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Law and Virtue

The more corrupt the state, the more numerous the laws.
—Tacitus[1]

Modern life is fundamentally lawless. We have an abundance or even a surfeit of man-made laws, but legislated morality is an inadequate and potentially dangerous expedient made necessary by the absence of a basic moral order, the fundamental ground of any society. Without that ground, piling law upon law will hasten, rather than forestall, the onset of social and political breakdown.

Legislation is no substitute for morality. For Aristotle, "The best laws, though sanctioned by every citizen of the state, will be of no avail unless the young are trained by habit and education in the spirit of the constitution."[2] For Hippolyte Taine, "the aim of every society must be a state of affairs in which every man is his own constable, until at last none other is required."[3] Mores, not laws, make us law-abiding and public-spirited.

To put it the other way around, in the absence of an inner disposition to behave morally, people will inevitably find ways

to avoid, evade, subvert, delay, or otherwise frustrate the operation of laws. This precipitates a legal arms race. Self-seeking individuals, unrestrained by virtue, seize opportunities to bend the law to their own selfish ends, and this behavior requires yet more legislation to close the loopholes, and so on ad infinitum. The upshot is a labyrinth of laws that grows ever more convoluted and corrupt.

To spell out the implied syllogism of Tacitus,

- In a healthy state, laws are few, simple, and general because the people are moral, law-abiding, and public-spirited, which makes them easy to govern.
- In a sick state, the laws are many, complex, and minute because the people are amoral, conniving, and self-seeking, which makes them hard to govern.
- Ergo, the more numerous the laws, the more corrupt the state, and vice versa.

By this standard, the United States is hopelessly corrupt. In fact, it may be the most law-ridden society that has ever existed. The volume and complexity of statutes and the rapidity with which they are amended make a mockery of the legal fiction that "ignorance of the law is no excuse."[4] Even full-time specialists find the labyrinth daunting, and the bureaucrats who inflict the laws on the public repeatedly err in their interpretation of them.

The laws are not only increasingly numerous, complex, and all encompassing, but they are also more draconian and even tyrannical. Indeed, said Edmund Burke, "Bad laws are the worst sort of tyranny."[5] For example, mandatory sentencing means that judges cannot temper justice with mercy or common sense, so prisons are packed with petty criminals, candidates

for rehabilitation, as well as violent felons. The talk of an American gulag is not idle: legislating morality has real social costs.[6] Nor, thanks to civil forfeiture and other legal bludgeons handed to prosecutors in recent years, can defendants always expect to mount an adequate defense. One of those bludgeons, the Racketeer Influenced and Corrupt Organizations Act (RICO), effectively abolishes the presumption of innocence on which the criminal justice system supposedly rests.

We also seem to be slouching toward a police state in which *raison d'état* trumps civil rights. Exploiting popular fear of criminals and terrorists, successive presidential administrations have concentrated more and more coercive power in the hands of the state—a power that operates behind a shield of secrecy to strip away long-established rights to privacy and liberty. In a development that evokes memories of life behind the Iron Curtain, bankers, therapists, pharmacists, teachers, and other civilians are now legally compelled to spy on their fellow citizens.[7]

As indicated in the prologue, the law-ridden and corrupt modern state, of which the United States is a preeminent exemplar, results from a demoralization that is an inescapable consequence of our basic political principles. And the process is all but irreversible. As with Gresham's law in economics, bad values drive out good, so the moral currency is continuously debased.

Once demoralization is well advanced, reform efforts exacerbate the problem. Without a general consensus, the attempt by some to impose morality by law on others embroils society in perpetual warfare over issues such as crime, drugs, abortion, and schooling. Legal substitutes for morality are therefore a symptom of the disease rather than a cure for it. They

do not arrest moral decay but advance the corruption of the state. When laws are no longer felt to be general principles of justice but instead are seen to be the product of organized selfishness, factional strife, or moralistic meddling, then all respect for law is lost—and even the legitimacy of the state is called into question.

But how can our basic political principles foment demoralization and the dangerous consequences described above? Is not liberal polity the final answer to the riddle of politics—or at least a better answer than all the others? Despite the banner of progress under which they march, liberal polities are self-destructive. Both in theory and practice, they depend on reason and self-restraint—that is, on citizens who know the difference between liberty and license and who govern themselves accordingly. But the intrinsic amorality of liberalism first erodes, then corrodes, and finally dissolves these faculties.

