightenment” Project

- 1700s to early 1800s
- Follows the “Scientific Revolution”
- Three crucial tenets
 - Rationality
 - Knowledge & knowability
 - Isolation & separation



The Scientific Revolution



Isaac Newton



Johannes Kepler

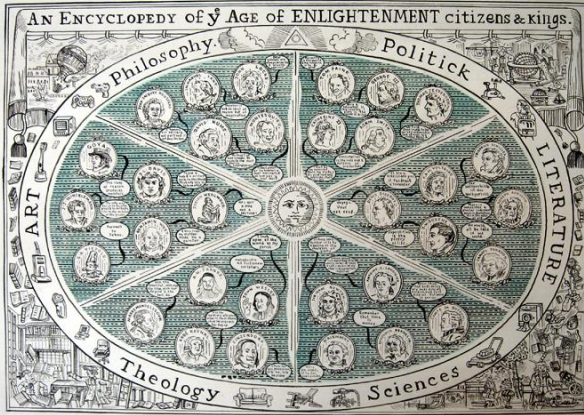


Francis Bacon



Galileo Galilei

The Enlightenment: “A Science of Man”



- Since Newton had proved that the universe worked according to certain laws, discovered via the scientific method, shouldn't man, society, government work according to universal laws, too?

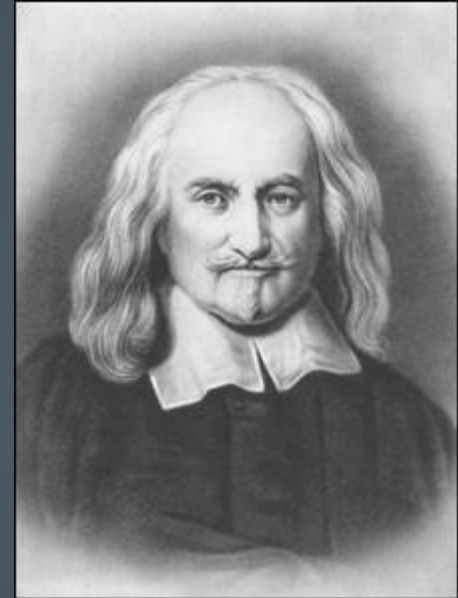
The Enlightenment Goal: Light without Darkness



- Reason is the light that makes it possible to see and know the universe.
- Those who could not know through this rational process (children, women, Indians, slaves) were not fully human.

The Enlightenment conception of “Self”

- Thomas Hobbes: the self is autonomous, detached & isolated from the surrounding world.
- This self is threatened by others
 - Fundamentally rooted in FEAR.
- The role of society (and the state) is to protect individuals from others.



The impact of the Enlightenment

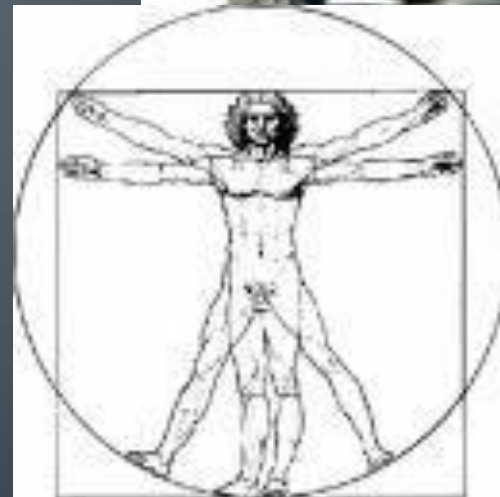
- Jurisprudence & the law
- Social & Structural arrangements
- Our sense of self as individuals

Dubito, ergo cogito, ergo sum
(English: "I doubt, therefore I think,
therefore I am")



Rene Decartes

The Cartesian Cut



Rodin

The Cartesian Ego

- The modern, reflective, rational self.
- The mind is transparent to the objective observer.
- Capacity to reason exists a priori, unaffected by the particularities of experience.
- Disembodied, immaterial self.
- Mind over matter.



Enlightenment Jurisprudence

- Modern jurisprudence has been an attempt to make the law more scientific: Objective, neutral, mechanical, certain.



Francis Bacon



Hugo Grotius: “The Galileo of law”



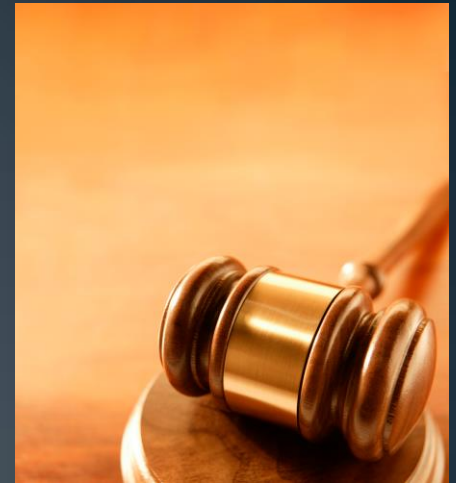
Blackstone



Montesquieu

Enlightenment Jurisprudence

- Role of the law is to protect individuals from others, allow them to keep what they gain in “fair” exchange
 - Emphasis on property, contract, torts
- Nature is distinct from state
- Public is distinct from private
- Relationships between things are linear
 - e.g. causation
- Complete knowledge of self is possible & presumed
 - Motivations are always knowable



Public v. Private; Nature v. State



Racial imbalance (in schools) can result from any number of innocent **private** decisions, including voluntary housing choices.

Individuals schools fall in and out of balance in the **natural** course, and the appropriate balance will shift with a school district's changing demographics.

