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Reasonableness and Law



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task of framing and applying such rules, and then evaluating the legislative decisions on that basis (see Nimmer 1968, who introduced the term “definitional balancing” to describe this idea; for some criticism, see Aleinikoff 1987, 979). The first approach seems to correspond to some extent to the practice of European constitutional courts, while the second is more often used by the U.S. Supreme Court.

Which strategy (or which combination of them) is most appropriate depends on different institutional structures and legal traditions, but these two strategies may be considered to some extent as functionally equivalent. In common-law jurisdictions, based on the idea that judicial decisions produce binding *rationes decidendi*, constitutional judges may feel conformable with explicit rule-making. Consequently, rather than attacking a legislative determination for its failure to appropriately balance constitutional values, common law judges may prefer to extract from the constitutional recognition of such values (e.g., the right to free speech) some general rules (e.g., the rule that no content-based restrictions on speech are admissible, unless conditions of strict scrutiny are met; or the rule that child pornography is not covered by freedom of speech) whose application will likely lead them to strike down the legislative determinations failing to effect an appropriate balance. They will then be able to decide cases (e.g., striking down a law that establishes a content-based limitation on free speech, or not striking down a law that makes child pornography illegal) by evaluating legislation in light of implied constitutional rules rather than in light of the underlying values to be balanced.

But it will still be necessary to rely on the underlying values in justifying and interpreting the implied constitutional rules or in working out conflicts between them (by giving priority to the rule whose application, in the case at hand, leads to a higher combined satisfaction of the values at stake: for instance, in cases involving hate speech, freedom of speech can prevail on dignity and non-discrimination, or vice versa). Moreover, when application of the implied rules fails to provide an appropriate outcome (it would lead to striking down a legislative norm providing an appropriate balance, or to preserve an unbearably unbalanced one), the judges would need to reformulate such rules or to supplement them with exceptions.

I cannot consider here advantages and disadvantages of the two approaches (greater contextual flexibility as against greater predictability, a clearer perception of the interests at issue as against an incremental refinement of precedent-based choices), for this would in turn have us compare rule-based decision-making with a more casuistic style of decision and weigh the pros and cons (see Schauer 1991; and for a discussion of some problems involved in case by case balancing, see Kumm 2007). We should bear in mind, finally, that both perspectives recognise the important role that teleological reasoning plays where constitutional values are concerned, and that this role is framed in different ways in the two approaches, which in this respect can be considered complementary (the constitutional judge/interpreter can go back to goal-norms when implied rules are not applicable, or can revise rules when they fail to appropriately balance the constitutional goals).

18 Conclusion

This contribution has presented two main theses. The first concerns the correspondence between in which the general notion of rationality in decision-making and rationality in legislation: the argument here was that legislative decision-making is guided at its core by teleological reasoning, and that such reasoning can be analysed and evaluated according to general patterns of rationality. Moreover, a correspondence has been established between the way in which individual rationality is guided and constrained by commitments (intentions) and the way in which legislation is guided by constitutional norms. Combining the ideas of teleology and of norms made it possible to argue that goal-norms play a key role in legislative decision-making, and so we looked at their particular structure and function.

The second thesis concerns the development of a sufficientist understanding of reasonableness conceived as a standard for the constitutional evaluation of legislation: in order for reasonableness to be achieved, a sufficient level of rationality and morality is required, and this is a lower level than that of cognitive and moral optimality. This idea, introduced in Section 2, was applied to the complexity of legislative decision-making and modelled after the proportionality test: it says that constitutional review must leave the legislature a margin of epistemic and practical appreciation, even when constitutional values are at issue.

In conclusion, the achievement of constitutional values through legislation is a difficult, uncertain, and complex task, open to reasonable disagreement, and this appreciation requires that constitutional review of legislation be based on a modest (sufficientist) understanding of reasonableness.

