THE WAYS OF JUDGMENT

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The authority of secular government resides in the practice of judgment. That is the thesis that the argument of this book will sustain, and it summarizes a characteristic biblical approach to government which has had a decisive effect in shaping the Western political tradition. It has deep roots in ancient Israel’s political experience, where, at an early point in history, the “judge” (shophet) was apparently the only standing officer of the Twelve Tribes, there being no other central institution, so that even the provision of military leadership fell to the judge’s care, as on the notable occasion in the narrative of the book of Judges when the judge was a woman. Under the monarchy the king was conceived as a judge, separating the wicked from the righteous, as appears in the little Psalm 101, a royal oath that ends with the alarming promise, “Morning by morning I will destroy all the wicked in the land” — that is to say, the king will hold judicial assizes daily. In the anonymous exilic oracle against Moab at Isa. 16:5 the restoration of the throne is spoken of in terms of “one who judges and seeks justice.” And in the First Servant-Song of Deutero-Isaiah, where the Servant is depicted as a king, it is said that he will “bring judgment to the nations . . . in his law the islands will put their hope” (Isa. 42:1, 4). Yet it would be an oversimplification to say that in ancient Israel judgment was the essential function of government. Not least, it would fail to account for the two great figures on whom so much reflection is focussed, those of Moses and David. The one, as deliverer and lawgiver, stands behind the judges of Israel; he is the source of their authority, not of their number. The other,
as the recipient of a personal covenant with YHWH, underpins the identity of the people as a whole.

For the proposition that the authority of government resides essentially in the act of judgment, we must turn to the New Testament, where St. Paul described the function of civil authority as to reward the just and punish the evil (Rom. 13:4). Such an interpretation of authority, though this has not often been recognized, is in fact an iconoclastic one. It self-consciously dispenses with other functions of political authority that must have suggested themselves to readers of the Hebrew Scriptures as well as observers of the Roman world; it strips down the role of government to the single task of judgment, and forbids human rule to pretend to sovereignty, the consummation of the community’s identity in the power of its ruler. This is, of course, in part an acknowledgment of the purely secular character of government in the Christian era — “secular,” that is, not by its own profession, which is irrelevant, but by its actual position in salvation history. Other tasks that governments might perform, and in ancient Israel did perform, such as determining the form that public worship must take, could have no interest in a world where God had conferred his sovereignty upon his Christ. The higher goods of mankind’s social destiny have been looked after in the proclamation of Christ; only the lower goods of judgment need concern earthly princes. For Paul, no less than for John of Patmos, there is only one political society in the end, which is the new Jerusalem; sovereignty is to be found there and nowhere else. Israel’s identity is complete there, and the identities of other nations are of no account except insofar as they are found in Israel’s God and his Christ. This passing usefulness, however, the rulers of the nations still have, pending the final revelation of Christ’s sovereignty: they maintain a distinction within their societies between the just and the unjust.

This new way of envisaging the political function I have described, in an expression doubtless capable of improvement, as the “re-authorizing” of government as judgment. This does not intend to say that the whole operation of government is thinned down, as in some libertarian fantasy, to the operations of civil courts of justice; it means that political authority in all its forms — lawmaking, war-making, welfare provision, education — is to be re-conceived within this matrix and subject to the discipline of enacting right against wrong. My expression intends to sum up two contrasted but complementary assertions characteristic of the Christian tradition. In the first place, the terms on which the bearers of political authority function in the wake of Christ’s ascension are new terms. The triumph of God in Christ has not left these authorities just where they were, exercising the same right as before. It imposes the shape of salvation-history upon politics. The operations of the Holy Spirit in the world drive the political leaders back upon the tasks of justice, and so effect a transformation. This offers a distinctive perspective on the evolution of political forms in history. For the hero-warriors of Troy the ultimate test is the survival of the city, for the warrior-monarchs of Beowulf the survival of the tribe; but that is ground we can never re-occupy. Even were the same conditions as once prevailed in Magna Graecia or Scandinavia to prevail again, we could not return to that state of mind in innocence; for something about our human vocation has been shown to us: we are called to a final destiny in the life of the new Jerusalem, subject to the throne of God and the Lamb. Only of that throne can it be said that by its sheer prevailing it gives life. All other thrones need further justification; their role is subordinated to the task of preparing the way for that final one. This was the ground of the distinction that arose within a Christian view of history between secular and spiritual authority, this-worldly and ultimate rule.

In the second place, political leaders are not simply denied their authority, but are constituted, on these new terms, as a secondary theatre of witness to the appearing grace of God, attesting by their judicial service the coming reality of God’s own act of judgment. In the light of Christ’s ascension it is no longer possible to think of political authorities as sovereign; but neither is it possible to regard them as mere exhibitions of pride and lust for power. To the skeptical question, “What else, basically, are the courts of this world — together with all its prosecutors and lawyers — than the necessary institutions which have come from original distrust?” we are bound to answer, “Much in every way!”


The term “judgment” is what the grammarians call a nomen actionis, that is to say, the name for a type of act, the “act of justice,” as St. Thomas describes it.⁵ When we read the famous prophetic texts in which the Hebrew noun mishpat is employed, we must always bear in mind its active force: the king “judges (shaphat) and seeks mishpat” (Isa. 16:5), and the Servant “will bring mishpat to the nations” (Isa. 42:1). The immediate concern of these texts lies with courts and litigation, though the Servant-Song shows how the international sphere, too, could come to be construed as a great court of divine judgment. The famous word of Amos 5:24, which bids us “let mishpat roll down like waters,” has in view a flood of judicial activity. Courts are to be held every day “in the gate,” appellants are to be heard quickly and without the need for bribes, verdicts are to be clear-sighted, decisive, and enforced. The active sense of mishpat famously influenced St. Paul, whose use of the Greek word dikaiosune carried over the force of the Hebrew noun: the “dikaiosune that is by faith” is God’s act which sets wrong right (Rom. 3:21f).

“Judgment,” then, is more sharply focussed than the abstract noun “justice.” This latter term has been used in broadly three ways in the moral discourse of the West. In the first place, and most conformably to modern usage, it has been used to describe a state of affairs, a kind of moral equilibrium obtaining between two or many things, a state which it is morally requisite to bring about or morally prohibited to disturb. In the medieval Western tradition this sense is represented especially by the Roman-law term jus, “right.” In the second place, and most characteristic of the classical philosophical discussion, “justice” is the name of a virtue, which resides in those who are disposed to “render each his due.” This virtue is either one of many, “special justice,” differentiated from the other virtues by its specific reference to what we owe others, or it is the sum of all virtues, “general” justice, a sense which hardly survives in English, though, when English vocabulary was still fed from the Authorized Version of the Bible, it was spoken of as “righteousness.” In the third place “justice” has been used to describe effective performance, the act of “judgment,” which sets wrong right. When people “demand justice,” what they want is for somebody to do something. We may distinguish the three conceptions of justice by speaking of justice-as-right, justice-as-virtue, and justice-as-judgment.⁶

The Christian discussion of justice has been generated by the confluence of these three streams, in which justice-as-judgment, predominant in the Scriptures, has mingled with justice-as-right from Roman law and justice-as-virtue from Plato and Aristotle. Although all three of these notions have application to political life, only the performative notion represents an originally political reality. For Plato, the just man is like a just city, but can exist without a just city, for justice-as-virtue is an ordered disposition of the powers of the soul, not of relations among and between people. Justice-as-right supposes a society, on the other hand, but without reference to political organs, so that in this sense the phrase “original justice” may be used of the pre-political social harmony of the Garden of Eden.

Let us venture upon a working definition: judgment is an act of moral discrimination that pronounces upon a preceding act or existing state of affairs to establish a new public context. On this I shall make four comments.

(i) Judgment is an act of moral discrimination, dividing right from wrong. The pretension of judgment is to resolve moral ambiguity and to make the right and wrong in a given historical situation clear to our eyes. It “defines,” as Grotius says, “between two parties.” It is an intellectual act, implying the exercise of intellectual virtue. In the Hebrew Scriptures, indeed, judgment often appears as the supreme expression of “wisdom.” The famous story of Solomon and the two women is intended to display how the wisdom conferred by God on princes resolves the obscurities of conflicting claims. The emphasis laid by idealist thinkers on the intellectual character of political action is not due solely to Plato’s famous thesis about philosophers and kings; it derives also from the ancient Near-Eastern association of wisdom-ideals with government.

3. Summa Theologiae II-II.601. The single most important Christianizing transformation that St. Thomas introduced into Aristotle’s virtue-theory of justice was his concentration on iusdictum as the focal act of justice. In this he was followed by Hugo Grotius, De imperio summorum potestatum circa sacra 5:1ff.

