

University of Chicago Law School

Chicago Unbound

Journal Articles

Faculty Scholarship

2016

The Paradoxes of Public Philosophy

Brian Leiter

Follow this and additional works at: https://chicagounbound.uchicago.edu/journal_articles



Part of the [Law Commons](#)

Recommended Citation

Brian Leiter, "The Paradoxes of Public Philosophy," 1 Indian Journal of Legal Theory 51 (2016).

This Article is brought to you for free and open access by the Faculty Scholarship at Chicago Unbound. It has been accepted for inclusion in Journal Articles by an authorized administrator of Chicago Unbound. For more information, please contact unbound@law.uchicago.edu.

THE PARADOXES OF PUBLIC PHILOSOPHY

*By Brian Leiter**

Philosophy has long been part of the public life of human societies: one need only mention Socrates in Greece or Confucius in China, or, to leap forward a couple of thousand years, Rousseau in France and Hegel in Germany to recognize that philosophers can be taken *very seriously* by the politicians, the journalists, the ordinary citizens of their eras.

But the idea of “public philosophy” as I will be discussing it here, is an artefact of the professionalization of the discipline over the past two hundred years, with the rise of research universities and, especially in the Anglophone world, after World War II, the rise of a professional class of philosophers—”professional” in the precise sense that they earn their living by teaching and writing about philosophy, paid either by private or mostly public universities to do so. There are now numerous organizations that promote “public philosophy,” that seeks to make philosophy “relevant” and “significant” to the broader culture. These locutions are themselves striking, since philosophy is relevant and significant to anyone—including presumably members of the “public”—who want to know what is true or to know what they do and do not know, but that is obviously not what is meant by “public philosophy.” Rather, the special purview of so-called “public philosophy” is to contribute philosophical insight or knowledge or skill to questions of moral and political urgency in the community in which it is located. So conceived, public philosophy is an artefact of what is usually called the “neoliberal” way of thinking that has dominated the capitalist world completely since the 1980s, in which every human activity justifies itself by its contribution to something for which there is demand in the marketplace. The most extreme form of this pathology in a country with a formerly preeminent but now declining university system is England, where philosophers are asked to adduce evidence of their “impact” in order to justify the funding of their work.¹ “Impact” here does not mean influencing how other scholars or students think about issues, but rather such ephemera as appearing on television or having one’s research discussed in a newspaper.

* Karl N. Llewellyn Professor of Jurisprudence and Director of the Center for Law, Philosophy & Human Values, University of Chicago. An earlier version was presented as a keynote address at the conference on “Philosophy in the Public Sphere” at O.P. Jindal Global University on Nov. 7, 2014, where it benefitted from discussion with the faculty and students in attendance. I am grateful to Dan Telech for excellent research assistance and help in preparing the article for publication. I may be contacted at bleiter@uchicago.edu.

¹ This is not the first time, of course, since the birth of the research universities that philosophers have had to justify their place in it. But during prior iterations, the question was an intellectually and epistemically serious one. See FREDERICK BEISER, *AFTER HEGEL: GERMAN PHILOSOPHY, 1840-1900* 18 (2014) (regarding German academia a bit before mid-19th-century- “To receive funding, a faculty had to demonstrate that its discipline was legitimate, that it had its own ‘scientific’ methods, and that it occupied a necessary place in the academic division of labor.”) Demonstrating the existence of a *Wissenschaft*, of reliable and rigorous methods for ascertaining knowledge, is quite a bit different than adducing evidence that *The Daily Mail* noted one’s research.

The idea of “public philosophy” so conceived—that is, philosophy as contributing to questions of moral and political urgency in the community in which it is located—is paradoxical, however, for reasons that I propose to discuss. The first puzzle may be simply put: normative philosophy has no well-established substantive conclusions about the right and the good—literally, none!—that could possibly dictate to the polity at large what should be done. All biologists agree that the theory of evolution by natural selection is crucial to understanding the diversity of life on the planet; all physicists agree that Newtonian mechanics gives a correct description of the movement of mid-size physical objects; all moral and political philosophers agree about nothing, except perhaps the very modest claim that all human beings have equal moral standing. And they do not even really agree about that, since some major philosophers, like Nietzsche, deny it; others deny that equality of moral standing attaches to species membership at all; and all the rest differ so dramatically on what is required for or because of “equal moral standing” that the apparent agreement is wholly illusory (consider: for Kantians, equal moral standing requires something like rational personhood; for some utilitarians, something like sentience; for Marxists, something like needs).² Moral and political philosophers can not agree about whether the right has priority over the good or vice versa; they can not agree about what the criterion of human well-being is; they can not agree about the correct formulation of Kant’s categorical imperative; they can not agree whether agents in the Rawlsian original position would choose deontological or utilitarian principles; and so on.

