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

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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 Dark Ages
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
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?
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")
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.
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
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.

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.

“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”
It 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
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

SELF

OTHER
The Circle of Human Concern

SELF

Core me / us

OTHER
Nonhuman
The Circle of Human Concern: Collective

Core “us”

Middle-class

Children

Working Poor

Nonhuman

Undocumented Immigrants

People with felony convictions

Homeless
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.
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.
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.
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.

Transforming our Collective Structures
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

- Citizens
- LGBTQ persons
- Mothers
- Children
- Elderly
- Undocumented immigrants
- Black and Latinos
- Felons

Non-public/non-private space
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