4. The association of these different concepts of justice with different cultures is, of course, a simplifying generalization: Plato was far from uninterested in just states and deeds of judgment. Yet the “paradigm” of the just city is effectively established only in the soul of the just man (Republic 592ab).
(2) **Judgment pronounces upon a preceding act**, or on an existing state of affairs brought about by action. It is by definition reactive, following what it pronounces on. It is not, and never can be, a forward-looking action, like “founding” a city, “striking” a blow, or “broaching” a question, but derives its rational conditions from a reflective reference, like “answering” a question, “defending” an encampment, “noticing” a sound, etc. To pronounce a **judgment** is always to speak about something that already is the case. This is especially important for the theory of punishment: “retribution,” i.e., reacting to the past, cannot be recommended as a **virtue** of judgment; it is quite simply a condition for judging at all, as opposed to, let us say, taking an initiative. When we have said that punishment is retribution, we have, as yet, said nothing as to how we may punish **well**; we have only said that punishment is, as such, a species of judgment.

(3) **Judgment establishes a public context, a practical context, that is, in which succeeding acts, private or public, may be performed.** The fact that an act must be by definition retrospective does not mean that it must be undertaken without a prospective object of action, another point of importance for the theory of punishment. No human actions are ever undertaken without prospective objects; they differ, however, as to whether their objects are **purely** prospective — “setting out on a journey” — or incorporate a retrospective object, too. The prospective object of the act of judgment is the securing of a public moral context, the good order within which we may act and interact as members of a community.

An act of judgment may therefore be assessed by the success of its outcome, as well as by the truth of its pronouncement. “Execution is the life of the law.” It achieves its goal only if a public moral context is established by the judgment, and the public moral context is, in some respect, more just as a result. This may involve making a substantial change to the public context, as when a new law turns something that we have hitherto done with perfect innocence (let us say, hunting foxes) into an offense overnight, or something we have done furtively (say, smoking cannabis) suddenly becomes legitimate. And so we may think of a good judgment as “creative,” in that it brings new possibilities of ac-

The Act of Judgment

The private citizen, in the first place, may have a private avocation, a calling, a profession. This may be his occupation, in which he is engaged, or it may be a profession, to which he is devoted. The private citizen, in the second place, may have a private avocation, a calling, a profession, which is his occupation, in which he is engaged, or it may be a profession, to which he is devoted. The private citizen, in the third place, may have a private avocation, a calling, a profession, which is his occupation, in which he is engaged, or it may be a profession, to which he is devoted. The private citizen, in the fourth place, may have a private avocation, a calling, a profession, which is his occupation, in which he is engaged, or it may be a profession, to which he is devoted.

6. Thomas Aquinas, Summa Theologica, I-II, q. 30, a. 1, ad 3: "Et omnia aliquid in alio, introitum sit in omnino, quia contemplato et
eignly bound himself. In other words, it is an aspect of *potestas ordinata*, not *potestas absoluta*, for God's absolute power can destroy but not judge. The story of the covenant with Noah illustrates the same point in terms of the whole human race: a God who will judge the human community, requiring "a reckoning for the life of a man," is one who has assumed responsibility for the good of the human community, and will not destroy it (Gen. 9:5, 9-17). Yet we do not conceive of God as undergoing the loss of personal freedom that characterizes the human official; nor is he a "representative" in the sense that his voice simply is the voice of the community. That is because God's freedom is not curtailed by his self-giving in covenant, but is wholly expressed there; and his agency for the community is prior to the community, not subject to it. In that sense it is sovereign, as no human political agency ever can be. In speaking of God's rule as the foundation of political authority, then, we speak of the point at which things separated and often in tension in our political experience find their true point of equilibrium. "All authority from God," the apostle said. And we know that that must be true, precisely because of the contradictions and tensions that arise when we are mandated to exercise authority over one another.

Imperfectibility

It is, perhaps, the most fundamental of all political questions whether and to what extent judgment is possible. How are we so to pronounce as to establish? How are we to make the truth appear effectively? Of God it is said that "He spoke and it was done." "God said, 'Let there be light,' and there was light." The word of God carries the power of God within itself; to echo the old phrase from sacramental theology, it effects what it signifies. But can the human word effect what it signifies? Are we given to renew the life of human communities by a word of truth, or is this an unattainable ideal, from which we have to fall back upon the "messiness" and "compromise" of politics?

This question, which divides the "idealists" from the "realists" strands of Western political thought, first became articulated in the Middle Ages in response to the Averroist separation of intellect and will. Marsilius of Padua, reflecting on a passage of Aristotle's *Politics* where the philosopher distinguished judges from soldiers on the basis that the judiciary was required against internal, the military against external foes, observed that this was neither the only nor the principal reason for the military class. Rather, that class existed so that "the sentences of the judges against injurious and rebellious men within the state [might] be executed with coercive force."²¹ The distinction Marsilius perceives be-

tween these two elements of political society, then, reflects that between rational and voluntative functions of the mind. The exercise of judgment requires the coincidence of discernment and coercion. The judge says “Guilty!” and the military leads the prisoner away. At the last judgment Christ will unite these two elements; but in the meantime human judgment is a composite act which depends on their fragile conjunction. They are not inseparable. Discernment may be exercised without coercion, which gives us, Marsilius thought, a secondary sense of the word “judgment,” by which a priest may be called a judge: “a teacher of divine law” who “has no coercive power in this world to compel anyone to observe these commands.” In Marsilius’s conception we may observe the first stirrings of that outlook which has come to be called “realism”: the coercive act is a voiceless complement to an otherwise impotent word.

But it was possible to think of force in judgment quite differently. Later in the fourteenth century Oxford’s John Wyclif proposed that it was the non-coercive declarations of the priest that comprised the essential reality of judgment. “A judge,” he wrote, “is a contemplative ruler of the people operating solely with the moral authority of God’s law.” This office is distinguished from that of the king in terms of the contemplative and active lives: “a king is an active ruler of the people operating with human law.” The judge as such uses no coercion: “It belongs to judges to direct the people solely by God’s law, and to kings to use civil compulsion.” This “contemplative” government, which should be represented in Christendom, Wyclif believes, by the bishops, is a real alternative to coercive government, “nearer to the state of innocence,” more apostolic, more like the heavenly state, and so “more perfect.” Only “accidentally” (i.e., circumstantially) may the rule of kings be preferable in the face of extensive sin, though even so “human law and kingly office have no worth unless they are directed by the evangelical law.” Here we encounter a form of the “idealist” tradition, derived from Plato’s famous conception of the rule of philosophers in the Republic, where the whole action of government is contained in its expression of wisdom and rationality. Coercion is not essential to judg-

2. Defensor Pacis 2.8.3f.
3. De civili dominio 1.28.
4. De civili dominio 1.27; IG, p. 506.

... ment; it is an ancillary for a less than ideal world, an accident that befalls the act of judgment.

The question posed by this divergence of views has haunted political thought in the twentieth century. Is there in the nuclear core of human judgment a shortfall of reason, which generates an exertion of force to compensate for its lack? Or does reason reach all the way to express itself, where necessary, in forceful action? We found ourselves constantly reverting to such a question in our decade-long heart-searchings over the crisis between Iraq and the United Nations: was there a point at which the reasoned discourse of diplomacy simply “ran out”? The question may present itself in various guises: in terms of the practical fragility of human judgment, the insufficiency of propositions to pass over into action, the shame attached to force, the limitations on our perceptions of the truth, and our restricted capacity for constructive and forward-looking initiative. These different forms of the question are interrelated, constantly leading back to one another and to the theological root-question underlying them: can we imitate God’s unity of thought and action so that the reasonableness of a judgment will be sufficient to give it effect?

It is not simply a question of whether we approve or disapprove of coercive force. The idealist tradition presents itself as the champion of reason; yet its upbeat account of the rationality of public action contains an apologia for force as a form in which political rationality may sometimes appear. So Eusebius of Caesarea, that arch-idealist, interprets Constantine’s military victories as the conquest of the Logos, the final triumph of rationality. The realist tradition, on the other hand, presents itself as the advocate of necessary force; yet its sombre account of human possibilities may sometimes contain a confession of shame in the face of necessity, a sense of tragedy about the cutting-short of reasonable interaction. So for Augustine the just man wages even just wars in tears. The realist critique of idealism is that it fails to acknowledge the brutal rupture implied in the transition from speech to action. The idealist critique of realism is that it allows too little distinction between rational force and irrational violence.

Let us pursue the question from each end in turn. What is implied, first, in speaking of the truth of a judgment? And what is implied, secondly, in speaking of judgment as an effective action?

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The traditional definition of truth spoke of an “adequacy” of language to object, _adaequatio verbi et rei_. The sense in which language may be said to be “adequate” has, of course, given rise to much discussion. No notion of equivalence will fit the case, since language and its referent are things of a different kind, not to be commensurated. Yet language “refers.” It is not condemned to be a new beginning, a venture into the world from outer space, like the Arminian conception of the act of will. Language enacts itself by referring to other performances; and the success with which it makes that reference is what we mean by its truth. But what does “success” mean? When language refers to an object, we do not think that it summons the object into existence, but that it corresponds with greater or lesser effect to the way things are with the object. Yet the way things are with the object is not given to us directly; objects are not known to us apart from our reference to them through language. The implication of this antinomy is that we conceive the object, as it is in itself, before we refer to it, as the object of a _prior_ reference that is somehow presupposed by our successful reference to it. Our reference appears to us as a kind of correspondence to the reference of God. Our judgment, therefore, can be said to judge truthfully when, within the limits of human understanding, we judge of a thing as God has judged of it.

