

What is virtue?: Speech by Lord Justice Laws: Earl Grey Memorial Lecture

1. As every schoolboy ought to know, in 480 BC the city-States of Greece faced invasion and suppression by the Persian King Xerxes, who sought revenge for the defeat of his father Darius' army at the Battle of Marathon 10 years before. King Leonidas and the 300 Spartans might have turned him at the Pass of Thermopylae, but for the treason of Ephialtes, who led the Persians by a mountain path so that they could attack the Spartans from the rear. Knowing that they were doomed, faced with overwhelming odds, the 300 fought wave upon wave of the enemy to the death. All but two of them fell. Of these, one killed himself on his return to Sparta, and the other atoned for having kept his life by his valour at the Battle of Plataea the following year. And so the Persians came into Attica, and sacked the city of Athens. It was a dark hour for Greece. But later in 480, at the Battle of Salamis fought in the straits between the island of that name and the mainland, the Persian fleet was destroyed by the Athenian triremes. The war was not over, but the tide had been turned.
2. It is said there were 200 ships of Athens at Salamis. Each ship carried some 200 men: 170 rowers, the rowing master, and a small troop of soldiers. 40,000 Athenian men, then, at the battle. All of them were free citizens. No slave fought on the Greek side at Salamis. But at this time the whole citizenry of Athens - adult males, of course - numbered the same: some 40,000. So it was the Athenian democracy itself that rowed the fleet to victory against the Persians.
3. I will say four things in this lecture. First I will say that the major principle which has shaped moral thinking since the Enlightenment, that is the principle of the sovereignty of every individual, provides no more than a minimal base for good conduct. It is a crucial minimum, for if it is followed, it is a kind of antidote against the worst excesses of man's inhumanity to man. Secondly I will say something about justice, justice as the referee between selfishness and altruism - neither of which on its own is a sensible or civilised basis for the conduct of life. Thirdly I will say that a useful way of looking at morals is by way of a calculus - a calculus with three lines. Each line of the calculus postulates a choice, a choice of how to behave between A and B, where A is the worse and B is the better choice. The first line is where you are to be blamed for choosing A but not praised for choosing B. The second line of the calculus is where, again, you are to be blamed if you choose A, but this time praised if you choose B. The third line is where you are *not* to be blamed for choosing A, but, again, you are to be praised for choosing B. Now, the three lines of the calculus are distinguished from each other by two factors. The first is the quality of the act or omission in question. The second is the element of what it takes: what it takes in terms of determination, courage or steadfastness to do B, the better choice, than to do A. And within the three lines of the calculus, I will say where I think virtue lies. I will say that virtue is much more than the mere avoidance of vice; much more, if you like, than mere *goodness*. There is no virtue at the first line of the calculus. Virtue, as the Greeks understood, is glorious and difficult. Leonidas and the 300 Spartans live at the third line of the calculus.
4. The fourth thing I will say concerns what I will call civic virtue, that is, the idea of duty owed and performed to society at large, and not just to yourself or those you love. It is the virtue of the good citizen. I will condemn the fact that civic virtue is all too often consciously or unconsciously consigned to the third line of the moral calculus, so that you are praised for fulfilling it but not blamed for failing to do so. Civic virtue is largely the subject of an important book by David Selbourne, *The Principle of Duty* [Endnote 1], which, however, is marred by its hectoring, breathless and repetitive tone: I found myself wanting to disagree with it.
5. I will make no apology for the fact that my four themes will run into each other; nor for the fact that there are some quite large preliminaries before I can get to them. These concern moral philosophy generally. Moral philosophy is rewarding and frustrating at the same time. It is rewarding as any rigorous discipline is rewarding. It is on the other hand frustrating for two reasons at least. One is that when the ordinary language school of philosophy was all the vogue, the experts did not believe it was any part of their task to investigate for themselves - far less teach others - how to behave. Indeed I think many would have deemed it a breach of good manners to embark on anything approaching so evangelistic an exercise. This much impoverished moral philosophy. Nonetheless the ordinary language philosophers bequeathed much good. They got the metaphysics out of the subject. But there is a second, and much bigger, reason why moral philosophy is so frustrating.

