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Beyond Reason and Interest

JEREMY PAUL*

As is often the case with a work of genius, Pierre Schlag's *The Enchantment of Reason* is both stunningly impressive and maddeningly perplexing.¹ It cuts to the heart of all that happens within the legal academy (and sometimes beyond) by identifying our central, and, according to Pierre, highly implausible, premise. Legal academicians and other members of the culture in which we thrive speak "as if" life's most difficult challenges are generally amenable to reasoned solutions.² Pierre then thrills us with a deft display of the shallowness of such a poorly disguised conceit. His reasoning is so good, his questions so incisive, and his conclusions so inescapable, that after reading *The Enchantment of Reason* an intellectually honest person would be hard-pressed to continue participation in the business as usual game of the American legal academy. This, I gather, is one of Pierre's goals.

But Pierre's book is cryptic, even silent, on the question of how to escape rather than merely to describe the paradoxes and riddles he illuminates. My fear then is that too many will come away from the book with their academic practices intact, acting "as if" Pierre hadn't said anything at all. In this brief essay, I will address those who would dismiss Pierre's work as cynical and woefully short on positive program. I will explain why I find not merely analytical clarity but political passion in Pierre's work. And I will explicitly call upon Pierre to take up the challenges his own work suggests for all those wishing to turn such passion toward useful projects in twenty-first century America.

I. PIERRE'S PROJECT

Disenchanted! The nooks and crannies of the word provide a window into *The Enchantment of Reason*. Certainly, Pierre reveals his own

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1. PIERRE SCHLAG, *THE ENCHANTMENT OF REASON* (1998) (hereinafter EOR).

2. For Pierre's fabulous coinage of the phrase "as if jurisprudence," see *id.* at 108-11. For a noteworthy antecedent, consider HANS VAHINGER, *THE PHILOSOPHY OF "AS IF," A SYSTEM OF THE THEORETICAL, PRACTICAL, AND RELIGIOUS FICTIONS OF MANKIND* (C.K. Ogden trans., 1925). Of course, it was only a matter of time until "as if" became the name of a prime time network television show.

disenchantment with those he denominates “the partisans of reason.”³ These professors and writers who dominate the legal academy are venerated and well compensated for pretending that there are good reasons to believe most problems have reasonable solutions. It’s no surprise, Pierre would have to admit, that Americans might be venerated and well compensated for pretending. Tom Hanks and Julia Roberts come to mind. But in the legal academy candor and reason are supposed to be the coin of the realm. How can law professors go on day after day acting as if profound political disagreements, such as those over abortion or the proper distribution of wealth, are amenable to reasoned solutions? Why don’t they see that time and time again “reasons run out” but choices still need to be made?

Pierre has an answer. None of us see that reasons run out because we have all become “enchanted by reason.” It starts like this. Everyone recognizes the overwhelming dangers to safety and security posed by political conflict. If you and I both lay claim to particular resources, such as a plot of land or royalties from a joint venture, there must be some method to determine which of our claims prevails. Violent physical conflict, in which the stronger party winds up with the spoils, is a scary and unappealing way of resolving such disputes. And thus we invent “the rule of law” pursuant to which we tell ourselves that conflicts can be resolved according to law, so as to shield us from the war of all against all. The rule of law, in turn, means more to contemporary ears than simply the positivist edicts of the state. We pride ourselves on rule-following precisely because we have built a system in which the rules themselves stem from procedures we believe defensible by reason. Perhaps most crucially we count on judges to interpret the laws as if they were the reasoned products of reasonable minds. But what if none of this works?

Much of twentieth century American legal theory focused on whether the law itself could provide sufficiently determinate answers so that judges applying the law could be trusted to act reasonably, i.e., impartially and non-politically. But Pierre’s attack is aimed at a deeper level. He embraces the legal realist and critical legal studies theme that the law contains many ambiguities that make it possible for judges to decide particular cases in different ways. Much more important, however, is his eagerness to point out the law’s lack of “reasoned” answers to those who question its entire legitimacy or its claim to rule.

