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## A Symposium: Morality Reconsidered

# *Tradition, Principle, and the Rule of Law: A Response to Claes Ryn*

**Bruce P. Frohnen**

*Ohio Northern University Pettit College of Law*

*Despite some merits, Ryn's argument may ultimately undermine normative sources of character formation.*

Claes Ryn's fine essay asks perhaps the most difficult and important question of our decadent era, namely "how do we act morally in desperate times?"<sup>1</sup> As our republic reaches the nadir of governmental lawlessness, social chaos, and cultural disintegration, it is well worth considering how we can act as we ought. Being no ideologue, Ryn offers no pat answers, instead focusing on what he sees as a deep problem within the Western tradition. The problem? A tendency to define morality "as adherence to a preexisting rational or ideal standard."<sup>2</sup> There is much to this criticism and to Ryn's alternative of conscientious integration of imagination, reason, and historical experience. That said, I have a somewhat different understanding of tradition and especially of the role of rules in guiding proper conduct, such that a response may be worth making. In brief, I fear that Ryn's approach to morality in desperate times would undermine the rule of law and the promotion of virtuous examples necessary to maintain the habits of conduct and imagination needed to re-establish

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BRUCE P. FROHNEN is Professor of Law at the Ohio Northern University Pettit College of Law.

<sup>1</sup> Claes Ryn, "How Desperate Should We Be?" *Humanitas*, Vol. XXVIII, Nos. 1 & 2 (2015), 5-30.

<sup>2</sup> *Ibid.*, 5-6.

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order and virtue. I may well be overstating my disagreements with Ryn as I follow through on some implications in his argument and welcome correction of any such errors in his reply.

### *The Problem of Ideology*

The bulk of Ryn's fire is aimed appropriately at contemporary ideologues. Whether self-identified as on the left or on the neoconservative "right," those who see in any particular idea, principle, or value a model to be used in restructuring society undermine moral conduct. The monomania of the left is, of course, relatively easy to see, if difficult in corrupt times to combat. Any who would impose a vision of equality end by repressing those who disagree with them, presenting them as intolerant and dangerous in their obstructionism. The latter portrayal itself is as inevitable as the failure of the left's policies, which must fail because their principle cannot be "made real" given the varied nature of societies and human persons. Blueprints for a fundamentally changed society (and, hence, human nature) end up mere excuses for immoral conduct as reality and the people who inhabit it fail to live up to false ideals.

*Ryn's critique of left-wing and right-wing ideologies is justified.*

The neoconservative challenge to moral reasoning may be difficult to spot because it is wrapped in the trappings of patriotism. Neoconservatives constantly invoke the American founders and Abraham Lincoln as guides to proper moral conduct, especially in politics. Here, however, a second false reality is imposed as our constitutional order is reduced to a phrase ("all men are created equal") from the preamble to that lengthy, common law document through which the thirteen colonies declared their independence. That phrase is used as a single principle—"equality"—defined as an impossibly specific classical liberal form of equality of opportunity including some but not all aspects of the welfare and administrative state. The definition is meticulously fine-tuned as its partisans seek to distinguish themselves from more radical progressives whose fundamental assumptions and goals they share. The neoconservatives' Lincoln is a fitting interpreter, here. He adds to the preoccupation with equality an uncompromising nationalism that brooks no dissent and spurs the drive

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for “principled” empire. Such modulated progressivism is, of course, doomed in a time when its more radical adherents have a more coherent and attractive ideology.

This is not the place to go into any detail regarding the “West vs. East Coast” debates among neoconservative followers of Leo Strauss. It is worth noting, however, the claim made by some Straussians to superiority not only over modern ideology but also over traditional conservatism in eschewing mere opinion for Platonic objective truth. Yet, as Allan Bloom made clear in *The Closing of the American Mind*, Strauss himself did not believe in the truth of the principles of Plato or any other philosopher. Divine madness is the rule in Straussian philosophy, or rather erotic enjoyment in seeing how principles and precepts “play out” in various philosophies. Only in dealing with the mere statesmen of political life do (some) Straussian philosophers make truth-claims regarding these principles. The result, again, is what Eric Voegelin understood as ideology, the placing of a second, false reality onto the natural world.