6. It is an arresting fact that the moral philosophers have been asking more or less the same questions for 2,500 years - What is goodness? What is justice? Why should one be good? - and have lamentably failed to come up with much in the way of conclusive answers. The big questions are as much disputed now as they were in the groves of Plato's Academy. One is tempted somewhat to lose faith in the value of the exercise, with such a passage of time and effort and so little apparently to show for it.
7. Yet the reasons for 2,500 years of stalemate are themselves worth pondering. Here I think is the starting-point. Rational peoples at least since the Greeks have been accustomed to two principal modes of thought. The first is the objective ascertainment of facts. The second is the process of deductive reasoning. Both of these lead to definite results. As for the first, in the simplest case my senses tell me here is a chair, there is a table. Increasingly complex situations will require the assessment of evidence which, as any practitioner in the courts knows, can be done well or badly: but it always leads to a result. Sometimes, of course, the result is inconclusive: there is not enough evidence to determine what happened. But that leaves no controversy of principle unresolved, far less unresolved for 2,500 years. It merely means we cannot ascertain every event which has happened. But generally, we can find out facts from evidence, and be more or less confident in the results, depending on the quality of the evidence in the particular instance. The only wholesale assault that can be made upon this everyday position is by deploying a theory of thoroughgoing philosophical scepticism such as that espoused by Bishop Berkeley in the 18th century - that there is no such thing as a real world, existing independently of the mind of the observer. But this is a very silly theory, comprehensively refuted many times but not least in a recent and excellent book by the American philosopher John Searle, *Mind, Language and Society* [Endnote 2] We may be as confident in rejecting philosophical scepticism as was Dr Johnson, when he kicked a large stone, saying "I refute it *thus*" [Endnote 3]. And I cannot forebear to share with you the delicious treatment of scepticism given by the immortal Revd Sydney Smith in his - alas - little known "Elementary Sketches of Moral Philosophy", delivered at the Royal Institution in the years 1804, 1805 and 1806:

"Scepticism... may be fairly said to have done its worst. Bishop Berkeley destroyed this world in one volume octavo; and nothing remained after his time, but mind; which experienced a similar fate from the hand of Mr Hume in 1737; - so that, with all the tendency to destroy, there remains nothing left for destruction: but I would fain ask if there be any one human being, from the days of Protagoras the Abderite to this present hour, who was ever for a single instant a convert to these subtle and ingenious follies?"

8. So the ascertainment of facts is in theory unproblematic. Our second familiar mode of reasoning is deductive logic. The simplest paradigm is the Aristotelian syllogism: all men are mortal, Socrates is a man, therefore Socrates is mortal. In contrast to the ascertainment of facts, the force of this logic says nothing about the real world. It consists only in the relation between the premises and the conclusion. For my purpose the syllogism is better restated: *If* all men are mortal, and Socrates is a man, *then* Socrates is mortal.
9. The ascertainment of facts, and the application of deductive logic, have not generally involved 2,500 years of inconclusive debate. I recognise of course that there are some other forms of reasoning, not least inductive reasoning and probability theory, which have given rise to important questions in the philosophy of science. But in the philosophy of science, the spectre of scepticism again tramps over the philosophical ground, not least in the shape of the work of Kuhn and Feyerabend; but I hope that scepticism is dead or dying. I like Searle's withering comment [Endnote 4]"...antirealism is motivated by a will to power in general and a hatred of science in particular". In any case, dead or alive, scepticism only worries philosophers. But moral questions engage the minds of most thinking people, philosophers or not. And moral reasoning has involved 2,500 years of inconclusive debate. Why?
10. There is a sense in which the ascertainment of facts, and the making of deductions, are *static* activities. The Aristotelian syllogism is no less nor more valid than when Aristotle exposed it. The discovery of a bird in a bush or a frog in a ditch is the same process now as it was when Aristophanes wrote the *Birds* and the *Frogs*. It is true, of course, that what we count as evidence for a fact has changed over time, in ordinary life as well as in the court room: in ancient Athens the evidence of a slave was inadmissible *unless* he had been tortured. In particular the means by which we try to predict future facts is radically transformed. Necromancy has been out of fashion, at least in developed societies, for a long time. But then and now man has sought to know what was, what is,

what will be. His methods have changed. His view of the causes of things has changed. Sometimes he believes in chance, sometimes he believes in fate. But once we put aside scepticism, the endeavour to know about facts in the external world, deep or trivial, simple or complex, is as timeless as Aristotle's syllogisms.