Imagine, as Pierre often does, the losing party in any case, continuously asking “why” to every question posed, when told he must comply

3. EOR, *supra* note 1, at 41-59.

by a judge.⁴ The judge says, “You must give up your claim to the land.” The loser asks “Why?” The judge says, “I have ruled against you.” The loser asks, “Why?” The judge says, “You failed to occupy the property long enough to make out a claim of adverse possession.” The loser says, “Why does that matter?” (Note here the legal realist or cls losing party would keep fighting within the legal framework looking for gaps in adverse possession law, such as doubt over what’s meant by “occupying,” whereas Pierre’s child-like loser raises the stakes by questioning the legitimacy of the framework.) The judge says, “Under the laws of property in this state, if you don’t occupy the land for the required time, I am obligated to return the land to the true title holder.” The loser asks, “Why should I be bound by the laws of this state?” The judge says, “As a member of the community you have given tacit consent to abide by all its laws in exchange for the protections afforded you under the law as a citizen.” The loser says, “Suppose I disagree with your notions of tacit consent, or I want to revoke my consent, why do your views of political theory prevail over mine?” At some point the exasperated judge is going to give up trying to explain. But that’s Pierre’s real point. At the level of political theory necessary to justify the entire set of laws of a particular jurisdiction, disagreements among leading thinkers are profound and not reconcilable. Pretending otherwise so that we can continue to believe that “reason rules” is part of our enchantment.

The Enchantment of Reason, however, is not a sustained inquiry into whether it would be possible at the general level of political theory to articulate principles that could justify, through use of reason, our particular political institutions. Thus, proponents of any one political theory, such as one grounding obligations to obey in tacit consent, won’t find much that is responsive to their concerns. Pierre’s astute eye turns much more directly to comments made by contemporary legal academics aimed at convincing readers to follow one approach to the law or another. These comments, he observes, consist of “unreasoned” statements such as “the better view is” or “x concerns ‘predominate’ over y.”⁵ If mainstream academics don’t have anything better to say in defense of our legal institutions, why shouldn’t we take Pierre’s word for it that our legal system cannot be derived from a single set of reasoned principles? Put another way, the problem is not that utilitarians, rights thinkers, consent theorists, and the like, don’t have answers to many of the difficult problems in the political theory literature. It’s that

4. One can imagine here the unfolding of an infinite regress akin to the four-year-old’s “Why, why, why?” For a while at least, reason can easily seem equal to the task: “Because, because, because.” *Id.* at 32.

5. *Id.*

there are so many answers available from so many writers that only divine providence could produce an actual set of legal institutions that flowed directly from any one set of general principles.

Another way reason “enchants,” Pierre observes, is in its effort to adjudicate conflicts among what a more candid observer might call “incommensurable” positions. You have only enough money to send one of your two children to private school. One of your children is academically gifted. A chance at better teachers and smaller classes might start her on the road to the Ivy League. The other is socially awkward and has trouble making friends. He might feel much more comfortable in the smaller, private setting. Is there a way to tackle a problem such as this by “reasoning” one’s way through it? What if there is not? Would it be psychologically helpful after making a decision for me to pretend “as if” there were a reasoned approach?

Unsurprisingly, our legal system is making judgments concerning such potentially incommensurable positions all the time. How, for example, is a judge in a divorce case to balance one spouse’s claim to have “earned” money against the other spouse’s claim that he “needs” that same money? Are we better off telling ourselves that these decisions are made on principle even if we can’t articulate what that principle is? Suppose we decide that we are better off acting as if reason can adjudicate such disputes because the alternative is too scary. We thus adopt a worldview that pretends that hard choices are made on principle. Have we done so because reason convinces us or because to pretend reason works is in our own self-interest? And if the latter, then haven’t we already confessed our lack of faith in reason?

All of this, and so much more, is meant to leave us, Pierre’s readers, “disenchanted” as well. Pierre writes his book with an eye toward breaking the spell that has us spinning out endless conjectures defending or criticizing various legal positions. It’s not just that such conjectures are extraordinarily unlikely to have an effect on actual outcomes. It’s that there’s a collective fantasy involved in having everyone pretend that decisions within the legal system are often (or, Pierre might say, ever) a product of so-called reasoned elaboration.