To make a long story short, all modern polity is rooted in Hobbes's rejection of the classical conception of the polity—namely, that the state has a duty to make men and women virtuous in accordance with some communal ideal. Instead, said Hobbes, let individuals follow their own ideals and pursue their own ends with the state acting simply as a referee to prevent injury or harm to others. Hence, the function of the state is purely instrumental: it keeps the peace and relegates morality to the private sphere.

Unfortunately, by making politics instrumental rather than normative, Hobbes and his followers set up a vicious circle leading to demoralization. If individuals are left to their own moral devices with nothing but rationality to guide them, said Will Durant, there can be no other outcome:

> The brilliant enfranchisement of the mind sapped the supernatural sanctions of morality, and no others were found to effectually replace them. The result was such a repudiation of inhibitions, such a release of impulse and desire, so gay a luxuriance of immorality as history had not known since the Sophists shattered the myths, freed the mind and loosened the morals of ancient Greece.[8]

Mores are a matter not of rational calculation but of heartfelt conviction. Reason may (as Hobbes and his liberal followers argued) instruct us in virtue, but this is likely to be effective only for philosophers. The rest of us need stronger medicine. Without such medicine, the sentiment that keeps individuals law-abiding even in the absence of positive law is fated to grow ever weaker as reason succumbs to passion. As Durant suggests, far from inculcating moral restraint, a reason that is excessively rational becomes part of the problem. Rationality may begin benignly by liberating us from superstition, but after disposing of myth and religion along the way, it ends by ruthlessly deconstructing every form of meaning or authority.

Amorality and nihilism were not problems at the origin of the modern era because society was for many years sustained by the virtues and beliefs inherited from the premodern era. As this lode of fossil virtue and belief was eroded away, however, individuals became increasing self-seeking, amoral, and even immoral.

The moral calculus of liberal politics was succinctly stated by the Marquis de Sade, who adumbrated with his own depraved conduct the fateful consequences of allowing mores to be a matter of private choice. Writing in 1797, de Sade noted that to adopt self-interest as "the single rule for defining just and unjust" was to make morality a fiction: "There is no God in this world, neither is there virtue, neither is there

justice; there is nothing good, useful, or necessary but our passions, nothing merits to be respected but their effects."[9]

To avoid anarchy, the decline in inner lawfulness that follows demoralization necessarily demands an increase in outer compulsion. The modern state has been obliged to step in to replace a civil society whose vigor has been sapped by moral entropy. In short, just as Hobbes himself maintained, a Leviathan (which in our age means an increasingly heavy-handed legal and administrative tyranny) is the paradoxical and bitter fruit of a polity based on his liberal but amoral principles.

Writing in the aftermath of the French Revolution, Edmund Burke articulated a political axiom that could have predicted this outcome:

> Men are qualified for civil liberty in exact proportion to their disposition to put moral chains upon their own appetites. . . . Society cannot exist unless a controlling power upon will and appetite be placed somewhere, and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things, that men of intemperate minds cannot be free. Their passions forge their fetters.[10]

In other words, a limited government compatible with wide personal liberty requires a virtuous people, a point well understood by the framers of the American Constitution. As John Adams said, "Our constitution was made only for a moral and religious people. It is wholly inadequate for the government of any other."[11] James Madison extended this understanding to all of politics: "To suppose that any form of government will secure liberty or happiness without any virtue in the people, is a chimerical idea."[12] In the end, living legally rather than morally is not desirable on political grounds alone: a lack of virtue in the people entails a government of force, not consent.

If we now turn our attention to humankind's relation with the natural world, the case for placing moral chains on human will and appetite becomes even more compelling. When Hobbes "unleashed the passions," he liberated men and women from imposed moral or religious strictures, but he also gave birth to what we know as economic development. Although the state no longer had the duty or even the right to inculcate or enforce private virtue, it did nevertheless have a positive role beyond mere peacekeeping—to foster "commodious living." Freed of the obligation to promote otherworldly ends, the state would henceforth dedicate itself to the things of this world—to abetting human desire, especially the urge for material gratification.

Following in Hobbes's footsteps, John Locke and Adam Smith made this profound shift in orientation from sacred to secular explicit: the purpose of politics is to facilitate the acquisition of private property and national wealth, along with the power that they confer. But the unfortunate side effect of unleashing human will and appetite in this fashion has been the destruction of nature.