Justice Thomas, Concurring, *Parents Involved in Community Schools v. Seattle School Dist. No. 1* (2007)

Linear Causation: Standing



The links in the chain of causation between [IRS grants of tax exemptions to racially discriminatory private schools] conduct and the asserted injury [of diminished ability of respondents' children to receive a desegregated education] are far too weak for the chain as a whole to sustain respondents' standing.

Justice O'Connor for majority, *Allen v. Wright* (1984).



Chief Justice
John Roberts

“Judges are like umpires. Umpires don't make the rules, they apply them. The role of an umpire and a judge is critical. They make sure everybody plays by the rules, but it is a limited role. Nobody ever went to a ball game to see the umpire.”

–Judge John Roberts,
2005

Complete Knowledge of Self: The Intent Standard

- It is necessary to consciously will discrimination for the 14th Amendment's Equal Protection Clause to apply.



- This assumes the enlightenment precept of complete access to the mind & ability to know our motivations.

The Enlightenment & Institutional Arrangements



Education



Economic



Transportation



Food



Housing



Justice



Healthcare

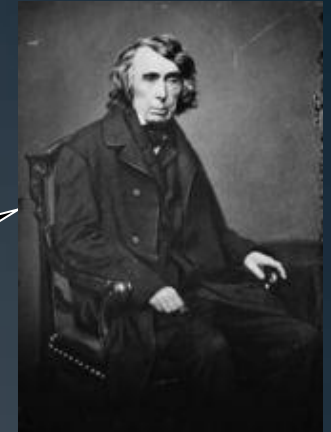


Communications

Enlightenment & Social / Institutional Arrangements

- Premised on group-based othering
- Validate exploitation
- Revolve around defining “Who Belongs”

C. J. Taney's Opinion in Dred Scott



[I]t is too clear for dispute, that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this declaration [of Independence]. . .

The Constitution of the United States . . . declares that it is formed by the people of the United States; that is to say, by those who were members of the different political communities in the several States

We think they are not included, and were not intended to be included, under the word 'citizens' in the Constitution, and can therefore claim none of the rights and privileges which that instrument . . . secures to citizens of the United States.

Belonging & Social Structures

- Immigration
 - “Once again, the streets of our country were taken over today by people who don't belong here America's illegal aliens are becoming ever bolder. March through our streets and demand your rights. Excuse me? You have no rights here, and that includes the right to tie up our towns and cities and block our streets.”

-- Jack Cafferty, former CNN anchor
- LGBT equality
- Gender roles; domestic / corporate
- Disability access

Structures & Self

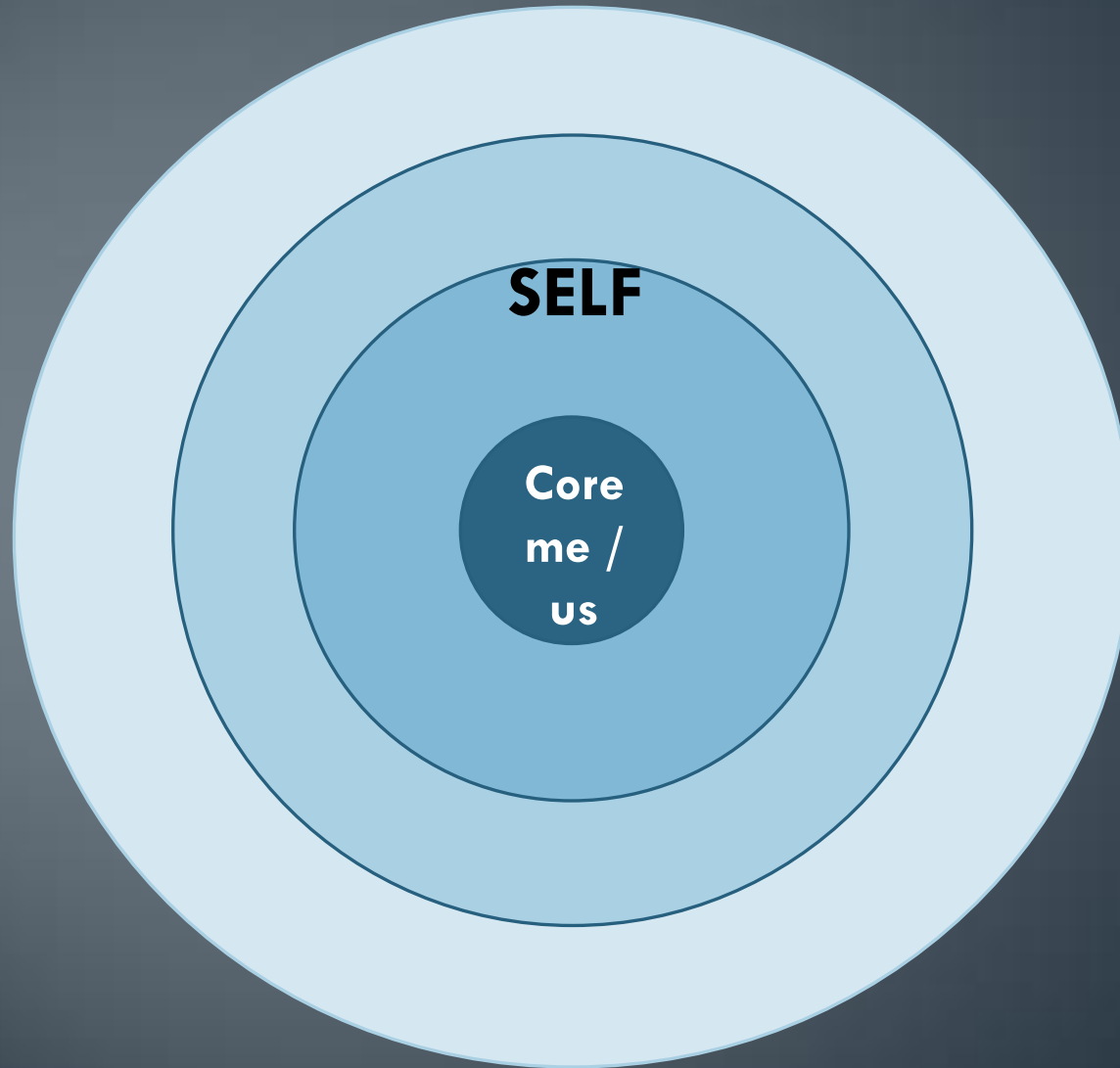
- Enlightenment conceptions of self give rise to existential angst
 - “Wherever there is self, there is fear; wherever there is other, there is terror.” – Ken Wilber
 - Separation from our true selves, and from nature.
- Institutional arrangements affect the spirit, soul, and “self” of a nation and all those within it
- But there is no way to render people as “other” without denying some basic humanity about ourselves
- Even when one is considered part of a community for limited purposes, there are other ways to withhold mutual respect and dignity
 - But only by denying something within oneself