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Reasonableness, Common Sense, and Science

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After all, in a democracy “reason” has just as much right to be heard and to be expressed as “unreason” especially in view of the fact that one man’s “reason” is the other man’s insanity.
Feyerabend (1978, 217)

1 Introduction

Reasonableness is not a philosopher’s term. Nowhere in philosophical literature will you find such clear-cut definitions of reasonableness as you find for the twin concept of rationality. Indeed, even on the handful of occasions on which the concept of “reasonableness” is taken up, there is hardly more than a partial characterization that can be found of its traits. What, then, does it mean to be “reasonable”? The reasonable person makes a rare appearance on the philosophical scene as a great moral character displaying in every circumstance, and especially where others are concerned, many “amiable and respectable virtues”.¹ Very little, if anything, is said about the reasonable person’s epistemic features. For example, on one place reasonable people are portrayed as having the Baconian virtues of cautious reasoning and careful consideration of evidence.² That is all. To find further insights we must turn to Rawls. Though it seems exaggerated to speak of a “theory” of reasonableness in Rawls (as Maffettone 2004 does) he is certainly the one who more than any other contemporary philosopher has made an extensive and significant use of the idea. In his work, reasonableness comes in as “an element of the idea of society as a system of fair cooperation” (Rawls 1996, 49–50) and as a “particular form of moral sensibility” (ibid., 51). Indeed, Rawls is clear in warning us that the idea of “being reasonable” which we find at the heart of his construction “is not an epistemological idea” though, he adds in parentheses, “it has epistemological elements” (ibid., 62).

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¹ See Sibley 1953; Finnis 1980, Chapter 5; Rawls 1996, Part I, Lecture II (“The Powers of Citizens and Their Representation”); MacCormick 2005, Chapter 9 (“Being Reasonable”). Rawls acknowledges his debt to Sibley. Finnis draw on Aristotles and Aquinas. MacCormick draws on Finnis. “Amiable and respectable virtues” alludes to the Smithian background of the reasonable person: see Finnis and MacCormick, and Smith 1976, Part I, Section I, Chapter V.

² Reasonable people, MacCormick notes, “do not jump to conclusions, but consider the evidence” (2005, 166).

Hence the question: Can these elements be detected in Rawls's account of reasonableness? I believe they can. It is this paper's modest aim to identify them and fill the epistemic gaps in the picture of the reasonable person.

2 Fallibilism Not Skepticism

The epistemic traits of the reasonable emerge from Rawls's discussion of the "burdens of judgment." These are called into play in an attempt to answer the question: How might reasonable disagreement come about? (ibid., 55). Reasonable people disagree: this is a fact. And they do so in ways that do not affect their reasonableness; that is, they disagree for causes other than bias and prejudice; personal or group interests; mere obstinacy and wilfulness, ignorance and perversity—all these are causes of *unreasonable* disagreement (ibid., 58). To be sure, reasonable people—Rawls assumes—share basic epistemic equipment: "[g]iven their moral powers, they share a common human reason, similar powers of thought and judgment: they can draw inferences, weigh evidence, and balance competing considerations" (ibid., 55). But in any event, even the most correct and conscientious exercise of these powers will not ensure that reasonable people will reach agreement in judgment. The burdens of judgment are "the many hazards involved in the correct (and conscientious) exercise of our powers of reason and judgment" (ibid., 56) that cause reasonable people to reasonably disagree. Here are some obvious sources of disagreement as they "apply mainly to the theoretical uses of our reason" (ibid.):

- a. The evidence—empirical and scientific—bearing on the case is conflicting and complex, and thus hard to assess and evaluate.
- b. Even where we agree fully about the kinds of considerations that are relevant, we may disagree about their weight, and so arrive at different judgments.
- c. To some extent all our concepts, and not only moral and political concepts, are vague and subject to hard cases; and this indeterminacy means that we must rely on judgment and interpretation (and on judgments about interpretation) within some range (not sharply specifiable) where reasonable persons may differ.
- d. To some extent (how great we cannot tell) the way we assess evidence and weigh moral and political values is shaped by our total experience, our whole course of life up to now; and our total experience must always differ. Thus, in a modern society with its numerous offices and positions, its various division of labor, its many social groups and their ethnic variety, citizens' total experiences are disparate enough for their judgments to diverge, at least to some degree, on many if not most cases of any significant complexity. (Ibid., 56–7)

(a)–(d) identify some inherent and inescapable limitations in the use of our epistemic powers. Through (a)–(d) considerable uncertainty enters our cognitive lives. With this recognition,³ reasonable people also recognize that "[s]ome conflicting

³ Reasonable people recognize and are willing to bear the consequences of the burdens of judgment. This is Rawls' second basic sense of the reasonable (Rawls 1996, 54). The first sense is that

reasonable judgments [...] may be true, others false; conceivably, all may be false” (ibid., 58); that even all of our most cherished comprehensive views may be false; and “that the burdens of judgment set limits on what can be reasonably justified to others” (ibid., 61). It turns out, in a word, that reasonable people are fallibilists.