A judgment on any act or situation proposes an account of it; yet it is not an open-ended account, but has a moment of closure, where innocence is separated from guilt. The moral _description_ ends in a moment of _discrimination_. Description is complex and indeterminate, tracing and representing the dimensions and boundaries of the multiple relations which constitute and situate the object of judgment. But discrimination is simple and determinate: it draws a moral line through the situation, dividing its actors and their acts into two opposed moral categories. It is this simplifying moment that enables judgment to become action. Discrimination treats its object as an act, rather than an emerging sequence of happenings, by imposing closure on it: the conclusion is understood as the act’s intention. At the same time it shapes itself as an act, emerging out of the observer’s descriptive stance, where it simply stood by and looked on, into a practical posture of judgment.

Imagine with the aid of a hypothetical exercise how it would be if all our truth were purely descriptive, with no closure. Every transaction made in every shop is recorded on a central computer that identifies not only retailer, customer, and price, as with our present-day credit-card transactions, but also the precise description and quantity of the goods purchased. The computer then reviews each transaction, and if the price charged is above or below the average market value, it makes an adjustment in the form of a credit or debit on the retailer’s and customer’s accounts. Subsequently the computer tracks fluctuations in the market price of those goods, and makes ongoing retrospective adjustments as necessary. Such an arrangement, besides putting an end once and for all to the January sales, would ensure against unjust pricing — if that term could be thought to have a meaning anymore. But it would not be _judgment_, telling the truth about a human act. For the original transaction would never have been properly concluded. Sales subject to endless adjustments, like scientific theories open to infinite revisions, are not completed acts; and so they are not susceptible of attributions of guilt or innocence. It is characteristic, perhaps, of a totalitarian society that nothing is ever regarded as finished: everything is always open for higher review. Even the loser on the scaffold knows that with the next turn of events his memory will be rehabilitated. There can be no responsibility, no truth of human acts, because the point is never reached at which something has been definitely done. Judgment on a human action imports the moment of closure both in the performance of the act and in its description.

(i) How, in the first place, may our _descriptions_ correspond to the judgments of God? It is not as though God has pronounced on each case already, so that all that is wanting is simple implementation or execution of what God has decided. When we judge, we venture our own pronouncement. But we do not have to do this in a vacuum, but in responsibility to the generic judgments of God known to us through divine law, natural and revealed, and through salvation history. God’s judgments illumine the categorical structure of all events, and so teach us how to appraise particular events. The word of God illumines the works of the flesh and shows them up for what they are: fornication,
impurity, licentiousness, idolatry, sorcery, enmity, and so on. That John Doe did or did not practice a sorcery on Tuesday last is not, however, illumined by the word of God, but is given in the first instance to us to decide.

Descriptive truth is a matter of appropriate predication. This act, this event: of what kind is it? Are we looking at an assault, or at an innocent accident? At a lie, or at the careful statement of a truth? To answer this question requires a kind of reasonableness that is neither deductive nor inductive. It is not inferential at all, but cognitive: it is the recognition of a kind in a particular. One must see past the bare particularity of the object (the haecceitas, in scholastic terminology) to its quidditas: it is not simply "this" or "that" but "a such and such." From the philosophical point of view, this is one of the most mysterious acts there is: it seems that it either happens or does not happen. I either recognize this slithery floppy object as a fish, or I do not; even if I can be taught to recognize a fish by looking for gills, scales, and fins, I either recognize this orifice as a gill, those membranes as scales, that limb as a fin, or I do not. But though recognition is unanalyzable, it is not haphazard. We prepare for it by acquiring competence with the relevant moral categories. To be sure of answering the question "Was that a lie?" we have to learn in general what constitutes lying. We learn to feel out the boundaries between categories, determining where one ends and another begins: "In those circumstances an evasion might have been innocently meant, but in these it could only be a lie." A particular act may plausibly belong to more than one category at once: there are fish, there are dogs, and there are dogfish; and so, we may say, there are idolatries, there are enmities, and there are idolatrous enmities — and more ambiguous combinations, too, such as maternal jealousy, protective lying, and so on. The first and most obvious categorical description of any human act may require a number of qualifying categories.

It is a sign of inadequate judgment to rest content with the superficial description, a hallmark of "summary" justice. This is why laws must be drafted with a certain complexity, so that courts may have sufficiently developed categories in which to form reflective judgments. It is a great weakness for a law to be under-specified. In ancient societies this complexity was sometimes achieved by the device, confusing to modern readers, of letting two apparently contradictory laws stand alongside one another in a law code. This device allowed judges to weigh up different possible interpretations of a given act. A society more used to discursive thought, however, rightly prefers to express the relation between the different provisions for different possibilities clearly, so that the determination of the judge is less likely to be arbitrary.

(ii) As well as appropriate predication, however, true description implies a reflexive contextualization. A further truth comes into the picture, which is the truth about the community that judges; and only by taking that truth into account can we attain a satisfactory discrimination of innocence and guilt. In the story of Jesus and the woman taken in adultery, which has shaped so much of Christian jurisprudence (John 8:3-11), Jesus does not challenge the generic categories in which the judges describe the act, nor does he challenge the application of those categories to the accused woman. But he demands that another dimension of description should be included: the ambiguous relation in which those who accuse others of adultery stand to the adulterers. And so he challenges the discrimination they have made. Were that community to carry out the death penalty on that woman, the line between innocence and guilt would have been drawn wrongly.

We may treat this story as a paradigm for the problem confronting all idealistic legislation. The trouble is not that law hopes to express some moral truth, for law must express moral truth if it is to command authority; the trouble is that it underestimates the complexity of the moral truth it must express. The truth of a law must also be a truth about the society in which the law will function. An over-demanding or over-restrictive law bears false witness to the totality, while intending to bear true witness to the part. Consider, for example, the legislative proposal that, irrespective of harm done, it should be criminal for parents to slap their children. The idealist character of this proposal is betrayed by its assumption that parents can always command forms of rational persuasion, and always have sufficient social support, to discharge their responsibility for their children's behavior without physical expression of their displeasure. Even were we satisfied that everything this proposal supposed about the moral character of parental slapping was true, we would still know that its view of the realities of parenthood was an idealized fiction.

Accommodation to human weakness, then, which the Greek Fathers called oikonomia, is not simply a matter of how a truthful judgment is implemented. It bears upon the truth of the judgment itself. So when
Jesus says, “Moses for the hardness of your hearts commanded you to give a writ of divorce,” we should not take him to mean that the Mosaic law was, from a moral point of view, a second-best law. This regulative arrangement, rather, was the right way to condemn divorce, because it told the truth about the Israelites’ hardness of heart.7

All this helps us to understand why laws differ from one society to another, and, indeed, ought to differ. A false inference is often drawn from the truth of social imperfectibility: that it implies a uniform minimum of law (or, in a more modest version, a uniform minimum of criminal law), which will safeguard the bare essentials while renouncing the attempt to maintain by legal means moral standards in excess of them. Without pursuing all the various objections to this inference, we may simply observe, as Aristotle did long ago, that sin is manifold.8 The universal sinfulness of humankind is not a uniform sinfulness. Some societies tolerate a measure of violence, some tolerate offenses against property, some sexual offenses, and so on.9 Societies differ in their besetting sins as well as in their distinguishing virtues. The uniform minimum law risks ending up with the worst of both worlds: it neither appeals to our sense of value to motivate us, nor provides us with protection at points where we feel we need it. It is idealistic in the vicious sense of the word, i.e., it supposes some other kind of society, with other problems and possibilities, than the one it actually has to serve. Apart from differing moral possibilities within society, other changeable factors require variations in law. Local expectations differ from place to place and need to be respected; local conditions for detection and execution have to be taken into account. The European Convention of Human Rights declares: “Everyone arrested or detained . . . shall be brought promptly before a judge . . . and shall be entitled to a trial within a reasonable time”10 What is prompt? What is reasonable? It must depend in part on the distances to be covered and the topography, the means of communication, the local laws which govern evidence at a trial, the pressures on courts’ schedules, and so on. The principle must be universally upheld, but cannot be uniformly implemented. Yet that does not mean that implementation may be indefinitely elastic; some intervals are not “prompt” or “reasonable” by any criterion.

Furthermore, law must change with historical circumstances. A generation ago, in common with many other Western countries, Britain decriminalized suicide and attempted suicide. The law continues to disapprove of suicide, for it remains a serious offense to counsel or assist one. But it was judged, surely correctly, that suicide was better dealt with by discouragement. We should not conclude that because we now judge it right to deal with it in this way, it was always a mistake to have had criminal legislation. That was for our grandparents, not ourselves, to judge, in the light of how they thought their contemporaries would react to the presence or absence of sanctions. To take a contrary example: in the seventeenth century it seemed evident to all the more civilized and reflective thinkers that war-crimes could not be prosecuted. Though many common acts of war ran counter to basic principles of lawful conduct, they had to be immune from prosecution, for if every war was followed by a systematic attempt on the victor’s part to punish the crimes of the defeated party, not only would justice be intolerably one-sided but belligerent parties would be deterred from making peace. Today the trial of war-crimes is popular, and for good reasons. But it is not the case that either the seventeenth or the twenty-first century had to be wrong. The existence of international institutions makes some things practicable now that were impracticable before.11

7. Mark 10:5. In Resurrection and Moral Order (Leicester: Apollos; Grand Rapids: Eerdmans, 1986), pp. 96-97, I observed that “the forging of compromises does have a legitimate place in Christian moral thought when it addresses ... norms for the conduct of public life.” I also noted, however, that “it would be better to find another term.” I now prefer to speak of the “imperfectibility” of human politics. This logic framed one of the most interesting and disturbing experiments in legislation of recent years, the law on euthanasia in the Netherlands.