The Circle of Human Concern



OTHER

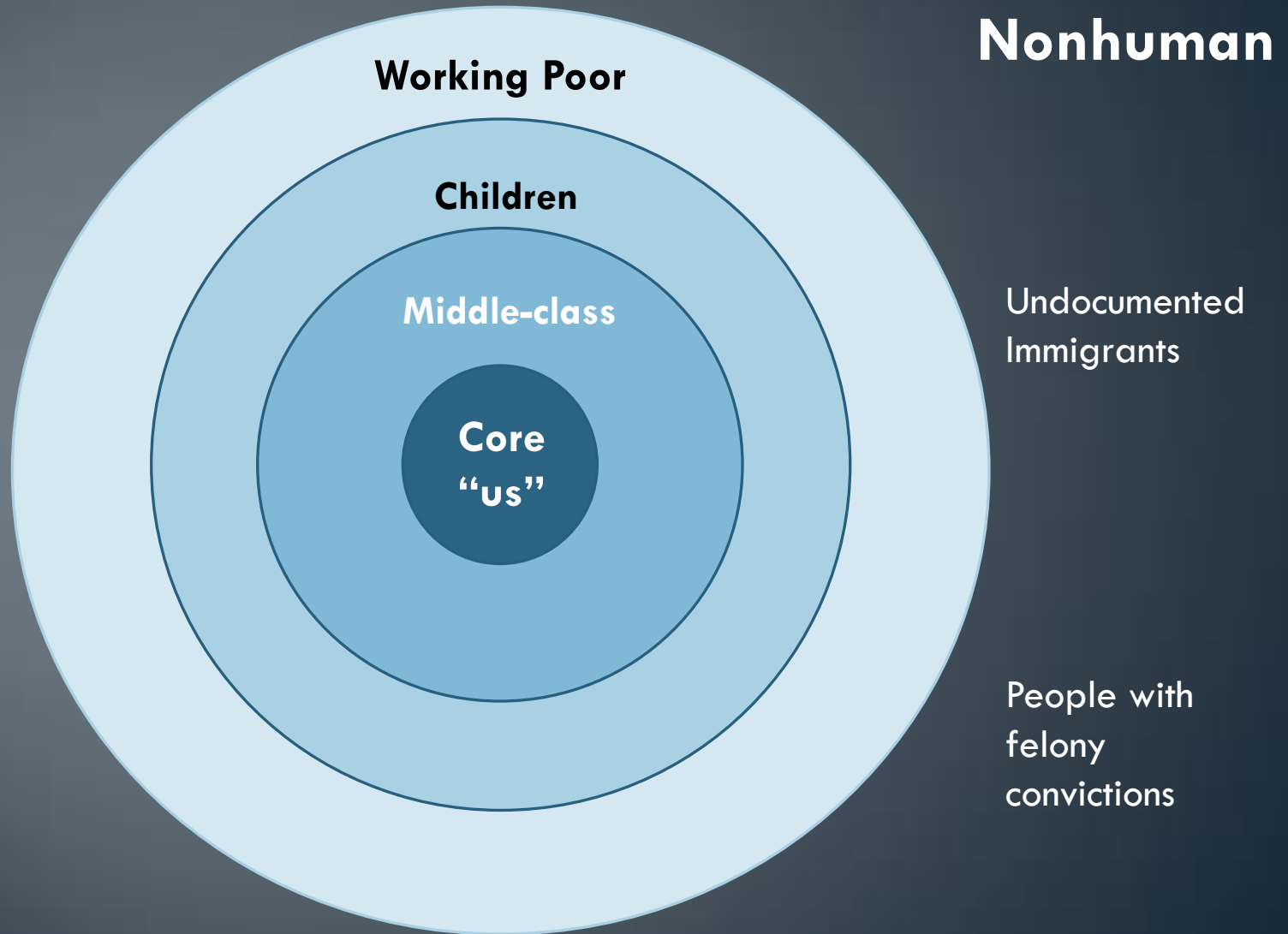
The Circle of Human Concern



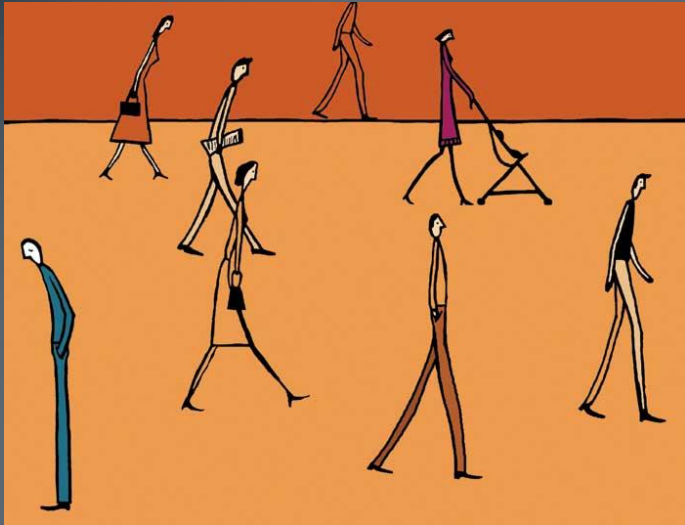
OTHER

Nonhuman

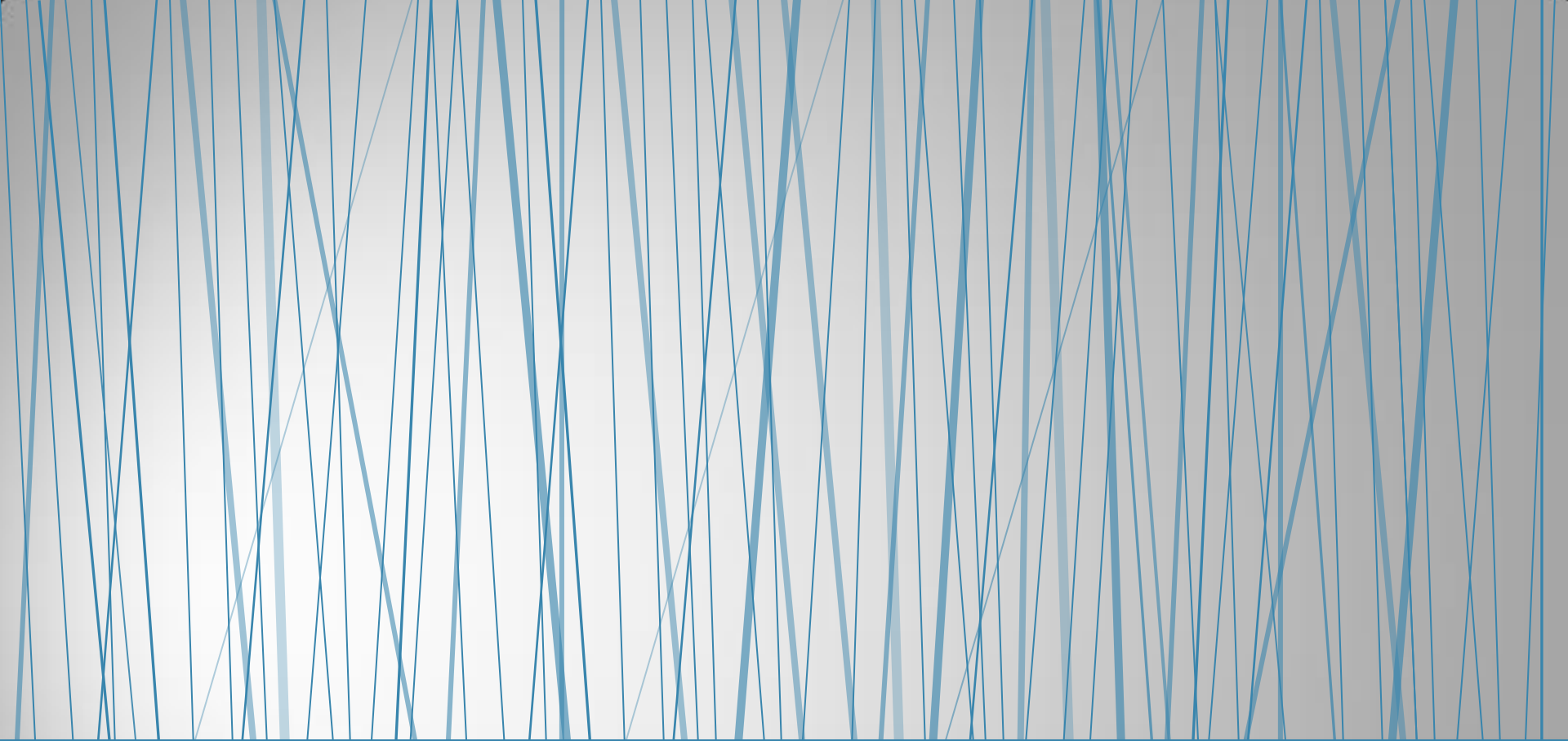
The Circle of Human Concern: Collective



The Isolated Self as Fearful & Unhappy



- The Hobbesian self as detached & autonomous results in deep loneliness, terror, dread
- Many religions are designed to counter this isolation, but are relegated to the realm of “private”



