

THREE VERSIONS OF NONSENSE

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Larry Alexander's interesting and provocative paper raises all sorts of important questions, of which I have time here to address only one, or rather two aspects of one: is his claim that the modern American university is in something of an intellectual crisis true, and, if so, is his diagnosis as to why correct?¹

Alexander's claim, briefly stated, is that many of the things that pass for knowledge in the modern university are nothing more than nonsense. This is a judgment with which I heartily concur. We disagree, however, as to why this is the case. Alexander's argument is that post-modernism, at least in its cruder and more extreme forms, has enabled all sorts of absurdities in the name of perspectivalism, historicism, anti-foundationalism, social constructionism, etcetera. Again, I do not disagree. However, Alexander's argument, I think, implies that post-modernism is nothing more than a bastard child of Enlightenment rationality, and that if we wish to restore the university to true intellectual health, we need merely look to those disciplines that have remained the legitimate heirs of the Enlightenment: namely, the hard sciences, medicine, philosophy, economics, and, at least to some extent, law.

My objection to Alexander's argument is not that his scorched earth critique goes too far but rather that it does not go nearly far enough. Consider three ideas that at present have impeccable intellectual credentials in the modern university and that remain wholly uncontaminated by post-modern thought: one, the position within the philosophy of mind known as eliminative materialism; two, the jurisprudential claim that legal texts have meanings other than those ascribed to them by their authors; and, three, the epidemiological claim that, in the words of Harvard Medical School professors Walter Willett and Meir Stampfer, having a body mass index ("BMI") of between 25 and 29.9 is "a major contributor to morbidity and mortality."²

Eliminative materialism, at least in some of its most famous and academically respectable forms, such as in the work of Paul and Patricia Churchland, is the claim that consciousness does not exist, and that the

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1. Larry Alexander, *Academic Freedom*, 77 U. COLO. L. REV. 883 (2006).

2. Walter Willett & Meir Stampfer, Letter, NEW REPUBLIC, Feb. 17, 2003, at 4. The Body Mass Index places people of different heights and weights on a single linear scale.

concept of consciousness itself will be eliminated as neuroscience advances.³ On this view, a comprehensive description of the workings of the human brain will find no place for any such concept as "mind," and, therefore, concepts such as "intention," "belief," "desire," and so forth, which make sense only if one assumes the existence of conscious entities, are referring to illusions rather than actual phenomena because no such entities exist. In short, this version of the philosophy of mind argues that the traditional subject matter of the discipline—that is, the mind—is not a real thing, but rather a category mistake. It is a product of folk psychology that must and will be discarded as knowledge advances toward a strictly materialist and therefore "scientific" account of reality.

The claim that texts have meanings which remain autonomous from those meanings the texts' authors intended them to have is of course crucial to much legal argument, from the interpretive textualism advocated by eminent jurists such as Antonin Scalia and Frank Easterbrook, to fundamental legal doctrines such as the parol evidence rule.⁴ This claim depends on the acceptance of some version of the distinction made in speech act theory between sentence meaning and utterance meaning; that is, between the formal, acontextual linguistic meaning of a text, and the meanings the text may have in a variety of linguistic contexts. "Thus," to quote Justice Holmes' description of the proper method for interpreting a statute, "we ask not what this man meant, but what those words would mean in the mouth of a normal speaker of English, using them in the circumstances in which they were used."⁵

The claim that having a BMI of between 25 and 29.9 is a major contributor to morbidity and mortality means that, according to the advocates of this view, the epidemiological evidence is clear that, for example, an average height woman has a significantly increased risk of premature death as a direct causal result of maintaining a weight of between 146 and 174 pounds, rather than a weight of between, to use Professors Willet and Stampfer's definition of ideal body mass, 108 and 127 pounds.⁶

All three of these claims are, I repeat, eminently respectable positions within the modern university. The Churchlands are celebrated phi-

3. See generally PAUL CHURCHLAND, *MATTER AND CONSCIOUSNESS* (2d ed. 1988).

4. For Scalia's views on the subject of textualism, see generally ANTONIN SCALIA, *A MATTER OF INTERPRETATION* (1998). A good summary of Easterbrook's position is found in *In re Sinclair*, 870 F.2d 1340 (7th Cir. 1989).

5. Oliver Wendell Holmes, *The Theory of Legal Interpretation*, 12 HARV. L. REV. 417, 417-18 (1898).

6. See Paul F. Campos et al., *The Epidemiology of Overweight and Obesity: Public Health Crisis or Moral Panic?*, 35 INT'L J. EPIDEMIOLOGY 55 (2006).

losophers, to the extent that philosophers can be celebrated. Justice Scalia, the most prominent proponent of the idea of the autonomous legal text, is widely regarded to be the most intellectually influential member of the current Supreme Court. Walter Willett is perhaps the single most quoted authority in the elite media on the question of the relationship between weight and health, as well as being the chair of a department within America's most prestigious medical school.