Agreement may not secure the reliability of the claims agreed upon, of course,³ but such agreement does seem a prerequisite for successful influence on questions of public interest. Consider a pseudo-science like economics,⁴ which in the United States has had considerable influence on public policy. That economists could present fairly unified fronts for significant periods of time—first, under the Keynesian umbrella, subsequently under the “Chicago School” umbrella—no doubt lent credence to their claimed epistemic authority. (Even there, one suspects that non-intellectual factors, such as the extent to which economic theory tracked the interests of ruling elites, played a decisive role in the triumph of various economic orthodoxies at the level of policy.) In the United States, at least, that apparent authority may now be ending, due partly to the very public nature of the disagreements—a result primarily of the prominent polemics of the Neo-Keynesian Paul Krugman—and partly to what is increasingly apparent, namely, that macroeconomists, in either camp, have almost no ability to predict any significant economic events. Putative sciences with no significant predictive power eventually lose credibility.

² See generally, Brian Leiter, *Moral Skepticism and Moral Disagreement in Nietzsche*, OXFORD STUD. IN METAETHICS 9 (R. Shafer-Landau ed. 2014); Cf. Brian Leiter, *The Boundaries of the Moral (and Legal) Community*, 64 ALA. L. REV. 511-31 (2013).

³ See Derek Parfit, *On What Matters* (2011) (A leading contemporary moral philosopher, does think such agreement is essential to secure the objective truth of moral conclusions).

⁴ See ALEXANDER ROSENBERG, *ECONOMICS: MATHEMATICAL POLITICS OR SCIENCE OF DIMINISHING RETURNS?* (1993) (Regarding the failures of Neoclassical macroeconomics).

But let us return to philosophy. No philosopher can even pretend to enter the fray of public debate by reporting, “Philosophers have discovered that rule utilitarianism is the only correct way to assess questions of public policy.” Nor can any philosopher intervene in a dispute by noting that “such a policy would be unjust given the Rawlsian difference principle.” The “difference principle”—the idea that economic rewards should be distributed in such a way as to maximize the position of the economically worst-off in a society—is not a result or a discovery, but an intuition, the formalization of some vague feelings about what justice involves. If a society ignores the difference principle—as essentially all do—there is no discernible consequence. If someone tries to ignore the laws of Newtonian mechanics, the consequences are immediate!

In short, the first paradox of public philosophy is that philosophers enter into moral and political debate purporting to offer some kind of expertise, but the expertise they offer can not consist in any credible claim to know what is good, right, valuable, or any other substantive normative proposition that might be decisive in practical affairs.

That brings us to the second paradox of public philosophy. If it is not substantive normative knowledge that philosophers bring to debate, then perhaps it is a *method* or *way of thinking* about contested normative questions that they offer. And this strikes me as a far more plausible suggestion. Starting with certain normative intuitions, public philosophers work out their entailments, demonstrating claims of the form, “If you believe X, then you ought to believe Y,” and, “If you believe Y, you should not do Z.” What philosophers—at least those in the broadly Socratic traditions—are good at is parsing arguments, clarifying the concepts at play in a debate, teasing out the dialectical entailments of suppositions and claims, and so on: Socratic philosophers are, in short, purveyors of what I will call “discursive hygiene.”

Although this constitutes a detour from my main claims, I want to emphasize that this conception of moral and political philosophers as purveyors of discursive hygiene is compatible with the emotivist theory of normative discourse defended by A.J. Ayer and Charles Stevenson in the middle of the 20th-century, despite the fact that their meta-ethical views tend to be reviled today by those who think they somehow distracted philosophers from important normative questions for a long period of time.⁵ Recall that for Stevenson ethical judgments express, roughly, an attitude like, “I disapprove of X, do so as well.” So they express pro- and con- (favorable and unfavorable) attitudes, plus a meta-attitude about the attitudes others should have. Stevenson thought, correctly I believe, that the emotive meaning of ethical terms was central to understanding their centrality to social life. Ethical disagreements are at bottom a function of disagreement in attitudes, rather than disagreements in beliefs (here he follows Ayer): “ethical argument usually terminates when disagreement in attitude terminates, even though a certain amount of

⁵ The irony, of course, is that those philosophers who did address “normative” questions never addressed important ones! See Brian Leiter, *Why Marxism Still Does Not Need Normative Theory*, 37(2) ANALYSE UND KRITIK 23-50 (2015) (for the discussion of “bourgeois practical philosophy”) [Hereinafter “Leiter”].

disagreement in belief remains.”⁶ (He thinks this counts in favor of explaining what we observe about moral disagreements, namely, that they often end when we secure agreement in belief, but seem interminable when they involve disagreements in attitudes.) But this does not mean that all ethical disagreement is just *brute* clash of attitudes. As Stevenson writes, “Since attitudes are often functions of beliefs, an agreement in belief may lead people, as a matter of psychological fact, to agree in attitude” (cf. there is “the psychological fact that altered beliefs may cause altered attitudes”⁷). Notice, though, that on Stevenson’s account, the connection between particular facts and our attitudes is just a contingent *psychological/causal fact*: it is just a psychological fact about many creatures like us that if our beliefs change, our attitudes often change too.⁸ Philippa Foot, a famous critic of emotivism, emphasized this point: on Stevenson’s view, she complains, “there are no rules validating particular inferences [from beliefs to evaluative attitudes], but only causal connexions between the beliefs and attitudes concerned.”⁹