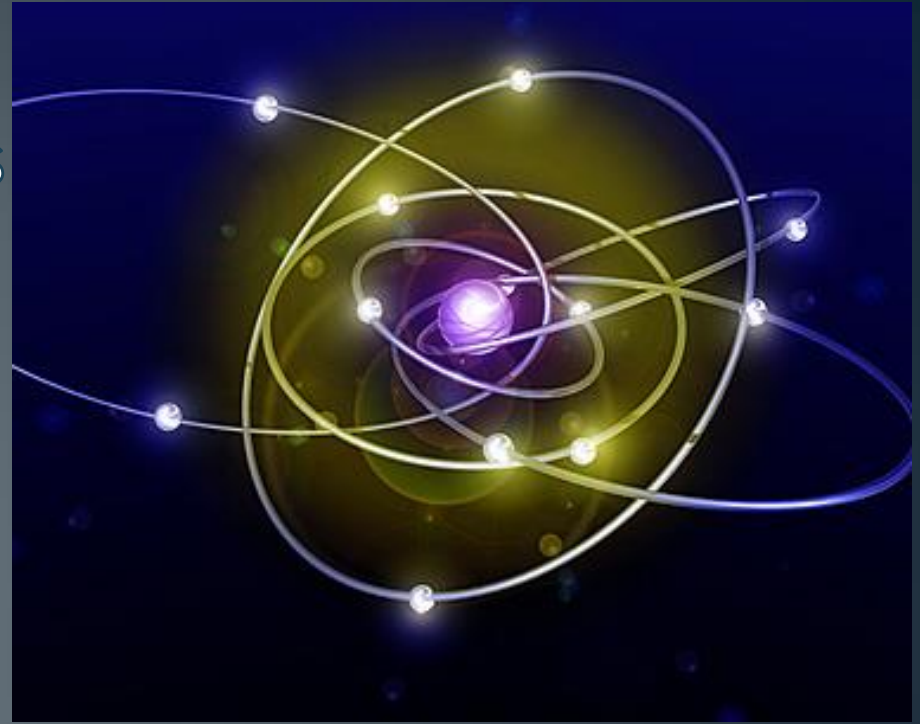
**Part II: The problems with Enlightenment
assumptions: What we now know**

Critiques of Enlightenment Assumptions

- Critiques voiced from the many perspectives that have been marginalized by this Enlightenment worldview
 - Feminist
 - Environmentalist
 - Marxist
 - Humanist
 - Racial justice
- The Enlightenment Project
 - emerged in one cultural / macrogeographic perspective
 - An abundance of other traditions present alternatives
 - Modern Scientific Developments contradict Enlightenment Assumptions
 - Quantum physics
 - Systems theory
 - Cognitive Science

Quantum Mechanics

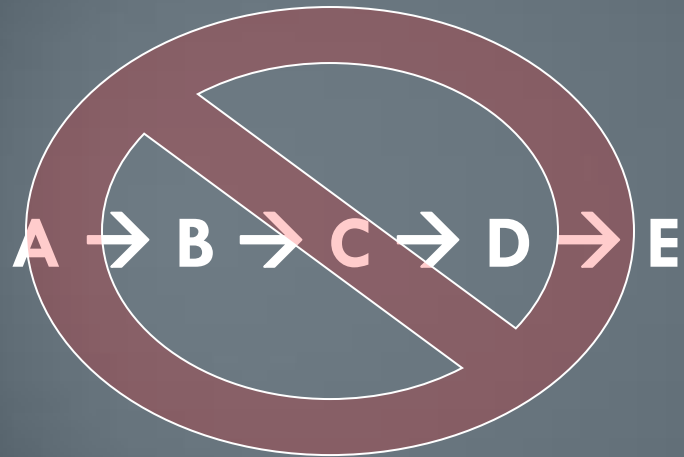
- Observation is interaction
- Reality is probabilistic, not deterministic
- Attributes of things exist only in relation to the observer.



In other words: we are a part of the object and other that we seek to understand.

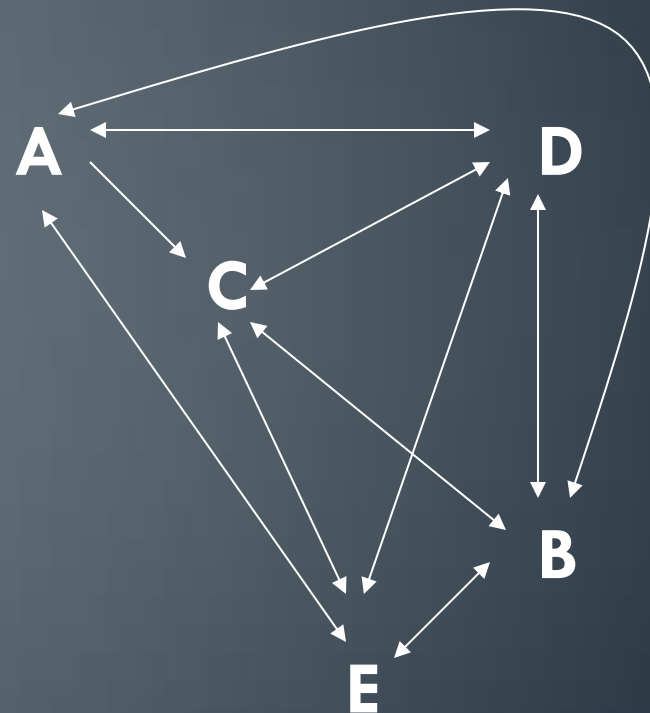
Systems Thinking

The Newtonian Perspective:



Linear causation

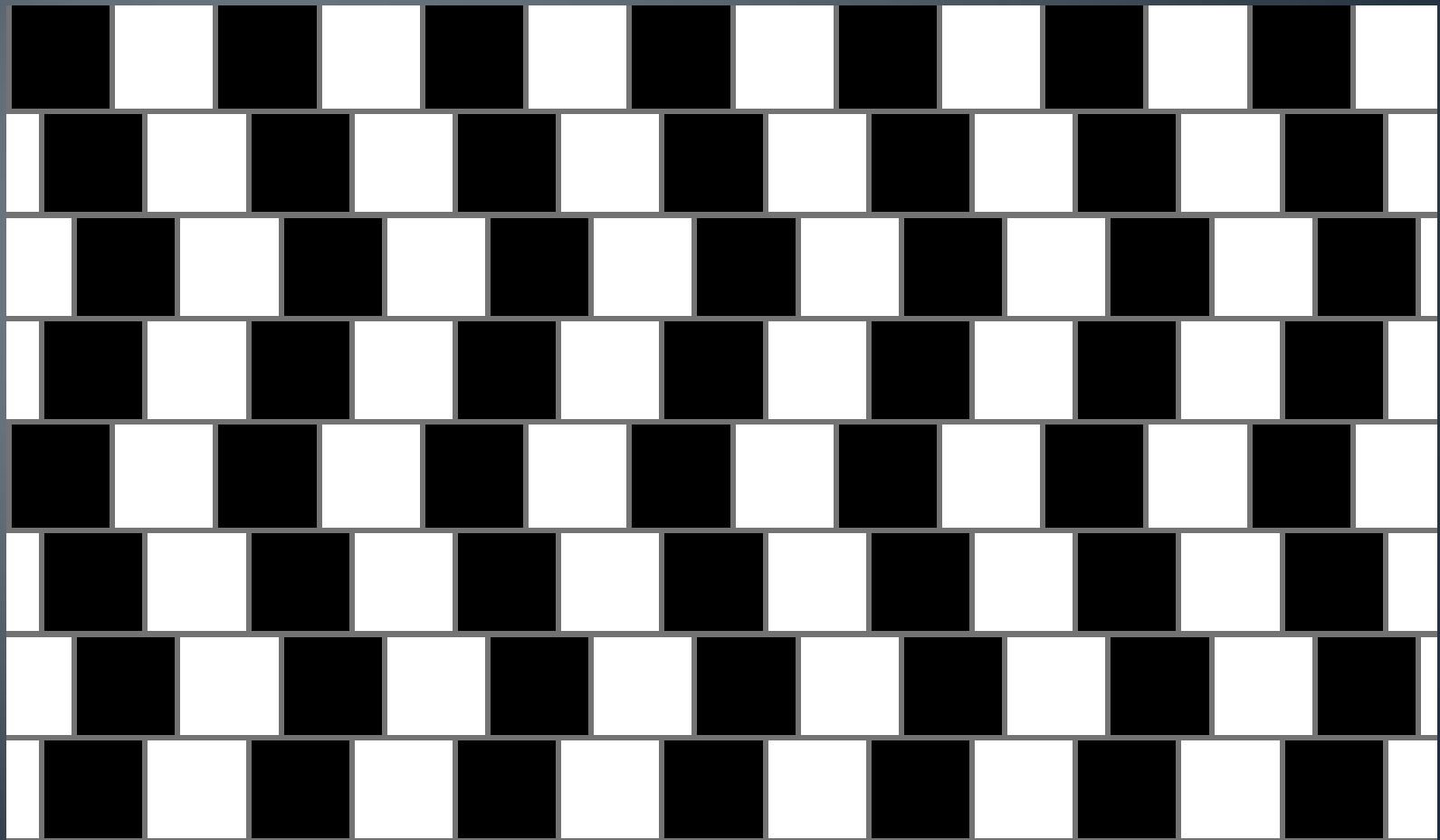
Systems Thinking:



Causation is reciprocal, mutual, and cumulative.

Cognitive Science: the subconscious overriding the conscious mind

Parallel or crooked?



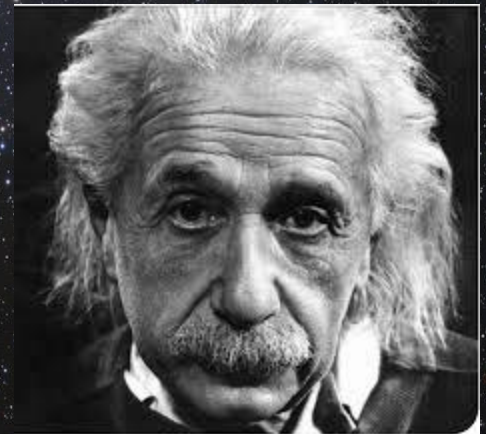


**Part III: Transforming the isolated self:
Mindfulness & Social Justice.**

“A human being is part of a whole, called by us the ‘Universe’ —a part limited in time and space. He experiences himself, his thoughts, and feelings, as something separated from the rest—a kind of optical delusion of his consciousness.

This delusion is a kind of prison for us, restricting us to our personal desires and to affection for a few persons nearest us. Our task must be to free ourselves from this prison by widening our circles of compassion to embrace all living creatures and the whole of nature in its beauty.”