A question remains, of course, concerning just who Pierre thinks his readers are and which folks he believes are actually under the spell he’s trying to break. He describes the enchantment of reason as a pervasive phenomenon. Yet his examples are drawn largely from the writing of prominent, mainstream legal academics, a group whose influence it is easy to overestimate. To criticize Pierre, however, for failing to analyze whether feminists, legal services lawyers, or other marginal groups fall equally under “reason’s” sway, is, I think, to miss the point. Pierre’s

targets are chosen precisely because they are people with the most invested in portraying the legal system as a product of reason. If the system's primary champions find themselves often resorting to unreasoned arguments, then reason will be diminished in the eyes of us all. I imagine Pierre hopes to find some prominent legal academics among his readers, but I imagine as well that he hopes to provide a tool kit for readers everywhere who now face an uphill battle in identifying legal solutions beyond those embraced by the partisans of reason.

The harder question is why many readers would want to take up Pierre's invitation to become "disenchanted." Most of us look forward to an enchanting evening or dinner companion. Pierre's metaphor reminds us that sometimes our enchanting companion (reason) may deceive us or distract us from deeper, even disturbing, truths. But unless we are confident in our ability to deal with those truths or certain that our enchantment is somehow getting in our way, perhaps we prefer the rapture of enchantment to the sense of disconnection that disenchantment brings. If, as Pierre suggests, we are to restore reason to its rightful place as merely one tool among many for coping with life's conflicts, then we need to push pretty hard on the question why.

II. PIERRE'S PARADOXES

Readers of *The Enchantment of Reason* will quickly discover that Pierre is shy—almost bashful—about explicating the case for the negative consequences of over-reliance on reason. He begins the book with a re-telling of Poe's story *The Purloined Letter*.⁶ In this story the police prove unable to find a stolen letter because they rely on investigative methods that have them searching in the wrong manner for the wrong thing. The police assume the letter is hidden when actually it's in plain sight. The police assume the letter is clean and readily identifiable. The culprit, however, has actually crumpled the letter to make it appear as an ordinary piece of paper. Poe's central character, Detective Dupin, transcends the police's narrow-minded approach and locates the letter. Pierre's readers are set up for a similar denouement. If we jettison our over-reliance on reason, we too will locate the object of our quest.

Pierre, however, devotes little time to identifying just what it is that we are searching for. Instead, and here's the book's first paradox, the overwhelming thrust of Pierre's argument for why we should escape enchantment is that it's simply not reasonable to believe too much in reason. Pierre notes that much of life is shaped by other forces, such as authority, tradition, custom, and experience. True enough. But what if

6. *Id.* at 2.

another life-shaping force is “enchantment”? We let ourselves become enchanted when it suits our interests to do so. Or with slightly less hubris, we become enchanted because we simply can’t help ourselves, sort of like falling in love. Having someone point out that such enchantment is not “reasonable” is unlikely to change our minds unless we have committed ourselves fully to reason as a way of life. Such a commitment, of course, is precisely what Pierre is warning us against.

Indeed, the paradox of writing a book stocked with ruthlessly relentless reasoned arguments for the limits of human reason starts with the book’s title. Compare Allan Bloom’s title, *The Closing of the American Mind*.⁷ This lengthy diatribe against political correctness and relativism on campus starts with the idea that certain people have taken tolerance too far. Liberals started out wanting to be open-minded and ended up becoming the opposite. But, of course, unless you are committed to the same goal of open-mindedness that motivated liberals to begin with, you won’t be at all upset to see the American mind “closing.” You might cheer instead. Similarly, Pierre scares us with the charge that we have become “enchanted.” At times, he compares contemporary comments about reason to attacks on witches or defenses of phrenology.⁸ Yet it’s our passionate commitment to reason that makes us recoil at those examples. Pierre expects us to be haughty and certain in our unified disdain for the belief in witches. Yet doesn’t this disdain flow directly from the precise enchantment by reason that Pierre is at war against?