Was Stevenson wrong in thinking that normative theory operates mainly by exploiting the fact that creatures like us—or at least some of those creatures—are psychologically disposed to be moved by certain kinds of inferential connections between our attitudes or between our attitudes and our beliefs? Around the same time as Foot levelled her critiques of Stevenson’s emotivism, Richard Brandt, in his 1959 textbook *Ethical Theory* (a really crucial book for anyone who wants to understand the sociology of Anglophone moral theory in the last half-century), offered a similar challenge. Brandt asks us to imagine the case of Mr. A and Mr. B who disagree about whether colleges should accept direct grants of money from the government, Mr. A holding a favorable attitude, Mr. B an unfavorable attitude. Brandt writes:

“We do *not* consider an argument relevant or well-taken *just* because it is successful in influencing attitudes. If Mr. B. is a legislator and Mr. A wants to influence his vote, there are various “arguments” he might use that no one would think ethically relevant. Mr. A might say: “Your alma mater will surely go bankrupt unless this bill is passed.” Or, perhaps better, he might say, “Your daughter will be admitted to ____ College, if you vote for this bill; otherwise she won’t be.” These arguments may be of wonderful effect in changing Mr. B’s attitudes, but they are not ethically relevant. On the contrary, suppose Mr. A argues about the importance of having independent educational institutions, where absolutely uncensored thinking and discussion can occur. In this case, Mr. A will have argued relevantly, irrespective of whether Mr. B is interested.”¹⁰

⁶ Charles L. Stevenson, *The Nature of Ethical Disagreement*, in FOUNDATIONS OF ETHICS: AN ANTHOLOGY, 3373 (R. Shafer-Landau & T. Cuneo eds., 2007).

⁷ *Id.*

⁸ Emotivism and non-cognitivism got sidetracked into the Frege-Geach problem. See generally, Mark Schroeder, *What is the Frege-Geach Problem?* 3(4) PHIL. COMPASS 703: 720 (2008).

⁹ Philippa Foot, *Moral Arguments* 67 MIND 502-513, 503 (1958).

¹⁰ RICHARD BRANDT, *ETHICAL THEORY: THE PROBLEMS OF NORMATIVE AND CRITICAL ETHICS* 219 (1959).

Unnoted by Brandt is that the judgment that an attitude-altering argument is not “ethically relevant” is itself an evaluative judgment, so the expression of another attitude, according to the emotivist. So what Brandt’s example really illustrates is that we also have pro- and con- attitudes about the kinds of arguments that influence attitudes, which is hardly surprising. In other words, sometimes we not only want someone to change their attitude, we want them to do so for a non-self-interested reason, because we have an unfavorable attitude towards self-interested considerations and a favorable attitude towards those we denominate “ethical” considerations.¹¹

I believe that Stevenson had it exactly right. Changes in belief do influence changes in attitude, but only as a contingent, psychological fact: this includes changes in belief about the logical or inferential relations between beliefs or between beliefs and attitudes. This brings us to the second paradox of public philosophy. Although philosophers can contribute no substantive knowledge about the good and the right, they can contribute *discursive hygiene*. But discursive hygiene plays almost no role in public life, and an only erratic, and highly contingent, role in how people form beliefs about matters of moral and political urgency. Both points deserve notice, but they are distinct.

The absence of discursive hygiene in public life should be familiar to any reflective observer. Public debate, including in democracies, is awash in fallacious inferences, non-sequiturs, and arguments based on obviously false premises. I shall give just one example, chosen only because it is recent and I know a lot about it because I was involved in the public debate. The University of Illinois at Urbana-Champaign, a major public research university in my home state in America, offered a tenured position on its faculty to a man named Steven Salaita. Dr. Salaita writes about colonialism and the experiences of colonized peoples, including the Palestinians in the Middle East. (Salaita himself is a Palestinian-American.) He was offered a tenured position at the University of Illinois in October 2013, accepted it fairly quickly, and the University began making arrangements for his arrival and for his teaching to start in late August of 2014. Dr. Salaita is also an active user of social media, including Twitter. In response to the Israeli attack on Gaza in the spring and summer of 2014, Dr. Salaita began “tweeting” vigorous moral outrage at the slaughter of children and civilians, and at the apologists for these crimes, and began expressing himself in increasingly vulgar and hostile terms. I will give just one example. Dr. Salaita re-posted on his Twitter page a comment someone else made about an American journalist named Jeffrey Goldberg, who is an utterly shameless and morally bankrupt apologist for any crimes committed by Israel. Here is the statement that Dr. Salaita “re-tweeted”:

Jeffrey Goldberg's story should have ended at the pointy end of a shiv.

A “shiv,” for those who do not know, is a sharp knife, like the kind that might also be known as a “bayonet” attached to a rifle. The most natural reading of this tweet—contrary to some defenders of Dr.

¹¹ The point extends to our epistemic attitudes on my view, though I do not discuss that here. See Brian Leiter, *Moralities are a Sign-Language of the Affects*, 30 SOC. PHIL & POLY 237-258, 253-255 (2013).

