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Reply to target article: "Inventing the Subject: The Renewal of 'Psychological' Psychology"

It is an honor to be invited to respond to Daniel N. Robinson's essay. Professor Robinson's books and articles have, over many years, inspired and deeply influenced my own scholarly efforts. Although I work in political philosophy and the philosophy of law, rather than psychology and the philosophy of mind, Robinson's reflections on the moral dimensions of the human and social sciences are no less fruitful in my field than in his own. Wherever the phenomena under review are constituted in significant part by human deliberation, judgment, and choice, Robinson's insights illuminate the landscape.

Anyone who happens to be familiar with work I have done will not be surprised to learn that I find nothing of substance to disagree with in Professor Robinson's article. Its numerous provocations are for others, not for me. The margins of my copy of his paper are decorated with "amens," and even a few "hallelujahs!"

What to say, then?

This, perhaps. The shortcomings and defects Robinson finds rampant in academic psychology are no less widespread, and no less intellectually debilitating, in the fields in which I make my professional home. The considerations motivating his plea for a more "psychological" psychology militate with equal force in favor of a more "political" political science and a more "legal" jurisprudence. The intellectual reforms he demands in psychology are no less urgent in these sister disciplines.

And sister disciplines they are. For the phenomena of politics and law are indeed constituted in significant part by the deliberation, judgment, and choice of human beings. People do not simply *behave as if* they were deliberating, judging, and choosing; nor is there any reason to suppose that their experience of deliberating, judging, and choosing is illusory. And deliberating, judging, and choosing are possible just in case there are basic human goods providing more-than-merely-instrumental *reasons for action* capable of playing a decisive role in motivating human conduct.

The facts on the ground are that people's choices, including choices to cooperate in the pursuit of common goals and even a common good, are significantly motivated by their practical grasp of such goods and reasons. There is no point, and no real possibility, of explaining them away. Consequently, any science of human behavior—be it psychology, philosophy of mind, sociology, jurisprudence, or political science—cannot get off the ground without an understanding and appreciation of the fundamental aspects of

human well-being and flourishing—the basic human goods—whose formal identification and explication is at the heart of what Professor Robinson calls *moral science*.¹ Thus it is that I join Professor Robinson in saying, not merely to the psychologists, but also to the sociologists, political scientists, and legal scholars, *Begin here*.

Yet the resistance within these disciplines is strong. Because the principles of moral science are, as Robinson says, "stubbornly inaccessible to the methodology" proposed by what has become mainstream human and social science, the apparently irresistible temptation of people in the grip of the methodology—people for whom science *just is* the methodology—is to *explain away* human deliberation, judgment, and choice, to treat them as illusions, to imagine that behind the appearance and experience of these mental phenomena are indeed "jealously guarded secrets" that the application of methodology can, with sufficient ingenuity from the scientist, wrest from nature. Apparently it never dawns on the methodologists that such a view is itself flatly incompatible with any account they would, if pressed, be prepared to give of *their own deliberation, judgment, and ultimate choice* to commit themselves to the discipline of truth-seeking by the rigorous application of a certain method of inquiry to a certain set of data in need of explanation. The manifest point of Professor Robinson's provocations is to awaken them from their dogmatic slumbers.

Reductionism of the form Robinson exposes and condemns in academic psychology gained the upper hand in English-speaking jurisprudence in the time of Jeremy Bentham and his disciple John Austin.² Happily, however, it has not gone unchallenged in recent decades. The "command theory," according to which the phenomenon of law is to be understood and explained on the model of "orders backed by threats," came under severe criticism in the 1950s and early 60s at the hands of Oxford legal philosopher H.L.A. Hart. It

¹ In saying this, I recognize that though moral science *begins* with the identification and explication of the basic human goods that are the most fundamental reasons for choice and action, it does not end there. The identification and specification of norms of conduct whose particular character and force qualifies them as *moral* requires consideration of the *integral* directiveness or prescriptivity of the basic human goods. See Germain Grisez, Joseph M. Boyle, Jr., and John Finnis, "Practical Principles, Moral Truth, and Ultimate Ends," *American Journal of Jurisprudence*, 32 (1987), pp. 99-151.