Pierre remains undaunted by such a paradox precisely because he wants us to see that our contemporary faith in reason is often little more than faith. He is fully aware that he’s playing with us with his examples, but he has no qualms about using our faith against us. Many readers, however, will wish he had bailed us out a little more by tackling the question of what it means to believe in reason in just the right amount. He’s right, of course, that reason can’t provide us with the right mix of “rational frame construction” and “critical reflexivity.” But of all people, Pierre can’t stop there. Certainly, he can’t expect us to tone down or lessen our faith in reason simply because it appears that a little “modesty” is a reasonable thing. Put another way, it takes a great deal of energy to reason one’s way through Pierre’s arguments. Reason alone can’t be sufficient grounds to make the effort. Only a victim of enchantment would pursue reason at the expense of all other life goals. So perhaps the right amount of reason is exactly the amount now spent by

7. ALLAN BLOOM, *THE CLOSING OF THE AMERICAN MIND* (1988).

8. EOR, *supra* note 1, at 43 (witches); 62 (phrenology) (citing his own Pierre Schlag, *Law and Phrenology*, 110 HARV. L. REV. 877 (1997)).

the partisans of reason that leads them to the happy conclusion that we live in a world making steady progress toward reasonable outcomes. The standard by which we readers might determine whether Pierre's critical stance is preferable to the apologies of the partisans of reason is left too much in the background.

Consider a second paradox implicit in the way Pierre makes use of the terms reason and interest. Pierre mocks the "partisans of reason" for suggesting that continued faith in reasoned solutions is justified on grounds that it's better than the alternatives.⁹ Pierre compares this to Pascal's wager as an argument for the existence of God.¹⁰ One might be better off believing in God, Pierre concedes. But this is hardly an argument that God actually exists. Similarly, we might all be better off if human conflicts could be resolved through reason rather than through violence. But, Pierre correctly points out, this tells us little about whether we are able to reason our way to solutions. So far, so good.

The cases of God and reason, however, differ in an important respect. Presumably, man's actions can do little to bring God into existence. Acting "as if" reason will solve human conflicts, however, might make us reluctant to resort to reason's opposites (e.g., violence) and thus produce a somewhat self-fulfilling prophecy. Moreover, it's hard to see just what worries Pierre when he complains that Pascal's wager is an appeal not to reason but to interest. For it is the blending of reason and interest that stands at the root of the liberal tradition that Pierre is trying to overturn.

Pierre's anti-Pascal argument starts out seductively. Suppose the partisans of reason are trying to convince you that the American legal system provides a fairer and better way of resolving disputes than other available methods. You raise several counter-arguments suggesting, for example, that much of the system is a hodge-podge based an accident, inherited wealth, and so forth, and that there's no reason to suspect the system reflects anything resembling a reasoned attempt at fairness. Rather than respond on the merits, the partisans suggest to you that it's in your self-interest to believe and act as if the American system is reasonable. Acting otherwise, they suggest, is likely to unleash dangerous political forces and perhaps result in outbreaks of ugliness or violence that will prove uncontrollable. You then point out how feeble they sound. They started off arguing that the system is reasonable, and they have been reduced to arguing that it makes sense to pretend as much. In short, you point out that the partisans have traded reason for interest.

9. *Id.* at 53-58.

10. *Id.*

The reply, however, might be quite cutting. What else is reason ever, the partisans might say, but an appeal to self-interest? Indeed, to steal a phrase that Pierre uses throughout the book, interest is the ultimate “unthought” that makes reason work. Although it is conventional to pose reason against interest, each depends on the other in a reciprocal relationship. It’s true that if you are paying me too low a wage, I might appeal to your reason, or your sense of fairness, as a way of getting you to give me a raise. In such cases, we conceptualize reason as an antidote to naked self-interest that might impel you to pay me as little as possible. But it’s also true that unless I can count on you to be a person who has some conception of self that includes a notion of your own interest, I may not be able to communicate with you via reason at all.

Imagine another conversation, this time with a homeless person you meet in a park. “How are you?” you ask the stranger. “I have ten fingers,” he answers. Already you know he is a bit odd, but his statement is true and not yet inherently “unreasonable.” “No, really, are you ok?” you try again. “I have ten fingers,” he replies. Taking a different tack, you ask a possibly more helpful question. “Do you have a place to stay tonight?” Again he tells you, “I have ten fingers.” At this point, you know this person does not converse normally. But you still don’t know why. Perhaps he thinks you are annoying and is pulling your leg. Perhaps he gets a kick out of watching do-gooders squirm. So now you point out to him that you are holding a baseball bat and that unless he tells you something other than that he has ten fingers you are going to hit him over the head. If again he says, “I have ten fingers,” you might now conclude (assuming he believes your threat) that he is actually crazy. In short, it’s when his reason fails to align with what seems to be his obvious self-interest that you are most confident concluding that reason has gone off the track.