8. The extensive discussion it received from Basil Mitchell a generation ago in Law, Morality, and Religion in a Secular Society (Oxford: Oxford University Press, 1967) is still well worth reading.

9. Thus the ironic bookseller whom George Borrow met at St. James of Compostella asked: “By the bye, I have heard that you English entertain the utmost abhorrence of murder. Do you in reality consider it a crime of very great magnitude? ... The friars were of another way of thinking. ... they always looked upon murder as a fiaolera.” The Bible in Spain (London: Dent, 1906), p. 249.


It is difficult to evaluate the judgments of a past historical period, because we are not “at home” in it to assess its possibilities realistically. But is it any easier to evaluate the judgments of our own? Is it given to us to know our own society more clearly than a past one? Our society is not an object set before us for scientific examination. It is a historical, shifting and changing context, constantly emerging out of a past society and constantly developing into a future one. It is of infinite complexity, and we who assess it are part of it, and assess it from a partial point of view. We may sometimes suspect that there is no more misleading view of a society than the one it takes of itself, a blend of hopeful and despairing self-images, sectional perceptions, and so on. Once grant the reflexive movement, in which the particular case is set within the context of the society, and the search for the truth looks like a voyage towards a landless horizon. Contextual truth, so important to assessing the case, is in principle unlimited.

But some limit must be set to the reflection that any case requires of us, and so human judgments settle for functional simplifications. While requiring some degree of complexity, the practice of judgment precludes an indefinite search for insight and understanding. Neither the court nor the legislative chamber is the place to explore some aspects of a situation that more extensive and humane reflection, not to mention divine insight, would uncover. They have to cut things short, and act. So when we describe what a court does in relation to the case before it, we say simply that it “declares the law”; it terminates the quest for truth within those categories of determination that human law has provided. Our judgment is never more truthful in its correspondence to God’s judgment than when it acknowledges its own severely limited capacity for truth.

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What makes a judgment an effective action? We have spoken of establishing “a new public context.” That is to say, the shape of what any member of society may and may not do is determined by judgment on behalf of the community as a whole for the community as a whole. The verdict of a court on a crime is addressed not only to the offender and the victim’s relatives, but to the whole of society, which is to conduct its affairs on terms that repudiate such crimes. So there is a directive func-

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 Imperfectibility

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unpaid debts by killing off its unpunished murderers. The pleasing paradox in the idea was that the objects of this disinterested justice inevitably became victims rather than executed criminals. Such informal dealings could never give society what it needs in response to crime, which is judgment.

I am inclined to believe that the moral rule prohibiting private vengeance is an example of that much-controverted category, the "exceptionless" moral rule. Apparent exceptions arise only because the concept of political authority is extended to other forms of social authority with limited rights of public vengeance: to the authorities of a school, for example, which have the right to expel students and censure staff, or to the management of a business which has the right to dismiss employees for misconduct. These exercise judgment within the sub-political institutions where they hold office. Theirs is not political judgment in the strict sense, but in serving a public institution it has a quasi-political character, as the law recognizes when it allows a court to intervene to uphold the principle of "natural justice." Other apparent exceptions arise from emergencies, in which provisional political authority may be assumed on a temporary basis. The citizen-groups in the Romanian revolution of 1990 who caught, interrogated, and executed members of the secret police may or may not have acted rightly, but they were certainly not acting privately. They claimed a provisional authority for a political action that the emergency required.

What, then, is private vengeance? It is something more than the merely malicious desire to inflict retaliatory injury. It is a desire for reckoning, a need to bring the private sense of injury into the public space for vindication. There is a private desire for public vengeance, which becomes a private desire for private vengeance only when the desire for public reckoning is frustrated, unsatisfied, or despaired of. So it belongs to the art of politics to persuade those who nurse grievances that judgment can provide the satisfaction they desire. Institutions of judgment are in principle at the service of the aggrieved, whose cause has an indefeasible claim upon the public interest. When a woman lies bleeding on the pavement, the contents of her handbag strewn across the road, the street is galvanized into action; she commands assistance, creating a community of action around herself. Victims have the authority of injured right to claim the interest of mankind and God. But they do not have the authority to enact judgment; that authority re-

sides with those who respond to the claim by making their injury the object of public vengeance. So although private vengeance has to be condemned, the desire for vengeance must be allowed its proper point of entry into the public realm, where it both commands and legitimates political authority.

A decisive view on the relation of private vengeance to public judgment is given us in the ancient Jewish institution of the Cities of Refuge, described at several points in the biblical narrative of conquest. It bears witness to a difficulty: how to overcome the strongly felt religious duty on the part of the next-of-kin of a slain person to kill the slayer. Normally such a sense of family obligation must have produced blood-feuds and inter-clan warfare. The institution aims to restrict this by providing a court that had, in effect, only one thing to decide: whether the violent death complained of was a true murder. The accused was protected within the bounds of the city until the decision had been made, and, if the verdict was favorable, thereafter. If there was true cause, the retaliatory slaying was allowed, and the demands of vengeance satisfied; yet this was no longer private vengeance, since the duty of the next-of-kin had been subjected to the terms of a public act of judgment.

In all texts the manslayer who may benefit from the court’s protection is described in two Hebrew phrases: bibi da’ath and la shone lo mishmol. The first, “without knowledge,” means “accidentally,” as the illustrations make clear. The court has to distinguish between intentional and unintentional killing. The second, “without previous evidence of hatred” (not “malice aforesaid”), is a supplementary criterion, supporting the appearance of lack of intention. On the historical context of this institution only speculation is possible. It looks like an institution designed for a society with minimal juridical organization, and there is no narrative record of its functioning. It is therefore possible to suppose that it was very ancient, and died out with the growth of local courts of justice. But the emphasis laid on it in Deuteronomic writings invites an alternative suggestion. In Deuteronomy itself we encounter it twice; the first occasion, most unexpected, is as an appendix to the First Speech of Moses (4:41ff.), which suggests that the editors and promoters of the Deuteronomic code set some store by it. This code was claimed to originate from Beth-Peor, on the East Bank of the Jordan, and we notice that this text is only acquainted with Transjor-

danian Cities of Refuge. In the other texts the distribution still favors Transjordania, with three cities located there and only another three for the whole of the rest of Israel. Were these Cities, perhaps, an East-bank institution, the device of a frontier-territory with certain features in common with the Wild West of American imagination? When the Josianic Reformers found in Transjordania a law-text around which they could promulgate reforms in Judah (and, as they hoped, in the former Samaria), did they attempt to extend this institution to the West Bank? Perhaps they conceived it as a bridgehead for monarchical authority, a point of appeal against local jurisdiction. So far as we know, the project of West-bank Cities of Refuge was stillborn. But it was a sufficiently attractive idea to encourage the post-exilic Pentateuchal editors not only to preserve the record, but to attempt to integrate these cities with Levitical cities and the High Priesthood (Num. 35:6, 25).

There is, however, something in the private yearning for vengeance that political judgment can never satisfy. The inner logic of grievance is to demand a cosmic reckoning. Wrong, as Hegel described it, is "infinite," and demands infinite judgment. The victim demands that the wrong should become the whole business of the universe. In confronting his adversary and striking him down he will command the world, which is reduced to that one event on which it appears to depend for its vindication. Like all sin, vengeance makes the world a small pseudo-infinite, a substitute for making contact with the true infinite. (This is the psychology explored so brilliantly in the book of Job in a portrait that is neither unsympathetic nor uncritical.) The pseudo-infinite can appear in history only as infinite bloodshed, the unending retaliation of the feud. It is a false god that the avenger has called to his aid, and the role of public judgment is to provide a place of provisional satisfaction, where we may open ourselves to the infinitely reconciling judgment of the true God. The victim is required to accept a moment of renunciation, even disappointment, in allowing the community to give finite and limited recognition to the wrong by enacting judgment on it. An age that champions victims' rights is familiar enough with the grieving spirit that clings defiantly to its wrongs, unsatisfied with public vindication and always in pursuit of the illusory hope of infinite reckoning.