Salaita—was that he wished Goldberg dead. That’s not a nice sentiment, but it is not illegal in the U.S. to express such a wish on your Twitter account, and far more illustrious writers than Dr. Salaita have made the same point. We need only recall Heinrich Heine, one of the great German writers of the 19th-century, who famously expressed the wish that “if God wants to make my happiness complete, he will grant me the joy of seeing some six or seven of my enemies hanging from [the] trees” in front of his cottage.¹² It is easy enough to understand how someone who believes his people are the victims of violent oppression might wish apologists for this oppression dead.

We only know about this “tweet” because, in the United States, there are a large number of so-called “conservative”—mainly reactionary and crypto-fascist—websites and media outlets devoted to monitoring and harassing university professors who deviate from what they regard as “acceptable” opinion. These websites began publicizing other examples of offensive, sometimes vulgar “tweets” by Dr. Salaita in July of this year. Soon alumni and wealthy donors to the University of Illinois began complaining to the University about this prospective hire. Although the tenured appointment had been approved by the Department, by the Dean, and by the Provost a year ago, the Chancellor on August 1 of this year notified Dr. Salaita she would not forward the appointment to the Board of Trustees for final approval (ordinarily pro forma in every prior case).

From a legal point of view, the issues here are fairly clear-cut. In the United States, it is illegal for a public university to deny employment to someone because of their political point of view: that violates their constitutional right to free speech and freedom of association. Citizens also have a well-established constitutional right in the United States to express their political views in vulgar and offensive terms.¹³ From a constitutional point of view, these claims are banal and familiar to lawyers and scholars. Yet the Chairman of the University’s Board of Trustees, in justifying the firing of Dr. Salaita, declared that “there can be no place” for “disrespectful and demeaning speech” “in our democracy, and therefore, there will be no place for it in our university.” As a factual matter, there is quite a lot of disrespectful and demeaning speech in American democracy, and, more importantly, the University of Illinois, as a public university, and thus subject to constitutional limits, *must* permit such speech, at least to the extent it takes place outside the classroom. (Inside the classroom, it likely would disrupt the university’s pedagogical mission, and so could be regulated, but that was not at issue here.) The Chairman went further, saying that he believes only in “free speech tempered in respect for human rights.” There are some countries where this statement would make sense: in Germany, for example, human dignity is the fundamental constitutional value, which can trump freedom of expression. But American constitutional law is the opposite of

¹² Heinrich Heine, *Gedanken und Einfälle*in SIGMUND FREUD, CIVILIZATION AND ITS DISCONTENTS 21 59-145 (1930).

¹³ Salaita v. Kennedy et. al., 1:15-cv-00924, No. 59 (N.D.Ill. 2015). (A federal court in the United States has since rejected an attempt by the University of Illinois to dismiss Prof. Salaita’s lawsuit, affirming that he clearly had valid legal claims. The University subsequently paid out nearly a million dollars to settle his claim.)

German: there is no doctrine of “free speech tempered in respect for human rights,” what is called in other jurisdictions “hate speech” is fully protected under American law. Anyone interested in the prospects of public philosophy should think hard about this case: we have a public official, the Chairman of the Board of Trustees of a major public university in the United States, who is completely ignorant of the basic facts of American constitutional law, making assertions that are both false and, if implemented, wholly illegal. Can one imagine the travesty that would result were there to be subtle issues of philosophical argumentation at stake?

Alas, this public stupidity was not anomalous in this affair. Chicago’s leading newspaper, the *Chicago Tribune*, defended the decision¹⁴ to fire Salaita on the grounds that his critical comments constituted “hate speech.” I want to emphasize that Chicago is the third largest city in the United States, and this newspaper serves a community of eight million people: after *The New York Times*, the *Tribune* is one of the three or four most significant newspapers in my country. Yet nowhere does the editorial defending the obviously illegal firing of Salaita even mention that “hate speech” is constitutionally protected in the United States. The editorial does not even mention that under most “hate speech” legislation in other countries that I have seen, nothing Salaita said would qualify.

I must underline that I am here talking about *clear points of law*, not hard philosophical questions. Yet the editors of a major American newspaper and the public official chairing a major American University’s Board of Trustees do not even understand simple legal points, and so make claims and arguments that are false and fallacious. I wish this problem were only confined to the United States, but I am sure I do not need to persuade members of this audience that it is, sadly, not.¹⁵ So what hope is there for public philosophy—for the discursive hygiene that philosophers can offer—in a world like this?

That discursive hygiene should be almost wholly absent from public debate is not surprising given the psychological evidence that people’s beliefs about matters of moral and political urgency—and, perhaps, more important, what they do based on those beliefs—are only slightly influenced by a regime of discursive hygiene; instead, their emotional and affective responses mostly determine their moral attitudes. Consider the psychologist Jonathan Haidt’s famous work on the “social intuitionist” model of moral judgment,¹⁶ according to which in most ordinary situations, moral judgments are produced by emotional or affective responses, the reasons adduced in their support being post-hoc: they do not

¹⁴ *U. of I. right to reject prof’s hate speech*, CHICAGO TRIBUNE Sept. 11, 2014 at <http://www.chicagotribune.com/news/opinion/editorials/ct-salaita-u-of-i-professor-hate-speech-edit-0911-20140911-story.html>

¹⁵ See e.g., Pankaj Mishra, *Modi’s Idea of India*, INT’L N. Y. TIMES, Oct. 25-26, 2014 6-7 (which discusses the outrageous historical fabrications and misunderstandings common among the Hindu nationalists, who claim Modi as their leader).