11. But moral reasoning is not like this. Now, one *might* suppose that after all the bluster ethics over the ages has raised a fairly constant question. The admirable *Oxford Companion to Philosophy* has this [Endnote 5]: "Perhaps the major problem of current and traditional moral philosophy... is coming up with a rationally defensible theory of right and wrong action." But what sort of enquiry is this? It is not a purely *factual* enquiry. You cannot arrive at moral truths by sifting evidence. Such truths do not consist in what has happened, is happening, or will happen. Nor is it a purely *logical* enquiry. You cannot arrive at moral truths by making deductions from proved or assumed premises. Such truths do not consist in logical relationships.
12. The enquiry is about how we ought to behave. Such an endeavour might be thought to assume that it is an axiom - a *given* - of moral enquiry that there *is* a way in which we ought to behave, and if we are diligent enough we can find out what it is: just as in the field of factual enquiry, once one discards scepticism it is an axiom - a *given* - that there exists an external world independent of our perceptions of it, and if we are diligent enough we can find out past, present and future facts. But the difficulty with moral reasoning is that there is no such axiom, no such *given*. It is not self-evident either to the senses or to the intellect that anyone *ought* to do anything. And this is not a sceptical position, to be refuted by the simplicity of Dr Johnson or the sophistication of Professor Searle. As I have said, you cannot arrive at moral truths merely by sifting evidence.
13. Moral principles are forged not by evidence, not by logic, though both come into it. They are forged by *arguments*; and only by arguments: arguments about how we ought to behave. Such arguments must take account of the state of factual knowledge at the time the arguments are deployed. And they must be true to logic, in the sense that a self-contradictory argument has no persuasive force. They will be much affected by the aspirations of the era in which they are formulated and advanced. Such aspirations depend on the working of man's intellect, his emotions, and his will in the crucible of the time and place where he is. Social, political, and cultural forces will play their part. In one time and place the nearest thing there is to what might be called morality may be little more than loyalty to one's tribe and its practices. In another it may be the practice of a religion and adherence to its tenets. It is not in the end surprising that there have been 2,500 years of disagreement. *Tempora mutantur, et nos mutamur in illis* [Endnote 6]. I would not, of course, dream of offering a translation, having learnt from *The Times* last Friday that the Wallsend Metro station is festooned with Latin signs as a tribute to the town's Roman heritage and the nearby presence of Fort Segedunum. It seems that Professor Donald Hill of this university has obliged with Latin translations of well-loved sayings; he will I hope forgive me for observing that it seemed to me that the construction of *O iuvenes mei, debetis vidisse nos euntes* - which is of course a rendition of *Wey, me lads, ye should've seen us gannin* - had a little more of the silver than the golden about it.
14. But I digress. Are we to say that morality is no more than a parochial creature, a mere chameleon in different times and places? That of course is the view of the moral relativists. But I think it is false. I have said that moral principles are forged by arguments, and *only* by arguments. But some arguments are better than others. We must ask the question, then, what is the shape of a moral argument? A moral argument will culminate in a normative proposition, which will prescribe or demand this form of behaviour, or condemn or prohibit that sort of behaviour.
15. At this point I have to confront that familiar maxim, you cannot derive an "ought" from an "is": the "is-ought dichotomy": the proposition that breaking Sydney's fingers one by one will cause Sydney excruciating pain does not entail the further proposition that you ought not to break Sydney's fingers [[Endnote 7]. The "is-ought" dichotomy has given rise in the minds of many thinkers to what Roger Scruton has called a "supposed ontological divide between 'fact' and 'value'" [Endnote 8], and *therefore* a commitment to one version or another of a *subjective* view of morals. But the dichotomy does not in truth support any such conclusion. It means only that moral principles cannot be arrived at by deduction. This, however, is not of itself a very exciting circumstance. You cannot prove by deduction that the sun will rise tomorrow. Bertrand Russell made the mistake of supposing that it was only *probable* that the sun would rise tomorrow [Endnote 9] because there was no premise from which it could be deduced that the sun would do so: the basis for predicting it was only inductive, not deductive. But in reality the sun's rising is not probable, but certain, as certain as $2 + 2 = 4$.
16. In pursuing the question, what is the shape of a moral argument, I should draw this following

distinction, which may be obvious but I think is very important. It is between a moral *principle*, such as Lying is wrong, and a *particular* moral prescription, such as You ought not to tell such-and-such a specific lie on such-and-such a specific occasion. You can infer the latter (the particular moral prescription) from the former (the general rule), for you would only be deducing an "ought" from an "ought" which, of course, is just as legitimate as deducing an "is" from an "is". But the major premise - the general rule - cannot be deduced, unless perhaps you can construct some yet more general rule which entails it. Ultimately, however, we are faced with the question whether and how we can construct what may for convenience be called basic moral principles, which cannot be derived by strict logical entailment from any anterior proposition.