In Scripture the issue is posed in the story of Cain and Abel, the first offender and the first victim. Cain, the murderer, is founder of the political and civilized arts; and so the myth conveys that the purpose of political life is to set a limit to the infinite reckonings of justice. The blood of Abel cries from the ground; but God, having heard the cry, protects Cain from it. The vengeance demanded by Abel's murder would put an early end to the human race. How could the universe concede to Abel's reproach, except by dying? The author of the Epistle to the Hebrews commented, "Abel, being dead, yet speaks" (Heb. 11:4): his cry for vengeance is never silenced, satisfaction never having been given, for only God's decisive judgment against the world could set that cry to rest. But God will not give him judgment. Or, as the Christian author adds, he has given it, though in a manner quite different from what was demanded: "the sprinkled blood of Jesus speaks more loudly than the blood of Abel" (Heb. 12:24). Infinite judgment has been given in infinite sacrifice, but with redemptive, not destructive purpose. Abel's cry for cosmic vengeance has been met, but not on its own terms.

Here, then, is the crucial point: there is a limit to the extent to which we are capable of accommodating a disclosure of right as the basis for our future public freedoms. The inner brooding of the victim may conceive of cosmic reckoning, but such a settlement cannot appear among us under the conditions of common social life. Public judgment is constrained by this limit, and in its struggle to wrest the initiative from private judgment, it loses the ground of its authority if it succumbs to immodest pretensions. It is not only that there is more truth to be known than it can know; there is also more judgment to be given than it can give. Its work lies on the surface of things, and only anticipates the deep judgment of God by not pretending to forestall it. To the extent that it exceeds its limits it loses credibility as a community undertaking, and appears in the world as a prophetic, didactic, or ideological force, armed with an authority springing from beyond community discourse. 14.

14. We may recall Hannah Arendt's memorable comments (On Revolution [Harmondsworth: Penguin, 1963], pp. 84, 87) on Herman Melville's Billy Budd, which she took to be a criticism of the "natural goodness" invoked in the French Revolution: "The absolute — and to Melville an absolute was incorporated in the Rights of Man — spells doom to everyone when it is introduced into the political realm.... Passion and compassion are not speechless, but their language consists in gestures... rather than in words.... Good-
What, then, are the limits of practicability that constrain a judgment performed in public on the community’s behalf? They are three: (i) that not everything known can be publicly expressed or certified; (ii) that judgment has only certain modes of expression open to it; (iii) that it lacks final authority.

(i) God knows the thoughts of the heart, and will publish them. We, too, may know some thoughts, but they are inexpressible in the public sphere. Certainly, thoughts are the well from which we draw our public utterances and deeds; but the source remains hidden, and in drawing from it, we transform what we draw. Thoughts are not simply utterances that we have held back. To the extent that it is possible by introspection or with the aid of drugs to render a succession of thoughts verbally in speech or writing, it is incoherent. But that simply means that it does not have the coherence of utterances; to make sense of it one would have to have thought it. The famous observation of Elizabeth I, that she did not wish to make windows into men's souls, is simply a concession to the inevitable, for political surveillance cannot, as a matter of reality, make windows on souls. When governments have thought they could do so, they have caused untold misery, because what is actually done is to destroy spheres of community that are not "hidden," as thoughts are hidden, but are "private": family, friendship etc., spheres in which we justifiably expect freedom from political control. In catching us out in our careless utterances, political surveillance can only exaggerate their significance, since careless utterances are precisely not utterances vested with high political significance.

(ii) Divine judgment is "final" in that God alone has the power to cast the devil and his angels into the lake of fire. Human judgment has no such ultimate power at its disposal; it commands only the same resources for exertion as any other human action does, including wrong-doing itself. The Noachic lex talionis, "Whoever sheds the blood of man, by man shall his blood be shed," gives expression to an invariable limit on human judgment. How much more we should like to accomplish when confronted with a murder! Best of all would be to cause the murderer to step forward, confess himself, and repent; failing that, we

would identify him and cause him to remove himself from the community in shame, without our having to raise a hand against him; and in either case we should like to demonstrate the wrong of murder so irrefutably as to deter all future murderers. We can do none of this. We can only watch the sin of Cain repeat itself, and only, as it were, repeat the murderer’s crime back to him, responding to force with force. In doing so, of course, we give force a new rational and moral context, that of judgment, and so we transform it. But it is still force. Irrespective of whether the death penalty is in question, it is the murderer's mortality and vulnerability that expose him materially to the act of judgment, just as it was the victim's mortality and vulnerability that exposed him materially to the murderer's criminal intent. Judgment exerts contrary force for the simple reason that, materially, there is nothing else to exert. Spiritually, there is rationality and persuasion, and these are not empty of power; but by the time a case comes to judgment they have already failed once, and if they are to have a chance of success on the second attempt, a new situation must be created first.15

(iii) Lacking transcendent power of action, human judgment also lacks transcendent authority that can withstand contest. When a judgment fails to elicit acquiescence, the issue reorganizes itself as a quarrel between the judge and the contestants, in which the judge's independence is subverted, and the judge's authority with it. The arbiter ends up being party to a wrangle. The extensive machinery for police complaints and appeal courts indicates how the right to judge needs protection against the threat of attrition by challenge. Precisely because force cannot accomplish persuasion, and may even make persuasion more difficult, the very legitimacy of political organs can be worn away by protest.

Human action is always subject to limits that make it fall short of its intellectual conception, and the action of political authorities, despite the illusion of being able to transcend limits, is peculiarly subject to them. This is the source of that universal phenomenon of shame and embarrassment before political power, a phenomenon at least as

15. There could be no clearer illustration of this than the circumstances leading up to the Dayton Agreement of 1995, which ended the Bosnian civil war. Until serious external military force was thrown into the scales, every deal that was signed was broken before the ink was dry.
perennial and deeply rooted as shame before bodily sex, though these days much less well understood. The comparison between the two is illuminating, not least because the same philosophical temptations arise in both cases: to misinterpret the shame as guilt (the idealist temptation), and to face it down as a mere misunderstanding (the realist temptation). To appreciate sexual shame we must recognize the exposure and belittlement before God which human action encounters in its highest pretensions to transcendence. And in the political instance, too, the correct response to shame lies in the virtue of modesty.

Justice and Equality

Justice-as-right is a presupposition of justice-as-judgment. It corresponds to “general justice” as Plato and Aristotle conceived it, embracing all the various virtuous practices that might appear in a well-ordered person or society. Theologically conceived, it is the successful determination of our ways in the light of God’s law. Justice-as-right envisages the possibility of injustice, as success envisages the possibility of failure; but that does not mean that it presupposes actual injustice. Justice is founded on the posse peccare aut non peccare, “the capacity either to sin or not,” which is a moral feature of the original createdness of humankind. In discovering that we are determined by God’s law, we discover that, in another sense, we are apart from it. We can determine ourselves as we are determined, or we can determine ourselves in defiance of our determination. We can be either just or unjust — not that these are equal alternatives in an ontological sense, since injustice is ultimately unreality; but they are alternatives practically, as deliberative possibilities. Justice-as-right is the correspondence of self-determination to the determination of God’s law; it is obedience. For this reason Grotius, in the first of the three senses that he ascribed to the word “right,” ius, propounded a negative formulation: ius means “what is just — ‘just’ being understood in a negative rather than a positive sense, to mean ‘what is not unjust’, and ‘unjust’, in turn, meaning what is inconsistent with the nature of a society of rational beings.”

1. De iure belli ac pacti 1.1.3. IG, p. 797.
“Be subject to the governing authorities” (Rom. 13:1). An apologist for St. Paul may wish to cushion the impact of the verb by pointing out that what it demands in the first instance is simply a developed political consciousness. Paul’s outline of political responsibility, though schematic and limited by the possibilities of the early Roman empire, may be filled with appropriate content as we learn to operate intelligently within any political structure whatever. “Submission” (hupotassesthai) corresponds philologically to God’s “arrangement” (tetagmenai) of authority, words formed from the root meaning “order.” This line of defense is neither inappropriate nor unfruitful; yet, when everything possible has been said along these lines, “be subject” is hardly the favored language of republican citizens who see themselves as participating in the reciprocal relations of self-government. Between St. Paul’s model of political structure and the dominant model of our era there is a decisive difference, which turns upon the non-reciprocal relation of subjects to rulers.

Non-reciprocity is the stumbling block from which the dominant problematics of modern politics have arisen: on the one side authority, on the other side obligation. The history of the emergence of political from pre-political concepts, the slow evolution from clan to state, indicates how the experience of being commanded and responding required a lengthy and difficult clarification before civilized man could speak clearly of what it was that imposed the obligation. And clarity is not guaranteed even to civilized man. When civilization thinks of polit-
itical authority as one of its own artifacts, it conceives it in terms of institutions rather than events, and then, equally naturally, begins to resent being asked to defer to institutions of its own making. That is why “authority” has little place in late-modernity; yet late-modernity continues to encounter it and respond to it, even if it does not know how to explain itself as it does so.

The contract myth of Bodin and Hobbes was an attempt to justify the non-reciprocal relation by deriving it from reciprocity. The attempt ended with Rousseau’s republican reaffirmation of reciprocity. Political subjection was owed not to the rulers themselves but to the collective whole; consequently, everybody owed precisely the same to everybody else. This turning of the contract through three hundred and sixty degrees derived from a failed attempt to resolve the paradox of political subjection. Political subjection is not servitude; the political subject is freer as a subject. Political authority may abridge freedom in certain of its exercises; but it does so only to ensure it and secure it. That paradox refuses to be resolved into a stratagem of freedom; it can be grasped only at its center, the experience of being subject to a governing authority.