Nature may not be a moral agent in the usual sense of the word—although a moral code is indeed implicit within the natural order—but it does have physical laws and limits that cannot be transgressed with impunity. Tragically, in the absence of mores that promote self-restraint and respect for nature, the exploitation of the natural world is bound to turn into overexploitation, for human wants are infinite. The long-term effect of unleashed passions therefore has been to violate nature's laws and limits and provoke an ecological crisis.

Our escalating ecological problems have become both common knowledge and a growing focus of political concern

but to very little effect. After all, our form of politics requires perpetual economic growth, so the idea of limits, much less retrenchment, is anathema. Besotted with hubris, we cherish the delusion that we can overpower nature and engineer our way out of the crisis. We are not yet ready to admit that the destruction of nature is the consequence not of policy errors that can be remedied by smarter management, better technology, and stricter regulation but rather of a catastrophic moral failure that demands a radical shift in consciousness.

The antidote to political corruption and ecological degradation is therefore the same—a moral order that governs human will and appetite in the name of some higher end than continual material gratification. For this we need true laws, not merely prudent or expedient rules. But where shall we find such laws? They will not be found in revealed religions, old or new. Whatever the virtues and advantages of premodern religious politics, the concomitant evils and disadvantages were enormous, and Hobbes's philosophical revolt was both intellectually and historically justified. Perhaps they can be found in some new ideology? Again, surely not. If the history of the twentieth century has anything to teach, it is that secular ideologies are even worse than religious creeds at fomenting cruelty and violence. This leaves only one possible source for a new moral code—natural law, the law "written on the tablets of eternity."

The classic definition of natural law by Cicero is still unexcelled, albeit in need of minor amendment:

> True law is right reason in agreement with Nature; it is of a universal application, unchanging and everlasting; it summons to duty by its commands, and averts from wrongdoing by its prohibitions. . . . We cannot be freed from its obligations by Senate or People, and we

cannot look outside ourselves for an expounder or interpreter of it. And there will not be different laws at Rome and at Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all nations, and for all times.[13]

Natural law in this sense has lost almost all philosophical respectability in modern times. As mentioned in the prologue, the Enlightenment *philosophes* believed that there was a discernible moral order in the cosmos that science would soon reveal. So they believed that natural law was not to be found by reflection alone but that we could—and indeed should—"look outside ourselves" to learn from nature. And this was a necessary correction, for the danger of a purely introspective quest for natural law is that we may mistake culture for nature. For example, the vast majority of Europeans and growing numbers of Americans condemn legal execution, but Confucians by and large do not. Abolition of the death penalty may therefore be a laudable moral goal, but it is probably not a candidate for natural law. Reference to some external standard—such as science, including the softer human sciences—can therefore provide a check on ethnocentrism and assure us that what we discover will be "valid for all nations, and for all times."

Unfortunately, the evolution of science took a very different path than the *philosophes* intended—away from a more inclusive reason and toward an increasingly narrow and instrumental rationality. Applying the methods of the so-called hard sciences to human affairs, the rationalists demonstrated (to their satisfaction) that there was no epistemological stance from which to derive natural law or moral principle. Instead of a sentient universe charged with moral meaning, science found only a machine—dead matter to be exploited by economists and engineers to make us wealthier and more powerful,

not better. And what does a machine governed by mathematical formulas and physical laws have to teach us about how we should live? Nothing.

This brings us to the impasse at which we now find ourselves. As naked self-interest turns liberty into license and spreads demoralization, an increasingly despotic state tries vainly to forestall moral and ecological self-destruction with stopgap measures and ill-considered laws that cause mostly more harm than good.

A way out of this impasse has now emerged. As noted in the prologue, the epistemological and ontological revolution of the twentieth century has decisively overthrown the mechanical worldview and opened a path to the goal of the *philosophes*. By discovering and appreciating the moral order implicit within the natural world, we can derive ethical principles that will serve as a basis for polity and society in the twenty-first century and beyond. These principles are nothing new. The wise of every age and tradition have urged them on those who had ears to hear. The difference now is that what once was merely sensible has become imperative if a complex civilization is to survive.

But is it really possible to discover an ethical basis for politics that accords with natural law? The next three chapters argue that nature does indeed instruct us in how to live. Ecology, physics, and psychology—that is, biological nature, physical nature, and human nature—reveal fundamental and eternally valid moral principles with which to reconstitute our polity. On this virtuous foundation I shall try to construct a new Aristotelian rule of life whose essential core is a politics of consciousness dedicated to the idea that ennobling human beings matters more than accumulating dead matter.