17. In considering, then, what is the shape of a moral argument we can discern at least these following two distinct processes. There is first the ascertainment of moral principles. There is secondly the statement of a moral position in a particular case: you ought not to break Sydney's fingers. Principles by their nature establish or rather constitute general norms, to be applied when circumstances engage them. A particular moral prescription arises when the rule has indeed been engaged by circumstance. It tells you what you ought to do then and there. I do not of course suggest that in everyday life people scratch their heads asking themselves what principles they hold and whether this or that course of action is to be deduced from them. But this is the *shape* of moral arguments; and moral arguments, once accepted, lead to commitment in action.
18. There are distinct problems which touch the ascertainment of general moral principles; and there are distinct problems which touch particular prescriptions. Two supposed problems touching particular prescriptions are first that of *dilemmas*, and secondly that of *weakness of will*. I have not the time to go into these, but it is important to notice that they arise only at the point of decision in a concrete case, and not in the course of formulating general moral principles. In fact I do not believe they present the difficulties which have often been attributed to them. They both proceed from the same false premise, namely that a person's acceptance of a moral judgment - with its prescriptive or imperative quality - entails his acting upon it. I do not think there is any such entailment. Dilemmas and weakness of will are creatures of a chasm in the moral life, the chasm between acceptance of a commitment and acting on it. That is often a terrible thing; but it hits you in the gut, not the head. It calls up Vergil's wonderful but untranslatable phrase, *Sunt lacrimae rerum* [Endnote 10].
19. Now I will come to that prior stage, the stage of making principles, which also has its problems. A particular prescription may generally be derived from a principle, so that it is not difficult to ascertain; but there may be acute difficulty, because of a dilemma or weakness of the will, in the prescription's being made good and acted upon. By contrast a principle offers no difficulty of that kind, since it only falls to be acted upon at the later stage, when a particular prescription bites. Thus dilemmas or weakness of will offer no inhibition to an acceptance of the *principle*. A moral principle, however, cannot be derived from any higher premise - nothing entails it - so that it may be very difficult to ascertain. We are back to the beginning: moral principles are forged not by evidence alone, not by logic alone, but by *arguments*; and only by arguments. What kind of arguments are they? How are they to be found?
20. I have suggested elsewhere [Endnote 11] that the conditions for the emergence of moral principles are threefold: Man's power of reason, his possession of free will, and the fact that he lives in society with others of his kind. The first and third of these are matters of fact; the second - free will - is a proposition of philosophy, involving the refutation of philosophical determinism. I cannot go into determinism here; I must proceed on the assumption that it is refuted [Endnote 12]. These conditions, then, constitute the building blocks upon which moral arguments are constructed. The march of knowledge, of the causes of things, shapes and hones such arguments from time to time. If you fear eternal torment in hellfire, it will be rational to develop principles of conduct such as will appease the forces that would send you there. Eschatology, the superstition of the four last things - death, judgment, heaven and hell - has been a force in moral argument of enormous power during periods of religious tyranny; and today religious tyranny, with all its dreadful stupidities, is by no means entirely extinguished.
21. The truth is, as I have said, that some arguments are better than others: better, because they fit the facts better; better, because they appeal better to man's power of reason; better, because they work better in practice over time. This is why morals are objective, and are not merely a function of preference, taste, or belief. This is so although the arguments may change, and what was accepted as better then is no longer so now. 'Objective' does not mean, True for all time.
22. Against this background, I may now unfold the four things I said I would say at the beginning. The

first of these concerns one very big idea that has, at any rate since the Enlightenment, largely won the day in civilised society. I have called it the principle of the sovereignty of every individual, but it has many different manifestations. A shorthand for it is the proposition that all men are equal. Its most potent philosophical authority is the towering figure of Immanuel Kant. Every philosophy student will or should know of Kant's Categorical Imperative. Professor D. D. Raphael, sometime of Birkbeck College London, gives the categorical imperative something close to instant accessibility, in stating in simple language the three formulations of it which Kant himself offered [Endnote 13]: "(1) Act as if you were legislating for everyone. (2) Act so as to treat human beings always as ends and never merely as means. (3) Act as if you were a member of a realm of ends." The first of these tells you that your moral stance must not be partial, in favour of yourself or anyone else in particular. The second tells you that you must never treat anyone as a mere tool or a bondsman; his desires and choices are to be considered no less than your own. The third links (1) and (2) together. As Raphael says [Endnote 14], "The idea is that you should act as a member of a community of persons, *all* of whom make moral decisions... This joins the universality of moral decision to the fact that moral action treats people as ends. It implies a form of *equality* for all men..."

23. Hence the phrase I prefer for these linked ideas: the *sovereignty of every individual*. It is closely connected with the Judaeo-Christian precept, that you should love your neighbour as yourself [Endnote 15]; or as it is put in St Matthew's Gospel [Endnote 16], "therefore all things whatsoever ye would that men should do to you, do ye even so to them: for this is the law and the prophets." There is an affinity also between the sovereignty of every individual and *utilitarianism*. The "greatest happiness of the greatest number" principle, which is utilitarianism's crude beginning, implies an absence of any precedence between one individual and another. But the sovereignty of every individual has another affinity: it is with theories of *rights*, which emphasise the claim of every individual to respect by the State, by the law, for his essential freedoms. Individual sovereignty, moreover, underscores the tenets of one of the most influential moral philosophies of the late 20th century, John Rawls' *A Theory of Justice* [Endnote 17], with its re-invention of the social contract. And it goes almost without saying that the idea of individual sovereignty has exerted enormous influence in the field of political thought: equal rights are seen as a mainspring of democracy.
24. I am not sure how far it would be disputed that all these streams and rivers of western moral and political thought derive, essentially, from the same spring. It seems to me broadly that they do. However the idea of the equal sovereignty of every person is not self-evident, nor free from difficulty. If it is to be taken as meaning that every person is in some sense of equal *value* with every other person, it is counter-intuitive: certainly it fails spectacularly to fit the facts. Some people are villains of the deepest die, their inclination for cruelty and sadism knowing no bounds. Others, not so bad as the first, are systematically selfish, prepared to use violence and deception to advance their own interests. Yet others, not so bad as the second, are only prepared to use deception. And quite apart from all these moral defectives, which they certainly are, there are others who through no fault of their own are irredeemably damaged by birth or misadventure so that they cannot think straight or act sensibly. This is not a doom-laden catalogue out of touch with reality: in the courts I have encountered every one of these individuals, from the worst downwards, some, as you would imagine, more often than others. Any sensible armchair theorising about morals has to recognise reality's rough trade.
25. Yet I imagine, certainly I hope, that all of us here would buy the idea of the sovereignty of every person as a first principle in a civilised moral system, in one form or another. You have only to see what happens when it is denied: now in Iraq and Zimbabwe, then in Germany and Russia. The reality is that the sovereignty principle, like any other moral principle, is a prescription about how we ought to behave. Its essence is not that all men are in any sense factually equal, whatever that might mean. Its essence is that the weakness, even the wickedness, of any man never justifies his being treated as *untermensch*: someone who by definition is to be dealt with from the start as dispossessed of rights, unworthy of consideration, a thing not a man. He may forfeit his rights; he may lose the consideration, at least the sympathetic consideration, of his fellow-men; he may be imprisoned, he may be sectioned to a special hospital; but in every case these measures or attitudes stand in need of special and objective justification. He starts, everyone starts, as one of a kind, all of whose members are to regard each other with an equal eye. If they do not, you get holocausts, or myriad lesser sins having the same baleful genesis of hatred and contempt.
26. But there is another objection to the principle of equal sovereignty. Here it is first important to notice that the principle is one of high abstraction: other propositions, which we would also call principles, are more particular. I have cited one such already: Lying is wrong. Nothing is easier than to conjure