Indeed, it’s the reliability of reason and its link to self-interest that has made reason such a powerful tool in the historic battle against the forces of power, authority, tradition, custom, and so forth. The Hobbesian sovereign, our iconic image of the all-powerful ruler, is slightly less powerful than monarchs rooted in custom, precisely because Hobbes justifies the sovereign’s absolute rule with “reasoned” argument.¹¹ Only the sovereign, Hobbes tries to convince us, can protect us from the war of all against all.¹² Disobedience is thus never justified, unless the sovereign is coming to kill you. In that case, since your interest in self-preservation can never be overcome by reason, Hobbes understands your

11. See generally James Boyle, *Thomas Hobbes and the Invented Tradition of Positivism: Reflections on Language, Power, and Essentialism*, 135 U. PA. L. REV. 383 (1987).

12. See THOMAS HOBBS, *LEVIATHAN* 157 (Michael Oake Shott ed., 1974).

right to fight back. Indeed, it's Hobbesian pessimism about the inability to reason separately from interest that gives rise to the entire liberal tradition in which government adjudicates conflicts according to rules rather than some government imposed definition of the good.

One wonders then where Pierre gets his definition of reason against which to compare the impure arguments of interest. Certainly, an argument that says to me, "believe x and your life will be better," is a different argument than "believe x because it's true." Once again, however, the latter truth claim presumes just the sort of antiseptic reason that Pierre's *The Enchantment of Reason* is pitched against. Perhaps we couldn't make it true that $2+2=5$ even if doing so would eliminate poverty, cure all the world's diseases, and put an end to war. But we would hardly deserve excoriation for trying.

Pierre, however, points straightforwardly to the source of what I called "antiseptic reason." It comes, Pierre might say, from the partisans of reason themselves. It's those in the legal academy who pretend day after day that the search for reasoned solutions, separate from interest, distinguishes objective and hence sound argument from subjective and thus biased partisanship. Pierre challenges this mainstream view in ways that emphasize how the realists and cls scholars didn't go far enough. They were right to highlight the ambiguities, indeterminacy, and politics within law. But Pierre argues they continued to hold on to the false hope that law could be reformed to eliminate many of its more obvious embarrassments. Such reform is not where Pierre's heart is at. He sees law's demands for allegedly objective solutions to questions that have no objective answers as a fundamental contradiction dooming the enterprise of law as we know it.

Here then is a third paradox for Pierre. His book appears aimed at transforming practices within the legal academy. Yet he pushes as hard as possible the point that argument alone cannot meaningfully transform legal practice outside the academy. His book is a singing tribute to the power of reason to make us stop and take notice. Yet in the same book he is constantly warning us that it would not be possible to continue law as it is without the sleights of hand that let reason pretend to be more reasonable than it can ever be. Why couldn't we say the same thing about the legal academy? It just wouldn't be possible to run large institutions funded by those committed to the "rule of law" in which the teachers hold deep-seated convictions that such a "rule of law" was not possible. In short, Pierre's own book eloquently sets out reasons why his arguments are unlikely to change anything.

This final point leaves readers wondering, why is Pierre so deeply committed to intellectual honesty as the one value that trumps all others?

He seems sympathetic to lawyers who are forced through daily pressures of practice to shade truth and so on to work within the system. Law professors, however, he describes as being under no such pressures. Thus he seems, as noted above, particularly disenchanted with our unwillingness to speak the truth. Certainly, the protections of academic tenure, the good salaries, and the general respect for intellectual bravado make it much easier for professors to speak out. Professors who hide their true feelings in pursuit of worldly glory (foolishly and unrealistically, Pierre notes) are hardly worthy of admiration. At the same time, no serious critic would want to embrace some imaginary line between the safety of the academy in which intellectual honesty is revered and the rough and tumble of law practice in which guile reigns. Intellectual honesty (compare reason) is a wonderful thing but it's only one value among many others, including compassion for others, sympathy, serving as a role model, acting as an agent of change, etc. (compare custom, tradition, experience, power, authority, etc.). One wouldn't want to become enchanted by it.