-- Albert Einstein



Mindfulness: Roots in Many Traditions

- Each major religion
- Humanism
- Jungian
psychology
- Naturalist

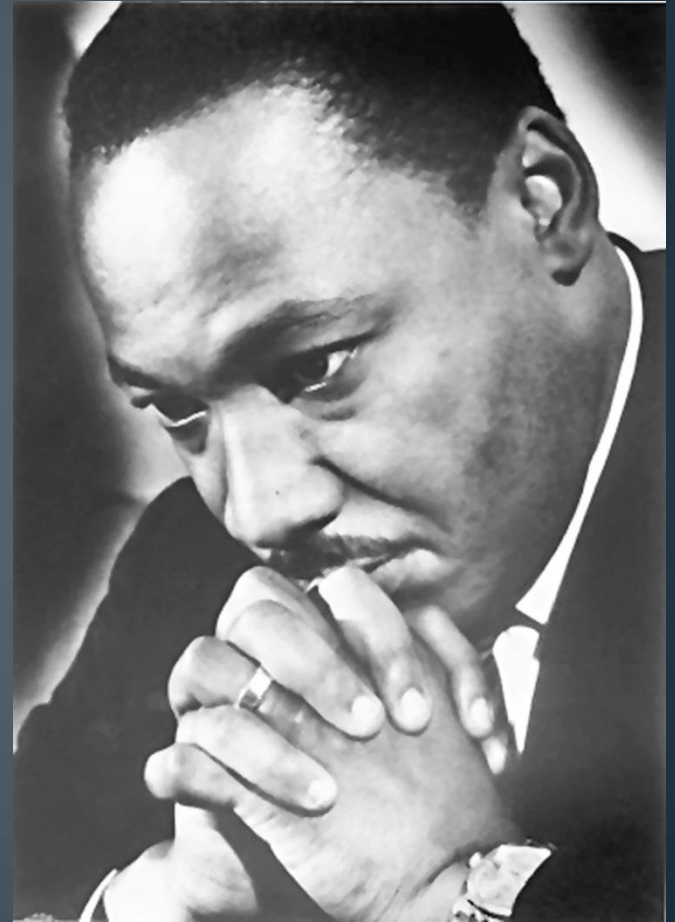
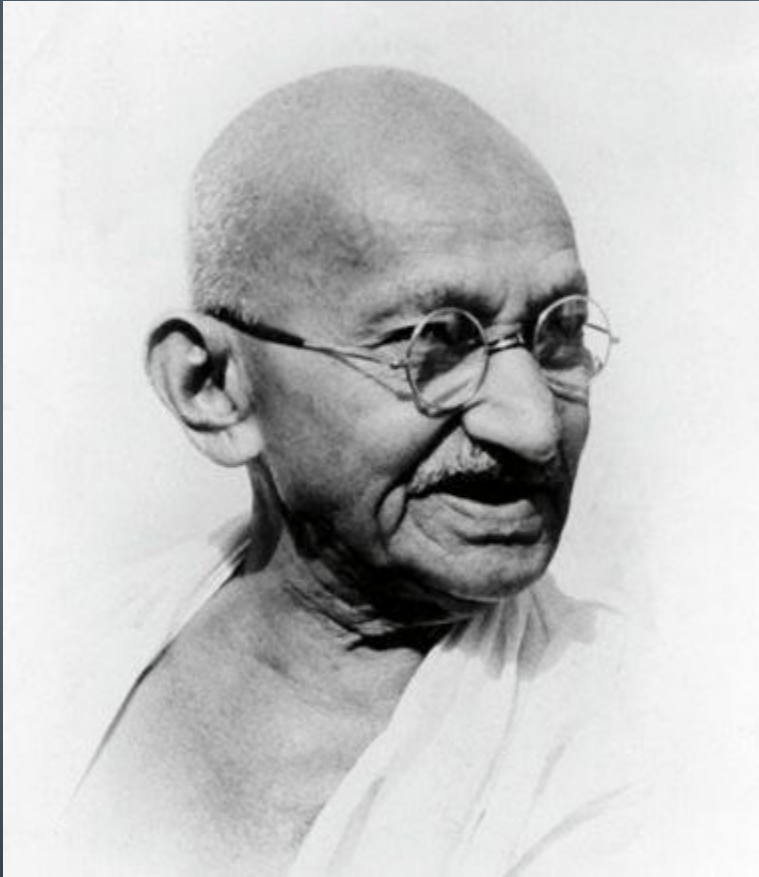


Mindfulness: My story

- Asking my father: “What is hell?”



Mindfulness, Spirituality & Social Justice

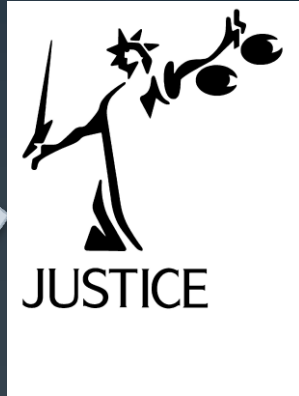


One view

Mindfulness helps us be better social justice advocates



Mindfulness



Another view

Challenging
marginalizing structures
is an essential to
knowing our true selves.

Mindfulness

Social
Justice



Transforming our Isolated Selves

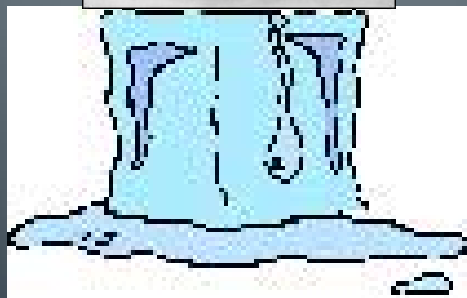
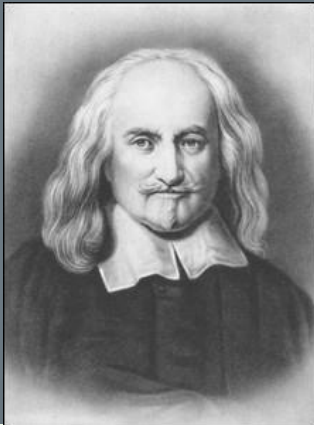
- Because the isolated and egoistic self is separated from others through a set of institutional arrangements, then truly transforming this sense of self requires engaging with and challenging those structures.
 - Not retreating from or avoiding them
- The heart of mindfulness and spirituality is engagement.
 - Not happiness, not detachment.