Yet all these claims are nonsense. They are not "insufficiently nuanced" or "true" in some Clintonian sense that depends on what the meaning of the word "nonsense" is. They are completely, egregiously, and absurdly false. The claim that there is no such thing as consciousness, no matter how erudite and analytically rigorous the arguments one may make for it are, simply remains insane on its face. It is the sort of thing that only academics could believe, or rather claim to believe, or rather imagine they believe; for if we accept eliminative materialism, then the statement "Paul and Patricia Churchland believe in the truth of eliminative materialism" is, *ex hypothesi*, an oxymoron because the Churchlands, like everybody else, have no beliefs. I believe that Larry Alexander will fail if he sets out on a quest to find an identifiably post-modern school of thought that is more absurd than eliminative materialism, since eliminative materialism—which, I repeat, is an eminently respectable view within philosophy departments that have remained wholly untouched by post-modernism—is about as absurd an intellectual position as can be imagined.

The assertion that a text can mean something other than what its author intends it to mean is based on a theoretical distinction between what language means acontextually, and what it means contextually. The problem with this distinction is that it is just as absurd as eliminative materialism. Language does not mean anything acontextually, because the notion of an acontextual language is just as oxymoronic as the notion of a non-mental consciousness. In other words, the distinction between sentence meaning and utterance meaning is empty, because there is no such thing as sentence meaning.⁷ The meaning of a sentence emptied of its context of utterance is no more cogent than the idea of pain in the abstract. There is no such thing as pain in the abstract, and there is no such thing as semantic meaning in the abstract. Pain is always felt by a particular subject, and meaning is always meant by a particular subject.

7. For an extensive discussion of these points, see Paul F. Campos, *The Chaotic Pseudotext*, 94 MICH. L. REV. 2178 (1996) (arguing that since the meaning of a text and the semantic intentions of the text authors are simply the same thing, any account of interpretation that attempts to separate these concepts is based on a misunderstanding of the nature of textual interpretation).

Both phenomena require, always and everywhere, as Larry Alexander's favorite post-modernist would say, a subject who feels and means.⁸

The claim that average height women who weigh between 146 and 174 pounds run a significantly increased risk of premature death as a result of their supposedly overweight status is as demonstrably false as any broad empirical generalization can be. Such levels of body mass do not even correlate with increased mortality risk, let alone cause it. The claim that so-called "overweight" is a significant contributor to mortality has exactly the same status as the claim that smoking marijuana leads to a significant risk of dying from an overdose of THC. That is, while it is impossible to demonstrate that evidence for this proposition will not appear at some point in the future, at present, there is no evidence in its favor and an enormous amount of evidence for the contrary claim.

How do claims that run the gamut from demonstrably false empirical assertions to completely incredible conceptual theories get people tenure at Harvard Medical School or seats on the Supreme Court or, even more annoyingly, well-funded academic chairs in lovely La Jolla, California? I would suggest that, in each of these cases, intellectual perspectives that can be characterized as "post-modern" to some extent provide helpful clues. That is because each of these absurd claims is a product of certain dysfunctional features of the social construction of knowledge in this particular culture. Eliminative materialism is nothing more than the logical endpoint of certain metaphysical axioms that dominate disciplines such as contemporary analytic philosophy. If one takes the view that, as John Searle puts it, the universe is ultimately nothing but particles in fields of force and these phenomena are themselves subject to mindless laws of causality,⁹ then it is difficult to escape the conclusion that consciousness and everything associated with it is epiphenomenal at best, if not a complete illusion. If one wants to preserve the notion that there is something called "law" that remains autonomous from the beliefs of legal actors, then one must posit, among other things, texts that have autonomous meanings. If one wants to convince public health officials that the extremely complex and ambiguous data produced by a field like epidemiology provides a solid basis for a wide variety of public health policies, one will have to pretend to know much more than what one actually knows—which is the intellectual vice par excellence of post-Enlightenment thought in general, and the contemporary university in particular.

8. On the claim that interpretation always and everywhere requires an interpreter who undertakes interpretation within a particular social context, see STANLEY FISH, *IS THERE A TEXT IN THIS CLASS?* (1980).

9. See JOHN SEARLE, *THE REDISCOVERY OF THE MIND* (1992).

In short, the absurdities of eliminative materialism, autonomous textual meaning, and the so-called "obesity epidemic" are products of different aspects of the failures of the more extreme forms of Enlightenment rationalism. To explain adequately why Paul and Patricia Churchland are famous, one would need to understand why, in this intellectual culture at this time, basing arguments on the assumption of the existence of a transcendent metaphysical reality is considered disreputable, while basing arguments on the assumption that human beings are actually zombies is considered a plausible basis for an entire school of philosophical thought. To fully understand why it has become the official position of the American public health establishment that the average American's weight is now a hazard to his or her health, it would be necessary to undertake, among other things, a careful ethnography of the Harvard Medical School, in order to explain how a few high-status academics have managed to transmute their own eating disordered ideation into national health policy. To comprehend how what is called "the rule of law" has come to feature a belief that texts can somehow contain meanings independent of particular human beings' beliefs, it would be necessary to explore how law in our culture has become a kind of idolatrous, pseudo-theological discours.¹⁰

Thus, while I agree with Alexander that there is something fundamentally wrong with many aspects of the intellectual culture of the contemporary university, I believe that the excesses of post-modernism are symptoms of the illness rather than its cause. The true cause of that illness is the largely unthinking acceptance of various metaphysical axioms. The nihilistic aspects of post-modernism are inevitable consequences of taking those axioms seriously. Indeed, those axioms make nonsense of, among many other things, the entire concept of human freedom, whether academic or otherwise.

10. This last point is elucidated in an excellent new book, STEVEN SMITH, *LAW'S QUANDARY* (2004).