Straussians are not the only thinkers who claim to have found an objective ground for ideological conduct. Germain Grisez, John Finnis, and Finnis’s follower Robert P. George have claimed to represent a “new” natural law eschewing metaphysics in favor of Kantian precepts. Reduction of the natural law tradition to an instinctive pursuit of “basic goods” is supplemented in this ideology by a detailed casuistry or logic of morality that leaves motive (Ryn prefers to write in terms of “will”) as a matter of mere ratiocination. The result is a mechanized conception of virtue, allowing for hypocrisy, an abdication of judgment in obedience to assumed authority, and a preoccupation with the trappings of temporal power the likes of which few Christians from the supposedly servile Middle Ages would have tolerated.

The ideology of “new” natural law is especially relevant in light of another subject of Ryn’s criticism, the self-conscious religious idealist who claims his virtue requires that he withdraw from public life. This “goody two shoes” as Ryn names him says in essence, “I am a perfectly religious person, my religion is the only true and worthwhile religion and is being treated badly, so society’s problems are not my problems; if

*New natural law theorists examples of contemporary moral idealists criticized by Ryn.*

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the world goes to Hell while I and mine go to heaven, then God's will is done." Ryn's point is that those who hide behind self-flattery in order to avoid the hard work (and grit) of engaging a decaying culture are abdicating their responsibilities to the public good, and so not acting virtuously. The point is well taken, though I would leave room for those few, most in holy orders, who genuinely desire to die to this world, serving it by example and prayer.

The question this criticism raises, again, is how those who recognize their duty to engage the world and act morally within it are to respond to a vicious culture. It is here that Ryn uses the example of Machiavelli to show what desperate times may require of us, namely imaginative re-conceptualization of moral norms to make peace and order possible again. It is an example that, while in my view poorly chosen, deserves to be considered for issues it raises concerning the inescapable nature of metaphysical foundations and the proper role of codes of conduct in public life.

### *The Machiavelli Problem*

Probably the most controversial aspect of Ryn's argument is his partial endorsement of Machiavelli's morally ambiguous approach to desperate times. No doubt Ryn looks to Machiavelli in part for the shock value of so doing. It is easy in our era of terrorism to identify any form of personal, physical action as intrinsically evil—all the more so given decades of attacks on the very idea of masculinity and its physicality. Add to this the mind-numbing casuistry of some who claim to follow the natural law tradition (and use it to justify wars they happen to like) and you have a situation in which cynicism competes with barbarous ideology and weak-kneed passivity. In such a context, Machiavelli's open endorsement of targeted violence—of "taking out" enemies—provides welcome clarity.

That said, we should not forget that the just war tradition developed, not in an attempt to "outlaw war" or any such ideological project, but as a concerted effort to limit the natural tendency toward brute force and chaos. We seem to be descending into a new form of that chaos, in which force is the tool of ideology—whether our own, or others'. Nor should we forget the fragility of decency, especially in desperate

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*Ryn's use of Machiavelli is more problematic than he suggests.*

times, and its reliance on both rules and examples to sustain and even re-establish its vitality. In this context, Machiavelli's advice and example are counterproductive because they promote an ideological vision contrary to our Christian tradition and to the rule of law.

Ryn appears to assume that Machiavelli was working to re-establish a peaceful, moral order to replace the chaos in which he lived. In this light he praises Machiavelli's willingness to flout conventional definitions of good and evil in an attempt to find an operative morality for his circumstances. But flout how, and to what end?

Ryn has a practical model of deliberation in mind. In facing moral choices, "the intuition interacts with reason in a process in which the conscientious person is trying as best he can to understand the situation and make the best of it."<sup>3</sup> There is a danger, here, that the person may fall into a situational ethic prioritizing immediate and selfish interests over higher order goods. Nevertheless, in practical terms, we all must simply do the best we can, guided by intuition and conscience. No rule book can give us all the answers. Moreover, there may be times when a great bad act is necessary in order to bring an end to a corrupt and corrupting rule so that virtue may again hold sway. One thinks, here, of the protracted struggle against Caesar, in which so many noble Romans died, and for which Brutus gave his life and reputation, attempting to salvage the old republic through tyrannicide. But Machiavelli, himself a partisan of old Rome, did not subscribe to the old Stoic virtues. His example is interesting and useful because it shows the manner in which, and ends for which, one should not flout conventional morality if one seeks to achieve actual moral conduct.