up many others: Stealing is wrong, Killing is wrong. This second objection to the sovereignty principle uncovers the uncomfortable fact that the principle may be used to justify a whole range of different moral and political positions, some of them flatly contradictory. Thus it may be deployed to support policies of *laissez faire* on the right, on the footing that individual sovereignty requires individual freedom to be maximised; or policies of social regulation on the left, on the footing that individual sovereignty requires economic equality and other forms of equality to be maximised. It may be used to justify liberal measures in criminal penology, on the footing that the criminal is entitled to a degree of respect and understanding (perhaps especially if he is young and disadvantaged); or it may be used to justify draconian penal measures, on the footing that some crimes at least are a terrible affront to the very principle that you should treat your fellow-man as an end in himself. And one may at once conjure the kinds of different and opposite policies in the fields of education and health which the principle may be paraded to support. As regards personal conduct, it may be said to encourage both self-reliance and reliance on others; both self-satisfaction and humility; ambition and deference; frankness and reticence.

27. Here, then, is the second objection to the principle of individual sovereignty. If it and all its manifestations in different philosophical theories can prove almost anything; that would of course mean that they prove almost nothing; and hence have no utility. But things are not as bad as that. We should in my opinion recognise that the sovereignty principle gives us what may be called a moral minimum. It is a minimum of the highest importance, for below it lies the bottomless pit of every vile instance of man's inhumanity to man. The minimum consists in standards of behaviour which must be accepted once it is recognised that the next man's interests and desires, his hopes and fears - in short what may be called his integrity as an individual - have to be considered as much as one's own. His interests and desires may of course be base, or criminal; the duty to consider his integrity is not a mandate to give effect to it; nor even, when self and other have equal merits, necessarily to put other before self. It is not a prescription of systematic altruism.
28. Here I will digress for a moment, upon the subject of systematic altruism, though it is not really a digression, for it will bring me to the second of my four themes, that of justice. Systematic altruism has more in common than you might suppose with systematic selfishness. Take the image of a queue: at a bus-stop, or a cinema, or a check-in desk. In a world of systematic selfishness the queue collapses because everyone pushes to the front; in a world of systematic altruism it collapses because everyone pushes to the back. Systematic altruism is a nightmare, which can inflict much cruelty, as Nick Hornby's brilliant novel *How to be Good* amply demonstrates. More crisply, it is systematically unjust: or at least, leaves no space for justice to occupy. I will come to justice directly.
29. The duty to *consider* the other person's integrity is a compulsory starting-point in any relation between person and person. That is given to us by the principle of equal sovereignty. But the question whose interest then should prevail, in any case when his and yours are in opposition, is a step-change; we are in a different mode of enquiry. The answer to the question may (and *should*) often be given by love or sympathy or generosity, but if it cannot be resolved by those amiable resources, the bottom line for its resolution is *fairness* or *justice*. There are two things to say about justice. First, justice is not to be treated simply as another word, a synonym, for goodness or virtue or morality. There are quite enough such words already. Justice is about the principled resolution of disputes. I would altogether deprecate the notion that in an ideal world there would be no disputes. A world with no disputes must be one of two kinds: (1) a world where all dispute is suppressed - that would be a vicious tyranny; (2) a world where no one bothered to dispute - that would be a world of shades, not people: it would be Hades, the dwelling-place of all the bloodless spirits whom Odysseus met on the banks of the River of Ocean [Endnote 18]. It is Hades, not heaven, that is evoked by John Donne's wonderful figure of a supposedly blissful hereafter: "no Cloud nor Sun, no darkness nor dazling, but one equall light, no noyse nor silence, but one equall musick, no fears nor hopes, but one equal possession, no foes nor friends, but an equall communion and Identity, no ends nor beginnings; but one equall eternity". [Endnote 19] I had thought there might be a third kind of world with no disputes, the world of systematic altruists: but its denizens would dispute like mad, each to be more altruistic than the next. Let us be thankful for honest quarrels.
30. The other thing to be said about justice is that it may itself be seen as required by the sovereignty principle. It is precisely because every person is an end not a means that we respond to a dispute by asking what is *fair*, or just. The law, of course, elaborates sophisticated rules and principles so that disputes, sometimes of much complexity, may be dealt with consistently, relatively predictably, and so as to accommodate many interests, some of which may not be represented before the court. So it

comes about that there may be fissures between the application of the law and what seems to be fair in the particular case. But the law's *fount* is what is fair and just, enriched by the perceptions of successive generations.