Fallibilism is a respectable philosophical stance—most epistemologists are fallibilists—concerning the extent of our cognitive powers. Fallibilism takes the view that no rational justification can raise the truth of our beliefs to the level of absolute certainty: after all, any belief may be false, and ultimately all beliefs might be false. Such an opinion seems to open the door to all manner of sceptical worries about knowledge. Indeed, fallibilism is often regarded as posing a skeptical challenge to the legitimacy of having beliefs. Most fallibilists reject this charge, and rightly so. In fact, reasonable people are not skeptics. They do “not argue that we should be hesitant and uncertain, much less skeptical, about our own beliefs” (ibid., 63). They only make the modest claim that “we are to recognize the practical impossibility of reaching reasonable [...] agreement in judgment on the truth of comprehensive doctrines” (ibid.). Skepticism, in fact, would not permit any “overlapping consensus” among espousers of different reasonable comprehensive views (the views that reasonable people espouse; of course, reasonable people endorse only reasonable comprehensive views: ibid., 36 and 59). For which reason the burdens of judgment cannot be characterized as skeptical arguments.⁴ They do no more than lay out some of the ways (misevaluation of evidence, conceptual indeterminacy, and idiosyncratic experience) in which fallibility may affect our judgments, especially our “judgments about comprehensive doctrines” (ibid., 63).

Another reason why reasonable people are not skeptics lies in their being citizens of a “well-ordered society.” Such a society is subject to what Rawls calls the “publicity condition.” This requires, at a first level, that citizens accept the principles of justice governing the basic institutions of society, and that they “do so on the basis of commonly shared beliefs confirmed by methods of inquiry and ways of reasoning generally accepted as appropriate” (ibid., 66). At a second level, the publicity condition requires that citizens agree on the general beliefs which support the accepted principles of justice and that these beliefs “be supported (as at the first level) by publicly shared methods of inquiry and forms of reasoning” (ibid., 67); these methods

people are reasonable when “they are ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so” (ibid., 49).

⁴ As Rawls points out, the burdens of judgment do not proceed from “a philosophical analysis of the conditions of knowledge [...] to the conclusion that we cannot know [...] because one or more of the necessary conditions of knowledge can never be satisfied” (ibid., 63). Maffettone contends that “[t]he question of scepticism—which underlies the theory of reasonableness—cannot [...] be resolved so simply” and that “Rawls can insist all he wants that his stressing of the burdens of judgment is not based on an epistemological or metaphysical theory inspired by philosophical scepticism,” but “[t]here remains the doubt that he is pursuing what amounts to an ‘abstinence’ from the truth, at least as regards the realm of politics” (Maffettone 2004, 563). The charge of “abstinence” from the truth is made in Raz (1990), but it will not be discussed here. What is beyond doubt is that Rawls is right in holding that the burdens of judgment do not outline a skeptical scenario—one in which we are *never* justified in having any belief.

are assumed “to be familiar from common sense and to include the procedures and conclusions of science and social thought, when these are well established and not controversial” (ibid.). That this is a crucial point in Rawls’s conception of a well-ordered society is confirmed by the fact that later on, in his discussion of public reason, he insists that in providing justifications for the basic institutions of society “we are to appeal only to presently accepted general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science when these are not controversial” (ibid., 224). For example, “we are not to appeal [. . .] to elaborate economic theories of general equilibrium [. . .] if these are in dispute”; instead, “[a]s far as possible, the knowledge and ways of reasoning that ground our affirming the principles of justice and their application [. . .] are to rest on the plain truths now widely accepted, or available, to citizens generally” (ibid., 224–25). This brings out two additional features of the reasonable person’s epistemic makeup: faith in the reliability of the precepts and arguments of common sense, and allegiance to the methods and conclusions of science.