Machiavelli was not attempting to re-establish or adapt a pre-existing order. His goal was to displace a corrupt order, caught between the disintegration of the medieval consensus and nascent modernity, in favor of his own ideological vision of a much older ideal. It would be too easy simply to point to Machiavelli's jibes against the "feminizing" influence of Christianity as making him a teacher of evil; such simplistic responses foreclose meaningful analysis. Nevertheless, the

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<sup>3</sup> Claes Ryn, "How Desperate?," 13-14.

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basis of these jibes is worth considering. For, when one moves beyond the bracing “realism” of *The Prince* to Machiavelli’s *Discourses on Livy*, one finds a fully formed alternative that constitutes a dangerous ideology picked up on by later revolutionaries, including the French Revolutionary Jacobins, that has done much to undermine necessary bases for moral conduct.

*Machiavelli  
not a  
realist  
but a  
proto-Jacobin  
ideologue.*

In his passionate defense of republicanism, Machiavelli repeatedly holds up for our approval the virtue of murderous lawgivers and especially the patriotism of the pagans, both the Romans and their enemies. Machiavelli’s is no mere criticism of certain aspects of Christianity, but a call for a return to a pagan ethos, or rather an idealized version of a pagan ethos. He assumes that men are not merely sinful, but by nature ruled by passions that can be ordered only by powerful, ever-present leaders, whether singular princes or broader assemblies held together by a common political faith, willing and able to strike mortal fear and the possibility of immortal shame into their hearts. The *Discourses’* praise of political murder and all the trappings of a bloody-minded civil religion balance out *The Prince’s* paeans to political murder of a slightly different sort and the amassing of power. Both hold in common an appreciation for violence and glory and an expansive mentality that belies Machiavelli’s claim to want only to cast out the barbarians from Italy. Machiavelli seeks glory and expansion through war, not merely some “clean sweep” of corruption to re-establish peace, order, and virtue in any Christian sense. He seeks the glory of war and the reconstruction of an empire rooted in political religion. Like totalitarian ideologues of the modern era, he seeks to promote a false vision of late republican Rome as a spur to glory seekers in overcoming moral scruples.

### *Tradition and Civilization*

Machiavelli’s *Prince* often is seen as a critique of the Renaissance “mirror of princes” literature seemingly so feckless in using character formation as a means of cabining abuses by the powerful. But the moral chaos of that time was the product of a too-common rejection of both universal natural law principles and practical, historically rooted restrictions on power. Much like today, Machiavelli’s time was one of moral disinte-

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*Providing  
examples of  
virtue is vital  
to recovering  
from disorder.*

gration and political centralization. The question is whether desperate measures in such times ought to be aimed at further undermining pre-existing standards of conduct. It seems to me they would be better aimed at recovering such standards, in part by providing examples of virtue in the face of powerful vice. Such examples helped build the civilization Machiavelli inherited; and, I submit, they are necessary to the reinvigoration of any moral tradition.

Ryn's point is that disintegration of such a tradition leaves those seeking to act morally truly at sea, for the natural bases of moral conduct are traditional. He certainly is correct in this. Indeed, one very strong point on his side (not mentioned in his essay) is that the root meaning of morality is custom or manners. Alasdair MacIntyre, Paul Griffiths, and others who have worked for decades on the nature of tradition in relation to supposedly abstract theological and philosophical issues, agree with Ryn's historicism for the most part. We act, as we think, within traditions. Even our criticisms of institutions and/or practices are shaped and confined by circumstances and experience.

But traditions never wholly disappear and, as Burke noted in his criticism of the French Revolution, our options are not merely to accept decay or let slip the dogs of revolution. We also may, and should, seek within our tradition the means of its resuscitation. In the French case, this meant recurring to regional assemblies and other traditional, more local bodies. In Machiavelli's case, some have claimed he also was seeking a traditional solution to the problems of dissolution. As I have noted, however, that solution was recurrence to a false, ideological tradition rooted in the lies, not just of a venal power seeker like Cesare Borgia, but of entire regimes using ideological rituals to bind the people to themselves.