This experience is generated by a political moment of non-reciprocity that accompanies the performance of the political act, the act of judgment. Initially we recognize authority simply as an occurrence: it appears to us in the acts of a given agent, and summons us to defend the common good. Presupposing no institutions, political authority arises as judgment is done. In Scripture we find it said that God “raises up” those through whom he exercises judgment. The clearest example of this truth is in revolution. By definition an extra-constitutional act, it must also, by definition, have authority, for otherwise it is not a revolution but merely a seizure of power. But what kind of authority does a revolution command? To say it is authorized by the will of the people is like saying that fire is started by combustion. The will of the people is precisely what needs explanation. Why did this person’s speech spur the people to act as one? All we can say is, God raised him up.

There can be no sensible deliberation as to whether we shall or shall not have such a thing as political authority. It is something we simply stumble upon. Yet we may devise institutions to channel it, and these may be more or less successful. A train of constitutional thought running from Ockham to Suárez conceived the matter this way: to design political forms and to prefer persons to occupy positions within them is a human undertaking; it nonetheless presupposes the providential gift of authority. That the ruler we elect and the forms we devise should be able to assert and retain authority, that is something we cannot undertake. We can only entrust them and ourselves to God’s providential authorization.1

So it is that theologians have asserted at one and the same time that a ruler was the people’s representative and the “minister of God” (Rom. 13:4). This latter phrase does not remove political authority from the sphere of the human; it does not imply a special intervention of the divine to appoint a particular ruler, but a general provision of non-reciprocal relations under which we may flourish. That which God has arranged is, in another New Testament phrase, a “human institution” (1 Pet. 2:13), i.e., a relation among human beings for the benefit of human affairs.2

Our situation in the face of political authority, far from being out of the ordinary like an encounter with an angel or a divine revelation, is simply a special case of a situation deeply woven into our experience as human agents: finding ourselves under obligation to do something. Being obliged is different from being compelled, for it is only in a minimal sense that one “does” what one is compelled to do. The prisoner walks into the cell on his own two legs because the prospect of being manhandled is too painful, but his choice in the matter is limited to the means; for all the real difference he can make, he might as well be trussed up and carried in. To do something one is obliged to, on the

1. An older tradition learned from the Litany of the Book of Common Prayer to pray for “the Lords of the Council and all the Nobility . . . grace, wisdom and understanding,” and for the Magistrates “grace to execute justice” — “grace” here being meant precisely in the sense of divine authorization. Our recent liturgists, unable to share the perilous sense of contingency in government, have thought it enough to ask that politicians should be clever people: “Endue the high court of Parliament and all the ministers of the crown with wisdom and understanding” (Common Worship, p. 285).

2. We may well share Wolfgang Schrage’s discomfort with this traditional translation while not feeling that he has shown us how to improve on it (The Ethics of the New Testament, trans. D. E. Green [Edinburgh: T & T Clark, 1988], pp. 277–78). His proposal, “every human creature,” ignores the theme of social structures that controls the context. But whatever we take the precise sense of ἀνθρωπίνη to be, the key to the sense of what follows is ἄνθρωπος: whatever it may be by which the polity and the household are governed, it is common among humankind. The word has a consistently leveling tone; it conceives the “human” as the ordinary usage of human beings, sometimes in contrast to the greater scope of divine and angelic powers, and sometimes suggests the need for indulgence.
other hand, is to do it freely, not under compulsion. But it is also different from acting spontaneously; the spontaneous act is entirely our own, an act which nobody has laid upon us. In being obliged by an authority we have an action laid upon us, even though it is still free action. A large number of human actions are "laid upon us" in this sense, for there is a multitude of non-political authorities, constituted by the ordinary relations of society, which direct us to perform certain actions: doctors, teachers, parents, employers, all whom the catechism called our "pastors and masters." In these relations, where two parties are not equally capable of envisaging the goods of action, one is dependent upon the direction of the other.

If we overlook the role of authority in these non-political relations we can never understand their effect on us. We are used to hearing them characterized, inaccurately, in terms of "power." In the eighteenth century Joseph Butler could claim the distinction between power and authority as one that "every body is acquainted with," a claim that could hardly be made today. In its widest sense "power" is simply the capacity to accomplish something, by whatever means, and in this innocuous sense authority is a species of power. But in a narrower use, "power" is the power to compel, which is not what authority is, though political authority does depend on power as a precondition. The confusion of these senses gives the word "power" its fashionably sinister sound, as, for example, in the alarms promoted by Foucault about the power of the medical profession. Actually, physicians exercise power over patients only when the latter are unconscious or exceptionally weak, and there are strong professional constraints upon how they use their power in those circumstances. What a physician does exercise is a great deal of authority: the patient will submit without protest to physical examinations, medical treatments, surgical operations, and so on, perfectly freely, but at no other instance than the physician's prescription. This authority may be, and sometimes is, wrongly coveted or wrongly used; but its abuse is not the same thing either as the abuse of power, nor the same thing as the abuse of political authority.

To oblige us freely to do something, authority must present us with a reason for doing it. Action is free only as it is intelligible — intelligible, that is to say, to the one who acts. A free action must seem, in some sense, "a good thing to do." Some actions occur to us effortlessly: a beautiful sound invites us to stop and listen; a truth dawning on our intelligence inspires us to apply our minds. We have reasons for doing such things, but do not usually stop to ask what they are, since reason and response flow delightfully together into an unruffled stream of experience and action. But other goods of action are intruded into the stream by the intervention of another agent, and these require an effort in response. We perceive them as obligations laid upon us by authority. We attend to sounds that do not appear beautiful, or struggle with thoughts that do not appear significant, because the teacher who trains our ear or mind instructs us to do so. Authority is not, as has been said, "a reason for acting in the absence of reasons," for the goods of action are reasons in either case, whether effortlessly present or painfully mediated. Yet reasons are "absent" to the extent that they are not conspicuous. An authority is someone I depend upon to show me the reasons for acting. The authority of the expert, the person with a special knowledge, teaches me what I cannot work out for myself, e.g., how to operate a computer. Even if I hope to learn enough to be independent of my teacher one day, I still need help for the time being. Less obviously, but no less cogently, the same principle applies to relations grounded in emotion. When the poet writes of "that not impossible shee, that shall command my heart and mee," he points to the meaning of erotic love as a form of dependence on authority.

At this point the exposition of authority I gave in Resurrection and Moral Order is in need of improvement. Tempted by the project of compiling a list of basic goods of action (such as is pursued in the Reformed thinker Herman Dooyeweerd and the Catholic thinkers Germain Grisez and John Finnis, not to mention ancient models in the Old Academy and the Stoics), I identified four "immediate natural" authorities of beauty, age, community, and strength; one "reflexive" natural authority, that of truth; and one "supernatural authority," the


4. Richard Crashaw, "Wishes. To his (supposed) Mistress." The poet desires that a "divine Idea" (punning the word "idea" with the title of the goddess Cybele, associated with Mount Ida, where overmasters her devotees with ecstatic rites) will "take a shrine of chrysalid flesh" in his mistress, who is to direct all his practical engagements.


6. Cf. Cicero de fin. 2.11.33f., 4.7.16f.
divine. Clearly, my list did not account for actions arising out of the instinct for self-preservation, nor, perhaps for the good of play, or mimesis. I was able, however, to exploit the provisionality of my undertaking in invoking a compound authority, "tradition," which combined the authority of age and community, and by allowing "strength" to diversify into every kind of areté, or virtue, from might to wisdom. I do not feel a need to modify my insistence that authority is intimately connected with the basic goods of action, and is therefore not a reason for acting in the absence of reasons. An end of action must be intelligible, not only from the actor's point of view but from the observer's point of view. Reasons for acting are not mere "goals" which we set ourselves, they are also "grounds" which integrate our action into the intelligible structure of events. But I was injudicious in using the term "authorities" more or less interchangeably with "goods" in the objective sense, i.e., "grounds of action." This usage failed to identify the key difference about authority, which is that the ground of action is not immediate, but mediated through another agent.

Where authority is, freedom is; and where authority is lost, freedom is lost. This holds good for all kinds of authority. Without adults who demand mature behavior, the child is not free to grow up; without teachers to set standards of excellence, the scholar is not free to excel; without prophets to uphold ideals of virtue, society is not free to realize its common good. To be under authority is to be freer than to be independent. The centurion of Capernaum addressed Jesus with the memorable words, "I, too, am a man under authority. I say to this man 'Go' and he goes, and to another 'Come' and he comes" (Matt. 8:9). He exercises authority because he is under authority. Authority communicates itself through him, liberating his capacity for effective action and command. We catch the idea in our expression, "to be authorized to do something," a condition in which one is at the same time dependent upon authority and freed by that authority to act. When a group of followers identify themselves with a leader, they experience their leader's command as freeing them. That is true of any social movement: a political party, a school of intellectual criticism, an artistic fashion, or a gang of thugs — Augustine famously understood that certain social principles apply equally to kingdoms and to robber bands!