III. PIERRE'S PROMISE

Despite not having an answer for everything, Pierre does provide in *The Enchantment of Reason* a sustained (if sometimes understated) answer to one very important thing. What do we risk by becoming enchanted with reason? The most dangerous enchantment, Pierre argues, is the one in which contemporary liberals, law professors or otherwise, routinely assume that reason is the best, indeed, the only, effective check on power. Pierre sees things very much the other way around. "Reason is the compliment that interest pays to law in hopes of earthly reward," Pierre notes, in one of the book's more memorable lines.¹³ As this comment reveals, Pierre focuses our attention on the apologetic character of reason and the ways in which it may lull us into accepting the status quo. Nor is it hard to see why reformist liberals might find reason so enticing.

Whatever one's political perspective, it's hard to overlook the gross disparities in wealth, income, and power that characterize the world in which we live. Accordingly, many political observers begin their analysis of contemporary society by seeking techniques that might be available to redress such inequalities. If one abandons either the feasibility or the desirability of violent efforts by those at the bottom to seize power from those at the top, then some effort at persuading, and thus reasoning

13. Peter Goodrich and Duncan Kennedy were both quick to remind me that Pierre is building here on the famous maxim of François, duc de La Rochefoucauld, "hypocrisy is the homage vice pays to virtue." See JOHN BARTLETT, *FAMILIAR QUOTATIONS* # 9529 (10th ed. 1919).

with, those in power becomes inevitable. In one sense this is the grand liberal project, or what today we might call the Rawlsian project, of contemporary legal and political thought. Principles of fairness may first be identified and devotees of those principles will then seek to move society toward those principles through moral suasion. Pierre's goal is to throw a big red caution flag in the path of such a view of social transformation. It's not that Pierre himself might not come to see the wisdom of a principle of justice that, let's say, prohibited inequalities other than those which benefit people at the bottom of the scale. It's that Pierre would be very suspicious of whether advocating such a principle would be an effective technique for actually moving society in that direction. Such advocacy might instead reinforce the unrealistic notion that people in power are actually limited by rational principles. This in turn may reduce the motivations of those at the bottom to actually try and change things.

Now Pierre is hardly the first scholar to emphasize the apologetic character of what passes for rational thought. Indeed, readers will relish the way *The Enchantment of Reason* provides snapshots of Pierre's forebearers, Freud, Marx, Nietzsche, Foucault, Derrida, Gadamer, Fish, and Kennedy, and the way in which the book bonds these writers together as part of a shared tradition. What makes Pierre special on this front is his willingness to find fault not with a particular style of reasoning offered by mainstream thought, but instead with the tendency of mainstream intellectuals to fall in love with reason itself as the source of effective resistance. This is a point he might have made more colloquially through resort to simple psychological dynamics.

Imagine a set of rather dictatorial parents and a smart young child seeking to grow and find her place in the world. Her parents are constantly blocking her from trying new experiences. They often act largely due to their own fears. But because they, too, are "enchanted by reason" they find themselves often offering their daughter rationalizations about what's actually best for her. She finds that these rationalizations sometimes provide her an opportunity to persuade them to change their minds. She catches them in contradictions such as their love for new worlds found within great literature, and she uses these contradictions to get permission to travel to museums. She begins to believe she can tame her parents' power through reasoned argument.

Alas, however, the time comes when an important decision, let's say choosing what college to attend, pits her desire for a distant university against her parents' need to have her close to home. This time, her parents' fears inhibit their ability to hear her point of view. Nor, of course, is there a neutral metric to weigh the gains she might experience

from the stronger program at the distant college against the gains she (and they) would experience from closer access to her family. Indeed, as is so often the case in real life decisions, reason will, as Pierre predicts, run out. If the daughter has convinced herself that only the stronger reasoning will entitle her to go far away, she will indeed end up closer to home. Her commitment to reason that proved so helpful before will turn out to be crippling now. Only a break from her parents and their traditional dialogue, reminiscent of the detective's break from traditional methods in *The Purloined Letter*, will offer the girl the chance to get away. What she needs may no longer be a proliferation of reasons but an assertion of self. And reason will not be adequate to adjudicate whether she should make the break or not.