¹⁶ Jonathan Haidt, *The Emotional Dog and Its Rational Tail: A Social Intuitionist Approach to Moral Judgment*, 108 PSYCHOL. REV. 814–834 (2001).

explain the judgment, as evidenced by the resilience of the judgment even in the face of the defeat of the preferred reasons. Thus, in one famous case, Haidt describes to experimental subjects the case of a brother and sister who decide, after discussion, to experiment with incestuous sex. All the experimental subject thinks this is wrong, but the scenario, as described by Haidt, rules out *all the reasons for thinking it wrong*: the brother and sister only do it once, they do it voluntarily and are happy with the experiment, they use birth control to insure no pregnancy results, no one knows what they did, and so on. But people's visceral reaction remains powerful and unshakeable, even when the reasons they give for their judgment are defeated by the facts of the hypothetical. In the realm of ordinary moral judgment, emotion trumps reason.

We also know from work in empirical psychology that individuals “with selective deficits in emotional processing” due to disease or injury to the brain render different moral judgments about hypothetical situation like the Trolley cases, than most emotionally normal subjects to hypothetical situations,¹⁷ suggesting that the emotional responses are the real causes of the moral judgments. Psychologist and philosopher Joshua Greene has argued¹⁸ that emotional responses loom larger in deontological than consequentialist moral judgments, the latter demanding more “controlled cognition,”¹⁹ but in more recent work even Greene has acknowledged that “affect [or emotion] supplies the primary motivation to view harm as a bad thing” in the first place, so that even consequentialist reasoning has “an affective basis.”²⁰ More precisely, according to Greene et al. “affect supplies the primary motivation to regard harm as bad. Once this primary motivation is supplied, reasoning proceeds in a currency-like manner [“currency emotions are designed to participate in the process of practical reasoning”].²¹ “[A]larm-bell emotions are designed to circumvent reasoning” and, arguably, this is “the origin of the welfare principle.”²²

In a recent review of the empirical literature, Timothy Schroeder, Adina Roskies and Shaun Nichols found that the view they dub “sentimentalism”—namely, the view that “the emotions typically play a key causal role in motivating moral behavior”²³ —is well-supported by the “evidence from psychology and

¹⁷ Fiery Cushman & Liane Young et. al. *Multi-System Moral Psychology*, THE MORAL PSYCHOLOGY HANDBOOK 53–54 (J. M. Doris and the Moral Psychology Research Group eds., 2010).

¹⁸ Joshua Greene, *The Secret Joke of Kant's Soul* 3 MORAL PSYCHOLOGY 35–117 (W. Sinnott-Armstrong ed., 2007).

¹⁹ Cushman et. al., 54 (2010).

²⁰ *Id.* at 62.

²¹ *Id.* at 63.

²² *Id.* at 62, 63.

²³ Timothy Schroeder et. al., *Moral Motivation*, THE MORAL PSYCHOLOGY HANDBOOK (J. M. Doris and the Moral Psychology Research Group, eds. 2010) 77.

neuroscience”²⁴ and that while “motivation derived [exclusively] from higher cognitive centres independently of desire is possible...the only known model of it is pathological” involving Tourette syndrome.²⁵ Such empirical findings do not rule out the possibility that moral judgments can be influenced by what I have been calling discursive hygiene, but they certainly explain why so much of public discourse is manifestly irrational and emotion-driven.

But the research on the role of irrational emotional responses to moral questions is just the tip of the iceberg. The real problem, of course, is that prejudice and bias are dominant forces in human life. What I will call Tribalism—the propensity of creatures like us to identify with those “like themselves,” and to view others as unacceptably different, deficient, depraved, and perhaps dangerous²⁶—is, as any realistic appraisal of human affairs will reveal, the dominant force in public life. Tribalism—whether it is Irish Catholics killing Irish Protestants, or Sunni Muslims terrorizing Shia Muslims, or working class American whites hating working class American blacks—is the curse of our species, against which discursive hygiene is the feeblest of weapons. As Nietzsche observed, “Nothing is easier to wipe out than a dialectical effect” (TI II: 6), and he was only thinking of Socrates’s argumentative harassment of the rich youth of Athens. Given that Tribalist prejudices engage a range of powerful emotions—pride, self-respect, resentment, and others—how can discursive hygiene make an impact?

It may be said that Tribalism’s terrain has receded, especially in the last two hundred years, and that certainly seems to be true in various parts of the world. But we may reasonably ask what role discursive hygiene actually played in this process? Consider that the post-World War II consensus that emerged in many democracies about the importance of “universal human rights” only emerged after the ghastly slaughters that resulted from the extreme Tribalism of German and Japanese fascists and racists. Argument played little or no role; emotional revulsion at barbarity did. Yet Tribalist loyalties and prejudices remain ferocious, in America, in Iraq, in Israel, in India, in Pakistan and elsewhere. The great cosmopolitan ideal of the 19th-century, famously expressed by Karl Marx, was that, “Human emancipation will only be complete when the real, individual man has...in his everyday life, in his work, and in his relationships...become a *species-being* [*Gattungswesen*],”²⁷ that Marxian ideal of human beings who recognize their social and existential interdependence in producing the conditions of their existence *qua* human beings, but who no longer identify as simply the self-interested members of their tribes. That Marxian ideal remains an aspiration, even as *some* tribalist loyalties have receded over the last century.