I am reminded, here, of Burke's characterization of Oliver Cromwell as a "great bad man."<sup>4</sup> In Burke's view Cromwell, while wrong for overthrowing the English monarchy, avoided the ignominy of the Jacobins and even achieved a certain greatness because he did not seek to replace the most fundamental ordering structures of English life. In particular, by

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<sup>4</sup> Edmund Burke, *Reflections on the Revolution in France, Works* (London: John C. Nimmo, 1899), 3: 294-95.

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respecting the relative independence of English judges, Cromwell maintained the common law and the normative order of daily life. The same could not be said of any successful Machiavellian call for absolute devotion to the patria and promotion of civil religion.

Am I being too narrow, insistent in essence that Christian virtue is the only virtue? I do not think so. As Ryn himself argues, morality must fit the circumstances of one's society. And Italy during the Renaissance clearly was Christian in its culture, though it was losing its medieval character as a newer, modern one emerged, for both good and ill. As we struggle with a society rejecting its Christian roots and latching onto vapid ideology, it is important to remember that Machiavelli, too, was seeking to latch onto an ideology—an inappropriate, simplified version of an ethos no longer relevant to his circumstances.

It seems to me that Ryn's willingness to point to Machiavelli as an exemplar of moral action in desperate times stems from a frustration with contemporary rules-based moral codes he finds to have been chained to the emotivism of Rousseau. Far too many people today believe that if they are sincere in their attachment to some abstract principle (equality in one of its many forms) they are justified in forcing others, and even all of society, to conform to it. Meanwhile, those opposed to such ideological visions retreat into idealized pasts or call out idealized slogans of religious, political, or constitutional doctrine at those with no ears to hear.

*Frustration with Rousseauistic morality leads Ryn unfortunately to embrace Machiavelli as a moral alternative.*

Rousseauian narcissism is real and prevalent today. However, as a matter of the history of political thought, I would at least quibble with Ryn's emphasis regarding its source. Important as Rousseau's impact on intellectuals has been, it relies on a subsequent development for its influence on later thought and action. That later development may be summed up in the name Kant. The reduction of morality to categorical rules—especially, of course, the categorical imperative—allows for the emptying out of tradition in the name of "fairness." John Rawls is, of course, the prime example of this process. His fantasy in *A Theory of Justice* of a veil of ignorance that can transform human beings into soulless choice makers retains power in the liberal imagination long after its bases have been proven to be

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a matter of mere personal inclination.

But this is the point. Mainstream academics completely missed the partisanship of Rawls's *Theory of Justice* for years because the policy preferences it enshrined were their own, and because they were wrapped up in the "neutral" language of universalism. Kant was used to empty out the content of our tradition—our natural attachments, institutions, and ends—allowing Rousseauian sentimentality (and political will to power) to fill the void. I do not know that Ryn would disagree with this point, but the difference in emphasis is important. Kant's "rules" have undermined the natural respect we all should have for traditional modes of conduct because Kant's rules are anti-traditional. Merely formulaic, they in fact destroy the more open-textured historical assumptions, common law maxims, and social codes of conduct necessary for society to function, leading to governmental intrusions on social life and revolutionary action carried out in the name of ideological "fairness." But these older, culturally rooted standards, including both law and more cultural rules, remain essential to moral order.

Ryn avers that "morality demands respect for a universal moral authority, but the latter is misconceived as conformity to ready-made norms or models." He rightly criticizes rote application of rules. But what is a "ready-made" norm or model, and what is wrong with it? Certainly he is correct to question "the assumption that moral universality is static, unhistorical, and ethereal." And he is right to point to moral determinations as properly made up of "adjustments among will, imagination, and reason." Here he lists will first, emphasizing the importance of the Christian insight that the proper link between the universal and the practical is a matter of proper intent, hence not a factor of abstract reason.<sup>5</sup>

This does not mean that there are not or should not be guiding principles for moral action. Principles serve as important starting points for moral conduct. Thus we can, in fact, learn something from the ancient Greeks as well as Christ in looking to the relationship between the general and the specific. Christ propounded the Golden Rule—do unto others as you would have them do unto you. This is not so very

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moral conduct.*

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<sup>5</sup> Ryn, "How Desperate?," 6, 10, 14.