31. In most instances of ordinary inter-personal relationships or encounters, however, we do not need to consider justice: ordinarily there is no substantial opposition between the other's interest and your own. Life involves thousands and millions of encounters between thee and me. In every one of those, the sovereignty principle, now seeming far too grand an expression for these occasions of every day, requires that we behave decently and with reasonable consideration - I am not sure if there is a better word than the slightly sickly adverb *nicely* - towards one another. It requires in particular *good manners*. Good manners are hugely underrated as stars in the moral firmament. They are seen all too often as a mere add-on to other, more substantial ways of behaving well, or at least not behaving badly. Of course, in any given particular situation it is more important not to kick someone in the teeth than to say good morning to him; but you cannot have a mountain without foothills, or if you can, it is much more difficult to climb. Good manners are not an add-on. They are the oil of the moral engine.
32. The sovereignty of the individual, then, requires every one of us to consider the other person's integrity in all our inter-personal relationships, and in the case of conflict between his interests and yours, an appeal to what is fair is the tie-break. Against this background I may come distinctly to what we ought to mean by *virtue*. It will bring me to my third theme: the idea of a moral calculus.
33. I have said, what we *ought* to mean by virtue. This is very important. I am going to say that compliance with the minimal standard of the sovereignty principle is *not* virtuous; it is merely the avoidance of vice. Some might disagree; some might say that compliance with the minimal standard *is* virtuous. Here, it is vital to recognise that there is no metaphysic, no hidden truth, such that if only we could discover it we could know who is right. Now, there is nothing self-contradictory in the proposition that compliance with the minimal standard is virtuous. Nor can it be disproved as a matter of fact. I just think it is the wrong way of looking at the matter. I have said already: moral reasoning is not like fact-finding, nor does it consist in deductions or inferences. In the end there are only *arguments*. What I am offering is an *argument*: a piece of advocacy. I am inviting you to accept as right a proposition about how we should conduct ourselves. Its importance is that if it is accepted, it can influence action, and influence it for the better.
34. I have found it useful to think of morality as a calculus. The first line in the calculus is the concept of the minimal standard, which the sovereignty principle gives us. The minimal standard is the mere avoidance of vice. What is the mere avoidance of vice? It means behaving decently and with reasonable consideration towards one another. It means the avoidance of violence, of cruelty, of dishonesty, in our everyday dealings. It means courtesy and good manners. These are the requirements of the minimal standard. You can call it being good, if you like; but I say it is the mere avoidance of vice.
35. Now consider the notions of praise and blame. How are we to distribute praise and blame at the first line of the moral calculus? Clearly, vice is blameworthy. We blame, condemn, the man who is cruel, violent, or dishonest. There may be cases where his conduct is to be excused or even justified: I have not the time to go into that, but would ask you only to notice that *excuse* and *justification* are by no means the same thing. In such instances justice, my second theme, stands at our shoulder. Leaving aside such complications, we have this question: vice is admittedly to be blamed, but should we *praise* the mere avoidance of vice?
36. Now praise, surely, is reserved for conduct that is singled out; singled out as being worthy in some particular way. See then what would be meant if the mere avoidance of vice were without more enough to attract praise. We should be singling out the mere avoidance of vice as being worthy. We should thereby commit ourselves to the barbarous notion that behaving badly is the rule - not just the practice, the *rule* - not the exception: since *not* behaving badly would be singled out as special. Our everyday expectations of each other would be reduced to the shameful and the selfish. Surely then, at the first line of the calculus, we must choose to blame vice, but withhold praise from the mere avoidance of vice. There is nothing special about this thin gruel of goodness. It is not to be praised. It is to be *expected*.
37. The second line in the moral calculus is constituted by the class of case which involves a choice between two courses of action, and a choice one way rightly attracts blame, and a choice the other way rightly attracts praise. Here the first, blameworthy, course of action again is vice; just as on the first line of the calculus. But the second course of action is *not* the mere avoidance of vice. At least it

is not *only* that. It is distinguished from the first line by the *effort* required to make the right choice. The actions in question, however, may not differ from instances of the first line. Here is an example. A young man with a terrible record of dishonesty and violence fathers a child. He sees that if he persists in his career of crime, there is no decent family life for the baby, its mother, or himself, and he turns the corner. He stops committing offences. In particular, he resists a specific opportunity, to which he is tempted by his erstwhile unsavoury associates, to commit an easy burglary at a deserted house with rich pickings. They mock him, perhaps even threaten him, for his refusal to join in their base enterprise. In one sense, all he has done is to avoid vice. But in a deeper sense, he has acted *virtuously*: virtuously because it cost him much, in terms of determination and strength of purpose, to decide and act as he did. Others without the young man's criminal history have no difficulty avoiding the temptation of burglary; indeed for them it is not a *temptation* at all. Their avoidance of crime is only at the first line of the calculus. They deserve no praise. His is at the second. He does deserve to be praised.