²⁴ *Id.* at 98.

²⁵ *Id.* at 94.

²⁶ See DAVID LIVINGSTONE SMITH, *LESS THAN HUMAN: WHY WE Demean, ENSLAVE, AND EXTERMINATE OTHERS*(2011) (For a striking catalogue of the extreme version of this phenomenon).

²⁷ KARL MARX, *ON THE JEWISH QUESTION* THE MARX-ENGELS READER (R.Tucker ed. 2nd ed. 1978) 46.

The key point, however, is that we philosophers must recognize that moral change depends fundamentally on the emotional attitudes of people, and that these attitudes tend in a strongly Tribalistic direction. And the most plausible explanations for the evolution of such attitudes do not, alas, assign much role to discursive hygiene.²⁸ Consider selectionist explanations, which are all the rage these days in philosophy and the social sciences. These explanations appeal to evolution by natural selection, as opposed to all the other evolutionary mechanisms (e.g., genetic hitchhiking or genetic drift) that affect the evolution of species. Such explanations have serious limitations,²⁹ but they do help explain the persistence of tribalistic tendencies. First, these explanations concern only the evolutionary explanation of *altruism*, that is, concern for others, a kind of concern that can, of course, be far more tepid than considering the “other” to be a full-fledged member of the non-tribal moral community, whose suffering, for example, has as much moral salience as the suffering of anyone else. Second, the only well-confirmed and generally accepted evolutionary hypothesis in the literature—deriving from the work of biologist W.D. Hamilton— involves altruistic concern for *kin*, that is, for organisms that share some of the genetic make-up of the altruist. From a selectionist point of view, so the Hamiltonian argument goes, altruistic concern for kin can be highly effective in passing on genetic material to the next generation as long as that concern is directed towards kin, such as sisters or cousins or aunts who have some of the same genetic material. Thus, natural selection will select for a genetic predisposition to nurture and sustain kin, since they too can pass the genetic inheritance on. That, of course, is a far cry from viewing non-kin, indeed utter strangers, regardless of race or religion or tribe, as entitled to basic moral consideration, but it is certainly consistent with the Tribalism we observe. Third, even the more ambitious selectionist arguments for “group selectionism,” associated with Elliott Sober and David Sloan Wilson,³⁰ would still fail to explain the evolution of moral sensibilities beyond tribalistic ones, since, at best, these arguments tell us why individuals might develop altruistic concern for *members of their group* who are not kin; they do not explain why human communities might come to adopt non-tribalistic moral ideals.

Doubts about the prospects of discursive hygiene are strikingly illustrated by considering the case of Peter Singer, undoubtedly the most successful “public philosopher” in the Anglophone world in recent years, though in a somewhat schizophrenic way: he is lauded for his defense of the rights of non-human animals, but also denounced (indeed, sometimes banned from speaking—in Germany, for example³¹) for

²⁸ See, e.g., KWAME ANTHONY APPIAH, *THE HONOR CODE: HOW MORAL REVOLUTIONS HAPPEN* (2010).

²⁹ See, e.g., Brian Leiter & Michael Weisberg, *Why Evolutionary Biology is (so far) Irrelevant to Legal Regulation*, 29 *LAW & PHIL.* 31-74 (2010).

³⁰ ELLIOTT SOBER & DAVID SLOAN WILSON, *UNTO OTHERS: THE EVOLUTION AND PSYCHOLOGY OF UNSELFISH BEHAVIOR* (1998).

³¹ “Umstrittener Philosoph wieder eingeladen,” *Deutschlandfunk*, May 30, 2015: available at http://www.deutschlandfunk.de/phil-cologne-umstrittener-philosoph-wieder-ausgeladen.1818.de.html?dram%3Aarticle_id=321259. For coverage in English, see Michael Cook, *Peter Singer ‘disinvited’ from German philosophy festival* *BIOEDGE*, June 20, 2015, available at, <http://www.bioedge.org/bioethics/peter-singer-disinvited-from-german-philosophy-festival/11491>.

his willingness to approve of the killing of defective human beings. Singer is, however, a paragon of consistent discursive hygiene. He has argued, on the one hand, that our treatment of non-human animals is morally indefensible, since the suffering of a sentient creature is what is morally salient,³² not the species of the sufferer. Yet, on the other hand, he has argued that it can be morally justifiable to kill human infants afflicted with various kinds of cognitive and physical defects, since to allow them to live would, over the long term, produce more suffering than happiness. If one thought infanticide was morally abhorrent—as a matter of brute moral attitude—then one might take Singer’s position as a simple *reduction* of the idea that *suffering per se* is the only thing that is morally relevant, since it leads to an absurd and heinous conclusion. Singer has no actual argument against such a response, since his entire position rests simply on an equally brute, and unexplained, emotional attitude, namely, that *suffering per se is abhorrent*.³³ But if the consequence of believing that *suffering per se (regardless of species)* is the only thing that is morally salient leads to the conclusion that it is permissible to kill human babies with defects, it is equally reasonable to take that to show that species membership (namely, being human) is morally salient, since it explains why killing human babies is wrong, even when their cognitive and physical defects will impose burdens on others. That this rather obvious point is not much acknowledged in the philosophical literature should make even philosophers wonder what role *discursive rationality* as opposed to other forces are playing in their arguments.