² The roots of Benthamite and Austinian reductionism are to be found in the psychology and philosophy of Thomas Hobbes.

was not Hart's goal to undermine faith in the possibility of a properly descriptive jurisprudence. On the contrary, the opening page of Hart's major treatise, *The Concept of Law*,³ invites the reader to understand the book as itself an "exercise in descriptive sociology." And like Bentham and Austin, he was keen to keep the description of social phenomena clear of the distorting impact of the personal moral and other evaluations of the inquiring social scientist. But unlike his predecessors, Hart took deliberation, judgment, and choice seriously. I have no idea what Hart's formal position was on the question of freedom of the will and determinism. But he knew that a theory of law worth its salt would have to abandon the idea that human behavior is "caused" in such a way as to warrant a method of inquiry on the model of chemistry or physics.

Hart said that he rejected the "command theory," not because it is cynical or morally dubious, but because it "fails to fit the facts." In treating legal rules as *causes* of human behavior, it implicitly adopts an "external viewpoint" from which it is impossible to account satisfactorily for people's own experience and understanding of what they are doing when they are guided by, and make use of (as in the law of contracts, trusts, matrimony), legal rules. According to Hart, a better understanding (or "concept") of law would identify an *internal point of view* whose adoption would enable the social scientist to grasp the function of legal rules as characteristically providing citizens and officials with a certain species of reason for action—one that Hart would later describe as "content-independent, preemptory reasons."

Hart's break with the reductionism of his predecessors was decisive. But did he go far enough?

Hart's understandable concern for the autonomy and integrity of descriptive inquiry in law and the other social sciences led him to strive to retain the *positivism* of traditional analytical jurisprudence, even as he sought to free the tradition of reductionism. This was, I believe, unnecessary and unfortunate. He stepped up to the verge of where Professor Robinson now calls on the human and social sciences to "begin," but there he balked, leaving himself in a position described by his great student, John Finnis, as "rather obviously . . . unstable and unsatisfactory."⁴

Hart rightly gave methodological pride of place to the perspective of participants in a legal system who do not "merely record and predict behaviour conforming to rules" or treat legal norms as "a sign of possible punishment," but rather "use the rules as standards for the appraisal of their own and others' behaviour."⁵ Yet, he declined to treat as in any way central, focal, or paradigmatic the perspective of people whose decision to obey or be guided by the legal rules is the fruit of *moral* judgment and commitment. Nor, of course, was he willing to take the next step of identifying as the truly central, focal, and paradigmatic case the viewpoint

of people who, as Finnis describes them, "not only appeal to practical reasonableness [i.e., moral truth] but also *are* practically reasonable, that is to say, consistent; attentive to all aspects of human opportunity and flourishing . . . concerned to remedy deficiencies and breakdowns, and aware of their roots in the various aspects of human personality and in the economic and other material conditions of social interaction."⁶

To begin where Professor Robinson urges human and social science to begin, namely, with *moral science*, it is critical not merely to break with reductionism but to *follow through* on its rejection. Hart's failure to recognize the importance even for *descriptive* jurisprudence of the distinction between morally motivated fidelity and obedience to (just) law, on the one hand, and cases of obedience motivated by "unreflecting inherited attitudes," and even the "mere wish to do as others do," on the other, disabled him in the end from providing a satisfactory, or even coherent, account of legal obligation—one that could truly distinguish law from mere force. Ironically, it was precisely Bentham's failure to distinguish law from force that motivated Hart's quest for a better concept of law, and generated his most profound and celebrated insights.

³ H.L.A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961).

⁴ John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), p. 13.

⁵ Hart, *The Concept of Law*, pp. 95-96.

⁶ Finnis, *Natural Law and Natural Rights*, p. 15.