Together with freedom there is awe, a wonder that is both delightful and terror. Freedom begins in delighted astonishment: at the beauty of the object which the artist will paint, at the complexity of the thought which the philosopher will tease out, at the God who reveals himself in the burning bush. This is a normal element in the genesis of any worthwhile project: a rational action which looks from one point of view like the pursuit of a good may from another point of view look more like being stopped in one's tracks. The parable of the pearl of great price is a parable about how any great thing comes to be done. Wonder contains dread as well as delight, and it is this that is especially prominent in response to authority. Those who present us with something we must do impose responsibility on us as well as freedom, and they become the immediate object of our fear of responsibility. The police officer waving down the car, the teacher setting the exercise, the physician recommending the operation, are all in varied ways our judges, should our response prove inadequate or unseemly. Only desire can make this dread tolerable, only love can make it welcome.

Confronted with political authority in particular, we respond with the same combination of freedom and awe: "fear to whom fear is due, honor to whom honor is due" (Rom. 13:7). Yet in the political case there is an all-important difference: political authority is non-transparent. It does not wait upon a mature perception of its righteousness, and an understanding of its ways is granted only as we obey. There is a spontaneity in the mixture of delight and dread with which we bow to our teacher's wisdom or our mistress's beauty; our responses will need discipline if they are to come to anything, yet the discipline is supported by an intuitive appreciation. With political authority the disciplines must support themselves, for there is no intuitive perspicuity to call upon. Faced by some government official who behaves discourteously and issues foolish instructions, only a reflective belief engendered by civic virtue will instruct us to see his office as a service of the common good. Undisciplined responses oscillate between two poles: ogling fascination with political leadership on the one hand, angry resentment on the other — fetishism without fear, fear without admiration.

Rousseau was only the most celebrated of many who have concluded that political authority is peculiarly artificial, a "subjection" of nature to device. But it was not devised, this invasive obligation that in-

light of that summons the ruler can appear “like the angel of God to
discern good and evil” (2 Sam. 14:17), the herald of the hidden future to
which God summons human society.

* * *

To recognize political authority is, in the first place, to recognize a particu-
lar bearer of authority. We hear the summons to defend the com-
mon good mediated through this or that political actor. This does not
imply that we approve of the way that bearer acquired authority, nor
that we judge the bearer better suited to the responsibility than alter-
native candidates. It simply means that this and not some other power
is, for us at this moment, “the government”—the one that “actually is”9—and may be expected to make dispositions for the defense of the
common good which require our obedience.

We are obliged to sustain that bearer in place, to achieve continuity
of regime. Complex constitutional arrangements, of course, make con-
tinuity of regime compatible with change of administration, and in
democratic constitutions there is due provision for a “loyal opposi-
tion.” But interruption of authority is an evil to be avoided. If we find
ourselves in a state of sub-political social chaos where no bearer of po-
itical authority is to be found, our obligation is to facilitate the emer-
gence of one. Here arises the famous moment of political “foundation”
on which constitutional and contractarian thought became exclusively
focussed. But this moment arises only in the pathological, not in the
normal case, and even when it does arise it is not so much a “founda-
tion” as a kind of midwifery, attending on events as providence directs
them. In either case, normal or pathological, the goal which we are
obliged to promote is political institution—that is, a series of common
practices in which the exercise of political authority has a regular posi-
tion. Institutionalized authority does not supplant the “moment” of
authority; it provides the framework within which such moments may
easily occur and easily be recognized.

“For this reason,” as St. Paul says, “you pay taxes” (Rom. 13:6), which
is the fundamental way that we facilitate political institutions. The duty
to pay taxes is unconditional in the sense that the citizen-taxpayer does

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not acquire a right to make terms. Taxation is for the support of government. It is not for specific policy aims of government at any given time, to be withheld if one disapproves of them, which would make taxation a kind of standing plebiscite on policy, a way of directing the state’s counsels. Such direction can be given only by a critical political discourse, and the duty of sustaining such a discourse cannot be discharged by paying or withholding taxes. If a government pursues an unpopular war, those who disapprove are bound to propose articulate and reasoned objections, which they may do precisely because it is their government supported by their taxes. If they merely withhold the proportion of taxes supposedly designated for the war, the government could be content to buy their silence and pursue its policy as an optional extra which supportive citizens would buy into. But that would be a collusion to undermine political authority. A voluntary subscription can support a voluntary enterprise, but not a policy of government.

The second form the obligation takes is to discern the demands of authority as they are made from moment to moment. This is distinct from the first form. From the fact that I acknowledge some Caesar as the bearer of authority it by no means follows that I see myself as presently confronted with a binding demand to act in a certain way. Even if Caesar has this moment made a demand, there may be no obligation. For Caesar may make demands that do not pretend to political authority: he may urge us, for example, to buy something from him like a government-bond or a state-owned railway, or he may press upon us the need to vote for his party in elections. Our usual discretion as purchasers or voters is not diminished by the fact that the vendor or canvasser is Caesar. Alternatively, Caesar may lay claim to an authority that he does not have. The competence of any political authority is limited both by the rightful competence of other political authorities and by the proper immunity of social bonds to unwarranted political interference. Conscientious subjects will understand the formal limits of political authority no less clearly than they understand the moral weight of its substantive demands.

There is an element of discretion that can never be removed from the obedient subject: it is always the subject’s business to be clear in his or her own mind that this or that command actually requires obedience. The duty of obedience carries with it the right and duty to decide what constitutes obedience at any given point. The subject’s discretion has sometimes been misrepresented by the suggestion that political commands present us with an alternative in which we are free to make a choice: either obey or be punished, whichever we prefer. But this is sheer confusion, for if Caesar has the right to punish he has the right to be obeyed; and if we have the right not to obey, we have the right not to be punished for not obeying. Obedient decision is not a choice between alternatives, it is an aspect of recognition. Responsibility for ascertaining that the demand is duly authorized belongs inalienably to those who must obey it. One cannot be obedient without making sure that it is the right demand one is obeying. “That thou mayest rightly obey power, her bounds know.” Agents of government will, of course, have their own views on where the limits of their competence lie; but agents of government are not infallible, whether in politics or in any other sphere, and they cannot relieve the subject of the burden of intelligent obedience. This was the principle upheld so starkly in the Nuremberg war-crimes trials.

Prior to these two forms of political obligation the subject has a more basic obligation — not, as such, the obligation of a subject specifically, but the obligation of a member of society, something owed to the neighbor before anything is owed to the ruler. This is the duty to preserve the public truth of social engagements by exercising candor in the public realm, a candor which necessarily includes appraisal of the conduct of political authority. Freedom of speech strengthens the public social bonds and prevents their being swallowed up by political demands. If there is one special virtue in constitutional arrangements that incorporate formal opposition into the regime, it is to encourage freedom of speech. Yet free speech can only be encouraged, not conferred, for free speech is participation in the word of God, not a privilege which one form of constitution may confer, another refuse. Nor is it a “right” that one citizen may claim, another forgo. That would imply that only the private citizen who exercised it had an interest in it, whereas candor is of the greatest importance for the public realm itself.

10. The sixteenth-century theory of the “purely penal law” interpreted certain inconvenient measures of taxation as not binding in conscience, since government purposes seemed to be served equally well by collecting taxes or by collecting fines.


12. The Universal Declaration of Human Rights (19) declares “the right to freedom of opinion and expression,” and the European Convention for the Protection of Human Rights (10) “the right to freedom of expression.” We may be grateful for the insistence
simple public duty, often unperformed, or performed badly, out of simple reluctance to take responsibility for the truth on which the community depends. Behind many a story of tyranny lies collusion between oppressor and oppressed, a community that prefers to accept a shrunk public realm rather than pay the price of discerning and articulating complex truths in public.

The duty of public candor is not a duty of public office alone. Subjects who hold no office may discharge it by the way they tackle their business in the public realm, look to safeguard the common good in their commercial engagements, articulate and discuss the common good with those they deal with, not isolating themselves by technical narrowness or professional mystique, but advocating, justifying, listening to others’ advocacy and justification, seeking a common understanding and approach to common tasks, avoiding the sins of rhetorical exaggeration and administrative impatience. Citizens who are comparatively “unpolitical,” in the sense of having little to say about the conduct of government, may influence their community effectively by exercising the pre-political social virtue on which any good political community is founded. Living in a society that deliberates about its common good, they may contribute vigorously to its deliberation. And if their political role is no more than that of “recognizing” political authority without playing any active part in the machinery that sustains it, we can at least be sure that they will do that much with discernment and freedom. A society is free vis-à-vis its government when it is free vis-à-vis itself.

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But what do we recognize, when we recognize that political authority has arisen? What does the bearer of authority bear?

The common good which government defends includes, in the first place, right. This is not self-evident, because it is possible to construe the common good too narrowly as something short of right, a prosperity like material wealth or peace without justice. It is also possible to construe “right” too narrowly as something less than the common good, restricting it to private goods and immunities, as is constantly done in late-modern talk about “rights.” But understanding common good and right as the good and the right of a community, that is, the sphere of social communications in which each member communicates within the whole, we must say that for political authority to defend the common good, it must command the authority of right. “Right” is at one and the same time the right of the community to its participants and the right of the participants to their community. Here, we may say, is the only fundamental and inalienable human right that can be thought of, at once subjective and objective: the right of society as such, the right of each member of society to be social.