38. The insight which the first line of the calculus gives us is that virtue is much more than the mere avoidance of vice. The insight which the second line gives us is that virtue attaches to the actor rather than the act. The act - rather the omission, eschewing the burglary with easy pickings - is just the same for the young ex-criminal as it would be for any of us. He is virtuous as I have said because of his state of mind: he has wrestled the devil inside him to the floor. None of us, it may be, is free from our own devils; but they take different forms; they do not grip the throat of most of us at the prospect of a burglary.
39. Now I will come to the third line of the calculus. Remember: the first line is where you are to be blamed for failing, but you are not to be praised for succeeding; the second line is where, again, you are to be blamed for failing, but you *are* to be praised for succeeding. The third line is where you are *not* to be blamed for failing, but, again, you *are* to be praised for succeeding. The third line is where the heroes are. It includes all those actions which lie beyond the call of duty, but not only those. Fulfilment of duty may also be at the third line; some duties are terribly, impossibly, onerous, yet still they are duties. All those deeds of courage, or of endurance, or of self-sacrifice, which earn the mantle of glory, they are at the third line. Leonidas and the 300 earned it at Thermopylae. They would have thought of themselves as doing no more than their duty. Remember their roadside memorial: "Passer-by, go tell the Spartans that we lie here, obedient to their commands". *Obedient to their commands*: what they suffered was within the call of their duty.
40. But the mantle of the calculus' third line is by no means only given for warlike valour. Captain Oates earned it; so did Sydney Carton; but it is by no means given only for acts of altruistic self-obliteration or physical courage. And it is not only for heroes. It is earned by anyone who goes the extra mile. In the Sermon on the Mount: "... whosoever shall compel thee to go a mile, go with him twain." [Endnote 20] (Though I must say I have a lot of difficulty with the immediately preceding verse in St Matthew's Gospel: "And if any man will sue thee at the law, and take away thy coat, let him have thy cloke also.") Going the extra mile is virtue indeed, even if you are no Leonidas.
41. Now, this brings me to what I want to say about *civic* virtue. What *is* this kind of virtue? It is the cast of mind of all those men and women who are positively concerned for the good of their fellows generally, and not only for the welfare of those who are close to them, to whom they have ties of love or affection or loyalty. They may engage in unsung charitable works for no reward. They may or may not stand for public office; but they will take an interest in public affairs, local perhaps, maybe national, because they believe that the concerns of the community are their concerns also. They know that obedience to the law is a moral imperative, even if you disagree with the law in question. They know that the greater good should sometimes prevail over the vindication of individual right, even though their lawyer tells them the individual right is rock solid. In short, in their relations with the State, they give as well as take. They call up what Pericles said in the funeral speech for the Athenian dead early in the Peloponnesian War [Endnote 21]:

"Our public men have, besides politics, their private affairs to attend to, and our ordinary citizens, though occupied with the pursuits of industry, are still fair judges of public matters. Unlike any other nation, we regard the man who takes no part in these duties not as unambitious but as useless. We are able to ponder and judge affairs accurately, and instead of looking on discussion as a stumbling-block in the way of action, we think it an indispensable preliminary to any wise action at all."

42. I think that civic virtue is of the first importance for the integrity of the modern democratic State, and

as a mark of the virtuous man. All of our people owe a great responsibility to each other, not just to be citizens, but to act as citizens. The democracy belongs to them. They must protect it by joining in it. The man who does not vote at elections because he does not care is worse than Pericles' useless man. It is no wonder that the Greek word is *idiotis* - which has given us 'idiot' in English. The man who disobeys the law because he disagrees with it, or because it imposes hardship on him, in a democracy acts unconscientiously. So does the man who drops litter in the street or drives across red traffic lights. Yet all these people are probably very kind to their mothers. Virtue, as opposed to the mere avoidance of vice, is not and never can be about private relationships only.