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different from the very practical definition of justice in Plato's *Republic* as paying what one owes. In either case one must, in fact, think in particulars, taking account of circumstances; returning a weapon to one not in his right mind does not constitute a moral act because one should know (and care) that the result may well be disastrous for the other person, and others. One can take this insight as a spur to utopian thinking, creating a "city of the mind" in which we all "mind our own business" as defined by philosopher-tyrants. Alternatively, one can take it as a call for examination of conscience and habituation to a mode of thought and action rooted in the desire to live a life of faith, hope, and love. That is, one can see principles in ideological terms or as calls to develop the proper motivations and habits so as to lead a virtuous life.

Unfortunately, during times of social disintegration such as Machiavelli's and ours, such habits may not form and when they do form may well bring punishment from social and political authorities. Thus the virtuous ruler in Machiavelli's time too often suffered a grisly fate at the hands of brutes. Today those who seek to put their traditional beliefs into action often find themselves prosecuted by the government or sued by private parties on the grounds that, for example, limiting membership in their organizations to those who share their normative understanding regarding sexual morality constitutes unjust discrimination. In desperate times one's tradition is under attack, even disintegrating under pressure from those seeking to further their own ends and power.

There remains, however, a wider, longer tradition to which we can look, and to which Machiavelli could have pointed. This tradition includes noble Romans as prominent exemplars. It is not a purely Christian tradition, granting prominent place as it does to figures such as Cato the Younger, who chose death to avoid being used by Caesar as an example of his beneficence. That tradition produced martyrs as well as conquerors, champions who exemplified virtue in loss as well as virtue in victory. It provided relevant, effective codes of conduct—combinations of rules and examples necessary for people to guide their wills as well as their actions.

In this context I would amend somewhat Ryn's example of the soldier who must respond without panic even in desper-

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*Ryn's conception of what constitutes moral action is too narrow.*

ate straits, yet on some occasions be willing to surrender. My point would be that the soldier who acts on the public stage may be called upon to sacrifice himself and even his immediate cause in the interests of a greater good over the long term. It may be necessary to go down fighting, not because one may “win,” but because one’s example of virtuous conduct may serve as a model for those to come later. Short-term practicality must on occasion give way to the promotion of timeless examples of virtue. Ryn criticizes the idea that there are ready-made models of conduct, but examples there must be so that individual persons seeking to act morally may intuit for themselves a place within a tradition of right conduct.

### *The Natural Law Tradition as a Tradition of Law*

It has become popular among academics to refer to the tradition of public virtue to which I have referred as “civic republican,” and to include Machiavelli within it. But civic republicanism is in large measure a creation and conceit of anti-religious intellectuals. Indeed, the civic republican tradition, such as it is, is an ideological perversion of the natural law tradition, reflected in the actions and stated beliefs of major figures from Moses to Washington and fitfully up to this day.

A primary danger in promoting examples of virtue is that in so doing one may create a kind of civil religion, in which loyalty to the state displaces all other important loyalties (especially those to family, church, and local association) and perhaps reduces public life to mandatory service to some single ideological principle. Examples are of critical importance in providing people’s imaginations with narratives into which they can place themselves and their behavior if they are willing to put forth the necessary effort and make the needed sacrifice. But admiration for particular persons must be leavened, like patriotism, with recognition that the person and even the country is only an imperfect embodiment of permanent standards.

Mention of “permanent standards” may seem to put me at odds with Ryn. Perhaps so, but Ryn stresses that he does not reject the use but rather the mis- and over- use of principles.

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We are, here, in difficult terrain, where custom and principle must meet. In this context it is helpful to consider the nature of law and rules, and especially Harold J. Berman's insight that law should be defined as the integration of reason and experience.