In a famous passage 13 Hugo Grotius defines ius “right” in three ways: (a) It means “what is just — ‘just’ being understood in a negative rather than a positive sense, to mean ‘what is not unjust’, and ‘unjus’t, in turn, meaning what is inconsistent with the nature of a society of rational beings.” (b) A secondary and derivative sense is “attributed to a subject,” a “subjective right” in our modern sense: “a right is a moral quality attaching to a subject enabling the subject to have something or do something justly.” (c) The third sense “means the same as ‘law’, understood in a broad sense as a rule of action obliging us to do what is correct.” This lapidary terminological summary has an acknowledged place in histories of the early-modern development of subjective right; but we will appreciate it better if we observe how Grotius conceives subjective right as a subject’s participation in a prior and objective social right. 14 And we


14. Contrast Grotius’s formulation here with that of Jean Gerson (De potestate ecclesiastica 13; IG, p. 228), propounded two centuries earlier but infinitely more “modern” in its leaning to rights-positivism: right is defined as “a proximate faculty or power which belongs to some subject as prescribed by primary justice.” “ Primary justice,” we are told, is the disposition of God, so that the right-bearer derives his power directly from God’s disposition through God’s law, with no social right to mediate between God and the subject.
need add only one comment in order to make it serviceable also as a materia l summary: law is just one form of political enactment, i.e., the act of upholding or defending right in senses (a) and (b). "Judgment" is the broader term that encompasses any act of right-giving.

In the second place, the common good implies the flourishing of a particular society with a particular identity. An abstract defense of right which destroyed one society and founded a different one would not be an exercise of political authority, since one could not identify whose common good was served. (That is the force of the story of the Deluge in Genesis.) The idea of an identity introduces the idea of a community's "tradition." Tradition is "what is established"; and "what is established" is not the past, but the present as determined by the past. The authority of tradition resides in the way the community functions now to sustain its identity. But a community's identity depends on its historical provenance, so the authority of tradition is that of its continuity with immediate history. In Heidegger's terms, "tradition" is "historicality." It is constituted by actual and diachronically communicated memories, relations and practices that determine the community as this community rather than some other. If these are corrupted or destroyed, the community is corrupted or destroyed. If innovations fail to connect with them, it is not this community that innovates, but some new community that has sprung into existence as a predator upon it.

These two aspects of the common good, "right" and "tradition," represent the essential ground of political authority. Authority belongs to those who, embodying the identity of the community, enact right on its behalf. With these two components, the idea of political authority is given. Yet for the idea to become actual a third component must be present, power. Power adds nothing to the idea as such. This is important to be clear about, since the thought that coercive power is the essential determinant of political authority, though periodically discredited, periodically returns. "The modern state can only be defined sociologically in terms of a specific means, which is peculiar to the state . . . namely physical violence," wrote Max Weber in 1920. It is, of course, true, and not only of the "modern" state, that "a state . . . lays claim to the monopoly of legitimate physical violence within a certain

territory." Any apparently legitimate use of private violence (e.g., in private self-defense) is lawful only as the state has authorized it, not on the basis of some pre-political individual right. But it is not true that violence (or, better, "force") is the foundation of the state. The state's claim to monopolize legitimate force is secondary; it derives from the harnessing of power to the service of right and tradition. "Legitimate force" is power deployed in the service of right within a given community. The definition of the state, its founding rationale, is not the monopoly of violence but the monopoly of the community's right, its claim to be the last instance in a society's defense against wrong.

What we should rather say, then, is that power is a prerequisite for the realization of the idea of the state. That is why we cannot recognize an agency that has no power as having political authority, though it may have moral authority. Political authority enacts judgment, and action expends power. If a representative agency has no power to act decisively, it cannot command the authority to require action of us. No political authority is possessed by a "government in exile," since a government that does not govern is nothing. Ousted regimes may at best have the status of a worthy opposition, which does not entitle them to command disobedience to government since it is the duty of subjects to ensure that they are actually governed, wherever their sympathies may lie. In the moment of conflict, of course, when posses-


16. Political Writings, ed. and trans. Peter Laslett and Ronald Scipis (Cambridge: Cambridge University Press, 1994), p. 310. The term Gewaltans<span>t</span>um, "violence," is ill chosen, however, and too broad. A private entrepreneur may deploy a stick of dynamite to clear a building site; it is force against persons that the state monopolizes. "Violence" and "legitimate force" are exclusive alternatives.

17. And for that reason Weber's hypothetical formulation, "If there existed only social formations in which violence was unknown as a means, then the conception of the 'state' would have disappeared," is not true either. We can conceive in thought the idea of a state maintaining its political authority without calling on force against the person — confining itself to resort against goods, liberty, and social participation. The conditions for such a state would be an utterly pacific society, where offenders complied unresistingly with orders of house-arrest or expulsion. But however implausible in themselves, such conditions would not destroy the form of the state, which would continue to rest upon its monopoly of community right and of such power as was necessary to exercise it.

18. In the seventeenth and eighteenth centuries monarchial governments uncertain of their tenure attempted to evade the moral logic of this principle by exacting
sion is contested, the matter may be different: a revolution acquires power as it acts, recruiting the power it needs as we respond to its summons. But in this case, too, authority lays its obligation on us by what it can effectively achieve for justice. If it can achieve nothing, it lays no obligation on us, and therefore is not an authority.

We sum this argument up in a theorem we have broached before: Political authority arises where power, the execution of right, and the perpetuation of tradition are assured together in one coordinated agency. Neither power, nor right nor tradition alone, nor any two of them without the third, can constitute political authority. It cannot arise except where one and the same agency can dispose of all three.

In Resurrection and Moral Order I propounded this theorem tentatively in the form that political authority was a compound of might, injured right, and tradition. In Desire of the Nations I reached the present formulation (p. 46), and interpreted it in terms of the kingship of YHWH as salvation, judgment, and possession, seeing this reflected in Jesus' works of power, announcement of judgment, and interpretation of the law. The source of this triad, as I now realize, was Paul Ramsey's analysis of authority as lex, iustitia, and ordo. By ordo Ramsey meant "order" in the late-modern sense, i.e., control of the situation, something more like power than I would understand by the term. 19 In Desire of the Nations I added a fourth strand to the analysis of YHWH's kingship, worship, to which the equivalent in the Gospel account of Jesus' ministry proved to be faith. In the present discussion this fourth strand is represented by the term "recognition." The fourth strand is not a constitutive element of political authority alongside the other three. For it is not recognition, or consent, that constitutes political authority; yet the presence of political authority is demonstrated in recognition. "In acknowledging political authority, society proves its political identity" (cf. DN, p. 47). The orchestra does not make someone its conductor by playing in time to his beat; by playing in time to his beat they recognize him as their conductor.

Oaths to the person of the monarch whatever should become of him. So the nobility of Ireland, bound by oath to James II, was creamed off into unnecessary exile with the fallen monarch after the Treaty of Limerick in 1691, to the incalculable loss of the country. But an oath to a monarch is an oath to the monarch as monarch. It can do no more than render explicit what is implied in the subject-monarch relation.


My earlier discussion in Resurrection and Moral Order required correction in four respects. (a) "Might" is the capacity to deploy force, which is an element in political power, since a society without the resources to mount a determined defense against an assault on its order can only act tentatively at best. St. Paul says that the ruler "does not bear the sword in vain," i.e., that the symbolic sword which is the mark of his office is not an empty symbol, but points to the fulcrum of political authority in the capacity for coercion. But "power" is a wider notion than "might." It implies wealth, a good deal of it these days, to support and train government officers, to house the administration, to equip it for its routine work, and, of supreme importance, to enable efficient communication among its officers. And so Paul continues, "For this reason you pay taxes" (Rom. 13:6). (b) The epithet in "injured right" is misleading. The sense of "right" in question is the enactment of right, and authority is commanded by all active resistance to wrong. (c) For reasons explained above, it was a mistake to describe the authority of tradition as the authority of "age." (d) In Resurrection and Moral Order I assumed it as typical of all political authority that the authorities of might and tradition were "put at the disposal of" the authority of injured right (p. 128). By the time I wrote Desire of the Nations I had reached the conclusion that this subordination of two to the third is "not imposed by the nature of political authority as such" but "by the limits conceded to secular authority by Christ's kingdom" (p. 233). This significant change of mind was not acknowledged in Desire of the Nations, and, indeed, it went unnoticed by the author until his attention was drawn to it by Jonathan Chaplin. 20

Every conflict over political authority is played out before two horizons of de-politicization, on which political authority simply disappears. One of these lies where the claim of injured right is systematically ignored by those holding power, the other where those holding power have no right of tradition. On the first horizon we locate those powers that are not political authorities because, while they maintain traditions, they ignore the tasks of right.

The cultural imperative of tradition can assume far too great an urgency. The book of Deuteronomy, while calling upon tradition to maintain Israel's identity, and making much of educational transmission in the home (6:20-25), yet insists that this domestic tradition needs always