3 Common Sense Virtues

Common sense has often been appealed to as an antidote to skepticism. Where the demands of public reason are to be met, common sense also plays a role as a remedy to reasonable people’s cognitive fallibilities. Moreover, common sense informs the reasonable person’s attitude in the public domain. For, as Clifford Geertz comments, “[b]eing common, common sense is open to all, the general property of at least, as we would put it, all solid citizens” (Geertz 1983, 91). Reasonable people are such citizens and they are accordingly expected to have all the attitudes peculiar to common sense. They view matters “as being what they are in the simple nature of the case,” with an “air of ‘of-courseness,’” and as “a sense of ‘it figures’ ” suggests, that is, “as inherent in the situation, intrinsic aspects of reality, the way things go” (ibid., 85). These commonsensical, and hence reasonable, citizens are practical, not “in the narrowly pragmatical sense of the useful but in the broader, folk-philosophical sense of sagacity”: the sense in which “[t]o tell someone, ‘be sensible’, is less to tell him to cling to the utilitarian than to tell him, as we say, to wise up: to be prudent, levelheaded, keep his eye on the ball, not buy any wooden nickels, stay away from slow horses and fast women, let the dead bury the dead” (ibid., 87). They perceive things at face value, “as being precisely what they seem to be,” that is, as being “what the wide-awake, uncomplicated person takes [them] to be” (ibid., 89). They like sobriety and realism and despise subtlety and imagination; they think it wise not to go beyond “the obviousness of the obvious,” and to instead accept that “[t]ruth is as plain, as the Dutch proverb has it, as a pikestaff over water” (ibid.). Reasonable people embrace the kind of unsystematic, ad hoc wisdom that “comes in epigrams, proverbs, *obiter dicta*, jokes, anecdotes, *contes morals*,” and the wisdom so encapsulated they enjoy just because of its inconsistency: “‘Look before you leap’, but ‘He who hesitates is lost’; ‘A stitch in time saves nine’, but ‘Seize the day’” (ibid., 90). Finally, reasonable people are confident “that any person

with faculties reasonably intact can grasp common-sense conclusions, and indeed, once they are unequivocally enough stated, will not only grasp but embrace them” (ibid., 91).

Being endowed with these virtues, reasonable people bow to the authority of common sense, which they take to be the source of all our most obvious and most unassailable certitudes. They defer to common sense upholding “its tenets [as] immediate deliverances of experience,” and its truths they understand as “comprising one large realm of the given and undeniable, a catalog of in-the-grain-of-nature realities so peremptory as to force themselves upon any mind sufficiently unclouded to receive them” (ibid., 75). No wonder they are prone to endorse all sorts of “plain truths,” including those “now widely accepted, or available.” Common sense wants reasonable people to be down-to-earth and anti-intellectualistic; it wants them to nourish a puritan contempt for both expert knowledge and pure, disinterested speculation; and, most importantly, in Cardinal Newman’s words, it wants them to abide by “the prejudice which exists against logic in the popular mind, and [. . .] the animadversions which are levelled against it, as that its formulas make a pedant and *doctinaire*, that it never converts, that it leads to rationalism, that Englishmen are too practical to be logical, that an ounce of common-sense goes further than many cartloads of logic, that Laputa is the land of logicians, and the like” (Newman 2005, 1355–56).

Such maxims, cast in the sententious style distinctive to common sense, express the common sense awareness of the multifariousness of reasoning as opposed to the uniform canons of logic. Such maxims “mean, when analyzed, that the processes of reasoning which legitimately lead to assent, to action, to certitude, are in fact too multiform, subtle, omnigenous, too implicit, to allow of being measured by rule” (ibid., 1356). An illustration of this is the story of “the Judge who, when asked for his advice by a friend, on his being called to important duties which were new to him, bade him always lay down the law boldly, but never give his reasons, for his decision was likely to be right, but his reasons sure to be unsatisfactory” (ibid.). Good advice—and ever more so an illustration of how much common sense recommends itself as a guide to *public* standards of reasoning.⁵

⁵ If you suspect that Cardinal Newman’s judge is just an eccentric character out of a quaint Victorian story, you might want to refer to Wright 2006. Commenting on some courts’ tendency to “speak of intuition [. . .] as valid, even if [. . .] the intuition does not justify itself in any publicly accessible fashion,” and on the fact that “[c]ourts often vaguely link or even identify judicial intuition with the similarly humble idea of ‘common sense,’” Wright mentions *United States v. Reyes*, 87 F.3d 676, 681 n. 7 (5th Cir. 1996), finding “that ‘our judicial intuition—or common sense—tells us that the result is foreordained’ ” and “that ‘[o]ften in such situations it is preferable to simply announce the conclusion, rather than to attempt to explicate its doctrinal basis’ [. . .] This,” he comments, “raises the issue of the cost and benefits of reason-giving or explanation in the law, which in turn affects the proper scope of more or less unexplainable judicial intuitions” (ibid., 1386).