The civilization in which Machiavelli found himself—troubled, early modern Christendom—was formed in part through development of laws, traditions, and codes of conduct. These practices served, imperfectly, to cabin power and orient individual wills toward virtue. It is too easy to see earlier eras as simply corrupt or populated only by hapless victims and ruthless victimizers. In fact, nobles and even monarchs during the middle ages were held in check by a variety of social and moral forces sometimes reduced to specific rules within a code. One might mention, here, the knight's duty under the chivalric code to fulfill the terms of a conditional surrender. One might "succeed" in reneging on such an agreement, but one's reputation would suffer, sometimes to the point of ostracism (itself potentially fatal).

Even kings were obliged to fulfill their coronation oaths and various other duties by the force of tradition, morality, and the "public opinion" of potential adversaries among the church, nobility, and common people. Many of these requirements were not formally enforceable as law. But they did constrain behavior and shape the characters of persons and communities toward order and virtue.

In the absence of effective constitutional checks on power, abuses remained common and codes of honor were far from "ideal" in that they allowed for many forms of cruelty. The chivalric code, for example, did not forbid the standard practice of allowing soldiers to pillage conquered towns—a practice all but inevitable during a time in which booty was used as a primary form of pay for soldiers and in which blood lust was not strictly controlled, or even seen as controllable in many instances. But the looser, more varied and flexible codes of the middle ages, while imperfect and allowing for low-level conflict, rarely allowed for, let alone demanded, anything like the mass slaughters of the modern, ideological era.

As anyone not hopelessly lost in the exercise of casuistry should know, the natural law itself provides no detailed code

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of conduct. Rather, as recognized for millennia, it is an impetus placed in the human heart to pursue good and avoid evil. This impetus may be corrupted by vice and encouraged by virtue, but remains a natural part of our being. The question with which political philosophers must deal is how public institutions including laws can promote or undermine the virtue necessary for moral conduct. The ideologue who substitutes his “principled” will for the variety of institutions, beliefs, and practices making up any decent society clearly undermines our ability to act with virtue, whatever his “principle” may be. Likewise, however, those who would question the existence of standards of conduct that transcend desires of the moment undermine persons’ capacity to recognize the good and avoid the evil.

It may be useful, here, to recall that an important definition of justice, so unconscionably simplified as “fairness” by Rawls, is vindication of the reasonable expectations of the parties. That is, when two parties come before a judge, that judge has a duty, not to “do justice” in the abstract, any more than it is to favor one party or the other on the grounds of personal characteristics. The judge’s duty is to uphold the law of the land. And a law is not merely an abstract statement of principle, nor the mere words of a statute, but the public meaning of words in the law and, in the common law, the customary course of conduct upheld over time in everyday life. Principles such as the maxim that a malefactor shall not profit by his own misdeed are not mere matters of abstract justice. They are deeply embedded understandings of right conduct, present in both Western and non-Western law, that have been applied and enforced over time. Thus, a grandson who murders his grandfather to prevent that grandfather from changing his will cannot inherit under the will. Even where there is no statute saying so, the law embodied in precedent and the long-held expectations of the people forbid it.

What do we do, then, when the expectations themselves are unjust? This is the favorite question of the revolutionary, who seeks to de-legitimize tradition as a “dead hand of the past” binding us to unjust powers. The classic example, here, is slavery. But it cuts against the ideologues’ position. That practice had been recognized for centuries as a violation of

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the basic principles of the common law. This meant that it was treated by judges as purely a creature of statute. And statutes that derogate from the common law are to be read narrowly. Only specific language in a statute, which itself would be read narrowly, could justify any extension of arbitrary powers of ownership over human beings. This was no ideological opposition to a mere word, nor even a determination by legal officers to undo a centuries-long practice, but rather a recognition that absolute dominion of one person over another violates, not just some abstract principle of justice, but the basic customs of a society ruled by law. The result for most of Europe was a gradual reduction in the restrictions imposed on slaves (one should recall, here, that “serf” simply means “slave”). That reduction ended in elimination of most forms of slavery by the late eighteenth century within much of Europe. In his *Sketch of a Negro Code*, Burke sought to extend its influence over slavery in the Caribbean colonies, to which the British had denied the common law (a denial at the root of our own American revolution). It might have done the same in the United States but for a combination of economic and ideological factors causing deviation from traditional common law understandings.