From a serious philosophical point of view, of course, it should hardly be surprising that it is not rationally obligatory to think the suffering of non-human animals is on a par with that of humans. More general lessons of twentieth-century philosophy, I believe, show that no belief about *any* subject-matter is rationally obligatory for all agents regardless of their ends. First, from the famous Duhem-Quine thesis,³⁴ about the under-determination of scientific theories by evidence, we know that there are not even any scientific hypotheses that are rationally obligatory, in the sense of required by logic and evidence. This is because any recalcitrant evidence elicited in a test of an hypothesis is compatible with the hypothesis as long as we are willing to give up the background assumptions such a test requires. In choosing among competing hypotheses and background assumptions, we must always fall back on non-rational considerations, such as theoretical simplicity, methodological conservatism, and consilience.³⁵ Second, unless there were a plausible *substantive* conception of rationality (there does not appear to be one, alas), then rationality itself is instrumental, imposing normative constraints only on the means chosen to

³² There are nuances of Singer’s views I am ignoring here: e.g., he talks in terms of desire-satisfaction, rather than pleasure and pain, though this comes to the same thing in the case of non-human animals. Singer also thinks *sapience* can be morally salient, insofar as it affects the experience of pleasure and pain (or the satisfaction of desires).

³³ He sometimes derides responses like this as failures to follow through a principled and rational argument, but such responses are obviously question-begging.

³⁴ Named after French chemist Pierre Duhem and American philosopher W.V.O. Quine.

³⁵ See, e.g., W. V. O. Quine & Joseph Ullian, *The Web of Belief* (2nd Ed.. 1978).

realize our ends, whatever they may happen to be. Thus, even norms for belief are hostage to ultimate ends, and so particular beliefs are “irrational” only relative to the believer’s ends.³⁶ Neither Singer nor anyone else can show that one is rationally required to rule out ends (like forbidding infanticide) which require as a matter of instrumental reasoning the repudiation of the moral salience of suffering without regard to species.

Given our general epistemological predicament—namely, that no belief is rationally obligatory—it becomes even more interesting to ask what role discursive hygiene can play in public life? Even Peter Singer has acknowledged,³⁷ that one of the most influential parts of his 1975 book *Animal Liberation*,³⁸ was not the Benthamite argument mentioned already, but rather the emotionally evocative description of factory-farming practices in Chapter 3 of his book. These descriptions evoked the *suffering* of sentient creatures, and so elicited feelings of compassion from readers quite effectively. But from Singer’s perspective, the moral salience of suffering also entails the moral permissibility of infanticide, and it is easy enough to see that even a rather discreet description of infanticide factories or hospices (call them what you want) would immediately elicit a very different set of moral intuitions and feelings. Clearly our emotional responses to vivid descriptions of *factory-farmed chickens* and *the painless killing of defective human babies* are not going to yield a rational verdict about the moral propriety of either practice.³⁹

So if Tribalism and emotion dominate most moral thinking in the public sphere, should we simply not bother with “public philosophy”? That is not, in fact, the skeptical conclusion I draw and it is important to emphasize why. First, of course, some of us, both citizens and philosophers, want to try to reason our way to sound views of moral and political questions of public significance, despite the irrational and Tribalist tendencies of most public discourse. That may effectively render “public philosophy” private, defeating its originally neoliberal rationalization: but perhaps that needs to be acknowledged. The *primary* reason for trying to figure out what is right and wrong in public affairs is to figure out what is right and wrong (assuming there might be facts of the matter about this), not necessarily to influence public policy. Second, let us also remember that we do not understand well the conditions under which discursive hygiene matters to public policy over the long haul, and that is an additional reason for philosophers to continue trying to cleanse public debate and reasoning of its fallacies and non-sequiturs: discursive

³⁶ See, e.g., Peter Railton, *Facts and Values*, 14PHILOSOPHICAL TOPICS 5-31 (1986).

³⁷ See, Peter Singer, *Animal Rights*, Slate June 13, 2001, http://www.slate.com/articles/news_and_politics/dialogues/features/2001/animal_rights/_4.html (his reply to Judge Richard Posner)

³⁸ PETER SINGER, *ANIMAL LIBERATION: A NEW ETHICS FOR OUR TREATMENT OF ANIMALS* (1975).