4 Good, Solid Science

Besides the axioms and arguments of common sense, reasonable people have to rely, in offering public justifications, on the procedures and conclusions of science, provided (as Rawls says) that these are well established and not controversial. This, indeed, is a highly reasonable requirement, since relying on scientific methods and results which are not well established and controversial could shake the confidence that reasonable persons have in those features of science that are best suited to their being citizens of a well-ordered society—and, in particular, to they themselves being standards of objectivity.⁶ In fact, science can provide for all the “widely recognized” (Rawls 1996, 110) elements of objectivity to a greater extent than any other human enterprise. With the universally acknowledged power of its methods, science “establish[es] a public framework of thought sufficient for the concept of judgment to apply and for conclusions to be reached on the basis of reasons and evidence after discussion and due reflection”; it specifies criteria of correct (i.e., true or reasonable) judgment and “an order of reasons as given by its principles and criteria”; it “distinguish[es] the objective point of view [...] from the point of view of any particular agent [...] or [...] group of agents” (ibid.); it “has an account of agreement in judgment among reasonable agents” (ibid., 112); and it is “able to explain the failure of our judgments to converge by such things as the burdens of judgment” (ibid., 121).

As reasonable people strongly believe that science does establish such an objective “framework of thought, reasoning, and judgment” (ibid., 112), they do not doubt for a moment that scientists make judgments and draw inferences “on the basis of mutually recognized criteria and evidence” and “reach agreement by the free exercise of [their] powers of judgment” rather than “by mere rhetoric and persuasion” (ibid., 111)⁷; nor do they doubt that scientists’ claims to correctness are “supported by the preponderance of reasons as given by an appropriate procedure” (ibid., 115), or that scientists are guided by objective reasons that they “distinguish from the reasons they have from their own point of view” (ibid.). Reasonable people “never suppose that [the scientists’] thinking something is [true] [...] makes it so”

⁶ See Rawls 1996, 119: “Political convictions [...] are objective [...] if reasonable and rational persons, who are sufficiently intelligent and conscientious in exercising their powers of practical reason, and whose reasoning exhibits none of the familiar defects of reasoning, would eventually endorse those convictions, or significantly narrow their differences about them, provided that these persons know the relevant facts and have sufficiently surveyed the grounds that bear on the matter under conditions favorable to due reflection [...] To say that a political conviction is objective is to say that there are reasons [...] sufficient to convince all reasonable persons that it is reasonable”.

⁷ Like rationalists in general, Rawls feels uncomfortable about rhetoric and persuasion which he see as the exact opposite of sound (i.e., rule-governed) reasoning. As he writes, “all ways of reasoning [...] must acknowledge certain common elements: the concept of judgment, principles of inference, and rules of evidence, and much else, otherwise they would not be ways of reasoning but perhaps rhetoric or means of persuasion” (ibid., 220). Onrhetoric and persuasion see note 10 below and corresponding text. For a more balanced view and a rehabilitation of rhetoric see Toulmin, 2001. Toulmin’s book is an immensely valuable contribution to the understanding of reasonableness.

(*ibid.*, 111), or that scientists do not possess principles and methods which, when correctly applied, allow them “on the same (true) information [to] reach the same (or similar) conclusion” (*ibid.*). And they whole-heartedly believe that scientists, having firm standards and definite procedures, fail to converge only insofar as their “disagreement is consistent with objectivity, as the burdens of judgment allow” (*ibid.*, 121). As champions of science, reasonable people consider outrageous, even absurd, the idea that a closer look may reveal that no scientific result can ever be said to be so “well established and not controversial” that it cannot run into serious objections, or that does not clash with other “well established and not controversial” results; that subjective elements affect the very foundation of scientific research (many kinds of “facts,” for example, cannot be detected without the assistance of some idiosyncratic, though rarely transparent, point of view); that there are no settled and generally agreed-upon criteria either of method or of fact, but these criteria vary widely with the subject of research (those of physics are not those of political science)⁸ and are affected by the circumstances in which they arise⁹; that skilled rhetoric, effective persuasion, and clever propaganda (including the appeal to “shared” and “objective” criteria) are much more relevant to science than philosophers like Rawls have ever imagined, and they are effective as well in building consensus¹⁰; that scientists adhere to any sort of idea for any sort of reason including (though not primarily) its being “supported by the preponderance of reasons.” Who among reasonable people would lend credence to the story that scientists hold hypotheses for no other reason than that they bring a theory into agreement with the facts¹¹, or that scientists retain hypotheses in the face of contrary evidence and incorrect predictions, or that they maintain hypotheses which are at variance with theoretical and experimental results that are “well established and not controversial”?¹² No reasonable person believes this. Nor maneuvering they believe that a scientist’s objective reasons are often so little objective as to be undistinguishable “from the reasons they have from their own point of view,” their “objectivity” resulting more from shrewd than from an objective “order of reasons”¹³; or that what is true in science is often simply what

⁸ As Berlin has often emphasized: see, for example, Berlin 1996, 50–51.