My point is that law has the means of addressing inequities understood as deviations from higher law standards without fomenting revolution or decreeing some ideology of inevitable “progress” toward any particular end or goal. Judges who recognize and act in accordance with natural law respect the powers of the legislature, its legitimate power to make the law and to have it followed, only within a tradition requiring explicit statements of derogation. Today’s judges (and academics, of course) reject this role and even this law as insufficiently “just” in the Rawlsian sense. The result has been a concerted attack on the rule of law by those sworn to uphold it.

*Civil law, informed by natural law rightly understood, promotes virtuous conduct and justice.*

### *The Contemporary Challenge*

Transformation of law into ideology has been widespread and damaging. Our Constitution has been all but destroyed by those who have put forth arguments, whether in ignorance, bad faith, or both, recasting law as the will of “right-thinking” rulers serving current ideological ends. Would-be Caesars in the White House, cowards in Congress, and self-styled Her-

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culean heroes on the bench have made limited, decentralized government in service to fundamental social institutions all but impossible.

Law, language, and meaning itself are sacrificed to ideological ends. For example, scholars such as Akhil Amar openly “translate” constitutional language to serve their own substantive goals. Some of Amar’s tactical moves encompass specific constitutional language. The Fourth Amendment’s prohibition against unlawful searches and seizures in his hands becomes “the right to enjoy consensual conjugal happiness in one’s home.”<sup>6</sup> More generally, Amar seeks to delegitimize as irrational, dimwitted, and subject to ridicule as racist, sexist, and otherwise intolerant anyone who takes seriously the words and historically grounded meanings of constitutional terms. In their place he substitutes principles improperly drawn from concrete language and stitches them together into “the trajectory of the American constitutional project over the past two hundred years”<sup>7</sup> toward ever-greater equality and individual license.

I mention Amar merely as a typical example of the contempt for law prevalent in the legal profession today. It is important, here, as evidence that we do truly live in desperate times. The Constitution itself is treated with contempt, not only by our President who increasingly rules by decrees (issued as “executive orders”) but also by a Congress that refuses to do its job of writing full, detailed legislation binding down administrators and making clear to the people what rules shall bind them.

The question, then, is not whether our times are desperate, but how we may best seek to act morally in their midst. Ryn rightly rejects formulaic approaches. It is no good simply telling people that the bulk of what goes on in Washington contradicts the plain meaning of the Constitution. In the unlikely event that significant numbers of people understood and were upset by such facts, there is little they could do about them under current circumstances. By the same token, Machiavelli’s example is pernicious, here, for it would promote disrespect for already vulnerable customs and practices necessary to maintain such general order as exists.

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<sup>6</sup> Akhil Reed Amar, *America’s Unwritten Constitution* (New York: Basic Books, 2013), 97.

<sup>7</sup> *Ibid.*, 451.

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We must seek solutions, not in radical action aimed at birth or re-birth of any ideal system. Rather, action in times such as ours must be aimed at rebuilding trust among the people for such institutions as can, in fact, provide normative order. These institutions—principally family, church, and local association—clearly are under attack from a centralizing state. At the national level, then, the political task is primarily negative, to dismantle at least some of the apparatus of centralized power established over the last century or so.

*Appropriate action in desperate times requires rebuilding of trust and local associations.*

More important, as I believe Ryn would agree, is the need for social and cultural labor aimed at rebuilding proper motivations and habits necessary to orient people toward the limited public goods necessary in and to a free republic, and the strength of will needed to reject the lures of our increasingly social democratic politics and culture. In so doing, however, I would argue that we must be careful to present the people with examples and arguments rooted in pre-existing stories. We must work to revive interest in examples and codes of conduct (including the common law) enabling people to see themselves as playing a role that matters in restoring a virtuous public life.

Our work is that of rebuilding a culture, not, as for Machiavelli, replacing it with an ideological vision of an older one. As such, we must be extremely careful of the examples we choose to promote and emulate. We live in a time when vigorous action is both needed and all but nonexistent. But it must be the vigorous action of a Moses, not a Caesar, of the early modern federalist Althusius, not a Machiavelli, of Christ, and not Napoleon, lest we give aid and comfort to the Jacobins in our midst.