Transforming our Collective Structures

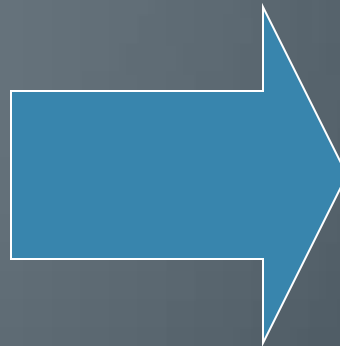
- Mindfulness can be a means to an end
 - Better students, better lawyers, better business leaders
 - Better at our interpersonal relationships
- But it can also fundamentally rewrite the rules, relationships, and roles that govern our lives
 - As students, as lawyers, as leaders
- Consider how the practice of engaging & challenging the structures that “other” and marginalize can be part and parcel of the project of mindfulness.

Sustainable Change

- As we transform structural arrangements, we transform ourselves as well

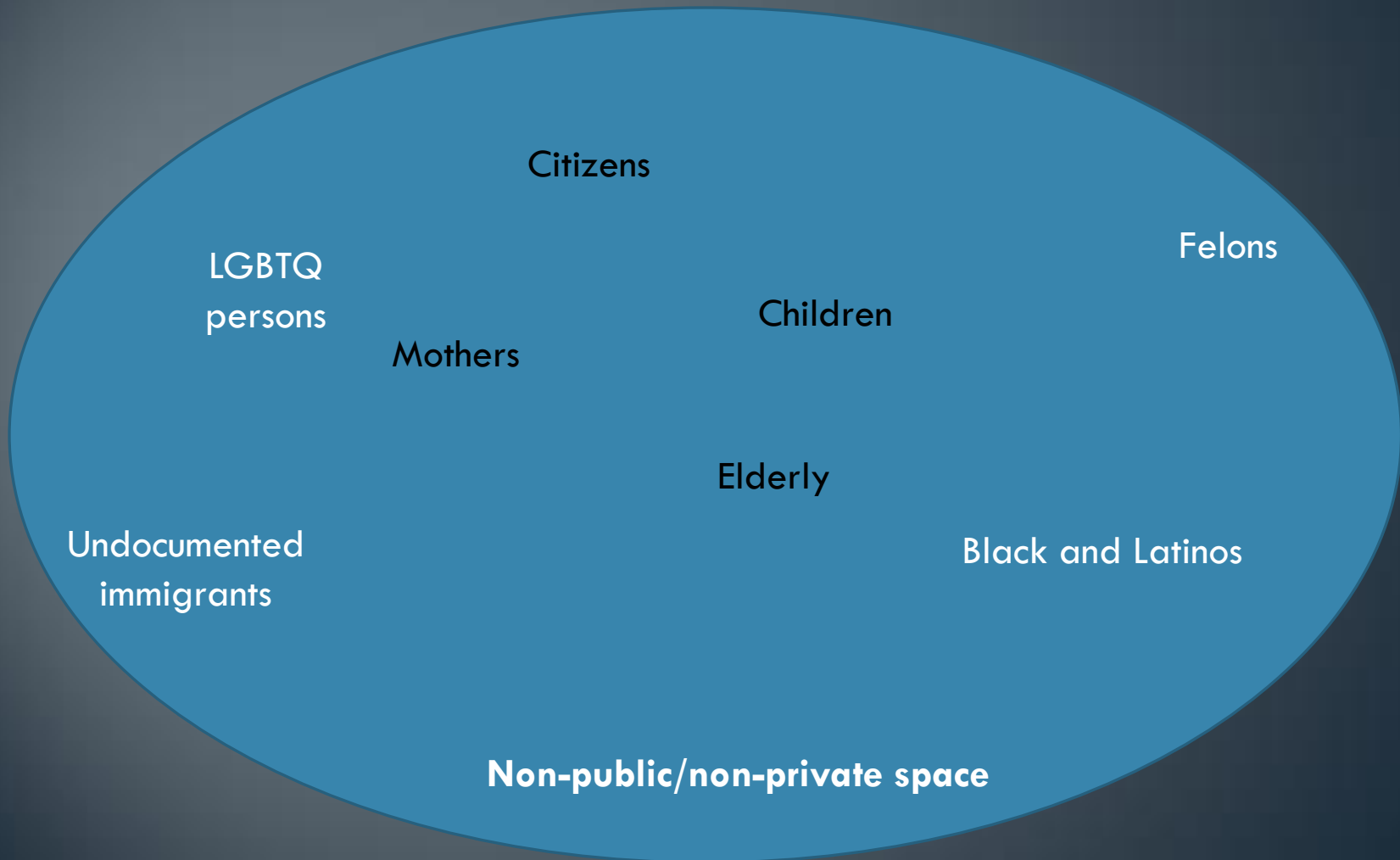


Fear, Disconnectedness, Sense
of Lack



Interconnectedness,
mutuality, linked fate

An Expanded Circle of Human Concern



RACING TO JUSTICE

*transforming our conceptions of self and other
to build an inclusive society*

john a. powell

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