³⁹ The anti-abortion forces in the United States have always employed a Singerian strategy of describing the disgusting particulars of abortion to motivate “moral” opposition to it. It strikes me as curious that philosophers skeptical of the latter fail to notice the similarity to the most successful bits of rhetoric in support of the rights of non-human animals.

hygiene may lead philosophers to satisfactory conclusions about the right and the good, but it also may, through causal channels we do not yet understand very well, lead society to similar conclusions.

Finally, and perhaps most significantly, we do know that the discipline closest to philosophy—namely, law—is grounded in a commitment to discursive hygiene as well, albeit less rigorously and formally. Judges give reasons for their decisions, and those reasons are based on premises, from which inferential steps purportedly follow. Judges are influenced by a myriad of non-legal factors, but discursive hygiene matters to them, as even those great skeptics of 20th-century Anglophone jurisprudence, the American Legal Realists, repeatedly emphasized. Let us recall the anecdote invoked by Jerome Frank, one of the two most important American Realists and the most skeptical of the group; he observed:

A century ago a great American judge, Chancellor Kent, in a personal letter explained his method of arriving at a decision. He first made himself “master of the facts.” Then (he wrote) “I saw where justice lay, and the moral sense decided the court half the time. I then sat down to search the authorities...I might once in a while be embarrassed by a technical rule, but I *almost always found principles suited to my view of the case...*⁴⁰

Frank took this to be illustrative of the general form of legal decision-making by judges, namely, that they arrive at their decision based on their “moral sense” about what would be a fair outcome given what happened. In this regard, Frank’s picture is still consistent with Haidt’s “social intuitionist” model of moral judgment. But notice that the account Frank endorses has two other striking features: first, judges, on Frank’s picture, still want to find *legal principles* that will justify deductively the conclusion they find morally attractive; and second, judges can still be “embarrassed by a technical rule,” that is, they can come to recognize that the result they deem fair is not permissible *discursively* because of the logical entailments of the controlling legal rules. Those concessions by a radical skeptic like Jerome Frank about rational decision-making about practical questions should remind us that even in the sphere of emotional reaction and Tribalism, discursive hygiene can still exert pressures. Public philosophy can contribute to those pressures.

This will no doubt seem too tepid a conclusion to those whose vision of philosophy is different than mine. But, like the Skeptics of antiquity, and like the great modern skeptics about reason, namely, Hume and Nietzsche, I think we must recognize that reason underdetermines what to believe, even in the best of circumstances, and that, unsurprisingly, in the worst of circumstances—such as public discourse—non-rational factors overwhelm all others. We philosophers labor at the margins of public life, public life being dominated by irrational emotion and Tribalist prejudice. But in ways we can not always anticipate, our labors in the service of discursive hygiene may matter. Law is our ally in this regard, because lawyers are the practical torchbearers of discursive hygiene. But lawyers understand something that most philosophers—the Sophists, Marx, and Nietzsche are prominent exceptions—do not understand, namely, that rhetoric—the art of persuasion apart from appeal to what follows from discursive hygiene—matters,

⁴⁰ JEROME FRANK, *LAW AND THE MODERN MIND*, Ch. XII 112 (1930).

and often matters decisively, in what the public believes. “Belief fixation,” the process by which certain beliefs take hold in the cognitive and affective economy of the mind and thus yield action, does not necessarily track evidential, inferential and logical relations that interest philosophers: the empirical evidence for that is, by now, overwhelming. Rhetoric was always, from the Sophists onward, the art of producing belief fixation, and it is not taught sufficiently either in law or philosophy faculties.

Of course, rhetoric does not tell us what *beliefs* we should try to produce with our rhetorical tools, but for reasons I have already discussed, it is doubtful that discursive hygiene will help us on this score. The two great polemicists of modern philosophy, Marx and Nietzsche, understood this, despite their differences in moral attitudes. Marx did not engage in public philosophy in the sense now fashionable in professional philosophy: he did not offer reasons why the abolition of capitalism was just or morally obligatory.⁴¹ Instead, Marx offered a causal-explanatory theory of historical and economic change, taking for granted that as capitalism immiserated the mass of humanity, the understanding of *how things really work* would suffice to produce action, since the motivations of the vast majority to change things could be taken for granted. Nietzsche, by contrast, viewing almost all philosophy in the Socratic tradition as a kind of fraud, the attempt to rationalize the emotional prejudices of particular cultures, or particularly sick individuals (as Nietzsche viewed most philosophers), wanted to displace it with a self-conscious “legislation of values,” values in the service of making life worth living. For Nietzsche, this meant living in a world in which genius and its aesthetically pleasing products prevailed, something to which he thought the ascetic moralities of the last two thousand years constituted obstacles. Marx and Nietzsche both were “public philosophers”—Marx during his lifetime in some measure, Nietzsche only afterwards—and both on a scale undreamed of by any academics of the last hundred years, yet neither was primarily a practitioner of discursive hygiene in the sense of neoliberal “public philosophy.” There may be an important lesson in this fact for aspiring “public philosophers,” who should give at least as much attention to rhetoric as to discursive hygiene. We need discursive hygiene for the study and the seminar room; but in public, we need something else, something much more important, namely, rhetorical skill that will make our academic conclusions salient to a public too often influenced by emotion and Tribalist sympathies.

⁴¹ Leiter, *supra* note at 5.