43. Now, I will explain how this is engaged in the moral calculus. It seems to me that far too many people, if they were asked to think in this sort of language, would assign civic virtue as I have described it to the third line of the calculus: you may be praised for fulfilling it, but you are not to be blamed for failing to do so. I profoundly disagree. Civic virtue belongs at least to the second line: you may be praised for fulfilling it, but should certainly be blamed for failing to do so. For many facts and instances, however, I would say that civic virtue should belong to the first line of the calculus. You are not to be praised for voting; you are certainly to be blamed for not doing so. You are not to be praised for obeying the law; you are certainly to be blamed for not doing so.
44. We shall enjoy no social tranquillity unless we can assign civic virtue to the first, at least the second, line of the moral calculus. But it is not merely a matter of social tranquillity. We have the good fortune to live in a State where public power is conducted subject to the rule of law. It is a function of the rule of law that our governors hold their power on trust for the people. The principle of the common law is that for the citizen, everything that is not forbidden is allowed; but for the public official, from the highest to the lowest, everything that is not allowed is forbidden. By this principle the freedoms of our people enjoy substantial guarantees. By the same principle the law subjects every act of public power to a strict requirement that it be justified in law. If the beneficiaries of this enlightened state of affairs look to the State only for their rights, or - worse - only for the handouts of Juvenal's bread and circuses [Endnote 22], at length our governors may struggle to keep the whole of their democratic conscience. At length we may get increasingly repressive laws, as the legislature perceives, with whatever reluctance, that the citizen is unrestrained: he is only prepared to look after himself and his own, and not his fellow citizens. There are ominous signs around us. Very low election turnouts. Cavalier statements of an intention to break a law, a democratically made law, because it is costly or difficult to fulfil. Reactions to difficult social problems - reactions which have more to do with Not in my Back Yard than with the duties of good citizenship.
45. I am not suggesting that we should all put our backs behind government policy. I am not suggesting that this or that policy of government, whether or not translated into law, should not be criticised or even reviled, if there are good grounds for reviling it. I am not suggesting that the citizen's rights, his legal rights, against the State should not be vindicated and enforced. Sometimes, certainly, the virtuous thing is to waive your right; and it is to be noted that whereas a right may be waived, a duty never can be. But where all else is equal, it may be important that the citizen *should* assert his legal right against the State. In short, I am not suggesting that the citizen owes any duty to government; rather he owes a duty to all his fellow-citizens, and thus to the State, which in a free society stands for him and for them. The idea is as old as Socrates' refusal to escape from the death-cell in 399 BC when he could have done so. He chose to abide by the laws of Athens which had nurtured him. [Endnote 23]
46. Here, then, we have these four ideas. The principle of the sovereignty of every individual provides no more than a minimal basis for good conduct. Justice is the referee between selfishness and altruism. The three lines of the moral calculus distinguish virtue from the mere avoidance of vice. Without the quality of civic virtue among our citizens, which should be assigned ultimately to the first line of the calculus, the integrity of democratic government subject to the rule of law is over time undermined.
47. How can I persuade you that these things are true? - Not so much true; truth is about facts in the world - but *right*? It is the mystery of ethics that to accept this or that position, you must look not only at the world around you, but into your own soul: it is a matter of *commitment*, not merely proof. It is about the difference between nobility and shame. What arguments appeal to you - and as I have said there are *only* arguments - depends on the temper of your character as much as the quality of your intellect. Winning over souls, then, is not just for the religious: it is for everyone who thinks about these things, for by so thinking he will become an advocate, for this position or that. I aim to persuade you of a particular model of virtue as good citizenship. Its figure, its metaphor, the mind's eye of it, is the whole of Athens' democracy manning the triremes at Salamis. For every one of us

there is an oar to wield: it may be a very small and unwarlike oar; and a ship to sail in: it may be a very small and unwarlike ship. But let us at least board the ship, and take up the oar.

Endnotes

1. Sinclair-Stevenson, 1994.
2. Weidenfeld and Nicolson, 1999.
3. Boswell's *Life*, vol. i, p. 471.
4. *Mind, Language and Society*, p. 33.
5. Oxford University Press, 1995, p. 591.
6. Harrison, *Description of Britain*, (1577), Pt. III, ch. iii, p. 99. But with the 'et' transposed - *Tempora mutantur nos et mutamur in illis* - it is the first line of an epigram by John Owen (1560? - 1622).
7. Hume, *Treatise of Human Nature*, III i. 1. See also K. R. Popper, *The Open Society*, vol. I pp. 50 - 53, and compare G. E. Moore's "naturalistic fallacy": *Principia Ethica*, Cambridge 1903.
8. Scruton, *Modern Philosophy*, Sinclair-Stevenson 1994, p. 273.
9. *Problems of Philosophy*, Oxford 1912, ch. vi.

10. *Aeneid*, i 462.
11. *The Constitution: Morals and Rights*, [1996] Public Law 622.
12. There is a very considerable literature: see in particular Ted Honderich, *A Theory of Determinism: The Mind, Neuro-science, and Life-Hopes* (Oxford, 1988).
13. *Moral Philosophy*, Oxford 1994, p. 55.
14. *ibid.* p. 57.
15. *Leviticus* ch. xix, v. 18. Raphael (*op. cit.* p. 59 fn. 1), agreeing with Edward Ullendorff, thinks that the correct translation of the *Leviticus* text is more like "Act lovingly towards your neighbour, for he is like yourself".
16. Ch. vii, v. 12.
17. First published in 1971 by Harvard University Press and Oxford University Press; revised edition 1999.
18. *Odyssey*, Book XI.
19. Sermon XV.

20. *St Matthew*, ch. v, v. 41.
21. Thucydides, *Peloponnesian War*, 2.40. I took this translation (which I have adapted) from the excellent *Perseus* website, which however does not identify the translator.
22. *Satires*, x 80.
23. See the *Crito*, esp. at 50 a - c.

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