In the end, *The Enchantment of Reason* is an argument concerning our historical period that compares the situation of those seeking to improve life for those at the bottom of the scale with the situation of the daughter who wants to attend college far away. If we continue to pursue the same old reasoning, Pierre contends, we will be dragged into endless debates with those in power that we can never win. Having established important rights, such as freedom of speech, we will find ourselves defending corporate advertising for fear that otherwise free speech might be lost. Or, as Pierre puts it so eloquently, we will find ourselves giving spirit to the technocracy.¹⁴ Having established important rights, such as the right to hold tortfeasors accountable for injuries they cause, we will find ourselves calculating human lives in terms of dollars and cents in order to make the tort system actually function. Again, as Pierre eloquently complains, we will be aiding "the technocratization of spirit."¹⁵ What's called for instead, and what *The Enchantment of Reason* attempts to provide, is a collective rejection of familiar debate. What we are to replace it with remains undefined other than the very clear point that there will be a collective recognition of the pitfalls familiar debate routinely offers.

Now, Pierre is not so reductionist as to actually believe that any particular historical period might be uniformly cast in terms, let's say, of the daughter's need to become disenchanted. This is why he repeatedly makes clear that he is attacking "the enchantment of reason" and not reason itself. Certainly, we will still find lots of occasions where reason can be turned to good advantage. In other words, reason will retain critical bite, even though it is also often apologetic. How will we tell which is which? Similarly, Pierre understands, that power also often has its good side. It's not enough to celebrate reason merely because it can be

14. EOR, *supra* note 1, at 93.

15. *Id.*

shown in a particular case to be opposed to power. The parents might be correct, let's say, to keep the daughter from traveling to dangerous lands before she has the cognitive capacities to weigh the risks or to take necessary precautions. Blind opposition to power is no better than blind allegiance to reason.

What contemporary readers will want from Pierre then is deeper exploration of what it means to choose among all the various sources of decision that *The Enchantment of Reason* trumpets so often. If reason is to rule no longer, how are political actors to decide when to follow experience, or authority, or tradition? Is this why Heinlein invented the term "grok"?¹⁶

Pierre will no doubt attempt to turn the question back upon the reader. The choosing self that now finds itself with a smorgasbord of options is, Pierre might say, just one more product of reason's enchantment. Why, Pierre might ask, is all the focus of legal and political writing aimed at the mythic moment of choice when someone finally goes left or right? Isn't it worth writing about how they got to that spot in the first place? But this response, insightful as it is, just won't make the problem go away. The very tools of linguistic communication that Pierre adopts to make his case seem to demand a focus on the moment of choice. If one writes a book, as Pierre has, presumably one imagines that readers will be influenced by it. How are they likely to be truly influenced unless at some point Pierre's ideas lead them to make one choice that they otherwise might not have made? In short, the enterprise in which Pierre is engaged assumes a reader with choices even if Pierre wants it otherwise. Pierre could instead begin organizing political or social institutions built on principles other than what he sees as enchanted reason. Indeed, that might be a good place to direct his energies. But as long as he writes books on legal theory it seems fair to ask him how these books might change our choices.

But if we have to wait for Pierre's next book for him to tell us what it will feel like to make choices among reason, experience, authority, power, tradition, custom, and so forth, he tells us quite a bit about what such choices will not feel like. Initially, he might prefer the word "decisions" over "choices," because the former term (like the word deciduous applied to trees) reminds us of cutting off alternative paths rather than simply living in a land of endless options. More important, the clear, certain lines we have come to expect when reason points us in one direction or another will no longer be available. We will need to make political decisions with humility, recognizing the profound possibility that an alternative outcome might be preferable. Yet we must act on these deci-

16. ROBERT A. HEINLEIN, *STRANGER IN A STRANGE LAND* (1961).

sions with passion, knowing that our political opponents can be no surer of their preferred direction. In short, we must combine the deepest doubts with the most emphatic righteous indignation. Only then will we escape the enchantment of reason. While this lesson may seem straightforward to every self-respecting adolescent, we owe Pierre thanks for his relentless efforts to teach it once again to those of us in the legal academy.