⁹ As Toulmin (2001, 99) puts it, such methods and criteria are “OK in their own way.”

¹⁰ Feyerabend (1978, 157) has made this point as eloquently as anyone ever has: “Propaganda of this kind,” Feyerabend writes, “is not a marginal affair that may or may not be added to allegedly more substantial means of defence, and that should perhaps be avoided by the ‘professional honest scientist.’ In the circumstances we are considering now [i.e., Galileo’s struggle in favour of Copernicus], *propaganda is of the essence*. It is of the essence because interest must be created at a time when the usual methodological prescriptions have no point of attack; and because this interest must be maintained, perhaps for centuries, until ‘new reasons arrive.’” Those who feel uncomfortable with Feyerabend can refer to Pera and Shea, eds. 1991.

¹¹ While ad hoc hypotheses of this sort abound in science, from Galileo and Newton to elementary particle physicists, they are the stuff of deep disagreement among philosophers: Popper condemns them, Lakatos praises them. Scientists simply introduce, elaborate on, and *use* them. For a discussion and examples see Lakatos 1978.

¹² For a discussion and examples see Feyerabend 1978, 59–62.

¹³ “Even experimental ‘facts’ turned out to depend on compromises between different groups with different experiences, different philosophies, different financial backing, and different bits of high theory” (Feyerabend 1999, 132).

scientists think to be so; or that agreement among scientists, far from coming about “by the free exercise of [their] powers of judgment” results from disparate factors, inclusive of propaganda, political interference, institutional influence, authoritarian pressure, lobbying, case-by-case negotiations,¹⁴ mere orthodoxy, and the backroom deals of “the mysterious anonymous class of referees”.¹⁵ Nor, finally, will reasonable people ever come to believe that “true” information often comes by highly specific, idiosyncratic, ad hoc processes leading to different, often conflicting conclusions¹⁶; or that, as the most crucial scientific debates show, there is more to scientists’ disagreement than “the burdens of judgment allow” (for example, fundamental disagreement among comprehensive views of the kind Rawls would like reasonable people to give up in the public sphere). All this talk about science is so plainly senseless that it will never induce reasonable people to realize that their good, solid science may turn out to be so disreputable.

5 Conclusion

Reasonable people cease to be fallibilist where common-sense views and science’s most well-established claims come into play, at which point they take up all the plain wisdom of the plain man: a combination of “mere matter-of-fact apprehension of reality” (Geertz 1983, 75); straightforward reliance on “the sheer actualities of experience” (ibid., 76); a preference for simple immediate facts and self-evident claims; a disregard for logic and an endorsement of popular views, habitual judgments, accepted beliefs, received ideas, and “widely shared” mistakes. At the same time, reasonable people are expected to have a distorting intellectual creed requiring them to believe in science’s universal applicability, strict objectivity, ideological purity, uncontroversial tenets, single method, all-embracing principles, indisputable facts, and other pious frauds, and also to accept as “well established and not controversial” anything falling under the rubric of “science” and “scientific.”¹⁷

¹⁴ See note 13 above.

¹⁵ Hoyle (1982), quoted in Feyerabend (1999, 149). Despite overwhelming evidence to this effect, philosophers remain unflaggingly attached to science as a model of rational agreement. Thus, for example, Rawls asks: “Why does not our conscientious attempt to reason with one another lead to reasonable agreement?” And he comments: “It seems to do so in natural science, at least in the long run” (Rawls 1996, 55). Maffettone elaborates on this point: “The burdens of judgments,” he says, “explain why reasonable disagreement persists, contrary to what takes place, on occasion, in the field of scientific research” (Maffettone 2004, 561). It may just be the case, however, that reasonable agreement of the Rawls-Maffettone type takes place in science, whether “in the long run” or “on occasion,” whenever science eases into a period of *stagnation*, through a combination of dogmatic sleep and a dearth of new fundamental ideas.

¹⁶ Notice that this is quite different from Rawls’s obvious contention that our experience is inevitably subjective and differs from person to person: idiosyncratic processes of the kind just referred to are *essential* in gaining information and do *not* pose a hindrance to “the way we assess evidence.”

¹⁷ A wicked effect of this creed is that even the most liberal and most tolerant attitude will cease to be so once it reaches the portal of science. A striking example is found in MacPherson and